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WITNESS SECURITY PROGRAM

HEARINGS BEFORE THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE NINETY-SIXTH CONGRESS SECOND SESSION

DECEMBER 15, 16, AND 17, 1980

for the use of the Committee on Governmental Affairs



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WITNESS SECURITY PROGRAM

MONDAY, DECEMBER 15, 1980

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9 a.m., pursuant to notice, in room 318, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Member of the subcommittee present: Senator Sam Nunn, Democrat, Georgia.

Members of the professional staff present: Marty Steinberg, chief counsel; W. P. Goodwin, Jr., staff director; Gregory Baldwin, assistant counsel; Raymond Worsham, Jack Key, and Glenn Fry, investigators; Myra Crase, chief clerk; Mary Robertson, assistant chief clerk; Charles Berk, general counsel to the minority; and Richard Shapiro, investigator to the minority.

Chairman NUNN. The subcommittee will come to order.
[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on the Witness Security Program on Monday, December 15, 1980, Tuesday, December 16, 1980, and Wednesday, December 17, 1980.

SAM NUNN, *Chairman.*
CHARLES H. PERCY,
Ranking Minority Member.

OPENING STATEMENT OF SENATOR NUNN

Chairman NUNN. Our hearings today, tomorrow, and Wednesday concern the operations and management of the Federal witness security program of the Department of Justice.

We are holding these hearings under the authority granted the Committee on Governmental Affairs and its duly-authorized subcommittees by rule XXV of the Standing Rules of the Senate and by Senate Resolution 361, agreed to March 5, 1980.

Without objection, I wish to order the texts of rule XXV and Senate Resolution 361 printed as an appendix to the record of these hearings.

The witness security program was created by the Organized Crime Act of 1970. Its mission is to protect Government witnesses and the families of witnesses who testify in organized crime cases. The fight against organized crime depends in large measure on witnesses coming forward to testify against alleged mobsters, usually at great risk to themselves and their families. For this reason, the witness security program is one of the most important elements in our efforts to eradicate organized crime.

The program provides a variety of services to its participants, depending on each individual case. These services include temporary protection, relocation, establishing a new identity, providing documentation to support the new identity, and limited financial and employment assistance.

At present, approximately 3,500 witnesses and some 8,000 of their dependents are participating in the program.

In general, the contributions of these people to the war on organized crime cannot be overestimated. We can all appreciate this fact when we consider the courage it takes for a victim or a member of organized crime to come forward and testify against the mob. Their lives, and often the lives of their families, instantly become potential targets for reprisals.

These people face tremendous fear and pressure. They literally tear up their roots and move to new towns and cities, leaving their homes and most of their relatives behind. Even though they live in a new place, they walk the streets with an eagle eye for fear that someone from the past might recognize them and compromise their safety. They and their families are under constant pressure not to say anything about their past for fear of divulging their true identity.

When they start out anew under another name, they have no birth certificate, no driver's license, no social security number, no credit cards, no passport, no automobile registration—none of the things we all take for granted. They quickly become a people without a past.

The Government bears a high responsibility in protecting these people and starting them off on a new life. Safely relocating witnesses is a job in itself. Getting them on their feet in a new place is even more difficult, given the wrenching psychological adjustments that must be made. The job must be done in an efficient and professional way by the Marshals Service. If not, the witnesses are not the only ones who suffer. So does the fight against organized crime, and so do we all.

This subcommittee has had a number of protected witnesses who have appeared before us, and on a few occasions we have been responsible for having witnesses admitted to the program. Therefore, the program is of special interest to us because it is a tool that we use in our investigations on occasion.

We also have the responsibility to examine the efficiency, economy, and management of Federal programs. We want to see the program not only works but works well.

In this connection, a number of the protected witnesses who have appeared before us have lodged complaints with us about how they have been treated in the program. Many of these complaints have aired in the media, including national television.

Some of these witnesses who are confined in prison have complained to us about being moved frequently from institution to institution; of being placed in the general prison population; of being placed in solitary confinement for long periods; of being placed in local prisons under such names as John Philip Sousa; of having their security breached by careless actions on the part of the marshals.

Relocated witnesses have complained about a lack of adequate documentation; about the difficulty of securing a line of credit or a job résumé; about a lack of effort by the marshals to find them a suitable job.

Last May, during our hearings on organized crime and the use of violence, we received testimony from a protected witness named F. Harvey Bonadonna. Mr. Bonadonna was a businessman in Kansas City who was "muscle" by the local Mafia, which wanted a share of a redevelopment project which he had helped to pioneer. After his father and several close friends were brutally murdered, Mr. Bonadonna went to the FBI. His testimony was primarily responsible for the conviction of a high-level Kansas City mobster. Mr. Bonadonna entered the program and was relocated in another part of the country about 3 years ago.

After all that time, Mr. Bonadonna testified, he still—

*** cannot fill out a credit application to buy a home *** (or) to get a Sears and Roebuck charge card. I cannot fill out any work applications. I got no documentation on who I was, what school I went to, where I come from.

It took him 2 years to get a new driver's license under his new name, and "it seemed like a year or more just to get a social security card."

Mr. Bonadonna laid the blame for these foulups on the Marshals Service.

"I don't know if it is in Washington or where it probably is—but the kindest think I can say is they are extremely ineffective," he testified.

In light of Mr. Bonadonna's testimony and the other complaints we have received from previous witnesses who appeared before us, I instructed the staff to commence a preliminary inquiry into the witness security program. I wanted to find out if there was validity in the various complaints that he and other witnesses have made to us. If there was validity, then I wanted to find out the reasons for these problems, to identify the agency responsible, and to develop some suggestions on how the program can be organized and managed in an effective manner.

I would like to emphasize that we do not want to tear down the program. Quite to the contrary, we want to build it up, to strengthen it, to improve it to the point that no complaints will be heard or at least the number of complaints will be reduced and that key witnesses will have no compunctions about joining it.

In my mind, an efficient and effective Federal witness security program is a vital tool in the fight against organized crime, but this tool must be kept oiled and running. It must not be allowed to corrode and fall apart.

Before we hear from our first witnesses, I want to point out that we expect to hear a great deal of criticism of the U.S. Marshals Service during these hearings. We are concentrating here on the problems in the witness security program which is administered by the Mar-

shals Service, but our focus should not be interpreted to mean that the program does not have its good points.

Some 3,500 witnesses would not have joined the program if the U.S. Marshals were not doing a fine job. The Service should be complimented for the many accomplishments of the program and I am sure that it shares with us the desire that these hearings will be constructive and will lead to much needed changes in the program.

I also understand and we will have testimony that in spite of the many problems in the program today that it has improved some in the last couple of years and we are certainly interested in any improvements that have been made and any planned improvements that have not been fully implemented. I also want to thank the members of the Marshals Service who have assisted in the preparation of these hearings. This includes many members of the headquarters staff and all of the witness inspectors who have coordinated the bringing of the protected witnesses to and from Washington. I want to especially thank John Washington, supervisory inspector of the Washington Metro Unit, who has assisted the subcommittee during these hearings and on several occasions in the past when we have called protected witnesses to testify.

Our first witness this morning will be two members of our staff, Gregory Baldwin, assistant counsel, and Raymond Worsham, investigator on the Permanent Subcommittee on Investigations. I will ask both of you to stand and hold up your right hand before you testify.

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BALDWIN. I do.

Mr. WORSHAM. I do.

**TESTIMONY OF GREGORY BALDWIN, ASSISTANT COUNSEL; AND
RAYMOND WORSHAM, INVESTIGATOR, PERMANENT SUBCOM-
MITTEE ON INVESTIGATIONS**

Chairman NUNN. Mr. Baldwin, I understand you and Mr. Worsham have a prepared statement this morning. Is that correct?

Mr. BALDWIN. Yes, Mr. Chairman. That is correct. With your permission, we would like to have that placed into the record and I will proceed to summarize that in my testimony this morning.

[The statement follows:]

STATEMENT OF GREGORY BALDWIN, ASSISTANT COUNSEL; AND RAYMOND WORSHAM, INVESTIGATOR, U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. Chairman, the staff of this Subcommittee has conducted an extensive investigation of all aspects of the Federal Witness Security Program since May, 1980. This investigation was undertaken at your direction. It was a logical and necessary extension of this Subcommittee's hearings on Organized Crime and the Use of Violence held in April and May 1980. As you stated, "the Witness Security Program is one of the most important elements in our efforts to eradicate organized crime," and during the violence hearings, as well as during the investigation preceding those hearings, many protected witnesses were interviewed. In particular, this Subcommittee heard testimony concerning the Witness

Security Program from Mr. Bonadonna, as you have noted. That testimony pointed out a real need to identify the problems encountered by protected witnesses; to determine their validity; to isolate, if possible, the cause of those problems; and to develop realistic suggestions for improvement. Because Mr. Bonadonna's testimony on May 1, 1980, was one of the immediate causes of your directive to institute this extension of the organized crime and violence investigation, I request that a transcript of his testimony be made a part of the record of this hearing as Exhibit 1.

Bearing in mind your belief that the Witness Security Program is vital to the efforts against organized crime and your desire to improve and strengthen that Program, the staff has met with as broad a range of knowledgeable individuals as possible. We have made contact with more than 139 persons, 57 of whom are relocated witnesses. Some of these 57 individuals contacted us on their own, some were interviewed at the suggestion of the U.S. Marshals Service and some were interviewed at our request. We have conducted 36 interviews with protected prisoner-witnesses, 25 of whom were inmates at two of the three Metropolitan Correctional Centers operated by the Bureau of Prisons.

In addition, we interviewed 16 members of the U.S. Marshals Service, including all of the non-clerical personnel at the Witness Section headquarters. We interviewed 18 employees of the Department of Justice and five officials in the Bureau of Prisons. Finally, we have spoken with 13 other individuals who have a unique knowledge of the Program such as Tom Renner, a reporter for Newsday.

In addition to these personal interviews and contacts, 191 written random surveys were conducted. Forty-three of these were surveys of U.S. Attorneys, Strike Force Attorneys and Drug Enforcement agents, and 148 were of relocated witnesses. All of the surveys solicited candid views of the operation of the Witness Security Program.

Among the DEA and attorneys surveyed, 36, or 84 percent indicated that their experience with the Program has been "generally satisfactory." However, 25, or 58 percent perceived serious problems with various aspects of its operation. These figures take on added meaning when broken down according to job category. About one third of the DEA agents perceived such problems. And, 81 percent of the attorneys perceived problems. Insofar as the sponsoring attorneys are more often exposed to protected witnesses and their problems than are the agents (who often cease contact with the witness after the investigation ends), the attorneys' surveys reveal that many of our most knowledgeable prosecutors see problems in the operation of the Program.

The surveys of relocated witnesses are substantially more difficult to interpret. When asked if they would have entered the Program if they had their present knowledge of its operation, about 74 percent answered affirmatively and about 26 percent negatively. However, if one assumes that these witnesses were in fear for their lives when they entered, then it is only natural that most would re-enter today. Perhaps a more accurate, although certainly more subjective review is to determine the number of witnesses who indicated in their responses some serious problems with the Program's operation. On this basis, about 31 percent of the responses were basically negative in their attitude toward the Program's operation, and 69 percent were basically positive. By whichever count, one out of four or one out of three express the existence of problems, figures which indicate serious operational difficulties with various aspects of the Program.

Moreover, the questionnaires were designed to serve a dual purpose: To identify the problems and to identify potential witnesses for the Senate. The ability of the questionnaires to serve either purpose is questionable for the following reasons:

(1) Despite recommended security precautions which would have insured both security and validity of the questionnaires, the Marshals demanded the questionnaires be filled out in their presence. The staff has received several complaints from responding witnesses indicating that they felt intimidated by the presence of a Marshals Service employee while answering the survey or by the fact that their answers could later be read by an employee who would know the witness. Given the fact that the relocated witness must rely heavily upon the local marshal for his security, their concern may well have altered these or other answers, thereby affecting the validity of the survey.

(2) Despite an agreement between the staff and the Marshals to code the questionnaires in such a way as to protect the witnesses' security and yet identify potential persons for interview by the staff, the questionnaires were received by the Subcommittee without any coding whatsoever.

(3) Despite the fact that the questionnaires were delivered to the Marshals in July with a request to return them in August, they were not received by the Subcommittee until late October—when they could be of little or no use. The completed questionnaires, however, were in the possession of the Marshals for months. The stated reasons for this delay were to insure no witness had inadvertently breached his security (none had) and for the Marshals to tabulate the results. Although the Marshals have twice stated that this staff would be provided copies of their tabulations, they have never been provided. Accordingly, the staff cannot determine if the Marshals Service agrees with these percentages or, if it disagrees, what the source of the disagreement is.

The surveys were to have been sent to witnesses whose witness code numbers were randomly selected by the staff. The staff did in fact randomly select witness code numbers. Due to the lack of control and the lack of coding I have described, the staff has no assurance of how the surveys were completed.

But even accepting the validity of the surveys, it is not acceptable that a quarter to a third of the witnesses surveyed are dissatisfied with the operation of a program so vital to law enforcement. Such widespread dissatisfaction cannot avoid general public attention through the news media. It is a fact which is common knowledge and which is documented by a number of news reports, which I request be placed in the record of these hearings as Exhibit 2. These unfavorable reports, plus others on TV, reach out to potential witnesses and may conceivably deter them from cooperating with law enforcement and entering the Program for their own protection. These problems act to injure the use of this law enforcement tool. The interviews conducted by the staff support not only the existence of many problems in the Program but also the potential effect they can have if left uncorrected.

Before addressing the problems and their causes, these problems must be put into context. The U.S. Department of Justice, and in particular the U.S. Marshals Service, has made a determined effort to improve the operation of the Program and resolve the identifiable problems over the past two years. These efforts have apparently met with some success. In preparing its March, 1978, report, the Department of Justice Witness Security Program Review Committee conducted two surveys of relocated witnesses. The first was a survey of witnesses relocated between March 1972 and June 1977. The second surveyed witnesses actively involved in the Program as of August, 1977. I request that sections of the Committee's report pertaining to these surveys be made part of this record as Exhibit 3.

If we refer to the Subcommittee staff's survey as survey number three and compare the results, a trend is visible (assuming the results of survey three are valid). When asked if the witness or his family experienced avoidable problems under the Programs, 61 percent of the pre-1977 witnesses (survey one) answered "yes;" 55 percent of the active 1978 witnesses (survey two) answered "yes;" and 39 percent of the 1980 witnesses (survey three) answered "yes." When asked if they would re-enter the Program with their present knowledge of it, 59 percent answered "yes" in survey one; 70 percent answered "yes" in survey two; and 73 percent answered "yes" in survey three.

It is apparent from these surveys that there is a large number of relocated witnesses who are generally satisfied with the Program. The many successful relocations conducted by the U.S. Marshals Service must be considered if the Service or the Program is to be fairly judged. This fact was brought home most forcefully to the staff by several witnesses themselves. One stated: "If it wasn't for the Program, I'd be a dead man now..." Another witness stated: "On the whole, the U.S. Marshals Service is tops in the field of security." He added: "The Program has worked wonders for me. It's helped me give my kids more than I ever could've before," [by which he meant it helped remove them from the original criminal environment]. "The Program gave me the tools," he went on, "and I took them and I used them effectively the way I was supposed to." A third witness stated, "The Program is super. Based on what it is designed to do, it does it well. It's designed to keep people alive and give them a new start in life, and it accomplishes this purpose in a damn good fashion."

There are many witnesses, however, who do not share these views. Generally, they fall into two classes: those who are relocated and are not incarcerated; and those who are prisoners. The particular problems of each group differ widely, and we will discuss first those of the non-prisoner relocated witnesses.

Many of the problems experienced by relocated witnesses today are the same as those uncovered in 1978. The recommendations made by the witnesses themselves in 1978, as reported in Exhibit 3, insofar as they reflect problems, have not changed. This indicates that while some problem areas may have been addressed with some success, none have been completely resolved.

As a result of our investigation we can accurately identify the Program's operational problems. I should note at this point that we have attempted to verify the specific complaints made by a number of witnesses. Despite the fact that the Subcommittee has provided the Marshals Service with specific witness problems and complaints both orally and in writing in an attempt to verify them and receive an official response, to this date the Subcommittee has received no response at all.

The specific problems we have identified are the following:

- (1) Inaccurate or false promises made prior to relocation by federal investigative agents and prosecutors or, on occasion, by members of the Marshals Service.
- (2) Breaches of the witness' security caused by inexperienced or carelessness on the part of the Marshals.
- (3) Inadequacy and late receipt of documentation necessary to reestablish a witness' life under a new identity.
- (4) Inadequate employment assistance for witnesses.
- (5) Careless, insensitive and unsympathetic attitude on the part of Marshals to the witnesses' trauma and problems in reestablishing themselves socially and economically.
- (6) Lack of specialized expertise in complex areas such as witness employment, documentation, financing and social services.
- (7) Lack of central control, authority, responsibility, accountability and oversight by the Department of Justice.
- (8) Lack of coordination by the Department of Justice between various Executive agencies and the Marshals, among other branches of the Justice Department and the Marshals, and among state agencies and the Marshals.
- (9) Lack of training of Deputy Marshals in security matters and the problems of handling and helping relocated witnesses.
- (10) Failure to provide adequate financing or credit, or to provide any financial or credit counseling or assistance.
- (11) Inadequate control by the Witness Security headquarters of most of the personnel handling and protecting relocated witnesses.
- (12) Political appointment of U.S. Marshals.
- (13) Inappropriate union rules requiring the use of inexperienced personnel for sensitive duties.
- (14) Lack of flexibility in recognizing and coping with the special problems of legitimate non-criminal relocated witnesses.
- (15) The lack of an effective procedure for witnesses to file and resolve complaints against the U.S. Marshals Service.
- (16) Inadequate funding of the U.S. Marshals Service as a whole, and the Witness Security Program in particular.
- (17) Inadequate manpower for the U.S. Marshals Service as a whole, and the Witness Security Program in particular.

Our investigation has shown that great improvement has been made by the U.S. Marshals Service in accurately explaining the Program to prospective witnesses. One of the major sources of this problem had been caused by promises made by agents and prosecutors who knew little if anything of the Program but who in their zeal to win the witness' cooperation, were willing to promise almost anything to the witness on behalf of the Marshals Service. This aspect of the problem has improved as a result of a concerted training effort by the Marshals of their own personnel and by an educational campaign aimed at prosecutors and agents. Nevertheless, witnesses still assert that specific promises were made by the Marshals Service and never kept. All promises made are now to be embodied in a written Memorandum of Understanding signed by the witness. The problem, however, is that this document is not considered by the Marshals to be a binding contract. While they may break the agreement with impunity

because of headquarters policy changes, if the witness does so he faces termination from the Program. When the Program provides the only source of income or documentation or employment assistance for the witness, termination is a major deterrent to violating the agreement. There is no similar deterrent for the Marshals Service, however. This embitters many witnesses who believe promises made by the Government have been broken. The problem is enhanced by the fact that for security reasons the witness is not allowed to have a copy of this memorandum for his records. Thus, a witness may frequently believe that a promise is in writing when in fact it is not. Further complications arise because the memorandum is often reviewed and signed in a hasty and panicky atmosphere. The witness has at that time no access to advice from persons knowledgeable in the fields of employment, documentation, finances and social readjustments. This is not conducive to a clear understanding by the witness of exactly what has been promised, with the result that he may later feel tricked and betrayed.

Security is of paramount importance to the Program's success, but too frequently it is breached by carelessness on the part of the Marshals. It is infrequent that the Marshals Witness Inspectors, who have been trained in the handling of witnesses, make such errors. Most often this is caused by inexperienced or thoughtless and untrained Deputy Marshals. In one instance, a witness' mail addressed to individuals in his former home town was given to a Marshal to be forwarded from a location other than where the witness was then living. In this way, the postmark would not show his town. The Marshal carelessly mailed the letters directly from his office, which was the town the witness lived in. The witness' location was thus exposed, and he had to be relocated a second time.

In another case, a relocated witness was testifying at trial amid intense security. During a break, one Deputy Marshal assigned to the security detail guarding the witness made the chance remark within the hearing of a trial spectator: "When he finishes testifying, he just goes back to Minneapolis." Within minutes the defendant knew the town where the witness was living, and this required the witness and his family to be uprooted again, thus ending a successful relocation.

On other occasions, untrained Marshals have returned witnesses to danger areas on direct airline flights, enabling anyone seeing the arrival of the witness to know his place of origin. In one instance described to us by government officials, during the recent primary election campaign, a witness was booked on a flight under the name "T. Kennedy," causing an uproar at the airport and resulting in his delay and questioning by airport security guards.

Security details in danger areas are, due to union rules, staffed by untrained deputies who come from hundreds of miles away. They do not know the witness, the city they are in, or people who may endanger the witness. Nevertheless, union rules require the uniform rotation of oftentimes ill-trained and inexperienced deputies on sensitive security details in order to provide all of these deputies equal access to overtime pay. This causes situations which are very dangerous to the witness. The union views are expressed in an interview report relating to a meeting between union officials and staff members, and I request this report be made a part of the record as Exhibit 4.

Another aspect of the security problem is in the movement of household goods from the danger area to the place of relocation. In some instances reported to the staff, a witness' belongings were delivered to him with half of the boxes marked with his original name and half marked with a third name or with his new name. In some cases the deliverer was fully aware that he was delivering to a relocated witness.

Such security breaches cannot be avoided when the Marshals, already 40 percent undermanned, must rely on untrained deputies to provide security or other services for protected witnesses. There are not enough marshals trained in security and witness handling to insure careful, secure operation in all cases.

One of the major obstacles to a witness' social and economic readjustment is caused by a lack of background information. The difficulty arises in two ways: first, the witness is given no "cover story" to explain a new past to match his new name; second, what little documentation he does receive is often inadequate and late in arriving.

Witnesses are routinely picked up from the danger area and delivered into their new place of relocation without any advice or briefing on a new past. They are told only their new names. It is up to them to decide where they were born, grew up, or went to school. They must decide themselves where they last lived

and why they moved. They must, on their own, work out an entirely new past not only for themselves but for their entire family. No counseling or assistance is provided them by the Marshals. This leads to potentially severe security problems. In one case reported to the staff, a witness told his new neighbors he was born in the State of "X" because he did not know what his new birth certificate would show. When he received that certificate, it was from the State of "Y," but he had already filled out other local documents showing his place of birth as "X." In another instance, a witness was placed in a hotel in his new city under the name of [John Doe]. After one month he received a birth certificate in the name of [Richard Smith]. Thus some people in that city knew him by the John Doe name and others by the Richard Smith name.

The psychological trauma of relocation is compounded by this burden upon the witness and his family. It could be eased immensely by following the recommendations of two witnesses interviewed by the staff. They suggested the witness be taken to an interim city for a month or so, and counseled by experts on the psychological, financial, and social aspects of relocation. During the same period they could be provided the documentation needed to start a new life as well as a background cover story.

Actual documentation received is inadequate to reestablish the witnesses' past credit ratings, military service, education or job skills. The standard documents provided include a birth certificate (if the witness is lucky enough to have been born in a state which cooperates with the Marshals in issuing new certificates—14 States do not) a drivers license and Social Security card.

Birth certificates issued are genuine and reflect a legal name change secured by the Marshals. There are 14 States and 3 Territories from which the Marshals, for one reason or another, cannot or will not secure birth certificates. Some of these States simply refuse to cooperate; others cannot be used because of security problems. These States and Territories are, according to Witness Security headquarters: Alabama, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Louisiana, Massachusetts, Ohio, Oklahoma, Oregon, Vermont, Washington, Guam, Puerto Rico and the Virgin Islands. The staff has prepared a brief memorandum regarding this point and I request that it be made part of the record as Exhibit 5.

The relocated witness has no documented history. As if he were born yesterday, he has no past. For all he can prove, he is a man who never worked in his life. He is a man who never had credit. He is a man without an education. He has no former address or telephone number. He has no family, no friends, no personal or character references. Thus without professional assistance, it is very difficult for him to reestablish his life. Such assistance is not forthcoming from the Witness Security Program.

When documentation arrives, it is frequently late. Social Security cards may take up to three months to arrive. Yet a witness cannot open even a new bank account without a Social Security number. Until very recently, Social Security cards took from six months to one year to arrive. Many witnesses have waited two or three years for new marriage certificates and other vital documents.

Documentation is coordinated out of Witness Security headquarters. The coordinators, however, perform largely clerical functions with no expertise except what they have learned on the job. The document coordinators are overwhelmed by the sheer volume of required documents. Yet too often documentation promised at the time of relocation may never be delivered because securing it will consume too many precious moments or resources, or because it is beyond their expertise. In fact, in some cases it is the sponsoring federal law enforcement agency which secures needed documentation.

School records and employment records are, in the words of one witness, "so useless as to be worse than nothing." School records consist of previous school records with the name of the child and the school blotted out. Employment histories are prepared in the same way. Being worse than nothing, they necessitate a Marshal going to the new school or new employer, and explaining the fact that the parents or employee is a relocated witness. This in turn generally results in many people in the witnesses' new location being aware of the situation. Their curiosity is aroused and difficult or embarrassing questions are asked. On one occasion, a child was introduced to his class as being the son of a relocated Mafia witness.

The Marshals Service must rely on other agencies to secure most documents, and generally the cooperation they have received borders on obstruction. While

the Social Security Administration has improved the amount of time it takes to deliver new Social Security cards, in many cases, it has failed to transfer a witness' earnings from his old number to his new one. All Social Security claims must, therefore, be processed personally by the Marshals in Washington on a case-by-case basis. There are over 3,500 witnesses who must go through the Marshals if they are to ever successfully file a claim. The transfer of benefits existing at the time of relocation takes, in some cases, years. Often the witness must be funded by the Marshals' limited resources until Social Security completes the benefit transfer. But, in all such cases, the Marshals, not the agency, are bitterly blamed by the witnesses.

Credit is a problem which plagues witnesses. For obvious reasons, credit cannot be obtained by a person without a past. A relocated witness sacrifices his entire credit history, and receives no counseling or assistance whatsoever in establishing new credit. In the words of one witness: "There's no reason that they can't tell a bank I'm a relocated witness but once had a good credit history with Master Charge . . . if they can tell my boss, my kids' school and my landlord that I'm relocated."

Having no past plus the concern for security combines to make the witness a "non-person" in civil suits. While the witness can unfairly escape debts in the home town he leaves behind, he also unfairly loses in many cases his right to pursue claims there in civil court. One witness almost forfeited the collection of a large judgment, and it was only by the special intervention of the prosecuting attorney who introduced him to the Program that he was finally able to enforce the judgment. Much more common is the fact that household goods are severely damaged or even lost when delivered. Here the witness cannot file suit against the company without breaching his security. Worse still, the moving companies, aware of his status and his disability, refuse to settle the claim for anything more than a fraction of the true value. In such instances the Marshals provide no assistance. Losses to witnesses run into the tens of thousands of dollars. The Marshals refusal to assist appears to be based not upon a lack of concern as much as upon a lack of people to do the job and a lack of expertise.

Related to the inadequacy of documentation is the pervasive problem of employment. The relocated witness, appearing to have been born yesterday, and lacking any education and job skills, cannot independently seek any type of worthwhile employment in our sophisticated society. He must accept what the Marshals Service can find for him. The coordinator of the Marshals Service Employment Assistance Program lacks the professional credentials and contacts necessary to develop a job bank for witnesses. In fact, we have been informed that this service is primarily handled by clerical help. Normally, some manual type job can be found for the witness. It is generally the Marshals in the field or an interested agent who locates a job for the witness and it is the lucky witness who finds the job which relates to his job skills. One difficulty is the fact that many witnesses have a criminal past and not legitimate job skills. Compounding the problem is the fact that some witnesses are highly educated and formerly held high salaried, responsible positions. The Marshals Service has neither the expertise, the flexibility, nor the funds to effectively assist witnesses in these broad categories.

Nonetheless, some witnesses are often under constant pressure to accept employment so that their funding can be terminated. If the witness turns down two job offers which the Marshals deem to be acceptable jobs, then by policy the witness' funding will be terminated. At the other end of the spectrum is the witness who receives no help from his assigned Marshal in finding employment. These witnesses must find their own jobs without documents, skills or even counseling.

The number of complaints which arise from these problems is apparent just from the degree of news media attention they have received. Some witness complaints are justified, and some are not. Some complaints should more fairly be directed at agencies other than the Marshals Service. No clear, effective method of making a complaint exists, although a witness complaint system was recommended within the Justice Department in 1978. It is of little use to say a witness may complain through his assigned Marshal since the complaint often is directed against that very person. Witnesses use a variety of means to resolve complaints and grievances now—some go to their sponsoring attorney, some to the Witness Security headquarters, some to Justice Department officials, some to

Congressmen, some to the news media. Some try all avenues at once. The result is a cacophony of complaints from divergent sources all converging on Witness Security headquarters. Often, that headquarters must respond to the same problem two or three times. Insofar as the headquarters is often asked to resolve complaints made against itself, it is often accused of siding against the witness in its own behalf. The lack of a reliable, centralized witness complaint system seriously interferes with the Marshals' performance of their primary witness security duties.

These problem areas impact upon different types of witnesses in varying degrees. Most seriously affected is the legitimate businessman who becomes a relocated witness. This person with a college degree, highly developed job skills and a high social and economic standing in his community is treated in the same manner as the criminal witness who has no such background or skills. The failures of promises and security, the inadequacy of background documentation, the limited employment assistance, the lack of credit and financial advice or assistance, the lack of social readjustment counseling, added to the inability to be heard, have a ruinous effect upon such a witness. Many are forced by these circumstances into a greatly reduced lifestyle. It is frequently impossible due to their lack of a past to secure financial aids available to any other citizen, such as Small Business loans or FHA loans. Such loans can only be made with the direct assistance of the Marshals Service, and this itself can be very difficult to obtain. Yet, these are often witnesses who formerly had excellent credit, owned their own homes and sometimes even businesses. Because their lack of a past deprives them even of the most basic credit or other tools necessary and available to any other citizen in this sophisticated society, they feel betrayed and punished by the Government because of their cooperation. The mental anguish and frustration caused by the inability of the Marshals Service to adequately respond to and handle such witnesses is perhaps best summed up in the words of relocated witness Frank Calimano: "This whole program was developed for the criminal who turns against his own element to avoid going to jail. The U.S. Marshals Service has the audacity to assume everyone on the Program is a criminal avoiding a jail sentence so just be content with what you have, it beats being in prison." I request that this entire statement by Mr. Calimano, written shortly before his death in June, 1980, be made part of the record of these hearings as Exhibit 6.

Relocated witnesses are not the only people affected by the Witness Security Program. Also affected adversely are those often completely innocent citizens left behind after the witness relocates: his family members and his creditors. Perhaps the worst example of the affect the Program can have upon innocent citizens arises in the cases of child custody. It occurs with some frequency that a relocated witness may include as part of his family group a wife or girlfriend who has custody of children from a previous marriage. Those children are relocated with the witness with no warning, no consultation and no explanation to the natural parent who is left behind. The relocation takes place without regard to the natural parents visitation or custody rights, even if they are part of an existing court decree. The relocation takes place without any monitoring of the psychological effect this forced separation from one natural parent has upon the children themselves.

Two cases can serve to illustrate the point. One involves the children of Eugene Grossman and began in 1973. Another occurred in '78, involving the children of Donna Ruffalo. I request that materials relating to the Grossman case be made part of this record as Exhibit 7, and the materials relating to the Ruffalo case be made part of this record as Exhibit 8.

Of the problems I listed previously, six are so pervasive that they are major causes of the other problems. These six problems cannot be eliminated by the U.S. Marshals Service alone, although they can be eliminated by the Government itself. These are:

- (1) Inadequate funding of the U.S. Marshals Service as a whole, and the Witness Security Program in particular.
- (2) Inadequate manpower for the U.S. Marshals Service as a whole, and the Witness Security Program in particular.
- (3) Inadequate control by the Witness Security headquarters of most of the personnel handling and protecting relocated witnesses.
- (4) Lack of central control, authority, responsibility, accountability and oversight by the Department of Justice.

(5) Lack of coordination by the Department of Justice between the various Executive agencies and the Marshals Service, among other branches of the Justice Department and the Marshals Service, and among numerous state agencies and the Marshals Service.

(6) Lack of qualified professional personnel with the specific expertise in areas such as documentation, employment, finances and social readjustment. As an example of this type of professional expertise, I refer to the employment program developed by Mr. Wayne Hopkins, a former President of the National Chamber of Commerce, for the Witness Security Program.

I request that this be made a part of the record of this hearing as Exhibit 9.

Each of these contributes to the problems mentioned already. As to the question of funding and manpower, it is sufficient to point out at this time that the Marshals Service is about 40 percent understaffed and lacks the funds needed to resolve this. More specifically, the staff has been told—and later testimony here will establish—that the Witness Security Program is understaffed in all aspects of its operations. Not only is the Program understaffed, but fully 65 percent of the personnel who actually operate the Program in the field are not subject to the control of the Witness Security Section, although it is that section charged with and responsible for the proper operation of the Program.

In this regard, there are 129 field personnel working on the Program. About 40 of these are called "Witness Security Specialists," or "Metros" for short. These are directly controlled by the Chief of Witness Security. Almost without exception these "Metros" were praised by relocated witnesses as sensitive, dedicated and professional. The remaining field personnel are called "Witness Security Specialists-Field," or "In-districts" for short. These personnel—two-thirds of the total—are under the direct control of the U.S. Marshal in the district to which they are assigned. They are assigned duties as Deputy U.S. Marshals such as court security, as well as duties relating to relocated witnesses. Should the two conflict, the U.S. Marshal will direct which has priority—and this is often done at the expense of the Program. Moreover, the U.S. Marshal is a political appointee often having little knowledge and less sympathy with the Program. He is far beyond the direct control of the Chief of Witness Security, and as a practical matter, beyond the control of the Director of the U.S. Marshals Service. In fact, a U.S. Marshal can—and several have—refused to permit the relocation of any witnesses within their districts. This can severely affect the choices of relocation areas. Thus while the Chief of Witness Security has the responsibility for providing services to relocated witnesses, in many cases he lacks the power to discharge that responsibility. A third category is the "contact deputy." This is a deputy marshal in a district in which the U.S. Marshal has agreed to accept relocated witnesses but who refuses to sacrifice one of his deputies officially to witness duties. The number of these "contact deputies" varies. They receive no specific training in servicing relocated witnesses and are unschooled in policy or procedures for handling witnesses. Needless to say, the Witness Security Section has no control over the "contact deputy" although he directly represents that Section with the witness.

Moreover, the Chief of Witness Security has no control over the cooperation of other agencies within the Executive branch of government. We have been informed that no formal agreements exist with agencies such as the Veterans Administration or Social Security Administration, although the prompt issuance of documentation by them is vitally important to the witness. It has not been until the administration of Attorneys General Bell and Civiletti that any efforts have been made in this regard.

Little effective oversight has been given the Program by the Department of Justice. Many problems have been addressed, but only a few have been resolved. Although a departmental committee was created two years ago to oversee the Program, it has met only once. In the words of one attorney interviewed by the staff, "The Program is a prime example of how a bureaucracy can diffuse responsibility so broadly that no one is responsible ethically or morally anymore." No efforts seem to be made from any responsible departmental level to control or coordinate the efforts of the U.S. Marshals Service, the Office of Enforcement Operations or the Bureau of Prisons. No centralized control of these various departmental components exists. The Program operates like a body without a brain.

Another difficulty, related to each of the basic causes listed above, is the inadequacy of training provided to personnel handling relocated witnesses. While

a training program is in effect, it is apparently ineffective or insufficient. The staff has been informed from diverse sources, including personnel in the Witness Security headquarters, that Witness Security Specialists seem unable to make even the most routine decisions without first securing specific authority from headquarters. The result is that case managers, technically responsible for the monitoring of witness services on a regional basis, are inundated by requests for authority to do things for witnesses which have clearly been approved by long-standing written policy. This inundation is so overwhelming that case managers, who should play a proactive role in witness handling, play a reactive role only. Ideally, the case manager's role should be to monitor the handling of a witness by the field personnel. He should have the time and experience needed to anticipate the problems and resolve them before they arise instead of just reacting to them. The staff has received many complaints that field personnel are careless or unsympathetic to the witness' needs. These complaints were made by the vast majority of witnesses interviewed by the staff. While it is true that the attitude of the witness is important, most often that attitude will be formed by the witness' first or second meeting with a Marshal. Most witnesses will respond in kind, and if treated carelessly, crudely or unsympathetically, they will respond appropriately. The attitude of the witness, a major ingredient for a successful relocation, is usually determined by the Marshals themselves. I request that the comments of one witness regarding witness attitudes be made a part of this record as Exhibit 10.

The successful operation of the Witness Security Program as it relates to relocated witnesses requires flexibility, imagination and dedication. While many of the personnel assigned to the Program show a dedication far beyond that called for by their grade level, their flexibility and imagination is stifled by lack of funds, lack of manpower, lack of expertise, lack of support from agencies needed to provide assistance and limited training. This terrible waste of dedication is perhaps one of the most demoralizing aspects of the Program for both witnesses and Marshals Service personnel.

The second major classification of problem areas in the Program deals with prisoner-witnesses. While there are fewer prisoner-witnesses (about 250), their problems are just as, if not more, severe than those of relocated witnesses.

Prisoner-witnesses experience three basic problems unique to their situation. These are:

1. Misrepresentations as to how they or their families will be treated;
2. The more restrictive conditions under which they are incarcerated, resulting as a practical matter in their doing "harder time" than prisoners who are not cooperating as witnesses.
3. The fear of discovery and retaliation by other prisoners caused by their cooperation with law enforcement.

Many prisoner-witnesses are recruited while they are incarcerated. They are persuaded to cooperate for a variety of reasons, but the most common reasons found by the staff are a desire to mitigate their sentence or terms of imprisonment, and a desire to preserve and protect their families.

Often they are told that they will receive favorable parole consideration for their cooperation. They are told their families will be relocated to an area nearby their place of imprisonment in order to have frequent visits. They are told their family will receive financial aid on the Witness Program until their release from prison. They are told they will be protected as long as they are in prison. In an overwhelming number of instances, these are misrepresentations.

The Bureau of Prisons has the responsibility of protecting a prisoner-witness. The Marshals Service's only role in this is in transporting the prisoner witness when required. As a result, the Marshals Service will not discuss any aspect of protection with a prisoner until his release from prison. Yet, no arrangements have ever been made with the Bureau of Prisons to have a representative explain the details of prison protection to the prisoner before he enters the protection program. The result is that most representations are made to potential prisoner-witnesses by federal attorneys or agents who have little or no knowledge of Bureau of Prisons protection policy or the Witness Security Program as it applies to the prisoner-witness and his family.

In fact, it is infrequent for a prisoner-witness to be incarcerated near his family. The prisoner retains his original name. The family, however, if accepted into the Program, is provided a new identity. The Marshals Service considers it to be a breach of security for the relocated, renamed family to visit with the

prisoner-witness whose name remains unchanged. Thus, almost by definition any promise or representation that the prisoner will be near his family is incorrect. Most prisoners find this out too late. This forced separation is destructive to the prisoner-witness' attitude and rehabilitation. It is also dangerous: in at least two instances wives have left the Program and returned to a danger area in order to be near their husbands who were prisoner-witnesses.

The standard policy of the Marshals Service is to remove the prisoner-witness' family from funding and find them jobs as soon as possible. There is no policy permitting funding of a prisoner-witness' family for the duration of the prisoner's sentence. The representation that the family will receive financial aid for that period of time also is incorrect. Most prisoners find this out too late also. In fact, some prisoner-witness families which consists of a wife and children are placed on welfare.

Neither the federal attorney, the agency, the Marshals nor the Bureau of Prisons have any power or control over the parole board and thus any promise or representation to a prisoner-witness about favorable treatment is at best a gamble. In an effort to impress a parole board with the degree and importance of a witness' cooperation the parole board will be provided copies of the witness' statements about all of the criminal activity he has knowledge of. This often backfires, however. In many cases the parole board will find on the basis of this information that the witness is a much more serious offender than his actual conviction indicates, and delay his parole date on that basis. This also the prisoner-witness finds out too late.

The Bureau of Prisons standard policy is to house most protected prisoner-witnesses in protective custody units in one of three Metropolitan Correctional Centers in New York, San Diego, and Chicago. This type of protection ends as soon as possible after the witness has given his testimony. He is then sent into the general population of the federal or state's prison systems.

Many prisoners, especially those who were involved in organized crime groups or in prison gangs, believe that they can never safely be placed into general population. Their fear is based upon the expectation that they will be retaliated against not only by a defendant against whom they testified, but also by any prisoner at all. They believe that the "prisoners code" prohibits informing or testifying for the government, and that prisoners will violently and swiftly enforce this code against them. Violation of the code is, they state, an offense summarily punishable by death. This is particularly the case in the maximum security state and federal prisons. Prisoner-witnesses state that they can never be anonymous in the prison system. In most prisons other inmates have access to all prisoners' files. Any slight indication of the prisoner-witness' cooperation will expose him to retaliation. In addition, any other inmate who has been housed in one of three Metropolitan Correctional Centers, may have seen a prisoner-witness there. Should that inmate later see the prisoner-witness in the general population of another prison, he need only identify him as a prisoner formerly on the "witness floor." In either case, mere identification as a witness will lead to retaliation. In such instances the only recourse available to the prisoner-witness is to have himself placed in solitary confinement or what is known as "the hole." There, he must attempt to contact someone in an effort to be removed from the prison, an effort which in some cases may take two or three weeks.

This fear on the part of the witness clashes directly with the Bureau of Prisons Policy dictating ultimate placement of a prisoner-witness in general population. The clash is aggravated by the prisoner-witness' belief that he was promised protection. Again, the prisoner-witness feels betrayed by the very people he endangered his life for.

The combination of this fear and sense of betrayal has a devastating effect upon the prisoner-witness. Overcome by these problems, he cannot concentrate on the promised testimony. He is distracted, demoralized and deeply embittered against the government. In some cases, in retaliation, he may "forget" his testimony. The end result is dissatisfying to everyone except the defendant.

Compounding these two problems are the conditions under which many prisoner-witnesses live. About 20 percent are housed in protective custody units of the Metropolitan Correctional Centers in New York, San Diego and Chicago. Designed for short term incarceration (the stay for the average inmate in the New York MCC is 77 days) they house prisoner-witnesses for years at a time. Because the facility is geared to short-term prisoners and because of the need

to keep prisoner-witnesses secure, the prisoner-witnesses lose recreational and educational opportunities available to other inmates. With time on their hands, the sense of frustration, betrayal and fear is provided the perfect place to grow into a problem of monumental proportions. This unnatural environment is preferred by some because of the fear they have for the only available alternative, general population. The situation was summed up by one prisoner-witness who told the staff, "I don't expect to be treated any better because I testified, but I don't expect to be treated worse." Virtually all of the prisoner-witnesses to whom the staff spoke stated unhesitatingly that they were worse off than other inmates. They said that it was as if they were being punished by the government for their cooperation with the government.

It has often been said that the primary purpose of the Witness Security Program is to protect the lives of government witnesses. It has often been claimed that no witness under active protection has ever been killed. Keeping a witness alive, however, also includes keeping him in a mental state conducive to his testimony. I can say as a former prosecutor who has used this program, Mr. Chairman, that any witness so overwhelmed with problems, fears or a bitter sense of betrayal will not be an effective witness in a criminal trial. It is a vital part of the Witness Security Program that a witness—prisoner or relocated—be in a frame of mind favorable to his testifying as well as alive to do so. The Program should attract witnesses to the idea of cooperating with law enforcement, not deter them. Several witnesses, however, have reported to the staff that they have discouraged other witnesses from accepting protection and cooperating, because of these problems.

It can be of little satisfaction to law enforcement if the government develops a protection program which maintains a witness' life but destroys his quality as a witness. It can be of even less satisfaction to law enforcement if the government develops a protection program which acts more as a deterrent to cooperation than an inducement. As you have said, Mr. Chairman, this vital tool in the fight against organized crime must not be allowed to corrode and fall apart. If the present corrosion continues the only winners will be professional organized criminals.

Chairman NUNN. If you would, give us a little bit of your background, just briefly, what you have done in law enforcement. I will ask Mr. Worsham to do the same thing and how long you have been with the subcommittee.

Mr. BALDWIN. Yes, sir. Upon graduation from law school in 1974, Mr. Chairman, I took a position with the U.S. Department of Justice, Organized Crime and Racketeering Section. I was assigned after an initial period in Washington, D.C., to prosecution of organized crime in the city of Rochester, N.Y.

I remained in that position for approximately 5½ years. During that time, I took a transfer on leave without pay from the Organized Crime Section to the office of the district attorney of the county of Philadelphia, where I assisted in establishing a grand jury and electronic surveillance unit; I remained in that position for a year until the expiration of the transfer, at which time I joined the staff of this subcommittee in September 1980.

I should also mention in connection with my experience with the Department of Justice that I have sponsored as a prosecuting attorney approximately 12 witnesses and their families into the witness security program.

Chairman NUNN. Thank you very much. Mr. Worsham, could you also give us your background?

Mr. WORSHAM. Yes. I graduated with a bachelor of science degree from the University of Tennessee. I first became involved in law enforcement when I joined the Bureau of Drug Abuse Control in 1966, remained with the Bureau of Drug Abuse Control until 1968,

when it was amalgamated with the Federal Bureau of Narcotics into the Bureau of Narcotics and Dangerous Drugs.

In 1973 the Bureau of Narcotics and Dangerous Drugs became the Drug Enforcement Administration, and I have been with that agency since, and during the course of my law enforcement tenure, I also had sponsored approximately four witnesses into this witness protection program.

Chairman NUNN. Thank you.

Mr. Baldwin, go ahead with your testimony.

Mr. BALDWIN. Thank you, Mr. Chairman. The staff of this subcommittee has conducted an intensive investigation of all aspects of the Federal witness security program since May of 1980. This investigation was undertaken at your direction. It was a logical and necessary extension of this subcommittee's hearings on organized crime and the use of violence which were held in April and May 1980.

As you stated, Mr. Chairman, "The witness security program is one of the most important elements in our efforts to eradicate organized crime."

And during the violence hearings, as well as during the investigation preceding those hearings, many protected witnesses were interviewed.

In particular, this subcommittee heard testimony concerning the witness security program from Mr. Bonadonna, as you have noted. That testimony pointed out a real need to identify the problems encountered by protected witnesses; to determine their validity; to isolate, if possible, the cause of those problems; and to develop realistic suggestions for improvement. Because Mr. Bonadonna's testimony on May 1, 1980, was one of the immediate causes of your directive to institute this extension of the organized crime and violence investigation, I request that a transcript of his testimony be made a part of the record of his hearing as exhibit 1.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 1" for reference and follows:]

EXHIBIT NO. 1

EXCERPTS OF TESTIMONY OF F. HARVEY BONADONNA, ACCOMPANIED BY WILLIAM OUSELEY, SPECIAL AGENT, KANSAS CITY FIELD OFFICE, FEDERAL BUREAU OF INVESTIGATION BEFORE THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, MAY 1, 1980

Mr. BONADONNA. Senator Sasser, you are on a subject that I am glad you want to discuss. I want to get into this.

The witness protection program in the United States is one, is another one, of the good tools that was passed to help people in my position and other areas, who come in and stand up and take the chances that I have taken to survive.

You have to do something about the implementation of your program guidelines. My experience is all that I am speaking of, the U.S. Marshal's Office—I don't know if it is in Washington or where it probably is—but the kindest thing I can say is they are extremely ineffective.

They have problems that they just don't know how to handle. They just don't know how to handle, as far as a businessman like myself coming into the project. They have no idea what they are doing or how to do it.

I can enumerate many things that have happened and I will just leave it at that in case you want more.

Senator SASSER. Let me just ask you this: Is the witness protection program effective in allaying an individual's fear, legitimate fear, of mob reprisals in the event that they do testify, in the event they do give information?

Mr. BONADONNA. As I said before, basically, Senator, the witness protection program—and when I first testified, I had no knowledge of anything about the witness protection program.

Senator SASSER. You knew nothing about the witness protection program at the time you came forward as a witness?

Mr. BONADONNA. No. I came forth. I was told they had a program of this nature. I had no knowledge of the program or the workings it had or anything like that. I just came into it.

Like I said, the program, the Marshal's Office that handles the program, there are a lot of good marshals and they have the feeling that they want to do well and I know they want to, but I just don't think that they have the expertise or that they have the wherewithal or what. I don't know, I mean, I want the witness protection program to work for me.

At this point in my time I have not—I am almost at the point in my life where I am almost going to be forced to go back into the Kansas City area because of the inadequacies of the witness protection program.

I do not want to do this, but you know, because of the inadequacies that I am having in the witness protection program, I am at the point where I have a limited time left to stay in it.

Chairman NUNN. Can you tell us about those inadequacies?

Mr. BONADONNA. Documentation. When I came to the witness program, when I first got into the witness program, when I got located in the area that I am in now, it took me almost 2 years, just 2 years, to get a driver's license. For 2 years I drove around the State I am in now with my Bonadonna's driver's license.

All I had to do was get stopped by a police officer, and if he ran a traffic check on me or anything, I would have been exposed at that point in time.

It took me—I don't know the exact dates of it—but it took me a long time and it seemed like a year or more just to get a social security card, yet every time I would call the Marshal's Service I would ask them, "Please give me this."

"It is in the works." "We lost the papers. Would you please re-sign another paper?" "We can't get that."

And the driver's license incident, after 2 years they gave me a driver's license that looked like it came out of a crackerjack box and they made me sign a paper stating that I would—anything I did with this driver's license, that they would not be responsible for it.

I had to go into the State license bureau, and in fact, I even signed the Governor's name on the driver's license to make it look more legitimate than it did.

I turned it into the State license bureau, got issued a driver's license that I have now in my pocket.

Chairman NUNN. Did they know who you were? Did they know the background?

Mr. BONADONNA. They had. I walked in—like me handing you a piece of paper stating that you were Frank Smith, and typing up a driver's license that doesn't even look like a driver's license, say, "Go down to the State license bureau, tell them this is your new resident of the State, turn this in. They will issue a new license."

What really irked me is, even the license plates on my car—I had a tremendous amount of trouble with them to even help me get the license plates on my car other than my Missouri license plates. I had to finally get the license I had for Kansas City. The U.S. Justice Department sent a set of plates down that were clean and I could drive around the State with my car for almost 2 years and then when I finally got to the point where I was trying to get my titles on my car changed, they made me sign other papers stating that they would change these titles over, but this car would not be ever driven in the State in which I resided.

I mean it was just—it is a joke.

Another thing. You know I worked for 20 years and I worked hard. I worked very hard. I established credit.

Chairman NUNN. Let me interrupt you just to say this: You go right ahead. This is very, very valuable testimony; but be extremely careful that you don't say anything that jeopardizes your present identity.

Mr. BONADONNA. I know that. Like I said, I worked 20 years to establish credit. To this date, to date I cannot fill out a credit application to buy a home. I cannot fill out a credit application to get a Sears and Roebuck charge card. I cannot fill out any kind of a work application.

I got no documentation on who I was, what school I went to, where I come from. I am having problems now trying to get an application filled out and all

that I needed was them, the Marshals Service, to take this application and vouch for my character and give me five people who have known me for 5 years.

In Kansas City I can write 500 people, judges, lawyers, senator, mayors that would give a good credit reference in this program. You know, I am upset and I am just upset at the program. It is just not a good thing.

Chairman NUNN. It is not professional?

Mr. BONADONNA. No way in the world is it professional. It is being held up, it is being mismanaged or something. I don't know if it is the agents in the field or if it is the agents here in Washington. I don't know.

I feel like it is the agents in the field. I like to think the agents in Washington are really concerned and I feel like they want to help. I feel like when they issue out an edict to get something done, that it goes right back to the incompetency of the agent in the field who doesn't know what he is doing or his hands are tied.

For example, I wanted to get a birth certificate to show that I was born, that I am a legitimate person, because they came to me and told me, well, "It is against the law in the State that you are in to issue a phony birth certificate," yet they gave me a phony social security card, a phony driver's license, a phony car driver license and also, after almost 2½ years, I finally, after much trouble—I finally got a passport.

But they will issue me a passport, but they won't issue me a birth certificate. They just don't know what they are doing. That is all there is to it. They are very insensitive.

They have—I, you know, I don't know. I wish they would make it right, because there are other people who want to come into this program.

Chairman NUNN. One of the areas we are looking into is the witness protection program. We have heard numerous complaints about it and I agree with you there are a great deal of well-meaning, competent marshals, but the overall service in the witness protection program is obviously not being run in a professional way from the top to the bottom.

In my opinion, that is one of the most important elements in the fight against organized crime in this country. I think we must do something to revitalize it or recharge the responsibility on this.

I appreciate, Senator Sasser, your questions on this and your answers.

Mr. BONADONNA. Thank you, Mr. Chairman.

Senator SASSER. Let me just ask two more questions, Mr. Chairman, and that will conclude my questioning.

One final question about the witness protection program—and let me add I think that this is important and valuable information you are giving us about this program.

Did the Justice Department give you assurances of what assistance you would be given under the witness protection program once you were involved in it? Once you found out about it, because a participant in the witness protection program, did Justice, the Justice Department, give you assurances of what sort of help they would give you?

Mr. BONADONNA. Yes, Senator Sasser, they did. They told me that I would get a complete dossier filled out on a birth certificate, social security card, driver's license and whatever other identification I needed to establish a new identity and, too, I would get help in obtaining the job and to a lifestyle that I was accustomed to or, you know, at least an existing lifestyle.

I have been in this program now, I think, 2 years and a couple of months and at this point in time I have not received—the only thing I have received is a driver's license, a social security card and a passport. That is as far as—that is as far as I have been able to get.

One of the things I think that is very important in this witness protection program—if those people who are qualified, only those who are qualified—there should be something that you can do to have them able to get a line of credit to buy a home.

If the person has the money and the qualifications in his prior life, he should be given the opportunity to purchase a home, purchase a car or just to be a citizen, just do the normal things that everybody does.

In this program you have to pay cash for everything. In this program you can't apply for any credit card because you don't have the background. In this program have you ever tried to rent a car without a credit card?

It is almost impossible.

Senator SASSER. You can't rent one with cash, can you?

Mr. BONADONNA. No. They won't take it. It is almost impossible. Yet the Justice Department—not the Justice Department, the Marshals Service, I know they are charged to do these things. I used to make the statement about them being ineffective at the time. I don't think the top people are ineffective.

Senator SASSER. I gather that you think the problem with the program is in the field with the marshals themselves. Is that a correct assumption?

Mr. BONADONNA. Yes, sir, it is.

Chairman NUNN. One other question. Do you know people who are in the mob or the outfit or the organized criminal element who would like to get out and can't?

Mr. BONADONNA. Yes; I do, Mr. Chairman. There are people who want to get out and can't. There is one instance, I know of a man who wanted out and they forced him to stay in, and I told him that he was too valuable in the position that he was in, that he had to stay where he is and he came out.

There are others that want out. There are others that are just sitting back and waiting to see, and this witness protection program, that is why I worked so hard to make it go, and I will continue to go hard until the last day.

They are waiting to see if I succeed. If I succeed, they will step forward. I talked to my aunt, one of my aunts, and she is an older person. She is very old. She is like about 80 years old.

She tells me that there are people that are sitting back and they wish their sons could get into the witness protection program, and get out of the mess they are in. They want out, but they don't know. They don't know where to go.

There is no way to go. The witness protection program is not that well known in Kansas City. It is now, but it wasn't at the time.

Chairman NUNN. If you had to list top priorities of what the Federal Government can do to improve its efforts against organized crime, would the witness protection program, made effective and efficient, be at the top of your list?

Mr. BONADONNA. It would be at the extreme top of my list along with the Internal Revenue Service getting at the organized crime.

Chairman NUNN. You believe that IRS should get involved against organized crime?

Mr. BONADONNA. Yes.

Chairman NUNN. When did the Internal Revenue Service begin not to really be active against organized crime? Can you date it or is it just a general impression that you have?

Mr. BONADONNA. I remember that everyone, you know, when I was younger, that everyone was scared because of the Internal Revenue Service. You couldn't go out and buy a new car because you have to know where the money was coming from.

You had to make out phony bills of sale that you pay more for a car than you actually did, so they could show that they got this much more money that they were spending and then all of a sudden it just stopped.

Mr. BALDWIN. Bearing in mind your belief, sir, that the witness security program is vital to the efforts against organized crime and your desire to improve and strengthen that program, the staff has met with as broad a range of knowledgeable individuals as possible. We have made contact with more than 139 persons, 57 of whom are relocated witnesses. Some of these 57 individuals contacted us on their own, some were interviewed at the suggestion of the U.S. Marshals Service and some were interviewed at our request. We have conducted 36 interviews with protected prisoner-witnesses, 25 of whom were inmates at two of the three metropolitan correctional centers operated by the Bureau of Prisons.

In addition, we interviewed 16 members of the U.S. Marshals Service, including all of the nonclerical personnel at the witness section headquarters. We interviewed 18 employees of the Department of

Justice and 5 officials in the Bureau of Prisons. Finally, we have spoken with 13 other individuals who have a unique knowledge of the program such as Tom Renner, a reporter for Newsday.

In addition to these personal interviews and contacts, 191 written random surveys were conducted. Forty-three of these were surveys of U.S. attorneys, strike force attorneys, and drug enforcement agents, and 148 were of relocated witnesses. All of the surveys solicited candid views of the operation of the witness security program.

Among the DEA and attorney surveys, 36, or 84 percent, indicated that their experience with the program has been "generally satisfactory." However, 25, or 58 percent, perceived serious problems with various aspects of its operation. These figures take on added meaning when broken down according to the job category. About one-third of the DEA agents perceived such problems. But 81 percent of the attorneys that were asked to fill out the surveys perceived problems in the operation of the program.

The surveys of relocated witnesses are substantially more difficult to interpret. When asked if they would have entered the program if they had their present knowledge of its operation, about 74 percent answered affirmatively and about 26 percent negatively. However, if one assumes that these witnesses were in fear for their lives when they entered, then it is only natural that most would reenter today.

Perhaps a more accurate, although certainly more subjective review is to determine the number of witnesses who indicated in their responses some serious problems with the program's operations. On this basis, about 31 percent of the responses were basically negative in their attitude toward the program's operation, and 69 percent were basically positive. By whichever count, one out of four or one out of three express the existence of problems, figures which indicate serious operational difficulties with various aspects of the program.

Moreover, the questionnaires were designed to serve a dual purpose: to identify the problems and to identify potential witnesses for the Senate. The ability of the questionnaires to serve either purpose is questionable for the following reasons:

One, despite recommended security precautions which would have insured both security and validity of the questionnaires, the marshals demanded the questionnaires be filled out in their presence.

The staff has received several complaints from responding witnesses indicating that they felt intimidated by the presence of a Marshals Service employee while answering the survey or by the fact that their answers could later be read by an employee who would know the witness.

Given the fact that the relocated witness must rely heavily upon the local marshal for his security, their concern may well have altered these or other answers, thereby affecting the validity of the survey.

Two, despite an agreement between the staff and the marshals to code the questionnaires in such a way as to protect the witness's security and yet identify potential persons for interview by the staff, the questionnaires were received by the subcommittee without any coding whatsoever.

Three, despite the fact that the questionnaires were delivered to the marshals in July with a request to return them in August, they were not received by the subcommittee until late October—when they

could be of little or no use. The completed questionnaires, however, were in the possession of the marshals for months.

The stated reasons for this delay were to insure no witness had inadvertently breached his security—none had—and for the marshals to tabulate the results. Although the marshals have twice stated that this staff would be provided copies of their tabulations, they have never been provided.

Accordingly, the staff cannot determine if the Marshals Service agrees with these percentages or, if it disagrees, what the source of this disagreement is.

The surveys were to have been sent to witnesses whose witness code numbers were randomly selected by the staff. The staff did in fact randomly select witness code numbers. Due to the lack of control and the lack of coding I have described, the staff has no assurance of how the surveys were completed.

But even accepting the validity of the surveys, it is not acceptable that a quarter to a third of the witnesses surveyed are dissatisfied with the operation of a program so vital to law enforcement. Such widespread dissatisfaction cannot avoid general public attention through the news media. It is a fact which is common knowledge and which is documented by a number of news reports, which I request be placed in the record of these hearings as exhibit 2.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 2" for reference and may be found in the files of the subcommittee.]

Mr. BALDWIN. The interviews conducted by the staff support not only the existence of many problems in the program, but also the potential effect they can have if left uncorrected.

Before addressing the problems and their causes, these problems must be put into context. The U.S. Department of Justice, and in particular the U.S. Marshals Service, has made a determined effort to improve the operation of the program and resolve the identifiable problems over the past 2 years. These efforts have apparently met with some success. In preparing its March 1978 report, the Department of Justice Witness Security Program Review Committee conducted two surveys of relocated witnesses. The first was a survey of witnesses relocated between March 1972 and June 1977. The second surveyed witnesses actively involved in the program as of August 1977.

And I request that sections of the committee's report pertaining to these surveys be made a part of this record as exhibit 3.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 3" for reference and follows:]

EXHIBIT 3

U.S. DEPARTMENT OF JUSTICE REPORT OF THE WITNESS SECURITY PROGRAM REVIEW COMMITTEE, MARCH 1978

In addition, two mail surveys were conducted of protected witnesses:

WITNESS SURVEY NO. 1

Questionnaires were distributed to 200 protected witnesses selected by taking roughly every 10th witness to enter the Program between March 8, 1972, and June 17, 1977. The mailing included a self-addressed stamped envelope which permitted the questionnaire to be returned anonymously. Of the 200 questionnaires distributed, 32 (16 percent) were returned.

WITNESS SURVEY NO. 2

Questionnaires were distributed to 500 protected witnesses actively involved in the Program as of August 1977. This group had generally been in the Program for a shorter period of time on the average than those surveyed in Survey No. 1. There were 144 (29 percent) anonymous responses received.

The returns are informative and represent the first systematic attempt to obtain the views of protected witnesses regarding the Program. Five questions were asked and a space provided for elaboration. In summary, the returns produced the following results:

(1) Have adequate measures been taken to protect you and your family?

Survey No. 1:		Survey No. 2:	
Yes	21	Yes	117
No	8	No	18
Other	3	Other	9
Total	32	Total	144
Percent:		Percent:	
Yes	66	Yes	81
No	25	No	13
Other	9	Other	6

Reasons given for inadequate security:

- Government interest diminished after testimony completed.
- Danger while incarcerated.
- Witness was moved only a short distance from danger zone.
- No Deputy U. S. Marshals were present during moves, transfers, and returns.
- Family members were not protected as well as witnesses.

(2) Have you or your family experienced problems under this Program which could have been avoided?

Survey No. 1:		Survey No. 2:	
Yes	21	Yes	79
No	10	No	58
Other	1	Other	7
Total	32	Total	144
Percent:		Percent:	
Yes	61	Yes	55
No	31	No	40
Other	3	Other	5

Problems experienced:

- Financial.
- Documentation.
- Employment.
- Broken promises.
- Poor explanation and guidance under the Program.
- Movement of household goods.

(3) Do you feel that this is a worthwhile Program?

Survey No. 1:		Survey No. 2:	
Yes	29	Yes	130
No	1	No	4
Other	2	Other	10
Total	32	Total	144
Percent:		Percent:	
Yes	90	Yes	90
No	3	No	3
Other	6	Other	7

Reasons why worthwhile:

- New lease on life, new start, new chance.
- An alternative.
- Protection.
- Chance to help combat crime.

Reasons why not worthwhile:

- Only good is for the Government.
- Not fit for families.

(4) If, when you entered the Program, you had your present knowledge about it, would you still have entered?

Survey No. 1:		Survey No. 2:	
Yes	19	Yes	101
No	10	No	31
Other	3	Other	12
Total	32	Total	144
Percent:		Percent:	
Yes	59	Yes	70
No	31	No	22
Other	9	Other	8

Reasons for entering:

- Gives a chance for a new start.
- No new charges to face.
- Chance to help Government.
- No choice or best choice available.
- Safety.

Reasons for not entering:

- Requires a dependence upon inadequate support.
- Bureaucracy operates inconsistently.
- Promises not kept.
- Too many sacrifices to make.
- Financial problems.

Many of the witnesses gave very informative narrative statements in the space provided for comment after each question. The Appendix of this Report contains all such comments returned under Protected Witness Survey No. 1. The only difference between these comments and those from Survey No. 2 is that the first group—which included larger numbers of older cases and a larger number of witnesses no longer on subsistence—tended to be more critical of the Program than the responses under Survey No. 2.

The Review Committee believes it is quite significant that, notwithstanding all the problems and criticisms the Program has faced, a clear majority of the witnesses in both surveys thought the Program was "worthwhile" and, given their present knowledge, would still enter the Program.

Complaints

There is no clearly defined procedure for protected witnesses to follow in voicing complaints about their treatment under the Program. The result is that the witnesses complain everywhere: to the local U.S. Attorney, to investigative agents, to the Criminal Division, to the local U.S. Marshal, to their contact deputy, to the U.S. Marshals Service headquarters, to their Congressional representatives, and to the press.

Frequently, witnesses pursue several avenues of complaint concurrently, so that two or more offices may be handling the same complaint, independently and without coordination. Often these various offices arrive at conflicting assessments of a complaint and adopt inconsistent approaches to its resolution.

Mr. BALDWIN. It is apparent from these surveys that there are a large number of relocated witnesses who are generally satisfied with the program. The many successful relocations conducted by the U.S. Marshals Service must be considered if the Service or the program is to be fairly judged. This fact was brought home most forcefully to the staff by several witnesses themselves.

One stated, "If it wasn't for the program, I'd be a dead man now." Another witness stated, "On the whole, the U.S. Marshals Service is tops in the field of security." He added, "The program has worked wonders for me. It has helped me give my kids more than I ever could have before"—by which he meant it helped remove them from the

original criminal environment. "The program gave me the tools," he went on, "and I took them and I used them effectively the way I was supposed to." A third witness stated, "The program is super. Based on what it is designed to do, it does it well. It is designed to keep people alive and give them a new start in life, and it accomplishes this purpose in a damn good fashion."

There are many witnesses, however, who do not share these views. Generally, they fall into two classes: Those who are relocated and are not incarcerated; and those who are prisoners. The particular problems of each group differ widely, and we will discuss first those of the non-prisoner relocated witnesses.

Chairman NUNN. You are skipping some of your testimony. Without objection, your whole testimony should be put in the record. I would like you, though, to pick up page 5, the total paragraph now, because you have some favorable comments there and we will have a lot of unfavorable and I think in the proper context those ought to be stated.

Mr. BALDWIN. Yes, sir. Are you referring to the results of the surveys in particular or the statements made by witnesses to us?

Chairman NUNN. Beginning paragraph, I think you ought to read that paragraph, all of page 5. "If we refer," the first paragraph.

Mr. BALDWIN. Yes, sir. If we refer to the subcommittee staff's survey No. 3, and compare the results of the other surveys done by the Justice Department, a trend is visible assuming the results of survey 3 are valid. When asked if the witness or his family experienced avoidable problems under the program, 61 percent of the pre-1977 witnesses—survey 1—answered "yes"; 55 percent of the active 1978 witnesses—survey 2—answered "yes"; and 39 percent of the 1980 witnesses—survey 3—answered "yes." When asked if they would reenter the program with their present knowledge of it, 59 percent answered "yes" in survey 1; 70 percent answered "yes" in survey 2; and 73 percent answered "yes" in survey 3.

As I just noted, however, there are many witnesses who are not satisfied with the program, and generally, they fall into two classes: Those who are relocated and are not incarcerated; and those who are prisoners. The particular problems of each group differ widely, and we will discuss first those of the nonprisoner relocated witnesses. Relating first to the relocated witnesses, our investigation shows that we can accurately identify the program's operational problems. I should note at this point that we have attempted to verify the specific complaints made by a number of witnesses.

Despite the fact that the subcommittee has provided the Marshals Service with specific witness problems and complaints both orally and in writing in an attempt to verify them and to receive an official response, no response was received until yesterday afternoon at 3. My statement which I am inserting into the record was prepared prior to that time and states that to this date we haven't received any response at all. I would like to correct that at this point and let the record reflect that we have received the response, although not until 3 yesterday afternoon.

Chairman NUNN. How long have you been working on this?

Mr. BALDWIN. We have been working actively on this, the subcommittee, since May of 1980.

Chairman NUNN. When did you furnish the Marshals Service with the complaints orally and in writing?

Mr. BALDWIN. We have discussed the complaints with them orally on several occasions, most particularly through September and October. Finally, approximately 2 weeks ago after we had been told by the Justice Department that there could be no discussion at all regarding any specific cases, the Marshals Service indicated that they would unofficially discuss specific problems and specific complaints that we brought to their attention.

Approximately a week ago, or a week and a half ago, we were requested to reduce those complaints to writing, which we did, and they would respond to them in writing. It was that response to that specific written request that we finally received yesterday afternoon.

If I may, Mr. Chairman, I would like to take the response submitted by the Marshals Service and enter that into the record as a sealed exhibit.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 4" for reference, sealed, and entered into the confidential files of the subcommittee.]

Mr. BALDWIN. The specific problems that we have identified are the following:

(1) Inaccurate or false promises made prior to relocation by Federal investigative agents and prosecutors or on occasion by members of the U.S. Marshals Service.

(2) Breaches of the witness' security caused by inexperience or carelessness on the part of the marshals.

(3) Inadequacy and late receipt of documentation necessary to reestablish a witness' life under a new identity.

(4) Inadequate employment assistance for witnesses.

(5) Careless, insensitive and unsympathetic attitude on the part of marshals to the witnesses' trauma and problems in reestablishing themselves socially and economically.

(6) Lack of specialized expertise in complex areas such as witness employment, documentation, financing and social services.

(7) Lack of central control, authority, responsibility, accountability and oversight by the Department of Justice.

(8) Lack of coordination by the Department of Justice between various executive agencies and the marshals, among other branches of the Justice Department and the marshals, and among State agencies and the marshals.

(9) Lack of training of deputy marshals in security matters and the problems of handling and helping relocated witnesses.

(10) Failure to provide adequate financing or credit, or to provide any financial or credit counseling or assistance.

(11) Inadequate control by the Witness Security Headquarters of most of the personnel handling and protecting relocated witnesses.

(12) Political appointment of U.S. marshals.

(13) Inappropriate union rules requiring the use of inexperienced personnel for sensitive duties.

(14) Lack of flexibility in recognizing and coping with the special problems of legitimate noncriminal relocated witnesses.

(15) The lack of an effective procedure for witnesses to file and resolve complaints against the U.S. Marshals Service.

(16) Inadequate funding of the U.S. Marshals Service as a whole, and the witness security program in particular.

(17) Inadequate manpower for the U.S. Marshals Service as a whole, and the witness security program in particular.

Witnesses still assert that specific promises were made by the Marshals Service and never kept. All promises are now to be embodied in a written memorandum of understanding signed by the witness. But the problem is enhanced by the fact that for security reasons the witness is not allowed to have a copy of this memorandum for his own records. Thus a witness may frequently believe that a promise is in writing when in fact it is not. Further complications arise because the memorandum is often reviewed and signed in a hasty and panicky atmosphere. The witness has at that time no access to advice from persons knowledgeable in the fields of employment, documentation, finances, and social readjustments. This is not conducive to a clear understanding by the witness of exactly what has been promised with the result that he may later feel tricked and betrayed.

Chairman NUNN. Mr. Baldwin, on page 7 you skipped over this part. I know you are trying to summarize your testimony. I think that is good. But I don't want to pass over anything that is important.

You are saying at the bottom of page 7 our investigation has shown that great improvement has been made by the U.S. Marshals Service in accurately explaining the program to prospective witnesses. Is that accurate?

Mr. BALDWIN. Yes, that is entirely accurate.

Chairman NUNN. One of the big problems is the witness didn't understand the program?

Mr. BALDWIN. One of the problems is they didn't understand and it was complicated by the fact the program was often misrepresented, not purposely, but by accident or lack of training by Federal investigative agencies, State investigative agencies, or prosecutors themselves discussing the program with witnesses. This has largely been corrected now by an intensive training and educational program mounted by the marshals themselves and directed at their own personnel and at the Federal prosecutors and also the Federal investigative agencies.

Chairman NUNN. When did this change come about?

Mr. BALDWIN. I would say most specifically within the last 2 years, Mr. Chairman.

Chairman NUNN. Thank you.

Mr. BALDWIN. Security is of paramount importance to the program's success, but too frequently it is breached by carelessness on the part of the marshals. It is infrequent that the marshals witness inspectors, who have been trained in the handling of witnesses, make such errors. Most often this is caused by inexperienced or thoughtless and untrained deputy marshals.

On other occasions, untrained marshals have returned witnesses to danger areas on direct airline flights, enabling anyone seeing the arrival of the witness to know his place of origin.

In one instance described to us by Government officials, during the recent primary election campaign, a witness was booked on a flight under the name "T. Kennedy," causing an uproar at the airport and resulting in his delay and questioning by airport security guards.

Security details in danger areas are, due to union rules, staffed by untrained deputies who come from hundreds of miles away. They do not know the witness, the city they are in, or people who may endanger the witness. Nevertheless, union rules require the uniform rotation of oftentimes ill-trained and inexperienced deputies on sensitive security details in order to provide all of these deputies equal access to overtime pay. This causes situations which are very dangerous to the witness.

The union views are expressed in an interview report relating to a meeting between union officials and staff members and I request this report be made a part of the record as exhibit 5.

Chairman NUNN. Which union is that? Is that the Government Employees Union?

Mr. BALDWIN. Yes, it is.

[The document referred to was marked "Exhibit No. 5" for reference, sealed, and entered into the confidential files of the subcommittee.]

Mr. BALDWIN. One of the major obstacles to a witness' social and economic readjustment is caused by a lack of background information. The difficulty arises in two ways: First, the witness is given no cover story to explain a new past to match his new name; second, what little documentation he does receive is often inadequate and late in arriving.

Witnesses are routinely picked up from the danger area and delivered into their new place of relocation without any advice or briefing on a new past. They are told only their new names. It is up to them to decide where they were born, grew up, or went to school. They must decide themselves where they last lived and why they moved. They must, on their own, work out an entirely new past not only for themselves but for their entire family. This can lead to serious security problems for the witness. In one instance related to the staff a witness was placed in a hotel in the new city under a new name. After 1 month he received a new birth certificate and a second different name. Thus some people in that city knew this witness by the first name and others by the second name.

Actual documentation received is inadequate to reestablish the witness' past credit ratings, military service, education, or job skills. The standard documents provided include a birth certificate, if the witness is lucky enough to have been born in a State which cooperates with the marshals in issuing new certificates—14 States do not. He also receives a driver's license and a social security card. The staff has prepared a brief memorandum regarding the issuance of birth certificates, Mr. Chairman, and I request that that be made part of the record as exhibit No. 6.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 6" for reference, sealed, and entered into the confidential files of the subcommittee.]

Mr. BALDWIN. The relocated witness has no documented history. As if he was born yesterday, he has no past. For all he can prove he is a man who never worked in his life. He is a man who never had credit. He is a man without an education. He has no former address or telephone number. He has no family, no friends, no personal or character references. Thus without professional assistance, it is very difficult for him to reestablish his life. Such assistance is not forthcoming from the witness security program.

When documentation arrives, it is frequently late. Social security cards may take up to 3 months to arrive. Yet a witness cannot even open a new bank account without a social security number.

Until very recently, social security cards took from 6 months to 1 year to arrive. Many witnesses have waited 2 or 3 years for new marriage certificates and other vital documents.

The Marshals Service must rely on other agencies to secure most documents, and generally the cooperation they have received borders on obstruction. While the Social Security Administration has improved the amount of time it takes to deliver new social security cards, in many cases, it has failed to transfer a witness' earnings from his old number to his new one. All social security claims must, therefore, be processed personally by the marshals in Washington on a case-by-case basis. There are over 3,500 witnesses who must go through the marshals if they are to ever successfully file a claim.

The transfer of benefits existing at the time of relocation takes, in some cases, years. Often the witness must be funded by the marshals' limited resources until social security completes the benefit transfer. But, in all such cases, the marshals, not the agency, are bitterly blamed by the witnesses.

Credit is a problem which plagues witnesses. For obvious reasons, credit cannot be obtained by a person without a past. A relocated witness sacrifices his entire credit history, and receives no counseling or assistance whatsoever in establishing new credit.

Related to the inadequacy of documentation is the pervasive problem of employment. The relocated witness, appearing to have been born yesterday, and lacking any education and job skills, cannot independently seek any type of worthwhile employment in our sophisticated society. He must accept what the Marshals Service can find for him. The coordinator of the Marshals Service employment assistance program lacks the professional credentials and contacts necessary to develop a job bank for witnesses.

One difficulty is the fact that many witnesses have a criminal past and no legitimate job skills. Compounding the problem is the fact that some witnesses are highly educated and formerly held high-salaried, responsible positions. The Marshals Service has neither the expertise, the flexibility, nor the funds to effectively assist witnesses in these broad categories.

Chairman NUNN. Would you say, generally speaking, the higher the education and the higher the skill level, the more difficult it is in having them placed?

Mr. BALDWIN. Yes, Mr. Chairman.

Chairman NUNN. In adequate jobs?

Mr. BALDWIN. Yes.

Chairman NUNN. So it is almost the reverse of society in general here. In other words, the past record of high, legitimate earnings, high job skill, white collar, that kind of employment is the most difficult to secure?

Mr. BALDWIN. That is correct, Mr. Chairman. As the testimony will later develop, the problem is they have no provable skills to establish their former positions or jobs or responsibilities and the marshals must go in and explain orally to the potential employer and also indicate their background as relocated witnesses. This is not conducive to securing them the same type of position or responsibilities they had in their former life.

Chairman NUNN. They would do much better in locating someone that has expectations of menial jobs, more menial?

Mr. BALDWIN. Yes, sir.

These problem areas impact upon different types of witnesses in varying degrees. Most seriously affected is the legitimate businessman who becomes a relocated witness. This person with a college degree, highly developed job skills and a high social and economic standing in his community is treated in the same manner as the criminal witness who has no such background or skills.

The failures of promises and security, the inadequacy of background documentation, the limited employment assistance, the lack of credit and financial advice or assistance, the lack of social readjustment counseling, added to the inability to be heard, have a ruinous effect upon such a witness. Many are forced by these circumstances into a greatly reduced lifestyle. It is frequently impossible, due to their lack of a past, to secure financial aids available to any other citizen, such as Small Business loans or FHA loans. Such loans can only be made with the direct assistance of the Marshals Service, and this itself can be very difficult to obtain. Yet these are often witnesses who formerly had excellent credit, owned their own homes and sometimes even businesses. Because their lack of a past deprives them even of the most basic credit or other tools necessary and available to any other citizen in this sophisticated society, they feel betrayed and punished by the Government because of their cooperation. The mental anguish and frustration caused by the inability of the Marshals Service to adequately respond to and handle such witnesses is perhaps best summed up in the words of relocated witness Frank Calimano:

This whole program was developed for the criminal who turns against his own element to avoid going to jail. The U.S. Marshals Service has the audacity to assume everyone on the program is a criminal avoiding a jail sentence so just be content with what you have, it beats being in prison.

I request that this entire statement by Mr. Calimano, written shortly before his death in June 1980, be made part of the record of these hearings as exhibit 7.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 7" for reference, and follows:]

EXHIBIT 7

NOTES PREPARED BY FRANK CALIMANO SHORTLY BEFORE HIS DEATH

1. General briefing on program.
2. Through briefing on new location area.

3. Documentation upon leaving danger area should be provided on day of departure. The following documentation should be in witness possession upon leaving.

- (a) Driver license in new name.
- (b) Social security card and number.
- (c) Marriage license or some other form of legal I.D.
- (d) Auto license plates.

4. Drivers license is needed in order to obtain a new license in newly located state.

5. Social security number is a must to open a bank account and seek employment.

6. An adult person will find it very difficult to say the least in obtaining credit. Where did you last live? What bank did you use? Where were you last employed? Were you in the military service? If so, D.D. form 214?

The person or persons who enter the program had to be somewhere else before entering his safe area. The basic problem is he had to exist before. School records and medical records are needed for young adults to seek employment.

A family in a new relocated (area) cannot except at his own bank cash a check without a major credit card to back up his drivers license. (**the next sentence is not readable)

Let's take for example he applies to a large department store for a credit card and this person or persons are middle-aged. Well, where were they for the past thirty or forty years?

This can cause many, many problems for relocated witnesses. The basic turmoil of family being taken out of their area where on the average family lived all their lives and then cannot even get the smallest amount of credit even more so now when our mode of living revolves around the plastic money. The family has enough problems trying to readjust to their new location without the basic problems of just trying to live and exist. Try to get a telephone installed! Some credit problems arise.

This whole program was developed for the criminal who turns against his own element to avoid going to jail. The U.S. Marshals Service has the audacity to assume everyone on the program is a criminal avoiding a jail sentence so just be content with what you have, it beats being in prison. Now along comes a man not of the criminal element and decides to help the FBI in their pursuit of the criminal. His background is not criminal and never was. He enters into this to be of help as a citizen and works closely and honestly with the government. He owns a home for many years for over 20 years. He has always been gainfully employed and in business. His family is not aware of his likelihood of having to change their names, etc. and leave for another state and sever all contacts with family and life long friends. Now they are faced with this suddenly. They are taken to a motel room and in my case, 7 people in this room and a marshal in a few hours briefs you and tells stories. The stories are intended to relax everyone. In the course of a few hours, forms are shoved around to sign by all adults.

Trying if you can to put yourself in the mental frame of mind of these people. Most of them hardly every being far away from home in their life times being told now you have a new home. Do not contact any of your family or friends this is without a doubt a breach of security, this would cause a great danger to the witnesses involved. So try to consider the family's mental state at this time. How confused they are and the fear a mother has for the safety of her spouse and her children. This being the U.S. Government and they are telling us how they will help. Why would they lie why wouldn't we believe them. Pack your personal belongings, movers come to you (r) house packing your goods, prepare to move. Make up stories to you family being left behind. Sell your house, even its a lower price—paid off he has a young family the note must be paid in full (no help given) or they cannot allow him to leave. Confusion and fear works for the government. The families state of mind is we must get out of here at all costs. Its close to panic which is brought on by fear. The same sort of fear the underworld uses so people will not turn against them. This time it works for the government. In this little hotel room your mind is confused and everyone is trying to talk at once due to their nervous state. You are of course signing legal documents and without legal counsel because you feel the government is going to protect you and help you restart a new life. That's Bullshit in every form of the word.

They have the movers at your house days before your closing on the sale. So you wind up sleeping on a couple of mattresses for a week because you cannot leave the house unattended.

Now the fun begins, you close on your home, the checks are paid out in your name. Now what. Before you do close you ask the marshal on the telephone how do you cash these checks. His answer we can't do everything for. Now starts the problems C.Y.O.A. (cover your own ass) in my case the FBI agent I worked with took care of it through his own bank account—and gave us his check in exchange. (The FBI tried in every way to be of help.) We were told at the hotel meeting a marshal would be at our house when the movers arrived to load. They (gave) us another name to use. Picture this for over 20 years on our house was a lettered sign with our name. When we removed the name the name still showed on the paint. Quite clear to all who would come to the front door. Not only that the name they gave to me and the one to my son we didn't know until they came to the door. Not so funny when you are handed papers with a strange name on it. Security, I would say it lacks something. Back to the marshal who never showed up. Now its my business having machines that are quite heavy. Picture this one two trailers arrive moving vans which contains all my house and personal belongings and my sons. They are going to load machinery and office equipment on these trucks. These are moving men not riggers. From two o'clock in the afternoon till midnight my sons and I and two men whom I paid had to load the trucks not equipped to handle machines. The two drivers come with 2 men who were temporary hired help and not movers. So we had to load the equipment, thank God we had access to a fork lift which I drove to load this equipment. Before this all came about I had asked if the moving company would be down to survey the shop. They told me no they had a good idea whats to be done and how and can handle it. So how come we had to do it. Again bear in mind the mental state of people. In the hotel during one of the stories of how witnesses are such a bother. So we don't want to complain, our family is to anxious to try and reshape their lives.

Mr. BALWIN. Relocated witnesses are not the only people affected by the witness security program. Also affected adversely are those often completely innocent citizens left behind after the witness relocates: his family members and his creditors. Perhaps the worst example of the effect the program can have upon innocent citizens arises in the cases of child custody. It occurs with some frequency that a relocated witness may include a part of his family group a wife or girlfriend who has custody of children from a previous marriage. Those children are relocated with the witness with no warning, no consultation, and no explanation to the natural parent who is left behind.

Two cases can serve to illustrate the point. One involves the children of Eugene Grossman and began in 1973. Another occurred in 1978, involving the children of Donna Ruffalo. I request that materials relating to the Grossman case be made part of this record as exhibit 8 and the materials relating to the Ruffalo case be made part of this record as exhibit 9.

[The documents referred to were marked "Exhibits Nos. 8 and 9" for reference and follows.]

EXHIBIT 8

New York, N.Y., December 12, 1980.

Senator SAMUEL NUNN.
U.S. Senate, Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR NUNN: My name is Eugene Grossman. I have been asked to submit for the record a factual account of my experiences as a victim of the Federal Witness Protection Program. Although I am submitting this written testimony, I do so under protest because I believe I have earned the right to testify in person before the Committee.

On August 2, 1973, my children were relocated with my ex-wife, Joan and Michael Hellerman, an underworld informant. I won't bore you with all the details. They are readily ascertainable from the enclosures I have included with this letter. I believe it can honestly be said that the government's decision to separate me and my children has left scars on them and me that will never be eradicated. Our lives and our relationship has been seriously and needlessly impaired.

My rights as a parent, as a citizen and as a human being have been trampled on by an agency of government while I have had no recourse. Certainly, any such program carried out by the federal government must carry with it more safeguards for those of us who are its potential victims.

As a consequence, I have some suggestions I hope the Committee will take into consideration when reviewing the efficacy of the Witness Protection Program.

1. While there is a legitimate public interest in achieving the incarceration of leading members of organized crime it should not be considered of greater importance than the safeguarding of the legitimate rights of citizens who have committed no crimes. Think of this for a moment. A person who has lived a life of crime is suddenly caught with his hands in the cookie jar. In order to save his own skin he offers to testify against someone with a bigger hand in a bigger jar. The way things stand now, this criminal is allowed to set the terms for such testimony which can include setting aside a legitimate court order granting certain rights to a law-abiding citizen. In one fell swoop, an entire body of law is set aside (the divorce statutes), traditional rights of parenthood are disregarded, the rights of children to know the love and concern of both natural parents are forgotten, religious, ethical, civil and economic principles are all cast aside. How can any law enforcement goal which encourages such behavior be considered legitimate?

2. There is no mechanism established to protect the rights of the parent of the children in this program. At the very least it would appear that before the U.S. Marshal's Office can carry out such an abduction of children it should be made to submit its plans to an impartial panel of judicial, child psychology and religious experts who are to review and pass on the plans. This panel should be able to halt such an abduction if found not to be in the best interest of all parties, especially the children and victimized parent. An appeal to the decision of the panel may be made through the courts, however, the judgment of a previous court such as the granting of visitation rights should not be allowed to be effectively set aside. Arrangements must be made for visitation rights on neutral grounds with adequate security measures. (I might point out that I offered to settle for such a program, but was denied this opportunity to see my children.)

3. Decisions by the U.S. Marshal's Office must be subject to review by a higher, impartial authority. Without such a review procedure we will have established a police authority answerable to no one in effect, without the declaration of war or other such national emergency will have granted police-state powers to a shadowy agency of government. I am sure no thinking American supports such a willy-nilly abrogation of the rights of its citizens.

4. While it is true that persons do not choose with whom they shall fall in love and it is possible that a woman may fall in love with a criminal and choose to tie her destiny to his star, it is also true that a child has two natural parents both of whom have equal rights with regard to that child. The child's destiny should not then be inextricably tied to its mother's star in a package with the criminal to the exclusion of the father. It doesn't make moral, ethical, religious or legal sense. Quite frankly, it is unamerican.

As I mentioned in the beginning, I have submitted his written testimony under protest. I believe that as a law-abiding citizen, who has been victimized by this program, I have at least as much right to be heard before the panel as the criminals who alleged they have been mistreated by the program.

Among the indignities I have suffered have been a refusal of a government agency which has participated in spiriting my children away from me to let me know of the whereabouts or to let me see them despite a court order granting me such privilege. Also mental and physical anguish at the loss of my children. Infringement of my religious rights as a parent—the celebration of religious holidays, as an example.

This is a battle which is just being joined. It is one, I promise you, which will continue until those wrongs are righted and a program established which will

both protect the legitimate rights of all concerned and place the proper burden of law enforcement agencies to exhaust all other means to bring criminals to justice short of tampering the rights of law-abiding citizens. I have engaged the legal services of Salvatore R. Martoche to help my children and I and to put an end to these abuses. Mr. Martoche and his partner, Alan R. Feuerstein, represent people across this country who make it evident that my situation was not an isolated case of bad judgment.

Finally, a search of the record will note that the accomplishments of this program are few indeed when one considers the organized crime bosses who have been convicted as a result are usually aged, receive relatively few years in prison and generally continue to run their businesses from their prison cells.

It is sickening to note that persons like me are sacrificed to accomplish this minimal goal.

The program is a good example of the way a bureaucracy can diffuse responsibility so broadly; in the end nobody is responsible for anything that happened to my children and I. It must end. You must do something to make this program accountable for its actions.

Very truly yours,

EUGENE GROSSMAN.

Enclosures.

Re Views of Salvatore R. Martoche regarding the Federal Witness Protection Program.

To: Senator Samuel Nunn.

From: Salvatore R. Martoche, Esq.; Buffalo, N.Y.

Date: December 12, 1980.

Allow me to initially express my sincere appreciation for this opportunity to present my observations and comments regarding the Witness Protection Program. As you may know, I have specific knowledge and experience with this Program even prior to its formal inception, as a result of my office's representation of a number of individuals and their families whose lives have been seriously affected by the Program. In a number of these cases, the callousness of federal officials charged with the responsibility of upholding and enforcing the law has cruelly and needlessly added to the suffering of these people.

To more fully explain my views regarding the Witness Protection Program, please refer to my statement previously made before the U.S. Senate Subcommittee on Administration Practice and Procedure in 1978.

With reference to the previous statement, a complete outline showing how the United States Department of Justice acted prior to having statutory authority to engage in "witness protection" is included. Even though the United States Department of Justice and the United States Marshal's Service have operated in this field for over fourteen years, I am astonished by the enormous sums of money being spent in furtherance of a project that has virtually no structure, virtually no one to oversee it and is devoid of any meaningful evaluation and sense of self responsibility.

As a citizen, and as a lawyer who has been personally involved in a number of "witness protection" incidents where people have been deprived of their rights, I am amazed that no governmental agent or agency has ever been charged with the specific responsibility of informing the American public as to the actual number of people relocated, the overall effectiveness of the Program and the costs engendered. Notwithstanding the above, what truly saddens me is the lack of progress that has been made since 1967 in correcting the problems which are caused by this Program. The same problems seem to crop up again and again and they are not handled any better now than they were fourteen years ago. It appears as if very little has been learned from the lessons of the past and even worse, that any problems are just too minor to address.

I do note, with a degree of satisfaction, that the awareness of the American public to this Program has been heightened by the book and movie "Hide In Plain Sight," which loosely portrays the story of my client, Thomas Leonhard and his children, Michael, Karen and Steven Leonhard, who were forcibly separated by agents of the United States Government for a period of eight years, between August 15, 1967, and July 4, 1975. To recount that situation briefly, agents of the United States Government changed the identities of Thomas Leonhard's children, and relocated and concealed them with their mother,

Rochelle Leonhard, and her boyfriend, a convicted felon and informant, Pascale Calabrese. No arrangements were ever made or allowed by the Justice Department for their father, Thomas S. Leonhard, to visit with his children, to speak with them or even to exchange mail through a neutral party. Further, Mr. Leonhard was never even informed as to the health, safety and well-being of his children during those years. Throughout the eight-year period of separation, my client attempted in vain, to assert and enforce his natural and legal rights to custody and visitation of his children, but the United States Government, through its agents, fought him in court and out of court and beat him at every turn. Rather than protect the natural, legal and human rights of this ordinary working-class citizen, the United States Government decided it was the better course to protect and defend a convicted felon from threats whose very existence remains in doubt to this day, all the way to the United States Supreme Court. I would like to mention at this point that my office filed a lawsuit on behalf of Mr. Leonhard, to force the Government to disclose the whereabouts of the children, and later in another suit for damages only after the United States Department of Justice had no cavalierly rejected each and every attempt to reach a settlement of this serious problem.

Mr. Leonhard and I believed then, and believe now, that organized crime is something that deserves the top priority of the Justice Department; and that the Witness Protection Program is not inherently evil; however, in its present condition it is so mismanaged and its operating principles so skewed that it is nothing short of a national disgrace.

The individuals charged with the responsibility of setting and enforcing policy and managing and dealing with day-to-day problems have such a total disregard for natural and human rights, and are guilty of such bureaucratic bungling and obvious inability to learn by the mistakes in the past, that I feel more than justified in calling it a disgrace. I am sure that many others will discuss in detail the inherent problems with any program that attempts to eradicate the will of the state as expressed through the jury process by granting "immunity" and the bureaucratic fiat that simply forgives a convicted felon for his crime and his sentence. This is an abuse of power. As a result of this Program, felons have literally gotten away with murder by participating in the Witness Protection Program. We cannot simply allow this to continue based upon some nebulous crime-fighting rationale which ignores the rights of innocent victims. This amounts to rewarding those who should be punished, and punishing those who are innocent, a clear perversion of American principles. Additionally, the tremendous incentive to perjury inherent in such a system, where desperate men are offered such great rewards in return for telling prosecutors what they want to hear regarding organized crime figures, is obvious. No matter what the motives, no matter how noble the intentions may be, this, quite simply, is not healthy.

There are further problems that need to be aired in these hearings. What, if any, has been given to the families and spouses left behind when the Government, in an exercise of power, devoid of consideration of the human factors involved, makes a decision to relocate children?

Should these innocent people be made to bear the burden of someone's idea of what it takes to right organized crime? I think not. What about the effect on the children, and the danger to them of living with someone whose moral standards and life style are, to put it kindly, unhealthy. I am speaking not only of the physical danger to children who may be innocent pawns, if in fact organized crime does decide to take vengeance upon a relocated witness because of his testimony (which frankly, I have never heard of happening since the inception of this Program); but I am concerned about children living in fear of such an event, as well as living in a climate of moral morass, as I have seen so many times. The emotional and psychological effect on these children is stunning and evident even to the most untrained, except, apparently, those officials who run the Witness Protection Program. They seem blind to this reality. To say that this Program is unfair to everyone is an understatement. In addition to the problems which I have outlined regarding families and children, even the relocated witness suffers from unkept promises made by ambitious officials and bureaucrats in an attempt to secure favorable testimony without having the ability to deliver.

So, just who does benefit by the Witness Protection Program? It is obvious that it is not the person left behind; it is obvious that it is not the children; it is obvious that in most cases it is not even the witness who is relocated. Does the

Government really benefit? Does society gain enough from this Program to justify its continuing existence as it is presently constituted? I don't think so. By doing business with the type of individual Justice Department officials must utilize in such programs, they must often adopt tactics and standards similar to those employed by organized crime. When you can no longer tell "the good guys" from "the bad guys", it is a sorry state of affairs.

America has a right to expect a high standard from its law enforcement officials. We decided in this country long ago that the ends do not justify the means. If we thought otherwise, there would certainly be no organized crime if we chose to eliminate it. Unfortunately there would also be none of the things which make America great, none of the things which make life in this country worth living. There are hard choices which must be faced every day, and for too long now Government has chosen to do and say things in fighting organized crime which are indefensible in any context and would not be sanctioned in any other context. Because of my heritage and the origin of my ancestors, I am particularly sensitive to the need to effectively fight organized crime. I have seen a whole group of people unfairly and prejudicially treated. Good people are hurt because of these vicious criminals and the prejudice they evoke. I respectfully suggest that this Committee consider the establishment of an ombudsman to review and oversee individual cases. His responsibility would also include coordinating a testing and counseling effort prior to the acceptance of individuals into the Witness Protection Program. That is to say, the effect on people must be considered. If injury, physical or emotional, to children is possible in a particular situation, they should not be forced to relocate and alternate arrangements should be made. I have no doubt that the problems of the spouses and families left behind can be eased greatly if the trauma were alleviated and tempered with knowledge and the spirit of cooperation.

In any event, there should be a recognition that the rights of innocent children are separate and distinct from those of the relocated witnesses and/or adults who choose to be relocated along with them.

It would also be the job of such an ombudsman to act as a conduit for the exchange of information on the health and welfare of the parties involved, for telephone communications between the unrelocated family and the relocated children, for the exchange of letters between them and in some circumstances for the arrangement of visits. There should also be periodic and complete evaluation of the environment that the relocated children find themselves in. I mean to say the emotional and psychological stress ought to be tested along with their physical well-being. These factors should determine whether a person needs to be placed in another environment and possibly even returned to the unrelocated family, in the child's best interest. The Government may find itself in a position where occasionally it may even have to relocate the unrelocated family subject to its decision to move the children from their prior relocation because of potential danger, but those matters can be overcome and the fact is that whatever the inconvenience, the attitude must be such or there should be no Program.

Thank you for your interest in reviewing and evaluating this Program and for allowing me to present my observations for your consideration. I look forward to your conclusions and recommendations.

Very truly yours,

SALVATORE R. MARTOCHE.

EXHIBIT 9

[From the New York Times, July 23, 1980]

FATHER'S SAFETY BLOCKS A MOTHER'S SEARCH

FEDERAL WITNESS PROGRAM KEEPS BOY HIDDEN

(By Ron Ostroff)

In November 1978, Kansas City underworld figure Michael Ruffalo Sr. made a decision that would change his life and that of his family.

Ruffalo, who was an associate of retired crime boss Carl Civella, turned government informant. In exchange for his testimony, he and his 10-year-old son were relocated and given new identities as part of the federal witness protection program.

Ruffalo's former wife, Donna, says she has not heard from him, or their son, Michael Jr., in more than 20 months.

In an effort to get her son back, Mrs. Ruffalo went to the American Civil Liberties Union. Lawyers for the ACLU say they have been gathering information and are preparing a case on behalf of Mrs. Ruffalo and her son.

Their lawyers have signed a complaint against Mrs. Ruffalo's former husband, the Justice Department, Attorney General Benjamin Civiletti, the United States and officials of the U.S. Marshals Service, which operates the federal witness protection program. Mrs. Ruffalo is expected to ask for \$3 million in damages, the lawyers say.

Mrs. Ruffalo says the government violated her right to due process of law when federal officials took her son without giving her a chance to be heard. She also says her privacy rights and those of her son were violated.

The Ruffalo case is much like the one depicted in "Hide in Plain Sight," a James Caan movie released this spring.

The film was based on a true story of the attempt of a Buffalo, N.Y., cement mason, Thomas Leonhard, to find his children after the government had hidden them with their mother and now mob-informant father. Leonhard asked a federal District Court to order the U.S. Marshals Service to disclose the identities and location of his children. The District Court refused, as did a federal appeals court. The U.S. Supreme Court would not review the case.

ACLU attorneys say that in the Ruffalo case, the facts may be similar, but the legal issues raised are different.

"I don't believe the Leonhard case seriously pressed the due process or privacy claims," and David Hashmall, a staff attorney with the ACLU children's rights project who is working on the Ruffalo case. "There they just relied on attempting to get a writ of mandamus"—a court order requiring the Marshals Service to give Leonhard the information he sought.

No matter what the issues, Mrs. Ruffalo wants to be with her son again.

"I love my son and I miss him. I want him back," she said. "He needs to be with me and his family. I can't believe the government would do this to an American citizen.

But it happened.

Michael Ruffalo Jr. was born Sept. 1, 1969. His parents were divorced March 20, 1972, and the boy lived with his mother until March 19, 1975, when a Jackson County circuit judge awarded Ruffalo custody of the boy and granted Mrs. Ruffalo custody only on weekends and some holidays.

She said that despite the order, she saw her son for several hours each day in the two years before he disappeared. He would stop at the apartment building she managed on the way home from school, she said.

Mrs. Ruffalo says she last saw her son Nov. 9, 1978. On Feb. 14, 1979, Ruffalo was found in contempt of court for not abiding by the custody arrangement. On March 20, the court ordered him jailed for 90 days.

A warrant for Ruffalo's arrest was issued, but he could not be found because his whereabouts are known only to the federal officials running the witness protection program.

On July 24, 1979, Mrs. Ruffalo was granted full custody of her son by the Jackson County Circuit Court, and Ruffalo was ordered not to visit his son without permission from the court.

But Ruffalo did not appear at the July hearing, nor did anyone represent him there. Although the court gave Mrs. Ruffalo custody of her son, the father and son were still together in hiding under the protection of the federal government.

Attempts this spring to obtain information about Michael Jr. from the Justice Department under the Freedom of Information Act failed.

E. Ross Buckley of the department's Freedom of Information-Privacy Act unit told the ACLU in a letter that making such information public would "constitute a clearly unwarranted invasion of the privacy of Mike Ruffalo Sr. None of the information about Mike Ruffalo Jr. is reasonably segregable from information about Mike Ruffalo Sr."

Buckley added, "Mr. Ruffalo has been advised that he will have to make himself accessible to the appropriate court for resolution of the custody issue."

But Hashmall finds no reassurance in that statement.

"The government has never given us a definite date on which Michael Sr. will appear in court. They also won't tell us when Michael Jr. will be reunited with

his mother," Hashmall said. "I think a lawsuit is a most effective way of reminding the government of its obligation to Mrs. Ruffalo and her son."

But returning Michael to his mother would most likely disclose Ruffalo's new identity and location, said Emmett Fairfax, the U.S. marshal for western Missouri.

"If we had to give the identity of that person," Fairfax said, "and he elected to stay in the program, it would cost the federal government a tremendous amount of money to relocate him and give him a new identity. It also might deter other persons from entering the program for fear that some day their identities might be revealed."

However, Hashmall believes rights are more important than money.

"If relocation of Mike Ruffalo would be necessary, that should be no problem," he said. "But they can't justify keeping a child from its mother in order to avoid the expense of relocating his father."

According to FBI wiretape affidavits unsealed in June 1979, Ruffalo became a government informant and joined the witness protection program because he believed he was marked for murder by Civella family associates. The affidavits said he had been marked for failing to perjure himself in a trial of a Civella associate and for refusing to participate in a mob murder.

Sanford Krigel, general counsel for the ACLU of Western Missouri, said another problem with the case and the witness protection program.

Krigel said that ACLU was concerned that Ruffalo may be using the federal government to keep the child away from his mother, saying that he will not testify unless the government helps him. And, Krigel said, the ACLU doesn't think the federal government should be used by someone in the federal protection program, "no matter who he is going to testify against."

[Associated Press release Aug. 31, 1980]

A CHILD VANISHES; HIS MOBSTER FATHER TAKES HIM WITH GOVERNMENT HELP

(By Margaret Gentry)

WASHINGTON (AP)—Donna Ruffalo remembers every agonizing, ordinary details of the day her son vanished.

She felt no reason for concern that Thursday afternoon in Kansas City nearly two years ago when she went off to her night job, kissed 9-year-old Mikey goodbye and left him with his father, her ex-husband, Michael.

"See you tomorrow, son," she told him.

"Okay, Mom," he answered.

Donna Ruffalo hasn't seen or spoken to Mikey since that day, Nov. 9, 1978. Not at Christmas. Not on his birthday. She hasn't even a clue as to where he is.

She knows only that father and son vanished behind a curtain of new names obligingly provided by the United States government and its Department of Justice.

Her pleas unheeded, she filed suit this summer in an effort to force the government and her ex-husband to return her son.

Michael Ruffalo was a mobster, a low-ranking but attentive soldier in the Nicholas Civella crime syndicate which, according to the FBI, controls racketeering in Kansas City. He worked the other side of the street, too, as an FBI informant for five years. Agents called him "most reliable."

That autumn, Ruffalo was marked for a mob execution and saw but one way out: the Justice Department program to protect Mafia witnesses and informants by giving them new identities and moving them to secret locations.

He took advantage of it, and sometime on the evening of Nov. 9, the mobster father and his Boy Scout son disappeared from Kansas City.

The next day, Mikey missed school but Donna, "wasn't too worried because I thought they had probably gone to the lake"—the Lake of the Ozarks, where Michael Ruffalo had taken his son often.

By Monday, when there was still no sign of Mikey, Donna frantically called authorities.

"Finally somebody in Washington called me and said they did have him and he was all right," the 31-year-old mother recalled in a telephone interview, her words tumbling out as she spoke of months of tearful, sleepless nights.

"I have called and called, everybody I can think of. My doctor thought I was losing my mind. I can't understand how the government could just take him away," she said.

"This is my only son. I want him back."

Her hopes were revived, she said, when attorneys with the Children's Rights Project of the American Civil Liberties Union agreed to represent her and file a civil suit in U.S. District Court in Kansas City against the Justice Department, the Marshals Service which administers the witness protection program, and Ruffalo himself. None of the defendants has yet responded.

Because of the pending litigation, "the Justice Department feels it would be best to have no comment," said spokesman Dean St. Dennis. Ruffalo obviously was unavailable to discuss his side of the case. The government says it is hiring a private attorney to represent him.

ACLU attorney David Hashmall said, "This case presents the best-developed challenge to the witness protection program," sharper even than the Tom Leonhard case which became the basis for a current movie, "Hide In Plain Sight."

Leonhard was a Buffalo, N.Y. construction worker whose ex-wife took their children along when she and her new husband, a mobster, fled into the program.

Leonard lost a long legal battle but saw his children years later after his ex-wife divorced the mobster.

Hashmall said the Ruffalo suit raises broad legal questions and could lead to reforms in the treatment of other children innocently swept into the program.

"When you consider how common divorce is, it would be very surprising if this has only happened twice," he said in an interview. About 3,400 witnesses, with some 8,500 family members, are in the alias program, the Marshals Service says.

The Ruffalo case presents a blatant violation of court orders dealing with child custody, Hashmall asserted.

When the Ruffalos were first divorced, Donna had custody and also what the courts call "possession" of Mikey, while his father had weekend and holiday visitation rights.

When Donna began working evenings at a restaurant, she and Michael agreed that he would keep the boy on weeknights. It spared her the expense of a babysitter. Court documents ratified their informal arrangement but made clear that legal custody still belonged to Donna.

After father and son disappeared, Donna went back to the divorce court and won an order requiring Michael to relinquish the boy and granting her "full care, control and custody of her son."

Emitt Fairfax, the U.S. marshal in Kansas City, says Ruffalo was served with that and subsequent court orders through a routine procedure for channeling messages to and from protected witnesses.

Ruffalo responded to none of those decrees, not even the judgment finding him in contempt of court and ordering him to jail for ignoring the previous orders.

William Dempsey, the Marshals Service Washington spokesman, acknowledged that protected witnesses risk being thrown out of the program if they violate such orders. But he said few have been.

As a matter of policy, Dempsey said, "We would not violate a custody order. We would certainly attempt to determine who has legal custody."

Was that done in the Ruffalo case? "I can't discuss the specific case because of the pending litigation," Dempsey said.

For Donna, the ordeal really began a lifetime ago. She was 19, a small-town girl; Mike Ruffalo, then 35, became the "older man" in her life, no less alluring because his worldliness came from a stint in the penitentiary.

"Three months later, I married him. Ever since then, my life was a living hell. The beatings were an every-week thing. He beat me in the head with a .45 revolver. When I was eight months pregnant, he beat me over the back with a chair.

"He was the black sheep in a very respectable family. I knew he was a thief. I stood it for three years, then I had to get out. One day, I told him, 'Mike, I'd rather be dead than live with you.'"

But for all his brutality, he "never laid his hands on" Mikey and Donna's daughter, also named Donna, now 12. Young Donna lately has become her mother's comforter. "She takes a picture of Mikey to bed with her every night and she says, 'Mommy, it's in God's hands.'"

Mikey grew quickly into a husky dark-haired, dark-eyed little boy—"the spitting image of his father"—a chatterbox who relished attention, adored his father, and gloried in Michael's lavish gifts.

"I remember once," Donna said, "he wanted a bike and Mike got him a three-speed. Mikey complained, he wanted a 10-speed. So Mike got him one of those, too.

"Mike spoiled him rotten. I couldn't afford to buy him all those things. I gave him discipline and love; his father just gave him gifts."

But for now, gifts are all Donna can give her son. Every Christmas and every birthday, she takes Mikey's presents—monster toys, space toys, puzzles, clothes at first until she realized she no longer knew the right sizes—to the federal marshals who say they deliver them to her son's new home.

She's wrapping presents now, for Mikey's 11th birthday Sept. 7.

She's heard no word from Mikey about the gifts or anything else.

"Every possible explanation has gone through my mind," she said. "But what I really think happened is that Mike told him 'Mommy is dead and we won't talk about Mommy any more.'"

Chairman NUNN. It seems to me that is a problem that has no easy solution. Are there any solutions on these child custody matters that have come to your attention?

Mr. BALDWIN. No easy solutions, Mr. Chairman, no. The problem is extremely complex. The marshals face extreme security problems on the one hand, and extremely impersonal and hard problems of taking children away from the natural parent on the other. Any solution could involve a great deal of complexity, difficulty, manpower, and even expense. This is a very tough problem. I should add that they have been trying to solve this problem and they have been trying to address it especially over the last 2 years.

Of the problems I listed previously, six are so pervasive that they are major causes of the other problems. These six problems cannot be eliminated by the U.S. Marshals Service alone, although they can be eliminated by the Government itself. These are:

(1) Inadequate funding of the U.S. Marshals Service as a whole, and the witness security program in particular.

(2) Inadequate manpower for the U.S. Marshals Service as a whole, and the witness security program in particular.

(3) Inadequate control by the witness security headquarters of most of the personnel handling and protecting relocated witnesses.

(4) Lack of central control, authority, responsibility, accountability, and oversight by the Department of Justice.

(5) Lack of coordination by the Department of Justice between the various executive agencies and the Marshals Service, among other branches of the Justice Department and the Marshals Service, and among numerous State agencies and the Marshals Service.

(6) Lack of qualified professional personnel with the specific expertise in areas such as documentation, employment, finances, and social readjustment. As an example of this type of professional expertise, I refer to the employment program developed by Mr. Wayne Hopkins, a former president of the National Chamber of Commerce, for the witness security program. I request that this be made a part of the record of this hearing as exhibit 10.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 10" for reference and follows:]

EXHIBIT 10

REFERENCES AND BACKGROUND MATERIAL CONCERNING THE ESTABLISHMENT
OF A WITNESS SECURITY EMPLOYMENT CENTER

PERSPECTIVE OF HOPKINS—USMS CONTRACTS

Perspectives are the requirements of the Hopkins—USMS Contracts.

1st Contract (May 1–July 31, 1978)

A. Develop list of corporations who can be called on to interview WCs (Exhibit C). Also develop a referral list of cross section of corporations and businesses who can be called for particular jobs for WCs when needed (Exhibit D).

Develop a long term plan for communication with corporations who have agreed to cooperate in hiring WCs.

B. Develop a plan for Inspectors to use in cooperation with the Employment Center in working with corporations in carrying out interviews with WCs. This plan has been field tested with Inspectors and employers. (Exhibit A)

2d Contract (August 1–October 31, 1978)

A. Develop a 3-fold brochure which should be sent to each corporation who has agreed to interview WCs. This brochure to also be used by Inspectors at the local level. This brochure was field tested with USMS personnel, employers of WCs and Justice Department o/c intelligence personnel.

B. Develop a plan for a reference file to be used by the employment service in correlating jobs needed and available with the employers records of interviews and hiring. (Exhibit B)

Also to make available contacts for sources of information in recruiting assistance from business executives and develop workable techniques for securing corporation cooperation across the country.

QUALIFICATIONS OF THE CONTRACTOR

Wayne Hopkins became associated with witness employment in 1968 when he worked with Henry Petersen who was the head of the Organized Crime Section of the Justice Department and later head of the Criminal Division. At that time, Hopkins was employed by the Chamber of Commerce of the United States and, Petersen directed, Gerald Shur of the Organized Crime and Intelligence Section to work with Hopkins in locating employment opportunities for organized crime figures. During a period of about four years (before Witness Security in the Marshals Service was developed) contact was made by Hopkins with about 200 corporations across the country which agreed to interview and hire witnesses. From the Chamber of Commerce standpoint, Hopkins closely monitored the cost/benefit relationship in regard to the 200 corporations. It was most discouraging to see the Justice Department lose contact with these corporations. Until today merely a handful exist.

The Chamber of Commerce became very concerned about the importance of the Organized Crime Control Bill and under Hopkins' leadership the Chamber became the only private organization who promoted the bill effectively and followed it through to conclusion. In fact it was the testimony of the Chamber that persuaded U.S. Congressmen Celler, Boggs and Rodino and caused them to place the bill before the entire House for a vote.

In March 1978, Wayne Hopkins retired from the Chamber of Commerce and was on his way to accepting a position in Florida. It was at this time that through the recommendation of the Justice Department and especially Gerald Shur, that Frank Niland contacted Mr. Hopkins as to his availability to help establish a WITSEC Employment Program for the Marshals Service. Because of other plans that were quite well developed, Mr. Hopkins' first inclination was to decline an offer of contract services. However, because of a genuine interest in the Program and a desire to establish a sound long-term WITSEC Employment Program that would involve corporations and other businesses across the United States on a permanent basis, he agreed to discuss the project. Three primary influences swayed Mr. Hopkins to enter into a contract with the Marshals Service. First was the Congressional hearings on the WITSEC Program which emphasized the need of a solid employment system. Second was Gerald Shur who because of his experience in employment of WCs could see the possibility

of setting up a sound WITSEC Employment Center and the third was Griffin Bell who upon Hopkins' retirement from the Chamber of Commerce sent him a personal letter in grateful appreciation of services rendered to the Program over the years.

Hopkins believed that, based on this substantial interest by the Attorney General in the Program and Hopkins' familiarity with it, that it seemed appropriate to enter into a contract with the USMS with an eye towards establishing an effective and enduring Employment Center within the Witness Security Program.

DEVELOPMENT OF A FORMAT FOR THE EMPLOYMENT CENTER

While analyzing the present employment process, many areas were identified that needed to be developed to complete a long term and sound WITSEC Employment Program. Among these are:

1. A basic list of employers had to be contacted and had to agree to consider WCs for employment.

A list of other corporations in all of the areas of the country had to be put in readiness to use as employment is needed. Many times WCs are located in communities where national corporations are not located. In such case, the local Chamber of Commerce can be helpful in locating smaller employers as in the case of one particular WC would amply demonstrate.

The reasons for starting with a small group of potential employers is that regular communication must be developed shortly after the corporation agrees to cooperate.

Implementation would be greatly enhanced by having letters go from Mr. Hall to the new potential employer thanking him for his willingness to participate. Included with the letter should be The Desk Book on Organized Crime and a pamphlet concerning the U.S. Marshals Service Employment Center. (It should be noted that a sample letter of thanks to employers in confirmation of agreement to cooperate in the Program has been furnished to the WITSEC Division.)

Experience has shown that in connection with the WITSEC Employment Program businessmen will help but they must be informed. The help which can come from businessmen will range from job offers to a WC to writing supportive letters to their Congressmen and Senators in behalf of legislation such as the Organized Crime Control Act Bill of 1970.

Businessmen who employ WCs generally develop respect for the WITSEC Program and even though the WC may not work out satisfactorily the employer conceivably maintains a positive attitude towards the WITSEC Program in talking to other businessmen.

2. It is essential that records should be kept so that every 90 to 120 days a follow-up communication can be directed to the cooperating employer whether or not he has hired a WC. This should be done in order to keep contact with the employer alive.

3. When national corporations are utilized, contact with that corporation should be maintained by an individual in the Employment Center who already has the confidence of the employer. WITSEC Inspectors must be aware of how to utilize employer services and how to proceed to use an interview with an employer in cooperation with the Employment Center. The attached Exhibit A entitled, "Employment Center is Here to Help You" gives a detailed outline of how Inspectors can and should work with top executives in corporations.

Past experience has shown us that if an Inspector does an excellent job with the employer, the Inspector is often invited to come back with other WCs. In some cases where the Inspector develops a relationship with the corporation head, it is possible that a mutual confidence is built whereby the Inspector can go directly to the corporations with a WC without going through the routine as suggested in Exhibit A.

4. Corporate development and corporate maintenance is the key to keeping corporations informed and interested in helping with the WITSEC Program. For that reason Exhibit B is set up to develop a system of employment of WCs that will facilitate the fastest employment possible, thereby placing WCs back in the work force and assure a reasonable cost/benefit ratio in administering the new WITSEC Program.

Many of the 10 steps to accomplish a sound reference file as shown in Exhibit B are already being done. However, to make the Employment Center a sound operating unit, it is essential that the prescribed steps be accomplished.

Step 8 is one of the most important because it covers the employer alphabetical file. It gives vital information on the company, what they have done in interviews, job offers and so forth. Also it keeps a record of communications the Employment Center has had with company officials. When the WITSEC Division computer becomes operational, it should be possible merely by pushing a button, to determine which employers have not been used; those that have been used extensively; and those that need to have personal attention to revive their interest. Exhibit B covers all of these phases and it should not be too difficult to implement this system prior to the time that the computer is installed. A good starting point would be compilation of a basic list of WCs that are currently on witness support. This conceivably allows for employment of 450 to 500 witnesses. The balance of the WCs can be added as time permits.

5. When contacting corporate executives, it is essential to the WITSEC Program to establish contact with those high level business leaders who can make a decision in their own companies which affect WITSEC cooperation.

One of the most difficult assignments for the person running the Employment Center is to develop business contacts which can lead him to the source of the information for the job which he wants for the WC.

The Chamber of Commerce of the United States is a prime source of these contacts. There are however other organizations which also can be of some assistance, the Business Round Table and the National Association of Manufacturers.

One of the ways in which Hopkins can be valuable during the final portion of the contract period would be to develop communication between the head of the Employment Center and the business resources and contacts. This particular exercise will take some time but out of it should come a sound business resource for WITSEC contacts which is so badly needed.

One of the greatest resources the Employment Center has in securing employers at the local level is the local Chamber of Commerce. A procedure to use in making the contacts with local Chambers of Commerce can also be developed if the head of the Employment Center and Hopkins work together for a period of time.

TECHNIQUES FOR SECURING EMPLOYERS

These techniques are especially appropriate for the development of the person who would head up the Employment Center.

1. A basic list of 15 to 20 employers in various locations with a diversity of products and types of employment should be on-hand at all times. Generally, contact with these existing employers that have already been contacted, will be the fastest and the easiest way to secure employment; however, a list of new employers must continually be developed.

The best source for this is to contact a specific and proper employer in the right location when a job is needed. This permits more diversity in placing the WC where he should be located. Generally, the basic list will serve the purpose but the outreach for employment becomes greater when employers not already listed are developed.

In addition to the list of 15 to 20 employers already committed to the program, a list of companies should be maintained both by geographic location and function so that when a particular location or type of job is needed they can be called upon to assist in employment. As new corporations are added they become part of the active employer list.

2. Another procedure for securing employers in various parts of the country is to hold "wholesale" meetings around the country where employment is most needed.

Wholesale meetings preferably should be conducted with the largest employers in a given geographic area (not to exceed five or six companies) and only company Chairmen, Presidents or Chief Executives should be in attendance. Ideally, the meeting would be a one to two hour working luncheon or it could be held at an appropriate time depending on the circumstances. In most cities the Chamber of Commerce, if properly approached, will act as the principal to set up the meeting. Sometimes local Chambers will sponsor luncheons or meetings with prospective employers. In some instances companies will provide all meetings facilities. It is important at these meetings to secure the correct names, titles, and companies of those executives present.

In addition to the business executives present, the person representing the WITSEC Employment Center, the Inspector from the area in which the city is located and sometimes the Marshal should be invited.

At the meeting each individual should receive a copy of the Marshals Service brochure and The Desk Book on Organized Crime. The Desk Book outlines the organized crime story from the business viewpoint and the brochure relates perspectives of the Marshals Service and the Justice Department.

Procedure for a Wholesale Meeting

A qualified representative of the Employment Center usually sets up the initial arrangements and conducts the meeting.

Out of the meeting will come:

1. A commitment from the employer (which is the reason for inviting only policy executives to the meeting).
2. Secure from each executive the name and position of the person who will handle the details in his company.
3. Wherever possible have sanitized records or employment forms of WCs that need immediate placement in the city where the meeting is held. Encourage employers to consider selection of a WC and agree to an interview.
4. Inform business executives that even should there be no immediate employment of a WC, that the Employment Center will keep in touch with them every 90 to 120 days. Explain that sometimes months will pass before a witness with proper skills and qualifications can be suggested for an interview.
5. Follow-up letters of appreciation should be sent to those executives present thanking them for attending and for willingness to cooperate.

EXHIBIT A.—THE EMPLOYMENT CENTER IS DESIGNED TO ASSIST INSPECTORS IN THE FIELD

The Employment Center maintains a basic record of Corporations where a Corporation Policy Executive has agreed to interview WCs for employment. The Corporation's responsibility upon employment of a WC is to maintain confidence of the WC while evaluating the WC's work record and production.

The initial contact with the Corporation Executive must be made through the Center. After the Corporation Executive agrees to cooperate, he is sent a confirmation letter, a Desk Book on Organized Crime, and the USMS Brochure.

Even if the Corporation has not been asked to employ a WC, the Center writes or calls the Corporation Executive every 90-120 days. This keeps the Corporation's original interest alive.

Many times in finding a safe area for a WC, it is necessary to locate additional corporations in specific areas. As these Corporation employers are developed, they become part of the basic record.

EMPLOYMENT ACTION

When the original contact with the Corporation is made by the Center and the Corporation agrees to interview the WC, the name, title, and telephone number of the U.S. Marshals Service personnel in charge of the WC is given to the Corporation Executive. Previous to contacting the Corporation, the Center will call the USMS field personnel to discuss the WC and determine his status for employment.

After the Corporation has agreed to give the WC an interview, the Center will again call the USMS field personnel. The Inspector will receive a rundown on the employer's business, his name, address, telephone number, and if known, the name of the employer's secretary.

U.S. MARSHALS SERVICE PERSONNEL'S FIRST CONTACT WITH EMPLOYER

Within 1-3 days the USMS personnel will call for a short appointment of possibly 20 minutes. This can be done through the employer's secretary. However to maintain security give only your name, title and ask to talk to the Executive to whom you have been referred. Some secretaries will know of your mission. However, if the secretary asks you the nature of the business you want to discuss, tell her he is expecting a call from you and that your business concerns a U.S. Government sensitive matter.

You can expect the same respect from the Corporation Executive that he gives his peers in business provided:

That you merit it!

That your dress is appropriate.

That you have confidence in your mission but not to the point of being overbearing.

That you present facts in a candid manner.

That you answer questions honestly.

That you explain how employment applications can be processed and the need for confidential treatment.

That you discuss the need for a letter of employment if a job is offered.

That you establish time that you can bring a WC for an interview.

When you visit a large Corporation be sure to get the name and title of the person who has been assigned to handle the details of WC employment and make arrangements to meet him personally. If he has not been present during your meeting with the top Corporation Executive, be sure to brief him thoroughly. After the employment process starts you will have more contact with him than the Corporation Policy Executive. He should be given a "Deskbook on Organized Crime" and the new USMS Brochure.

When you call on the Corporation Executive you may want to have resumes of other WCs with you, so that if the original WC proposed for employment doesn't fit you can suggest possible alternatives.

An example of this was recently experienced at General Media Corporation. When the job offer is made tell the employer how this protects the Government in the future. Send the letter to the Center for placement in the WC's jacket. This is important. (Example of the letter attached.)

Unless the employer wants to spend more time with you or requests you to stay and "have a cup of coffee", 20 minutes should be sufficient for the visit.

If you perform well, chances are good that you will develop a friendship and the employer may invite you to bring in other WCs.

If you do call on the employer with a WC application, please notify the Employment Center so documentation can be initiated. In addition to the jacket material which the Case Manager has on individual WCs, the Employment Center, when reorganization is completed, should have:

Alphabetical file on WCs needing jobs.

Case number file on WCs needing jobs.

Geographical alphabetical file on WCs.

Geographic and occupational file by states.

Occupation file for United States.

Employer's file.

A key to the success of the Program from the USMS viewpoint as well as the Employment Center is two-way communication between each other.

POINTS TO REMEMBER

1. After the Employment Center receives the WC's record from the Case Managers, the USMS Inspector will be contacted by the Center to determine safe areas for employment, trial status, and any important characteristics or attributes relating to the WC.

2. After the above has been completed, the Center should locate an employer willing to interview the WC. The process previously referred to is followed to achieve action.

3. The USMS should call the Center and report on the results of the interview. If employer offers a job, be sure to send a copy of the job offer to the Employment Center. The WC's record will then be taken out of the active employment file and the letter of employment will go to the Case Manager. The Inspector should call and tell the employer if WC turns the job down. Tell employer you have others that may fit requirements.

4. When Inspectors anticipate a "special" WC coming into the Program, it is important to contact the Center through the case manager, so that immediate leads for employment can be developed. (Example NY—Minnesota)

5. If employment is offered and the employer does not know how the letter should be structured, the attached sample may be helpful. The letter is very important because it fills the Government's obligation of helping to find a job.

Sample Employment Letter

Date: _____

Mr. _____

Dear Mr. _____,

The (name of company) _____ has accepted your application for employment. You may start work on _____

You will report to Mr. _____ (Title and Department):

Your starting salary will be _____ Company benefits include _____

We look forward to a happy and productive relationship.

Sincerely,

Title: _____

Acceptance by: _____

EXHIBIT B.—ESTABLISHMENT OF A REFERENCE FILE FOR USMS EMPLOYMENT CENTER

The installation of a computer system in the WITSEC Division will aid in the development and maintenance of a reference file aimed at identifying corporations. Computers will also make it possible to identify corporations that aren't being used for employment and automatically establishes a suspense system to indicate that contact with corporations is made on a timely basis.

When securing employment for a WC, the WC employer alphabetical files should provide most of the information needed by the staff to communicate with Inspectors as well as employers in arranging interviews. The following 10 phases are needed in the reference file.

1. Develop an 8½ x 11 alpha file on each WC. This file could be started with between 500 to 600 WCs now receiving Witness Support—new WCs can be added as they come into the program. Other WCs can be included in the file as time permits.

This main alpha file should include:

1. WC No. _____ and location _____
2. Profile: _____
3. Sanitized application. _____
4. Rap sheet. _____
5. Documentation completed—Soc. Sec., Birth Certificate, School Records, etc. _____
6. Picture of WC. _____
7. Trial status. _____
8. Restrictions: Health—Safe areas. _____
9. Receiving witness support. _____
10. Moving status. _____
11. Case manager involved. _____
12. Inspector involved: _____

City: _____

Telephone: _____

13. Companies contacted for employment for WC. _____
14. WC interviews and results with following companies. _____
15. Copies of letters of employment. _____
16. Documentation pertaining to employment. _____
17. Copies of memos to case managers or chiefs. _____
18. Copy of recommendation for termination to case manager. _____

Also establish the following:

- II. File by WC case number (and name). Cross reference to alpha file until computers are working.
- III. Geographic alphabetical file. Divide case manager territories.
- IV. Geographic case number file by case manager territories. Cross reference to alphabetical file until computer works.
- V. Occupational alphabetical file for employment needed by WCs in United States.
- VI. Occupational alphabetical file for employment needed by WCs by states.
- VII. Occupational alphabetical file for employment available by United States. Where, when, company name, restrictions.
- VIII. List employers alphabetically for the United States.
 1. Includes company vital information, company WC contacts, WC interviews, job offers, etc.
 2. USMS communication with company officials. (See attached examples—Pages 7 through 15).

Example: Date of original contact _____

Confirmation letter and books sent _____

90 to 120 day communication _____

Other WITSEC communication with the company _____

IX. Employers alphabetically by case manager territories. Cross reference until computer activated.

X. Employer alphabetical for file national firms with branch locations and outlets.

Communications with local employers:

Many Inspectors have indicated they would like to have a VIP from Metro write a letter of appreciation to certain employers who they have recruited at the local level.

Inspectors should furnish the name and address of the company. The letter should include the Inspector's name.

The names of companies involved should be placed in Employment Center's files and alphabetical filing could be initiated immediately.

It is important that case managers make a copy of all documentation pertaining to employment available to the Employment Center to place in the proper employment files.

Termination signals:

If the Employment Center personnel finds that all WITSEC requirements for termination have been met, the case manager should be notified in writing. Inspectors in the field should be levied with the requirement to report to the case managers when a WC refuses employment. The case manager should in turn immediately notify the Employment Section in writing. Training of WITSEC employment staff should be initiated immediately.

One area of development which should be started as soon as possible is the selection and training of the USMS employee who will handle the position of recruiting corporations and maintaining a continuous program of corporate relations and employment.

The employee selected can be helped in learning how to know and meet the best sources to obtain special information including the names of individuals (executives) who need to be contacted to help solve problems as they arise.

The following pages contain examples as to how employer records can be maintained in the alphabetical file.

EXHIBIT E—USMS BROCHURE

A MESSAGE TO THE BUSINESS COMMUNITY

THIS IS WITSEC, THE U.S. MARSHALS SERVICE WITNESS SECURITY PROGRAM, U.S. DEPARTMENT OF JUSTICE

"It is vital that cooperating witnesses be given a fair chance to become re-established as productive citizens in their new communities."

Approximately 2,600 witnesses (and 6,500 family members) from all walks of life have participated in the Program since its inception. Hundreds are successfully employed through the cooperation of American business.

Many hundreds of businesses both large and small are still needed to make it possible for witnesses to secure employment in a safe area.

Continued success in the fight against organized crime is dependent upon you.

SUCCESS OF THE PROGRAM

U.S. attorneys and government officials throughout the Nation attest to the value of the program.

Thousands of racketeers have been convicted.

"The need for a Witness Security Program remains unquestioned. It is a vital weapon in the fight against organized crime, indeed it is one of the government's most successful tools in organized crime cases."—Senator JAMES ABUREZK, (D) South Dakota.

From the first 800 witnesses alone who completed testimony since the start of the program, 3,100 convictions were obtained.

THE U.S. MARSHALS SERVICE

As agents of the Department of Justice, U.S. Marshals perform a myriad of Federal law enforcement duties. Among the most important of these duties is the protection and relocation of individuals who furnish evidence in organized crime cases. Often the wives and children of witnesses are protected and relocated as well.

AUTHORIZATION AND PROCEDURES FOR THE WITNESS SECURITY PROGRAM

Statutory authority.—Organized Crime Control Act of 1970.

Primary function.—Safeguard the lives of individuals who are in danger of death or serious bodily harm because of their testimony in significant matters affecting the community.

Qualifications for protection.—Determination that a witness qualifies for admittance to the Witness Security Program is made by the Assistant Attorney General or his designee at the Department of Justice. This determination is based on recommendations made by Justice Department attorneys assigned to the case of which the witness has knowledge and has agreed to testify. Similarly, State District Attorneys are assisted when they, too, have a significant case in which a witness' life is endangered.

General procedure once witness enters programs.—Usually involves the immediate removal by U.S. Marshals Service personnel of the witness and his/her family from the danger area and their relocation to a minimum risk area. Assistance is provided to the witness in the areas of housing, medical care, and help in finding employment. Often, the names of the witnesses have to be changed.

Importance of witness participation.—The services relocated witnesses provide to the United States are vital if we are to help rid communities of organized crime. A great deal of initial courage is manifested by most witnesses and their families. The successful prosecution of organized crime cases is largely dependent on the maintenance of an effective Witness Security Program. Witnesses must be kept alive. A secure witness is essential to obtain a conviction.

EMPLOYMENT ASSISTANCE

Cooperation needed from American business.

A recent department of Justice task force which studies the Witness Security Program found that 90 percent of participating witnesses stated that the program was "worthwhile".

SUMMARY

The Witness Security Program in the Marshals Service is providing more and better services to witnesses than at any other point in the history of the Program. We recognize the need to achieve still more in this area... the Marshals Service will undertake, with the cooperation of American business, whatever efforts are necessary and within our means to insure the welfare of each witness who enters the Program.

WILLIAM E. HALL,
Director, U.S. Marshals Service.

For further information contact:

WITSEC Employment Center,
U.S. Marshals Service,
1 Tysons Corner Center,
McLean, Va. 22102.

Chairman NUNN. What happened to that proposal? Was it implemented?

Mr. BALDWIN. It was implemented in theory, Mr. Chairman, but not in practice or spirit. There is a great difference between what the Marshals Service reported as to what their employment and job-finding capabilities and methods are and what we have heard from attorneys, agents, witnesses, and even some of the personnel with that Service.

Not only is the program understaffed but fully 65 percent of the personnel who actually operate the program in the field are not subject to the control of the witness security section, although that is the section charged with and responsible for the proper operation of the program.

Chairman NUNN. Who are they responsible to?

Mr. BALDWIN. They are normally responsible to the U.S. marshal in each district who is a political appointee and who is not answerable in any way to the chief of the witness security section.

Chairman NUNN. Who is the head marshal in each district answerable to?

Mr. BALDWIN. Technically and theoretically to the Director of the Marshals Service although in practice that is not the case. The U.S. marshal often functions as an entirely separate entity responsible basically to no one. He is an appointee of the President with the advice and consent of the U.S. Senate, whereas the Director of the Marshals Service is appointed by the U.S. Attorney General. These relative positions put the Director of the Marshals Service at a distinct disadvantage and it has often been the case that marshals can actually refuse to accept relocated witnesses in their entire districts or on other occasions they may direct the individual who is handling the particular witness not to take care of that witness but rather to take care of the court security detail or some other job not related to witness security.

These are problems that the witness security people cannot respond to and cannot handle.

The chief of witness security also has no control over the cooperation of other agencies within the executive branch of this Government. We have been informed that no formal agreements exist with agencies such as the Veterans' Administration, or the Social Security Administration, although the issuance of documentation by them is vitally important to the witness. Little effective oversight has been given the program by the Department of Justice. Many problems have been addressed, but only a few have been resolved. Although the departmental committee was created 2 years ago to oversee the program, it has met only once.

Chairman NUNN. Who is on that committee? Who is head of it?

Mr. BALDWIN. I would have to check my records in order to give you an accurate answer on that, Mr. Chairman. I believe it is the As-

sociate Director for the Office of Enforcement Operations. I believe the Assistant Attorney General for the Criminal Division is also on it. The other members I cannot tell you offhand at this point.

Chairman NUNN. Can you furnish the names of those people who are on the committee and who is the chairman of that for the record?

Mr. BALDWIN. Yes.

[The document to be furnished follows:]

The members of the "Deputy Attorney General's Review Board" are: the Deputy Attorney General; an Associate Deputy Attorney General; the Assistant Attorney General for the Criminal Division; a Deputy Assistant Attorney General for the Criminal Division; the Director and Associate Director of the Office of Enforcement Operations, Department of Justice; the Director of the Executive Office of U.S. Attorneys; the Director and an Assistant Director of the Bureau of Prisons; the chairman of the Board of Parole; the Director, Deputy Director and Assistant Director of the U.S. Marshals Service; and an Assistant Director of the FBI.

Mr. BALDWIN. No centralized control of these various departmental components exist and for relocated witnesses the program operates like a body without a brain.

Chairman NUNN. You say in the words of one attorney interviewed by the staff, "The program is a prime example of how bureaucracy can diffuse responsibilities so broadly that no one is responsible ethically or morally any more." That is a quote from the person you interviewed.

Mr. BALDWIN. Yes.

Chairman NUNN. Is that person with the Justice Department?

Mr. BALDWIN. No.

Chairman NUNN. Someone on the outside?

Mr. BALDWIN. Yes. Someone on the outside.

Chairman NUNN. Do you agree with that assessment?

Mr. BALDWIN. Yes; I do completely.

The second major classification of problem areas in the program deals with prisoner witnesses. While there are fewer prisoner witnesses, about 250, their problems are just as if not more severe than those of relocated witnesses. Prisoner witnesses experience three basic problems unique to their situation. These are: first, misrepresentations as to how they or their families will be treated; second, the more restrictive conditions under which they are incarcerated resulting as a practical matter in their doing harder time than prisoners who are not cooperating as witnesses; third, the fear of discovery and retaliation by other prisoners caused by their cooperation with law enforcement.

Often they are told that they will receive favorable parole consideration for their cooperation. They are told their families will be relocated to an area near their place of imprisonment in order to have frequent visits. They are told their family will receive financial aid on the witness program until their release from prison. They are told they will be protected as long as they are in prison.

In an overwhelming number of instances these are misrepresentations. The Bureau of Prisons' standard policy is to house most protected prisoner witnesses in protective custody units in one of the three metropolitan correctional centers in New York, San Diego, and Chi-

cago. This type of protection ends as soon as possible after the witness has given his testimony. He is then sent into the general population of the Federal or State's prison systems. Many prisoners, especially those who are involved in organized crime groups or in prison gangs believe that they can never safely be placed into general population. Their fear is based upon the expectation that they will be retaliated against not only by a defendant against whom they testified, but also by any prisoner at all. They believe that the prisoners' code prohibits informing or testifying for the Government, and that prisoners will violently and swiftly enforce this code against them. Violation of the code is, they state, an offense summarily punishable by death.

Prisoner witnesses state that they can never be anonymous in the prison system.

This fear on the part of the witnesses clashes directly with the Bureau of Prisons' policy dictating ultimate placement of a prisoner witness in general population. The clash is aggravated by the prisoner witness' belief that he was promised protection. Again, the prisoner witness feels betrayed by the very people he endangered his life for. The combination of this fear and sense of betrayal has a devastating effect upon the prisoner witness. Overcome by these problems he cannot concentrate on the promised testimony. He is distracted, demoralized, and deeply embittered against the Government. In some cases in retaliation he may "forget" his testimony. The end result is dissatisfaction to everyone except the defendant.

It has often been said that the primary purpose of the witness security program is to protect the lives of Government witnesses. It has often been claimed that no witness under active protection has ever been killed. Keeping a witness alive, however, also includes keeping him in a mental state conducive to his testimony. I can say as a former prosecutor who has used this program, Mr. Chairman, that any witness so overwhelmed with problems, fears, or a bitter sense of betrayal will not be an effective witness in a criminal trial. It is vital, and a vital part of the witness security program that a witness—prisoner or relocated—be in frame of mind favorable to his testifying as well as alive to do so. The program should attract witnesses to the idea of cooperating with law enforcement, not deter them. Several witnesses, however, have reported to the staff that they have discouraged other witnesses from accepting protection and cooperating because of these problems. It can be little satisfaction to law enforcement if the Government develops a protection program which maintains a witness' life but destroys his quality as a witness. It can be of even less satisfaction to law enforcement if the Government develops a protection program which acts more as a deterrent to cooperation than an inducement. As you have said, Mr. Chairman, this vital tool in the fight against organized crime must not be allowed to corrode and fall apart. If the present corrosion continues the only winners will be professional organized criminals.

Mr. Chairman, that basically summarizes the statement that the staff has prepared for the record of this subcommittee. If you have any questions of the staff, I and Mr. Worsham, will be happy to answer them to the best of our ability.

Chairman NUNN. Thank you.

I do have a good many questions. I know it is very difficult to summarize your overall statement, 24 pages long, and based on about 8 months of very hard work. It is hard to even get it down to that kind of summary and then to summarize it for oral testimony is even more difficult, but I appreciate very much that statement.

I think it would be of great benefit to us as we try to make recommendations. Mr. Worsham, have you got a prepared statement or do you want me to proceed directly with questions?

Mr. WORSHAM. You may proceed directly with questions.

Chairman NUNN. I will confine my questions to you until you have told your story so to speak. Mr. Worsham, in the course of the staff investigation have you had occasion to interview many Federal, State, and local agents who deal with the relocated witnesses and who are persons responsible for encouraging informants or witnesses to come forward?

Mr. WORSHAM. Yes. We have interviewed Federal investigators and State and local law enforcement officials all over the country who have had considerable experience with this witness security program.

Chairman NUNN. From the agent's point of view, have the problems that you have listed in the staff statement which Mr. Baldwin has already presented caused any difficulty to the agents who must attempt to obtain witnesses in order to provide evidence in criminal cases?

Mr. WORSHAM. Yes, Mr. Chairman. Some agents feel that the rather considerable amount of adverse publicity that the program has received in the recent past has had a negative impact on their ability to recruit informants and witnesses necessary to pursue the type of investigation that they want to get into. Other agents, and you have to bear in mind these are agents who have sponsored witnesses into this program that have had considerable problems with the program. So these agents are going to be, their comments, are going to reflect the problems that their witnesses have experienced, but there is a large number of agents out there that are extremely reluctant to utilize the program any more, who will not recommend it and we have been told on more than one occasion that agents will not use the program, particularly with respect to the legitimate businessman-type witness, the individual who has no criminal past or reputation.

One agent told us just a couple of weeks ago—we were discussing a particular witness that we were considering possibility of having testimony here—if he ever went across a witness like this again, he would walk away from the case rather than pursue it because he would not be responsible for ruining another person's life such as he had done to this witness.

Chairman NUNN. Does this have any kind of disproportionate effect on the Government's ability to successfully prosecute high-level people in organized crime, high-level people in narcotics, high-level people in white-collar crime?

Mr. WORSHAM. It certainly does. The program is really just not geared at this point to handle a certain sophisticated type of witness that you need for a very sophisticated type of case.

You have, say, an extortion victim, a high-level business executive, an accountant without criminal past. What do you tell this type of

witness? You have to go to him with a proposition—if you are going to be truthful and honest, you have to say:

Mr. Witness, we would like you to cooperate with the Government so that we can prosecute these dangerous parasites out there. Now, all you have to do is risk your life, change your family name, sacrifice your career, give up all your friends and accept a much lower standard of living than you have now, and in exchange for that, we will let you be of service to your country in this matter.

The problem is even—of course, you don't put it in those words. That is basically what you are telling the man. Not many people will leap at a proposal like that. It is having a very negative impact on getting the type of assistance we need to pursue these types of criminal cases.

Chairman NUNN. Based on interviews you have with witnesses, what can you say about the sensitivity of the Marshal Service, particularly in these types of high-level witness relocations?

Mr. WORSHAM. Well, there is a general feeling, again, that the witness is cloned when he comes into the program, be he a white-collar type of witness or street junky who has to sell \$300 worth of stolen goods daily to support his habit. Once he comes into the program, he is treated the same, with a rigid set of guidelines. He is a case, a statistic. These guidelines generally tend to effect treatment of this witness as if he is a criminal.

Not all of them feel that they are.

Chairman NUNN. In your conversations with Federal prosecutors and Federal investigators, do you find they have suggestions to make in trying to address these problems?

Mr. WORSHAM. Yes. It seems a feasible cost-effective suggestion that is made most frequently is to create some sort of fictitious but similar, background and backstop this background for the witness, thereby voiding his perpetual dependency upon the Marshal Service for documentation, and everything he is going to need throughout his life for the rest of his life.

In fact, we discussed this matter with the chief of witness security here in headquarters, and he states he has proposed such a suggestion to the Justice Department. The Justice Department—they are going to address the issue. They just haven't done it yet.

Chairman NUNN. Based on your experience and the witness we had here, Mr. Harvey Bonadonna, does this case typify some of the problems that other witnesses are having?

Mr. WORSHAM. Yes, it does. The special agent who accompanied Mr. Bonadonna during his testimony here has reported to us that despite Mr. Bonadonna's coming here at a certain risk to him, despite his father having been assassinated by the mob, despite that during his testimony here, his family received a death threat and this was corroborated by the FBI, despite the fact the organized crime figure against whom he was testifying had a son here in these hearings watching his testimony, despite these things, according to the agent, Mr. Bonadonna was routed back to his home area in such a way that final destination could fairly reasonably be traced. The agent had to pay \$60 out of his own pocket to route Mr. Bonadonna home via a more circuitous route.

Chairman NUNN. The agent recognized the danger and paid for an extra airline ticket himself in order to better protect Mr. Bonadonna?

Mr. WORSHAM. Yes, Mr. Chairman.

Chairman NUNN. Are there no funds available in the Marshal Service for that? Are the funds short?

Mr. WORSHAM. This operation is underfunded, as Mr. Baldwin has pointed out, as I am sure other testimony will elaborate upon. It comes down to a situation when a decision has to be made between funding and security, the funding takes priority.

Chairman NUNN. Mr. Baldwin, I will direct these questions to you. Mr. Worsham can chime in if he would like to. Have these problems existed for a long time or are these new problems in the overall witness security program?

Mr. BALDWIN. Mr. Chairman, these problems have existed since the inception of the program 10 years ago.

Chairman NUNN. Would you say that the problems are less or more than they were 5 years ago, 8 years ago? How would you rate the program as far as whether it is making progress or whether it is going backward?

Mr. BALDWIN. The surveys that I mentioned in the staff statement indicate that progress is being made, that fewer and fewer people are experiencing serious problems in the program or what they consider to be avoidable problems.

The difficulty, however, becomes more and more compounded by the fact that more and more frequently law enforcement is attempting to use as witnesses people who are legitimate, who are not criminals, who are making good money and are in responsible positions. In relation to those people and in connection with the fact that their number is increasing, then those problems are getting worse and worse every day.

Chairman NUNN. I suppose the more the law enforcement community goes after higher echelon target-type defendants and the more they go after white-collar criminals and those at the top of narcotic operations in organized crime families, the greater the witness security problems are, is that right?

Mr. BALDWIN. Yes, sir, basically as summed up by Mr. Worsham, how can you turn to someone who is making \$30,000 or \$40,000 a year and say to that person, relocate, testify, help your country and give up all credit rating and have no hope of ever getting another credit card again or no major credit card, and forget about a good job and so on and so forth. Forget about your children's past education, forget about your college degree. It is not going to work. It does not encourage people to come into the program.

Chairman NUNN. Are none of the witnesses you interviewed satisfied with their credit?

Aren't some of them given credit or do they have to reestablish it after the relocation?

Mr. BALDWIN. They have to reestablish it after the relocation, Mr. Chairman.

Chairman NUNN. Even if they had a good credit rating before?

Mr. BALDWIN. Yes, sir, they receive no assistance. As a matter of policy with the Marshal Service and Department of Justice, they are given no help or assistance in reestablishing their own credit. They start literally from scratch. Only they are worse off than most citizens because they have years that have been erased. It is twice as hard for a 40-year-old man to establish credit when he has no background than it is for anyone else to do that.

Chairman NUNN. Why is this a matter of policy with the Marshal Service? Is there a reason for it not to help on credit?

Mr. BALDWIN. I think there was a fear or a concern on the part of the Department of Justice that in some way establishing or assisting witnesses in getting new credit will render the Government somehow liable, civilly, to anyone who might be defrauded by a witness.

Chairman NUNN. Have they got cases where this has happened?

Mr. BALDWIN. Not that I am aware of. I know there are cases where witnesses have, in fact, abused their new documentation. I don't think there are many cases of that, but there are, in fact, some cases of it. The difficult part is that these few cases, they are certainly not the majority, they don't even come close to a substantial number, but these few cases taint everybody else. Because they have had a couple of bad experiences, then no one else in the program can receive this assistance.

Chairman NUNN. Are there any easy answers to any of these problems or are all the answers difficult problems themselves?

Mr. BALDWIN. Mr. Chairman, some of these problems can be solved relatively simply. I can give you an example, if you like.

There is one aspect of the Social Security System that can be used as an example. When a person is relocated, he gets a new social security number and that reflects his new identity under the program. But this individual's prior earnings under his own account are not transferred to his new number. So as a result, any claim he makes in the future at any time in the future, will result in a refusal of that claim, because he doesn't have any earnings that accrue to his new number.

So to secure benefits, he has to go back to the marshals in Washington who have to have the claim processed by hand on a case-by-case basis with Social Security in Baltimore. This is an expensive and time-consuming process. The resolution would be to automatically transfer these earnings from the old account to the new account at the time that the card is issued to the witness in his new name.

This could be done by Social Security. It only takes the decision to do this to resolve this problem, but it hasn't happened and it is still not resolved. I should add that, in fact, it was only at the suggestion of our staff to Social Security, that they are now according to my understanding actually contemplating transferring these accounts at the time the witness enters into the program. We will be hearing testimony on that point later on during the hearings.

Chairman NUNN. Is this because of the security problem or is this just because of delay?

Mr. BALDWIN. The failure to transfer the benefits?

Chairman NUNN. Yes.

Mr. BALDWIN. I believe initially for some reason, which I frankly cannot understand, they decided not to transfer this over, they say, for security purposes. They don't perceive a security problem now, how-

ever, or at least they see that the number of witnesses who will have to be processed by hand greatly outweighs the security problem they had earlier foreseen or considered.

Chairman NUNN. What kind of feeling do you get as to why these problems which are so longstanding and so difficult yet apparently easy to solve haven't been solved?

Mr. BALDWIN. I think the basic problem, Mr. Chairman, is an overwhelming inertia on the part of the executive branch, the failure of someone with appropriate amount of authority to take an interest in and correct the obvious deficiencies.

As one witness put it, this requires two things: First, it requires somebody in authority who cares and, second, it requires somebody in authority who can give it some intelligent followup action. One or two or both of these ingredients seem to be missing.

Chairman NUNN. It sounds to me as if you are not putting the whole blame on the Marshal Service. In fact, the blame is shared by a great number of people in government and a lot of problems are beyond the solution of the Marshal Service itself, are they not?

Mr. BALDWIN. Yes, sir, the marshals are the ones who have to say "no" to the witnesses and consequently they are the ones who are constantly blamed for the problem.

Chairman NUNN. They are blamed for everything as far as the witnesses are concerned.

Mr. BALDWIN. Yes, sir, the marshals are the ones who have to say no. They are saying no because they don't have the funding, they don't have the manpower, they cannot control their own people. The Department of Justice has imposed a particular policy. They have no recourse. They cannot control the fact that many States either cannot or will not issue birth certificates but they are blamed for it. They cannot control the fact that Social Security takes so long just to transfer existing benefits at the time of relocation, but it is the marshals that are blamed for that problem, not Social Security.

Chairman NUNN. Every time you hear a problem identified in the Federal Government, the solution usually requires more money. That gets to be a frustration in itself. Are you talking about large amounts of money in trying to correct some of these problems?

Mr. BALDWIN. No, sir, I don't believe so. I think much of the expertise that the program needs exists within the Federal Government now in agencies like the CIA for documentation, the Labor Department for employment, the banking and loan institutions for financing and many social agencies for social readjustment. The staff believes that many of these changes would, in effect, be cost efficient because it would allow the witness and his family to leave the Government subsistence at an earlier period of time and would eliminate his dependence on Government for the rest of his life and family's life.

Moreover, there are other costs that should be considered, Mr. Chairman, that a price tag cannot be so easily applied to, such as the cost to the Government and to society of the loss of potentially important witnesses because of the inadequacies of the program.

Also, there is another cost to society. It could drive a person who did not receive adequate subsistence or assistance back into a criminal lifestyle. Moreover, again, there is the most obvious cost to the innocent

witness and to his innocent family and that is the cost of their ruined lives.

Chairman NUNN. You mentioned a little while ago that there are certain union rules that require reallocation or relocation of certain security people or rotation of them. Did you go into this in detail? Can you tell us what these rules are and give us an example of what kind of problem they cause in security?

Mr. BALDWIN. We have been informed, Mr. Chairman, by numerous and highly reliable sources inside and outside the Government that in such situations, inexperienced marshals are assigned to security details when witnesses return to a danger area for the purpose of giving testimony. They are assigned that way because the union requires, as we understand it, that all overtime details such as security details of this nature be made equally available to all deputies in the Marshals Service. This means if a deputy is entitled to overtime and he comes from Los Angeles and the witness is to testify in Boston, that that deputy from Los Angeles will protect that witness in Boston although he does not know the city, he does not know the mob, he does not know their procedures and he does not know any of the individuals in that city. Moreover, he is usually not trained specifically to handle security details like this.

One example of this is an inexperienced deputy marshal from a rural setting in the South who was sent to protect a witness in an organized crime case in a large Northeastern city. This marshal had little experience with organized crime, had no information about the city he was going to nor the individuals from whom he was supposed to be protecting the witness. But inadvertently, he housed a witness in a hotel in the city which was generally known by law enforcement there to be controlled by the mob. After he placed the witness into an adjoining room, he proceeded to the lounge of the hotel where he engaged the services of a lady of the evening. Upon bringing this woman back up to his room, he apparently explained who he was, why he was in the city and who he was protecting. In an attempt to pay for her services, he wrote her a personal check and produced his badge number as identification and security to encourage her to accept the check.

Fortunately, Mr. Chairman, this woman turned out to be an informant for a Federal law enforcement agency, but the agents and the prosecutors in that area who were involved in the case could only shudder to think what could have happened had she not been an informant. This is the type of thing that can always endanger a witness and can happen when you do not use highly trained and intelligent people who know the area, yet union rules seem to require this rotation of deputies and this is the kind of situation they always run up against.

Chairman NUNN. Did you get any response from the union people you talked to about whether they would be willing to modify these policies in light of problems they cause?

Mr. BALDWIN. The staff has interviewed members of the Government Employees Union. The report of that interview has been entered into the record as one of the exhibits, but generally their response is very negative. They oppose any exclusion or exemption of the deputy marshals from this type of security detail.

Chairman NUNN. Why?

Mr. BALDWIN. They fear that basically there is a good deal of mismanagement on the part of Marshals Service and what will happen is that a large number of security details will be staffed by favorite sons or friends of the marshals or whoever it is who is assigning people to that detail. They believe that union members will be discriminated against in the assignment of this overtime money, that there will be nepotism and favoritism involved. That is basically their reason.

Chairman NUNN. We have heard a lot about the difficulty of getting jobs for people. You have alluded to it in your testimony. We heard it from previous witnesses who appeared before us. What is the official explanation of the Marshals Service in terms of their capability to get jobs for people, good jobs for high-level people and is there any conflict between their official position and the reality as you have found it in your investigation?

Mr. BALDWIN. There is, Mr. Chairman, a distinct and direct conflict. The Marshals Service's official response, in effect, concludes that they have a sophisticated employment program with a large job bank on a national level. On the other hand, most attorneys and agents we talk to, tell us the employment problem is usually solved by the investigating agency obtaining appropriate employment for their relocated witness. We have been told there is a substantial backlog of witnesses out of work, as many as 650, and the time period for subsistence payment is longer now even though there are fewer people who are entering the program. Federal prosecutors, agents, Justice Department personnel, witness security personnel themselves uniformly have said there is no such sophisticated employment program, but that the employment efforts of the Marshals Service are left in the hands of basically clerical personnel.

In this respect, Mr. Chairman, I would like to refer to a statement made by an individual who actually worked for a witness security program in the employment section. This witness stated that the witness had been employed from March of 1976 until August of 1980 as a personnel security research analyst with the U.S. Marshals Service, witness protection program. Prior to assuming that position, the witness had been employed by the Department of Justice as a docket clerk. The witness indicated that that witness had no previous experience in the area of personnel or job placement. The witness indicated that the witness program had no established policies, procedures or system for obtaining employment for relocated witnesses, and at the time the witness took this job, there were no existing available resources that could be contacted in order to obtain jobs. The statement was that the duties and responsibilities of this witness included the responsibility to obtain employment for relocated witnesses throughout the Nation and to establish contacts with the Fortune 500 first companies, smaller local businesses, local and Federal Government agencies. This witness prepared and sent form letters to businesses soliciting their cooperation. There are other duties that this witness was assigned to, but these are the primary ones.

Given her background, I think it is questionable at least as to whether or not this witness was in any position to make the sophisticated high-level contacts necessary to establish, but the witness stated

that when Mr. Safir, who is presently chief of witness security, became the chief of witness security about 1½ years after this witness became employed with that section, the witness stated that Mr. Safir decided that field inspectors—

Chairman NUNN. When you say witness, what you are saying is this employee of the Marshals Service?

Mr. BALDWIN. Yes, sir, that is correct.

Chairman NUNN. The witness, since you interview him, was not protected?

Mr. BALDWIN. That is right. The witness stated that Mr. Safir decided field inspectors would be responsible for employment contacts. Mr. Safir directed that letters from headquarters to businesses be issued asking them to contact field inspectors. The witness we spoke to, the former employee presumed this was done because there was a lack of travel money which precluded visiting businesses in the field. It was this person's opinion that this procedure was not effective and the belief was that businesses and local and Federal agencies would cooperate more fully with individuals at least in the program's headquarters rather than individual field inspectors who had little or no training in the field of employment placement or contact.

The witness suggested that the witness protection program's employment operations suffered because of a lack of established guidelines, a lack of delegation of responsibilities and a lack of travel money. This individual stated that it was this person's impression that through the contacts with witnesses, relocated witnesses that this person had, that the relocated witnesses were not receiving adequate assistance in obtaining employment. The impression of this person who was formerly employed at the headquarters was that field inspectors were basically too overwhelmed with their jobs in handling the relocated witnesses and with end-of-the-month paperwork and consequently the personnel in the field either disregarded monthly reports or prepared inaccurate reports. Therefore, there never really was a time when it could be determined how many jobs had been located or who was and was not employed.

Chairman NUNN. I suppose what you are saying is if you are going to deal with high-level corporate officials in trying to get good jobs for people who deserve those good jobs and have a skill for it, that you have to have somebody high level in the Department of Justice to make any contact.

Mr. BALDWIN. Yes, sir, at the very least or there has to be someone who has got experience and personal contacts among the business world, among major corporations. I do not think it is feasible to have a clerk or a secretary or a nonsupervisory member of any agency or group contact the chairman of the board or the president of a major corporation, like General Motors, asking them for assistance in employing people who are relocating, especially when so many companies face such a difficult employment problem today as it stands.

Chairman NUNN. Mr. Worsham, do you have anything else you would like to add this morning?

Mr. WORSHAM. No, sir.

Chairman NUNN. Mr. Baldwin?

Mr. BALDWIN. No, sir.

Chairman NUNN. I want to thank both of you for months of diligent efforts in presenting this testimony for us this morning. I think it will go a long way in enabling us to make recommendations to the Justice Department and have something in legislative form, if necessary, at least with regard to budgets, that would improve this program in a dramatic way. I hope that can be the result of these hearings in the months to come, and you play a vital part in it. I thank both of you.

Mr. BALDWIN. Thank you, Mr. Chairman.

Chairman NUNN. Our next two witnesses are both protected witnesses and, after we complete their testimony and questions, that will complete our hearing for today. To give everyone a brief summary of where we are going, tomorrow, December 16, we will also be in this room, room 318. We will have an attorney panel including an assistant U.S. district attorney from California, assistant U.S. attorney from New York, a Department of Justice attorney in Buffalo, and an attorney in Kansas City, as well as FBI agents. We also have another protected witness tomorrow. We will have testimony of U.S. Marshal John Partington and former witness inspector Frank Noe, as well as John Schwartz from the Social Security Administration, tomorrow. So we will have a very full day tomorrow.

On Wednesday, we will hear from Norman Carlson, Director of Bureau of Prisons, U.S. Department of Justice; Gerald Shur, Associate Director, Office of Enforcement Operations, Department of Justice; Howard Safir, Assistant Director of Operations, U.S. Marshals Service; and Paul Michel, Associate Deputy Attorney General, U.S. Department of Justice. That is generally the outline of these hearings.

Before we call our next witnesses, I want to say something to the news media about the ground rules regarding photography in the room when we have our protected witnesses here. Our next two witnesses this morning, and one tomorrow, are members of the witness security program. They have all been relocated to a different locale and new identities. The people in their hometowns know little or nothing about their true identity. If they did, these witnesses would have to be relocated again for security reasons. One of our witnesses testified against organized crime figures, all of whom were convicted of violent crimes. The other two are the wife and son of a protected witness who committed suicide while in the program. I recognize there has been some exposure there, but to the extent we possibly can, we are going to abide by the rules for all the other witnesses. Obviously, criminals in the original hometowns of these witnesses know what they look like, but they do not know where these witnesses are now residing. Should a photograph of these witnesses appear on television or in the newspapers in their hometowns, it will greatly increase the chances of mobsters finding them and threatening their lives.

For this reason the U.S. Marshals Service has requested that no television, motion picture, or still photography be made of these witnesses during their appearances here today. In accordance with the subcommittee's rules of procedures, we have granted this request. The

witnesses will testify while sitting behind an opaque screen. Photography will be permitted only from the audience side of the screen. I also request the news media refrain from using file photos of these witnesses if such photos exist.

Two years ago, we received testimony from a protected witness of whom we allowed no photography. However, some newspapers ran file photos of them. Anyone who saw these photographs could identify that witness. We had information that a contract was out on his life. That contract has never been carried out but I can tell you these file photographs greatly increase the chances of the mob discovering witnesses' whereabouts. I am going to ask my chief counsel, Marty Steinberg to give specific instructions as to what he would like done with the cameras and then we will take a brief recess for about 10 minutes. Then we will bring in the witness. We will have to clear the room completely before we bring in a particular witness.

Mr. STEINBERG. Your cameras should face the rear of the room for this period of time.

Chairman NUNN. Cameras will be relocated. Before we bring in the witness, before we clear the room, after you relocate the cameras wherever you want them, then we will clear the room. Any cameras that are not going to be relocated we would like to be pointed in the other direction or at least down. In fact, all of them should be relocated.

[Brief recess.]

[Member of the subcommittee present at the time of recess: Senator Nunn.]

[Senator present after taking of brief recess: Senator Nunn.]

Senator NUNN. The committee will come to order.

I will ask you to remain seated and hold up your right hand.

Do you swear the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HAAK. Yes; I do.

TESTIMONY OF GARY HAAK

Chairman NUNN. I understand you have a full and complete statement which we will insert in the record. I also understand you wish to summarize portions of your statement for the record. Is that correct?

Mr. HAAK. Yes, sir.

Chairman NUNN. We appreciate your being here today. We appreciate your cooperation. You can take your time and go through your statement and then we will have questions for you.

Mr. HAAK. Thank you.

Chairman NUNN. If you need to take a break at any time, let us know. You have water there in front of you.

Mr. HAAK. OK.

Thank you for giving me the opportunity to appear before this subcommittee to explain to you my experiences and problems with the witness security program.

Before I begin to describe these experiences and problems, I should explain to you some of my background. Throughout my life I have held a series of entirely legitimate jobs. I have not been a career criminal. I must admit that in the city where I last lived I did get involved with the wrong people. I had been involved with them for some time, and I ended up assisting them in the conduct of a mob war in the city where I lived. This was the Rochester bombing case that was brought up during your mob violence hearings last May.

At the time I was assisting the mob, I didn't realize the exact purpose of my assistance, but I did realize that I was assisting them in some sort of illegal activity. I helped them to prepare remote control parts of various bombs. I would assemble the remote control device portion and turn it over to one of the people I knew. He and his cohorts in turn attached explosives and placed those destructive devices. They ended up bombing a number of buildings and killed one person by setting off a bomb under his car while he was in it.

During the investigation that ensued, I was approached by Federal agents and State agents asking me about my involvement in this. I realized that sooner or later they were going to be able to prove what I had done, and it would be better for me to go ahead and cooperate with them and try and work out some agreement with the Government. So I worked out an agreement and testified against the people that I prepared these remote control devices for. They were all convicted. I was not convicted of any crime in connection with any of these activities, although I realized I did engage in criminal activity. I have never been convicted of any crime in my life, and I have always held decent jobs and supported my family. These jobs have given me a certain degree of skill by which I can make a decent living.

I should also explain to you that it is my belief that the witness security program is an extremely important tool for law enforcement. Without a program like this, it would be impossible for many people like myself to testify against organized crime figures. In fact, the witness security program has kept me safe and alive so that I could give the testimony that led to the convictions of organized crime figures, as I have mentioned.

Insofar as protecting a witness is concerned, and insofar as protecting the witness means keeping him alive, I think the program does an excellent job. In fact, it fulfills its primary purpose of protecting the witnesses. But, I think that protecting a witness means a lot more than just keeping that person alive and in one piece. Protecting him also means enabling him to begin a new life and at the same time stay in a state of mind where he is not beset by constant minor or major problems which affect not only his life but the lives of his entire family. It is very hard for a person to get up on the witness stand and concentrate on the testimony he is supposed to be giving when he is not only in fear for his own safety or his family's safety, but also is concerned with problems caused by his own relocation. Some of these problems are minor. Some of these problems are major. But the combination of all these problems is the most distracting and devastating thing that can be imagined, not only to a witness but to a witness' family as well.

Rather than going through an entire detailed history of my relocation, let me simply state that I was relocated in the witness security program in September 1978. Over the past 2 years, I have experienced a number of problems, and, as I have said, some major, some minor. Let me begin by detailing some of the minor ones and move on to some of the things that I consider more important and more serious.

There are problems, however, which I think are major and these problems relate to a person trying to make a new life for himself and his family on a relocation program. After all, this is the purpose of relocation, not only to preserve a witness' life, but to help him get a new start in life so that he can stand on his own two feet without fear of having to give testimony against organized crime figures. But it is almost impossible to start a new life under this program. It is almost impossible because the marshals will provide you with no new background at all. When I left home I had excellent credit. I had a good deal of work experience. I had a high school education and some college credits. Gary Haak was a real person. Now in my new identity I am a man without a past. I have no documentation for my past whatsoever. I am a man who never had a job before. I am a man who never had credit before. I am a man who never even went to school. I have no former addresses or phone numbers. Have you ever tried to get a telephone or rent an apartment or buy a home or auto or life insurance without giving former addresses or former phone numbers?

One recourse is to lie, to fill out phony applications. There is a real danger in this, however. I am not a professional document man or expert in this area. Anything I do is likely to be traced or found out. And I could lose my security.

The marshals should have an expert to advise and assist witnesses on how to do things like this.

There is one other option. I can't have a marshal go around to my landlord, my school officials, employers, phone company, insurance company, and tell them all that I have no past because I am a relocated witness. Believe me, they actually do this. Is this security? I don't think so. Because it only causes more people to ask more questions of me, my wife, and my children.

Every time a problem arises, the marshals' response is, "We can't help on it," or "We won't help on it." It is irrelevant to them that another marshal may have promised to do the very thing they are later refusing to do. I don't know whether the problem is with the marshals who handle the witnesses in the field or if it is with the people in Washington who simply hand down decisions.

I do know, however, that the decisions are simply announced without explanation and without the possibility of appeal. The witness is powerless and the marshals know it. I honestly think the Marshals Service doesn't care at all. The witness is just another problem to them. Maybe these people, those in the field and those in headquarters, should suddenly be uprooted from their families, their homes, their friends. Maybe they should be sent to a strange city with no name, no past. Maybe they should try to live without credit, without documentation for a few months. Maybe they should place their own lives and the lives of their family in the hands of a stranger and live at the whim

of faceless people hundreds of miles away in Washington, D.C. Maybe then they would begin to understand how hard it is to tell a 10-year-old child why she can never say her own name again or see her friends again. Maybe then they would have some sensitivity to what a witness goes through on this program.

When I was relocated, I was anxious to get on my own two feet and be on my own again. I don't want to spend the rest of my life relying on the U.S. Marshals Service and I don't think they want to have me as a burden for the rest of my life either. I don't want to spend the rest of my life this way. I don't want to have to rely on these people for the rest of my life. I can't understand why no one can provide me with some sort of background or school records.

I am not asking for anything phony or anything fake. All I think is that a relocated witness should be provided with a decent background and school records and employment records, to accurately reflect his true background, not only his, but his children, also. I think probably one of the basic difficulties with the program is that a witness has so little time to discuss it and to think about it before he signs up for it. I also think that a witness should be given copies of everything he has signed. After all, this is a written agreement between him and the U.S. Government. It is hard for me to understand how security can prohibit me from having a copy of what I signed, but at the same time security doesn't prohibit the inspector from telling schools, principals, teachers, telephone companies, moving companies, insurance companies and prospective employers that I am a relocated witness.

I want to thank you for the opportunity to share my experiences and present my views of the Federal witness security program. I hope that in some way, some of my experiences and problems will help this subcommittee to find some solutions so that maybe future relocations for other people will be more efficient, more effective, and easier, not only for the witnesses, but also for the marshals.

Chairman NUNN. Thank you, Mr. Haak, for summarizing that. Your whole statement will be put into the record.

[The statement in full follows:]

STATEMENT OF GARY HAAK

Thank you for giving me the opportunity to appear before this Subcommittee to explain to you my experience and problems with the Witness Security Program.

Before I begin to describe these experiences and problems I should explain to you some of my background. Throughout my life I have held series of entirely legitimate jobs. I have not been a career criminal. I must admit that in the city where I last lived I did get involved with the wrong people. I had been involved with them for some time, and I ended up assisting them in the conduct of a mob war in the city where I lived. This was the Rochester bombing case that was brought up during your mob violence hearings last May.

At the time I was assisting the mob, I didn't realize the exact purpose of my assistance, but I did realize that I was assisting them in some sort of illegal activity. I helped them to prepare remote control parts of various bombs. I would assemble the remote control device portion and turn it over to one of the people I knew. He and his cohorts in turn attached explosives and placed those destructive devices. They ended up bombing a number of buildings and killed one person by setting off a bomb under his car while he was in it.

During the investigation that ensued, I was approached by Federal agents and state agents asking me about my involvement in this. I realized that sooner or later they were going to be able to prove what I had done, and it would be better for me to go ahead and cooperate with them and try and work out some agreement with the Government. So I worked out an agreement and testified against the people that I prepared these remote control devices for. They were all convicted. I was not convicted of any crime in connection with any of these activities, although I realized I did engage in criminal activity. I have never been convicted of any crime in my life, and I have always held decent jobs and supported my family. These jobs have given me a certain degree of skill by which I can make a decent living.

I should also explain to you that it is my belief that the Witness Security Program is an extremely important tool for law enforcement. Without a program like this, it would be impossible for many people like myself to testify against organized crime figures. In fact, the Witness Security Program has kept me safe and alive so that I could give the testimony that led to the convictions of organized crime figures, as I have mentioned.

Insofar as protecting a witness is concerned, and insofar as protecting the witness means keeping him alive, I think the Program does an excellent job. In fact, it fulfills its primary purpose of protecting the witnesses. But, I think that protecting a witness means a lot more than just keeping that person alive and in one piece. Protecting him also means enabling him to begin a new life and at the same time stay in a state of mind where he is not beset by constant minor or major problems which affect not only his life but the lives of his entire family. It's very hard for a person to get up on the witness stand and concentrate on the testimony he is supposed to be giving when he is not only in fear for his own safety or his family's safety, but also is concerned with problems caused by his own relocation. Some of these problems are minor. Some of these problems are major. But the combination of all these problems is the most distracting and devastating thing that can be imagined, not only to a witness but to a witness' family as well.

Rather than going through an entire detailed history of my relocation, let me simply state that I was relocated in the Witness Security Program in September, 1978. Over the past two years, I have experienced a number of problems, and, as I have said, some major, some minor. Let me begin by detailing some of the minor ones and move on to some of the things that I consider more important and more serious.

When I was first relocated, I was told that my family and I would initially be placed in a hotel in the city to which we would be relocated. The stay in the hotel was to be very brief. It would only be as long as was necessary for my wife and me to find a new home for us to stay in. I understood that this would not be a house that I would own but just simply a rented house or a rented apartment. That was fine as long as it would happen as quickly as possible. But when I got to our area of relocation, my wife, my two young daughters and I were all placed in one room in a motel. We stayed there for approximately two months. It doesn't take long for four people in one motel room to get a pretty bad case of cabin fever. Coupled with the emotional strain of moving away from all of our friends and everything that was familiar, having to live together in one room for two months was maddening.

Although I had been told before I was relocated that my contact Marshal in my place of relocation would help me find another place to live so that we could get out of the motel, this never happened. In fact, my wife and I finally had to go out and find our own place to rent. We did it without any assistance from our Marshal. This was all complicated by the fact that my two daughters are of school age, but there was no place that we could put our children into school because we did not know where our children were going to be living. My girls missed a couple of months of school, really for no reason at all. They wound up with so much time on their hands that they were constantly bored and were on each other's nerves as well as on my wife's nerves and mine. I am not sure how my family survived this first exposure to relocation. I wonder how many families don't survive.

Another problem that I have experienced with this program is the amount of turnover among Witness Inspectors. In the two years that I have been in the Program, I have had four different Inspectors handling my relocation. The qual-

ity and professional abilities of each one of these four Inspectors varied greatly. One of these Inspectors was an excellent man who couldn't do enough to help us and knew at all times exactly what he was doing. Another one of the Inspectors was almost impossible to contact, and I had great difficulty in getting through to him at any time at all. One of my Inspectors required that all correspondence between myself and the headquarters be in writing. I am not sure why he did this, but everything that happened required some sort of approval or O.K. out of Washington, and the only way to get that approval or O.K. was to write a letter. He always seemed overcome by the need to have someone in Washington tell him in writing that it was O.K. to do even the smallest, most routine thing. This kind of turnover and this kind of attitude results in nothing but problems, and I think those problems are caused by constant policy changes in Washington. And it's the witness who gets stuck with the turnover and the policy changes.

An example of this is some stock that my wife owned at the time that we were relocated. The stock is only 10 shares and is only worth about \$100. When we left our original home, we were told by the Marshal that we should turn over these shares of stock to him. He would forward them to Washington where the name would be changed on the stock ownership certificates. If the name could not be changed, then the Marshals would sell the stock and launder the money through their own accounts to us. After two years the stock was finally returned back to us. It was returned to us exactly the way we had given it to the Marshals in 1978. It was still registered in our old names. We were then told by the Marshals that they could do nothing and would do nothing regarding this stock. Now this is not an earthshaking problem, but it is typical of the kinds of things that keep happening to a witness in the relocation program. Why did this take two years? Why not simply tell me that I had to dispose of the stock before I relocated. The Inspector now tells me that we have to mail these stock certificates back to our original home to our attorney. Our attorney (with a power of attorney) will sell his stock and send the money back to the Marshals Service to be laundered into our present account.

This could have been done while I was still in my original home with my attorney instead of by mail now. If a policy was changed then the stock should have been returned to us almost immediately or as soon as the policy changed. There was no reason to sit with that stock for two years. I haven't lost any money on this; I just bring this up because it is a good example of the kind of problems and the kind of little harassments that we go through constantly.

In connection with this stock, though, I should point out one other problem that we have had with the Program. When I take this stock and dispose of it, I have to mail it back to my attorney in my original home town. This means I have to mail the stock to the U.S. Marshals Service and they have to switch envelopes and mail it back to my attorney. Then, ultimately he has to take the proceeds of the stock and mail it to the Marshals Service who will then, in turn, forward it to me. This is for the purpose of security. (I might also point out that the security seems rather strange at times—here I am with this stock in my old original name and yet the Marshals Service tells me that I cannot have a copy of my own Memorandum of Understanding regarding the Witness Protection Program because that has my old name on it. Sometimes, I just don't understand the logic of the Marshals Service, and sometimes this security business just looks like an excuse they use whenever they want their own way.)

At any rate, mail is a constant, continuous aggravation and problem. In two years we have never received a letter that didn't take a substantial time to arrive. In fact, it is very common for a letter to take one or two months to get from my original home to my new location or vice versa. At the time we were relocated, my wife was extremely close to her family—so close that when we left our home town for our new place of relocation, my wife wrote to her family every single day for a year. We found out, however, through our correspondence with the family that it was taking up to a month to two months for them to receive our mail, and that they were receiving 20 to 30 letters all at once. We, in fact, on the receiving end also got mail in big bunches. Nobody will tell us quite why this delay occurs. Our letters are constantly being stop-gapped and collected in one spot and then mailed out in giant bunches. Now this might not seem to be a terrible problem, but consider the sale of the stock. If my stock were extremely valuable, then a delay in the mail could cost me a great deal of money.

When I left my place of relocation, I owned my own home. The marshals told me that I had to sell that home and that it was entirely up to me to do it. They could give me absolutely no help in selling it or disposing of it. I decided I would sell my own home, but the delay in the mails has caused me nothing but aggravation and expense in connection with the sale of my house.

First of all, it took me fifteen months to sell the house. I understood that the market has been very tight and I understand that 15 months delay in selling a house is not terribly uncommon, especially in the area where I came from. However, I know that the sale would have taken place a couple of months earlier if only my attorney could have received the necessary paperwork. Now, maybe this didn't affect the price of the house, but for 15 months I had to pay a mortgage on that house. This delay cost me two or three months in additional mortgage payments. This is not easy when you are living on a subsistence budget that's supplied to you by the Marshals Service. What made this whole thing even worse is that very frequently throughout this entire 15 month period, I received about 14 late notices from the bank because they claimed that my mortgage payments hadn't been made on time. I mailed my mortgage payments on time. The problem was the mail was delayed somewhere, in between me and the bank. The problem was that the Marshals Service was delaying the mail and the receipt of my mortgage payments. This cost me more money, because every time my mortgage payment was late, I had to pay the late fee.

These problems aren't really overpowering, and it's really only the fact that they are constantly occurring and accumulating, one on top of the other, that really causes any aggravation and distraction.

There are problems, however, which I think are major and these are problems which relate to a person trying to make a new life for himself and his family on the relocation program. After all, this is the purpose of relocation, not only to preserve a witness' life but to help him get a new start in life so that he can stand on his own two feet without fear after having given testimony against organized crime figures. But it is almost impossible to start a new life under this program. It's almost impossible because the marshals will provide me no background at all.

When I left my home, I had excellent credit. I had a good deal of work experience. I had a high school education and some college credits. Gary Haak was a real person. Now, in my new identity, I am a man without a past. I have no documentation for any past existence whatsoever. I am a man who never had a job before. I am a man who never had credit before. I am a man who never even went to school. I have no former addresses or telephone numbers. Have you ever tried to get a telephone, or rent an apartment, or buy a home or auto, or life insurance without giving former addresses and former phone numbers?

One recourse is to lie, to fill out phony applications. There is a real danger in this, however. I am not a professional document man or an expert in this area. Thus, anything I do is likely to be traced or found out, and I could lose my security. The Marshals should have some expert to advise and assist witnesses on how to do things like this.

There is one other option. I can have a marshal go around to my landlord, the school officials, my employers, the phone company, and the insurance company and tell them all I have no past because I am a relocated witness. Believe me, they actually do this. But, is this security? I don't think so, because it only causes more people to ask more questions of me, my wife and my children.

The Program, although they promised me, has never provided me a marriage certificate. I cannot prove that I am married. This might seem a minor point, but as far as I can see, to get things like death benefits and Social Security benefits if I die, my wife has to prove that we were married. She can't now. It's been over two years, and I still don't have the marriage certificate that I was promised. We were also told we would be given a "former address," and that that address could be used for the purpose of getting a telephone, for opening bank accounts, for starting up utilities in our place of relocation. But when we got to our place of relocation, the inspector said this couldn't be done.

If you are 35 years old, it's impossible to go to someone and say you have never been insured before in your life or that you have never had any other address in your life. The U.S. Marshals Service will help pay the car insurance for a short time but they won't help you get it. Without a background, you can't get insurance. My problem is that I just didn't know what to put down on these applications. On my insurance, I finally just made up information and put it

down on the applications. I had four investigators from different insurance companies trying to check me out and find out about my background on car insurance and two on renters insurance. This only creates a lot of security problems. These are little holes and the little holes can become big holes very easily, but the marshals will do nothing to help on this sort of thing.

Documentation, or I should say the lack of documentation, creates a real problem in the area of credit. As I said, when I left my original home I had an excellent rating. I owed very little money to anyone. I had always paid my bills. Now it's as if I just never existed or, alternatively, it's as if I were one of the worst credit risks in the world. It is almost impossible for me to get credit because I have no background. I have no one else who ever gave me credit for 35 years. I have no former addresses. I have nothing. How can I go get credit? Well, it can be done. It takes years and years to do it and it's a very slow process. But, I'm not sure that it's fair. I had good credit. I worked hard at my credit all my life. Now, I've got nothing. Why am I being punished just because I'm being relocated? How can I start a new life without being able to start credit. How can I ever get my family back into a house again, if I can't get credit. Again, this is a field that the marshal refuses to help me in. I can't understand why, if I had excellent credit before that someone can't go to a bank and explain that I had excellent credit before, that I am receiving so many dollars per month and that I might be a good risk for a low-level credit card, such as Mastercharge, with a maximum amount of \$500 on it. If they tell landlords, schools, or employers that I am relocated, then why can't they tell a bank?

Documentation is also a real problem in the area of school records. As I said, my two daughters were in our area of relocation for three months before they got any records at all. They were almost expelled from school because they had no records. At one point, the principal told us that if he didn't have the records by Friday, they would be expelled. We finally got the records on the very last day. And what were the records that were finally sent to us the Marshals Service? The records consisted of nothing more than a photocopy of my daughters' original school records with their real names cut off of the copy and a new name typed in. The school name had been completely obliterated. These records are useless. They are absolutely meaningless. They could have been made up by anyone for anyone. Certainly it's difficult to expect any self-respecting school to accept a photocopy like this as an official record. The only way we managed to keep those girls in school was to have the marshal bring the records down and explain the situation to the school principal. But this was about the last thing in the world I wanted. I don't want the school principal to know that my daughters and I and my wife are relocated witnesses, but this is just another area where the fact that we are relocated witnesses has had to come out because the documentation is so totally inadequate.

School records have also affected me directly. I was told that I would be given a high school diploma to reflect the fact that I had been in high school. I've also been to college and have credit for several courses, and I was told that I would receive documents to show that I had that kind of college credit. I have received absolutely nothing. All I have gotten is the old records with my old name taken off and my new name typed in and all reference to other schools or anything like that completely erased. I have no record, and there is no way I can go to an employer now and show him that I have a high school education. The marshals now tell me, contrary to what I was told when I was relocated, that they cannot and will not get me a diploma.

The worst part of this documentation problem is that it hits me in the worst possible place it could hit, and that's employment. It is almost impossible to get a job on my own because I have absolutely no background. I was told when I was relocated that I would get a résumé that would show the type of work I had done but for different companies, and it would reflect my new name. I was told that this would be all backed up so that if a prospective employer contracted one of the companies on the résumé which the marshals would provide me, someone they would say yes, this individual worked here. But all of the information that they would provide would be completely accurate—my good points and my bad points and my work habits and the type of work that I did.

After I was relocated, I discovered that the Marshals had just simply changed their mind without even telling me or explaining why. They no longer provide, I was told, a real résumé or any sort of employment background. What they do provide is a "sanitized résumé." This is a xerox copy of the résumé that I gave

to them when I was relocated. What they have done is to scratch off my name and the names of the companies I have worked for. Mr. Chairman, if I came to you with a résumé like that and asked you for a job, would you seriously consider me for more than 30 seconds? I don't think so, and what's worse is that no one else will, either.

This type of thing, this "sanitized résumé," is worse than nothing. On top of all this they won't even give me a copy of this "sanitized résumé," apparently for security reasons. I just can't understand them. The marshal says that he will go to the employer for me and explain my situation to the employer. I don't want my employer to know that I am a relocated witness; it's none of his business. I don't want him to know and to be asking questions about where I'm from or about what kind of case I'm involved in. As I said above, I'm not completely innocent, but still I am not a convicted criminal, thanks to my cooperation with the Government. If I had stayed in my old city, or if I had moved myself, I would not have to tell anyone about that part of my past.

If I had a criminal record, I could understand that the criminal record should be passed on to my prospective employer. But I don't have a criminal record, and to come into an employer and to tell him that I am a relocated witness implies and indicates that I was involved in criminal activity and have a record.

I was lucky. I finally found a job, not through the marshals, but by myself. The problem was, for this job I needed specific tools. The marshal told me that the Witness Security Program would provide those tools for me. So, when I got the job, I wrote up a list of the tools that I needed and I gave it to my inspector. I told him that I needed these tools in about a month to start my work. Two days prior to the day I was supposed to start work, the marshal called me up and said he needed to meet with my employer to see if I really needed these tools. I was a little surprised that it took him so long to decide something like this, but I suppose he had to go to Washington again, and so I contacted my employer. I gave him some excuse, and the employer agreed to meet with the marshal. At this meeting, the only thing the marshal would explain to the employer was that he was a person who was looking out for my own interests and trying to take care of me. For over an hour he gave my prospective employer what can only be described as the third degree. He tried to determine whether or not I really needed these tools and actually demanded from my employer a financial statement about his business. All the inspector would tell my employer, however, is that he represented a company which was looking out for my interests.

It took me two years to find this job. The marshal there never gave me a single lead for a single job. He kept putting me off on the possibility of my going to work. I finally found this job myself, and this man almost lost it for me. If my prospective employer hadn't been one heck of a man, he would have thrown me out on my ear after that one interview with the marshal. As I said before, I do have job skills, and there should be no reason why I couldn't have gotten at least a job contact from the marshal. It was not as if I were totally unskilled or unemployable.

The lack of background hits home in one other way, or at least in one other way that has happened to me. When we finally moved into our new apartment, I contacted the inspector and asked if he would arrange for my household goods to be delivered to me. These were the things that had been picked up from my old home in our original town. When all these goods were delivered, most of them were almost demolished. The damage was so extensive it was shocking, and I couldn't believe it. I went to the inspector, and he told me if I had problems with the moving company that I should file a claim with that company or whoever the insurer was. I did so. It took me eleven months to get a settlement. It cost me over \$150 in long distance telephone calls.

When I finally did get a settlement, it was for 15 percent of my claim. Why? Because the adjuster kept insisting that they would not pay for damaged goods or missing goods unless I had a receipt to show that I had this missing inventory or unless I showed him the original bill of lading so that he could determine whether or not there had been any damage at the time that the stuff was picked up. How could I show him a receipt? How could I show him the original bill of lading. It was all done in my original name. If I had showed him that, I would have breached my own security and possibly been thrown off the Witness Security Program. This was a "Catch 22." He was insisting on the things that he knew I couldn't show because on top of it all, he knew that I was a relocated

witness. I complained several times to the marshals and their only response was that it was out of his hands and that there was nothing he could do. Finally, the company told me to take it or leave it. Either show the receipts or settle. I had no choice, so I settled. I couldn't sue. If I sued, the marshals said it would require showing the original moving documents, and they could not allow this because it would be a breach of security. Besides, I couldn't sue. Half of my documents were in another name, half of the documents were in my new name. What would the court say to that type of a situation? And what was worse, the moving company knew that I was relocated. They knew they had me over the barrel. They certainly knew that there was no way that I could show receipts or the original bill of lading, but this is what they insisted on.

Everytime a problem arises, the marshals' response is "we can't help on that" or "we won't help on that." It's irrelevant to them that another marshal may have promised to do the very thing they are later refusing to do. I don't know whether the problem is with the marshals who handle witnesses in the field or if it is with the people in Washington who simply hand down decisions. I do know, however, that their decisions are simply announced, without explanation and without the possibility of appeal. The witness is powerless, and the marshals know it.

I honestly think the Marshals Service doesn't care at all. The witness is just another problem to them. Maybe these people—those in the field and those in headquarters—should be suddenly uprooted with their families from their home and friends; maybe they should be sent to a strange city with no name and no past; maybe they should try to live without credit and without documentation for a few months; maybe they should place their own lives and the lives of their families into the hands of a stranger and live at the whim of faceless, nameless people hundreds of miles away in Washington, D.C. Maybe then they would begin to understand how hard it is to tell a 10-year-old child why she can never say her own name again or see her friends again. Maybe then they would have some sensitivity to what a witness goes through on this Program.

When I was relocated, I was anxious to get back on my own two feet and be on my own again. I don't want to spend the rest of my life relying on the U.S. Marshals Service, and I don't think they want to have me for a burden for the rest of my life either.

Another problem involves Social Security. In order for me to make any claim under the new card that the marshals have provided me, I have to go back to the U.S. Marshals to do it. In other words, none of my former earnings have been transferred over to my new card. If I make a claim today, they'll tell me that I have absolutely no benefits accrued, even though I have paid into the system for years. Instead, I have to go back to the marshals, who have to go through Washington. Someone in Washington then must contact Social Security in Baltimore to finally switch over my earnings from my old card.

Even in the area of a job, if I lose this present job, I have to go back to the marshals to find another one, because again, I have no background. Unless I can find another employer like the one I have now who didn't really care about my background too much, the only thing I can do is go running back to the marshals and ask them to tell my new, prospective employer that I'm a relocated witness and have no background, and to show the "sanitized résumé" for what its worth.

I don't want to spend the rest of my life this way. I don't want to have to rely on these people for the rest of my life. I can't understand why no one could provide me with some sort of background and school records. I'm not asking for anything phony or anything fake. All I think is that a relocated witness should be provided with a decent background and school records and employment records that accurately reflect his true background. Not only his, but his children's, also.

I think probably one of the basic difficulties with the program is that a witness has so little time to discuss it and to think about it before he signs up for it. I also think that a witness should be given copies of everything that he has signed. After all, this is a written agreement between him and the U.S. Government. It is hard for me to understand how security aspects can prohibit me from having a copy of what I've signed, but at the same time security doesn't prohibit the inspector from telling schools, principals, teachers, telephone companies, moving companies, insurance companies and prospective employers that I am a relocated witness. Also as part of the background, I think a witness should be given a prior address or some sort of past cover story so that when a witness gets

to the new place of relocation, he is able to say to neighbors and friends where he is from, what he did back there, why he came to this new city, and be able to intelligently discuss that old city that he has supposed to have come from. This is only common sense. These are things that everybody needs just to survive in day to day life. If the program is actually protecting people, it should be able to provide at least this kind of a background so that a witness knows how to maintain his own security when he gets to the new place of relocation.

I want to thank you for the opportunity to share my experiences and express my views of the Federal Witness Security Program. I hope that in some way some of my experiences and problems will help this Subcommittee in finding some solutions, so that maybe future relocations for other people will be more efficient, more effective and easier, not only on the witness but also on the marshals.

Chairman NUNN. Several months ago in a hearing this subcommittee held concerning mob violence, we heard extensive testimony concerning the facts and circumstances surrounding the Rochester Bombing Case that you testified in as a witness. As our own hearing record graphically demonstrates, the Rochester Bombing Case was a vicious mob war entered into by competing mob factions to take over the Rochester, N.Y., area. The war involved the indiscriminate use of explosives and automatic weapons and resulted in injuries, death, and generally terrorized the entire community until the Federal and local governments joined forces to investigate and prosecute those responsible.

We can easily understand the danger that you were placed in by testifying on behalf of the U.S. Government against the criminals involved in these vicious bombings. We also understand that at the time you were relocated, you had never been convicted of a crime and had no criminal record although you had been involved with these people in some of this activity indirectly. However, when you left, you had a credit rating, a home and secure job. Is that correct?

Mr. HAAK. Yes, that is true.

Chairman NUNN. When did you enter the program, Mr. Haak?

Mr. HAAK. I entered the program in September 1978.

Chairman NUNN. When you first entered the program, did you and your family receive the type of employment, financial and social counseling necessary to assist in your adjustment to a new identity in another location?

Mr. HAAK. No, we didn't. We were more or less to take care of it for ourselves, selling the house and handling everything else we needed by ourselves.

Chairman NUNN. Did you have fairly simple financial problems that could have been solved with timely professional advice, such as assistance in selling your house, obtaining funds from stocks you owned?

Mr. HAAK. I think some assistance in how to sell the house under the circumstances would have been a big help. As it was, we ended up paying 15 months' payments on the house before we could sell it. Living on subsistence, this was a real drain on what money we had been able to save and what money we were being paid by the Government.

As far as the bonds, when we entered the program, I owned, my wife owned 10 shares of stock in a local utility. We were told to surrender the stock at that time and the Marshals Service would either have the name changed, or they would sell the stock and return the proceeds to us. After almost 2 years, they returned the stocks to us with the same

name on it that we originally gave it to them with and they said there was no way they could get it changed, there was no way they could sell the stock for us; we might just as well throw it in the basket. After pursuing it a little bit farther, I was told to send it back to my attorney and gave him power of attorney and have him sell the stock for me. But this took 2 years to get the stock back.

Chairman NUNN. Took 2 years total?

Mr. HAAK. Yes.

Chairman NUNN. Did you finally sell the stock?

Mr. HAAK. It is being sold now.

Chairman NUNN. Why did it take so long to sell your house?

Mr. HAAK. I guess the market wasn't that good at the time, but with the problem we had with mail, it took as long as sometimes 2 months to get a letter; going through their system of mailing, post office box, forwarding it on. When we got our offer on the house, by the time we got the offer back, it was already 1 month late. Just in the handling of the mail, it was almost 3 months' payments would be lost, plus we ended up paying 15, or 14 late payments because the money had been mailed to the Marshals Service, where they would in turn cash my money order, forward a new money order to the bank to pay the payments. We were going through this process even though we mailed the payments in 2 or 3 weeks early. Every one turned up late because we ended up paying 14 late payments on top of it.

Chairman NUNN. When you first moved away from Rochester, what conditions were you housed in, how did this affect you and your family?

Mr. HAAK. We were told when we entered the new program that we would move to a motel for a couple of days, then the marshal in the area would find us either an apartment or house or something we could rent. When we got to the area, we ended up staying in the motel room with myself, my wife, two children, a dog, and we lived in a motel room for 2 months. Believe me, with that many people in one room, the nerves really got on end.

Chairman NUNN. Were you given adequate notice of your ultimate destination to assist you in things like relocating your children in school?

Mr. HAAK. We were told, before we left New York, where we were going, where we would be staying, but not the area we would be living in. After we moved there, there was no way to enroll the children in school because we didn't know which school district they would be in. So when they finally entered school they were 2 months late for school.

Chairman NUNN. Did you have any trouble getting school records for your children?

Mr. HAAK. We were told when we entered the program that by the time the kids started school their school records would be there. It got to the point where they entered school without school records because the marshal came down and talked to the school principal and told them we were in the witness relocation program and the kids started school. But then we were also told that it dragged on for so long we were told on a Monday that if we didn't have the school records by Friday, that they could no longer attend school. I relayed this infor-

mation to the Marshals Service, and they got me the school records on Friday. When I got the school records, they were copies of the original school records with the name of the school taken off, their original name taken off, and their new name typed in. It gave no former school or no identification whatsoever of the school records, but the school did accept the records after being talked to by the Marshals Service.

Chairman NUNN. They did accept the records after the Marshals Service talked to them?

Mr. HAAK. Yes.

Chairman NUNN. Did your children adjust all right to the school after being late in getting in?

Mr. HAAK. Yes; they seemed to adjust all right.

Chairman NUNN. They are getting along all right now?

Mr. HAAK. Yes; they are getting along fine.

Chairman NUNN. What was your experience in dealing with different marshals? Did you have one marshal assigned to you primarily, or did you deal with several different ones and if so, what were the difficulties there?

Mr. HAAK. We had one marshal assigned to us when we started the program, moved to our new area. But since then we have had a total of four marshals. The first marshal couldn't do enough for us, went out of his way to help us in everything he possibly could, the next two were almost impossible to get hold of and the one we have now, no matter what I ask him or what I do, he cannot give me an answer even for the most simplest question, unless he calls Washington or writes them a letter. I have to wait for the letter to come back or have to wait for him to get an answer back from Washington.

Chairman NUNN. Is that because of his experience, or lack of experience?

Mr. HAAK. He has said he is trained in this area and this is the new procedure. We found since starting in the program that procedures constantly change. The witness ends up on the bad end of it because we are never informed of the changes.

When we were going to do something like we did it before, we are told we can't do it that way anymore.

Chairman NUNN. What about your general problems in the mail; have you had problems just on selling the house or is that the general problem of the mail?

Mr. HAAK. The mail has been a problem since we started in the program. My wife is very close to her family and her mother wrote daily. She would write to the post office box, it would be forwarded to us. The mail was running 2 to 3 weeks late, 4 weeks, 5 weeks, 6 weeks late. It was not unusual to get a letter 6 weeks late. When we got mail, we would get 25 or 30 letters all at once, one group. My wife was writing back to her, she had the same problem on the other end. When I originally was interviewed about testifying here, they wrote to the Marshals Service and asked them about some of these problems. Immediately after they wrote, my mail is down to 4 or 5 days delivery now. I get one letter at a time, just like the mail.

Chairman NUNN. So it has dramatically improved?

Mr. HAAK. Yes.

Chairman NUNN. What about marriage certificate?

Mr. HAAK. We were promised a marriage certificate when we entered the program, and as far as a month ago, I was told that I could not get one, but the week after I testified, they talked to me about testifying, I was told that I would have a marriage certificate.

Chairman NUNN. What about social security benefits? Have you had problems with those?

Mr. HAAK. From what I understand, I wouldn't be able to collect on insurance or social security benefits because I have no money accrued in the social security. So if something was to happen to me or my wife, I would have to go back to the Marshals Service and they would have to go back to social security and I guess collect off my old number. But as far as I know, my new number has no accrued benefits whatsoever, even though I have put a lot of money into the program.

Chairman NUNN. You have put a lot of money into the social security program over the years?

Mr. HAAK. Yes; I have.

Chairman NUNN. Did you receive any background information to give in respect to utility companies?

Mr. HAAK. Again, we were told when we entered the program that we would be given a former address we can use, along with a former phone number and all this information would be backed up. So if anybody called and checked on it, it would be there. When we got down there, we asked them about it and they said they don't do that. There is no way they can do it. We got homeowners-renters insurance for where we are living, we had four investigators come out and ask us questions about that. The only thing I could do was I made up a former address and a former phone number, just gave it to them. I didn't know what else to do. Nobody even gave me help on it. The same thing happened with the car insurance. They said they would pay me for the first year's car insurance. But they couldn't tell me how to get the insurance or where to go for it.

Chairman NUNN. What about credit rating? When you left you had a good credit rating. What did you do about that?

Mr. HAAK. After we relocated I asked about the credit and again they said there was nothing they could do about that, that we would have to establish our own credit. I told them. I said, "We were told when we entered the program that there was help available for the credit." He said, "No; the policy has all changed, you are on your own now."

Chairman NUNN. Did you in fact establish a new credit rating?

Mr. HAAK. I am attempting to do that now. But it takes a long time to establish credit. It makes you feel kind of funny going into the bank, saying, "We would like to get some credit, I am 35 years old." They said, "Where have you ever had credit before?" I said, "I have never bought anything on credit, I have bought everything in cash for the last 35 years." It doesn't go over very big with the banks. They don't want to help you.

Chairman NUNN. Did you have skills when you were relocated? Had you held a steady job with skills that should have been transferable to the new jobs?

Mr. HAAK. I had a few jobs that gave me skills in a lot of different fields, and very easy for me to get another job. When it came down

to employment, I was constantly asking, because we were told again when we started the program that we would, that I would have to have a job in 90 days, joining the program. I would have to be out on my own. After almost 2 years, I was still asking the marshals, "When are we going to start looking for a job?" They said, "We don't want to get you a job until you testify, because we don't want you taking time off from work to go to testify."

When it came time for a job, I was told I would be given a résumé of my former employment, and it would have new places of employment on it that would also be backed up. When I asked for the résumé, I was given what they called a sanitized résumé which was the original copy of the original résumé that I turned in to them, with my name taken off and all the places of employment taken off, my new name just typed in over the top. It was nothing but a Xerox copy of it. This is what I was supposed to use for a résumé. They said they would go to every place that I applied for a job.

Chairman NUNN. In other words, there wasn't anything left on there once they scratched it all out that would tell anybody that was going to hire you anything?

Mr. HAAK. No. There was no way to back any of it up. I know myself if somebody came to me with that, regardless of whether the marshal came in there or not, I wouldn't hire them. There would be no check or anything on the guy.

Chairman NUNN. Did you manage to get a job?

Mr. HAAK. I managed to get a job by myself, which the Marshals Service almost lost for me.

Chairman NUNN. Almost lost? How?

Mr. HAAK. When I took the job, I needed some specific tools to be able to do the job. When I talked to the marshals about it, they said that they had funds available to provide me with some of the tools that I needed to do the job. And he said, "Just give me a list of the tools." I said, "All right, I am going to start the job next month, here is the list." Two days before I was to start the job, he calls me up and says, "I have to talk to your new employer, to verify that you need these tools." I said, "All right." So I made up a story, called the guy I was going to work for, said that he had to talk to him. The marshal met with me, we went over to the man's house and he just identified himself as a friend of mine who was there to help me out. Then he put the future employer through the third degree, more questions than I was asked when I testified, and he even got down to the point where he demanded the financial statement from my future employer. If my future employer hadn't been understanding enough, and that great of a guy, I would have lost the job.

Chairman NUNN. Did the marshals suspect you might be going into illegal activity or what would have given rise?

Mr. HAAK. I think he wanted to verify that I needed the tools, that they were spending the money on something legitimate.

Chairman NUNN. Did you have any problems with your household goods?

Mr. HAAK. When we asked, after we finally found a place to live, we asked for our household goods to be forwarded to us. At first we thought we got the wrong shipment of goods because everything was

damaged so badly, broken, scratched, we took the stuff out, we made a long list of damaged items. We went down to the Marshals Service. I said, "Here is the list of stuff, either broken, damaged, or not repairable, of our furniture." He said, "We can't do anything about that, you have to contact the insurance carrier yourself." I spent almost \$150, to the insurance company, on phone calls, to the insurance carrier, long-distance phone calls, of which not one phone call was ever returned, even though every time I called, they said they would call me right back. They never did.

They finally sent an investigator out to look at the furniture, along with the estimate that I prepared on the furniture. The investigator looked at my estimate and the damage on the furniture. He said, "I will OK this estimate only under one condition." I said, "What is that?" He said, "As long as you are doing the repairs." I said, "yes." He said, "As long as I don't have to do the repairs because I couldn't begin to do the repairs. You only have a portion of what is damaged."

Then when I tried to negotiate with the adjuster for the settlement, I found out that he knew that I was under the witness protection program.

Chairman NUNN. The adjuster for the insurance company?

Mr. HAAK. The adjuster for the insurance company had already been informed that I was part of the program. He wanted original receipts for the items I was claiming either damaged or missing, which I couldn't produce because the original receipts had my name on it. He knew he had me over a barrel. I was told I could not sue because I would again have to produce the original receipts. So as it was, I ended up settling for about 15 percent of my original claim.

Chairman NUNN. You mentioned your social security earnings. Do you know whether anything has taken place on having those past earnings or on having social security transferred?

Mr. HAAK. From what I understand the earnings are not transferred to the new card.

Chairman NUNN. Is anybody working on that?

Mr. HAAK. From what they told me, they will not be transferred to the new card and I will not get any credit for any of those benefits until I retire or have to make a claim on it, at which time the Marshals Service will somehow merge the two cards together.

Chairman NUNN. Are you still getting assistance from the Government in terms of subsidy payments, and so forth?

Mr. HAAK. No.

Chairman NUNN. How long did that last?

Mr. HAAK. Two years.

Chairman NUNN. Do you feel like you are independent now from the Marshals Service or because of your lack of documentation and so forth, are you still pretty dependent?

Mr. HAAK. The way the program is set up, I don't feel that myself or my family will ever be free from the Marshals Service, for the rest of our lives.

Chairman NUNN. Because of the documentation?

Mr. HAAK. Documentation, social security, job records; every time we want something we have to go to the Marshals Service. If we had a set of work records with some names on it, backup, I could be on my

own; I wouldn't have to worry. If something happens to this job, if the guy went bankrupt, I would be right back in the same boat. I would have to go back to them. I would be going through the same thing with them going to my employer. I wouldn't feel right about going to the employer and having the Marshals Service tell them I am under the witness protection program, which immediately implies I was involved in some kind of criminal activity and that most likely I had been arrested for it.

Chairman NUNN. So the marshals, by way of not having adequate documentation, for whatever the reason, really, have taken you on as a lifetime responsibility, rather than having, at some point, you feel independent yourself?

Mr. HAAK. That is exactly right. I would like to be independent and on my own.

Chairman NUNN. You mentioned that you had no complaints about the protection provided you by the marshals. You are pretty high on the actual security aspects; is that right?

Mr. HAAK. Every place I have gone, and every marshal I have met, has bent over backward as far as the security goes.

Chairman NUNN. How would you rate the program on that security aspect?

Mr. HAAK. As far as security, it is 100 percent.

Chairman NUNN. How would you rate it on the overall accommodations to you and your family, so you can live a reasonably normal life?

Mr. HAAK. Twenty-five percent.

Chairman NUNN. About 25 percent.

Do you feel that witnesses entering the program need experienced professionals to counsel them in the areas of employment, finances, credit, social problems, schooling documentation, and background?

Mr. HAAK. I think there should be experts available that we could talk to in helping us with these areas. I think there also should be some kind of grievance or complaint system you could go through. As it is now, if I asked a marshal a question, he comes back and says no, that is it, I have no recourse whatsoever. He has absolutely the last word on it. Whether it is right or wrong, that is it.

Chairman NUNN. You have a particular marshal to deal with?

Mr. HAAK. Yes, I do.

Chairman NUNN. Have you got any kind of emergency contact so you can contact someone in the event of an emergency?

Mr. HAAK. The first marshal gave me his home phone number. I don't have the home phone number of the marshal that I have now. I am sure I could get it if I asked him for it.

Chairman NUNN. At this time you don't?

Mr. HAAK. No, I don't.

Chairman NUNN. That is your normal contact, with one marshal?

Mr. HAAK. Yes.

Chairman NUNN. Do you have alternate numbers?

Mr. HAAK. Yes.

Chairman NUNN. So there are numbers you can call?

Mr. HAAK. Yes.

Chairman NUNN. Have you ever had to use it in an emergency?

Mr. HAAK. No.

Chairman NUNN. What kind of effect do these problems have on a witness' ability to concentrate and testify? Did you testify months after you had been relocated, or when did you testify?

Mr. HAAK. I testified 2 years after I relocated. At that time, some of the problems which I considered serious, like the job and the educational records and things like that, they were really on my mind and my wife's mind because we knew under the program the way it was, we were going to be stuck in this thing forever.

It had an effect on me when I was supposed to be concentrating on what I was testifying to. That was always in the back of my mind.

Chairman NUNN. The people you testified against were convicted?

Mr. HAAK. Yes, all were convicted.

Chairman NUNN. How many were convicted?

Mr. HAAK. Four or five.

Chairman NUNN. As it applies to your testimony about receiving—quoting—"a sanitized résumé," the marshals have advised this subcommittee that, and I quote them, "on October 4, 1978, Mr. Haak received sanitized employment records for him and his wife. These employment records include a description of his duties, an assessment of his skills and performance rating for the last three jobs. These records with performance ratings would actually be more useful than a sanitized résumé."

What were you promised in this area, and what did you actually receive from the marshal?

Mr. HAAK. We were promised a résumé that would list jobs and places of employment, lengths of employment and what my duties were. There would be different places of employment on them. The first marshal we had, called me one day and said, I have some documents for you. When I got down there, he had a document on the first part of my résumé which had a new insurance company on it with the name of the company and my length of employment and when I asked him for a copy of it, he told me he could not give me a copy.

That later disappeared and I was told I could no longer use that name and that I would not be able to have a résumé with actual place of employment on it.

Chairman NUNN. You said you feared security and social problems when the marshals used sanitized school records and then had to tell school officials that you and your family were relocated. As to the claim, the marshals have officially advised this subcommittee that your testimony is entirely accurate, but they go on to state:

When a trained security inspector took over in March of 1980, he had an FBI check done on the director of the school system, briefed him on the program, emphasizing security and now deals only with him. Should any security problem arise, the inspector will be notified.

In reference to that, Mr. Haak, when did your children enter school and when did the marshals reveal to school officials that you and your children were relocated witnesses?

Mr. HAAK. My kids entered school in 1978, at which time I told the school that I was on the witness protection program. From that I find out that they went to the school again in 1980 to inform—this is 2 years after the kids were already in school. Over that length of time, the things had pretty well died down. The only thing they did by doing

that was stir it back up again and remind them of the fact my kids were in the program.

Chairman NUNN. So the FBI check that was requested was 2 years after these school officials were told that your family were relocated witnesses?

Mr. HAAK. Yes; if it was going to be done it should have been done before the kids entered school.

Chairman NUNN. You have told the subcommittee staff that your family received "sanitized medical records," which caused the marshals to go to each doctor and each dentist and tell them you were a relocated witness, is that correct?

Mr. HAAK. That is correct. When I got the records, the marshal went around with us and said—this is the dentist, this is the doctor you are going to use because they are in the same general area. They gave the records which had the doctor's name removed and our new name typed in. That is the only thing that said on the records. But we were very surprised to find out when we went to the vet to have our dog get his rabies shot that the vet also knew that we were on the witness protection program and that our dog's records had been transferred and that he was part of the witness protection program.

Chairman NUNN. You mentioned security was real good but there were an awful lot of people in your community who knew you were relocated witnesses?

Mr. HAAK. Yes; I would just as soon nobody knew at all. I didn't think there was any reason they should know. With the proper documentation and paperwork, I could have moved to another city and no one would have known anything different.

Chairman NUNN. I suppose that this causes problems on the other side of the coin, particularly for people who had had criminal backgrounds as to getting credit ratings and those kinds of things and the possible abuse of that by people of that nature. Do you have any comments on that danger?

Mr. HAAK. I think that the amount of credit should have been kept at a minimum. The only thing that was really needed was some way to get the credit started. It wouldn't have made any difference if we got a Master Charge, VISA card with only a \$100 limit on it. I would have been willing to give \$100 to the Government to hold until I established credit on my own.

Chairman NUNN. So you would have some way to get—

Mr. HAAK. Some way to get credit started. That is all I needed.

Chairman NUNN. What you would have asked for is nothing fraudulent, nothing exaggerated about your past credit, but simply a statement of what it was.

Mr. HAAK. Just exactly what it was. They want to talk to everybody else, I don't see why he couldn't have gone to a bank and said he is under the witness protection program, he has had excellent credit, let him take a credit card out for \$300, whatever the limit. If somebody abused the credit and didn't have credit to start with, I don't think they deserved any credit when they got in the program.

Chairman NUNN. Taking these problems into consideration and the security you obviously have had, would you agree to cooperate again knowing what you know now?

Mr. HAAK. My wife and I put a lot of thought in that and I don't really think we would. I think we would have been better off staying there and just hoping for the best. It has been a lot harder trying to cope with the problems than it was with the security.

Chairman NUNN. Mr. Haak, you have had some of these problems ironed out in recent weeks since you agreed to testify here?

Mr. HAAK. Yes.

Chairman NUNN. Which ones have been?

Mr. HAAK. The mail has been straightened out. As I said before, we are getting mail within 4 to 5 days from the time that the letter is written and we have been promised a marriage certificate.

Chairman NUNN. Well, we will certainly do what we can to assist you in those respects although it certainly is not up to us, it is up to the marshals. We will try to follow through on the problems you have got and urge they be corrected. We appreciate very much your testifying here.

Mr. HAAK. I appreciate the opportunity.

Chairman NUNN. We appreciate your past cooperation with the Government, which I am sure has resulted in a great number of convictions of high-level people in the Buffalo and Rochester areas. I know you have been through a great deal. I hope your testimony will be beneficial to us in helping to followthrough on some of these problems and helping to straighten them out. We have had other subcommittees focus on this in the past and this is not a new area, but there has been very little followthrough, either in the congressional branch or the executive branch on a lot of these problems. You have heard here today—you probably wouldn't have heard, you haven't been in the room—how some of these problems, many are beyond the solution of the Marshal Department but will have to be addressed by other Government agencies, like the Social Security Administration, both at the State and Federal level in getting these documents in order.

I hope we can, by these hearings, focus on those overall problems that go beyond the scope of the Marshal Services' own capabilities.

Mr. HAAK. Thank you very much.

Chairman NUNN. Do you have anything else you would like to say this morning?

Mr. HAAK. No; I don't. I just thank you for the opportunity to be able to express some of my views on it.

Chairman NUNN. We thank you very much and wish you and your family good luck.

Mr. HAAK. Thank you.

Chairman NUNN. At this time, we will, again, clear the room until the witness can leave and we will have our final two witnesses this morning in about 10 minutes. I ask that all cameras be pointed downward before you leave the room, please.

[Brief recess.]

[Member of the subcommittee present at the time of recess: Senator Nunn.]

[Member present after the taking of a brief recess: Senator Nunn.]

Chairman NUNN. I will ask you to remain seated and hold up your right hand. Do you swear the testimony you give before the subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mrs. CALIMANO. I do.

Mr. CALIMANO. I do.

Chairman NUNN. Before we start, let me just say I am going to caution both witnesses to be very careful and not say anything about your name, your relocated name this morning. I know you already understand that, but we will be referring to you by your original name and caution you on that point. If you have any difficulty, if you want to pause for a moment, take a glass of water, whatever you want to do, just feel comfortable. We will be asking you a good many questions this morning. I understand you don't have a prepared statement, but are willing to answer questions, is that correct?

TESTIMONY OF VIVIAN AND STEVEN CALIMANO, PROTECTED WITNESSES

Mr. CALIMANO. Correct.

Chairman NUNN. I ask Mr. Ray Worsham to give a little bit of background on this case before we begin.

Mr. WORSHAM. Mr. Calimano was a totally law-abiding citizen. He was a businessman, had a construction business. But he, through his own reasons, had managed to and totally legally had penetrated into the highest echelons of organized crime in New York. As such, he was an invaluable cooperating individual to members of the local organized crime rackets bureau in that area. He then became a cooperating individual with the Federal Bureau of Investigation and involved himself with them in an undercover capacity with agents of the Federal Bureau of Investigation, in a very far-reaching investigation into an organized criminal enterprise there which was dubbed by the FBI as "Little Rex."

By his cooperation with the FBI, it ultimately surfaced Mr. Calimano would become a witness and this led to the entry of Mr. Calimano and his family into the witness security program in December 1978.

Chairman NUNN. Thank you, Mr. Worsham. I will direct these questions in general and whoever wants to answer it can volunteer.

So both of you have been through pretty much the same experience. I know, Vivian, you might have some answers and Steven may have others. So I will leave that entirely up to you.

When did your family first enter the witness protection program?

Mrs. CALIMANO. December 1978.

Chairman NUNN. December 1978. Prior to that, what occupation or business was your family involved in?

Mrs. CALIMANO. Heating and air-conditioning.

Chairman NUNN. Heating and air-conditioning? Could the clerk move those mikes up a little bit? I think it would be more comfortable. Then you won't have to lean forward so much. You need to talk right into the mike, but you don't want to be in an uncomfortable position.

Was that a successful heating and air-conditioning business?

Mrs. CALIMANO. Yes, it was.

Chairman NUNN. Mr. Frank Calimano, now deceased, was the witness for the Government which led eventually to your family, you are part of that family, being placed in the witness protection program. Is that correct?

Mrs. CALIMANO. Yes, sir.

Chairman NUNN. Did Mr. Calimano have any kind of criminal record?

Mrs. CALIMANO. No; none.

Chairman NUNN. Did Mr. Calimano serve in the Armed Forces?

Mrs. CALIMANO. Yes; he did.

Chairman NUNN. What was his record there?

Mrs. CALIMANO. Well, he received a number of medals, if I may name a few: Two Air Medals, two clusters, Purple Heart, German Occupation With Airlift Device, Korean Service Medal, Good Conduct, Human Action and Foreign Star, and he did serve in the Reserves after that, Marine Reserves, and he was active in the military service.

Chairman NUNN. But he was in the Reserves for a few years?

Mr. CALIMANO. Yes, sir; he was in the National Guard after that.

Chairman NUNN. It is our understanding Mr. Calimano volunteered his services to local and Federal law enforcement officials; is that correct?

Mrs. CALIMANO. Yes.

Chairman NUNN. What was his reason for doing so, Mrs. Calimano?

Mrs. CALIMANO. He had a brother who was on drugs and it so devastated his family that he felt obligated to do something about it and he had access to these people and felt he could do a great deal.

Chairman NUNN. Was his brother cured of drugs? Was he a heroin addict?

Mrs. CALIMANO. Well, he was, I guess, cured in a sense, but has since become an alcoholic. It was one thing after another. It devastated the whole family.

Chairman NUNN. So he attributed that to organized narcotics—

Mrs. CALIMANO. It was definitely because of organized crime.

Chairman NUNN. Was Mr. Calimano paid for his services to the Government?

Mrs. CALIMANO. He never was paid for anything he did.

Mr. CALIMANO. He never accepted a dime. On a few occasions, from what I understand, they had to give him money for expenses or something. He in turn took that money and donated it to the Boy Scouts, USO. He never wanted anything for what he was doing.

Chairman NUNN. Did Mr. Calimano use his business and personal contacts to infiltrate organized crime and labor racketeers to assist local and Federal law enforcement?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. We understand that Mr. Calimano provided extremely valuable information to law enforcement for many years on a confidential basis. It is also our understanding that, at one point in time, the Federal Government requested him to cooperate in a massive sting operation aimed at labor racketeers and organized crime figures. Is that correct?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. The cooperation that the Federal Government requested of Mr. Calimano, did this mean that he was now taking the risk of public exposure by being identified as a possible witness in the future?

Mrs. CALIMANO. He expected that.

Mr. CALIMANO. Also, if I may, he kind of looked forward to it. It may sound a little funny. Over many years, people looked at him as Mafia or he was in organized crime. The thing he was looking for was that if he, as close as he was to everybody in this, in organized crime, as well-known as he was, so to speak, working with the FBI, who else in organized crime was doing what he was doing, so in an essence he was looking forward to the day that they found out what he was doing.

Chairman NUNN. He thought it would be a severe psychological blow to organized crime?

Mr. CALIMANO. Correct. He was looking forward to the glorious days. He was looking forward to that.

Chairman NUNN. He knew at some point his cooperation would be known?

Mr. CALIMANO. Oh, yes, sir.

Chairman NUNN. Would you describe him as an honest businessman who volunteered to assist the Government despite the obvious risk?

Is that an accurate characterization of what you said?

Mrs. CALIMANO. That is very definitely what it was.

Chairman NUNN. At the time, did Mr. Calimano have faith in the Government that he and both of you, his family, would be taken care of?

Mrs. CALIMANO. Complete faith, complete trust.

Mr. CALIMANO. Which, in turn, devastated him toward the end when he found out he wasn't getting this trust, he wasn't getting the help that he thought was coming to him. His exact words in the end was, "I was betrayed." For him to say that, I was surprised even to hear that from him.

Chairman NUNN. You actually heard him say that?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. Told you that, both of you?

Mrs. CALIMANO. Many times. Over and over. He couldn't really believe—I mean, he had to believe that that was the final result.

Chairman NUNN. His faith in the Government being able to protect him and his family played a large part in his overall cooperative attitude, is that right?

Mrs. CALIMANO. That is the only way he could be hurt is if we were hurt. He had no fear for himself otherwise he wouldn't be doing what he did. He knew the risk he was taking for himself, but when we went on this program, the thing was we were to be protected. That is the only thing he was concerned about. He knew the risks and he was willing to take them. But he had complete trust in the Government and felt that we were taken care of.

Chairman NUNN. Did there come a time when the undercover operation became public knowledge because of grand jury or court proceedings or was that a certainty that that was going to happen?

Mrs. CALIMANO. Certainly, yes.

Chairman NUNN. Did Mr. Calimano realize that his role in assisting the Government would be exposed when that happened?

Mrs. CALIMANO. Yes.

Chairman NUNN. Did he tell you that the risk was worth it because of the damages cooperation would cause to organized crime?

Mrs. CALIMANO. That was part of the whole point, yes. That was very important.

Chairman NUNN. Do you recall any particular way he described that, in his words?

Mrs. CALIMANO. How did he describe that? This all didn't happen in a day, you know. He never spoke to us about actually what was happening in detail because he felt that was the only way to protect us, but he made us understand how important—that is why we came with him. It is not something I ever wanted to do. I didn't want to give up an identity, but he was so strong, he felt so strong about it that it was an opportunity for him. So in what exact words—he said it in many ways. It was how strongly he felt that we all came with him, the whole family.

Chairman NUNN. Did you know that he was cooperating most of the time, or was there a point when you didn't realize it?

Mrs. CALIMANO. I never realized how deeply. His theory was what we didn't know couldn't hurt us. That was his way of protecting us. As time went on, he would just say trust me and I did.

Chairman NUNN. You didn't realize he was not part of organized crime himself?

Mrs. CALIMANO. Oh, yes; I knew that.

Mr. CALIMANO. That was something he brought to my attention when I got into my late teens, when you start seeing things around the house and start picking things up. He did not want me to get the idea that he was involved in organized crime. He never really sat me down and explained to me what he was doing. But in so many words he had told me he was not organized crime, was not Mafia. He was one of the good guys, so to speak.

Chairman NUNN. When were you first told that you would be relocated with new identities?

Mrs. CALIMANO. I would say maybe a month or two before December, and at first he said to us, how would you like to leave the State, go to another State to live? As you know, New York is not doing too well, so we thought that was a great idea. But then one day he came and said, well, we are going to have to change our names. I said, no way, why should I change my name. I haven't done anything wrong. Well, he said, I would go. He would go by himself, which I knew he wouldn't. So I had a choice of either going. Otherwise the rest of my life—it was something he felt so strongly about. What I am actually saying is, I was not thrilled ever, or ever have been thrilled about changing my name and changing my background, selling my home, but we did.

Chairman NUNN. How did you feel about it?

Mr. CALIMANO. He had a few months beforehand spoken to me about the fact that what he has been doing is going to have to surface and will be in the papers and there will be big indictments and so forth, that he had the choice—apparently they came to him and said we have to do one of two things. Either we have to let it lie, let it drop at this point, or we are going to have to continue and get these indictments and eventually testify. He spoke to me and he asked me what I thought and to be perfectly honest with you, I told him it was going above and beyond what he had to do. I thought what he was doing was enough and why to expect any more out of him.

Obviously, he didn't listen to me. He explained that without him, these indictments wouldn't mean anything, or they needed him. I trusted him. That is what he wanted to do. He always backed me in what I wanted to do my entire life and so I figured it is my turn, and I did.

Chairman NUNN. Did you sign any documents when you entered the security program?

Mr. CALIMANO. Many.

Chairman NUNN. Several?

Mrs. CALIMANO. Many, many, many.

Chairman NUNN. Did you understand what you were signing, was it explained to you?

Mr. CALIMANO. Well, sir, I wouldn't. There we sat in the hotel room, seven of us and the Marshal sat in a chair, opened a briefcase and took out piles of papers. He went through each page like you read a newspaper, do you understand it, initial it on the bottom. Next page, read it initial it on the bottom. I don't remember how many pages there were, but there were cards to sign for social security and sign this. Wait a minute, you sign the wrong one, give me that one. I look back now and I feel a little stupid and a little naive that I would sign—I buy a car, I read it. But I trusted him. Obviously my father trusted him; we were there. I felt really no reason to have to sit down—technically under formal circumstances, I wouldn't be there without a lawyer.

Chairman NUNN. Were you given a copy of the papers?

Mr. CALIMANO. No, sir.

Mrs. CALIMANO. We were not allowed to have a copy. May I say something else, did we not understand. I understood the written word. Now, I realize, like he said, I feel foolish, too. The meanings I didn't understand. At one point now, in fact, we had to ask to see them again, we asked to go to Texas and they never said to us, do not go to Texas, but on the bottom of the page they wrote—I don't know how they said it.

Mr. CALIMANO. "You chose."

Mrs. CALIMANO. You chose Texas, would you sign it. And we did. Not knowing later on they would say, we can't help you because you chose Texas.

Chairman NUNN. You didn't have someone specifically explain the dangers, so forth, of the program?

Mrs. CALIMANO. No.

Chairman NUNN. Were you given any kind of financial or business advice, either you or your husband?

Mr. CALIMANO. No; none whatsoever, which we found out later on we could have greatly used and we knew beforehand we could have used some advice. Who do you go to? We opened up a business in our new location immediately upon arriving there, within a matter of weeks. Anybody will tell you without looking the area over, finding out what the business structure of that place is, in every State people work differently. But we had no other way to really survive. We had to open up a business to survive. The subsistence allotted to us was not enough, I would not have been able to support my family.

Chairman NUNN. Did you have anyone sit down and try to anticipate some of the problems you would have to go through, discuss those problems and tell you you should be aware of those problems before you make a final decision, did any of that take place?

Mr. CALIMANO. No.

Mrs. CALIMANO. And I wasn't really too concerned at that point, because they led us to believe there was no problem. When we get there, if we had a problem, they will help us handle them and we soon found out that was not the case, limited or nonexistent. If you wanted to apply for something, we would ask, how do we apply for credit? Well, we can't help you, we can't tell you how to go about it. That is what they said.

Chairman NUNN. Without going into any details about the city, did your husband, Mr. Calimano, request to be relocated in a certain city?

Mrs. CALIMANO. Yes; he did.

Chairman NUNN. Did the marshals agree to that?

Mr. CALIMANO. Yes; they did. We certainly wouldn't have gone there if they had told us it was not the place to go. We were trying to relocate to be protected, not to expose ourselves.

Chairman NUNN. Did you personally or did your husband possess enough knowledge to assess the security risk in any particular geographic location, considering where you were from and where you were going?

Mrs. CALIMANO. No. We supposed that they would make that judgment.

Chairman NUNN. Again, without naming individuals, did Mr. Calimano choose to take with him any people who knew your former identity?

Mrs. CALIMANO. Yes; one young fellow who worked in the office most of the time this operation was going on. He knew the whole thing. At this time, he had no job when my husband was closing down his business and he wanted to come down to where we were going and my husband said if you come down, you can have a job with me. There was no—he knew.

Chairman NUNN. Was he trying to protect this particular individual, or was he going to help him in the new business?

Mrs. CALIMANO. It was only work, not protect him. I don't think so.

Mr. CALIMANO. No, not protect. He was fond, liked the gentleman.

Chairman NUNN. Were the marshals aware of that?

Mr. CALIMANO. No, sir, they were not.

Chairman NUNN. They were not aware that someone was going to go with him?

Mr. CALIMANO. No.

Mrs. CALIMANO. He didn't come with us. He followed months later.

Chairman NUNN. He did come and join you later?

Mrs. CALIMANO. Yes.

Chairman NUNN. Did your family receive any advice about—they didn't know about it, so there was no way they could advise you on that aspect. Did they advise you not to take anybody with you?

Mr. CALIMANO. They didn't sit down and say, "Don't take anybody with you." We understood the ramifications. They told us no one could

contact us. Calls to the family were going to have to be made by us, stay away from the telephone, telegraph, and mail. If we wanted to mail a letter, we would have to write a letter, contact them, and they would come get the letter and mail it for us, which can be a drawn-out process if you want to mail a letter once a week.

Chairman NUNN. Did you habitually have a security risk because of people who worked with your husband?

Mrs. CALIMANO. No, none whatsoever. Not with this gentleman who was down there with the business, no.

Chairman NUNN. When you left your original location, were you in a hurry to get out of town?

Mrs. CALIMANO. Great hurry. They felt the faster we got out, because at that time they expected the case to surface much sooner or very soon after we left. And they felt the more time we got set in our new location, it would be easier.

Consequently, we sold our house as cheaply as possible. Out of the first five people who looked at it, three of those wanted to buy it—it was a very good price. We left very quickly.

Chairman NUNN. You owned a home and a business at the time you left?

Mrs. CALIMANO. Yes.

Chairman NUNN. Were you treated by the marshals as an honest family, or were you treated any differently from someone who would have been with a criminal background?

Mr. CALIMANO. We were treated like someone with a criminal background.

What was told to us at the meeting with the marshal in the hotel room, and my mother got very upset with it, he looked at us like, "You are getting a whole new chance to start over again." She kind of came out of her shoes. Like she said, "We didn't do anything wrong. We didn't do anything wrong. You are not giving us another chance." They were looking at us like they were doing us this fantastic favor.

Chairman NUNN. Instead of the other way around.

Mr. CALIMANO. Yes. We didn't go there expecting to be treated like royalty, but we did expect a little more common courtesy.

Chairman NUNN. Did you get any counseling with respect to disposing of your real estate, your home, or your company, did anybody advise you about that?

Mrs. CALIMANO. None that I know of.

Chairman NUNN. You felt under enormous pressure to sell very quickly?

Mrs. CALIMANO. Very quickly.

Chairman NUNN. Did anybody have you arrange a power of attorney, something of that nature, to dispose of your assets on an ordinary basis?

Mrs. CALIMANO. No, sir.

Chairman NUNN. That wasn't suggested?

Mr. CALIMANO. No, sir.

Chairman NUNN. Was any suggestion made one way or the other whether you should sell your home before you left or do it later?

Mrs. CALIMANO. Sell it before you left.

Chairman NUNN. All of them sell it now?

Mrs. CALIMANO. No.

Chairman NUNN. The marshals said, "Sell it now?"

Mrs. CALIMANO. That's how I understood it.

Mr. CALIMANO. The only real contact we had with them was in the hotel room and we hadn't been through this before. It was totally new. We didn't foresee any great problems. We didn't know what questions to even ask.

Mrs. CALIMANO. It would be quite a different story now. But at that time we put ourselves completely in their hands and we trusted them. They were the good guys, and I felt they were. I did feel that they were.

Chairman NUNN. Did you have an automobile at the time?

Mr. CALIMANO. Yes; I had a Dodge van. What I had to do was pay it off. I still had owed some money to the bank on it. There was a little bit of money I owed on it, which I did not have. According to them, when I go under the new identity, that I couldn't leave town without paying this bank. It was a Federal offense.

My father had to borrow money for me to pay the van off. Well, after I got that straightened out, I told them I was driving down with it, what should I do. They originally said they were going to send me to another State, stay overnight, swap plates and I will be on my way. Then they said, "No; maybe what we will do is transport it there, get it lost. We reregister it, reregister it again so no one can trace it."

As it turned out, I drove down there with my New York plates. My driver's license was under my new name and registration and title under my old name, and that was the only identification I had on me, to make this trip. But I was told that along the way if I should suspect somebody was following me—mind you, I had my wife and son with me, who was only 1½ years at the time—I should pull over and call this number. I don't know how to find out somebody is following me. I am on an interstate. I am sure people are going where I am going, too, I don't know. So that got me a little nervous—I was starting to feel a little leery about all this.

I arrived at the new destination, I was told to call as soon as I arrived there and somebody will fix me up with plates and take care of that. I get there and the gentleman I was supposed to call was on vacation, he wasn't there. Mind you, 4 or 5 days after I talked to him.

Chairman NUNN. When you arrived at your new location, your contact was on vacation?

Mr. CALIMANO. He was on vacation. I spoke to another gentleman. I told him about my predicament with the plates and I needed to get rid of them.

Chairman NUNN. Your license plates?

Mr. CALIMANO. Right. He said, "Well, let me see what I can do about getting you a set of cold plates." Two, three, four days went by and nothing. So me and my wife—the vehicle was registered under my wife's name for insurance reasons. It was cheaper. We finally drove down to the office, the Marshal's office, and met with this man, and in turn what I did, what we did was sell the van to ourselves. My wife signed her old name, and we made up a bill of sale to ourselves. We just turned the van over and turned the van over.

Chairman NUNN. So your title would show that your old name was on it and show your old name and new name?

Mr. CALIMANO. It shows my old name and my previous address on the title.

Chairman NUNN. It had both names on there?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. Who's idea was that?

Mr. CALIMANO. The Marshal's.

Chairman NUNN. Anyone looking at that would have a pretty clear path, would they not?

Mr. CALIMANO. Yes; very much. It's a little obvious.

Chairman NUNN. What would happen if you had gotten a speeding ticket or anything like that on the way down, what kind of identification would you have used?

Mr. CALIMANO. The only identification I had was a driver's license. That is all I had. We were told if something like that should happen, we were supposed to not say anything, don't give any information and contact the number we were given before we left.

Chairman NUNN. Was that number in your new location?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. Was that the number you called when the particular individual was on vacation?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. Did you have any alternate number to call?

Mr. CALIMANO. Yes; we did. We had one up in New York where we left.

Chairman NUNN. Did you call that number?

Mr. CALIMANO. No.

Chairman NUNN. But it was a number you could have used in an emergency?

Mr. CALIMANO. Correct.

Chairman NUNN. You didn't have an emergency?

Mr. CALIMANO. No; I didn't have any emergencies.

Chairman NUNN. What happened when you called and the particular individual was on vacation when you got to your new location? Did you call somebody else, or just wait?

Mr. CALIMANO. I called and asked for this gentleman. They gave me his name. I was told he was on vacation, somebody else is handling it for him. He got on and said, "Oh, yes, I was told about you. You made it all right?" Yes. Another thing is you don't use your name, you use a number. They told me, "Don't bother telling them who you are." They won't know. They have so many people there. You have to just use the number when you call. Here I am calling on a telephone and rattling off a number. We are reduced to a number now.

Chairman NUNN. You did have somebody there to talk to you in the absence of the contact?

Mr. CALIMANO. Somebody was left, apparently with our folder, and told we were arriving.

Chairman NUNN. Did you get some assistance at that stage?

Mr. CALIMANO. Not to speak of. I told them I would like a telephone so I can make some calls. He said there is nothing we can really do for you. We will pay for the deposit on the phone but you will have to

go about getting that on your own. Now I had to call the telephone company and I did not know what to tell them. They asked for previous employment. Actually at that time, I was only 3 days old, so to speak. I had no past and had no future. I did not know where we were going to be working since we did not have a company there, we did not have a name for the company. The company was not there so they could not verify it if they called up and asked if he was an employee there. I do not know what I told the people. To tell you the truth, I could not tell you what I told them. I lucked out and got one.

Chairman NUNN. You did not have any instructions on how to go about that?

Mr. CALIMANO. None whatsoever. They told us they cannot lie for us, cannot give us any sort of background or anything. Basically to this day I am only 2 years old. I have no past. Twenty-six years old and I disappeared.

Chairman NUNN. Did you have to use your resources or did you use your resources to go in business, a new business?

Mrs. CALIMANO. Yes; we used our resources and we had to support him. It was not enough to support him.

Mr. CALIMANO. They gave us, I do not know the exact amount. It was 800-some-odd dollars. That was for me, my wife and my child.

Chairman NUNN. Did you get to the new location before your father and mother?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. You were the first one to arrive?

Mr. CALIMANO. I was the first one to arrive.

Chairman NUNN. Did you get a social security card or did your father get a social security card?

Mr. CALIMANO. We all received social security cards approximately 6 to 8 months later.

Chairman NUNN. Approximately 6 to 8 months later.

Mr. CALIMANO. Right. You can not open a bank account without a social security card. So here I am with what money I had stashed in a drawer.

Mrs. CALIMANO. And my husband and I went to the bank to deposit money that we had and, of course, they asked your social security number and my husband had to say, well, I will get back to you on that. As you know, any serviceman rattles that off like your name and that kind of began—you had to hesitate. Most of the times there were no answers.

Chairman NUNN. Did you get a Veterans' Administration card or anything like that?

Mrs. CALIMANO. No, nothing.

Chairman NUNN. Was your husband a veteran?

Mrs. CALIMANO. Yes, he was.

Chairman NUNN. How about driver's license?

Mrs. CALIMANO. We went and got our own.

Mr. CALIMANO. We received a driver's license under our new name from the State we left. When we arrived at the new destination, we were told to go down to the motor vehicles and give that driver's license and apply for a Texas driver's license.

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Chairman NUNN. So you did get a driver's license?

Mr. CALIMANO. Yes; that is the only source of identification—

Mrs. CALIMANO. Because we did it ourselves.

Mr. CALIMANO. That is the only source of identification I had. The only thing that could identify me was a driver's license. No credit cards, nothing, that was it.

Chairman NUNN. Vivian, did you get a marriage license?

Mrs. CALIMANO. Never got one.

Chairman NUNN. Still have not?

Mrs. CALIMANO. Never got one.

Chairman NUNN. Have you ever asked for one?

Mrs. CALIMANO. Many times. It may not have been very important to them. It was very important to me. As it was I did not have the same father. All of a sudden those things are very important. In fact, I brought that up. I realized we did not have a marriage certificate. It seemed like it was new to them. It did not seem to be anything that they put any importance on.

Chairman NUNN. Had you had a marriage certificate in your old name?

Mrs. CALIMANO. Sure. Yes, I did.

Chairman NUNN. Did you keep that?

Mrs. CALIMANO. Yes; I have that but it is of little value, really because that was no longer my name.

Chairman NUNN. What about school records? Did you have any children of school age?

Mrs. CALIMANO. Not school age, but I have one boy that was just graduated from high school and he wanted to go to college. Finally I would say over a year later he got his.

Chairman NUNN. His school records?

Mrs. CALIMANO. School records. But if you say the school records, you could not really use them. What they suggested was when he went to school and registered, that they most probably would not accept it and they were supposed to get in touch, give them a number, which was a marshal's, and they would in turn do something, explain to the school in some way.

Chairman NUNN. Did they do that? Did your son get in school?

Mrs. CALIMANO. He never did.

By that time he was working and could not get into the union without his school records that he graduated high school, and that was another problem.

Chairman NUNN. Did you get any medical records, did you need any?

Mrs. CALIMANO. Yes; that they did get those especially for the baby because they needed that.

Chairman NUNN. They got your medical records transferred?

Mrs. CALIMANO. Actually they still have not. I think they still have my medical records. They would not give us any of that. You could not have it. The marshal brought it to us, showed it to us and said at the time that you get a doctor down here, let me know and we will deliver it to the doctor. And the same thing with the school records, you could not hold on to them, but at the time if I wanted to return back to school, whatever, they would bring it to the school.

Chairman NUNN. What about birth certificates?

Mrs. CALIMANO. We did receive them eventually. It took a long time. We did receive them. His son became a junior, which he was not. But other than that, we did receive it.

Mr. CALIMANO. It took a lot of time to get it.

Chairman NUNN. Did you have any trouble getting the credit rating established or did you make an effort to?

Mr. CALIMANO. To this day I am still getting turned down for credit cards. I had a decent credit rating where I was. It was not spectacular. I could apply for a credit card and receive it with no problems. To this day we are still getting turned down for credit cards. I have small department credit cards. Every time I applied for one they sent back a letter saying insufficient background. Obviously, I have only been around for 2 years. If it was not for my father, he had some money and he backed a loan for me so I could start. That is the only way I started getting credit, I went out and bought something and he took the money and gave it to the bank as collateral. If it was not for his money I do not know what I would have done at the time. I still did not have sufficient credit background.

Chairman NUNN. Did your dad go into a new business in a new location?

Mr. CALIMANO. Yes.

Chairman NUNN. Do you think looking back there should have been an immediate transfer of the new business or do you think you should have had some kind of gap?

Mrs. CALIMANO. We should have been counseled to never go into business, at least I would say, for 2 years.

Chairman NUNN. Why is that?

Mrs. CALIMANO. Until you find out you are in a safe position where you do not have to move again. It does not make sense I realize now. But it does not make sense because that is the whole idea of the whole thing, to find out if you are in a position where you can stay. Not like that, we were committed by this time. You cannot move. Well, in his case he secured a loan. It is a Federal offense to just pick up and move to another State, with a loan like that. You cannot do it. So there we were committed. I am sure you know that, if you start a business all over again, it takes a lot.

Chairman NUNN. Were you given any kind of background story to tell your friends, your new friends or employers, employees, utilities, insurance companies? Banks, credit agencies?

Mrs. CALIMANO. No. He finally hit on something, saying that he was in the U.S. Army and he had just retired. Of course, when they called up, they called up the business and they would get him because he had no secretary. That is how we got some credit.

Chairman NUNN. Looking back on it do you think you should have been given some kind of background information, discussed it, consulted on it?

Mr. CALIMANO. Most definitely.

Chairman NUNN. You were left totally on your own to make up?

Mr. CALIMANO. We actually submitted to a period where you can not trust anybody, you have to be careful what you say, you have to be careful you do not mention your old name, you have to be careful,

you are constantly lying. You do not know what to say to somebody. Somebody will say where are you from? So I say New York, you know. They say where? You have to back away from it.

Chairman NUNN. That is an inherent problem with relocation that cannot be avoided, but what you are saying is you should have had some preplanned, discussed arrangement where everybody knew what you were going to be saying?

Mr. CALIMANO. They could have said we will have a background, somebody will say they are from Atlanta, Tennessee or something, you know. Like I say, we are not the smartest people in the world but we are not stupid, but this is all entirely new to us. We are never used to sitting down and lying. Now we have to start lying, you know, and even an application or something, what do you say on it? What do you say for past employment? What do you say for your previous address? I do not have any.

Chairman NUNN. Did your father and husband contribute to social security during the period he was working?

Mrs. CALIMANO. Always, yes.

Chairman NUNN. Do you know whether his earnings have been transferred to social security?

Mrs. CALIMANO. I find out they definitely have not been.

Chairman NUNN. Even to this day?

Mrs. CALIMANO. Even to this day. It seems I should collect a funeral lump-sum benefit. I have filed more papers and they keep sending them back. First, the Marshals Service was going to do it, I waited and it is now 6 months. I still have gotten nowhere.

Chairman NUNN. Did you get any help with his burial expenses?

Mrs. CALIMANO. No.

Mr. CALIMANO. We never heard from anybody, sir.

Chairman NUNN. Including Veterans' Administration, Social Security?

Mrs. CALIMANO. No.

Chairman NUNN. Marshals Service?

Mrs. CALIMANO. No one.

Chairman NUNN. That is up to this date?

Mr. CALIMANO. Yes, sir. On the day of his death I spoke to somebody from the Marshal's Office, I cannot remember the gentleman's name, it was a bad day, but that was the last contact we have had with anybody; literally, aside from my mother calling up to try to get some of her VA benefits.

Chairman NUNN. You are trying to use the new name in getting those benefits. Right?

Mr. CALIMANO. Apparently we have to use both names.

Mrs. CALIMANO. That is another thing. They send it back, say now you have to file it twice, one is in one name, one in the other name, I do it every which way, and it is still not good enough.

Chairman NUNN. Do you have, did your husband set up a new business in a new location?

Mrs. CALIMANO. Yes.

Chairman NUNN. Was he able to support you and your family with that new business?

Mrs. CALIMANO. Yes, both the boys worked there.

Chairman NUNN. Did you receive any kind of subsistence payments during the interim period while you were setting up that business?

Mr. CALIMANO. For 1 year.

Chairman NUNN. How much was that?

Mrs. CALIMANO. It was \$860 a month. You have to realize it is an expensive place and rent alone is \$600 a month. Again, we expected that. It was not, I am saying this for a purpose, I am saying without the sale of our home and some other money, I do not know how anyone can exist. It is impossible to live.

Chairman NUNN. We understand that at a certain point a person who knew your former identity saw you in your new location. Is that right?

Mrs. CALIMANO. Yes. I was in a store and of course you cannot; it was very exciting because we had lived in the same neighborhood and my children had gone to school with her children. I did not know what to say. Finally, I said, I was just visiting. Then I met her again, I found out she was living about a block away from us. And then afterward, my husband met someone. I really do not know how, but one fellow kept, you know, kept yelling his name, you know, calling him, quickly got in the car and left. That happened to him a few times, it happened to my son also.

Chairman NUNN. Did your husband or did you notify the marshals about these possible security breaches?

Mrs. CALIMANO. Every time.

Chairman NUNN. How did you notify them?

Mrs. CALIMANO. I believe he sent them letters. I know he spoke with them on the phone also about it, but he got to the point where he felt he had better start substantiating some of the things.

Chairman NUNN. What advice did you get? Do you recall?

Mrs. CALIMANO. Move across town. We did not because we could see that there was no—not with anyone's help mind you—but just move across town.

Mr. CALIMANO. Which definitely was an inadequate answer. We could not figure that out, get up and move 50 miles, north, south, east, or west. That is not exactly the kind of answer, like we said, we do not know what the procedure is, but when they tell you to move across town, it is not much help.

Chairman NUNN. Did you write any letters to the marshals about this, did Mr. Calimano?

Mrs. CALIMANO. Yes.

Chairman NUNN. Did he get written replies?

Mrs. CALIMANO. Yes. He got written replies, one, and that is when he felt he had to seek out an attorney. He felt that he was in trouble. He knew he was caught with the business and we could not have moved by that time. He did not ever ask them to pay his debts. What he would like them to do is to somehow get in touch with the bank and hold it in abeyance, this loan. Again, I tell you, he never expected them to pay for his loan. That is not what he ever asked for, never. He needed a way out, he needed some help.

Chairman NUNN. Did he have enough business to cover the loans at that stage?

Mrs. CALIMANO. He would know more about that.

Mr. CALIMANO. Ready cash? No.

Chairman NUNN. How about contracts?

Mr. CALIMANO. Contracts, which would have taken some work had just started, you know; many months to complete them. It would have taken some time.

Chairman NUNN. Did your attorney write the Marshals Service about these problems?

Mr. CALIMANO. Yes, sir.

Chairman NUNN. Did you receive any written reply?

Mr. CALIMANO. We finally received a written reply. Yes.

Chairman NUNN. Have you got that with you?

Mr. CALIMANO. No; I do not.

Chairman NUNN. The clerk has a copy of that letter, I believe. First, I would like, without objection, that title that you testified to be made a part of the record. We will make a copy of that. These will be sealed exhibits until they are gone through with the Marshals Service.

[The documents referred to were marked "Exhibit Nos. 11 and 12" for reference. Exhibit 11 is retained in the confidential files of the subcommittee. Exhibit 12 follows:

EXHIBIT 12

JANUARY 31, 1980.

Certified Mail #P133131714

Re witness No. 25-13

U.S. Marshal's Service, Attention Mr. Howard Safir, Chief-Witness Security Program, 1 Tysons Corner Center, McLean, Va. 22102)

DEAR MR. SAFIR: By now you should have become aware that I represent [deleted]. I possess a copy of a hand written letter by [deleted] to Mr. [deleted] in your [deleted] office dated January 24, 1980.

The purpose of this letter is five-fold. First, I want to give you some background on [deleted] that you may not be aware of. I feel that such information will assist you in determining your proper practical course of action. Second, I will editorialize regarding my client's perception of the "Program" and in that connection I will express some of my personal views as well. Third, I want to propose some solutions for your review. Fourth, I will request certain documents and paper work. Finally, I will comment regarding time frames for reasonable action by your agency.

Mr. [deleted] served honorably and in combat in the U.S. Army during the Korean War. He probably would have made a career from the military, but the illnesses of his parents required him to seek civilian employment in order to support them. Upon his return from Korea, he discovered that his younger brother had become a heroin addict. This fact was significant in later years because he vowed to "get those bums" who got his brother in that shape.

In later years he furthered his education, married, raised three children and developed a legitimate [deleted] business. In a manner which will ultimately come to light he became close, but not illegally so, to certain underworld figures. Eventually he approached the FBI and gave his assistance initially in a minor way, but later in more significant matters. He continued to support his family and maintain his business in a lawful manner never accepting the gratuities available from the dark side of our society or the Government. On one occasion his assistance was nearly disclosed by ineptness of an agent of the FBI. He had reported to the Bureau that a hood had been hired by the New York Police Department. Taking the easy approach, the agent compromised [deleted's] identity to NYPD Internal Affairs.

Later, with this dangerous incident still fresh in his mind he was approached to aid in a far reaching undercover investigation which ultimately brought him to the Program. I understand that the Federal Grand Jury action will net several dozen underworld and corrupt individuals and that when this all breaks, [deleted's] life is worthless in the so-called "danger zone."

Because his exposure was imminent and more likely if he continued his assistance, he signed on the Program, pulled up stakes, abandoned his business, dropped out of the area that had been his home since birth and came to [deleted] with his family. I understand his identity documentation is incomplete and other than matters contained in papers he signed getting into the program, he received no significant counseling or advice, particularly in regard to the choice of a relocation area and the wisdom of long-term business investment.

Now, because the case is about to become public and he or his family have been seen in [deleted] on at least four occasions since September, 1979 by persons connected with his original home area, he has little time left to protect himself. These people are likely to see and talk to people who might be interested in [deleted's] whereabouts. He has outlined these incidents to the Service.

Upon arriving in [deleted] he had to start from scratch to rebuild his life. The money he got from the sale of his previous home and the savings he had accumulated went into a new [deleted] business. He now has contracts totaling \$317,000 and a bank loan of some \$39,000 or so which he is attempting to reduce as quickly as possible. To abandon this business now will wipe him out not to mention the damage such action will have on his business partner, a man totally unaware of the circumstances that brought [deleted] to this area.

He has requested that his family be moved but that he be permitted to stay long enough to discharge his credit obligations and preserve some reasonable credit worthiness until the day when perhaps he can return to [deleted] and start over. The Service has said "no", for security reasons. His debts and personal obligations, he is told, are no business of the Service. While his good citizenship got him in this mess, his physical safety as defined by the Service "CYA" policy is apparently the only concern. So what, if he loses everything else.

So far as I have been able to determine, no one in the Service gave any serious thought to the wisdom of allowing this witness to relocate to [deleted] in the first place. Its economy is booming like no place else in the U.S. Unemployment is barely a ripple when compared with the nation and more specifically the Northeast. The influx of people from all parts of the country including New York has been dramatic over the last three years. These are factors the Service should have accounted for from the beginning.

Also, it seems elemental that such a witness be counselled on the wisdom of long term business investment during the critical phases of his participation in the Program. Such counselling seems to have been totally lacking.

Mr. [deleted] perceives the Program to be callous, inept, and bureaucratic. Mind you, this man is not a creep, a hood, or an O.C. figure who cut a deal to save his neck or to keep from going to the penitentiary. He has no criminal record and put himself and his family on the line in order to "get those bums". While his form of civil service has no retirement plan, public acclaim or even an expectancy of personal security, these factors seem to be ignored by the Service.

As an ex-AUSA [deleted] who has had to put up with the Program and its frustrating and apparent incompetence, I know that the persons generally within its care are regarded as creeps and perhaps with justification (see recent article from the [deleted] Post). The incredible Catch 22 of the Program and, it seems, those who carry it out is that a man like [deleted] is just another body. I had a conversation with one of your people on January 16, 1980, and suggested some sympathetic stroking of [deleted] to at least calm him down so that some rational solution could be reached. I roughly quote the response, "We don't stroke anyone, as you put it, we merely give them their choices and let them make a decision". Well, that attitude clearly betrays a failure to perceive the real plight of those who sign up. They get into a program involving some very sensitive deceptions, and perhaps cloudy procedures, but when it comes to decisions, the participant is required to make choices on his own and probably with little or no sophisticated counseling or assistance.

I will now turn to some possible solutions for my client's problems.

1. Relocate his family now.
2. Relocate him by [deleted], 1980.
3. Cover the current interest expense on the bank loan for a period of 180 days. (I do not suggest that the government obligate itself on the principle of the note although I certainly would not object to a government guarantee).

4. Select two or three otherwise appropriate relocation sites whose economy could provide adequate salaried employment for [deleted] and his sons in their area of experience.

5. Commence immediately a search within and perhaps without the Service for a person qualified in [deleted] work to operate the business for a period up to 180 days. This could retire the note and preserve the integrity of the business long enough to allow retention of its capital assets for the day when business can be resumed here or elsewhere.

6. Consider an appropriate obituary as to [deleted's] original identity. (Data of death must be in February 1980 and not before and should be coordinated with the FBI).

7. In connection with items (2) and (5) assign a new "employee" to [deleted's] business as a device for interim security and as a replacement for one of the sons who worked in the office.

8. Approach every person who saw [deleted] or his family and interview them about the sensitivity of [deleted's] situation.

9. Assume there are a number of other possibilities if someone uses imagination rather than a manual.

I request that you immediately provide me with copies of all agreements executed by [deleted]. You may, if you chose, obliterate any name or date references and any other portions which could conceivably compromise his identity. Further if the agreements are matters of form then just send me a blank form. Also, I request that you send me a copy of any regulations or guidelines you operate under or which may have been shown to [deleted] at the time of his entry into the Program.

The time frame here is urgent. Your contacts with the Departmental Attorney can more fully develop this. I understand that attorneys and others have tried to plead [deleted]'s cause without success. Further the Service response time on this has been bad, to say the least. This is not a time to be dilatory. To date there has not been one written response received to any of his last four letters.

Finally, so that we can save time in any future discussions, I want to concede some attitudes on my part that are obvious from this clearly too-long letter. First, I do not know a single AUSA, past or present, who has looked with favor on the Program. Second, I believe that Congress assigned your agency a task for which it was ill-suited and financed. Third, I have punched at bureaucracy's pillow before and don't expect this one to be any different. One reason for the length and manner of mailing of this letter is to make sure no one in a position of responsibility in the Service can say they didn't get the word. Fourth, if some reasonable solution is not forthcoming, then you will have signaled me to go public: U.S. Senate Judiciary Committee, U.S. House Judiciary Committee, Judiciary (Appropriations) subcommittee of the U.S. Senate Finance Committee, and the Judiciary (Appropriations) subcommittee of the U.S. House Appropriations Committee. Needless to say, the Washington Post, the New York Times as well as network special news programs such as "Sixty Minutes", and the wire services will be informed. My current restraint will continue only until the case surfaces, a date which you can easily verify.

All too often, persons in leadership positions such as yours are not dealt with or advised honestly by those below or, for that matter, above the chain of command much less the outsider seeking benefit of the tremendous practical discretionary power you possess or can obtain. I am interested in a free discussion about reasonable solutions. If those solutions come about then [deleted] can fade into anonymity and I can go back to the kind of practice I prefer.

Very truly yours,

[Deleted.]

Mr. BALDWIN. Mr. Chairman, may we have all of the exhibits that have been put in so far as sealed exhibits?

Chairman NUNN. Without objection, all of them will be sealed until made public after review.

Is that a copy of a letter dated January 31 from your attorney to Howard Safir?

Mrs. CALIMANO. Yes; it is.

Chairman NUNN. I am going to show you another letter dated January 21, 1980 from Mr. Howard Safir to Mr. Calimano acknowledging

the security breach and relocating your family and assisting you in settling our business affairs. Is that a copy of that letter?

Mrs. CALIMANO. Yes; it is.

Chairman NUNN. Is this the first official response you received since the time you notified the marshals of the security breach?

Mrs. CALIMANO. Yes; it is.

Mr. CALIMANO. It is the first written—aside from the verbal, move across town—it is the first written response we received officially.

Chairman NUNN. Did the Government offer you any business or financial advice in an attempt to salvage the outstanding contracts and profits of your business so that you could start all over again?

Mrs. CALIMANO. As the letter states; no. But they told us, we were in jeopardy, to get out. That was the advice they gave us.

Chairman NUNN. You were not asking for any assistance in paying off the debt but simply advice. Is that right?

Mrs. CALIMANO. That is right.

Chairman NUNN. I will show you a letter dated February 18, 1980, from Mr. Safir to your lawyer advising him to have your family leave the area immediately, but basically declining to assist your family, and gradually phasing out your business so that you could salvage whatever business profits remain. Is that information contained in the letter we have already had identified?

Mrs. CALIMANO. She had it here, but I have not seen that one before. But I saw his name on it.

Chairman NUNN. Take a look at that letter. We would like to make it a part of the record. We have asked for all of the correspondence between the marshals and your family, your husband, and we have not received that yet. So you had 4 or 5 months when you received that letter and since the security breach and you still have not had any kind of final decision?

Mrs. CALIMANO. None.

Mr. CALIMANO. No, sir.

[The letters referred to were marked "Exhibit Nos. 13 and 14" for reference and are as follows:]

EXHIBIT 13

U.S. DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE,
McLean, Va.

Mr. FRANK J. CALIMANO,
% U.S. Marshals Service,
McLean, Va.

DEAR MR. CALIMANO: This letter is in response to your many letters and questions concerning a possible security breach.

It is the policy of the United States Marshals Service and the Witness Security Program to provide protection for a witness and their authorized dependents.

At no time is it, nor has it ever been, the policy of the United States Marshals Service or the Witness Security Program to take the wait and see what happens position before anything is done for the protection of a witness.

Based on your prior letters and other information received concerning "Ms. Edna Nigeri" and a possible compromise of your security, we are prepared to relocate you, your family and business. However, arrangements must be made by you with your creditors to settle all your outstanding debts and encumbrances. Should this become impossible to accomplish, we would suggest that you hire an attorney, at your expense, to handle these matters as soon as possible.

As outlined in the Witness Security Program's Memorandum of Understanding, acquisition of gainful employment is the responsibility of the protected witness, sixty (60) days following his or her permanent relocation. The United States Marshals Service will assist you in your relocation area in locating suitable employment. However, we cannot guarantee you that the particular employment will be equal to your business in either type, prestige, or pay. If a job opportunity is secured, however, the witness is expected to accept the job. Failure to accept this job may be grounds for termination of subsistence.

Again Mr. Calimano, we would like to point out that our foremost concern is the protection of you and your family and any further delays on your part to consider relocation could result in a more serious threat to your safety. We understand the position you are in with your business in trying to resolve these matters.

Please understand the United States Marshals Service cannot compel you and your family to relocate, but in your own best interest, we recommend that you do so immediately.

Sincerely,

HOWARD SAFIR,
Chief, Witness Security.

EXHIBIT 14

U.S. DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE,
McLean, Va., February 18, 1980.

Mr. [Deleted], Attorney at Law.
[Deleted].

DEAR MR. [DELETED]: Reference is made to your letter of January 31, 1980, on behalf of your client, Mr. Calimano.

Let me begin by reiterating our policy with regard to your client as outlined in my letter to him, dated January 21, 1980. Our foremost concern is for the safety of your client and his family and we are prepared to relocate them immediately. Arrangements must be made by your client to settle all his outstanding debts and encumbrances. Furthermore, the United States Marshals Service will assist him in his relocation area in locating suitable employment.

When the United States Marshals Service perceives a danger to a relocated witness in his area of residence, unless there are contravening facts to mitigate the danger, it is imperative that the witness depart the area immediately. I can fully appreciate your client's need and desire to terminate his financial affairs prior to departing. I am reassured that he has retained counsel to assist him in these matters. Safety can only be achieved by departure from the danger area. We cannot protect a witness if he will not allow us to do so.

Your client, Mr. Calimano, was relocated to his present city at his own request. The United States Marshals Service concurred with his choice only because the city presented a very healthy climate for your client's particular type of business. The United States Marshals Service financially and physically relocated not only your client and his family, but his business as well. Based on the figures you quoted in your letter, your client has been extremely successful in his business endeavors.

I cannot address your client's personal perception of the Program, nor yours for that matter. I can say, however, that your client was counseled extensively as to the tenets of the Witness Security Program prior to his entry into it. This is evidenced by a Memorandum of Understanding which was signed by your client. That Memorandum of Understanding further evidences your client's personal desire to relocate to his present city of residence. Based on your client's appointing you, as his attorney of record, you are free to review that Memorandum in the presence of a United States Marshals Service designee. Additionally, the United States Marshals Service has provided funding for your client to seek psychiatric evaluation and counseling.

In that the United States Marshals Service is prevented by public law from engaging in private enterprise, we are prohibited from engaging in any business relationship with your client as you suggest in your letter. Likewise, we are prohibited from indemnifying him against any business losses arising from the need for him to depart his present relocation area. As a former Assistant United States Attorney, I am sure you are well qualified to counsel your client in these matters.

As to your other suggestions regarding the security of your client, e.g., obituaries, etc., I think I am well qualified to say that such approaches would prove of little value, are contrary to Program guidelines, and could prove dangerous to your client.

Relative to your potential desire to seek some remedy through the media, I can only say that you are free to do as you choose. However, extreme caution should be exercised in that media exposures can often lead to compromises of the witness' security, which in the long run only serve to further jeopardize and traumatize the witness.

We are prepared to relocate your client immediately to an area where he will be safe and where we can adequately provide the necessary services to him and his family. We await your client's response.

If we can be of any further assistance, do not hesitate to contact us.

Sincerely,

HOWARD SAFIR,
Assistant Director for Operations.

Chairman NUNN. Do you feel that individual marshals tried to assist you but they just could not get it done?

Mrs. CALIMANO. Every marshal we have been in contact with, including the ones here, do their job and well. They are professionals. But they can only do so much for us. We can ask them for social security; they cannot go out and get us a social security card.

Chairman NUNN. So you do not blame the individual marshals; you say the system itself is inadequate?

Mrs. CALIMANO. They are fine.

Mr. CALIMANO. There have been some very nice men we have met and I literally can see the frustration they are going through because I know how they must feel that here we are, they know they are supposed to be helping us, but they cannot.

Chairman NUNN. Did these problems that you have described here this morning begin to affect Mr. Calimano's mental health?

Mr. CALIMANO. Yes, very severely.

Chairman NUNN. Had he had any problems with mental illness before?

Mr. CALIMANO. No, sir.

Mrs. CALIMANO. Never.

Chairman NUNN. Had he had any alcohol problems before, any severe alcohol use problems?

Mrs. CALIMANO. He was not an alcoholic, no.

Chairman NUNN. Any other severe problems he had relating to his mental state before he was transferred?

Mr. CALIMANO. No, sir. He was a human being. We are not going to sit here and put him up on a pedestal. He was a normal person. He had his ups, he had his downs, he had his good points, he had his bad points, he was like everybody else.

Chairman NUNN. Did he seek psychiatric help during this period of time where you were relocated?

Mrs. CALIMANO. Yes. He did.

Chairman NUNN. Did he get assistance in this respect?

Mrs. CALIMANO. He had to wait quite a while because you had to understand we had no papers from the Veterans that he was a veteran. So, finally we got a paper under the new name and he did enter a depression, voluntary depression unit and he was depressed.

Chairman NUNN. Did he explain his problems to the hospital or the psychiatric people?

Mrs. CALIMANO. Evidently it was kind of like a group therapy kind of thing. He did have a psychiatrist who did know his problem. But evidently he would see him not too often, maybe an hour, but they have these group sessions and I went to visit him and this group of people who walk in freely, they came. They said, you know, we do not understand. We do not understand your husband does not tell us what his problem is. That was his problem. He could not talk about his problem. Consequently, at one time they had an AA meeting and he went to an AA meeting out of sheer boredom. He was frustrated, he was depressed.

Mr. CALIMANO. It got to the point so that he carried himself very well, he had that street savvy, so to speak, and it got to the point where he would not even allow us to ride in the same car with him. Decisions were becoming very hard for him.

Chairman NUNN. Why was this, was he worried about his security?

Mr. CALIMANO. Yes, sir. Like we said, he never was afraid for himself, but he had gotten to the point now that we had come with him, we had given up our identities, our lifestyle, everything, friends, family to come with him and now he feels like he did us wrong, that he is hurting us now. It got to the point where he could not support his family because he could not keep his mind on his business and he was getting to the point where he could not protect them. I know if that was me, I think any other man, too, if you cannot support and protect your family, it does not leave you much of a man.

Chairman NUNN. Did he have himself admitted to a veterans' hospital?

Mrs. CALIMANO. Yes.

Chairman NUNN. He did manage to get the paperwork?

Mrs. CALIMANO. Yes.

Chairman NUNN. The marshals helped him?

Mrs. CALIMANO. Yes; that is 11½ years later.

Chairman NUNN. A year and a half after?

Mrs. CALIMANO. After he went in.

Chairman NUNN. How long did he suffer mental depression before he was able to get in the veterans' hospital?

Mrs. CALIMANO. I do not know, but if he felt anything like I feel now, because he must have realized, far before we did, what was going on, and I am sure he would not have let us know just exactly how bad he thought it was, but of course, for him to seek out an attorney, it became a severe problem.

Chairman NUNN. When did he die?

Mrs. CALIMANO. June 5.

Chairman NUNN. 1980?

Mrs. CALIMANO. 1980.

Chairman NUNN. Did you get any calls from anyone in the Government when he died?

Mrs. CALIMANO. No. Oh, about 21½ months after someone called, I believe they were from the FBI, and he said he was shocked to hear the news but now he felt that they may not be able to get some of the bigger guys that they wanted to. That was his. I told him how upset he made me, how badly he made me feel and that was our only communication except for two agents who worked for my husband, with my husband. They attended the funeral.

Chairman NUNN. Two FBI agents?

Mrs. CALIMANO. Yes; in New York. And they called us after that. But no one else. This was only on a personal basis.

Chairman NUNN. Did you get any help from the Veterans' Administration, burial, veterans benefits?

Mrs. CALIMANO. No. They tell me anyway, which I never asked, but I have called the marshals to find out if they were getting things together so I can apply for this and they said by the way, you know you are not entitled to any benefits because your husband committed suicide.

Chairman NUNN. Not entitled to any?

Mrs. CALIMANO. Any benefits because your husband, I said that is not what I was looking for. I was just looking for something that I felt I was entitled to, we were entitled to, a lump-sum funeral benefit. But evidently they looked into that and told me where I stood. That was it.

Chairman NUNN. How about social security? Were there any social security benefits forthcoming?

Mrs. CALIMANO. None.

Chairman NUNN. We will certainly pursue this whole question on veterans benefits.

Mrs. CALIMANO. Thank you, because I still do not know where to go.

Chairman NUNN. We will do the best we can on it. I do not know exactly what the provisions of the laws and regulations are, but it seems to me if he was in a veterans hospital under care—

Mrs. CALIMANO. Not when he did such a naughty thing as they think he did and mind you, he was in depression. That is a whole other story, but I even called them up.

Mr. CALIMANO. It is back to the same problem, who do we go to?

Mrs. CALIMANO. Exactly.

Mr. CALIMANO. Who do we turn to?

Mrs. CALIMANO. People say there is something, but no one knows where or what. It is the same thing like the Marshals Service, who, if it was not for 20/20 and Gordon Friedman, no one would know. We would not be here. We would not have this opportunity because it is our responsibility. I do not want anyone to go on this program the way it is now. I do not want anybody to have to suffer this.

Chairman NUNN. You are here in the hope that your testimony will improve this program?

Mrs. CALIMANO. This is my only hope.

Mr. CALIMANO. The idea is sound.

Mrs. CALIMANO. It is a necessity.

Mr. CALIMANO. It is a necessary thing, to get people like my father and I am sure they are out there, to do this, it has got to be something where they should not have to worry about it; not little things, but things that have happened to us I am sure have happened to other people.

Mrs. CALIMANO. Do you not realize, the Mafia, it must be, they have won again, even with this.

Chairman NUNN. They have won again?

Mrs. CALIMANO. Sure they have, because you can rely better on them. You really can. You can get better protection.

Chairman NUNN. Better protection from the Mafia than from the Government?

Mrs. CALIMANO. Yes; and better taken care of. That is for sure. But still and all, and it is people like him, I believe this, if you could give them a good program that they would take the risk like we did.

Chairman NUNN. You think there are a lot of people out there that will take the risk?

Mrs. CALIMANO. I know. There has to be. There has to be. It is our only hope, all of us, I do not want to sound dramatic about it, but there has to be some, someplace and somewhere you can go. I cannot even go to the social security. So how in God's—how did I get involved in this when I think about it really? Who am I to go to? Who are we to go to? To an attorney? That hurts, really; that we had to go to an attorney.

Chairman NUNN. I do not know how an attorney could cope with all of these problems anyway. They do not teach you a course on this in law school.

Mrs. CALIMANO. There is none. That is exactly right.

Chairman NUNN. Did you both attend the funeral?

Mrs. CALIMANO. Of course.

Mr. CALIMANO. Yes: my wife, my brother and his wife.

Chairman NUNN. Was the funeral back in your original location?

Mr. CALIMANO. Yes.

Mrs. CALIMANO. This is a little bit—

Chairman NUNN. Were you protected?

Mrs. CALIMANO. No. Why all of a sudden are we protected now? Why?

Chairman NUNN. You mean you are protected in this visit to Washington?

Mrs. CALIMANO. Yes.

Chairman NUNN. But you were not protected when you went to the funeral?

Mrs. CALIMANO. No one asked. He went first, I went later on with my other son, we were tramping all over. No one said when are you leaving, how are you doing, can you afford to bury him? Again, I do not want anyone to pay for my husband's funeral.

Chairman NUNN. Did you ask for any assistance or notify anyone you were going to the funeral?

Mr. CALIMANO. I called the day, that day of his death because I refused burial under his new name. He only had it for a limited time. I wanted to bury him under our original name. They did assist me in getting apparently what I understood was a court order because we had to ship him out of the State. They did do that for me and at that time I was asked if I still wanted to remain on the program, which seemed kind of superficial at the time, asking me if I wanted to stay under the witness program. Here it is, trying to get my father out, literally out of the morgue, where the guy was calling me telling me I had to get him out of there. We did. At that time I was asked if I wanted to remain on the program. I said, "Yes." That was the only contact until we got back with the Marshal's Office.

Mrs. CALIMANO. Or anyone else.

Mr. CALIMANO. Or anyone.

Chairman NUNN. In your opinion, I will ask both of you this question, is the witness protection program as it is now set up flexible enough to handle law abiding witnesses like Mr. Calimano?

Mr. CALIMANO. No, sir.

Mrs. CALIMANO. I hope that you understand by our answers that it is very definitely not.

Mr. CALIMANO. Let me say that I do not believe anybody, honest businessman, or dishonest businessman, criminal, or anyone, should be treated or subjected to this, to what we were put through. We had the utmost trust in them, we saw no reason not to, anybody, not just honest men, even criminals, if you want to say criminals or whatever, should not be subjected to this.

Chairman NUNN. What price did your family pay as a result of your cooperation?

Mr. CALIMANO. Loss of a father, a husband.

Mrs. CALIMANO. A business, any money that we ever had which is not the most important thing.

Mr. CALIMANO. We really lost just about everything. Now we are stuck with a new identity, that is the reason we took it was to protect my father, now we are stuck with a new identity that before it had a reason, now it has no reason. It leaves really a sour taste in your mouth. You are stuck with something that there is no reason for me to have it any more.

Chairman NUNN. You think you are no longer in danger?

Mr. CALIMANO. I certainly hope not, I do not believe so.

Mrs. CALIMANO. They tell me it is not, but I would like to know if it was their sons, would they want to take that same chance with their son; if they are willing to take the chance for me.

Chairman NUNN. You do believe, both of you, that there are people out there, if there was a good witness protection program, that would be willing to go against the top people in organized crime?

Mrs. CALIMANO. I have to believe that. I do believe that. I do not think my husband was so unique. He was not Prince Charming. He was not a great man, he was an average human being, he felt strongly about his country and he found a way he felt he could help and he did. I have to, I know there are people out there, but you cannot, I would not, I would not allow them if I knew to go on the program as it stands now; as it stands now.

Chairman NUNN. How do you generally feel about the Government at this point?

Mr. CALIMANO. Embarrassed, definitely embarrassed. I do not know how else to put it. It is like with my wife, it was a hard thing for her, I give her a lot of credit, she lost a lot more than I did, she had to move away from her folks. I kind of talked her into it, doing it, she did not have to do it and then she sees what is happening now. She said:

What is going on? I thought you promised me that we would be taken care of, that you would not have to worry about anything, here you are traveling to Washington, you are on TV, this is nothing. It is pretty bad when you have to go to, through a network and I am sorry I had to do it, to get something done. I feel embarrassed. Our own Government, that he helped all these years and worked with could not help him when he needed it.

Chairman NUNN. How did he feel about the Government toward the end of his life?

Mr. CALIMANO. Betrayed is the exact word he used and he was very idealistic, we did not in our family, talk against the United States. If you did he had something to say to you one way or another and when he first said that to me, I was really in shock to even hear him say that, because even in the most toughest times, he always stood behind the flag and so forth, and the country. But that is his exact words, he was betrayed which is even hard I believe, the hardest thing for him to even say, he finally realized it happened. It took him a while, but he realized it happened.

Chairman NUNN. I want to thank both of you very much for your testimony. It is apparent to all that you have been through a very traumatic experience as a result of your husband's willingness to cooperate with the Government and the country he loved, and I hope that the testimony you give here today will be of great benefit in strengthening this program, correcting many of the areas that you have pointed out so vividly, that caused you and your family so much problems, hardship, and suffering.

Mr. CALIMANO. I would just like to say I thank you for the opportunity.

Mrs. CALIMANO. Thank you.

Mr. CALIMANO. It helps.

Chairman NUNN. Thank you very much indeed. If you will keep your seats, we are going to clear the room. Do you have anything else you want to say before we close?

Mrs. CALIMANO. Probably when I go home, but right now I cannot think of anything.

Chairman NUNN. You have done a very, very credible job in presenting your story under difficult circumstances. We appreciate it. We wish both of you and your whole family God's protection.

Mr. CALIMANO. Thank you.

Mrs. CALIMANO. Thank you.

Chairman NUNN. Just keep your seat. We will ask the room to be cleared. These are our last witnesses this morning.

We will be in this room again at 9 o'clock tomorrow morning. After the room is cleared, and so forth, I think if the cameras could simply be turned downward, we could perhaps clear the room and then you can come back and I know you have to disassemble everything, if that is satisfactory with the members of the media.

[Whereupon, at 12:50 p.m., the subcommittee was recessed, to reconvene at 9 a.m., Tuesday, December 16, 1980.]

[Members of the subcommittee present at the time of recess: Senator Nunn.]

WITNESS SECURITY PROGRAM

TUESDAY, DECEMBER 16, 1980

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9 a.m., pursuant to recess, room 318, Russell Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Member of the subcommittee present: Senator Sam Nunn, Democrat, Georgia.

Members of the professional staff present: Marty Steinberg chief counsel; Greg Baldwin, assistant counsel; Raymond Worsham, investigator; Myra Crase, chief clerk; Mary Robertson, assistant chief clerk; and Richard Shapiro, investigator to the minority.

Chairman NUNN. The subcommittee will come to order.
[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on the Witness Security Program on Monday, December 15, 1980, Tuesday, December 16, 1980, and Wednesday, December 17, 1980.

SAM NUNN, *Chairman.*
CHARLES H. PERCY,
Ranking Minority Member.

Chairman NUNN. It is a pleasure to have our distinguished panel with us this morning. I know that all of you are experienced Federal prosecutors or investigators. I also know from past experience that you have worked long and hard in preparing excellent statements for these hearings. We have requested your statements from the Department of Justice on numerous occasions but we have been unable to receive the final statement within the time rules of the subcommittee.

I understand they were delivered by the Department of Justice at 9:05 this morning. I don't know why the delay, but nevertheless that is the situation. Therefore, we haven't had a chance to really prepare thoroughly the questions that we would base on your statement, but we

have tried to cover in our questions the major points which you have all stressed in interviews with our staff in the past.

You have been most cooperative. Because of this delay in receipt of the official statements I believe the best way to proceed, if it is satisfactory with the panel, is for us to ask you two questions, each of you, and we think from those questions we will be able to elicit rather thoroughly the information that we have received from you in our interviews. If we leave out anything, you want to go back and pick it up from your prepared statement, we would be glad to do that.

Mr. Mike DeFeo is our first witness this morning. It is a pleasure to see you again, Mr. DeFeo. Your expertise and assistance to this subcommittee have been invaluable in the past. I might add that Mr. DeFeo has one of the most distinguished careers in Federal law enforcement and that his reputation both inside and outside of the Department of Justice is synonymous with excellence. Mr. DeFeo's views have always carried great weight with this subcommittee. And we are pleased to have your valuable assistance here again today.

The Senate stayed in session until approximately 5 last night. I am going to have my first cup of coffee before I begin my questioning. I am going to ask Chief Counsel Steinberg in the interest of coherence to begin the questioning. I will pick up after I receive my first cup. We will need all of you to stand and take the oath as we do with all of our subcommittee witnesses.

Do you swear the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RODRIGUEZ. I do.

Mr. COSTELLO. I do.

Mr. DeFeo. I do.

Mr. HARTNETT. I do.

TESTIMONY OF DAVID RODRIGUEZ, ASSISTANT U.S. ATTORNEY, EASTERN DISTRICT OF CALIFORNIA, FRESNO, CALIF.; ROBERT COSTELLO, ASSISTANT U.S. ATTORNEY, SOUTHERN DISTRICT OF NEW YORK, NEW YORK, N.Y.; MICHAEL DeFeo, DEPUTY CHIEF, ORGANIZED CRIME AND RACKETEERING STRIKE FORCE, U.S. DEPARTMENT OF JUSTICE; AND DON HARTNETT, RETIRED FBI AGENT, BUFFALO, N.Y.

Mr. STEINBERG. I notice both you, Mr. DeFeo, and Mr. Hartnett are veterans in dealing with organized crime. I believe both of you stated that some minimal false identification is necessary to create a new identity for a witness. Does your suggestion mean creating a fictional human being or just using the witness' real background but changing the names of the employers, the banks, and so forth? The problem that we are trying to come to grips with is creating an adequate background for a witness without totally misleading the people he will deal with under his new identity.

Mr. DeFeo. Mr. Steinberg, I too believe a false identity is essential to accomplishing successful relocations. I don't find that tactic legally or ethically objectionable because the falsifications involved are not done with any intent to defraud or injure any segment of the

public and, in my opinion, are justifiable to avoid the greater danger of physical retaliation against the witness.

Once the decision has been made to fabricate, that an identity must be created, then several considerations suggest that that identity, insofar as is practical, be a mirror image of the witness' life. The need for the witness' entire family to be familiar with the employment and location history dictates there has to be at least some basis in reality for the identity which is provided. Moreover, public policy considerations dictate that there be a principle of parity in creating a new identity; that is, no witness be given a credit or employment history which is grossly disproportionate to that he enjoyed prior to relocation so the possibility of abuse and victimization of creditors and things of that sort is not unreasonable.

Mr. STEINBERG. Mr. DeFeo, you have been involved in organized crime investigations since 1963 and I believe the program has been in existence since 1970. Is there any adequate reason you can advance as to why the various Government agencies such as Social Security, Veterans' Administration, SBA, FHA, do not give this program the priority it needs so that the necessary documentation and social services are offered to a witness within a reasonable time period?

Mr. DeFeo. Very simply, I think those agencies have no stake in the program whatsoever. They have received no credit for successes and they bear no responsibility for its failures and, therefore, they are simply not motivated to contribute when they have other program goals of their own.

Mr. STEINBERG. Do you think we need an Executive order from the President to accomplish this or have a formal agreement with each agency?

Mr. DeFeo. Because of the realities of a lack of pressure to cause these agencies to contribute, I think it is obvious that some pressure from outside the agencies either in the form of an Executive order, interdepartmental memorandum of understanding, specific legislative direction, or some other comparable outside authority will, in my opinion, be necessary to accomplish the kind of contribution by these agencies that you are contemplating.

Mr. STEINBERG. You are apparently extremely knowledgeable, Mr. DeFeo, concerning F. Harvey Bonadonna, who was a protected witness who testified at our past hearings concerning mob violence, the same hearings at which you testified concerning the devastating impact organized crime had in the Kansas City River Quay project. Mr. Bonadonna had a home, a business, had credit, and so forth, and during his testimony he made a rather impassionate plea for improvements in the witness program.

Could you tell us for the record a little bit about Mr. Bonadonna?

Mr. DeFeo. Mr. Bonadonna was the product of a Kansas City family in which his father was an admitted member of the Kansas City organized crime family. After Mr. Bonadonna had established himself as the successful businessman, running a restaurant and establishment, he became very successful in a redevelopment area in the city of Kansas City, which was known as the River Quay area.

Once he became successful, his success attracted the attention of other members of the Kansas City organized crime families, specif-

ically the Cammisano brothers. These brothers put pressure on Mr. Bonadonna through his father—a member of their organization—to use his political, financial, and business influence to enable them to bring go-go-type bars and combat zone type entertainment into the River Quay area.

Mr. Bonadonna resisted, his father was ultimately killed, he entered the witness protection program; thereafter he remained in the program for several years during which indictments were secured, a trial held, the Cammisano brothers both were convicted—one of them now serving time and the other recently deceased.

Mr. Bonadonna, as you know, testified before this committee in late April or early May, and detailed what he felt were a number of unsatisfactory experiences he had with the witness protection program.

Mr. Bonadonna was in the unfortunate posture of being a person, who absent the witness protection program or some equivalent form of relocation, would unquestionably have been killed, simply would have had no alternative. So the program has kept him alive. On the other hand, he was very explicit in his testimony that he had experienced horrendous difficulties in connection with the documentation, in connection with some of the relocation aspects which he had undergone, which at times had made him contemplate even returning to the community of Kansas City because he felt he could not ever achieve a successful career within the program because of some of his problems. I certainly don't think that that purports to capsule all of Mr. Bonadonna's testimony before the committee, but I think it captures the salient points.

Mr. STEINBERG. Mr. Chairman, we would like to enter that portion of Mr. Bonadonna's testimony relating to the witness protection program into our record.

Chairman NUNN. Without objection.

[See Exhibit No. 1, p. 16.]

Mr. STEINBERG. Do you see a genuine problem in the program with people like Bonadonna who come from a legitimate background who have a legitimate business?

Mr. DEFEO. Yes, I do. The attitudinal problems which I mentioned in my prepared statement are most offensive to the legitimate witnesses. The need for a credit history equivalent to that which a person had before relocation is crucial to a successful businessman who wants to reestablish himself in an honest career in a new community and there simply has never been to my knowledge any organized effort to provide the necessary kind of employment and credit background.

Mr. STEINBERG. Does the treatment of a Mr. Bonadonna discourage other potential witnesses?

Mr. DEFEO. Whether or not unsatisfactory treatment discourages witnesses, Mr. Steinberg, to me it is wrong in terms of professionalism, but it does also discourage witnesses and it has other adverse impacts. The mere fact that these hearings are being held demonstrates that there is congressional concern about the program which obviously can jeopardize funding. With respect to the individual deterrent effect, normally a witness' dissatisfaction is known only to his family, perhaps a relatively small circle of people with whom he comes in contact and therefore does not have far-reaching implications.

However, the current prevalence of dissatisfaction has reached the point where it has spawned media accounts, television documentaries, news programs critical of the program, all of which have had inevitable impact in discouraging potential witnesses. Therefore, I think merely the fact that we are here in these circumstances demonstrates that the program has reached the point where its problems need to be corrected.

Mr. STEINBERG. In your opinion, does the Marshals program need to attract a group of people experienced in employment, social services, finances, documentation, to make this program work?

Mr. DEFEO. Absolutely, sir. Expertise in organization is essential to provide the services that are going to be needed, the necessary experts can be hired with experience from other agencies, they can be trained in-house, but the skilled cadre is simply indispensable.

Mr. STEINBERG. Obviously, there are witnesses in the program who create their own problems with respect to credit and otherwise, and the Government should deal with those people. What is your response to the answer that is given quite often that credit, documentation, employment background, and other items can't be supplied because the possibility of misuse by witnesses in the program?

Mr. DEFEO. My response would be that given the imperfect condition of human nature no institution can be made immune from abuse. It is simply impossible. But because false identities and credit background can be abused by perhaps 1 witness in 10 or perhaps even 3 in 10, that is not necessarily grounds for denial to other members of the program who don't have a criminal history, who don't demonstrate a tendency to defraud the business community.

Moreover, I think we are going to need some track record of what happens when decent documentation, prompt employment and adequate credit histories are supplied before we can make a judgment that the abuse would grow in that kind of circumstance, because we have never had an environment in which the witnesses get appropriate employment history, documentation, and employment.

Chairman NUNN. I know that some go out with false identity and cheat business people or anyone else out of money—but even if there were abuses, these people are in close contact with law enforcement and have to be for their very survival. They could be arrested at a rather early stage in most cases.

Mr. DEFEO. I think it could, Senator. I think that certainly is true of the respectable or quasi-respectable witness. Admittedly we do have some very superior con men and criminals who enter the program and obviously those people are a threat even in most circumstances, so with regard to that kind of person I think it probably would dictate that the amount, credit history, that sort of thing given them be much less impressive and much less persuasive, so they would have fewer resources with which to defraud the community.

Chairman NUNN. You could have credit limits very easily, couldn't you?

Mr. DEFEO. Absolutely.

Mr. STEINBERG. We have also been told of the so-called liability of the third party who deals with some witness who has some phony background or documentation. Do you feel that that so-called innocent third party would be in any different situation when he is dealing with

a relocated witness with a new identity based on the so-called real documentation but still has no idea of that person's background or situation?

Mr. DeFeo. No. The liability of the third parties, in effect creditors, is no different if the extensions of credit they make is based on the witness' true identity or the new identity supplied by the Marshals Service. What is different is the potential liability of the Marshals Service to suit and that obviously is a great factor.

In my opinion, one of the greatest stumbling blocks in this area has been the Marshals Service's institutional reluctance to violate local laws regarding false identity and applications or to provide an identity in which a witness can incur some substantial financial liability.

Obviously, these things can result in suit against the Marshals Service. They are unquestionably legitimate concerns, but I don't think they are insoluble. There are ways that these problems can be solved.

Mr. STEINBERG. Is there any legislation needed in this area?

Mr. DeFeo. That is an area in which I am not qualified to speak to the Department's official position. Hypothetically, visualizing some ways to approach the problem, I think you could certainly have legislation which would arrange for Federal-State agreements, interstate compacts, things of that nature, permitting legal name changes and providing the immunity from any liability that would flow from the use of the changed identity.

Even the difficult question of credit availability for such a need as purchase of a car so a person can go look for employment could be resolved on a parity basis, with the statute conferring the legal authority to apply a credit history "substantially identical" or some other term of art, to that enjoyed by the witness prior to his relocation. So when the business community deals with them they are no worse off than they would be if they are dealing with him under his true identity.

Mr. STEINBERG. Do you think for those witnesses who would otherwise qualify, Government loans or financing should be made available?

Mr. DeFeo. Obviously that has to be a carefully regulated approach, because providing a person's subsistence and credit history so that they can make their own way is one thing, providing a large sum of the taxpayers' money which they may waste is another thing.

However, I do think that appropriately supervised financing could be achieved through utilization of programs such as the Small Business Administration loan program, perhaps loans through a proprietary or arrangement with a Federal credit union for such simple things as automobiles. We simply have to reach a determination in that area, whether credit or employment problem for relocated witnesses are sufficiently severe to merit remedial action and that may require authorizing legislation.

Mr. STEINBERG. Apparently the program was originally aimed at attracting the hoodlum witness. Since the Government now seems to be concentrating on the higher echelon organized crime figures, white-collar crime, corruption, so forth, will the Government witnesses that you are trying to attract come from a better social and economic class and if so, is the program geared to handle that type of witness?

Mr. DeFeo. Mr. Steinberg, there have always been noncriminal witnesses in the program, Mr. Bonadonna being an example for whom its limitations have imposed great and severe problems. I agree that concentrating on more sophisticated violations would increase the relative prevalence of this kind of "respectable" witness in the program.

I think inevitably that is going to increase the demand for flexibility, for more social services and basically for a more flexible program than presently exists.

Mr. STEINBERG. Do you find lack of centralized authority and control over the marshals in the field a problem?

Mr. DeFeo. Surprisingly that is one of the most frequent observations I have heard about the program coming from witnesses and the marshals involved in it alike.

I have heard similar comments and criticism of the lines of authority and responsibility in the program, particularly in the past. I think there have been some improvements in recent years, but particularly in the past, lines of authority and responsibility were hopelessly confused and the opportunities for avoidance and transference of responsibility—a layman might refer to buckpassing—were endless.

I think any Government program needs to be clearly accountable. So I think some centralized authority or at least responsibility is essential.

Mr. STEINBERG. Do you think the investigative agencies such as the FBI or the DEA should run this program?

Mr. DeFeo. No. I do not. I will state my reasons if you would like.

Mr. STEINBERG. Yes.

Mr. DeFeo. There are ethical considerations involved which persuade me that the investigative agencies should not have direct operational responsibility.

There must be observance of a general principle that Government witnesses may be protected, and they be sustained by the payments of necessary funds to permit them to testify safely and truthfully. But payments for their testimony should be fully disclosed. They should not be disproportionate. If there is going to be a reward for their testimony, in addition to the simple subsistence, that reward should be a very rare thing. It should be plainly disclosed so it can be made a matter of cross-examination and it should not be the norm.

We should simply enable witnesses to testify by supporting and protecting them, not by buying their testimony by reward payments as a matter of general course. This concept to me dictates the wisdom of preserving as much distance as possible in financial matters, between the witness and the agent, or for that matter, between the witness and the prosecutor. That way the insinuation or the suggestion that a person is testifying less than accurately in return for payment can be minimized and I think it is a healthier situation.

Chairman NUNN. You would keep this program under a separate group of people, like the Marshals Service?

Mr. DeFeo. I would, Senator, yes.

Chairman NUNN. Do you believe the problems that you have outlined in your statement in response to your questions so far this morning can be met within the Marshals Service under the present

organization, or do you think it is going to require some substantial realignment or reorganization within the Department of Justice? We are not asking any of you to speak for the Department of Justice this morning. I will lay that ground rule down.

Mr. DeFeo. I understand.

Chairman NUNN. We will hear them and their official views later. We are trying to get your personal views.

Mr. DeFeo. My personal views are that any Government department can solve any problem if the heat is great enough, and I do think the Marshals Service has the resources to solve any problems which it faces.

Chairman NUNN. With the proper support, I assume, from other agencies and from the top-level Department of Justice.

Mr. DeFeo. Of course.

Mr. STEINBERG. Are you personally in favor of a safe house concept or a separate facility for prisoner witnesses?

Mr. DeFeo. The answer to that question involves cost comparisons with which I am simply unfamiliar. I think my answer would be that I favor the flexibility of safe houses if they are anywhere within reason on a cost basis and my suspicion would be they probably are not.

Mr. STEINBERG. Is there presently a perception of a lack of sensitivity in dealing with witnesses or even a resentment or hostility exhibited by certain marshals when they deal with relocated witnesses?

Mr. DeFeo. Yes. There is, Mr. Steinberg, but I think that those problems, those instances of resentment expressed by marshals, those comments to the effect that the relocated witness is probably a criminal who ought to be in jail and therefore ought to be thankful of anything short of incarceration, are not representative of the broad spectrum of personnel which the Marshals Service has assigned to this program. Basically, I can't think of that kind of problem ever arising with the witness security specialists, supervisory deputies, with people who work with this program all the time. I think several really outstanding gentlemen that I have been acquainted with over the years who are true gentlemen and would simply never be rude to a witness because it is unprofessional.

But I think there is a distinct problem that inexperienced, untrained personnel frequently have to be utilized in this program. They are rotated through it. I think the huge bulk of complaints come from people who don't have the direct stake in the operation of the program, who are simply assigned on a temporary duty basis.

Mr. STEINBERG. Do you feel there are existing Government agencies such as the Department of Labor, the social agencies, and agencies dealing with banking and credit, which could be utilized to assist the program?

Mr. DeFeo. Very definitely so, Mr. Steinberg. I think, for instance, one particular area is in the usual problem area of employment. I have known individual marshals who are absolutely relentless in their search for productive suitable work for their charges. Institutionally there seems to be no visible administrative organization or arrangement to support these individual efforts. There are huge departments of Federal and State government which control or influence millions of jobs in the economy, the Department of Labor influences the CETA pro-

gram, and with proper administrative focus, contacts, perhaps with some necessary exemptions from hiring regulations and statutes, it simply seems inconceivable that the vast public sector couldn't absorb readily those relatively few witnesses who can't be placed in the private sector economy.

Mr. STEINBERG. We have been given a couple of conflicting stories concerning the employment program in the witness protection program; on the one hand the WITSEC people claim they have a sophisticated employment program with hundreds of businesses or corporations cooperating. On the other hand, we have been told by witnesses from the Justice Department, WITSEC personnel and other people, that the employment program is run by clerical personnel with no background in this area.

In your years of experience with the program, have you seen any sophisticated employment or major corporation, job bank, or industry contacts that emanate from the Marshals Service?

Mr. DeFeo. Never, sir.

Mr. STEINBERG. Do you have any other suggestions for improvement in the program?

Mr. DeFeo. Mr. Steinberg, you and I talked preparatory to my testimony and I obviously gave you a few notes on some of the things we discussed.

First of all, I think to achieve the dual goal of not only keeping the witness alive and physically maintained, but also in solving some of these social problems we have discussed, there has to be a rationale for the program, there has to be a moral factor which addresses the fact that the program ought to have a philosophy. It ought not to be only to keep the witness alive; it ought to aim at least to give him the chance to reestablish himself in a respectable environment. Obviously, if he wastes that chance, the Marshals Service cannot be expected to rehabilitate people any better than the prison system does, but on the other hand, it at least ought to give its charges a chance to do so and I think that means decent documentation, employment history, things of that nature. Second, I think there is definitely a need to attract better personnel for the program. That is largely an administrative question involving training, union contracts, things of that nature, but I think it is very clear that there are different job skills required for guarding and transporting Federal prisoners, which historically has been one of the main tasks of the Marshals Service, as opposed to the much more sophisticated skills required in creating new identities, making it possible for a person to move into a new environment and support himself there, all of which dictate there will have to be new skills acquired in some way. There is obviously a need for authorization, and I think we may well need legislation to do this to resolve the question of civil liability. There is need to authorize proper documentation both regarding employment and credit.

Unquestionably, the Marshals Service does need to have a certain and fixed financial standard in its payments to the witnesses so that it not be defrauded, so that the conflicts between witnesses, one witness saying he heard another witness was paid more, may be minimized. Nevertheless there is, I think, room for flexible arrangements, particularly with regard to supplying the credit history so that the

witness can, as close as possible, reestablish himself in the lifestyle which he legitimately attained prior to his relocation.

I think there is obviously a need to establish contacts in the government and business communities to achieve these employment contacts, loan contacts, things of that nature. But I would also like to take a moment to editorialize, if I may, that whatever the Congress may determine should be done concerning the administration, structure of the witness security program, I think one conclusion is inescapable, after 10 years of experience with its administration: The Marshals Service has made the program work, not perfectly, not without problems, but it has worked, and its success has had a multiplier effect, magnifying each defection from organized crime, such as the highly publicized one of James Fratianno recently, and each success in the protection of a witness, such as Mr. Bonadonna.

Most countries do not tolerate organized gangs that can compete with civilized government or certain segments of its population. Unfortunately, our country has, until recently. Programs like the witness security program, are extremely important and inspiring to those of us involved in law enforcement and the administration of criminal justice because they represent the collective judgment of our government that we are willing to use the necessary force and resources to overcome organized crime and are no longer content to simply fight delaying actions against it.

Consequently, we are all very grateful to the Congress for the legislation which initially made this tool available, and I hope that these hearings will even further enhance its capabilities.

I thank you, sir.

Mr. STEINBERG. Thank you.

Chairman NUNN. Thank you very much.

[The complete statement of Michael DeFeo follows:]

STATEMENT OF MICHAEL DEFEO, DEPUTY CHIEF, ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman, Senators, and Staff Members: My name is Michael DeFeo and I am a Deputy Chief of the Organized Crime and Racketeering Section of the Department of Justice's Criminal Division. I have served with the Organized Crime and Racketeering Section for over 17 years as a trial attorney, as Attorney in Charge of several field offices, and now as a Deputy Chief of the Section. In those capacities I have been involved in the admission to the Witness Security Program of scores of witnesses since its inception pursuant to the Organized Crime Control Act of 1970, and in the problems which inevitably follow such witnesses through protection, relocation, maintenance, testimony, and termination of funding.

Based upon my experience with the Department, I wish to offer the following personal observations. The Witness Security Program is an indispensable tool in achieving widespread and effective prosecution of organized crime, and without it there is no realistic prospect of institutionally neutralizing an organized crime group. The program as it exists has been a success, as demonstrated by its undeniably impressive results. Nevertheless, there have been shortcomings and needless human costs which can and should be reduced if they cannot be eliminated.

With regard to the success of the program, the Marshals Service can best supply the statistics reflecting the large number of witnesses protected and relocated successfully. As a supervisory prosecutor, it has been my experience that the program adds a whole new dimension to prosecution efforts against organized, conspiratorial crime. Before 1970, there was no defense to an organized gang's ability to intimidate potential witnesses and deter cooperation. The United States

Government could not relocate witnesses, whereas organized crime could and did—with the relocation site frequently being found under a manhole cover on a deserted street. We could do nothing to neutralize the intimidating effects of this everpresent threat, and our impotence in this regard was well known in the circles from which our witnesses are drawn. A common response to pleas for cooperation was the simple, undeniable observation that the witness would have to live in the same environment, exposed to the defendants and their confederates, long after trials, appeals, and even the defendants' prison sentences were over, and that during all this time the Government could do virtually nothing to guarantee protection for the witness or the witness' family. In that situation, wherein both you and the witness knew that death was a potential consequence of cooperation, appeals to civic duty could still be made, but their emotional appeal rang somewhat hollow.

With the passage of the Organized Crime Control Act of 1970, a new equality of bargaining power was created. No longer did a potential witness have to accept constant insecurity as an unwanted supplement to his witness fee. Witnesses could now be removed from the occasion of danger and from the geographic area within which the defendants could locate or harm them. For the first time the Government could effectively protect its witnesses, and it has done so.

Examples of prosecutions involving witnesses who have been protected by the Witness Security Program are numerous and justifiably famous. The Subcommittee is aware of the cooperation of witness Fred Bonadonna, who testified in connection with the previous hearings on organized crime and the use of violence. Relocated witness James Fratianno has made possible significant convictions of entire organized crime families. Other major cases have been and are being made. The program is a resounding practical success because it has finally mobilized the resources of the United States and devoted as much force and money to protecting citizens who were in danger as organized crime groups were willing to expend to prevent their testimony.

Having acknowledged the indispensable nature of the Witness Security Program and its practical success, it is nevertheless desirable to admit and analyze its shortcomings in order to achieve their correction. Initially, it should be recognized that some friction and dissatisfaction are inevitable, given the practicalities of witness development. Almost inevitably, a substantial percentage of people in the Witness Security Program will be dissatisfied with its services. A person with a substantial criminal record or who has operated on the fringes of low-level crime may feel that his status and future are being improved by being moved hundreds or thousands of miles from his home environment, and given ninety days' subsistence and a chance to start a new honest life if he desires. However, any person of average social status and economic resources must find that treatment terribly demeaning, unsettling, and unattractive. None of us would willingly accept a new identity, without resources, credit, friends or promise of advancement, all in a strange environment. Accordingly, we should not be surprised when virtually every witness except those on the very bottom rungs of the economic and social ladder rebel against the choice they have made in accepting relocation once the immediate threat of death is no longer their dominant concern.

Unfortunately, after making allowance for these inescapable tensions, there are still common witness complaints which are avoidable or solvable without inordinate cost. The most common of these complaints, in ascending order of the complexity of their solution, relate to attitudinal problems, to employment, and to documentation and credit. Under the heading of attitudinal problems I include such things as simple insensitivity to the fact that a couple left in a motel room in a strange city with no transportation or work to divert them are subject to the onset of insanity in direct proportion to the number of children confined with them. Another frequent complaint involves expressions of resentment by overworked Marshals at the subsistence paid unemployed witnesses, and the vocalization of the sentiment that relocated witnesses are themselves criminals who should be grateful for any treatment short of incarceration. Sometimes witnesses are, in fact, reducing their criminal liabilities by cooperating against gang members more culpable and dangerous than themselves; often that is not the case. Regardless, tact and diplomacy are always owed as a matter of courtesy and are mandatory in preserving the cooperation of a disgruntled witness. In my experience, the immense majority of Witness Security specialists, Marshal, and Deputy Marshals would never treat a witness discourteously because they would

consider it unprofessional. However, every lapse or error in this regard by one temporarily assigned Deputy anywhere in a witness' handling is magnified by the witnesses, who are understandably in a dependent and sensitive emotional state.

These complaints appear to parallel an administrative difficulty within the program, which is the necessity to assign unspecialized personnel on a rotational basis to witness protection duties, a policy which does not insure the assignment of the suited or most experienced personnel to this sensitive task.

A more concrete area of problems involves employment. I have known individual Marshals who are absolutely relentless in their efforts to find productive, suitable work for their charges. Institutionally, however, there seems to be no visible administrative organization or arrangements to support these individual efforts. Huge departments of the Federal and state governments control or influence millions of jobs of all varieties. The Department of Labor influences numerous jobs under training and employment programs like the Comprehensive Employment Training Act. With the proper administrative focus and contacts, and perhaps with some necessary exemptions in hiring regulations and statutes, it seems inconceivable that the vast public sector cannot absorb readily those relatively few witnesses who cannot be placed in the private sector.

The thorniest problems always seem to arise in connection with documentation and credit. Too often social security cards, occasionally sequentially numbered for an entire family, are the only identification initially furnished. The program has been in existence long enough to have recognized, and organized itself to cope with, the need to furnish usable documentation so that relocated witnesses can utilize new identities with a reasonable degree of assurance and success. At a minimum, children must be enrolled in schools and need transcripts. Driver's licenses must be secured. The problems of employment and credit history must be addressed, as must the instances of applications for real estate and liquor licenses.

Unquestionably, one of the greatest stumbling blocks in this area is the Marshals Service's institutional reluctance to violate local laws concerning false identification and applications, or to provide an identity in which a witness may incur some substantial financial liability, e.g., by defaulting on a loan granted because of a credit history fabricated by the Marshals Service. These concerns are unquestionably legitimate. However, they are not insoluble.

Whatever the Congress may determine should be done concerning the structure of the Witness Security Program, one conclusion is inescapable after ten years of experience with its administration. The program has worked and has had a multiplier effect, magnifying each organized crime defection or successful protection of a victim or innocent witness. Most countries do not tolerate organized gangs which can compete with civilized government for control over certain segments of society. Ours has until relatively recently. Programs like the Witness Security Program are inspiring to those of us involved in law enforcement and the administration of criminal justice because they represent the collective judgment of our Government that we are willing to use the force and resources necessary to overcome organized crime, and are no longer content to simply fight delaying actions against it. Consequently, we are grateful for the legislation which initially made this tool available, and hope that these hearings will even further enhance its capabilities.

Chairman NUNN. Mr. Costello, we will have you go next, if that is satisfactory.

Mr. COSTELLO. It is, sir.

Chairman NUNN. I have just gone through your statement.

Mr. STEINBERG. Mr. Costello, could you give us briefly your background?

Mr. COSTELLO. Currently I am Deputy Chief of the Criminal Division for the U.S. Attorney's Office for the Southern District of New York, and I have been an assistant U.S. attorney in that office for the past 5 1/2 years.

During that course of time, I have worked with and sponsored for the witness protection program numerous individuals, both incarcerated

ated and those that are free. As a result of that I have gained an insight, I believe, into some of the problems suffered particularly by those individuals in the witness protection program who are also in custody at the Bureau of Prisons.

Mr. STEINBERG. Mr. Costello, you said you have an extensive experience dealing with the prisoner witness in the New York MCC and you are familiar with its operation and the problems with the prisoner witnesses located there, are you not?

Mr. COSTELLO. I am.

Mr. STEINBERG. In connection with that, is the preparation and service of food to prisoner witnesses a problem?

Mr. COSTELLO. It is constantly reported by the protected inmate as a problem, but let me point out one caveat that I think applies to all of the complaints that are raised by the incarcerated protected witness.

The program provides for both the physical and psychological security of the witness. I think both of those roles are equally important. In keeping that in mind, especially in light of the psychological impact on the witness, it necessarily follows that the ultimate veracity of the witness' complaint is really irrelevant. What is really relevant is what the witnesses themselves believe. So therefore, whether or not any of the complaints that they raise are in fact valid, if they believe them to be valid, they have the same type of psychological impact which is detrimental to that witness as a government witness. In light of that, in answer to your question about the preparation of food, I would say that it has been my experience that many witnesses have reported to me that it is a problem. Food is prepared in the general kitchen area of the metropolitan correction center by inmates and is supposed to be randomly selected for individuals on the third floor protective custody area. I believe there are approximately 24 beds in that unit.

It is—at least the protected witnesses believe that food is not always randomly selected. I will give you two instances that have been reported to us that lends some credence to their theory. I understand that on two different occasions the mashed potatoes that were received by protected witnesses on the third floor had the word "rat" spelled out with green peas in the mashed potatoes.

In another incident, a cartoon of a rat was drawn in the mashed potatoes.

As I said, these are unverified. These are the incidents that have been reported to us, but whether or not they are true, they at this point have a history to them and are believed by the people on the third floor to be true. Therefore, they do not believe that the prison personnel randomly select the trays.

I think that problem could be easily solved by convincing the inmates, if you can convince them, that in fact, that system works, that the trays are randomly selected.

Mr. STEINBERG. Does the handling and distribution of prisoner witness mail create any problems for them?

Mr. COSTELLO. That is another source of constant complaints by the witnesses. What happens is mail that is sent directly to the institution, routinely is rerouted to Washington, D.C., to the Bureau of Prison personnel that handle protected witnesses that are incarcerated. It is

then forwarded back to MCC in New York. Necessarily that involves delay in the mails. Again, whether accurate or not, inmate witnesses have reported to us that they have missed parole hearing, for example, as a result of receiving the notification a week after the parole hearing was scheduled. It is a minor complaint, but minor complaints, when you are incarcerated, become rather large complaints to the protected witness.

Mr. STEINBERG. Is there any problem that you are aware of in the movement of the prisoner witness, either outside the prison or inside the prison itself to different areas?

Mr. COSTELLO. This is probably the biggest complaint that the witnesses on the third floor, the protective custody witnesses have. It impacts on several different areas. What happens is when a witness is being moved, for instance, to the U.S. District Court for the Southern District of New York, that building is physically attached to the metropolitan correctional center. All witnesses that go out to court or to the U.S. attorney's office, which is likewise connected to the metropolitan correctional center, go out through the third floor. It is the witnesses' belief that other prisoners are aware of who they are when they are leaving, being escorted by the marshals to both court and/or the U.S. attorney's office. The problem that that entails is it not only impacts psychologically on the witness, but it prevents that witness from feeling secure later on when he is ultimately transferred from the metropolitan correctional center to the receiving institution to continue the service of his time because he doesn't know, and indeed nobody can know all of the individuals who are aware of his status as a cooperating witness with the U.S. Government.

Mr. STEINBERG. For those of us who are unfamiliar with the MCC, can you explain about the situation that certain protected prisoner witnesses are kept in specific facilities around the country?

Mr. COSTELLO. My understanding is at the MCC in New York there is a third floor protective custody unit. That unit, as I mentioned before, has approximately 24 beds. Most of the individuals, not all, but most of the individuals on that floor are incarcerated witnesses in the witness security program. On that same floor of the institution are also many of the general offices of operation of the MCC as well as the holding pens, as they are referred to, for prisoners going out to court from the eastern district of New York, the district of New Jersey, as well as the southern district of New York. Those three holding pen doors, which have a glass window in them, are located nearby the access door that leads from the MCC to both the Federal courthouse and the U.S. attorney's office. Therefore, when the individuals come out of the institution, they necessarily pass by that area. In addition to that, of course, there are numerous inmates that work in the general third floor area as typists and clerks and cleanup crews, who necessarily, from time to time will become aware of the people on the third floor by virtue of the movement from the protective custody unit on the third floor to the courthouse.

Mr. STEINBERG. So by the very fact that they are housed in one specific place, that is, the third floor, they are readily identifiable by other prisoners?

Mr. COSTELLO. That is at least the protected witnesses' belief and I think there is some substantiation for that.

Mr. STEINBERG. Are the visitors who visit these prisoner witnesses mixed with the general visitors who visit the other inmates?

Mr. COSTELLO. All visitors to the Metropolitan Correctional Center of New York enter through a common lobby. There is a general waiting area. My understanding—I reiterate that it is my understanding based upon the statements made to me by incarcerated witnesses on the third floor—is that in fact their witnesses show up at the same time—excuse me, their visitors show up at the same time other visitors do to the institution. The problem that this creates of course is that the Metropolitan Correctional Center houses inmates serving short sentences, but it also houses all of those inmates awaiting trial in the Eastern District of New York, the District of New Jersey and the Southern District of New York.

So in many cases it is quite possible that that witness who is being held on the third floor in the Metropolitan Correctional Center is being held for trial in one of those courthouses and will be testifying against some of the same individuals who are also incarcerated in the Metropolitan Correctional Center. It is likely in many instances that their families will know one another; obviously this creates problems when they show up at the institution at the same time.

The additional problem with respect to visiting is that with respect to the third floor all visitors to the third floor meet in one common room. Indeed, all attorney visits take place in the same room which of course leaves very little privacy to the attorney-client visit that takes place in the same room while other protected witnesses are meeting with their families or friends. In addition to that, necessarily because it is a small room, all of the witnesses know all of the families of every other witness, by virtue of the visiting privileges. This makes them very nervous; not only do they not trust people on the outside world, they also do not trust their fellow inmates in the program with respect to their families, and friends who are visiting them.

Mr. STEINBERG. Is the New York Metropolitan Correctional Center designed to handle prisoner witnesses for long periods of time?

Mr. COSTELLO. With respect to the question of design, I cannot really answer that. I can tell you that it is my understanding that the Metropolitan Correctional Center in New York is designed with respect to the protective custody unit to simply hold those incarcerated witnesses in the witness security program for purposes of testimony. Ideally, that is what is supposed to happen. Unfortunately, it is not what always does happen. We have had people on the third floor in the Metropolitan Correctional Center for periods of 1 year or greater.

Mr. STEINBERG. In your opinion, can the prisoner witness be routinely placed back in the general population?

Mr. COSTELLO. My personal opinion is, the answer is no. It involves a number of very substantial problems to the Bureau of Prisons and to the Marshals Service with respect to relocating an incarcerated witness and putting him in general population in another prison. As I mentioned before, with respect to incarcerated witnesses leaving the institution, many other inmates become aware of their status by virtue of their observations of those witnesses coming and going. In addition

to that, many of those individuals have first joined the program after having been previously incarcerated, for instance, on one of the other floors at the Metropolitan Correctional Center. Naturally, all of the other individuals on that floor at that time become aware, when they are moved down to the third floor, of their status as Government informants.

Finally, I think perhaps the most difficult problem dealing with movement of prisoners to general population is the existence of an absolutely incredible grapevine among prisoners, whether it involves one Federal institution to another, or even one Federal institution to a State institution. The problem that is entailed in moving a prisoner from the Metropolitan Correctional Center in New York to general population in another prison is that the only thing the Bureau of Prisons and, indeed, the Marshals Service can go by is a listing of all of those individuals who are known to be a threat to that particular witness. That list is necessarily going to be small and necessarily will not entail a listing of all of the individuals who are aware of that Government witness' status as a Government witness and that is indeed what creates the problem, both physically for the protected witness as well as psychologically since they themselves are aware of this. They know that they can never feel safe in their own minds with respect to the movement into general population.

Mr. STEINBERG. Do the problems you have outlined have an effect on the frame of mind or concentration of the witness and his ability to testify for the Government?

Mr. COSTELLO. I think the answer to that would necessarily have to be yes. Instead of spending most of their time recalling the incidents about which they will testify, the general rule is that the incarcerated protected witness spends most of his time attempting to deal with the day-to-day problems that they suffer as an incarcerated protected witness.

Chairman NUNN. Mr. Costello, what recommendations would you make for handling the prisoner witnesses that are not now the current practices?

Mr. COSTELLO. Senator, it seems to me—this is once again my personal view—that perhaps the easiest way to solve all of the problems that I have outlined in the prepared statements that have been relayed to us by protected witnesses would be the establishment of either a separate facility to house these individuals or perhaps just the establishment of a separate wing of a previously existing facility. As a general rule, what happens in the Metropolitan Correctional Center on the third floor, is that all of the guards in the institution are routinely rotated through that same floor. I noted in Mr. DeFeo's remarks with respect to the treatment of people in the witness protection program, he noted that whatever rudeness might be encountered by a witness is generally encountered by those witnesses dealing with Government personnel that have not been trained vis-a-vis the witness security program. The problem that necessarily happens with respect to the Bureau of Prisons is that each and every individual correctional officer in the institution is rotated through the protected witness unit, and therefore those witnesses are dealing with people who do not have any specialized training with respect to the witness security program.

The establishment of a separate facility or a separate wing of a previously existing facility to be staffed only by correctional officers assigned to that wing I think would solve a great many of the problems.

Chairman NUNN. How about the other problems you mentioned? You mentioned food problems, mail problems—I think we have already gone through the general population problems. I think you also mentioned in your statement education and training, medical access, telephone calls, and visiting problems. Let us start with food problems. Have you got any particular suggestion on that?

Mr. COSTELLO. Senator, with respect to the current food problems, I think that they could easily be solved by simply convincing the inmates through one means or another that in fact the current system is being followed. The current system will work if it is followed and all we have to do is convince those witnesses on the third floor that it is in fact the rule and it is practiced without exception every day.

There is something else I would like to mention and that, I think, is a serious deficiency with respect to incarcerated individuals under the program that currently exists. At least in the metropolitan New York area, there is absolutely no Federal facility for housing women in the witness protection program. As a result, what the marshals and the Bureau of Prison personnel are required to do with respect to a woman who enters the witness protection program, who is incarcerated, is to house those people in State or local facilities and quite frankly, that is a courtesy that has been rendered to us by the State and local jails and something that I do not think we can count on in the future. I think certainly some steps must be taken to provide adequate protected facilities for housing women inmates.

Chairman NUNN. What about the telephone calls? Is there any way to address the problem of lack of security there?

Mr. COSTELLO. Yes, Senator. The main problem that is involved with respect to telephone calls as the system currently operates is that if a protected witness wishes to make a long distance call, he must get in touch with the MCC operator who then puts him in touch with the long distance operator. The MCC operator then, as I understand it, remains on the line until the receiving party accepts the phone call, which necessarily means both the MCC operator and the long distance operator become aware of whom that prisoner witness is calling and what telephone number is being called.

I believe that that problem could be rectified rather easily by either one of two methods, either establishing an FTS line with limited access by protected inmates, or by screening and dispatching all telephone calls to long distance areas through the local marshals office. In New York at least, it is particularly convenient since the inspectors with the U.S. Marshals Service are located in the building right next door to the MCC. I do not believe it would be a substantial problem for them to handle such calls.

Chairman NUNN. Do they have any kind of educational training facilities at the MCC?

Mr. COSTELLO. They do but those facilities are limited to the general inmate populace. A constant complaint made of all protected inmate witnesses is that frankly they do what they call harder time. They do harder time in their belief because they are not entitled to the same

educational facilities and quite frankly, it is not the fault of the MCC or the Bureau of Prisons with respect to the physical setup that now exists. Simply as a result of the necessary security measures, they cannot possibly be given the benefits, the same kinds of benefits, that are given to other inmates.

I think that is the type of problem that would certainly be solved by a separate facility. In addition to that, there are certain privileges that other inmates would receive, such as furloughs, that necessarily, because of security measures, are out of the question with respect to a protected witness. All of these little items add up to the belief expressed and otherwise by protected inmates that they do harder time in the MCC in New York than do people in general population.

Chairman NUNN. What about the two reasons that I have heard most against a separate facility? No. 1 is cost. Have you done any kind of thinking or analysis on the cost feature?

Mr. COSTELLO. Senator, with respect to the actual cost in terms of dollars, I am certainly not qualified to render an expert opinion with respect to that. But it seems to me that really the important question here is not really a question of dollars. It is the cost of making this program work or not. As it currently exists, at least with respect to the beliefs expressed by the people on the third floor at the MCC, they feel it does not work because they feel they have to do harder time than other inmates do. If we had a separate facility, many, if not all, of the complaints that have constantly come up I think would be solved. The cost in terms of dollars I cannot measure. I simply do not know the answer to that.

But I think that equally important to the actual dollar cost is the cost of effectively and efficiently making this program work and making the inmates and the general population believe and understand that we are making a commitment to make this program work.

Chairman NUNN. Is there any danger of getting all the protected witnesses together in one facility and having someone to go after the whole facility with explosives or anything like that? Is that a reasonable concern?

Mr. COSTELLO. My personal view is that it is not.

Chairman NUNN. Do you feel that prisoner witnesses get adequate credit and parole considerations for their cooperation?

Mr. COSTELLO. Senator, with respect to parole, an interesting and in fact a unique situation faces the protected witness who is an inmate of the Bureau of Prisons. The fact is their cooperation is indeed brought to the attention of the Parole Commission at the time the inmate comes up for his parole hearing, but what is in fact I think curious is that with respect to the parole guidelines the Parole Commission has, what they call a salient factor score. That salient factor score when combined with the severity of the offense committed gives the Parole Commission prospective guidelines during which an inmate should be paroled. It is curious to me that the salient factor score does not include any category for cooperating witnesses who are indeed enrolled in the witness security program. It is strange that with respect to the salient factor score, the higher your score, the better it is for the inmate, in terms of getting out of jail early.

My understanding is, my recollection is, that you receive one point for having committed a crime that did not involve the use of an

automobile, but you receive no points for cooperating with the Government and testifying against other high-level criminals, and in fact as a result of that testimony, being placed in a life-threatening situation which requires your placement into the witness protection program.

Chairman NUNN. You do not get any positive points at all?

Mr. COSTELLO. Not with respect to the salient factor score. As I did point out, your cooperation, your testimony and your status is brought to the attention of the parole hearing examiners but in terms of the numerical factors that decide when you come up for parole, in terms of the guidelines, they are only guidelines, you perceive no credit for cooperating with the Government in terms of the salient factor score.

Chairman NUNN. Is it not also a factor sometimes that works negatively against the potential parolee in that his testimony sometimes expands the scope of his past criminal activity and that factor can be worked against him in the parole hearings?

Mr. COSTELLO. Senator, I think in all fairness clearly if that situation exists it should not. I think what you are referring to is that as the witness testifies more and more openly, he necessarily admits to having committed more crimes than the Government could possibly have proved he committed before his testimony. As a result of this testimony, his criminal history becomes clearer to the parole hearing examiners, and as a result of that they use that testimony against him in upping the guidelines and deciding when to release that person on parole.

I am not sure that that situation does exist. I know that it has been reported to me that it does. Protected inmates have made complaints about this.

Chairman NUNN. We have had it reported to us also.

Mr. COSTELLO. If it does exist, it is clearly extremely unfair to the cooperating individual and if anything will foster in the future that witness from telling the Government the complete truth about his criminal background, this will, which of course, would eliminate possible other investigations that the Government could have entered into because of the witness' fear that this information would be used against him.

Chairman NUNN. How are the prisoner witnesses treated by the prison guards?

Mr. COSTELLO. As a general rule, I would say that they are treated the same as any other inmate. I noticed before with respect to Mr. DeFeo's statement, and I pointed this out earlier in my testimony, that the guards that are routinely rotated through the third floor Protective Custody Unit as I understand it receive no specialized training with respect to the witness protection program or the people in that program. I know it has been reported on a number of occasions to us that they have been referred to, by prison guards, as rats; but I am sure that is on an individual basis and I do not think that it is true of all or even the majority of prison guards. I think it is in fact as Mr. DeFeo rightly pointed out, the result of the inexperienced personnel, inexperienced in the sense of dealing with people in that particular status as Government witnesses who are incarcerated.

Chairman NUNN. The Prisoner Witness Wing of the MCC which you have described, are there people there that are not protected witnesses, part of the general population also there?

Mr. COSTELLO. Yes, Senator.

Chairman NUNN. Is that a problem?

Mr. COSTELLO. It is clearly a problem with respect to the psychological impact on those inmates that are incarcerated there. They know that these other individuals are housed in the same unit that they are. They know that they are not in the witness protection program, but they do not know what they are doing on that floor. As I mentioned to you earlier, if a witness is concerned about the visitors and the family of another protected witness, you can imagine the feelings they have for another incarcerated individual who is not in the same position they are. They have expressed the belief that there is no reason that they should be housed with other people who just simply need protection in. It is a physical problem that exists at the MCC in New York. It probably is the same problem that exists at other MCC's.

Frankly, when it was brought to our attention, I personally was surprised, because I was unaware that the people on the third floor included people who were not in the witness protection program.

Chairman NUNN. Would you say generally speaking the problems faced by prisoner witnesses today make it harder for law enforcement to secure the testimony of other prisoners or would you say the program is working well enough to make it an encouraging factor? How would you evaluate it as far as it's being an incentive now, to prisoners who may want to testify?

Mr. COSTELLO. Senator, I can only evaluate that in terms of what those protected inmates have been telling myself and other people in my office over the last couple of years. As I mentioned before the phrase "harder time" comes up over and over again. They feel that they are mistreated. They feel that they have to do more onerous jail time than other prisoners. I think it is clear that the bad publicity that the witness protection program has been getting in terms of the media, novels, movies, certainly does nothing to encourage other people to come forward and get involved in the program.

What happens to witnesses who are incarcerated and are in the program is a matter of general knowledge to other inmates in the MCC. I am sure as a result of that, that it is a matter of general knowledge to other inmates in all other Federal facilities.

It is as I said a problem of what the witnesses themselves believe. What they believe they espouse, what they espouse other inmates hear and that becomes the gospel. I think as the situation currently exists it does nothing to really foster other people coming into the program. Indeed, we have had incarcerated protected witnesses who have told us that they have other friends who are in similar situations, in terms of being incarcerated, who would simply not get involved and would not testify for the Government because they did not want to do this "harder time".

Chairman NUNN. As far as the allegation that putting these protected witnesses in a separate facility could lead to someone trying to blow up the facility, get them all at once or something of that nature, would not that same threat apply to a wing of any other prison with equal validity? In other words, if someone was going to be able to go in and destroy a whole prison, they could also most likely do the same thing in one wing of a prison?

Mr. COSTELLO. I agree it is theoretically possible. I think personally it seems highly unlikely. Certainly they could do that to any organization that exists in the United States, whether it is police headquarters or the FBI headquarters. I think it is highly unlikely that a step like that would be taken.

Chairman NUNN. Thank you very much.

[The complete statement of Robert J. Costello follows:]

STATEMENT OF ROBERT J. COSTELLO, DEPUTY CHIEF, CRIMINAL DIVISION,
U.S. ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK

Dear Mr. Chairman, in October 1975, Paul Curran, the United States Attorney for the Southern District of New York, in his final report to the Attorney General stated:

"One of the most significant aids to our enforcement work has been the federal witness protection program. It has been the major factor in the success we have had over the past two years in convicting over 200 major narcotics traffickers.

"... Were it not for the program it is clear that a number of major recent prosecutions could not have been maintained. This invaluable asset to federal law enforcement has enabled the Government to provide frightened individuals with both the physical and psychological security which is necessary if testimony is to be obtained from persons whose lives are in constant danger because of their cooperation with the Government."

Those words uttered over 5 years ago are as true today as they were then. I am Robert Costello and I have been an Assistant United States Attorney in the Southern District of New York for the past 5½ years. During that time period I have requested the placement in, and worked with, numerous individuals in the witness security program.

Mr. Curran is quite accurate in stating that the witness security program provides for both the physical and psychological security of government witnesses. Both of those functions are equally important. The witness security program is the Government's sole weapon to combat the psychological and physical warfare practiced by the criminal element on prospective government witnesses. Many, if not most, of the major cases brought today, especially in the areas of organized crime and narcotics, would not be possible without the witness security program.

The program in general, is run by inspectors of the United States Marshal's Service. As with all human endeavors, it is not without its problems. However, it has been my experience and those of my colleagues that the inspectors of the Marshal's Service have done an outstanding job with a task of this magnitude. We have found the inspectors to be a dedicated group of responsible men trying with great zeal to make this system work. Certainly there have been problems in individual cases, but it has been my experience that these problems rarely occur to those witnesses who enter into the program with a spirit of cooperativeness and a full understanding of the limitations of this program. Those individuals who encounter difficulties are most often those who refuse or are unable to work with the inspectors in establishing a totally new life in a new environment.

INCARCERATED WITNESSES

My comments today will focus on the particular problems involved with incarcerated individuals who are placed in the witness security program, and whether the current program satisfies the physical and psychological needs of those individuals.

Unlike the normal witness in the program whose physical and psychological needs are handled by inspectors of the United States Marshal's Service, incarcerated individuals in the program are handled by Bureau of Prisons personnel.

In New York City, incarcerated protected witnesses are housed on the third floor protective custody ("PC") unit of the Metropolitan Correctional Center ("MCC"). The MCC is a federal prison located in downtown Manhattan that houses all federal prisoners serving short period terms or awaiting trial or other court proceedings in the Southern or Eastern Districts of New York as well as the District of New Jersey. The MC building is physically attached to the United

States Attorney's Office building, which also houses the inspectors of the Marshal's Service.

During the past 2 years as a result of a wide variety of cases handled by my office I have had weekly contact with protected prisoners housed on the third floor of the MCC.

Before dealing with the problems of the PC unit of the MCC it is necessary to reiterate that the witness security program is designed to protect the witnesses physically and to assuage them psychologically. With that in mind, it is important to note that whether a prisoner's fears are factually true or not is irrelevant. What is relevant is what the witnesses themselves believe. Purely accidental or coincidental events may have just as great a psychological impact as real machinations. The continued success of the program is enabling the Government to put on the witness stand psychologically and physically secure witnesses and to attract other witnesses in the future is dependent on the public view of the efficiency of the program in protecting individuals.

PROBLEM AREAS

1. Women's facilities

The most glaring defect with the present system in New York is that there is no facility in the metropolitan New York area for handling incarcerated females who are accepted into the Witness Security Program. The protective custody unit at the MCC in New York is limited to male prisoners. At present, protected female inmates must be placed in various state institutions, not under the control of either the Federal Bureau of Prisons or the inspectors of the Marshal's Service. This is clearly an unacceptable situation. A protective custody area for female inmates should be established in the metropolitan New York area.

2. The protective custody unit at the MCC

The following areas are the most common subjects of complaints with respect to the PC unit at the MCC in New York.

A. Nonprotected witnesses

The PC unit houses 24 individuals at any one time. Not all of the individuals kept in that unit are however protected witnesses in the witness security program. Whether or not those other individuals pose an actual security risk to the protected inmates is irrelevant because the inmates in the witness security program believe they do. The PC unit should be limited to those incarcerated individuals in the witness security program.

B. Staffing

Control of protected inmates is totally in the hands of Bureau of Prison personnel. Correctional officers from the entire prison are routinely rotated through the third floor PC unit. Protected inmates have most often served time in other prison facilities both federal and state and rightly or wrongly mistrust all prison guards and believe their security is threatened by the rotation of all correctional officers through the protective custody unit. If the control of protected inmates is kept with the Bureau of Prisons, the correctional officers should not be rotated throughout the prison. Rather selected guards should be permanently assigned and trained by the Marshal's service.

C. Food

Meals for all inmates of the MCC are prepared in the main kitchen of the institution by inmates. The food trays which will be sent to the PC unit are supposed to be randomly selected by the Operations Lieutenant or the Unit Counselor. As a result of several incidents reported to us in the last few years the protected inmates believe that this is not always done. I stress that these incidents have not been verified, but the more important consideration is that the inmates believe them to be true. Two separate incidents are most notable, and most often mentioned by the inmates. On one occasion an inmate allegedly received a randomly selected tray of food with the word "EAT" spelled out in the mashed potatoes. In another similar incident a cartoon of a rat was allegedly drawn in the mashed potatoes. Whether these incidents are real or imagined the psychological result is the same.

This problem could be rectified by compliance with the established procedure.

D. Mail delivery

Another frequent area of complaints deals with the delivery of mail. Apparently mail that is sent directly to a protected inmate at the institution is routinely rerouted to Washington, D.C., where it is placed in another envelope and sent back to the institution. One recent inmate missed a parole hearing as a result of the delay. Such delays could be eliminated by routing the mail to the Marshal's service located in the building next door.

E. Long-distance telephone calls

A complaint that does involve security problems develops in the area of long distance telephone calls by protected inmates from the institution. Current procedure requires that the protected inmate contact the prison operator and give his initials. That operator then contacts the long distance operator and stays on the line until the receiving party accepts the collect call, thereby informing the prison operator of the telephone number called. That procedure could be rectified by either installing an "FTS" line and allowing limited access or by patching the calls through the Marshal's office.

F. Visitors

Current visiting policies are the subject of great concern to the protected inmates.

All visitors to the PC unit enter the MCC with visitors to all of the other inmates. Needless to say this creates problems when the people they are testifying against are also inmates at the MCC. For the protection of other protected inmates, their visitors are required to identify themselves to prison officials. Thereafter visitors of one protected inmate meet in a common room at the same time as visitors to another protected inmate. Inmates in the Witness Security Program do not want other protected inmates or their visitors to be able to identify their own family members. Likewise, although it is recognized as being for security purposes, protected inmates do not want their families identified to Bureau of Prisons personnel. In addition to this protected inmates claim that visitors to the third floor unit can see directly into the living area for all protected witnesses. Finally, all legal visits take place in that same room at the same time as social or family visits making it extremely difficult to have confidential communications with the attorney.

There are other complaints concerning the visiting room which the protected witnesses believe places them at a disadvantage to normal inmates. Essentially they complain that unlike all of the other visiting rooms in the institution, the PC visiting unit has no rest room for visitors, nor is there any sandwich, coffee or cigarette machines available. While these may sound like petty complaints, the inmates state that without these amenities their visits are cut short, a disadvantage they point out not suffered by the rest of the inmate population.

G. Medical treatment

Protected inmates claim that they are disadvantaged from the rest of the prison population with respect to medical treatment. Once a week a contract doctor visits the unit. If additional treatment is required, the protected inmate is taken by two marshals to a public health hospital. If there is a need for an operation or other similar long term hospital treatment the protected inmate must be taken to a federal prison hospital facility such as that in Springfield, Missouri. Those facilities themselves do not have protected custody units.

H. Post-testimony incarceration

The PC Unit at the MCC is designed only to hold those protected inmates that are needed for testimony. After the testimony is completed, the Bureau of Prisons endeavors to place those individuals into general population under false identities at other state and federal institutions so that they can complete their prison terms.

The receiving institution is selected after determining that none of the individuals that are listed as threats to the witness are housed in that same institution. Where the process breaks down however, is that it is virtually impossible to identify all of the individuals that know that the protected witness has been cooperating with the Government. The current system also fails to take into account the incredible "grape vine" that exists between federal and even state institutions. This uncertainty plays havoc on the mind of the protected witness.

The only reasonable solution is to set aside a wing of a current federal institution for just such cases and to staff that wing with correctional officers who work only there and are not rotated through the rest of the prison.

1. Parole

Special factors apply to those protected inmates who are eligible for parole. Once paroled the witness will enter under the protection of the marshal's service and be relocated and helped to gain employment. While the cooperation of the protected inmate will be brought to the attention of the parole board it is curious that the Parole Board's "salient factor score," which helps to define the parole guidelines, does not have any category for such cooperation or that the inmate will be placed under the protection of the marshal's service. The parole commission should revise their guidelines to cover witnesses in the witness security program.

PROTECTED INMATES PERCEPTION OF THE PROGRAM

It is the common view of protected inmates that because of the necessary security measures they do "harder time" and receive less in the way of training, education and privileges such as furloughs than other inmates. This perception does little to foster cooperation by others similarly situated. Indeed the public perception of the program, fanned by the recent bad publicity in movies, books and newspapers, has undoubtedly led other individuals not to cooperate with the government. Incarcerated witnesses have stated that they knew many individuals who would not cooperate because they believed that the witness protection program would require them to do "harder time" if they were incarcerated.

Chairman NUNN. Mr. Hartnett, we will ask you to testify next. Your exemplary career with the FBI and your excellent credentials are well-known. Your expertise and contributions to the field of pursuing organized crimes serves as an example of the dedication and integrity of outstanding performance for FBI agents to emulate. We congratulate you on your fine career and appreciate very much your being here with us today.

Mr. HARTNETT. Thank you very much, Senator.

Chairman NUNN. We will proceed with the questions with you, as we have with the other witnesses this morning. We will put your statement in the record following the questions.

Mr. STEINBERG. Will you give us a brief résumé of your background?

Mr. HARTNETT. Yes, sir, Mr. Steinberg. I served with the FBI from 1951 until my retirement in August 1979. The last 10 years of my career I served as the Organized Crime Supervisor in the Buffalo FBI office.

Mr. STEINBERG. Mr. Hartnett, in your statement you have alluded to the fact that in many situations individual FBI agents have assisted the witnesses with employment or documentation when the program broke down. Is this due to the fact that the FBI agent who developed the witness has a close rapport with the witness and has an interest in keeping him in a good frame of mind to cooperate and testify?

Mr. HARTNETT. Yes; I believe that strongly, Mr. Steinberg. You have to understand when a witness, especially one with a criminal background, makes the decision to all of a sudden come over to law enforcement side, so to speak, they have developed a certain degree, high degree of confidence in the agent, the law enforcement officer representing the Government that they have been talking to to the point where they have made that important decision to change horses, so to speak, in the middle of the stream.

As a result of building up that confidence in that contacting agent, a strong rapport is developed between both the witness and the agent that

can exist through the entire period of time that witness is furnishing information to the Government, to the agent and for many years afterward.

Conversely, the agents may include a strong interest in the welfare, both physical and mental, of the particular witness that they have developed this rapport with. With few exceptions, the majority of FBI agents I ever came in contact with strongly desire to see such witnesses are properly handled after making that key decision to cooperate with the Government and that interest remains for many, many years.

Mr. STEINBERG. In your prepared statement, you mentioned that marshals' rules and regulations make it difficult for the case agent and the prosecutor to maintain contact with the witness. In that regard, one, what is the difficulty and, two, why is it important that you maintain this contact?

Mr. HARTNETT. The difficulty is you have this strong relationship developed and then when the person is taken into the witness protection program, their lifeline, so to speak, with the investigative agency, namely the agent that has dealt with that person for periods of time, is severed abruptly. The control of that witness is removed from the case agent and turned over to people that have no immediate rapport, contact with such a witness, no relationship such as existed or exists between the agent and the witness. And then from then on the decision as to when, where and how the agent or prosecutors may deal with that witness lies principally with the Marshals Service. A request is made to meet with the witness and the Marshals Service arranges for it. But the immediate problem is you are removing a person and family from their environment and the first time they run into problems, which is usually about the first hour after they go into the program, they look for someone for guidance, help and advice. That person, with few exceptions, is the agent they have dealt with.

And so while they are instructed under no circumstances are they to contact a previous contact agent, so to speak, or allow that person to know where they have been relocated, the truth of the matter is they are on the phone with them in a short period of time looking for advice.

Mr. STEINBERG. Do you also need this ready access to debrief witnesses and prepare them for trials?

Mr. HARTNETT. We certainly do, because these witnesses, many of them, have a wealth of knowledge and while preparing for trial they are continuously recalling situations involving criminal activity, as well as intelligence information that should be furnished immediately to the investigative agency that has dealt with that witness. If they are not available on a continuous basis, why that channel of communication is not open.

Mr. STEINBERG. Mr. Hartnett, we have heard many times that a lot of different agencies use one witness and the witness may be talked to by literally scores of people representing various State and Federal agencies. Do you think it is important to designate one Federal agent as a contact agent to monitor all these contacts with a protected witness?

Mr. HARTNETT. Yes, I do. I feel that agent should be the agent that has developed and dealt with that witness. To suggest a witness, be

interviewed by teams of investigators from various agencies, without some type of control by the contact agent, once again, that the witness has looked to for guidance, et cetera, I think it is improperly handling the situation. I think the contact agent, the closest person to that witness, should more or less be in control of such interview practices. The interviews should take place because they are necessary for the other agencies to obtain vital information as well as the prosecutors, but there should be some type of guidelines rather than just to expose a witness to any investigator or teams of investigators who want to interrogate them at length.

I am not in favor of witnesses being debriefed by scores of people. I think it should be handled on an individual basis, at least one on one, at most two on one.

Chairman NUNN. With this kind of one-on-one contact through the Marshals Service protection, that is after the witness is being protected, are you suggesting that relationship with one agent still be in existence?

Mr. HARTNETT. I certainly do, Senator.

Chairman NUNN. And that FBI agent, DEA agent, whatever the case may be, would know where the witness was and work with the Marshals Service?

Mr. HARTNETT. Certainly. For all intents and purposes, they know now, but the witnesses are instructed by the marshals that if they allow their contact agents to know their whereabouts, they could be immediately severed from the program.

Realistically once again they more often than not do keep in contact with that agent. Of course, that puts undue pressure on the witness because they realize they are jeopardizing their position.

Chairman NUNN. What you are suggesting then is not removing the Marshals Service out of the standard for the direct supervision of security, but you are suggesting there be liaison with the particular agencies that have developed the witnesses, is that right? Or are you saying both, are you saying that the witnesses ought to be really protected by the agents or by the agency that develops that witness?

Mr. HARTNETT. First, I believe the contact agent should have much more input into the situation than they currently have. They should be allowed direct access any time they wish with that witness within reasonable demands. As far as the protection of the witnesses, I feel from the physical protection aspect, I think generally the Marshals Service has done an outstanding job, just based upon the record of the very few instances where any witness had been harmed. I do feel strongly that where a witness is brought back to the so-called danger area where he had operated in the criminal underworld, that I think in that case the security for that witness should change over to the investigative agency who have experienced personnel that are not only familiar with the community, they are familiar with the identities of the underworld members who could be potentially dangerous to the witness, and I think they are generally in a better position to provide the necessary security in the danger area than to bring in a team of Marshals from other parts of the country into a community that they really do not know anything about. They certainly do not know the identities of the hoodlums, so to speak, and I think in those instances

that the security should be turned over with an assist by the Marshals, with manpower for guarding purposes especially, the lodgings the witness is placed into, but I think the control of the security in the danger zone should be with the investigative agency responsible for bringing that person into the program.

Chairman NUNN. Mr. DeFeo, on that point, you mentioned a little while ago you thought it was important to keep a distinction between the witness and the particular developing agency in the sense people, jury, defense attorney, or judge, anyone else, would not get the impression that that witness was under any kind of monetary enticement or other improper influence in possibly obtaining the testimony. Does Mr. Hartnett's suggestion about the developing agency assuming direct responsibility with the Marshals Service, does that cross that line?

Mr. DeFeo. I feel it does not, Senator. My original remark about maintaining a distance between the witness and prosecutor and developing agent applies to financial matters. In terms of contact for the purpose of witness development, security in the danger area, I do not feel any of these type of contacts pose a problem. Strictly in terms of financial matters, someone other than the person who wants the witness' testimony ought to be the person making the decision about how much money he gets.

Chairman NUNN. Do you generally agree with Mr. Hartnett's suggestion about the danger zone?

Mr. DeFeo. That is obviously a technical problem in which Mr. Hartnett and the Marshals people have more expertise than I. I think basically my reaction would be that as long as the admitting agencies are willing to assume that kind of responsibility when the witnesses are back in the danger area, I can see a great many advantages. When you bring a witness back for trial, his developing agent has to be there anyway. He is a liaison, probably testifying at the same time. As Mr. Hartnett points out, the team of Marshals who provide security do not usually know the local criminal organization. I think if the developing agencies are willing to accept that responsibility, it may be a happy compromise.

Mr. STEINBERG. Mr. Hartnett, are you familiar with the situation where an important Government witness was flown out of State every day during his trial testimony simply because the Marshals had more money in their travel budget than they had in their overtime budget?

Mr. HARTNETT. I am familiar with the witness being flown out of State on a daily basis while in the Buffalo area for testifying. I have heard stories to that effect concerning budgetary problems. I cannot comment firsthand on that, I have no direct knowledge.

Mr. STEINBERG. But he was flown in and out of the State every day prior to and after his testimony?

Mr. HARTNETT. That is correct.

Mr. STEINBERG. What effect did this have on the witness and on the prosecutors and agents ability to prepare the witness?

Mr. HARTNETT. No. 1, it subjected the witness to a situation which certainly did not put him in a happy frame of mind to be put on the witness stand each day under those circumstances. It was a drain on him physically and mentally.

It also removed his presence from immediate availability from the prosecutor or contact agent in necessary preparation for his testimony. It certainly limited that availability. I just do not think it was a correct way to handle the situation.

Mr. STEINBERG. Mr. Hartnett, do you believe the term security, as it is used in the witness protection program, should just mean protecting a person physically?

Mr. HARTNETT. Definitely not. That is actually a most important factor, and a factor which, as I mentioned before, the Marshals perform quite adequately. They are trained in guarding prisoners, witnesses. The problem being is to keep that witness in the proper frame of mind. If you just approach the security factor as the paramount issue without taking into consideration the witness' frame of mind, he certainly will not be the best type of witness to put on the stand.

It is paramount that considerations be given to these people other than treating them as a potential danger situation in the form of harm coming to them.

Mr. STEINBERG. Mr. Hartnett, you have had experience with literally scores of relocated witnesses. How was employment obtained for those witnesses?

Mr. HARTNETT. First of all, I know no witness relocated from the Buffalo area, at least through the FBI, that ever a job was obtained for them.

Mr. STEINBERG. By the Marshals Service?

Mr. HARTNETT. By the Marshals Service. More often than not, individual FBI agents through contacts in the locale where the person was relocated, would arrange through fellow agents in that locale to get a job with a person. And we did this many times.

Mr. STEINBERG. You have been involved with the program since its inception by placing people into the program. Have these problems such as employment, documentation, credit, so forth, have they been around since the time you first became involved with the program?

Mr. HARTNETT. They have been around as long as I can remember, going back to the early 1970's. I must say conditions have somewhat improved around the time of my retirement. I cannot comment on what they are since August of 1979. But it posed a continuous problem in obtaining documentation for these individuals.

More often than not, where these documents were not forthcoming, the case agents would normally once again contact fellow agents in given areas to come up with documentation to at least allow these people to exist until their formal documentation was obtained. I just find it hard to believe, yesterday before I came down here, there was an article in the Buffalo newspaper setting forth how easy it was for all those radical fugitives, and the weathermen, and your famous burglar down in this area, Bernard Welsh, how easy it was for these people to obtain documentation through Government channels by getting a Government publication. I forget the name of it, but, how in effect, you can get various documentary type material to establish credit, do whatever every person has to do in life to back up their situation.

I just feel there has got to be an easier way, faster way to get documentation for these people.

Mr. STEINBERG. Are you disturbed by the fact these problems may discourage potential witnesses from coming forward to cooperate with the FBI?

Mr. HARTNETT. Yes; I am.

Mr. STEINBERG. From the perspective of the FBI agent out on the street, the agent who has used the program and has to convince the witness to come forward and testify, are you beginning to get the feeling that they would hesitate to recommend the witness program to the witness for fear of what harm may be caused him and his family?

Mr. HARTNETT. I have heard agents voice their opinion they would not recommend someone going into the program. As far as physical harm, I do not feel that is paramount. I think the problem with a lot of the agents is the fact they develop rapport with these people and they do represent the U.S. Government. And then all of a sudden the change in the lifestyle of their individual, the family going into the program causes considerable problems, obviously. I think this somehow affects the conscience of the agents who in many cases subject people to situations they probably could not accept.

Mr. STEINBERG. Mr. Hartnett, do you feel there should be a transition period for a relocated witness under fairly pleasant circumstances where the witness can receive adequate counseling and documentation?

Mr. HARTNETT. I certainly do. There is a traumatic time period for any relocation situation. Those initial weeks, months where, once again the lifestyle of an individual and his family is changed abruptly, and I feel during that time life should be made as easy as possible for these people, and certainly counseling should be available to them, especially guidance as to what to expect concerning the area they are moving to; some type of professional help, certainly, as I mentioned, counseling, to try and bridge that gap, prepare them for what to expect.

I can think of one particular case a few years back where we relocated a witness and his family and the Marshals allowed us to maintain that witness and family under very ideal circumstances during the summer months whereby a relaxed atmosphere existed. Both prosecutors and agents had direct access to the family and were able to spend time to prepare them for what to expect when they moved on to their relocation site. To abruptly sever a witness and family from previous contact with law enforcement and drop them in a new environment, there has to be something in between there to make that transition more gradual.

Chairman NUNN. Thank you very much, Mr. Hartnett. We will put your full statement in the record.

We appreciate very much your being with us.

[The complete statement of Mr. Hartnett follows:]

STATEMENT OF DON HARTNETT

Mr. Chairman, I appreciate this opportunity to appear before this Subcommittee for the purpose of testifying about the Witness Security Program. The Witness Security Program is something that I think is particularly important to the infiltration and prosecution of organized crime. My belief is based upon my experience as an agent in the Federal Bureau of Investigation. I served with the FBI for a period of 28 years and retired in August of 1979. The last 10 years, I served as the organized crime supervisor of the Buffalo, New York, FBI Office.

During this time, I was responsible either directly or indirectly for putting over 60 witnesses into the Witness Security Program. Without this Program, it would have been impossible to bring the number and kind of prosecutions that we brought against organized crime.

I speak about the importance of the Witness Security Program from a perspective slightly different than that of my colleagues on this panel. They speak as prosecutors and attorneys. My observations of the Program and my dealings with the Program have been as an agent on the street working against organized crime and trying to develop informants and witnesses so that they may be presented by the prosecutor before a grand jury or at a trial. Thus, my perspective is more intimately concerned with the use and effect of the Program as a tool to develop informers and witnesses in the fight against organized crime. In this regard, I have noticed various problems and difficulties that have arisen in the operation of the Program. It is also with this perspective that I have developed, over the years, certain ideas as to how the Program might be operated more effectively and efficiently.

My first recollection of a particular relocated witness is that of Joseph Zito in 1972. Joseph Zito is a witness who was handled in a much different manner than witnesses are presently handled. I have seen a lot of good changes in the Program; however, I have also seen a lot of problems that have simply lingered on for years without being resolved. Although I retired in 1979, I have tried to keep in touch with this field of law enforcement, and it is my understanding that some of these problems still exist. I hope that this can be changed for the sake of law enforcement. These problems need to be addressed, and I think the United States Marshals Service needs some assistance from other organizations and other agencies.

I believe that one of the major problems is caused by the fact that an abrupt relocation without any sort of interim period of adjustment makes it much more difficult to successfully relocate a witness. Witness relocation, especially considering the fact that it is usually done in haste and in great fear, is positively traumatic for the family. Relocation is complicated by the fact that it means that the witness is taken into an area where he knows absolutely no one; he can contact none of his former friends; he can contact none of his family; he cannot even contact his agent whom he worked for and who developed him as a witness. Additionally, his children have to be told that they can never mention their former name or their former home. The witness and his family are basically without any past at all.

There should be some sort of interim period of adjustment to cushion this type of shock. If possible, a relocated witness should be taken from the danger area and placed in another area, for three or four weeks, and during that period of time he can be oriented into the Program and provided necessary background information. Thus, when the witness goes to a new area, he will be able to answer questions such as: Where are you from? What did you used to do for a living? Why you came to this city? These are normal questions that are asked of any person who moves into a new neighborhood. Witnesses have not been adequately prepared to respond to these type inquiries.

Too often a witness and his family are simply thrown into a motel (sometimes only one room) in a strange city with no briefing or preparation. During an interim period of adjustment, provision of such services as employment counseling, psychological counseling, and social counseling, would help the family to adjust to the problems and concepts of relocating. Additionally, the sponsoring agent should actually accompany the witness because, most often, the witness has developed a close rapport with that agent.

The new personal history a witness is provided during the interim period must match documentation provided by the Marshals Service and, from my view, there is a real problem with documentation. The witnesses do not receive their identifying documents in a timely fashion. The documents they do receive are generally not adequate for them to begin their lives over again. At the time of my retirement in 1979, documents were taking months and years to arrive. Social Security cards, for example, would take anywhere from six to twelve months to be delivered. It is my understanding that in recent times, some of this delay has been substantially cut and a witness may reasonably expect to begin receiving documentation such as a Social Security card within a matter of 1, 2, or 3 months. This is an improvement; however, it is not the case for all documentation, and it does not solve the problem of providing adequate documentation. In fact, I

know that in several cases the FBI has unofficially obtained appropriate documents for witnesses that it has relocated through the Program, in order to sustain the person while he awaited Marshals' documentation. One example I can think of is Mr. Charles Carlo. Carlo turned out to be a successfully relocated witness, but in my opinion this relocation went well because for the period of one summer, Mr. Carlo was relocated in an interim manner. He was taken to an area under FBI auspices and carefully and slowly debriefed and prepared for his relocation. This was expensive but it was paid for by the Law Enforcement Assistance Administration. Because of this gradual change, he adapted to the Program much better and he was ultimately successfully relocated. Even then, however, at the end of the summer the Marshals had still not provided him with school records or car registration records.

This is an unusual situation and I seriously doubt that the United States Marshals Service would permit it to happen again in that it violates their policy. I am also reminded of another situation regarding documentation in which the Marshals attempted to obtain school records for the children of a relocated witness. They attempted to obtain these records for a period of three or four months, and the problem became critical when the relocated children were about to attend their new school but still had no school records. The FBI contacted the Marshals and asked them about this problem. The Marshals replied that the school which the children had last attended was closed during the summer. The Marshals did not realize that the records that they were seeking were maintained by the Board of Education which was open year round. Once we suggested that they go to the Board of Education, the records were secured very quickly, but it took them several months to act on this suggestion.

Another problem with documentation is in the area of employment. The documentation provided simply does not enable a witness to go out and get a job on his own. He has to go through the Marshals Service, but, quite frankly I am not familiar with any witness who has obtained employment through the Marshals Service. I am sure that there are some, but I am not familiar with any case. Normally it was the FBI, and not the Marshals, who obtained jobs for the important witnesses. The problem is that the Marshals simply do not have the appropriate contacts in the business community. Agencies such as the FBI and DEA have such contacts. These agencies are in constant touch with the business community and thus have much better contacts and much better facilities to obtain employment.

This is something to which the Marshals should give some very serious consideration. They could increase their contacts in government, business and industry for obtaining not only employment but also documents by utilizing such people as ex-FBI and ex-DEA agents. Many such agents could effectively do this type of work on a contract basis. Many such agents could do this type of work through the contacts that they developed during their 20 or 25 years in the field of law enforcement as well as the contacts that they have developed after their retirement. I think that this type of contact and this type of arrangement would add substantially to the Marshals' capability of finding employment for their relocated witnesses. I believe that both the FBI and DEA would be happy to cooperate, not only through their existing agents but also the retired agents.

Another problem with documentation is credit. There are no plans in the Program to help a witness obtain credit or credit background or loans whether or not that witness was or is credit worthy or loan worthy. There are many people who would otherwise qualify for credit and loans, but they have been relocated and provided no record of their past. They should have the opportunity to at least obtain a loan. Some ideas that should be considered are government insured loans (with adequate collateral), SBA loans or FHA loans. At any rate, it is not fair to completely deprive an otherwise basically credit worthy individual of his entire credit background and credit rating, which he may have worked years to obtain, simply because he has been relocated and cooperated with the government. It is true that not all witnesses can be given credit or be assisted in obtaining it, but that does not mean that none can possibly be given credit or even assistance. There are some exceptions, and they have to be recognized.

Another problem that I have perceived with the Program is that the agencies which have relocated the witness are severely limited in their access to that witness. It is very rare that the witness can be permitted to call an FBI agent directly. Agents and prosecutors are not permitted to know of the relocated witness' new telephone number or even to know what part of the country he is in.

Agents must contact the United States Marshals Service. To do otherwise is considered a security violation. It makes it extremely difficult to conduct an investigation or prepare for a trial when the witness has been relocated. In order to question witnesses, the agencies and prosecutors should be granted some sort of private access to witnesses who are in their area. It is imperative that agents be granted private access to the witness in the danger area. The agents tend to debrief a witness under more congenial circumstances than the Marshals usually arrange which, in my experience, leads to much better testimony.

In particular regard to the witness' return to the danger area, the agents are much more familiar with that area and with the hoodlums who might endanger the witness. These local agents can provide much better security there. Presently, the method of operation is to bring the witness into the danger area with a security detail composed of deputy U.S. Marshals. These deputies, however, may come from 500 to 1,000 miles away from the danger area. They have no knowledge of the city; they have no knowledge of the mob; they have no idea who might endanger that particular witness. The witness knows, but his protectors don't, and they must rely on the witness to point out danger. Should a witness fail to see something, that witness may be killed. A better system would be to have the agency responsible for the witness' relocation be responsible for the witness' security in the danger area utilizing the assistance of the Marshals.

Another problem I have seen with out-of-town deputies is that many times they don't care or just don't want to be bothered with security. I recall one situation involving a relocated witness who saw a local mobster in a local airport. He requested the out-of-town Marshals guarding him to call me at the FBI office to determine if there was a security problem. The Marshal, however, apparently didn't want to take the time, and he merely pretended to call me at the FBI. He then reported back to the witness that there was no problem. The witness then boarded a plane which flew him directly to his relocation area. Fortunately, there was no problem, but if the mobster had seen the witness and had attempted to find out where he was, it would have been very easy. He could very easily have identified the witness' location simply by finding out what flight he got on and its destination.

Another problem that I have perceived in the Witness Security Program is that the Marshals have many Witness Security Specialists assigned to protect the witnesses, but all too often these specialists have no real concern for the welfare of the witness. Their only concern seems to be with the physical security of the witness. In fact, the agency that relocated the witness (usually the FBI or the DEA) has the major concern for a particular witness' welfare. What I am talking about here is basically a manpower type of problem. The Witness Security Program and the Marshals are so afflicted by manpower problems that they have to jockey positions to cover all the security details. This creates a number of problems. For instance, a recent witness who was testifying in Buffalo was flown every day after the trial from Buffalo to another state because of lack of available manpower in Buffalo. Because they did not have enough people to provide him security, the witness was put through a physically tiring procedure of flying out of the city every night and back to the city each morning. This went on for a substantial period of time. Even worse, the agents and the prosecutors were unable to discuss this witness' testimony with him in order to prepare him for each day's court appearance. One of the major improvements that could occur to the Witness Security Program would be an improvement in the manpower and budgetary restrictions that now afflict the U.S. Marshals Service, or to turn the responsibility over to the agency working with the witness, with assistance from the Marshals.

I realize that there are many people who say that the problems with the Program is the caliber of person who enters the Program. Many of the people who enter the Program, are themselves criminals. They are nevertheless human beings. They need help. They need guidance. They need somebody whom they know cares about their problems and is grateful for what they are doing for the government. We must keep in mind that the witnesses are providing the information necessary to prosecute professional criminals. In addition, while some of them might be criminals, their wives and their children most often are not, and it makes no sense to punish the wives and children because the husbands are criminals, especially when those husbands are cooperating with the government. This is something that must be kept in mind at all times with all witnesses and particularly with prisoner witnesses.

There is a real problem with prisoner witnesses because there is a shortage of facilities to keep these people imprisoned and safe. At one time the concept of safe houses was used. Generally, these were portions of armed forces bases designated to housing protected prisoners. However, the safe houses were done away with, and the prisoners are now kept in federal penitentiaries. Problems exist because witness prisoners obviously cannot be kept in the general population due to the danger to them because they have cooperated with law enforcement. In an effort to protect the prisoner witness, that prisoner is usually placed into solitary confinement. This, in effect, punishes him for his cooperation. If he is not placed into solitary confinement, he might be placed in a protective custody unit. But a protective custody unit so restricts his freedom and so restricts him of a normal prison environment that it also is basically a punishment for him. Moreover, everyone who is in prison seems to know who these prisoner witnesses are no matter what steps are taken to hide their identity. If they go into general population, they are subject to constant psychological harassment and physical fear caused by the other inmates. If they are not actually confronted, they live constantly for years on end with the fear that someone might come along and identify them as a witness. I think that it would be quite desirable to set aside one or two government facilities to be used exclusively for housing of protected prisoner witnesses.

Overall, I really think that the Marshals should work more closely with the sponsoring agency of the witness and they should be more flexible in their attitudes. The agencies who use the Witness Protection Program the most, such as the FBI and the DEA, should assign a team of representatives to work with, assist, and advise the Marshals concerning the Program. They might assist in details and in the securing of documentation and other matters. Alternatively, these investigative agencies should be given the responsibility for relocation, documentation and employment, with assistance from the Marshals. I also believe that agents and prosecutors should have fewer barriers in attaining access to a relocated witness once he has entered the Program. I think a lot of the problems that witnesses have are solved by assigning one investigator as a focal point for that witness, usually the original case agent. The agent would be someone that the witness can contact when he has a problem with the Program for at least a sympathetic ear.

I have several specific suggestions on how to improve the Program. Before I make them, however, I want to make my position clear. I think the Marshals have had an extremely difficult task before them for 10 years. I think that they have done a remarkable job with what they have had to work with. I think that many of the problems are not caused by the Marshals as much as they are caused by things such as inadequate manpower, inadequate funding and inadequate assistance from federal agencies within the Executive branch and from State and local government agencies. With this in mind let me turn now to some of my more specific suggestions.

First, I think that the security of the witness should be turned over to the agency which sponsored the witness into the Program whenever he enters the danger zone. I also think that the agency should be responsible for and capable of funding this type of a security detail.

Second, I think that the obtaining of documents can and should be expedited by the implementation or institution of federal legislation which will immunize those States, local and federal agencies or private parties who assist the Federal Government in obtaining documentation for relocated witnesses.

Third, I think it is important that the Marshals develop some means of obtaining contacts in government, business and industry to obtain employment and to obtain documents. People such as ex-FBI and ex-DEA agents or the FBI and the DEA themselves could do this type of work very effectively. These agents have contacts which can help to accomplish the needs where the Marshals don't have those contacts.

Fourth, more sophisticated problems such as documentation, employment, psychological adjustment and things of that nature should be at least coordinated, if not handled by a special staff from the Attorney General's Office.

Fifth, I am frankly somewhat perplexed that the Marshals' explanation for delays in documentation usually rests on the fact that the documentation they provide is real and not fictitious. I believe that you cannot build a solid background for a relocated person without using some form of fictitious documentation. The only thing that real documentation permits is a subsistence level of ex-

istence, something that merely allows a person the use of a car, for example. This so-called real documentation, however, is just as subject to exposure as fictitious documentation. The major fear of using fictitious documentation and providing such documentation is that a witness may use it in order to defraud people. However, he can use real documentation in the same way. If there is some sort of civil liability upon the government because a witness uses his real documentation for the commission of a fraud, then the same holds true for fictitious documentation and vice versa. The solution must be that anyone who misuses the documentation is simply terminated from the Program and the documentation is exposed to local law enforcement agencies for what it is.

And sixth, I believe that the G.S. grade structure of personnel in the Marshals Service, and particularly of the people who deal with the witnesses, must be upgraded in order to obtain persons with better background and expertise. The Marshals Service should be better funded, and they should have more manpower in order to deal with the problems that they have.

The problems confronting the Program have been widely publicized in the news media and extensively discussed among the criminal elements in the streets. These problems have created a chilling effect on some who would have chosen to cooperate and place themselves under the Government's protection. It has acted as a deterrent to people testifying against organized crime. This is a serious problem in that no one can be sure how many witnesses, investigations or trials may have been lost.

The Program must be strengthened. There must be more money and manpower put into such a high priority law enforcement tool. I hope that these hearings will lead to some improvements.

It only requires some flexibility, some imagination and the willingness to listen and to try. It also will require more money, but I for one think these will be tax dollars well-spent.

Chairman NUNN. Our next witness is Mr. David Rodriguez, assistant U.S. attorney, Eastern District of California.

Mr. Rodriguez, before we begin asking you questions, to get as much information from you as we can, this morning, we would like you to give us a brief background of your career and what you are doing now.

Mr. RODRIGUEZ. I will be glad to, Senator.

Presently I am the assistant U.S. attorney in charge of the Fresno office in the Eastern District of California. We have a field office out of Sacramento.

I have been so employed almost 3 years now. Prior to that, I was deputy district attorney in a county of the State of California for over 3 years, in which I was one of the basically five major trial deputies in the Felony Division, wherein I handled mostly narcotics and homicide cases.

Chairman NUNN. How many witnesses have you sponsored into the witness protection program, and what type of cases have you been involved in?

Mr. RODRIGUEZ. Senator, I have sponsored actual witnesses in the neighborhood of 27. With the submission of family members of the witnesses, the total has come to 46. The types of cases that I have sponsored witnesses under have been not only for, or in response to Federal activity, but also in response to State requests by State law enforcement agencies involved in investigations of organized crime groups. Most have particularly been involved with membership in activity in several prison-spawned gangs in the State of California.

Chairman NUNN. Do those gangs have a name?

Mr. RODRIGUEZ. Yes; Senator Nunn. The main prison gang the State law enforcement agencies have been addressing is a gang known

as La Nuestra Familia. There are three others that have rather large membership and are rather active in the streets and also in the prisons of California.

Chairman NUNN. In these cases you have been involved in, what is the conviction rate of the cases and about how many persons have been convicted?

Mr. RODRIGUEZ. There are numerous trials which have utilized the witnesses who have been sponsored into the program. Approximately 30 to 35 defendants in about 22 different trials in various counties of the State have been brought to trial and there has been a 100-percent conviction rate in each of those trials.

Chairman NUNN. One hundred percent conviction rates when you use those witnesses?

Mr. RODRIGUEZ. Yes.

Chairman NUNN. What kind of activities does the La Nuestra Familia engage in?

Mr. RODRIGUEZ. Originally the organization evolved in prison. They were directed toward mainly organizing and affecting vice activities in the prison and those consisted of narcotics, gambling and, in fact, sale of sexual acts by use of persons referred to as punks. They formulated an organized power base in order to infiltrate, regulate, and organize these vice activities.

Eventually they did expand out into the streets, where by now their criminal tentacles are permeated throughout the State of California by use of its various memberships, formation of regiments in all, I would say, but 12 counties, and those 12 counties would be mainly in the rural mountainous areas.

Chairman NUNN. Is that organization known as NF?

Mr. RODRIGUEZ. That is one of the monikers of the organization.

Chairman NUNN. Is it an ethnic organization?

Mr. RODRIGUEZ. Not entirely. It's mainly composed of individuals who are Mexican-American who grew up in Mexican neighborhoods in California. There are other Caucasian individuals who are also full-blown members, who, by virtue of where they grew up, they grew up with these same other members and grew up in the same type of community and neighborhoods, and they knew each other, and that is how they came to be sponsored into the organization.

Chairman NUNN. In regard to murders committed by this organization, does that include the murder of witnesses?

Mr. RODRIGUEZ. Yes; Senator.

Chairman NUNN. Do you have any idea how many witnesses have been murdered by this organization?

Mr. RODRIGUEZ. As to what I have been informed of by various State authorities, which have been confirmed, it is in excess of 30 in the prisons and well in excess of 20 on the streets who were actually witnesses. Now there are a number of other killings which have been perpetrated by members of the organization. These have mostly been other members of the rival prison gangs, both in prison and in the streets, as well as their own membership; persons who were referred to as "hermits," who fell in disfavor of the organization because they did not follow orders or because they got involved in other unauthorized activity.

Chairman NUNN. Referred to as what?

Mr. RODRIGUEZ. Hermits.

Chairman NUNN. Hermits?

Mr. RODRIGUEZ. Yes.

Chairman NUNN. And these are people who are on the hit list, more or less?

Mr. RODRIGUEZ. Yes; as well as —

Chairman NUNN. What do they call witnesses, do they have a name for people who are witnesses?

Mr. RODRIGUEZ. They are commonly referred to as "snitches", "informants", but would be listed as "hermits" if they were prior members of the organization.

Chairman NUNN. So you know of about 30 witnesses that have actually been assassinated or murdered by this organization?

Mr. RODRIGUEZ. It is over that; 30 is just restricted to the prisons themselves.

Chairman NUNN. And 20 more on the streets?

Mr. RODRIGUEZ. Yes, sir.

Chairman NUNN. About 50?

Mr. RODRIGUEZ. Yes.

Chairman NUNN. Is that just in California?

Mr. RODRIGUEZ. Those killings which I referred to occurred in California; yes.

Chairman NUNN. How many of these were in the witness protection program? Were any of them involved in the witness protection program?

Mr. RODRIGUEZ. No.

Chairman NUNN. For a prisoner testifying against a group like the NF, is he placed in danger by being put in the general population of the prison?

Mr. RODRIGUEZ. Without question. And I might, if I may, go back to your prior question, Senator. A number of witnesses were contacted by law enforcement authorities and were offered an opportunity to go under protection, be it State or Federal. Unfortunately, in several instances, they elected not to at that time for various assorted reasons.

As far as your immediate question, with regard to this organization, they are in extreme danger in going into the main population. This organization is one that is highly organized. They were able to, in essence, take control of much of the prison populace in various prisons somewhat in almost actual conflict with other prison gangs who are trying to do the same thing.

One of the methods by which they were able to do so was that they knew the State Department of Corrections authorities were able to identify various members of the organization, and by that, they were able to segregate members of one gang from the other. That is one reason why the authorities attempted to identify who the gang members were.

In anticipation of that effort and in response to that effort, the organization was able to expand by use of what is termed "associates." Associates were persons who may not be full-blown members of the organization, but are sympathetic to their goals, and in that regard, to the system and the operation of their activities in the prison, and

in the streets I might add, but more in particular in the prisons. There was yet a third category of person that was utilized. That type of person is referred to as someone who is undercover, with the specific design to avoid detection by the prison authorities, such that those persons, associates and undercovers, infiltrate all aspects of the prison operation, including as trustees, as clerk-typists, in the reception area, so that they have a full system of communication to know what persons were coming into the institution, where they were housed, who was going into protective custody, who was coming in to visit particular persons—such information as that. And they did that by use of associates and undercovers.

Now, where a person has been in one particular prison and perhaps been in protective custody or not, who is then thereafter transferred to another prison in the State of California, it is almost virtually impossible for the organization not to know that that person, within a short amount of time after his arrival, has arrived in the prison and where he is.

Chairman NUNN. Does this gang operate outside the prison also? Is it part of what we have known in the past as an organized crime family, in the sense that it is organized like the La Cosa Nostra or the Mafia?

Mr. RODRIGUEZ. Yes, Senator. Aside from the prison vice activities, which was the basis for its original formation, they thereafter went out into the streets forming regiments. Then, on the basis of confiscated documents and other information from State intelligence sources, these sources show that their design was to commit criminal activity with the purpose of acquiring funds to invest in legitimate businesses. They did this by use of a vast number of robberies that exceed several hundred, by extortion activities of prostitutes and narcotics dealers and also by narcotics activities out in the street. As part of their criminal activities, and in order to maintain control of those areas, they then engaged in the killing of persons who did not wish to go along with the plan, so to speak, those who they felt were going to be informants or who they felt were informants and those who resisted their efforts.

Chairman NUNN. How many members and associates, in your opinion, does the NF Family have?

Mr. RODRIGUEZ. Confirmed membership, State sources indicate that it is in excess of, I would say, 350. If we speak of associates who are not technically members, but for all intents and purposes are part of the gang, are part of the organization in that they assist in its activities, it would easily approach 1,000.

Chairman NUNN. How much of a regional concentration is there? Does this spread to other cities and States in the United States, or is it primarily California?

Mr. RODRIGUEZ. It is primarily California, Senator, but they have expanded to various areas of the Southwest at this time.

Chairman NUNN. Do they have any kind of formal ritual in initiating membership, which we have heard about in the Mafia group?

Mr. RODRIGUEZ. Not in that exact sense. There is a set process by which one is sponsored. He does have to be sponsored by a full member. He goes through a probationary process and there is a voting

process upon which only then can he be considered a full-blown member. But it is what I might refer to as a blood-in-blood-out organization.

Chairman NUNN. What do you mean by that?

Mr. RODRIGUEZ. That is that once you are a member, you are always a member until death.

Chairman NUNN. But there is no formal ritual, letting of blood, that sort of thing, that you know of?

Mr. RODRIGUEZ. That we know of, no, sir.

Chairman NUNN. You have indicated that the NF family has retaliated against the prisoner witnesses. In view of the NF family size and extent, is it true to say the Federal witness security program is an essential tool for the States in combating against similar organizations, particularly in California?

Mr. RODRIGUEZ. Without question, Senator. Again I might add this certainly goes in its application beyond just the Nuestra Familia, and applying to other prison gangs and identified organized crime organization, organizations in the State of California. I might preface my remark by saying that the State of California does have a witness protection program.

However, in speaking with the individuals who are in charge of that, the operation of that program, they are LEAA-funded. Their funding will run out in April. I have been advised unless the State of California and its legislature enacts funding that the California program will cease to exist.

The distinct difference between what the State program is able to provide and what the Federal program is able to provide is that the State program essentially amounts to assistance in relocation. Thereafter they are not equipped to provide what the Federal program offers in theory, and that is documentation change, assistance in employment, and such things as that, as well as more particularly, perhaps, protection in coming back into the State for purposes of testifying.

Chairman NUNN. Are there other gangs like the Nuestra Familia who are operating in California similar to that?

Mr. RODRIGUEZ. Yes, Senator.

Chairman NUNN. What other ones come to mind?

Mr. RODRIGUEZ. There are approximately four others that I can think of that have been confirmed and documented by State of California authorities. They consist of the Aryan Brotherhood, which one might classify as a white supremacy organization, something along the line of a Nazi group. There is the Black Guerrilla Family and there is also another organization mainly consisting of Mexican-American individuals known as the Mexican Mafia.

Chairman NUNN. Are these also prison-oriented gangs that operate both in and out of prison or are they primarily on the outside or inside?

Mr. RODRIGUEZ. They are prison-spawned gangs. However, in their operation, they are active not only in the prison system itself, but in the streets.

Chairman NUNN. Do these gangs conflict and have confrontations in the penitentiary very often?

Mr. RODRIGUEZ. Constantly. It has been the source of killings in excess of 200 within the prisons.

Chairman NUNN. Over what timespan?

Mr. RODRIGUEZ. During the last decade. And the killings also frequently occur in the streets. This is usually related to efforts of one organization to take over by any means, narcotics and extortion activities in one area where another particular gang is already operating.

Chairman NUNN. Have you followed to some extent the lives of the witnesses that you have worked with in your court cases after they are placed in the witness security program?

Mr. RODRIGUEZ. Yes; I have, and it has been by virtue of the witness feeling a necessity and, in most cases, expressing that they have no place else or no one else to turn to, that they contact me in their efforts to make someone aware of the problems that are occurring to them.

Chairman NUNN. What type of complaints do you normally hear?

Mr. RODRIGUEZ. If I may, Senator, review a couple of examples that I think illustrate problems that were brought to my attention—I might add that I understand that several of these individuals have contacted the committee directly, either in person or by letter. Initially, there seems to be, and probably the most common complaint that I am exposed to, as a witness was first placed into the program, stems around where they were placed.

One of the first families that I sponsored into the program, it was decided that they were going to be placed. This was a Mexican American family, in fact, from the San Jose area in California, just south of San Francisco. It is a community of predominantly Mexican American families. The Spanish language is prevalent in that area and, of course, the children, who are of school age, were used to going and attending school with their friends, who were also Mexican American. It was decided by the program that this family would be placed in the Deep South. They were placed in a State and in a neighborhood that was predominantly black. They, upon arrival, were almost immediately subjected to various forms of harassment, be they along racial or other lines, but it was harassment. By that I mean the children routinely were confronted going to school, they would either have their lunch money taken from them or have their lunchboxes gone into and their food taken, and this occurred on a regular basis.

When the mother attempted to complain to the law enforcement authorities, she was advised there was nothing they could do about it. It was almost as if that was a way of life, that they had more important things to take care of. When she addressed that same issue with the inspector, she received a similar response.

I comment on that because I feel there was perhaps a lack of planning in terms of identifying an appropriate area for placement for that particular family. I was made aware of that, reported it, and thereafter a number of other things occurred to her and her children along similar lines.

An effort was made to try and get her relocated. It was almost over a 2-year period that she was finally relocated. When it came close to the end, the service proposed moving her to the Miami, Fla. area immediately after the Cuban refugee crisis had occurred, which I sub-

mit might also be considered inappropriate for relocation. Thereafter, the Marshals Service suggested sending her to Texas.

Well, there is another prison gang that is active in California that I neglected to mention earlier—there are two—known as the Texas Syndicate and ETP.

Chairman NUNN. How do you spell that?

Mr. RODRIGUEZ. E-T-P. And also the Texas Syndicate, TS, that were both very active, not only in the Texas area, but membership was active in the California system. She knew that was not an area she could go to because of security reasons. Part of the reason behind the recommended move was as she and I, in turn, were arguing to the Marshals Service, that she needed more appropriate placement. She needed to be in a Mexican community. I might add part of the problem stems from the fact that she was not, she didn't feel she was totally that fluent in the English language and, of course, the inspector she was with did not speak any Spanish whatsoever. So there did develop a communication problem and I point that out, and to illustrate this, if I may take a moment to state that that was the basis behind the move that she be placed with Mexican families, a Mexican-American neighborhood. When it was proposed she be moved to Texas by the inspector, she responded by saying, "I cannot go there." The communication was such that she did not feel comfortable or feel she was able to relate exactly why, and by that I am referring to the other prison gangs who are active there.

The inspector, as related to me by her, indicated, "Well, you are the one who wanted to be moved to a Mexican neighborhood, and that's where there are Mexican families." She responded by saying, "Well, that's not the reason why I can't go there." The inspector utilized that statement and reported back to the Department that her statement about wanting to be with Mexican families was false or a lie, because she said that that wasn't the reason why she wanted to go to Texas, completely misconstruing what she had intended by that.

There was another example, if I may, of another family, also Mexican-American, a wife and six children, who were moved into, again, a predominantly, well, in fact, there were no other Mexican families there. She was moved into a housing project where there were mostly black families and Puerto Rican families. Her family, too, was almost again immediately subjected to the same type of harassment referred to earlier.

Chairman NUNN. In your experience, have the prisoners that you have dealt with, the witnesses, felt that they were doing harder time, as Mr. Costello mentioned a little while ago, than the actual general population of prisoners?

Mr. RODRIGUEZ. This has been related to me by the inmate witnesses. I would concur in Costello's statement. Probably more in particular is the aspect of contact with the families. If you are a normal inmate in a prison, you are able to contact your family through regular use of the mails, to begin with. To cite one example, by virtue of the operation of the program and the instructions the witnesses receive, they have to write via the inspectors, that is, the letter or mail item first goes to the inspector where the witness is located, then forwarded to another inspector in the area where the family is located such that it is designed that the inmate is not supposed to know where his family is. But I

would beg to ask, if we were in that situation where our families were placed into such a program, is it not reasonable, would we not demand to know where our family went, where they were placed, what their situation is, what their environment is? Yet the program states that the witness-inmate is not supposed to know those things. Even mail that I have received via the inspector system takes often—most often—in excess of a month and quite often even longer than that.

The inmates are provided opportunities for visitation, if you are a normal inmate. True, it may well be even the witness-inmate can have visitation, but only if his family happens to be placed in an area that affords them the opportunity to travel to the facility to visit with the inmate-witness.

In those situations where I have sponsored witnesses, that is often not the case. The family has to make ends meet and on their own funds, provide for that visit. That, then, I feel, is the source of much of the complaints that I have received from the witnesses I have sponsored, who are in the witness facilities. There not only are no provisions made for a regular visit with the family; but if there are security problems related to that, it might involve moving the family or moving the witness inmate to some place that they might find more secure, be that a base, a military base or other facility.

Chairman NUNN. Do you recommend a safe house concept for prisoner-witnesses?

Mr. RODRIGUEZ. As far as a personal opinion, Senator, I probably would favor that in light of what I have seen is available now at the witness facilities. I say that because most of the inmate witnesses are there, not so much for themselves, obviously they want to be protected by virtue of their cooperating, but I find a strong motivating factor in their initial decision to cooperate has been to provide for and attempt to protect their families. They have an extreme and earnest concern to maintain a close relationship with their family.

Albeit being incarcerated is a tremendous strain on that family relationship, but consider what happens when the program then separates them and keeps them from having contact not only visiting but even telephone contacts are not provided for as of now.

They don't have regular contact. In fact, I think one witness that the committee will be hearing from shortly who has been in custody for over 2 years by virtue of the programs hasn't even spoken with his 3-year-old, who is now 4. She has not heard her father's voice for that period of time. If he were to rely on the calls that he has been afforded to make by the program, they would be unable to speak to one another.

Chairman NUNN. So you think the whole question of family separation is one that really needs addressing?

Mr. RODRIGUEZ. Without question. It is probably the most important thing other than court security that witness inmates relate to me that they wish that the program would recognize as being a legitimate interest and concern. That is where they feel that they are punished for cooperating, having made the decision to cooperate versus what the normal inmate in an institution would be provided.

I say that because I feel that perhaps in that vein other facilities can be identified where they can be made secure, whereby a family will not be exposed to other inmate families as Mr. Costello related

that evidently occurred at the MCC in New York and would provide for an opportunity for a family visit.

I might add, Senator, that the State of California now through the department of corrections has recognized that there is a value to offer an incentive to an inmate to not only drop from the organization of which he is a member, but to cooperate with law enforcement and they have done that by virtue of offering increased visitation with the family, by offering facilities that provide for conjugal visits with the wife, and that offer facilities for weekend visits with the family.

It has been shown that it is—

Chairman NUNN. Is this just for protected witnesses or is this general population?

Mr. RODRIGUEZ. This would be what they are affording an inmate who decides to cooperate; he then becomes a protected witness, yes.

Chairman NUNN. He gets more of that type of visit?

Mr. RODRIGUEZ. He gets more than the routine prisoner does and that is the incentive that they offer so that the concept of being punished for cooperating is then eliminated because in the past that too is what was happening at the State level. The inmate then had to go into isolation and protective custody. He was not afforded the opportunity of as much exercise time, as much vocational training as the routine inmate and he saw himself by virtue of deciding to cooperate with law enforcement as being punished, and for reason, serving a more hardened term.

Chairman NUNN. Let me ask all of you this question and each one of you just give your personal views. You know there are competing budgetary demands on the whole budget and then when you get within law enforcement there are a lot of competing budgetary demands there, when you get into organized crime, narcotics, there are a lot of competing demands there. How important do you rate the witness security program in budgetary terms weighed against other demands?

Is it one of the most important, let's say, on a scale of 1 to 10, 10 being the most important, how do you fit this one in, what kind of priority would you give it in terms of budgetary demands on the law enforcement community? Mr. Rodriguez, do you want to start?

Mr. RODRIGUEZ. If the Government is going to make the decision, Senator, that it is a priority to prosecute, to infiltrate, identify, prosecute, and convict members of organizations and/or individuals that are involved in organized crime activity, then it is extremely important because I feel that without a viable program that offers, not only addressing the needs of protection of the witness and/or his family, but addresses their well-being, their mental well-being, so that they come into court prepared to concentrate on testimony rather than worrying or complaining about other things that are affecting them at home, that that is the only way that we can expect to be able to be successful in our efforts.

Chairman NUNN. Where would you rate it, 1 to 10, in terms of priority?

Mr. RODRIGUEZ. I would rate it at very near the top as a 10 item.

Chairman NUNN. Thank you.

Mr. Costello?

Mr. COSTELLO. I agree, Senator. I would rate this at 10 as the highest rating in terms of priority. The witness protection program is

clearly a 10. I think in my statement that is part of the record I quoted a statement from Paul Curran, who was then the U.S. attorney in New York back in 1975, who said that the witness protection program was the major factor in the success that his office had had in convicting over 200 major narcotics dealers and were it not for the program it is clear that a number of the major recent prosecutions could not have been maintained. I think that statement is as true today as it was then.

Frankly, I wonder how the process against organized crime figures worked prior to the program. It seems to me inconceivable. I don't think that we can currently live without it. Therefore I say it is a 10.

Chairman NUNN. Mr. Hartnett?

Mr. HARTNETT. I think the program is perhaps the finest investigative tool any law enforcement agency has today in the Federal Government. After all, the objective of the law enforcement community is to develop witnesses to testify against criminals and with that in mind, I certainly would place this program right at the highest level in the 10 categories also.

Chairman NUNN. Mr. DeFeo?

Mr. DEFEO. Senator, I am, of course, somewhat burdened with having a historical perspective of having worked prior to the existence of the program. It is possible to prosecute organized crime cases without a witness security program, but not well. In terms of priorities, I would have to say this program should come right behind your essential administrative support for the investigative and prosecutive agencies.

You can make cases with just investigators, and attorneys, making them using informants, electronic surveillance, physical surveillance, and things of that nature, but you are not really going to achieve widespread penetration and disruption of the criminal organization without being able to encourage insider witnesses through this program to come forward.

However, I would also like to add that in terms of budgetary support, I am not sure that is the crucial problem. I don't know all the Marshal Service's problems in terms of budget. I know frequently they have problems in travel, overtime, things of that nature. But I think the crying needs now are for better organization and administration. When we are talking about attitudinal problems—when we are talking about problems of documentation, employment history, those are not big money spenders.

Those are questions of organization.

Chairman NUNN. So you think significant and rather dramatic improvement can be made in this program without additional large sums of money?

Mr. DEFEO. Yes, sir.

Chairman NUNN. Thank you very much.

[The complete statement of David Rodriguez follows:]

STATEMENT OF DAVID RODRIGUEZ, ASSISTANT U.S. ATTORNEY, EASTERN DISTRICT OF CALIFORNIA

Mr. Chairman, it is a pleasure to appear before the Senate Permanent Subcommittee on Investigation to comment upon the Federal Witness Protection Program. This is a subject which is of utmost concern to me as a federal prosecutor involved in the government's law enforcement efforts against organized crime in my area of the country.

I have been an Assistant United States Attorney for the Eastern District of California for the past two and one-half years. Prior to my Federal experience, I was a prosecutor for a District Attorney's office in the State of California for over three years, during which I handled mostly murder and narcotics cases. I have sponsored numerous witnesses and members of their families both on behalf of state requests and as a result of federal investigations into organized crime in my area.

At the Committee's invitation, I have been asked to address three aspects of the Federal Witness Security Program. The first is the need of law enforcement for the Program. As prosecutors we are totally dependent upon witnesses to present testimony in a court of justice concerning criminal activity of which they have direct knowledge.

Much of our ability to prosecute a case often depends upon the witness' willingness to come forth, reveal and/or testify about an offense of which they have knowledge. As we focus our prosecution efforts towards the elements of organized crime, available and necessary witnesses become increasingly more inclined to resist coming forward or "getting involved" because of violence, fear, and intimidation by the criminal organization. The more successful the criminal organization is, the more likely the witness or witnesses will be intimidated. Therefore, a program which is designed to protect and encourage witnesses to come forward is necessary and vital to any successful efforts by law enforcement to identify, infiltrate, apprehend, and prosecute organized crime figures.

The second aspect of inquiry is a review and analysis of the problem in the operation of the Program. It is critical to a successful operation of the Program that it engender confidence in its operation and that it encourages witnesses to come forward with the knowledge they possess. The viability of the Program is dependent upon its reputation among the witnesses, and the extent to which the Program acts to reinforce, rather than inhibit, witnesses to provide their assistance.

In theory the Federal Program is designed to relocate a witness and his family, if applicable, to a "safe" area. Subsistence funding is provided for a limited period until the witness is self-supporting through employment, or other sources of income, i.e., welfare. In this regard, the witness is provided with the documentation for a change of identity.

Assistance is also provided in locating employment and housing. However, the difference between how the Program operates in theory and in practice is the source of many problems which I have encountered with the Program.

As in any organization, the Program's effectiveness is dependent upon the effectiveness of the personnel who are charged with the responsibility of putting the Program into operation. For this reason, the United States Marshal Inspectors have the role of being the main, or "on-the-street," contact between the witnesses and the government. The particular attitude of the individual inspectors towards their duties and function and their performance becomes a matter of extreme importance in terms of the government's relationship with its own witnesses.

The recruitment, selection, and training of Marshal Inspectors is of similar importance. Without adequate training or investigative experience in working with witnesses, it is very difficult for most persons to understand the psychological impact and dynamics involved when a witness elects to place his and his family's lives in danger by cooperating with the government in its prosecution efforts against organized crime. The witnesses routinely are initially totally dependent upon their particular inspector for even their most basic needs, such as food and housing for themselves and their families.

The witness and his family becomes dependent on the competence, professionalism, and sensitivity, or lack thereof, of their particular inspector or the Program, for they have no where else to go. For example, placing a Mexican family from California into a non-Mexican neighborhood in Alabama where the children then become victims of racial harassment is not what I consider as appropriate housing. In those instances where the provider does not provide basic needs and the witness attempts self-help, it has been my experience that the witness will risk termination from the Program.

The foremost requisite qualities for an Inspector should be a sense of vigilance for the witness' protection, sensitivity, and concern for the needs of witnesses. It is the witness' sense of security and well-being, not the Inspector's comfort, convenience, or over-time which should be uppermost in the Inspector's

mind. An Inspector who is perceived by a government witness as being indifferent, nonresponsive, or callous constitutes a direct threat to the witness' continuing cooperation, effectiveness of the prosecution and the very success of the Program itself.

I would now like to discuss several specific problems which have arisen with various witnesses whom I have sponsored into the Program and which problems I believe are faults of the Program as it exists now. Many of these problems derive from a lack of sensitivity to the plight of the witness in relocating and in starting a new life.

Preliminarily, to my knowledge, the Program does not provide a procedure for a witness to voice a grievance concerning a complaint against or dispute with an Inspector. Presently, when a problem arises and communication between the witness and the Inspector has broken down, the witness then usually contacts and relies upon his sponsoring attorney, who hopefully has the time and interest to respond, in an attempt to resolve the complaint. The attorney then, all too often, has to take an inordinate amount of time to resolve complaints which would not occur in the first place if the Inspector were properly performing his job. The attorney must contact the Office of Enforcement Operations to relate the complaint or problem and request that office's assistance. O.E.O. then contacts the Marshal Service to investigate the matter and respond. The Marshal Service has responded by stating that the witness is wrong or untruthful, or that the situation is other than as alleged by the witness. This kind of response only adds to the witness' feeling of resentment towards and frustration with the Program. I have found that a sufficient number of problems have arisen which justify creating for witnesses an ombudsman available at an 800-toll free number to process and investigate, independent of the Marshal Service, complaints of mistreatment by the Inspector.

The first area of concern involves placement and housing. Initially, as a witness goes into the Program the success or failure of the Program depends much upon the relocation of the witness.

It has been my experience that little or no consideration is given to the witness' individuality, his cultural heritage, or ethnic background when the decision is made to place the witness and his family in a new environment. Instead of putting the witness and his family into a community with which they share a common language, a common religion, and common interests, the Program shuffles people from one part of the country to another on what appears to be an impersonal and fortuitous basis, dependent on where there is an available opening.

This process of relocation selection subjects the witness and his family not only to climatic shock, but more importantly, to cultural shock.

In asking a person to participate in the Program the Government demands that that witness eradicate his past identity, irrevocably sever his intimate ties with family and friends, and assume a foreign role in a strange, and sometimes hostile, environment.

The Program's assumption that a human being can be uprooted and thereafter prosper wherever he is fortuitously placed, is like a belief that a tree can be transplanted without its roots. Because of the emotional strain which occurs when the witness is removed from familiar surroundings and is placed in a strange environment, it is imperative that a witness and his family should be placed in a community where they can "blend in" as much as possible.

Poor judgment was exercised in placing witness A's family, a Mexican-American family from California, into a predominately Black area in Alabama. Soon after their arrival, the children were subjected to racial harassment and assaults. The children routinely had their lunch money taken from them on the way to school. The children soon became frightened to go to school or to go out. The police and Inspector stated that they could do nothing about it. The situation was escalated by a communication problem between the Inspector and witness A because the Inspector always argued with her when she tried to complain and she felt she could not adequately express herself in English. When I interceded and urged the Marshal Service to relocate the family to a more suitable location, the Service then proposed Miami, Florida, shortly after the Cuban refugee crisis, in an inappropriate location because of community tension.

Upon my objection, the Marshal Service then proposed the State of Texas. Because Witness A knew that Texas posed certain security risks, she told the Inspector she could not go there. By that time, feelings and communications between the witness and the Inspector had deteriorated to the point that the witness

felt she could not explain to the Inspector the nature and seriousness of the security risks involved in a relocation to Texas. On his part, the Inspector reacted to her reluctance to the proposed Texas relocation with insensitivity and impatience, by confronting her with her previously stated preference to be relocated to a Mexican-American community and arguing that a relocation to Texas would satisfy such a desire.

The witness replied that her reluctance to go to Texas had nothing to do with her desire to be relocated in a Mexican-American community. Subsequently the Inspector chose to exploit this situation by distorting what the witness had said, and by reporting to WITSEC headquarters that the witness had been lying about her request to be relocated in an area of Mexican-American families. The Inspector then gave her the choice of remaining in Alabama or going to Miami. Meanwhile, the witness, faced with the possibilities of eviction, termination from the Program based upon her reluctance to accept a "take it or leave it" proposition, or remaining in what she described as a "living Hell" for her and her family in Alabama, suffered a near emotional breakdown. After it was reported to me that the Marshal Service could propose no other alternatives but a move to Miami, Florida, or her remaining in Alabama, I then, with the assistance of the chief agent on the case, sent to the Program a list of 47 cities in various states felt to be secure and appropriate for placement. Before witness A had suffered a complete emotional breakdown due to the Marshal Service's delay and insensitive treatment to her plight, the Marshal Service finally agreed to relocate the family to one of the 47 cities suggested. Upon arrival, the difference in the sensitivity and competence of her new Inspector was such that it prompted her to comment that she could not believe that her new Inspector worked for the same Program. This comment by witness A, in my opinion, exemplifies the lack of uniformity in the competence, sensitivity, and professionalism of the inspectors who operate the Program.

Additional problems with placement and housing has been and are being encountered by witness B and her family, which also was a Mexican-American family from California. For evidently no reason other than to save costs, she and her family were placed on welfare and put into a low-income housing project, a totally different and foreign environment than her previous situation. Her family almost immediately became subject to racial and ethnic harassment by the other minority groups. As a result of being placed into the low-income project, they were exposed to continuing criminal activity, such as trafficking in narcotics and assaults on their persons. Most recently, as a result of racial tension in the projects, her baby-sitter's son was stabbed to death and her baby-sitter was also later stabbed. The urgent request of several weeks for relocation of witness B and her family is still pending at this time.

The above two instances are examples of the need for consideration of and planning for appropriate placement and housing of witnesses.

The second area of major concern is that of employment and funding. Employment is another area where the witness is at the mercy of the particular Inspector to whom he happens to be assigned. Because of his identity and relocation, a witness cannot seek his own employment by use of a resume or by filling out an employment application with the detail usually required. In this situation, a witness could only obtain low-paying or menial employment on his own, that is, the type of job where one would be hired off-the-street without any background information. To avoid placing the witness in this predicament, the Marshal Inspectors should provide for the witness, where appropriate, sufficient cover and job resume commensurate with the skills and abilities of the witness.

In my experience, the Inspectors obtain employment for the witness by requesting a "contact" to hire the individual. Such a practice, however, can breach the security of the witness for the employer usually knows the Inspector and why the request is being made. For example, on both occasions when the Inspector assisted her in obtaining employment, Witness C was asked later by her employer about the case in which she was a witness. She left her first job because her employer kept asking her about the case even after she stated she didn't wish to discuss it. Feeling that her security had been breached by her Inspector on both occasions, she sought her own employment. On her own she located a seasonal job which paid only minimum wage. A third of her income went to pay for a full-day baby-sitter for her three-year-old so she could work. When subsistence payments were scheduled for termination, a request was made

for partial supplemental subsistence payments so that she could meet her documented minimal expenses. The request was denied by the Marshal Service.

In another instance, witness D, his wife, child, mother-in-law, and niece were submitted for placement into the Program. Previously the mother-in-law had been receiving Social Security disability payments. Upon being relocated, the mother-in-law and niece were not provided with their own subsistence funding, but they had to live with and had to share family-unit funding with witness D, his wife, and child.

In spite of being told by the sending Inspector that her disability funding would be transferred to her new identity, D's mother-in-law still awaits disability funding almost two years later. When she attempted to reapply under her new social security number, D's mother-in-law was advised that she did not have sufficient income credits, even though she had more than sufficient credits under her former number. D's mother-in-law faces losing not only the disability payments to which she is entitled, but also, any social security retirement benefits to which she would have been entitled to under her former social security number.

Another area of concern to me is the lack of available communications with the witness. For security purposes, the witnesses are instructed that they are to have no contact with the sending state, even with the sponsoring or case attorney, except through correspondence through the Inspectors. When the need arises for regular or urgent contact of the witness by the attorney the system of correspondence through the Inspectors is totally inadequate. Even the attorney's request to have the witness contact him through the Inspector's FTS line depends upon the access, availability, and willingness of the Inspector to allow the use of his office's line. This assumes that the witness is located near an Inspector's office. Sufficient need exists for a readily available, yet secure, communication system between the attorney and the witness.

For example, such a system could utilize an 800-toll-free number operated by the Office of Enforcement Operations or Marshal's WITSEC, to connect the witness with the attorney and vice versa through use of code identification numbers. This would provide a readily available and quick access to witnesses, without the witness having to reveal his telephone number or location to the attorney.

The next problem area I would like to discuss is the in-custody witness. The program can be insensitive if it mistreats or mishandles its inmate witnesses. It is important to note that quite often an inmate witness agrees to cooperate because of his interest in protecting and preserving his family. Maintaining contact with his family is a matter of vital concern to the inmate witness. Theoretically, the Program is designed to place an inmate witness, upon his release, with his family. But this presumes that he has a family to go to upon his release. The fact that the inmate is in custody and faces a lengthy incarceration creates a strained family relationship. When the Program, by the placement of the family, prevents the inmate from seeing or speaking with his family, this tends to insure that the family unit will be broken. Most witnesses are unwilling to pay the price of losing their families for cooperating with the Government. It should be noted that when the Program is not considerate of the inmate's interest in his family, this tends to have a negative and inhibiting effect upon his continued cooperation and upon other inmates who are deciding whether or not to cooperate with the Government. For these reasons, every possible effort should be taken to place the inmate in a location where he is secure, and yet, have his family within an area of reasonable travel so as to provide an opportunity for regular visits.

In fact, the Department of Corrections in California, in an effort to encourage inmates to drop out of criminal gangs and organizations, and to encourage cooperation with state law enforcement, provides for more frequent visits with the families and secured facilities for conjugal visits with the wives.

In practice, the Program is designed to operate in such a fashion that where the inmate and the family are separated by a substantial distance, they are to communicate with one another by letters through the Inspectors. Such an impersonal method of communication not only is unsatisfactory, but it also engenders feelings of resentment towards and frustration with the Program felt by the inmate witness who, as a result of being placed into the Program, becomes separated from his family. Here again, a system of communication through an 800-toll-free lines with identification numbers could be utilized. Although the considerations of an inmate witness wanting to keep close contact with his family may not be of importance to some involved with the administration of the Pro-

gram, they should be. For it is most often upon such considerations that the reputation of the Program is built among the inmates and their families.

Another problem area of extreme concern affecting inmate witnesses is the nature and extent of security provided by the Marshal Service to inmate witnesses before, during, and after appearances. The problems resulting from a lack of security precautions can best be shown by reviewing a series of events which were related to me by Witness E.

Witness E was first brought to testify in a state murder trial by two Marshal deputies who were unfamiliar to the courthouse and surrounding area. Because the Marshal Service failed to notify local law enforcement officials of their time and method of arrival to the courthouse, the deputies on the detail were not provided with a pass key for the secured interior entrance to the building. Rather, the deputies became lost twice and finally parked in a public underground garage. From this location, the witness, over his strenuous objection was walked across a public street, through the main public entrance to the building, and up a public elevator to the courtroom. Upon conclusion of his testimony, Witness E related to me that he was informed, that because of the pending Easter weekend, the deputies only had return airline tickets for themselves and that the witness would have to remain in a county jail for a few days. The deputies even proposed holding Witness E in the same county jail where the defendant in the case and several of his associates were incarcerated. After much objection and pleading by Witness E, the deputies found an alternate location in the women's section of another county jail. To make matters worse, a different deputy who transported Witness E to the other county jail, advised the jail personnel upon his arrival who the witness was and the nature of the case he was testifying in. Over his objection, Witness E remained there over five days. Upon his return and complaint to his Inspector, he was assured that it would not happen again.

After his next appearance as a witness in a multiple count murder trial in another county, Witness E related to me that he was advised that in order to save some costs, he was going to be transferred back along with a nonwitness inmate. Witness E was kept handcuffed to this individual, the Inspector stated the witness protested being handcuffed to this individual, the Inspector stated that he was going to run the detail as he saw fit. Upon his return and complaint to his Inspector about his being transported with and being handcuffed to the nonwitness inmate, Witness E was once more assured it would not happen again, as it was against Bureau of Prisons policy.

Upon Witness E's next state court appearance to testify in another murder case, he related that he was transported by a Marshal deputy who had recently sustained a hand injury. The deputy had his hand wrapped in Ace bandage and kept complaining about the pain in his hand throughout the trip. Because of the nature of the individuals and organization he was testifying against, Witness E pointed out at the beginning of the trip, that he should be assigned only able-bodied Marshal deputies/Inspectors to his protection detail. Witness E's complaint fell upon deaf ears as the injured Marshal deputy continued on the trip.

During this trip Witness E was again placed in a county jail facility for three days, in spite of Witness E's request to be returned to the federal facility and his pointing out that too many members of the organization that he was testifying against knew him and were constantly going in and out of county jails across the state. The Marshal Service merely responded that if Witness E encountered a problem, he could call them to have him moved. During the second day after Witness E was taken out of his cell in the presence of other inmates to shower, an inmate walked by Witness E's cell and stated, "You're dead! You won't make it." After numerous requests a guard finally let Witness E speak to a Marshal deputy at his home. In spite of Witness E's vehement pleas to be moved for fear of his life, he related that the Marshal deputy told him he would just have to wait until the next day to move him. Once more, Witness E would not sleep or eat from fear that an attempt would be made on his life by poisoning of other means. The next day, the Marshal Service moved Witness E to yet another county jail facility.

On another occasion, Witness E informed me that he was again placed in a county jail facility overnight. When Witness E was booked, the Marshal deputy requested isolation stating that Witness E was a protected witness. When advised by the jailer that the facility was encountering complaints about its policy of placing inmates in isolation for disciplinary purposes and that Witness E had not done anything to warrant an isolation cell, the deputy Marshal told the jailer

to place Witness E in a regular cell. While showering, Witness E located a match book with a note inside referring to the killing of an ex-member by the organization, which organization was the subject of Witness E's testimony in various parts of the state. Again Witness E remained awake all night in fear of an attempt on his life. When the Marshal Service arrived the next day, Witness E again complained about the lack of security and his being "dumped off" in some county jail.

On yet another occasion, Witness E informed me that he was taken to another county for testimony in a double murder trial. Upon arrival Witness E inquired of the deputy Marshals what arrangements had been made for him in the event that he did not finish his testimony in one day. The deputy Marshals responded by stating if he did not conclude his testimony early, he would be placed in that county's jail overnight. Witness E protested because the two defendant's he would be testifying against were also incarcerated at that county's jail.

Witness E then told the prosecutor he would not testify because of the conduct of the Marshal Service in placing him in fear of his life. The prosecutor then contacted the Inspector and advised him that he was in agreement that Witness E should not be placed in the county jail. Set plans were then arranged that if Witness E concluded his testimony by 4:00 p.m. he would be taken straight to the witness unit at his federal facility, whereupon Witness E did testify in the trial. When Witness E concluded shortly after 4:00 p.m., he was advised by the deputy Marshals that they were going to take him straight to his federal witness unit. However, during the trip the deputies deviated from the set arrangements and took Witness E to a different federal facility. In front of an inmate clerk and two other inmates, the deputy Marshal told the booking officer that they had a protected witness to be placed there overnight. The guard requested Witness E to provide his witness control number, but he refused to provide it. Witness E once more stayed awake all night in fear for his life. When Witness E was brought out the next morning for the deputy Marshals, a lone prison guard walked Witness E across the main yard while other inmates were out in the yard. Witness E was terrified and totally exasperated with the Marshal Service and the Program for what he described as a flagrant pattern of security violations.

Finally, on yet another occasion, as the deputy Marshals were about to take Witness E from the prosecutor's office to the courtroom, the prosecutor inquired what the deputies were going to do if they encountered trouble in the hallways or elevator. According to Witness E, and which was confirmed in essence by the prosecutor, the deputy responded by stating that, "He's the one they want to kill, not me. I'm going to get as far away from him as possible."

The foregoing series of events, as related by Witness E, presents an appalling pattern of inept security precautions taken for temporal overnight housing of witnesses during court appearances. It is naive at best to believe a witness is safe in a jail if he is placed in isolation. This belief reflects a lack of knowledge or training as to the realities of prison life. Rather than being "safe" by being placed in isolation, the witness is trapped in a cage where trustees or inmates can then effectively utilize flammable liquids, prison/jail made "zip-guns," dart guns, knives or dirks on the end of broom or mop handles, or poisonous substances being placed in the food tray. It was because of Witness E's personal knowledge of such prison/jail weapons being used to "hit" informants that he would stay awake all night in county jails in a state of terror and apprehension. After spending such a night, Witness E was then called upon to testify in court, not knowing where he was to spend his next night.

When the Marshal Service creates a situation whereby the witness is called upon to testify in such a mental state, there is a potential devastating impact upon the effectiveness and quality of the witness' testimony.

I have found that out of custody witnesses have also been jeopardized by a lack of security precautions in making court appearances. For example, Witness D, referred to above, after making an appearance for testimony, was placed on a plane to be flown out of the "danger area" back to his place of relocation. However, rather than being placed on a direct flight, the flight had a scheduled brief stop-over at another airport still within the danger area. During the initial flight, the plane developed engine problems, and upon landing at the stop-over airport, Witness D was ordered to deplane and transfer flights. In spite of still being in the danger area, Witness D had no escort, or even a number to call in an emergency. Witness D had to hide for several hours at the airport waiting

for the transfer plane to depart. Upon his eventual return, Witness D complained of the incident to his Inspector, who then investigated and confirmed the incident. However, when the Inspector reported the matter, both the Inspector and the witness were accused of lying about or misrepresenting the incident.

There have been other situations where witnesses have complained about certain conduct by Inspectors or deputies, only to then be accused by the Marshal Service of lying about or misrepresenting the incident. I, too, relate these matters, not with the intent to be critical, but with the earnest conviction that by relating the foregoing problem areas, the Program can be improved by experience and corrective measures.

In spite of much frustration and disillusionment with the Program at times, and in spite of untold number of hours spent trying to resolve witnesses complaints, I remain an avid supporter of the concept of and purpose for the Program.

Because of the vital role which the Marshal Inspectors and deputies have in the operation of the Program, the selection and training of these persons may be the most important factor to the success of the Program. I believe that for the Program to succeed, the Marshal Service must also recognize its collateral role of social worker in dealing with sensitive witnesses. This realization of role with witnesses is basic with anyone who has had experience in nurturing and developing a complex organized crime investigation. As bureaucratic and insensitive operation and administration of the Program will insure its demise. So many of the incidents which I have related can be avoided if the Inspector or deputy would reflect upon whether he would want himself or his family subjected to the same conduct or treatment.

Although the basic purpose of the Program is to prevent the loss of a witness as a result of his being harmed or killed. A noncompassionate and insensitive Program also results in the loss of witnesses. The loss being in the form of a witness, who from frustration and disgust with the Program, refuse to testify, or, who from knowledge of witnesses' experiences with or reputation of the Program, refuses to divulge information to or cooperate with law enforcement. Finally, there is a loss in the impact and effectiveness of testimony whenever the witness feels he or his family have been mistreated by the Government's Witness Security Program. Upon such loss may hinge the success or failure of the prosecution.

Chairman NUNN. Mr. Rodriguez, just two or three more questions for you as a prelude to our next witness, who is a protected witness.

Was Art Beltran, a La Nuestra Familia member, was he one of those you sponsored in the witness security program?

Mr. RODRIGUEZ. Yes, Senator.

Chairman NUNN. Based upon your familiarity with him, you are familiar with Mr. Beltran? Is that right?

Mr. RODRIGUEZ. Intimately, yes, Senator. He, I think, is much better equipped to relate to you those series of events which occurred to him than I was able to do in relating them in my statement.

Chairman NUNN. Based upon your familiarity with him, with the facts that he was provided to law enforcement officials, and with the trial testimony he has given, how would you rate his credibility?

Mr. RODRIGUEZ. Excellent, Senator. He perhaps has more than any other witness that I have sponsored, has appeared most often at State prosecutions in excess of eight different homicide prosecutions and it is not to say that the case turned on his testimony, but there has been a conviction of each of the defendants in each of the cases that he has testified in.

I have always found him to be very straightforward in his testimony and I have never known him to knowingly provide false information.

Chairman NUNN. How long have you worked with him?

Mr. RODRIGUEZ. It has been over a 2-year period now.

Chairman NUNN. In the last 2 years?

Mr. RODRIGUEZ. Yes.

Chairman NUNN. 1978, 1979, and 1980?

Mr. RODRIGUEZ. Yes.

Chairman NUNN. In view of Mr. Beltran's position in La Nuestra Familia, do you believe he would be in serious physical danger by being placed in a general population of the prison?

Mr. RODRIGUEZ. Without question, Senator. I state that based upon his status in the organization and how well he was known, the number of appearances he has since then made in testifying and the fact that each of the gangs which I have related to this committee have all infiltrated the Federal system to a certain extent that they have members there. They certainly are not as organized in the Federal system as they are where they have been concentrated within the penal system in the State of California.

That is how they were able to become as organized as they are. But he is an individual that I feel would be easily recognized.

I might add, Senator, he was the first inmate witness that I sponsored into the program. I was not advised at that point exactly how the sponsorship works with the inmate witness going into the system, in that he went into the system under his actual name, which I feel should not have occurred. I was of the opinion that the Marshals Service in putting someone into this program by going into the Federal correctional system, provided for a change of identification. As I understand it, and as I have experienced it, that is not the case. Rather the Marshals Service and Bureau of Prisons rely on the assistant sponsoring attorney to go about contacting the State authorities upon which the commitment was made to therein make the name change by contacting those judges or those courts and requesting the name change. I feel that as the Marshals Service receives an inmate from the State correctional office by whatever name or title it has, that when they receive those State commitment papers, that they should make, and effectively make, the name change at that point, that that is a function that they should do.

I was unaware that was not the case, because I was not advised of that; for that reason, now that he is in the Federal system under his true name, I have been advised by Bureau of Prisons and the Marshals Service that he will forever, no matter where he goes, keep his true name for some unstated reason that I fail to comprehend or understand. That additionally is a reason why I do not feel that he would ever be safe in any Federal institution.

Chairman NUNN. Thank you all very much for your very helpful testimony. I think we will hope to keep in touch with you as we continue to give oversight to this program and hopefully make some suggestions to improve it.

You have been enormously helpful this morning and in all of our investigations up to date. So we thank you and wish you well in your careers.

I know, based on your vigorous and healthy appearance, you will be active in retirement. You have just retired, haven't you?

Mr. HARTNETT. Yes: I retired.

Chairman NUNN. Where are you going to be living?

Mr. HARTNETT. I am in the Buffalo area.

Chairman NUNN. Thank you very much, all of you, for being here. Good luck.

Before we call our next witness, I want to very briefly repeat the ground rules we set down yesterday, particularly to the members of the news media. The Marshals Service has requested no television, motion picture, or still photography be made of this witness during his appearance here today. I think the reasons for this are obvious from the previous testimony. In accordance with the subcommittee rules of procedure, we granted this request. There will be no photography allowed while the witness enters and leaves the room. So I will ask you all to please put your cameras down and any kind of motion picture cameras will have to be in the back of the room.

We will vacate the room so that we can secure the witness here and we will recess for 10 minutes and be back here in approximately 10 minutes.

Mr. BALDWIN. Mr. Chairman, we have a statement arriving from the Department of Justice for one panel member who was unable to attend because of a trial commitment. May we have that admitted into the record—the statement of Mr. Endler?

Chairman NUNN. Without objection.

[The statement follows:]

STATEMENT OF RICHARD D. ENDLER, ATTORNEY IN CHARGE, BUFFALO STRIKE FORCE

Let me take this opportunity to state that it is a privilege and honor for me to appear before this subcommittee today to testify regarding the Federal Witness Protection Program. With the permission of this subcommittee, I have prepared a short statement that I would like to read for the record.

My name is Richard D. Endler and I am the Attorney-in-Charge of the Buffalo Field Office of the Organized Crime and Racketeering Section of the United States Department of Justice. I have been the Attorney-in-Charge since approximately July of 1979. For the previous approximately 7 years, I was a Special Attorney with the Organized Crime and Racketeering Section assigned to the Buffalo Field Office.

I would preface my remarks by stating the general principle that as a Federal prosecutor working together with various Federal, State and local agencies in the investigation and prosecution of organized crime cases, I consider the Federal Witness Protection Program to be one of the most important tools at the disposal of the prosecutor/agent. I mention this at the very outset, for if during the course of my statement, I should make any comment which could be construed as a criticism of the existence, method, or means utilized to implement or conduct the Witness Protection Program; there should be no mistake that these comments should be construed as personal suggestions on how an invaluable tool could be improved, rather than any criticism that the Program should be curtailed, limited or abolished. In short, I am a strong advocate of the Program.

During my 8-year tenure with the Buffalo Strike Force, I have been the primary trial attorney in approximately 150 Federal prosecutions. I have also had supervisory or secondary trial responsibility in approximately 25 other Federal prosecutions; and some 25 State and local prosecutions; all dealing with organized crime investigations. In almost 60 percent of these cases there has been at least one witness who was a member of the Federal Witness Protection Program.

Of that 60 percent, almost 100 percent of those witnesses were individuals whose testimony was crucial to the ultimate issues in fact. A final statistic that I would like to mention is that, of this figure, perhaps as many as 80 percent of the underlying prosecutions could not have been indicted and prosecuted without the testimony of the protected witness.

Since I have been a Strike Force attorney, I have been the sponsoring attorney for some 20 witnesses' admission to the Program. My rough calculations reveal

that in addition to the 20 witnesses, an additional 60 people, all dependents of the witnesses, were also relocated. While with the Strike Force, there have been approximately another dozen witnesses who were put into the Program by other attorneys in the office.

As this Committee is aware from its hearing on violence and organized crime, violence, threats of violence, and physical harm are the indicia of organized crime, and are the methods which are often employed by organized crime members to insure loyalty amongst its membership and to instill silence in those who are the victims of its acts. Additionally, possessing many of the attributes of formalized bureaucracies, organized crime groups have a rigid structure and chain of command which cannot be deviated from. This formalized chain of command allows the hierarchy of the crime group to insulate itself from the actual perpetration of the criminal acts and provides it with a buffer from the members of the organization who engage in the actual act. In order for the Government to pierce these layers of insulation, and provide the buffers with the opportunity to testify free from harm or threats of harm, the Witness Protection Program is an absolute necessity.

I have dealt with three groupings of individuals with regard to the Witness Protection Program: First, the member of the criminal organization, who for one of a myriad of reasons, develops a dissatisfaction with the organization and decides to cooperate with the Government; second, the incarcerated criminal who wishes to cooperate to extricate himself from his predicaments; and third, the victim of, or eyewitness to a crime, who either out of fear or happenstance finds himself embroiled in a potentially life threatening situation.

The former group, the dissatisfied member, is the one with which I have had the most experience, and which I will address first.

This grouping is illustrated by the following example:

A man approaching middle age, who has lived and worked in one section of a community all of his life. He has a large family which has also lived for generations in the same community. During his life, he participated with his acquaintances in numerous criminal acts. At a certain period, he became intimately associated with a criminal group and may have even joined the group. He learned that the penalty for informing or talking, or "being a fink" is an unceremonious death. Examples of members and associates of the group who were informers or believed to be informers, are found garrotted to death and left lying in the streets, or brutally killed with their privates in their mouths. Examples which when made are carried out in a manner so that the lesson does not go unnoticed or unheeded. There then comes a point in time, when this man who has never held a steady job, but rather is a trained professional burglar, armed robber, second-story man, arsonist, or murderer for hire, becomes dissatisfied with his lot in life; the result of the amount of tribute he is forced to pay his superiors, the pittance he receives as his salary for good work, the fact that life is not his own anymore, etc. He feels like the puppet on the strings of his boss. His dissatisfaction has become overt or may be covert. If it has become overt, he has probably already been threatened and is in need of a protection for his family. Because of his upbringing, he has little fear or regard of his own safety; his primary concern is for his dependents' welfare. When he approaches the Government, the first request he makes in exchange for his potential cooperation is protection and relocation for his family. This is not only the first demand of the prospective witness, but is typically the only one that is non-negotiable.

Similarly when the dissatisfaction is still covert, he approaches the Government, and after discussions whereby he agrees to operate on the streets as an informant, he still wants the guarantee of protection and relocation for his family, if the fact of his cooperation becomes known.

The mere existence of the program probably accounts for the high incidence of individuals who initially approach a Federal agency when considering cooperation.

The second grouping of prospective witnesses comes at a point during a prosecution: after indictment, after conviction, or after sentencing. Here the individual has come to the Government because he finds himself in a precarious situation; either facing a period of incarceration, or already serving one. He turns to the Government because his former associates have reneged on their promises of financial support and the realization that now only the Government can solve his problem.

In the former case, where the prospective witness is still at large before conviction, there is little likelihood that he will testify against his partners and associates in crime without some guarantees of protection. In the latter case, where there is a conviction and a period of incarceration, only the Federal Government can hold out the carrot to the witness of relocation to an institution in another part of the country when the prisoner can resume service of his sentence with some degree of anonymity. Obviously, a State prisoner whose testimony receives widespread press coverage and whose face is on the front page of the newspapers, receives no solace from a State official who offers him a move from a Buffalo jail to a jail some 25 miles away.

The middle aged individual who receives a 25-year to life sentence wakes up one day in his jail cell with the realization that he has two options: Obey the code of silence and remain in prison, or cooperate and hope for leniency. The latter course not only gives him an opportunity to have a life again, but allows his family the financial security and safety that his associates had promised but never delivered.

Finally, there are the victims or non-criminals. The debtor on the loansharking debt who has been intimidated and would not consider cooperation without protection. In this group, they are also the eyewitness to a crime: The innocent bystander who happens to be a witness to a violent crime, and finds himself in a position of having to testify against violent people.

These are the types of individuals who enter the program; from the hardened criminal to the frightened businessman who, because of financial problems has borrowed from a loanshark, to the young girl who while coming home from school, witnesses a gangland murder. Would you relocate this young girl?

Without the Witness Protection Program, I feel that most of these cases would and could never be prosecuted.

Unfortunately, there are cases wherein witnesses were not in the Program, and they never made it to court to tell their story. For example:

(a) The case of the young man who was involved in a counterfeiting scheme. No longer was he playing with his school buddies—he was now in the "big time". He did not want to leave town; he wanted to remain in Buffalo and live with his girlfriend. He did not think anyone would hurt him. Early one morning, two hired killers entered his bedroom and fired six .45 caliber bullets into his chest; or

(b) The girl who was involved with narcotic distributors. She was found in an apartment murdered; the result of a brutal axe murder wherein her body had been dismembered; or

(c) The Government informant who was found dead as a result of multiple gun shot wounds.

The need for the Program cannot be questioned. There is no viable alternative for these people to cooperate and testify and ensure that they will be alive to testify.

Now that I have established the principle that Witness Protection Program is essential to the success of an organized crime program, I would like to raise a few problem areas that I have encountered.

The two areas which seem to present the most reoccurring problem is the lack of sensitivity by the Program's administrators to the witness' needs, and the lack of any retraining program.

The first problem is one that usually haunts the prosecutor; the second is one that usually causes recidivism and haunts society.

I will address the latter problem first. The Witness Program has been established under a set of idealistic conditions that in practical terms often proves to be totally unworkable. The Marshals conduct a preliminary interview with the prospective witness prior to his entry to the Program. At this time they soon discover that the witness has had very little education, no experience or training, and has developed an expertise only in safecracking and murder. The Marshal as part of his repertoire tells the witness that (1) the Marshals will locate one suitable job for the witness. If he accepts it, the witness is on his own. Later, upon acceptance to the Program, a 40-year master criminal is whisked away in the middle of the night, moved half way across the country, and in a few months the Marshals come to the door and say master burglar, convicted embezzler, we have found you a job as a bank teller.

As ludicrous as it is, more importantly, it is also totally unworkable. The witness has absolutely no training at the new employment, which means that within a short period he will be terminated. Since he has been living on \$100,000

a year, when a Marshal waves a wand and says here's \$100 a week salary for you and your wife and five kids, the first step the witness takes is to pocket half of the bank's assets.

My experience indicates a very poor track record for the Marshal locating employment, suitable or otherwise, for the witness. In some cases, the investigative agency has made the arrangements to provide employment that pays a living wage for the witness.

Assuming that the Marshals are able to locate a form of employment for the witness, training or reeducation is a problem. As much criticism as has been leveled at our penal institutions, at least we have made an attempt to retrain prisoners for the day they will resume life in society. Similar treatment is not afforded a witness in the Program. Even if the prisoner is trained to make license plates, he develops skills in metal working. The witness, however, has never worked a day in his life at an honest job. His prospects for ever finding gainful employment are less than realistic. We would be naive to assume that we can take a hardened criminal out of one city, put him in another, and then ask him not to engage in criminal acts, but to be content as a sanitation worker.

The first problem I mentioned, insensitivity of the case managers, can make the Program intolerable not only for the witness but also the prosecutor. Once having placed a witness in the Program, it is the attorney who must often handle problems resulting in great time consumption on non-case related work.

The Marshals who handle the Program are not as knowledgeable about the witness, not having lived with him for many months as has the investigative agent. They speak to him in hard and fast terms. Once contact is established, they are not allowed to continue as the case managers. Control of the witness transfers as the witness leaves the district on his journey to another locale. When he arrives, he is greeted by a Marshal, who is often overworked and the last thing he needs is a "reformed criminal" from Buffalo, New York, coming into his Sleepy Hollow. The witness and his family are detached from their families, have not received any documentation, have not been placed in permanent housing, and are thoroughly dependent on the Marshals for their livelihood. I have had cases where the Marshals have advised that they would not recommend relocation to certain parts of the country because the inspectors in that locale were insensitive to the witness' needs.

The witness, familyless and friendless, depends on the Marshal for his every need. Everything from dentistry and doctors to where's a good location to buy groceries. The Marshal is at time busy on other matters and tells the witness, "I'll get back to you." One day later the witness is on the phone with the attorney threatening either he gets help or he will refuse to testify. Every prosecutor probably has been threatened at least a dozen times prior to trial by his prospective witness with the spectre of refusal to testify if a certain need is not met.

The usual result is that the attorney spends approximately an inordinate amount of his time handling administrative problems regarding the relocation of the witness. A prime example of this insensitivity is recent case where a witness was relocated across the country, and given \$850 a month subsistence. He selected an apartment that cost him \$700 a month. Obviously creating a situation where the witness immediately used all his cash reserves to pay his current living expenses. When that ran out the witness found himself in a situation where he was being sued by the landlord for nonpayment of rent, and was subpoenaed into court for a determination as to his net worth. The witness refused to answer all questions relating to his financial or biographical background, resulting in a situation whereby he faced either contempt and eviction, or exposure and threats.

Another problem facing the witness is the time problem in acquiring new identification documentation. There are cases where witnesses have waited up to five months to receive identity papers, including social security cards, birth certificates, etc. A couple of examples of these problems include: A witness who is moved from Buffalo and told not to tell anyone where he is from. He is given a new identity and background. His car is not reregistered. So while he sits in Miami, telling everyone he is from Indiana, his car has New York plates on it. Or, with the same witness, where he goes to enroll his children in school, and he has not received new identity papers. He asks the Marshal what to do. The Marshal calls the school up and tells the principal he's a protected witness from Buffalo, so do not ask too many questions about the kids. Or, on a different occasion, when the Marshals had not briefed the witness on his new background.

At the first day of school, the teacher asked the children, get up in front of the class and tell us all about yourself.

Once again, this problem has been solved on many occasions unfortunately by the investigative agency going out and trying to provide some meaningful documentation to the witness to last until such time as the Marshals came through.

Perhaps the most extreme example of the insensitivity was brought home in a case which occurred several years ago in Buffalo. A prisoner who was serving a 12-year sentence for extortion was a Federal witness in a trial against another extortionist. He was in jail while testifying. The Marshals forbid the witness from making personal calls while he was in the lockup during the recesses in the trial. The witness was forbidden any family visitations and visits even from Governmental attorneys and agents who had not requested his presence. There were allegations that the witness had made personal calls from attorney's offices, so that Marshals wanted to insure that the prisoner, although a witness, was treated exactly like a prisoner. Alone in a jail cell sat the witness. In the very next cell was the defendant on trial for the crimes for which the witness had already been convicted. The defendant was in jail serving time for another extortion case for which he had already been convicted. During the recess, this defendant was allowed visitations from his wife and many relatives. We had the picture of the witness all alone and despondent in one cell, and the defendant receiving hugs and kisses and well wishes from his wife and family next door. Needless to say, the witness questioned the wisdom of his cooperation with the Government.

This insensitivity to the witness' needs are probably the result of budgetary restrictions rather than a lack of professionalism by the Marshal personnel. Unfortunately, budgetary constraints seem to hamper the Program at every turn. This "penny wise and dollar foolish attitude" is the most frustrating for the prosecutor and case agent. The Government spends perhaps a million dollars during the course of an undercover case in order to present a strong evidentiary prosecution against a major criminal. Then, following this major investment of time, manpower, and money, because of financial limitations, cases are seriously jeopardized. Some of the problems created by financial restraints include:

(1) Having the major trial witness, a member of the Program escorted around the community by out of district Marshals. Due to financial demands, the district Marshals cannot handle the protection detail. The major witness is then guarded by Marshals who, at times are not fully briefed as to who presents a potential danger to the witness' security. They are not familiar with the area, and usually rely upon the witness for directions around town.

(2) Because of financial restrictions, prosecutors are told that their major witness will not be brought into the district until two days before the actual start of the trial. The prosecutor has not seen his witness in a while, perhaps since the grand jury stages of the prosecution. A protected witness often needs substantial pre-trial preparation. Finally, 2 days before the commencement of a major trial, the prosecutor is intimately involved with 100 witnesses, pre-trial motions and other case preparation matters. He does not have the luxury to be able to drop everything and at this late stage devote 100 percent of his time to one witness.

(3) Because of a lack of adequate funding, the Marshals tell the prosecutor that the witness will be flown in and out of town every day before and after the trial. Because travel moneys come from a different allowance than overtime funds, the Marshals can fly the witness half way across the country twice a day, but they cannot keep him in the district where the prosecutors are who want to review crucial points of testimony. The witness is not only tired and haggard from his constant state of travel, but also he is in no mood to talk to the prosecutor about details of the case.

(4) Because of financial constraints witnesses are at times not brought into the district for trial preparation needs. The prosecutor carrying satchels full of transcripts, tapes and exhibits flies to a small secluded town where he meets the witness in a motel room. The agents also have to travel. Since it comes out of different budgets, a prosecutor and six agents fly to meet a witness, but not vice versa.

The final example of both insensitivity and budgetary constraints I would like to present concerns the prisoner witness who is already serving a period of incarceration. With the abolishment of the so-called safe-houses, prisoners

are relegated to spending their in-district stays in local institutions which have contracts with the Government. For security reasons, the witness is held in solitary confinement resulting in a low morale. While maintained in the local institution, sometimes they are waited on by trustees, who being aware of their witness status subject them to severe psychological harassment.

Every morning, prior to taking the stand, a prosecutor spends an hour trying to get the witness into some sort of decent frame of mind for his testimony. Not only is the witness subjected to a day-long brutal examination on the witness stand, but he is also subjected to verbal abuse in the institution during the recesses in the trial.

The conclusion that is inescapably drawn is that the needs of the Witness Program are fit into budgetary constraints, and a corresponding mentality to that effect has developed.

By these comments and short examples, I have not intended to cast aspersions on the Program or those who administer it. I think that the Program is one of the most essential ingredients in a successful Strike Force program. My remarks are meant only to identify certain areas where I have encountered problems. Hopefully, this body can provide the necessary mechanism to encourage, foster, or recommend the action necessary to improve those areas where problems exist.

Thank you.

[Brief recess.]

[Member of the subcommittee present at the time of recess: Senator Nunn.]

[Member present after the taking of a brief recess: Senator Nunn.]
Chairman NUNN. The subcommittee will come to order.

Mr. Beltran, if you will remain seated, I will stand up and give you the oath. Will you hold up your right hand?

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BELTRAN. I do.

STATEMENT OF ART BELTRAN, PROTECTED WITNESS

Chairman NUNN. We appreciate your being here today; we appreciate your cooperation. I know it is not easy to testify about many of the things you will be talking about today. I understand you have a full statement. We will put your full statement in the record without objection. So your whole statement will be in the record.

But I also understand you have a summary of that.

Mr. BELTRAN. Yes; I do.

Chairman NUNN. That is correct?

Mr. BELTRAN. Yes.

Chairman NUNN. Take your time. You have water. If you need to pause, do that. Go ahead and give us your summary statement. Then we will have questions for you.

[The complete statement of Mr. Beltran follows:]

STATEMENT OF ART ROCCO BELTRAN

Mr. Chairman and Members of this Subcommittee, I am a protected prisoner witness under the Federal Government's Witness Security Program. I am here today to inform you that this Program is in dire need of improvement or some type of reform. I strongly feel that there should be some intensive inquiry into the practices and policies that govern witnesses, both prisoners and non-prisoners under this Program. I am here in an effort to do something to improve what I

feel is a continuing and very real danger to me and to people in my situation who are prisoner witnesses.

Before I go ahead with my views on the Witness Security Program, however, let me explain my background so that it is clear where I have been and what I have done.

My criminal record began in 1964 on charges of petty theft. I had committed quite a number of crimes prior to being caught for that one, but as a result of it, I was committed to the California Youth Authority in 1966. I had a very difficult time in the California jails. In fact, I participated in a number of disturbances while I was a ward at the Dual Vocational Institute in 1969. I was placed in the California Division of Corrections in July, 1973 for petty theft and the possession of heroin. I received an additional commitment in January, 1975 for the possession of a dangerous weapon during a stabbing assault on another inmate. That inmate was a member of the Nuestra Familia, the same gang I belonged to.

My prison disciplinary history, I think the records will show, is not long, but it is extremely serious and ranges from the possession of contraband money and weapons material to assault on other inmates. In fact, in 1974, I was placed in a security housing unit program because of my membership in the Nuestra Familia, which made me a possible threat to the safety of many other prisoners. In November of 1976, I was finally paroled. I continued my membership in the Nuestra Familia (NF) on the outside of prison as well. However, in March of 1977, I was arrested again for assault with intent to murder, carrying a concealed weapon, accessory to murder and assault with a deadly weapon.

I was, until the time I began to cooperate with the Federal Government and the State of California, a member of the NF and held the command rank of Captain, Second Grade. In fact, I became a member in 1971, and rose to be one of its top ranking members. The NF consists of somewhere between 800 and 1,000 members. It is mostly centered in California, although it also extends into the nation of Mexico. It consists of mostly Mexican-Americans; however, it is not exclusive, and it can include other people as well. It began as a prison organization, and it has spread throughout the entire prison system of California and almost the entire Federal prison system. It is not confined to prisons alone. It works on the outside as well. The type of activities it engages in are the sale of narcotics, murder for hire, assault, robbery, arson—just about anything that will turn a profit.

I explain these things not to shock the Subcommittee and not to exaggerate my own importance. It certainly does not make me proud to think that since 1964, I have led a life like this. I say this only to establish for your benefit that I know what I am talking about when I talk about prison life. I know what it is like to be a prisoner. I also know what it is like to be a member of a violent criminal organization.

In addition, I know what it is like to be a protected witness. I became a protected witness in August, 1978. At the time, as I mentioned, I was serving time in the California prison system in the Santa Clara County Jail. I was waiting sentencing on recent convictions for assault with intent to commit murder and for the carrying of a concealed weapon. I became a witness and began cooperating with the State government and with the Federal Government for three reasons. First, I was involved in a power struggle within the NF. I was one of its ranking members, but I had been marked to be killed. I knew, without a doubt, that ultimately attempts would be made on my life. It was time for me to leave the NF if I were to stay alive. Second, the Witness Security Program offered me the opportunity and an alternative that was otherwise not available to me. Third, I felt it was time to get out of the NF because I could see what was happening to myself. I could see what kind of a future it offered me and offered to my family—that is, no future at all. It was time, quite frankly, for me to help my family and help myself and begin a new life of our own. This was what was in my mind when I began to cooperate as a prisoner witness. I wanted to save my life but I also wanted to start a new life and a new life for my family.

In my attempts to start this new life, I have testified for the Government many, many times in State trials, and it is my understanding that I might be witness in a Federal trial in California. I have testified usually in connection with homicide-related cases, and in each case the defendants have been convicted. In almost every one of those cases I have testified against NF members. I have testified against members of other prison and non-prison gangs also—such as the Black Guerrillas. I should note that the NF is not the only prison gang. There are

probably twenty or more gangs in addition to the NF. Gangs like the Brown Bears, the Aryan Brotherhood, the Nazis, the Black Guerrillas—the list can go on and on. These groups fill the prison system. They are in incredible danger. This is a point that I will get into in a few moments.

There are many things that I can tell about the prison system. It is hard to figure out where to begin. Basically, the prison system is, in fact, operated by the inmates. This is not to criticize the Bureau of Prisons or the Federal Government or the State government. The problem is there are just more prisoners than there are guards and officials. Naturally, the prisoners are taking advantage of every slight slip that anyone in the prison system might make. The average inmate knows more about what is going on in the prison than most of the officials do. We are capable of communicating with one another within the entire prison system with remarkable speed. We can communicate with each other on different floors almost as fast as you can communicate with someone else in this building by telephone or messenger. We can do this without the guards finding out what our messages are. We can do it without using the guards and without them having any idea that it is going on. In fact, the prisoners can communicate with each other in ways that you wouldn't dream of. We can take things that you take for granted everyday of your life and turn it into a method of communication.

One example is the use of the plumbing facilities. When you go into a cell, you take the blanket, you roll it up, you put it into the toilet bowl, and you soak the water out of the bowl. Once it is emptied, you have a perfect pipeline to other parts of the prison. It might sound strange or it might sound funny, but in simple fact, it works, and it is used all the time.

The prisoners also have their own code of conduct which prohibits cooperating with the Government. In other words, it prohibits being an informer. The penalty for this is death. It is as simple as that. A witness cannot live in general population if it is known that he is a witness. Maybe this is not true for all witnesses in all prisons; there might be people who can be protected in general population. But when you are up against an organization like the NF, there is no such thing as a safe prison. The NF is literally everywhere. They enforce these rules and the prisoners' code. But they do not enforce them through "due process." There is no indictment. There is no accusation. You don't go on trial. You have no chance to argue unless you are very, very lucky. The speed of action is one of the things that characterizes the prisoners' code and the enforcement of that code. When the prison code is violated, a contract is put out. There is no warning. There is no discussion. There is simply action. It happens almost immediately. And it is not only gang members who will enforce this code. Anyone who wants to join a gang can show he is a good prospect by killing a witness or informer, or just a suspected witness or informer. So it can be anyone at all who is willing to kill you just on a suspicion.

I bring this out to try to explain it so that it can be understood that for a protected prisoner witness, little things that may seem picky or foolish to someone else are literally matters of life and death for me and other prisoner witnesses. All of this has to be taken together. Understand that prisoners can communicate with each other in spite of the restrictions of prison life. Understand that we have this prisoners' code. Understand that we enforce that code brutally, efficiently, and very, very rapidly. Then, consider that a prisoner witness is almost immediately identifiable as a prisoner witness for basically one of two reasons. Either someone in the general population may have seen him in one of the protective custody units—such as in San Diego, New York or Chicago—or there is something in his file—some slight difference, some slight statement or phrase that will tip them off. They may look at a phrase, misinterpret it, and incorrectly conclude that a person is a witness. Or the identification by another prisoner of some specific inmate having been in the protection custody unit may be completely incorrect. They don't try to find out if the accusation is true. They would rather be safe than sorry, and they will take action simply on the slightest information. That action will result in the death of a witness.

What a prisoner witness is faced with generally is the fact that he is identifiable anywhere, anytime and he never knows by whom. The prisoners can identify a protected witness, but that witness cannot identify them. He never knows who may have seen him. He never knows who may have seen his file. So, if he is put into general population, he lives in constant fear that someone will see him and he will never know about it until something happens.

There is one other thing that should be understood about these organizations, especially the NF. It includes entire families, wives as well as husbands. The men can be members, and the women can only be associates, but both men and women without hesitation will carry out the orders of the NF leaders. The NF is not the only organization that has members and associates of both sexes.

Many of the prison gangs operate the same way. They can cooperate very closely with one another, or they can go to war with one another. I am personally aware of hiring another gang for the purpose of killing an informant or someone engaged in a power struggle in that gang. Gangs will take contracts from one another. Therefore, it is not enough for someone like me, for example, to stay away from prisons where there are Mexican-American inmates or possible members of the NF. If there is a member of the Hells Angels, the Aryan Brotherhood, or one of a dozen and a half other organizations in that prison, then I am in just as much danger as if I were sitting in a jail cell with the people that I testified against. At least I could identify those people. I don't know the members of all the gangs in all of the prisons. Nobody does. Therefore, it is almost impossible for me to protect myself. And it is not just the men I have to worry about. It is also the women.

There is one last point that I should make before I begin explaining some of the problems I have had as a protected prisoner. Before I became a protected witness in August, 1978, I was, as I said, a high ranking member of the widespread criminal organization known as the NF. Not only a prisoners' code but also a very strict law of the NF says that if a member cooperates with the law, the price he pays is his own death and most likely the death of his own family.

The NF is unsophisticated, but it is very powerful. The NF would very quickly sacrifice one or more of its "button men" to get me. If they see an opportunity to kill me, they would do it anywhere, anytime. They would do it in this room if they thought they could. They are not concerned with getting away with it. I, myself, have seen various murders and assaults committed under the very eyes of guards. In fact, one of the inmate assaults that I was involved in was committed about four feet away from the guard tower, right underneath the guards. In fact, the guards were watching as I did it. But it was my job to get that man who was a member of the NF. The leadership had decided that he had to go, and I did it. Any NF member will do the same. It doesn't matter where. It doesn't matter when. If the order is given, the order will be carried out. With this in mind, let me explain some of the incidents that have taken place during my many trips to testify against the NF and other prison organizations.

I have been in the protective custody unit, a Metropolitan Correctional Center since August, 1978. On one occasion, I was taken from the Metropolitan Correctional Center and brought to Fresno, California to testify in a murder trial. I was under the protection of the Marshals as I was moved to Fresno. When we got to the U.S. Marshal's Office in Fresno, my two escorting Deputy Marshals were provided a car and directions to get to the courthouse. En route to the courthouse, we got completely lost. When we finally found the place, there was a crowd of people standing around in front.

Several of them could easily have been members of the NF. I knew that any NF member would recognize me, and I knew that if one of them thought he or she had the opportunity, they would do something to try and kill me. It didn't matter that there were Marshals around me or a crowd. At any rate, we left, but we got lost again. Finally, a person gave us instructions on how to get to the courthouse, but we ended up in the lobby of a hotel directly across the street from the courthouse. Eventually, I had to walk through that crowd of people to get into the courthouse. I was supposed to testify in a murder trial. About the last thing in the world I was thinking of at that point was somebody else's murder. I was thinking of my own murder. I was scared to death. I had been dragged through this crowd. I had been lost in a danger area for half an hour, and I was expected to get on the stand and testify to particular facts and circumstances—and be cross-examined. I told the Assistant District Attorney prosecuting the case that I was in no mood to testify because my security was so bad. The Assistant District Attorney got upset and told the Marshals that he could not understand why he had not called in advance so that they could have arranged to bring me in through the rear entrance. That was all it would have taken. A telephone call. But that telephone call was not made, and I was put through that kind of concern and fear.

At any rate, I testified that day, but I did not finish my testimony entirely. I had to be lodged somewhere overnight, and the Marshals wanted to put me into the Fresno County Jail. I protested at being put there because the person that I

was testifying against, and several other members of the NF, were actually prisoners at that same jail. After some argument, I was finally put into the Merced County Jail in isolation in the women's section. The Marshals who had brought me up returned home. I finished testifying the next day, and was taken back to the Marshals Office in Fresno. The Marshals said that they did not want to get stuck over the Easter holiday, as they would if they had to transport me back to the MCC. I was returned to the Merced County Jail. I protested that I was not supposed to stay in the danger zone any longer than was absolutely necessary. My protest was absolutely useless. I was lodged for five more days at Merced so that the Deputy Marshals could enjoy their vacations at home over Easter.

While I was at Merced, some of the female trustees told me that they knew who I was, whom I was testifying against, and that a call had already been made. I knew what this meant. I knew that these people were involved with either the NF or some other gang. I knew that these women were willing and capable of carrying out whatever orders were issued. I knew that my life was in serious jeopardy. I was trapped in a cell while the trustees were able to walk around the building. And yet, I was unable to contact any of the Marshals. There was nothing I could do except wait and hope. I waited in fear for five days until finally the Marshals picked me up. It might sound small to you on the outside. It might be meaningless to people who are not in jail. But, try it some day. And for this I am testifying? This is what happens to me when I testify?

On another trial trip, I was taken to the Yolo County Jail. The Marshals told me that they had housed Timothy Leary and a few other "hot" cases there. I told them that I was not terribly concerned about other witnesses who had been housed there. I was in an entirely different boat since the NF and all those other gang members knew me. I was housed there anyway in a disciplinary cell for security.

After two days, I was finally let out to take a shower. When I came out of the shower there were several other inmates out there. This might seem entirely routine, but I didn't know who any of them were. For all I knew, anyone of them could have been a member of the NF, the Hells Angels, the Aryan Brotherhood, or any other gang that permeate the Federal and California prisons. I did not know them, but they certainly might have known me. It would only take one person in that group of people to know me and to do whatever they had planned to do. There was no way that I was going to gamble with my life that there might not be any danger. Immediately, I put my back up against the wall. That was the only way I could be sure that nobody could approach me from behind. It was that way that I was brought back to my cell—with my back against the wall. For this I am testifying?

The unnerving thing about this is that while I was in this jail, I had been put into a disciplinary cell for security. In other words, there was supposed to be nobody else exposed to me—yet when I walked out of the shower there were several other inmates out there. Is this security? Is this supposed to encourage me to testify? Is this supposed to put me in the state of mind to testify and testify well?

Shortly after that incident, I was brought back to my cell. The cell doors have a little slot in them through which the food tray can be slipped. After I had been in my cell a short time, several of the inmates in adjoining cells were brought out into the hall. As one Mexican-American walked past my cell, he said to me through the tray slot, "You're dead, you won't make it." I immediately contacted the guard and persuaded him to let me make a telephone call to the U.S. Marshals. The U.S. Marshal told me he wasn't going to move me until the next day. There was nothing I could do even though I had contacted the people who were supposed to be responsible for my security.

On another trip I was taken to the San Francisco Jail. The Marshal there told the jailer when I walked in that I was a protected witness and he wanted to place me in a disciplinary cell. That was about the last thing I wanted announced when I walked into a local California jail, especially one in a danger area. The jailer told him that he couldn't do that because they were getting some heat for putting people into "the hole." He said that before I could be put into the hole I would have to commit a disciplinary infraction. (I should say that "the hole" means solitary confinement in a small six-by-eight foot cell that they put disciplinary cases into.) The end result of this argument was that they put me into a regular cell.

Before going into the cell I happened to pick up a match book. Match books are a form of communication in a prison, Mr. Chairman. Many times inmates will scratch out short notes or messages inside of a match book and then pass the match book back and forth for the lighting of cigarettes. In this way a very simple and routine physical action becomes an important means of communicating quietly and privately with other inmates even under the nose of the guard.

I picked up this match book and later when I went to light a cigarette I found a note inside there. The note was in reference to the death of Danilo Melendez. Melendez was a former NF member who had been killed as a result of a power struggle. He was very well known in San Francisco among NF members. The fact that he was mentioned in a routine communication between two inmates indicated to me that there were inmates present in the San Francisco Jail who were probably members or at least associates of the NF. More than likely, I would be well known to them on sight since I had been an important and ranking member of that same organization. The end result was that I stayed awake all night not knowing whether someone would try to make a hit on me. Again, this probably seems minor to people who have never been in jail. It might seem that I am over-reacting, but I know what they can do to a person who is locked into a cell, especially when they are in the corridor. I know it can happen. I have seen it. It is a horrible thing to know that death might come to you at any second, in any form, from any direction and the only thing that you can do is be permanently and continuously vigilant. I stayed awake all night. Imagine the shape I was in to testify the next day in the trial, let alone to be cross-examined.

On another occasion I was taken to northern California to testify in a murder trial. When it was completed, I was told that I would be driven to Bakersfield to testify in a double homicide. When we finally got to Bakersfield, the Marshals were discussing the idea that if I didn't get off the witness stand early, they would put me in the Bakersfield jail. I told the prosecutor I was not going to testify because the people I was going to testify against were being housed in the Bakersfield jail. Under the conditions the Marshals were setting, I was in fear for my life.

The only leverage I have is to threaten not to testify. These people consistently try to put me in jails where the actual defendants were staying, and it made absolutely no difference to them. The only way I could stop it would be to walk into the prosecutor and announce in the middle of his trial that I would not testify.

At any rate, the prosecutor told the Marshals that he had spoken to their boss and that if I didn't get off the stand before 4:00 p.m., they had arranged for accommodations for me. If I finished testifying before 4:00 p.m., they were to take me all the way back to the MCC. The Marshals checked this out with their boss and found that this was correct and agreed with the prosecutor. Therefore, I went ahead and testified.

I finished testifying shortly after 4:00 p.m., and I left with the Marshals assuming that we would go back to the MCC since it was just a little after 4:00. When we got to the Long Beach area, however, they told me that they were going to leave me at Terminal Island Prison overnight and pick me up the next morning. I told them that there was no way I could go to Terminal Island. Terminal Island is in Los Angeles. There are dozens of people in Los Angeles that I know are directly involved with the NF. I told them that I could be killed there because of the type of people that I was testifying against, and the number of connections they had, and the fact that I was very well known in Los Angeles and in the jails. Of course, none of this made any difference. When we got inside there was an inmate clerk and two other convicts being admitted into the jail. The Marshal told the guard in front of these people that I was a protected prisoner that they needed to house overnight. I was escorted to the D Block hole by about eight officers, which was unusual for any prisoner. On the way to that location, I could see a lot of the inmates staring at me in curiosity. I was placed in a cell with Mexicans on either side. My bedding was brought to me by a particular inmate.

After the guards left, I used the plumbing communication facility. I removed the water out of the toilet bowl in my cell with the blanket, and when it was empty I listened through the plumbing. I could hear one inmate asking another person over the plumbing system what my name was and what I was there for. The other responded by saying that he didn't know but that he would check with the "mainline" and send out a flyer on me to find out exactly what was going on with me. By the "mainline," he meant that he would check with the inmates

who were in general population and who were involved with the receiving and departure of inmates. These inmates have access to the various records and files on all prisoners who come into or leave this prison, just as they do in any prison in the Federal system. I was afraid that if they checked, they would see something in my file that would indicate that I was a witness. As a result, I stayed awake again all night waiting for the hit. Fortunately, it didn't come, but being in a cell all alone and separated from other prisoners is not so safe as people seem to think.

I have been a convict for a long time and not always a protected witness. I know both sides of the issue. I know that I was a trapped animal in that cell. At any time flammable fluids could have been thrown on me and I would have been burned alive. I could have been shot through the bars with a homemade zip gun, or a homemade bomb could have been thrown in the cell, or a dart gun could have been used, or a long broom stick with a knife tied to it. These things happen in jail. I have seen them. I know that there are access to flammable fluids, to zip guns, to homemade bombs.

Just before midnight, the same inmate who delivered my bedding to me earlier came back to my cell with a new bedroll. He told me that he was there to deliver my bedding. Right then and there I knew something was wrong. It might seem to be a particularly routine thing, but this was the same man, and delivering bedding at 12 midnight is not common. Besides that, the bedding can either be soaked in a flammable liquid, or it might conceal a knife or a gun. There was no way I was going to let him get anywhere near me, but fortunately just at about that moment a guard showed up so nothing happened and he left. The next morning at about 9:00 or so, one guard came up to my cell, opened the door and told me I was leaving. I was frightened because I could see I was being moved by only one guard and yet we had to walk through the entire prison yard. I knew that at 9:00 in the morning many of the inmates were out in the yard taking their exercise period. I realized how easy it would be for someone to assault me or kill me in the middle of the yard simply by having a lot of inmates crowd around me. I could be easily separated from one guard, and the NF or any of the other organizations would not hesitate for thirty seconds to make an attempt on my life, even though there might be fifty guards looking on from the walls of the prison. I made it through the yard, but I made it through in absolute fear. Again, for this I am testifying?

I cannot understand why I have to go through this sort of thing everytime I testify. Doesn't anybody understand what goes on in a prison? Doesn't anybody understand how a prison is run and what the inmates are like? Is everybody completely ignorant of organizations like the NF and the Aryan Brotherhood and the SS and the Nazis and the Brown Bears? I know that these people will kill an informer or even somebody involved in a power struggle, anytime, anywhere. Maybe on some of the incidents I have been worried unnecessarily, but the point is that this Program is supposed to keep me not only physically safe but mentally safe. I should be kept in a good mental state so that I can withstand cross-examination and be able to testify to specific facts and circumstances accurately and completely. And yet exactly the opposite is happening.

On another occasion, I was taken to Los Angeles to testify in a murder trial against four members of the NF. I did not complete my testimony, and I was scheduled to resume testifying the following day. The Marshals tried to lodge me in the Orange County Jail. I informed the Marshals that I couldn't be housed there, and they told me that I would be housed there anyway. Despite my protests, I was taken there. However, the jailer refused to accept me. He refused to accept me because nobody had contacted the jail to advise them that I would be brought in there. So, in the middle of the night, they took me to the San Bernardino Jail. I protested that the Marshals were going to get me killed because the San Bernardino Jail was filled with NF people. The Marshal turned to me and said, "Art, we just can't avoid all the danger." I told him that I could understand but that this type of danger could be avoided.

I was booked under an assumed name into the prison and placed in a cell. Shortly afterward I was approached by an inmate there who said, "Flaco sends his regards." This was a death threat. Flaco was a member of the NF in the San Bernardino area. When Flaco sent his "regards" through an inmate who did not know me I understood that the NF knew where I was. I told the guard immediately that I wanted to call the Marshals. I was not allowed to do so. Instead, I was placed in the hole. On the following day I was, to say the least, reluctant to

be a witness for the prosecution. I remember that the prosecutor asked the Marshal what they would do in the event that we ran into trouble in the hallway or the elevator. The Marshal responded by saying, "He's the one they want to kill, not me, I am going to get as far away from him as possible." I don't know if he was being serious or whether he was joking, but that was about the last thing in the world I needed to hear that day. It was just the thing to put me into the mood for testifying on behalf of the prosecutors. It was just the thing that I needed to trust the State and the Federal Government with my life.

This is the kind of thing that we go through constantly. I am not speaking of myself only. The examples I can give are personal examples. These are things that have happened to me, but knowledge of prison life, understanding inmates, the prisoner's code, the speed of communication, the speed of reaction and the speed of retaliation, these are things that all of us know. By all of us, I mean all of the prisoner-witnesses. It is just as dangerous for all of them as it is for me.

There are some prisoners, I think, who could probably be safe in the general population of the prisons in the federal system. But there are some prisoners who will never be safe. I am one of them. Anybody who was affiliated with an organization like the NF or Hells Angels is not safe in any prison, no matter what security classification it has. Others might be safe in the lower security classification prisons, places like Allenwood, and others might actually be safe in the most highly classified of security prisons.

We have recently been advised by people from the Bureau of Prisons that ultimately, according to their policy, we will be placed into the general population of some institution that they consider safe for us. I know there is no safe place for me in general population. Many of the prisoner-witnesses that are housed with me right now know there is no safe place for them. There seems to be no way we can convince them or make them understand. They seem to think that all they need is a list of the people that we testified against, and as long as they don't send us to a prison where those people are housed, we will be safe. This is not the case. We are also in danger because of the prisoner's code. If the word gets out that we are prisoner-witnesses, then we are going to be retaliated against. This is especially so in the high security prisons. Is it any wonder that the statement that we will all ultimately be sent to general population sends tremors throughout the entire prison section where we are housed?

I have to serve my time, as the system now stands, in an MCC because my NF contacts are spread throughout the entire prison system, both federal and state. Because we have been told that we would have to go into general population, I and six other inmates of the MCC have filed restraining orders in the U.S. District Court in the Southern District of California in order to prevent our being moved into a prison setting where we will be killed.

These moves into general population are complicated by the fact that usually they occur without any warning to us. Although Bureau of Prisons policy says that we should be consulted before we are put in general population, in many cases you don't find out about it until it happens. Usually you don't find out where you are going to go until you arrive there. It's no wonder that we are scared not only of prisoners but we're scared of the officials themselves.

Another problem that we have is food. I've been in a number of institutions in which, as I've mentioned, people have known that I was there as a witness—or at least that there was some connection between me and the government. All they have to know is that I'm cooperating or that I'm sort of a witness or informer. Food in the prison system is prepared by inmates or it's accessible to inmates. It never fails, and I know what happens in the prisons. I know because I have seen it done. The food for a prisoner-witness or an informer is tampered with in some way. Maybe filth is put into it, or bugs are put into it, or something of that nature. In half of the prisons that I have been in when I'm testifying, I wouldn't dare eat the food because the people bringing me to that prison have announced I was a witness or the word has gotten out. I didn't know what had been put in the food. For all I knew, I could have been poisoned. Maybe this might seem like an overreaction but it's not. I know. I have been there.

The result of all the accumulation of little incidents is a mental anguish that is almost impossible to describe.

There seems to be a pattern of innocent mistakes constantly taking place every time I move somewhere. I am not saying that the Marshals are trying to get me killed. I am not saying that the prison officials are out to get me. But I do believe that I am in danger from the average prisoner because I am a witness

and that constantly and continuously this pattern of innocent mistakes exposes me to extreme danger for my very life from these various prisoners who might well be members of the NF or some other gang. This pattern of innocent mistakes, whether it comes from incompetence or simply not caring, can ultimately lead to my death. I have to testify in this mental state every time I go to court. Believe me, it is awfully hard to testify when you're scared to death.

A lot of people are simply going to say, I am sure, that I am just a criminal, that we are all criminals, and that we don't deserve any real consideration or concern from anybody. But it seems to me that from the Government's own viewpoint, it's just common sense to take care of people like me in some way, to preserve us from this constant fear and this constant danger. Ask yourself, as any prosecutor must, do you want a witness to testify well or not? Do you want to encourage other gang members to leave the gangs and testify against them? If you do, then preserve them from this constant, continuous mental anguish and fear that they will have to go through. The only place I'm safe, or at least the only place I feel safe, is the MCC.

But these centers are made for people who are just about to get out of jail or who are in town only to testify or to be prosecuted. They are not made for people to stay for two or three years—and yet I've been there for over two years.

My only recreation is about an hour at a time up on the roof of the prison about six times a week. I can't use any of the educational facilities. I have less medical care. My commissary privileges are more restricted. I have a law library, but it's not as good as the average prisoner's. Being in an MCC is a deprivation. It's basically a punishment, and yet I'll take the punishment just to be able to avoid having to constantly worry whether someone is going to stick a shiv in my back while I'm not looking. I wish that in some way people like me, people who can't go into general population, could simply be placed in a facility where there is nothing but witnesses so that we could have all of the normal things that all the average prisoners get and yet still feel safe. But as it stands now, without something like that, we do harder time than anyone else in the system. In effect, we are punished by the people who should be at least helping us in some way, because they're the ones who want our cooperation and who will benefit from it.

Even if people think that a criminal deserves whatever he gets, and even if people think they don't want the testimony of a criminal, then at least think about my family. My wife is not a criminal, and my children are not. There is no reason in the world that they should be punished because of the things that I have done in my past. Like I said, one of the major reasons that I went into this program and began cooperating was to keep my own life safe. But it was also to start a new life for myself and for my family, to get out of the NF business and to go live somewhere like a man.

I was promised when I got into this program that my wife and children would be taken care of, that they would be relocated by the United States Marshals Service and placed somewhere near to me so that we could visit while I was in prison. I was also told that they would be taken care of financially, that they would receive subsistence and new documentation and new names so that they would be safe from all of the NF members wandering around California. One of the most important parts of this promise was the fact that my family would be able to visit me and visit me safely. But from the time I have testified until today, I have seen my wife and my children only one time. I haven't seen them more because they are relocated somewhere so far from me that they cannot get to see me. If they did, it would be considered a security violation, and the Marshals would be upset with them. They are no longer in the Program in the sense that they are not getting any money. But if they had tried to visit me, it is my understanding that that would have been considered a security breach, and they could have been terminated from the Program.

At any rate, my wife was told that security was of great, great importance, and she was told it was important that nobody knows she is a witness or married to a witness. Yet for some reason, the Marshals told her employer, her landlord, and even the person who sold her a used car that she was a relocated witness. Her first employer kept asking her what she was involved in and what case she was testifying in. It got to the point where she had to leave the job because she felt so harassed. The Marshal was good enough to get her another job, but the same thing happened again.

People found out she was a relocated witness because the Marshal told the employer, and as a result they kept asking her about it. Because of the same problem, she quit the second job. The Marshal said to her that he had arranged for another job for her, and she said, "No thanks. Every time you take me for a job interview, you tell people I'm a relocated witness, and that's all they can talk about with me. I'll find my own job." So the Marshal told the people in Washington, and they decided that she should be terminated from the Program because she wasn't willing to get a job.

On top of my own problems, on top of the constant and consistent pattern of innocent mistakes by the Marshals, I have to constantly worry about whether my wife has got food to feed my child, whether she has a dollar to buy some heat for the house, whether she and my child are safe. That's all I need at this point, and yet that's exactly what I've got. And the same thing keeps happening to many other prisoner-witnesses that I know of.

We should have known in the beginning, we should have understood all of this. The problem is that there was absolutely no orientation for the Program for me or for my wife. In fact, nobody ever sat down and told me what the protection program meant for my wife and family. They did sit down and explain it then, but it was a very rush job. It was done very fast, and while she was in great fear because of my cooperation. She knew as well as I did that the NF would go after her and the kids just as quickly as they would go after me. She was so preoccupied with the fear that she really didn't understand what she was getting into. Yet she and I were never allowed to sit down and discuss this thing together, let alone discuss it together with a Marshal or an attorney. We never had an opportunity together to review the papers she signed.

Finally, I should say a couple of things about the MCC. I think I can accurately characterize the MCC as about the best of the worst. It's the worst in the sense that we do harder time than other inmates who are not cooperating, but it's the best in the sense that we feel safer in an MCC than we do any other place. The way the officials are trying to run the MCC indicates that the Bureau of Prisons is trying to protect us and make us feel safe. As I said, the MCC was never made for people who have to stay there for a long time. The MCC was made for people who have to stay there for just a little while, but they are working with what they have. Maybe the solution to this whole thing is to take this all away from the Bureau of Prisons and have someone else protect us while we're in prison. I don't know who could do it other than the Bureau of Prisons. I think probably the solution, or at least one solution, is to just turn over an entire facility so that only prisoner-witnesses are there so that we won't have to worry and so we will have the same opportunities and access to program and things like that that other prisoners have. This might improve the situation.

I thank you for letting me go on for so long and give you such a very long statement. I've had to go on for a long time because somewhere, somehow I feel I have to convince somebody on behalf of all of the prisoner-witnesses that there is a danger in general population, that we do face real problems, that we are frightened and that we do harder time than anybody else in the prison system. The Government is never going to get people to continue to cooperate under circumstances like this. The word is spreading; people know what we go through; the prisoners in the jails all know what happens to us now. It's commonplace. How many witnesses are not cooperating because they are in jail and they know what will happen to them in jail? I think a lot of people are refusing to cooperate because of this. The Government will never get anywhere in fighting groups like the NF and the Aryan Brotherhood and the SS and the Nazis unless you develop some sort of system that not only physically protects a witness but removes him from the danger. He must be able to think without constantly being preoccupied and concerned with his own safety. He must know that his wife and children are starting a new life and that they are safe even if he can't see them. And he must know that he will survive the entire ordeal and someday start a new life with his family.

Chairman NUNN. You understand that you are being shielded from the audience and no pictures are being taken of your face and so forth. We would caution you to remain seated once your testimony is completed until we have the room emptied and then we will have you escorted out. So don't get up, don't stand up when you testify.

Mr. BELTRAN. OK.

Chairman NUNN. Go right ahead.

Mr. BELTRAN. Mr. Chairman, members of this subcommittee, I am a protected prisoner witness under the Federal Government's witness security program.

I am here today to inform you that this program is in dire need of improvement or some type of reform. I strongly feel that there should be some intensive inquiry into the practices and policies that govern witnesses, both prisoners and nonprisoners under this program. I am here in an effort to do something to improve what I feel is a continuing and very real danger to me and to people in my situation who are prisoner witnesses.

Before I go ahead with my views on the witness security program, however, let me explain my background so that it is clear where I have been and what I have done.

My criminal record began in 1964 on charges of petty theft. I had committed quite a number of crimes prior to being caught for that one, but as a result of it, I was committed to the California Youth Authority in 1966.

I had a very difficult time in the California jails. In fact, I participated in a number of disturbances while I was a convict at the Dual Vocational Institute in 1969. I was placed in the California Division of Corrections in July 1973 for petty theft and the possession of heroin.

I received an additional commitment in January 1975 for the possession of a dangerous weapon during a stabbing assault on another inmate. That inmate was a member of the Nuestra Familia, the same gang I belonged to.

My prison disciplinary history, I think the records will show, is not long, but it is extremely serious and ranges from the possession of contraband money and weapons material to assault on other inmates.

In fact, in 1974, I was placed in a security housing unit program because of my membership in the Nuestra Familia, which made me a possible threat to the safety of many other prisoners.

In November 1976, I was finally paroled. I continued my membership in the Nuestra Familia on the outside of prison as well. However, in March 1977, I was arrested again for assault with intent to murder, carrying a concealed weapon, accessory to murder, and assault with a deadly weapon.

I was, until the time I began to cooperate with the Federal Government and the State of California, a member of the Nuestra Familia and held the command rank of captain, second grade. In fact, I became a member in 1971, and rose to be one of its top-ranking members. The Nuestra Familia consists of somewhere between 800 and 1,000 members. It is mostly centered in California, although it also extends into the nation of Mexico.

It consists of mostly Mexican Americans; however, it is not exclusive, and it can include other people as well. It began as a prison organization, and it has spread throughout the entire prison system of California and almost the entire Federal prison system. It is not confined to prisons alone. It works on the outside as well. The type of

activities it is engaged in are the sale of narcotics, murder for hire, assault, robbery, arson—just about anything that will turn a profit.

I explain these things not to shock the subcommittee and not to exaggerate my own importance. It certainly does not make me proud to think that since 1964, I had led a life like this. I say this only to establish for your benefit that I know what I am talking about when I talk about prison life. I know what it is like to be a prisoner. I also know what it is like to be a member of a violent criminal organization.

In addition, I know what it is like to be a protected witness. I became a protected witness in August 1978. At the time, as I mentioned, I was serving time in the California prison system in the Santa Clara County Jail. I was waiting sentencing on recent convictions for assault with intent to commit murder and for the carrying of a concealed weapon. I became a witness and began cooperating with the State government and with the Federal Government for three reasons.

First, I was involved in a power struggle within the Nuestra Familia. I was one of its ranking members, but I had been marked to be killed.

I knew, without a doubt, that ultimately attempts would be made on my life. It was time for me to leave the Nuestra Familia if I were to stay alive.

Second, the witness security program offered me the opportunity and an alternative that was otherwise not available to me.

Third, I felt it was time to get out of the Nuestra Familia because I could see what was happening to myself. I could see what kind of a future it offered me and offered to my family, that is, no future at all.

It was time, quite frankly, for me to help my family and help myself and begin a new life of our own. This was what was in my mind when I began to cooperate as a prisoner witness. I wanted to save my life but I also wanted to start a new life and a new life for my family.

In my attempts to start this new life, I have testified for the Government many, many times in State trials, and it is my understanding that I might be a witness in a Federal trial in California. I have testified usually in connection with homicide-related cases, and in each case the defendants have been convicted.

In almost every one of those cases I have testified against Nuestra Familia members. I have testified against members of other prison and nonprison gangs also—such as the Black Guerrillas. I should note that the Nuestra Familia is not the only prison gang. There are probably 20 or more gangs in addition to the Nuestra Familia. Gangs like the Brown Bears, the Aryan Brotherhood, the Nazis, the Black Guerrillas—the list can go on and on. These groups fill the prison system. They are an incredible danger. This is a point that I will get into in a few moments.

There are many things that I can tell about the prison system. It is hard to figure out where to begin. Basically, the prison system is, in fact, operated by the inmates. This is not to criticize the Bureau of Prisons or the Federal Government or the State government.*

The problem is that there are just more prisoners than there are guards and officials. Naturally, the prisoners are taking advantage of every slight slip that anyone in the prison system might make. The average inmate knows more about what is going on in the prison than

most of the officials do. We are capable of communicating with one another within the entire prison system with remarkable speed. We can communicate with each other on different floors almost as fast as you can communicate with someone else in this building by telephone or messenger. We can do this without the guards finding out what our messages are. We can do it without using the guards and without them having any idea that it is going on.

In fact, the prisoners can communicate with each other in ways that you wouldn't dream of. We can take things that you take for granted every day of your life and turn it into a method of communication.

One example is the use of the plumbing facilities. When you go into a cell, you take a blanket, you roll it up, you put it into the toilet bowl, and you soak the water out of the bowl. Once it is emptied you have a perfect pipeline to other parts of the prison. It might sound strange or it might sound funny, but in simple fact, it works, and it is used all the time.

The prisoners also have their own code of conduct which prohibits cooperating with the Government. In other words, it prohibits being an informer. The penalty for this is death. It is as simple as that. A witness cannot live in general population if it is known that he is a witness.

What a prisoner witness is faced with, generally, is the fact that he is identifiable anywhere, anytime, and he never knows by whom. The prisoners can identify a protected witness, but that witness cannot identify them. He never knows who may have seen him. He never knows who may have seen his file. So, if he is put into general population, he lives in constant fear that someone will see him and he will never know about it until something happens.

There is one thing that should be understood about these organizations, especially the NF. It includes entire families, wives as well as husbands. The men can be members, and the women can only be associates, but both men and women without hesitation will carry out the orders of the NF leaders. The NF is not the only organization that has members and associates of both sexes.

Many of the prison gangs operate the same way. They can cooperate very closely with one another, or they can go to war with one another. I am personally aware of hiring another gang for the purpose of killing an informant or someone engaged in a power struggle in that gang. Gangs will take contracts from one another.

There is one last point that I should make before I begin explaining some of the problems I have had as a protected prisoner. Before I became a protected witness in August 1978, I was, as I said, a high-ranking member of the widespread criminal organization known as the NF.

Not only a prisoners' code but also a very strict law of the NF says that if a member cooperates with the law, the price he pays in his own death and most likely the death of his own family. The NF is unsophisticated but it is very powerful. The NF would very quickly sacrifice one or more of its "button men" to get me.

If they seek an opportunity to kill me, they would do it anywhere, anytime. They would do it in this room if they thought they could. They are not concerned with getting away with it. I, myself, have seen various murders and assaults committed under the very eyes of

guards. In fact, one of the inmate assaults that I was involved in was committed about 4 feet away from the guard tower, right underneath the guards.

In fact, the guards were watching it as I did. But it was my job to get that man who was a member of the NF. The leadership had decided that he had to go, and I did it. Any NF member will do the same. It doesn't matter where. It doesn't matter when.

We have recently been advised by people from the Bureau of Prisons that ultimately, according to their policy, we will be placed into the general population of some institution that they consider safe for us. I know there is no safe place for me in general population. Many of the prisoner witnesses that are housed with me right now know there is no safe place for them.

There seems to be no way we can convince them or make them understand. They seem to think that all they need is a list of the people that we testified against, and as long as they don't send us to a prison where those people are housed, we will be safe. This is not the case.

I thank you for letting me go on for so long and give you such a very long statement. I would have had to go on a long time because somewhere, somehow, I feel I have to convince somebody on behalf of all of the prisoner witnesses that there is a danger in general population, that we do face real problems, that we are frightened and that we do harder time than anybody else in the prison system.

The Government is never going to get people to continue to cooperate under circumstances like this. The word is spreading; people know what we go through; the prisoners in the jails all know what happens to us now. It is commonplace. How many witnesses are not cooperating because they are in jail and they know what will happen to them in jail? I think a lot of people are refusing to cooperate because of this.

The Government will never get anywhere in fighting groups like the NF and the Aryan Brotherhood and the SS and the Nazis unless you develop some sort of system that not only physically protects a witness but removes him from the danger.

He must be able to think without constantly being preoccupied and concerned with his own safety. He must know that his wife and children are starting a new life and that they are safe even if he can't see them. And he must know that he will survive the entire ordeal and someday start a new life with his family.

Chairman NUNN. Mr. Beltran, thank you very much. I have read your entire statement. Of course, there are many interesting parts to it. We hope to elicit some of those with questions here. When I asked the question, if you want to pause and think a minute, you certainly have time. We are not in any mad rush here. So you take your time in answering the questions.

If you have anything you need, let us know. If you need to take a break, let us know.

Mr. Beltran, in your statement you list many examples of problems you have had with potential and real security breaches when you are taken out of the MCC to travel for trials. Can you give us a few examples such as the Terminal Island incident and the San Bernardino Jail incident?

Mr. BELTRAN. First of all, I would like to start with the Terminal Island incident. I was taken to Terminal Island by two deputy U.S. marshals. At the time I was taken in front of the front gate I protested because there were NF members in that prison as well as Mexican Mafia members and Aryan Brotherhood members.

Nevertheless, I was taken in to receiving and release. When I arrived in there, they made me fill out a form and on the form the marshal wrote out, "witness," and handed it to the clerk. From there, I was escorted to the D block, which is the hole, by approximately eight guards. As I walked in there, all the inmates were staring at me as well as the guards. They put me inside of a cell, both sides of me were Mexican Americans. I stood there approximately 10 to 15 minutes, then I proceeded to empty out the toilet bowl. I sat there and I listened. I could hear one inmate talking to another, asking what was my name, what was I doing there.

The inmate responded and told them that he didn't know my name, but that he would find out and send a flyer to the general population, meaning someone that worked in receiving and release where I had originally entered.

I stayed awake all night; I didn't sleep. The following morning one guard pulled me out to take me out. At that particular point in time, the first thing that struck me was fear. It was ironic that I walked in with eight guards, I walked out with me surrounded by inmates, roaming the tiers. I went to a front gate, the guard said I would have to walk through the general population mainline. At first, I refused. I saw that he was going to hold his ground and we walked through there.

I would like to point out also that the inmates were on the general population and I literally walked in a crab position all the way to the gate to receiving and release, halfway through the guard turned around and asked me, "What have they got you in there for anyway?"

I told him. As soon as we get in to receiving and release I will tell you right in front of the marshals. We got into receiving and release and I got into a debate with the marshal, I told him that he put my life in jeopardy, had compromised me. He told me, let's kind of forget about it, played like I was part of the fixtures.

From there we left and went back to the MCC, where I was at. In the second incident—

Chairman NUNN. That was all the Terminal Island incident. Is that right?

Mr. BELTRAN. Yes.

Chairman NUNN. How about the San Bernardino Jail incident?

Mr. BELTRAN. The San Bernardino incident, I was taken to San Bernardino County Jail by two deputy U.S. marshals, as soon as I walked in there, I told them that I could not be placed in that jail or any jail and I demanded 24-hour protection.

Nevertheless, to no avail, I was put inside the jail. I stood there approximately 15 minutes, was put in the holding cell. U.S. marshals had left. A Mexican-American came up to my cell and he threatened me, told me that Flaco sent his regards.

Chairman NUNN. Who sent his regards?

Mr. BELTRAN. Flaco had sent his regards. To me that was a direct threat on my life, being that Flaco was a member of the Nuestra Familia. I knew at that point in time that I had already been made. A few minutes later the guard came, I told the guard, there should be a memo up in the front desk providing me a phone call to the U.S. marshals in the event that I run into a problem.

He told me he would check it out, see about getting me a call. Then he told me, hold my voice down because the jail was full of Nuestra Familia members, Mexican Mafia members, Black Guerillas, Aryan Brotherhood, I told him that's the point, that's why I want to make the call, I want to get out of the jail, I can't make it in here.

However, I was taken into isolation into the hole. The next day the marshals came and picked me up.

Chairman NUNN. We have seen in your statement and you have just related two incidents of real problems with your own security, your life was, you felt, in real jeopardy. Do you think this is an unusual exception in your case, or is this rather common to witnesses who are prisoners?

Mr. BELTRAN. Rather, rather common. There is nothing unusual about it in my case.

Chairman NUNN. Are you and are other prisoner witnesses generally familiar with situations like the killing of Mr. Zambito in the Atlanta Penitentiary?

Mr. BELTRAN. Yes. We all are.

Chairman NUNN. What is the general attitude when something like that happens?

Mr. BELTRAN. The general attitude and the general consensus of the witness prisoners is fear, fear that because William Zambito had the central monitoring system under the Bureau of Prisons applied to him, which I am under as well as other witness prisoners, so the same thing can happen to us as it happened to William Zambito.

Chairman NUNN. Mr. Beltran, why did you become a government witness?

Mr. BELTRAN. I became a government witness for several reasons, No. 1, I was involved in a power struggle with the NF and I was marked to be killed.

Second, I see the witness protection program as an alternative to change my life to give me an opportunity as well as my family to start anew and break away and sever completely away from the Nuestra Familia.

Chairman NUNN. What kind of promises were made to you at that time and who did you first contact?

Mr. BELTRAN. At that point in time, I was contacted by the Federal Bureau of Investigation and I was promised that I would do no more than 5 years, all sentences would run concurrent, I was told that I would not have to plead guilty to a Federal charge, I was also told that I had a guarantee on my life, that they would protect it. I was also told that I would be relocated near my family to keep strong family ties.

I was told that I would get new identity upon release, a job, and subsistence until I was completely established.

Chairman NUNN. Did you get anything in writing? Was this a written commitment or was this just an oral commitment?

Mr. BELTRAN. Everything was oral.

Chairman NUNN. Of course, I assume that not all of those promises have been carried out?

Mr. BELTRAN. Not one.

Chairman NUNN. How about your family?

Mr. BELTRAN. To a very small degree was carried out. That was driver's license and then later social security.

Chairman NUNN. In related investigation of organized crime, I have directed the subcommittee staff to interview Federal officials familiar with La Nuestra Familia. Those officials have reported to the subcommittee, through witnesses, searches, tape recordings, and other evidence they know that the La Nuestra Familia has a written constitution. Is that correct?

Mr. BELTRAN. That is correct.

Chairman NUNN. You have seen it?

Mr. BELTRAN. I have seen it, I wrote it, I taught other members.

Chairman NUNN. No. 2, we have been informed that they have written rules spelling out the behavior of members in and out of prison. Is that correct?

Mr. BELTRAN. That is correct, Senator.

Chairman NUNN. You have seen those written rules?

Mr. BELTRAN. I have written some of them, yes.

Chairman NUNN. No. 3, that the NF family has standing orders to assist a member released from prison in any way with money, weapons, housing, and so forth. Is that correct?

Mr. BELTRAN. Yes.

Chairman NUNN. No. 4, that members are allowed to sell but not use narcotics. Is that correct?

Mr. BELTRAN. Yes; it is, Mr. Chairman.

Chairman NUNN. No. 5, that with respect to high-ranking members the organization prepares a complete file on you with pictures, names of relatives, friends, movements, activities, and so forth so in case they have to locate you to kill you, they can do so. Is that generally correct?

Mr. BELTRAN. Yes; it is, sir.

Chairman NUNN. Is that the main reason for all of those files and pictures and relatives and so forth, to hold that over you as leverage?

Mr. BELTRAN. That is the basic reason, yes, that it is made up.

Chairman NUNN. No. 6, that members are expected to and must "make their bones." What does that term mean, make their bones?

Mr. BELTRAN. That means that they have to get their hands full of blood, meaning kill another individual for the NF.

Chairman NUNN. If they are ordered to?

Mr. BELTRAN. That is correct.

Chairman NUNN. No. 8, that the situation is so bad that the California prison system classifies prisoners according to which prison gang they belong to. Is that generally correct?

Mr. BELTRAN. Yes, that is true.

Chairman NUNN. How many years were you in the NF?

Mr. BELTRAN. I was in the NF approximately 7 years.

Chairman NUNN. Beginning when and ending how soon when you became a witness?

Mr. BELTRAN. My membership began in September of 1971 and was terminated in around March of 1978.

Chairman NUNN. Did you go into it with your eyes wide open knowing the kind of organization it was?

Mr. BELTRAN. No. At that particular time, at that particular point in time it was not as organized as it was now.

Chairman NUNN. How many top ranking members of your general rank were there in the NF? Where did you rank in the hierarchy?

Mr. BELTRAN. I was classified grade 2, third from the top.

Chairman NUNN. Third from the top in a certain category? How many people would have been generally above you in your superiors in the organization?

Mr. BELTRAN. The general and the first captain. I was the second captain.

Chairman NUNN. You were third in the whole hierarchy?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. How long did you have that position?

Mr. BELTRAN. From I believe it was sometime around 1975 to early 1977.

Chairman NUNN. When we think of organized crime, we have all heard the term "La Cosa Nostra" or "Mafia." Is the La Nuestra Familia different from traditional organized crime families?

Mr. BELTRAN. I would say about the only difference right now is that it is less polished and less sophisticated. Other than that, it has basically the same code of silence. And getting into illegal ventures.

Chairman NUNN. Would you say it is equally dangerous in terms of silence?

Mr. BELTRAN. In my assessment, it may be even more violent and that would be for a few reasons because these organizations are relatively young, they are hungry, they have young members. They have young members. They have a disregard for authority. They will do anything and everything to accomplish their goals.

Chairman NUNN. What other prison gangs are you personally familiar with? You named some of them.

Mr. BELTRAN. I am personally familiar with the Mexican Mafia, Aryan Brotherhood, the Black Liberation Army, the Black Mafia, the Black Guerrilla Family, the American National Socialists, the Brown Bear Party, the Texas Syndicate, the Familia Cinco, the SLA, the Weathermen, the Black Panthers.

Chairman NUNN. And you have run into all of those groups in the prisons?

Mr. BELTRAN. Yes, I have, sir.

Chairman NUNN. Are they as organized as the NF organization that you have described? How do you rank these in terms of the number of members and the influence they have in prison populations? Which one would be the most powerful?

Mr. BELTRAN. I think at this particular point in time, I think it would be between the Aryan Brotherhood, the Mexican Mafia, the NF, and the Black Guerrilla Family.

Chairman NUNN. Those would be the top four?

Mr. BELTRAN. I believe so, yes.

Chairman NUNN. Does the NF operate both in and out of prison?

Mr. BELTRAN. Yes, it does.

Chairman NUNN. So you carry on—your former organization carries on illegal activities outside the prison. It is not just a prison gang?

Mr. BELTRAN. No, it carries its activities out to the streets.

Chairman NUNN. Do the State and Federal prison systems understand and appreciate the problems of prison gangs?

Mr. BELTRAN. In my opinion they do not understand the first thing about prison gangs and do not appreciate exactly what is happening. There is a real danger there. It is like a disease. They just do not understand it, but I would like to state this, that the State of California, has recently come out of the ether, so to speak, and they are dealing with it.

Chairman NUNN. You appear to be a rather well-educated person. How far did you go in school?

Mr. BELTRAN. One day of the ninth grade.

Chairman NUNN. Were you self-educated in prison? Have you done a lot of reading and studying?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. Did you speak English at an early stage, early age, or have you learned to speak English in recent years, or have you always spoken English?

Mr. BELTRAN. I have always spoken English.

Chairman NUNN. Do you also speak Spanish?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. Does the NF membership communicate both in English and Spanish both?

Mr. BELTRAN. It does, sir.

Chairman NUNN. If you are separated from other NF members, would you feel like you were safe?

Mr. BELTRAN. Absolutely not.

Chairman NUNN. Why not?

Mr. BELTRAN. A combination of reasons. First I would like to state this. The convict code alone will get me killed. I am up against these different other groups that I mentioned and many that I have left out, but just the convict code itself alone being marked as an informant is just the final reason in the convicts' eyes to have me killed and they will do it.

Chairman NUNN. It would not take any particular man to kill you, that could just happen in the general population because someone might find out you are a witness?

Mr. BELTRAN. That is correct.

Chairman NUNN. Even if they were not paid to do it?

Mr. BELTRAN. That is correct.

Chairman NUNN. The Government usually informs us that as long as a prisoner is sent to jail where he does not have to see the people he testified against, he is safe. Is this realistic?

Mr. BELTRAN. That is totally inaccurate. That is not looking at it realistically.

Chairman NUNN. You mentioned that the NF membership or the family would sacrifice its own members in order to kill you. Could you go into a little more detail about that? Have you seen them do that in the past when you were a captain?

Mr. BELTRAN. Sacrifice themselves? I can give you one example, I have done it myself. And that is at one point in time when I was a soldier in the Nuestra Familia, I was given orders to kill another NF member. I was in a security-type unit where they had the gun

towers inside the block. We were directly across from the gun tower, approximately 4 or 5 feet away from the gun tower and we attacked the NF member and started stabbing him right in front of the guards. Moments later, about 10 guards came up and all of them were asking us to stop and they began shooting and we kept stabbing.

Chairman NUNN. They began shooting at you or up in the air?

Mr. BELTRAN. No; the first shot was a blank. After that came the bullets and they started shooting at us. The ironic thing about it was the intended victim that we were trying to kill was shot with a shotgun blast by the guard. We later took that particular inmate and threw him off the second tier onto the first tier.

Chairman NUNN. You took him away from that scene, you pulled him away from there and then later threw him off the second tier?

Mr. BELTRAN. That is correct, sir.

Chairman NUNN. At that same point in time?

Mr. BELTRAN. Same point in time.

Chairman NUNN. What did you do, you all ran and dragged him along with you?

Mr. BELTRAN. That is correct.

Chairman NUNN. Was he killed?

Mr. BELTRAN. Fortunately he was not, no.

Chairman NUNN. But he was stabbed and shot with a shotgun and fell off the second tier and still lived.

Mr. BELTRAN. That is correct.

Chairman NUNN. Were any of the rest of you shot?

Mr. BELTRAN. I was shot in the hand. One of the other men who was with me was shot in the face and the chest.

Chairman NUNN. What you are saying is whatever the dangers are, if they had orders to kill someone, they will do it?

Mr. BELTRAN. Whatever the dangers are—to put it into perspective, Mr. Chairman, the NF member is molded and indoctrinated in such a way that when he is given an order, he goes and tries to accomplish that order blindly and the law is silent and the NF order supersedes.

Chairman NUNN. Did you have anything personally against that particular individual?

Mr. BELTRAN. No; I do not.

Chairman NUNN. You had no personal hate or animosity, jealousy, rage, any of those feelings?

Mr. BELTRAN. No; I did not.

Chairman NUNN. And you were just given the order and carried it out.

Mr. BELTRAN. I was given an order and I carried it out.

Chairman NUNN. Did the order come from someone within the penitentiary?

Mr. BELTRAN. Yes; it did, sir.

Chairman NUNN. Do inmates have enough access to prison records to identify witnesses?

Mr. BELTRAN. They absolutely do.

Chairman NUNN. How is that? Are they usually the ones who keep the records?

Mr. BELTRAN. To give you an example, I would like to make a statement in respect to my own experiences. I have had numerous inmates,

both NF members and persons that just associated with NF that were on the NF's payroll. They were inmate clerks and worked in receiving and release.

There were inmate clerks that worked for the lieutenants, there were inmate clerks that worked for the captain's office, and because we had those inmate clerks in those key positions, we had access to all the files, and some of the files that were under lock and key we just got someone to pick that lock and key, take out the file, read it and return the file.

Chairman NUNN. Is there a better way to secure those records or is it impossible to secure the records as long as you have prisoners being clerks?

Mr. BELTRAN. In my opinion, as long as there are inmate clerks in the Federal or State system, not to omit the fact that you also would have to get someone from the outside to come in and clean those offices, because when we could not get an inmate clerk to do it, we would get one of the cleaners, who is an inmate. I do not see any way where they could keep those files locked.

Chairman NUNN. You feel you were readily identifiable after you started cooperating with the Government, as a prison witness?

Mr. BELTRAN. I do, sir.

Chairman NUNN. At one point in time, was it true that prisoners in your wing wore certain types of outfits, namely jumpsuits, to identify your location?

Mr. BELTRAN. They did, sir.

Chairman NUNN. Tell us about that.

Mr. BELTRAN. They wore jumpsuits that had a number and a letter printed on the chest on the right-hand side. That particular number and letter indicated the exact location of the prisoner witness.

Chairman NUNN. Namely you.

Mr. BELTRAN. Namely me, yes, sir.

Chairman NUNN. How did they have access to the letters and numbers? Was that just routine? Could they wear those?

Mr. BELTRAN. When I first arrived at that particular MCC, they did not have it. They did not have the number nor the letter. In other words what I am trying to say is, we wore the same jumpsuits like anyone else. Then they came up with what they thought was a fantastic brainchild by putting the letter and number of our location.

Chairman NUNN. Who did that?

Mr. BELTRAN. The Bureau of Prisons.

Chairman NUNN. Did this practice change after you were interviewed by staff?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. Is there a difference in the handling you received when you are with a witness security inspector as opposed to a deputy marshal randomly assigned to you?

Mr. BELTRAN. I would say so, yes.

Chairman NUNN. Which is the most secure?

Mr. BELTRAN. In my opinion I would rather be with a WITSEC inspector any day as opposed to a regular U.S. Deputy marshal.

Chairman NUNN. When they are randomly selected, not especially trained, that is a problem?

Mr. BELTRAN. Yes; it is.

Chairman NUNN. You can tell the difference?

Mr. BELTRAN. I can tell a big difference, yes.

Chairman NUNN. The many instances that have occurred with respect to your security when you were transported, since those have happened, have you been treated in any kind of a different manner?

Mr. BELTRAN. To a certain extent, yes. I have. It is my understanding any time I travel, that I travel with a WITSEC inspector.

Chairman NUNN. What else can be done to improve the security while you travel to testify?

Mr. BELTRAN. I would say that the only idea that I have to offer to this subcommittee is this. There is no other, there is no other way of providing security for witnesses, whether you are with a Witsec inspector or not. Meaning, while I am with the WITSEC inspector, I get protection with an inspector but I am not getting 24-hour protection. I am literally being dumped into a county jail. I feel that the witness should be placed in a military installation close by or where I myself have been placed at one time, and I receive 24-hour protection, or in a Federal building, meaning the Federal marshals office with marshals there 24 hours a day. I think that is a point that has to be addressed.

Chairman NUNN. That is when you are going to testify in another location.

Mr. BELTRAN. Exactly.

Chairman NUNN. In October of this year, did Ms. Stutley from Bureau of Prisons and Mr. Shur from Department of Justice come to talk with the prisoner witnesses at your MCC?

Mr. BELTRAN. They did, sir.

Chairman NUNN. What did they tell you?

Mr. BELTRAN. They told us sooner or later whether we were testifying or not, we would be filtered into a Federal or State system.

Chairman NUNN. Did you and other prisoner witnesses feel this was contrary to the promises that were originally made to you?

Mr. BELTRAN. Very, very contrary, yes.

Chairman NUNN. Did Ms. Stutley and Mr. Shur understand the danger of the prison gangs and why you couldn't go back to the general population?

Mr. BELTRAN. Mr. Chairman, they had about as much understanding about that problem of putting us back into the Federal system as I would trying to understand geometry. They don't understand the first thing about it, and that's sad.

Chairman NUNN. Did you ask Ms. Stutley what to do if you got into a dangerous situation in the general population?

Mr. BELTRAN. I did.

Chairman NUNN. What was the response?

Mr. BELTRAN. I asked Ms. Stutley pointblank, "What do I do?" She asked me—well, she didn't ask me, she said, "Art, if you get into trouble and you feel your life is in danger, I want you to lock up." And I responded to her by telling her, "What if the only warning I get is a knife in the back?" I said, "I don't want you to gamble with my life, and I will fight you; if I have to fight you in court, I'm going to fight you, because that is exactly what you are doing because you can't give me no guarantee," and the bottom line was she told me pointblank. "That is correct, you have no guarantee."

Chairman NUNN. Did anyone suggest you go into solitary confinement; is that what you mean by lockup?

Mr. BELTRAN. That's correct.

Chairman NUNN. Does this give you security when you do go into solitary confinement?

Mr. BELTRAN. No way.

Chairman NUNN. Why not?

Mr. BELTRAN. For a number of reasons. Through my own past experiences and things I have done, and things I have seen, the solitary cell, being in 6 by 8 cells with bars separating you from inmates, that's not safe and I tried to get her to understand that because there are a number of things that can happen to you: No. 1, you can have a fire bomb thrown inside your cell; you can have flammable fluids thrown all over you; you can be burned alive, shot with a zip gun, you can be speared through the bars with a broomstick with a knife at the end of it.

Those, Mr. Chairman, are things I have done, things I have seen repeatedly and I tried to get Ms. Stutley to understand that, and the only response I got was her mouth was open. It appeared to me that was the first time she ever heard of anything like that.

Chairman NUNN. What do you think the answer is for protected witnesses? Do you think you need a separate facility?

Mr. BELTRAN. I feel very strongly about that. I do, yes.

Chairman NUNN. What about protecting the protected witnesses from each other? How much danger do you feel from other protected witnesses?

Mr. BELTRAN. I think the only offer I could make in relation to that is, as I have stated to your staff, is that they have not one place, but several, meaning three or four different locations.

Chairman NUNN. Small facilities, or what would be the appropriate number, from your security point of view?

Mr. BELTRAN. From my security point of view, I think—I don't think the number would be that much of a problem. I think what they can do is fit witnesses with witnesses that are compatible. I mean interview them before they are placed in one particular area. That's what they do right now in all the three metropolitan correctional centers right now. They ask you—I've been asked, "Art, there are Nuestra Familia members, we want to send them to where you are at." There is a personal reason behind that. Not that I fear for my life, but I made a decision when I got out of the NF, I no longer wanted anything to do with any NF member, whether he was a witness or not. I wanted to sever my ties completely.

Chairman NUNN. Did you make that suggestion when you were interviewed about a separate facility?

Mr. BELTRAN. Yes.

Chairman NUNN. What was the reaction?

Mr. BELTRAN. The reaction that I got from Mr. Gerald Shur was that if we had one facility, and I might add that he was looking at it unrealistically, that it would be bombed.

Chairman NUNN. Is there anything to prevent that from occurring in the wing of the Metropolitan Correctional Center where witnesses are now housed? If that was a reality, wouldn't that be just as much a reality there?

Mr. BELTRAN. You are absolutely correct, Mr. Chairman.

Chairman NUNN. What about your trial testimony? Have you been able to be in a frame of mind to give appropriate testimony when you have testified?

Mr. BELTRAN. To be as honest as I can with you, Mr. Chairman, when I go out to court, each and every time, the last thing that is on my mind is circumstances and incidents and recross-examination that I will be subjected to by sharp defense attorneys. I am not even thinking about that, I am not thinking about that on the stand. Sometimes I am not even thinking about it while I am under oath, while I am being sworn in. The only thing I am thinking about is my life. I feel many, many times, I testified in several trials, I said to myself, "For this I'm testifying." My mental state is haywire every time I go out to court.

Chairman NUNN. You told our staff that the life of a prisoner-witness in the Metropolitan Correctional Center is the best of the worst. What did you mean by that?

Mr. BELTRAN. By that I mean—first I will start off with the worst. We have no educational programs. We have no type of industries. We are limited to the Sun, to seeing the Sun. We only get 1 hour a day. Our confinement is very closed in, very small area. We are limited to several educational programs that other regular prisoners do have, and I might add this, our families can't even see us.

Chairman NUNN. How long has it been since you have seen your family?

Mr. BELTRAN. Since I entered the witness protection program, in August of 1978, I have seen my family one time.

Chairman NUNN. I won't go into details about your family. I don't know how much of this is known or not. You have seen them one time since August of 1978?

Mr. BELTRAN. That's correct, sir.

Chairman NUNN. Have you asked to see them more? Is this something you sought?

Mr. BELTRAN. Well, in the beginning, when I entered the program, the FBI told me repeatedly, "Don't worry, we'll set it up, we'll set it up." When I would turn around and ask the U.S. Marshals, they said, "There's no way we are going to do it. We are not going to bring her into a danger zone or we're not going to take you to where she's at." All I got was the runaround. I never got to see them.

Chairman NUNN. So there is a direct conflict between what you were told by the FBI and what has actually happened?

Mr. BELTRAN. Sure there is.

Chairman NUNN. When were you told you and the other prisoner-witnesses were going to be placed in the general population?

Mr. BELTRAN. I was told that October 8, 1980.

Chairman NUNN. What did you do?

Mr. BELTRAN. At that particular point in time, that same evening, I got on this old typewriter we got in there, and I started filing a restraining order, filed it to a Federal Court to prevent the Bureau of Prisons from moving me into a general population setting, whether it was Federal or State.

Chairman NUNN. You filed that yourself?

Mr. BELTRAN. Yes, I did, sir.

Chairman NUNN. Have you studied law?

Mr. BELTRAN. No.

Chairman NUNN. You must have done some studying to know how to even do that.

Mr. BELTRAN. The way I can explain that, Mr. Chairman, is this: I had someone, I always assumed in the back of my mind that one day they would try to filter me into a State or Federal system and I had a witness there type out a restraining order for me and I had it in my drawer for about a year.

Chairman NUNN. So you already had one that was available?

Mr. BELTRAN. That's correct.

Chairman NUNN. In general form?

Mr. BELTRAN. Yes.

Chairman NUNN. Did you file that in Federal court?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. Did other prisoners join in?

Mr. BELTRAN. Several.

Chairman NUNN. How many people are on that petition?

Mr. BELTRAN. There's a total of 7 witnesses that have filed restraining orders.

Chairman NUNN. What is the status of that in court now?

Mr. BELTRAN. It's in limbo. There isn't anything going on with it.

Chairman NUNN. You haven't been moved yet?

Mr. BELTRAN. No, sir.

Chairman NUNN. I take it that as a normal precaution you are supposed to be separated from prisoners who pose a threat to you. Did the prison officials ever determine who poses a threat to you before making this judgment on general population?

Mr. BELTRAN. No, and I have tried to offer my advice, the information that I have had and the knowledge to lay out some type of groundwork, and the only response that I get, Mr. Chairman, is "We can't tell you who is on that list for security reasons." But I say this, I'm the witness they are supposed to be protecting and they don't want to tell me because of security reasons. If anyone should have the right to know, I think I should. I should be the first one to know before anyone else does.

Chairman NUNN. About who else is there, what the threats are?

Mr. BELTRAN. That's correct.

Chairman NUNN. Mr. Beltran, you told us your family was made certain promises such as new documentation, employment, financial assistance, and so forth? A few questions along that line.

Did the marshals get your wife a job, and if so, how did they do it?

Mr. BELTRAN. They got her a job by going to this employer and telling her, first announcing himself as a U.S. marshal; second, stating to the employer that she was under the witness protection program, and he needed a job for her.

Chairman NUNN. Did she have an adequate set of documents to get herself a job?

Mr. BELTRAN. She didn't have the complete documentation; no.

Chairman NUNN. Did the Government keep its promises about providing financial assistance to your family until you got out?

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Mr. BELTRAN. No; they did not.

Chairman NUNN. What was the promise?

Mr. BELTRAN. The promise was that my family would be helped with moneys until I was released from prison. As far as I know, and speaking to the AUSA that I worked for, Mr. David Rodriguez, that has been terminated and terminated for an ironic reason. The reason is, if I may, she was told to go to this place for a job. The marshal told that employer she is under the witness security program. My wife protested. The marshal then in turn told her he was going to find her another job. My wife said, "I'll find a job myself. I don't need you to go in there and say I am under the witness protection program" and because she refused to take that job that the U.S. marshal offered her, they terminated her and are not helping her at all right now.

Chairman NUNN. Did she find a job herself?

Mr. BELTRAN. I don't even know.

Chairman NUNN. When you agreed to cooperate, were you told your family would be located near you so you could keep in contact and visit?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. You say you have seen your family only once since you have been on the program?

Mr. BELTRAN. One time.

Chairman NUNN. Do you know for sure whether your family is safe and financially able to take care of themselves?

Mr. BELTRAN. No; I don't. As a matter of fact, that's what I was going to talk to Mr. David Rodriguez about.

Chairman NUNN. Were you made any promises about the help you would receive when you got out of prison?

Mr. BELTRAN. I was.

Chairman NUNN. What kind of help?

Mr. BELTRAN. I was told I would get all the documentation as far as driver's license, social security. I was also told that I would be helped with a job, I would be assisted with moneys until I was established.

Chairman NUNN. Have you received any training in prison? You obviously are well educated in terms of your ability to express yourself. Have you received any formal training or any kind of technical training that would help you get a job in prison?

Mr. BELTRAN. I have received no training whatsoever.

Chairman NUNN. Do you feel you are going to be able to get a job when you get out of the penitentiary?

Mr. BELTRAN. I feel the motivation and determination that I have to do for my family as well as for myself, there is no question in my mind that I can get a job, whatever it may be, on my own.

Chairman NUNN. If you were not on the witness security program, would you be in a position to get training in the general population?

Mr. BELTRAN. In the general population? Yes, sir.

Chairman NUNN. In other words, you have less training opportunities under the witness security program than you would in the general population?

Mr. BELTRAN. In the general population, you have all the opportunities to elevate educationwise and expand. Under the witness security program, you have nothing, absolutely zero. We have none of that.

Chairman NUNN. So when you go under the witness security program, your educational opportunities are greatly reduced?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. Just curious, how did you educate yourself and when did you start?

Mr. BELTRAN. I started to educate myself the same day that I was kicked out of school in the ninth grade, the first day.

Chairman NUNN. What were you kicked out of school for?

Mr. BELTRAN. I was kicked out of school—it is kind of embarrassing to this—

Chairman NUNN. You don't have to go into that if you don't want to. I withdraw that question. That is not really that important to our inquiry.

What did you do to educate yourself?

Mr. BELTRAN. I picked up books, I taught myself mathematics, English, spelling, writing, anything that I could get my hands on.

Chairman NUNN. That was before you were put into prison?

Mr. BELTRAN. No.

Chairman NUNN. After you were put in prison?

Mr. BELTRAN. That's correct.

Chairman NUNN. What age were you when you went into prison?

Mr. BELTRAN. I was 18 years old.

Chairman NUNN. Did you just sit down and go through these yourself or did someone help you with them?

Mr. BELTRAN. I had help from people from time to time, yes.

Chairman NUNN. In prison?

Mr. BELTRAN. Yes.

Chairman NUNN. Part of the regular prison instruction, or was it from other inmates?

Mr. BELTRAN. Part of it was the prison instruction in respect to a little bit of math, typing courses, things of that nature.

Chairman NUNN. This was when you were a regular prisoner, not part of the security program?

Mr. BELTRAN. That's correct.

Chairman NUNN. Looking at the general prison population, do people who really want to improve themselves get training, further their education and prepare themselves for a job, are they given that opportunity in the general population?

Mr. BELTRAN. In my assessment, they are, yes.

Chairman NUNN. But when you get into the security program, those opportunities are either terminated or greatly diluted?

Mr. BELTRAN. Exactly.

Chairman NUNN. Have you talked with other prisoner-witnesses before you came here?

Mr. BELTRAN. I did, sir.

Chairman NUNN. Do you feel that you are also speaking to some extent for them?

Mr. BELTRAN. I certainly do, yes.

Chairman NUNN. Do you think their problems are similar to yours?

Mr. BELTRAN. Yes, they are.

Chairman NUNN. If someone on the outside that hasn't been through this would say you are fearful for your life to the extent you may be paranoid about security, how would you respond to that?

Mr. BELTRAN. I would respond to that question in this form. My statement is self-explanatory. Had any individual out there in the audience ever walked a mile in my shoes and done what I have done and seen what I have seen, they would know exactly what I meant, and I don't mean this to be facetious, but if people on the outside don't understand my concerns are real for my family, my concerns are real for me, my security, me trying to do something for myself, if they figure I am being paranoid about my security, they are completely wrong and the end result in my statement would be this: They have about as much understanding as the Bureau of Prisons do, which is nothing.

Chairman NUNN. Do you believe you will be able to find a job and lead an honest life once you get out of the penitentiary?

Mr. BELTRAN. I do.

Chairman NUNN. Do you think you are going to need to be relocated in order to do that?

Mr. BELTRAN. I think about as much as I want out of the program, Mr. Chairman, is this: No. 1, to be relocated, wait long enough to get identification. Understanding a meeting of mind, who I have to report to on a regular basis because of my parole status. Other than that, I want nothing to do with the witness protection program for myself and my family.

Chairman NUNN. You are not going to request they give you credit rating?

Mr. BELTRAN. A credit rating? I don't see how I can ask for a credit rating, for my wife can't even get one.

Chairman NUNN. She cannot get one?

Mr. BELTRAN. That's correct.

Chairman NUNN. If you were in the Bureau of Prisons or in the Marshal Service, looking back at your record and a request was made by a person with your background, problems, and so forth, for help in getting relocated, help in getting a job, help in getting a credit rating, how would you feel about the risks in doing that, the risk to the employer, the risk to the particular bank that might extend credit or merchants that might extend credit, how do they deal with this dilemma of people who have been in trouble before requesting that kind of assistance?

Mr. BELTRAN. If I understand the question right, from the viewpoint of the U.S. Marshals Service?

Chairman NUNN. If you were in their shoes for a minute and someone that had the kind of problems you had and the trouble you have been in asked for help in getting a job, asked for help with a credit rating, how would you feel about the risk involved in setting up that kind of opportunity?

Mr. BELTRAN. I can answer it to you this way, Mr. Chairman. When we talk about risk, I think regardless of the witness, what he has done, I believe he should be given the benefit of the doubt and I believe that the U.S. Government should honor their commitment. That is what was promised to them originally. Let them fulfill those promises.

I do not see where we can draw a criteria where we say this witness here, I do not think he deserves a credit rating or this one here does not deserve this because his case is more touchy, I do not believe that. I be-

lieve the witnesses should be treated equally with respect to anything the witness protection program has to offer.

Chairman NUNN. You believe you will be able to lead an honest life in spite of your past record when you get out of the penitentiary?

Mr. BELTRAN. I do, sir.

Chairman NUNN. Are you dedicated to that? Have you gone through a change of mind, have you gone through a different psychological state? What makes you think you will be able to do that when you get out?

Mr. BELTRAN. My only response to that is, first of all, in some circles in the NF, I was probably considered a man that ruled with an iron fist. I was an extremist. I was an honorable man with the NF. I did what I had to do, I was dedicated, I was loyal. I have since then, believe me it was not easy, to sever those ties and start working for the U.S. Government and the State authorities, and I went from one extreme change to the other. Now I am trying my very best to be an honorable man to the U.S. Government and to the State authorities, and I believe because of that, not to omit the fact I am marked today, but I really want to do something for my family for a change. I want to give them something.

Chairman NUNN. Would you have any advice to offer young people who are being brought up in areas where the Nuestra Familia is active and operates? Do you have anything based on your experience that would be valuable to young people who might be tempted with this kind of organization? Whether it is Nuestra Familia or some other organization?

Mr. BELTRAN. Off the top of my head, Mr. Chairman, I think the only offer that I have is that the Nuestra Familia or any other group, such as the Nuestra Familia, is nothing but an illusion. You may want to try and bargain for a guardian angel by belonging to an outfit such as the Nuestra Familia but it is illusion because the only thing you are going to end up with is the devil in your hand.

Chairman NUNN. Does the witness security program work well enough for you to encourage other prisoners to participate at this point in time?

Mr. BELTRAN. I would not encourage a witness under any circumstances whether he was on the streets or whether he was in jail to ever get into the witness protection program. Absolutely not.

Chairman NUNN. How many different murder-related trial events have you testified about, approximately?

Mr. BELTRAN. I believe it is at this point in time, I think it is about 19.

Chairman NUNN. What has been the conviction rate in those trials?

Mr. BELTRAN. 100 percent conviction rate.

Chairman NUNN. Should the U.S. Government be concerned about the growth of new criminal organizations such as the La Nuestra Familia, the Mexican Mafia, the Black Guerrillas, Aryan Brotherhood and the Colombian Mafia, just how serious is this problem and is the growth rate a rapid growth rate?

Mr. BELTRAN. I think that the problem is serious and that if law enforcement does not pay closer attention to its activities that it is going to run away from them and I also feel that the reason why the

numbers are growing rapidly, are for a few reasons. You have a younger set, breed, if that is what we want to call it, that are willing to take more chances, more gambles, they are more vicious. They have more disregard for authority.

Chairman NUNN. Why is that? Is that the pattern of our life? Is that just the lifestyle in America that is producing young people who have that kind of tendency? Is it the exposure to violence, so forth? What is causing that?

Mr. BELTRAN. I think and I really mean this, Mr. Chairman, I think one of the main reasons the thrust of it all is poverty, lack of jobs. No one has a sense of direction any more. Everyone is lost, everyone is bumping into each other. And I think that in effect it is a major factor that contributes to young people now getting into different groups, wanting to look for excitement, wanting to monopolize the time.

Their time is idle. They have nothing to do.

Chairman NUNN. In other words, they do not have a challenge when they are young in terms of meaningful work opportunities and other challenges?

Mr. BELTRAN. Exactly.

Chairman NUNN. Do you think any of the groups you have talked about have the potential to be nationwide syndicates?

Mr. BELTRAN. I will answer it to you this way, Mr. Chairman. As I stated a little earlier, if the U.S. Government at that level and at the State level does not get down to brass tacks and pay attention to exactly what is going on and really understand the threat of these groups, there are several of those groups that have the potential to become nationwide syndicates in the years to come.

Chairman NUNN. Which ones would you say have that potential, based on your experience, have that kind of organization and growth rate?

Mr. BELTRAN. I would believe it would be at the top it would be the Nuestra Familia and the Mexican Mafia.

Chairman NUNN. Any more that come to mind or would those be the main two?

Mr. BELTRAN. I believe the Colombians, the Cubans, they have their own groups as well. They have the potential, they have the money.

Chairman NUNN. You were one of the top three people in the Nuestra Familia, according to your testimony; is that correct?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. Was there any kind of plan when you were in that key position for your organization to become nationwide? Was there any kind of master plan of where you were going or was it much more short range in nature?

Mr. BELTRAN. The intentions of the Nuestra Familia were to get a strong foothold in the nation of Mexico and the State of California, then filter out to the rest of the Nation.

Chairman NUNN. Did you have membership roles? There were people actually listed as members? How were you certified in the organization as a member?

Mr. BELTRAN. The process was the Nuestra Familia member that was already made would sponsor a potential member. He was then put on a 30-day probation period that could be extended from 60 days to

90 days to whatever, to whatever the captain felt was appropriate. Then at the time of expiration, his probation period, the captain would then give his blessing. He would then from that point on be obligated to Nuestra Familia before and above anyone else, whether it was family, kids, relatives—anyone.

Chairman NUNN. Did they actually keep membership roles or was this just done orally?

Mr. BELTRAN. I am not sure I quite understand.

Chairman NUNN. Were there actual membership lists, lists of people who belonged in writing or was that all done by oral expression?

Mr. BELTRAN. Most of it was done by oral expression, yes.

Chairman NUNN. But you did have a written constitution?

Mr. BELTRAN. Yes, sir.

Chairman NUNN. Mr. Beltran, we really appreciate your testifying. I hope as a result of your testimony we in the Congress can better be able to appreciate the problems faced by prisoner witnesses and the opportunities for going after high-level organized crime figures if we can get a witness security program what works satisfactorily and has that kind of reputation. I do express on behalf of this subcommittee our appreciation for your cooperation, for your testimony which I think will greatly benefit us. We certainly will have a number of recommendations to make regarding the witness security program. We are in a position, we hope, to make suggestions, to influence budgets and to hopefully improve this program for the benefit of the American people in the final analysis.

If this program works correctly, and we heard witnesses testify before you, and prosecuting attorneys, it can be one of the most powerful tools against organized crime. We appreciate your testimony and we wish you and your family good luck.

Mr. BELTRAN. Mr. Chairman, may I state one thing before I leave this room?

Chairman NUNN. Yes.

Mr. BELTRAN. I would like to extend my gratitude to you, Mr. Chairman, your staff, to Marty Steinberg, Greg Baldwin, Mr. Ray Worsham, and the investigative team from the Arizona Republic, Mr. Jerry Seper, Mr. Tomaso, Mr. LaPlante, and the media in general for giving me the opportunity to come before your Senate subcommittee and expound on the real dangers that the witness protection program is faced with now and will be faced with if changes are not made and hopefully through everyone's efforts, the witness protection program will be brought to safe harbor to once again be the effective tool and the only tool that can fight organized crime.

Thank you.

Chairman NUNN. Thank you very much. I might add, whatever your method of self-education was, it was very, very effective. I congratulate you on what must have been a very challenging kind of undertaking. You have obviously done a marvelous job in educating yourself.

Mr. BELTRAN. Thank you, Mr. Chairman.

Chairman NUNN. I hope you are an example in that respect, as well as in a cooperating respect even though you had real problems, I hope you are an example to other prisoners.

Mr. BELTRAN. Thank you, Mr. Chairman.

Chairman NUNN. We will clear the room now in accordance with the previous announcement. The witness will remain seated until the room is cleared. We will come back here at 1:30. We will take a 1-hour break. Come back here at 1:30 to continue the hearing.

[Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene at 1:45 p.m., the same day.]

[Member of the subcommittee present at the time of recess: Senator Nunn.]

AFTERNOON SESSION

[Member of the subcommittee present at time of commencement: Senator Nunn.]

Chairman NUNN. The subcommittee will come to order.

Mr. Partington is on the left here, I believe, and Mr. Noe is on the right. We are pleased to have both of you here this afternoon. You have credible credentials in this area. We look forward to your testimony and we believe we will benefit by it. We swear in all of our witnesses before the subcommittee. So I will ask both of you to stand and take the oath.

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PARTINGTON. I do.

Mr. NOE. I do.

TESTIMONY OF JOHN J. PARTINGTON, U.S. MARSHAL, U.S. MARSHALS SERVICE; AND FRANK W. NOE, U.S. MARSHALS SERVICE (RETIRED)

Mr. STEINBERG. Thank you. Mr. Partington, would you mind giving us a brief résumé of your background?

Mr. PARTINGTON. Currently I am the U.S. marshal in the district of Rhode Island, and have been serving there since January 1980. I spent 15 years in the witness security program; deputy marshal for 7 years prior to that.

Mr. STEINBERG. Mr. Noe, would you give us your background, please?

Mr. NOE. My name is Frank W. Noe. I have 25 years in the U.S. Marshals Service. My last 8 years were spent as an inspector in the witness security program. I was stationed in Miami, Fla.

Mr. STEINBERG. Was Miami, Fla., a particularly busy area for relocated witnesses both coming in and going out of that area?

Mr. NOE. Extremely.

Mr. STEINBERG. Mr. Partington, do you have a statement that you would like to summarize for the subcommittee?

Mr. PARTINGTON. Certainly. As you are all well aware, witnesses appeared with testimony, interviews, investigative reports. You are all well aware of the problem. I would like to get back to the beginning.

The program was designed originally to combat organized crime. Over the years it became involved in white-collar crime, political crime. State cases, and most importantly, the innocent victim of the crime. Providing for the witnesses entering the program, the never-ending

demands placed on a handful of men and the general posture of the U.S. Marshals Service, it was virtually impossible to service the program even if we worked 24 hours a day. The general attitude of the U.S. Marshals Service toward the program has changed considerably.

They have added resources such as manpower, equipment, money, and this is not altogether the answer, not just manpower, equipment, and money. It goes beyond that.

I have been involved in police work for 25 years and 15 years in the witness program, dealing with all levels, Federal, State, and local government and in the early days living in with the families I certainly can appreciate some of their problems. I am sure you are very aware that the witness program deals with persons whose values and standards are usually different from those of society in general. Because of this there will always be problems regarding promises, real or imagined, the rights of the witnesses and the responsibility of the involved agencies. Over the years I found that organized crime is controlled by fear and I believe that the witness security program should not be controlled on fear but with respect.

In addition to living with the constant threat to their lives, the witnesses also live with personal and legal problems; the problems that deal extensively with the sociological end of the criminal justice system. The U.S. Marshals Service becomes their protector, their guardian, social worker, counselor. The people for the most part never led a normal life.

For example, I get my paycheck, I take and pay my bills, with what is left I take my family out. We have to teach these people how to live. They usually get their money, they go out and have a good time, what is left they pay their bills, just as an illustration.

I can sit here today and recommend to the committee what I feel would be a solution to some of the problems. We have sat at hearings in the past, in the Senator Abourezk committee. We had an extensive program to go out to teach the marshals, case agents, and U.S. attorneys, our limitations and the problems with the program. It did not work.

I am looking forward now to a unit, a unit controlled by the Department of Justice. The unit in the main Justice would have wider scope of authority and would control and manage the witness program. This control center could, first, command all agencies to assist in sharing protection workload.

At present the Assistant Director for Operations, U.S. Marshals Service, can direct and manage witnesses in the protected program for the U.S. Marshals Service, but they do not have the authority to command other Federal agencies to support and assist the program of all the witnesses.

Second, it would centralize all of the records scattered throughout the Department of Justice, and throughout the country. It would use less office space, cut back on equipment from computers to vehicles. It would create a better work flow, a better chain of command. It would save on man-hours, unnecessary travel, maintain close relationships with the U.S. attorney, U.S. attorneys' strike force and case agents. The unit would be totally responsible for the program entry, high-level decisions to monitor the program and especially in termination.

I believe the witness should be terminated the way he enters. If he comes in through Justice, he is approved by Justice, as far as I am concerned he should be terminated by the same committee, not just one man.

Chairman NUNN. You are saying this unit you are talking about would be separate from the Marshals Service or would it be the Marshals Service restructured or would it be a unit that would be over the Marshals Service?

Mr. PARTINGTON. I would say the Marshals Service should be very much involved. We can write a book on our mistakes. We learn by our mistakes. I am saying we lack clout at the top. We have young inspectors out there in the field dealing with people who are not Billy Grahams. We are talking about hardcore people, sometimes murderers, con artists, whatever you want to call them.

What I am saying is this: Certainly the resources we have in the Department of Justice should handle some of these decisions, not the inspector in the field, especially legally, where I am sure we have a number of complaints, a number of lawsuits which brings me to a very sensitive area. With this unit you could create and do away with the layers and the time it takes to get an answer, an answer that is important to the witness. What happens, let us take for example, right now there are really two or three programs. We are running at present a program in the Department of Justice, we are running the U.S. marshals programs. You have the metro unit, who answers to the chief of security and you have the district inspector. You have the Bureau of Prisons' concept of the unit. You have the witnesses themselves and the case agents, U.S. attorneys, and let us take the witness for example when he has a problem, a problem he has to deal with, a family problem. He goes to the inspector. He will in turn go to the chief deputy or the U.S. marshals. He in turn will go to the case manager. He in turn will go to the assistant chief of witness security. He in turn will go to the chief.

The answer comes back to be negative. He has to go another route. You then go to the case agent, to the U.S. attorney, to Justice, Justice calls the chief of witness security, back to the command, the answer is still negative. Where can he go? He can go to the press, he can go to the committee like we have here today, he can threaten to go back to his old ways, which is a disaster, we win the battle and lose the war. He can threaten suicide and sometimes attempt suicide.

What I am saying is this, we do away with the layers, and with this unit that can control all the people involved in the program such as the case agents, U.S. attorneys, because I feel that a witness is picked up off the street, the first man he is in contact with becomes the U.S. Government. He makes promises, not knowing the program, but in good faith. When he reaches the Marshals Service, we cannot service, take care of his problems. We become no better than the people they are testifying against. That is how they feel.

The unit would give a central control, like I say, a wider scope of authority we have been lacking over the years.

I would like to sum up because I know we are pressed for time and go back probably to when the program started, which I think relates

to what has happened over 15 years of the service. The first witness I handled, one of the first, was serving time for habitual criminal charges. He allegedly had killed 23 people gangland style. He was housed in the jail and they felt, the Bureau felt, there was no such thing as a safe jail.

He was placed in my control, I had a detail, 24 hours a day, living with this person. We placed this witness on an island, not in the Pacific with palm trees, but an island off the Atlantic coast, with his wife, small child, 12 Federal marshals, everybody is unhappy. The wife, the lifestyle has changed, no longer the hairdresser, the big car, country club, the little girl should have been in school. She had playmates, Federal marshals. He hated us right from the start. He told me that on the street they control on fear and on the very first day I dealt with him he threatened me. He wanted to do a certain thing, walk to an area he was not allowed to go. I stopped him and he went into a tantrum, was going to eat my liver, bite my face, the whole bit. But he did not walk to this area.

You got to work out of respect. You got to go one on one. He has got to understand we wear the white hat, are doing the right thing. On the island I learned to understand the social aspect, especially in dealing from the small child to 16 deputies.

The problems, I could go on all day, through this whole session, talking about it. Even the situation we had with their animals seems very small but very big in the program today. They had two German police dogs, two cats, two canaries and a seagull. The marshals became involved in everyday life of handling the animals. The strange thing was all the animals died and eventually the witness died, gangland style.

This still reflects on the wife and child and though it goes back 14 years I am still involved with the family. You never get out of touch with these people. Recently I had to go to the child and explain what he was and who I was and she did not accept either one. She is a very disturbed child today. The woman, in 14 years, still does not have the social security situation resolved. I bring all this up because I think it goes beyond just protecting the body. We have become social workers. I think we should be trained as such.

Mr. STEINBERG. Mr. Noe, do you have any portions of your statement you would like to read?

Mr. NOE. In the interest of time, I will submit my statement. I would like to read certain portions from it and not go through the whole statement.

I would like to say that I agree with Mr. Partington's concept of a unit in the Department of Justice, properly organized, properly administered, preferably by a Deputy Attorney General, or someone high enough in the echelon to command.

I will start with this one particular area here and move on from there.

Novels have been written, movies made, television shows such as "60 Minutes" and "20/20" have portrayed the witness security program as a disaster. I disagree with any such projection. It is not a disaster. It never has been. We are making progress. It is doing its

job, not necessarily the way all people want it done, but it is being done, and it is improving.

I am hopeful that this subcommittee's interest in such a vital program can remedy past problems, provide better witness services and tighten management and supervision of the program in the future.

There is no doubt in my mind that certain problems which have been identified in the past have had a negative impact on the effectiveness of the program.

It has been recommended that a separate unit be created with the main Justice Department that would be responsible for the overall coordination. I endorse this heavily.

Another point Mr. Partington makes is the problem encountered with documentation. It has become an even more difficult problem, as various State agencies and the States themselves are tightening up on the issuance of fictitious or amended documents.

The Department of Justice should encourage various States to initiate legislation authorizing their own witness security program. State regulations could then be amended to accommodate the program at the State level.

The States and the Federal Government could share a reciprocity with each other.

Presently the documentation problem is slightly haphazard and uncoordinated. Some witnesses wait for months and even years before receiving all the documentation under their assumed names.

I feel in most instances this would be corrected if the States had their own witness program. Therefore, we could be coordinating the Federal effort and at the State level we could assist them and they could assist us and expedite the issuance of many, many of these documents that are required. In almost all the cases it is necessary to locate a job for a witness.

Given the current state of the economy, securing suitable employment for protected witnesses continues to be a source of difficulty. The great majority of individuals being protected often have criminal histories. This poses problems on employability and adaptability.

Several years ago Wayne Hopkins, formerly with the U.S. Chamber of Commerce, was asked and requested to assist the U.S. Marshals Service in the establishment of a Witness Security Employment Center, possibly a job bank type situation. Mr. Hopkins proposed that the National Chamber of Commerce assist the Justice Department Organized Crime Section in educating the business community about the value of the witness program in combating organized crime.

Mr. Hopkins suggested that the first step was to help the Justice Department develop the contracts at high-level locations throughout the country and with the high-level corporate figures. I recall that Mr. Hopkins set up numerous meetings with these corporations, several corporations around the country so that the Justice Department could explain the witness protection program.

They could tell the story of organized crime and how the program was working. These meetings were particularly defined to inform the corporate executives about the problems of finding employment for witnesses, the type of individuals they would be hiring and some of the problems they might encounter. Mr. Hopkins' program was very

successful during its initial stages, but it was discontinued. The Marshals Service today does not in practice or in fact have any employment program which effectively replaces that formerly enacted by Mr. Hopkins.

In conclusion, the witness program is one of the most complex, most frustrating programs the Federal Government tries to administer. There is no doubt that in your recreating human existence you will encounter problems and criticism. I have discussed the weaknesses and the strengths of the witness program, with many prosecutors and many law enforcement officers, they without exception, uniformly agree if we do not improve the program, it will no longer be considered an effective and efficient tool to fight organized crime.

I will conclude my statement with that.

Chairman NUNN. Thank you very much, Mr. Noe, and Mr. Partington. We have several questions for you. We appreciate your being with us today particularly with all the background and experience that you have had and you both have very good reputations in this overall area.

[The complete statements of Mr. Partington and Mr. Noe follow:]

STATEMENT OF JOHN J. PARTINGTON, U.S. MARSHAL, U.S. MARSHALS SERVICE

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the United States Marshals Service role in the Department of Justice Witness Program.

I am certain that you have become well aware of the Witness Protection Program and its problems through the testimony, interviews, and investigative reports that have been presented to this committee.

My statement regarding the Witness Protection Program will be brief and to the point.

When the Program was originated, it was designed for the protection and maintenance of persons whose lives had been threatened for giving testimony for the United States Government in organized crime cases. But, over the years the Program has evolved to accepting all types of criminal cases: drug, political, state, and most important, innocent victim crimes. The result is that we have spent so much time working unworkable cases that we found little time for the workable ones. The final outcome is that we lost both ways.

With the volume of witnesses entering the Program, the never-ending demands that were placed on a handful of men and the general posture of the United States Marshals Service, it was virtually impossible to service the Program, even if we had worked 24 hours a day.

The general attitude of the United States Marshals Service toward the Program has changed and considerably more manpower has been allocated. We are still encountering some of the same problems today that were encountered over the years.

Having been involved in police work for over 25 years, 15 years with the Witness Protection Program, working with all levels of Federal, state, and local law enforcement, and living in with the witnesses and their families in the early days, I am aware of the majority of sensitive and complex problems that are presented each day and that the Witness Protection Program deals with persons whose values and standards are usually different from those of society in general. Because of this, there will always be problems regarding promises, real or imagined, rights of witnesses, and the responsibilities of the involved agencies.

I found that in organized crime that the "family" is controlled and held together by fear. The Witness Protection Program should not be ran on fear, but on respect and interagency cooperation.

In addition to living with a constant threat on their lives, the witness must also live with their personal and legal problems. The program deals extensively with the sociological end of the criminal justice system.

The United States Marshals Service becomes the protector, the social worker, and the counselor to people who have, for the most part, never led a "normal"

life. It must be realized that under normal conditions relocating is extremely trying. Enough cannot be said to describe the stressful situation that witnesses find themselves in when they must relocate for protection.

RECOMMENDATIONS

At present, the Assistant Director for Operations, United States Marshals Service, can direct and manage the Witness Protection Program for the United States Marshals Service but he does not have the authority to command other Federal agencies to support or assist with the protection of the witnesses.

I recommend the following:

1. That a unit be created in Main Justice. It would have a wider scope of authority and would control and manage the Witness Protection Program.

This Control Center could:

- A. Command all other agencies to assist the sharing of the protection workload.
- B. Centralize and consolidate all records (presently scattered justice-wide) for better service and support.
- C. Use less office space—cut back on equipment from computers to vehicles.
- D. Create better workflow and chain of command.
- E. Save man hours utilized and unnecessary travel.
- F. Maintain closer relations with the U.S. Attorneys, Strike Force Attorneys and Case Agents.
- G. Improve the chain of command.

- 1. For security.
- 2. For expediency.

This unit would be totally responsible for Program entry, high level decisions, and Program termination.

We are presently working 5 different programs.

A. Present Main Justice.

B. Present USMS program.

1. Metro.

2. In-district.

C. Attorneys and case agents concept.

D. Bureau of Prisons concept.

E. The witnesses program concept (example—witness with problem and seeking resolution).

The Program is still encountering difficulties in about three main areas. These areas have been a constant source of complaint for the last fifteen years.

1. *Documentation*—The majority of the problems currently encountered in this area are the result of non-cooperation of Federal, state, or local authorities. They are afraid of lawsuits and bad publicity. There is no law to protect them, no guarantee, so they refuse to assist. In the Federal sector, some of the greatest difficulties come in the dealing with immigration problems.

2. *Employment*—The Program is faced with the difficult task of assisting with the acquirement of gainful employment. The economy and job market being what it is and the lack of work skills, oftentimes makes this an impossible task. The only other option is public assistance.

3. *Housing*—This area is a problem of major concern. When you have a low income or welfare situation, the housing available to them is severely limited. You must attempt to secure housing for them that they can afford once the monthly maintenance is discontinued. Too much of the available housing is in high crime rate areas or slums. There is no priority given to witness protection cases.

The Witness Protection Program has been without doubt the most effective tool in combatting organized crime. It has reach out to the people who have insulated themselves from the reach of the law. But, with all of the allegations and bad publicity, I am concerned that the Program could engulf the entire United States Marshals Service into a grey area.

I have wondered if the Program is fair to the witness and his family, to the government, and to the taxpayer. I presume that is why these hearings are taking place. My answer will be given by the outcome of these hearings.

Senators, my closing statement is that this is not a United States Marshals Service Witness Protection Program. It is the United States Government's Witness Protection Program. All Federal agencies who participate and/or render assistance to the Witness Protection Program should be receiving instruction, direction and control from one central unit that is housed under one roof, Main Justice.

STATEMENT OF FRANK W. NOE, U.S. MARSHALS SERVICE (RETIRED)

My name is Frank W. Noe. I have been jointly interviewed by Jack Key and Ray Worsham of the Senate Permanent Subcommittee on Investigations. I was a Deputy United States Marshal for about 25 years and retired from the Service in October of 1980. During the past 8 years of my career, I was a Witness Security Inspector assigned to the Southern District of Florida and provided witness services to over 100 witnesses.

I appreciate the opportunity to appear here today and discuss with you my experiences with the Witness Security Program, also known as the Witness Protection Program.

It is my belief that the Program has been extremely instrumental in improving the Federal Government's ability to combat organized crime. Without the testimony of protected witnesses, many of the Government's most significant convictions would have never been obtained.

Novels have been written, movies have been made and television shows such as "60 Minutes" and "20/20" have portrayed the Witness Security Program as a disaster. I am hopeful that this Subcommittee's interest in such a vital program can remedy past problems, provide better witness services and tighten management and supervision of the Program. There is no doubt in my mind that certain problems, which have been identified in the past, have had a negative impact on the Program's effectiveness.

My colleague, Mr. Partington, just presented his views of the Program and I concur with his findings, conclusions and recommendations.

Rather than duplicate Mr. Partington's testimony, I would like to elaborate on certain areas that he highlighted.

Mr. Partington recommended that a separate unit be created within the main Justice Department that would be responsible for the overall coordination of the Program. I endorse that recommendation. U.S. Marshals are appointed by the President of the United States. There are some U.S. Marshals who are not sensitive to the problems of the Witness Security Program and are not as responsive to headquarters as they should be. If a separate unit was created in main Justice, all WITSEC Inspectors would be subordinate to the Chief of Witness Security. The Chief would report to a Deputy Attorney General. This Deputy Attorney General would be in charge of administering the Program and would ensure that the Program was operated effectively and efficiently. As it is now, the Department of Justice has exercised limited oversight over the Program. U.S. Marshals would be called upon by the Attorney General or Deputy Attorney General to assist the Program. For instance, all subsistence checks and other expenses for witnesses would still be issued by the U.S. Marshals in the district where the witness is located, and when called upon, U.S. Marshals would occasionally provide manpower for protection details.

If such a unit can be established within main Justice, the position of WITSEC Inspector should be upgraded to be competitive with positions carrying equally important responsibilities in other Federal law enforcement agencies, thereby attracting a better caliber of candidate for WITSEC Inspector.

A position description reflecting the true complexity of the WITSEC Inspector position has never been formulated within the Marshals Service. Few people are aware of the fact, for instance, that it is the WITSEC Inspector, himself, who must now approach policy making heads of various agencies, school boards, universities, business corporations and the like in order to secure cooperation with the Program, employment for relocated witnesses, and documentation. Special skills are needed to carry out these functions and to help relocated families adjust to their new lives.

Another point Mr. Partington makes is the problem encountered with documentation. It has become an even more difficult problem as various state agencies are tightening up on the issuing of fictitious or amended documents. The Department of Justice should encourage various states to initiate legislation authorizing their own WITSEC Program. State regulations could then be amended to accommodate the Program. States and the Federal Government could share reciprocity with each other. Presently, the documentation program is haphazard and uncoordinated. Some witnesses wait for months and even years before receiving documentation under their assumed names. Moreover, there are serious doubts as to the success of briefings to witnesses on the area they are supposed to have come from, the people they supposedly know, the schools their children went to or the churches they attended.

In almost all cases it is necessary to locate a job for the witness. Given the current state of the economy, securing suitable employment for protected witnesses continues to be a source of difficulty. A great majority of individuals being protected often have criminal histories. This poses problems of employability and adaptability.

Several years ago Wayne Hopkins, formerly with the United States Chamber of Commerce, was requested to assist the U.S. Marshals Service in the establishment of a Witness Security Employment Center. Mr. Hopkins proposed that the National Chamber of Commerce assist the Justice Department Organized Crime Section in educating the business community about the value of the Witness Security Program in combatting organized crime. Mr. Hopkins suggested that the first step was to help the Justice Department develop contacts with executive officers of individual corporations. I recall that Mr. Hopkins set up numerous meetings with corporations around the country so that the Justice Department could tell the story of organized crime. These meetings were particularly designed to inform the corporate executives about the problem of finding employment for witnesses, the type of individuals they would be hiring, and some of the problems they might encounter. Mr. Hopkins' program was very successful during its initial stages, but it was discontinued.

The Marshals Service today does not in practice or in fact have any employment program which effectively replaces that formerly enacted by Mr. Hopkins.

I would like to call to your attention another area of concern. The Program demands flexibility. The Department of Justice and the U.S. Marshals Service tends to make rigid policy guidelines for the Program, failing to recognize the flexibility needed to adequately deal with the many unique problems that each witness encounters. It should be obvious that the legitimate businessman who happens to be at the right place at the wrong time should be handled in a somewhat different manner than the individual who has been involved in criminal activities for most of his adult life. Unfortunately, the majority of the witnesses get the same treatment.

In conclusion, the Witness Security Program is one of the most complex and frustrating programs the Federal Government tries to administer.

There is no doubt that when you are recreating human existence you will encounter problems and criticism. I have discussed the weaknesses and strengths of the Witness Security Program with many prosecutors and law enforcement officers. Without exception, they uniformly agree that if we do not improve the Program, it will no longer be considered an effective and efficient tool in the fight against organized crime.

I would be happy to answer any questions at this time.

Chairman NUNN. Mr. Noe, we just heard that a prisoner-witness faces many problems when he is transported back to the danger zone and placed in a local jail. The suggestion was made this morning that when a witness goes back to a local danger zone that the agency that has made the original contacts and really been his more or less liaison until he was turned over to the Marshals Service, that they be given primary responsibility for protecting him in that zone, working with the Marshals Service, rather than having the marshals come in from other places that aren't familiar with the local people, the local terrain, and so forth.

How do you view that kind of suggestion?

Mr. Noe. Mr. Chairman, I would say that could be answered with a pro and con. There could be times and certain locations where the participating agency does not have the manpower to handle the security aspect. In large cities such as Miami, New York, Los Angeles, perhaps the Drug Enforcement Agency, the FBI, possess a staff of people that numerically would be conducive to such an arrangement. It would not work in all situations.

Chairman NUNN. We really have two situations, I guess, that ought to be distinguished. One is a non-prisoner-witness. That was the one I

really was making the point on. I think that was the point this morning, the non-prisoner-witness.

Mr. Noe. I think a matter of liaison, I take no issue with the fact that the agent placing a person in this program probably having worked with him for days, weeks, months, is far more aware of the personality, problems, the attitudes of that particular individual. I am sure that it creates a bond of respect with that man over a period of time. He is the initial contact with the U.S. Government. There most often remains a bond between the witness and the agent that really never existed between the inspector and the witness. We are two different operations. It is understandable that they are going to lean on the people that they come in contact with first. I have utilized case agents in Miami many, many times simply because of that feeling. They have a calming effect on the witness. That agency usually is totally aware of the street intelligence, photographs of possible contacts on the other side of the street that we would want to keep the witness away from.

They have an opportunity to obtain any information that would be detrimental to the witness while in the danger zone. I have no qualms about accepting help from that agency participating.

Chairman NUNN. What about the question of the prisoner-witness, security back in the danger zone? We have heard all sorts of problems on that. Is there any kind of answer to that?

Mr. Noe. Yes. There is one answer to it. In the large areas that continue day in and day out, are bringing, receiving, picking up, sending out, court testimony, grand jury actions, these witnesses, prisoner-witnesses, there should be a secure site away from any local institution to house these people. Of course, in Miami we have a unique problem. We do not use any of the local jails. We have a Federal correctional institution there. We did utilize it until they completed it and turned it into a Federal jail. Even these are not sufficient. I firmly believe that that in a busy area there should be a safe site to keep prisoner witnesses so that it would be isolated from any possible threat.

Chairman NUNN. Like a military base or something of that nature?

Mr. Noe. Yes, sir. That would be one choice.

Mr. PARTINGTON. I would like to add to that. We spend so much time relocating these people away from the danger area. What this program is all about is to get the witness in the right frame of mind to go back to testify. We have the advantage hiding these people out. Now he returns to the danger area, the bad guy on the street who certainly knows the man is going to be going to a local jail because he is a prisoner-type witness. I think that it is important to make the man available for the case agent, for the investigators, and most important of all, to have a good night's sleep, not to worry about a shank being put on the top of his head, and to let him concentrate on what this program is all about, testimony.

I have watched people fly across the country, one had four massive heart attacks in the past and here he is flying around like a yo-yo. This man didn't know his own name by the time he came to testify; again, spending all this money, all this time, when it comes down to the bottom line to testify, especially a prisoner-witness. I am sure testimony here today would back me up on that.

Chairman NUNN. Mr. Partington, do prosecutors and agents who are really depending on a witness' testimony to make a case have any other alternative other than the witness protection program when that witness' life is in danger, or is this really their only recourse?

Mr. PARTINGTON. They probably should. Many prosecutors and case agents have approached me and requested me to give a man the money for a bus ticket and give him enough money to relocate in another part of the country. That is not the program. The program is all or nothing at all. Security has got to be consistent. It is not convenient. I think probably down the road somewhere a lot of witnesses who are coming into the program, could in fact be relocated without getting all the benefits of the program as stated in the memorandum.

Chairman NUNN. Some kind of in-between situation for varying cases?

Mr. PARTINGTON. Absolutely. The only danger there would be when it came time to testify, is, would he be available? But I do believe that is something the committee should look into as far as the break-off point. Why should a man who has done probably a minor crime get all of the benefits of the program? Oftentimes, the DEA case, on drugs, we spend so much time working these unworkable cases. We get cases, I know we can work, but we haven't got time to work them. There should be some priority, some kind of a breakoff, mostly priority cases.

Mr. STEINBERG. Mr. Noe, you were in Miami for many years and you dealt obviously with witnesses who had information concerning various drug rings. Do you feel it is important that someone has to assess the ability of the group that person is testifying against to reach out to that witness before you go to the expense, the trouble, and the trauma of a complete relocation program?

Mr. NOE. Yes. In the Miami area, for example, I think that attitude should prevail. As you probably know, Miami has many, many, many small crime units made up of a half-dozen people who do their thing, smuggling narcotics of one kind or another. I don't think that a small local group without extensive organized crime contacts can reach out beyond a given area and find people that have been moved out of the Miami area. They don't have the time. They don't have the expertise. They are not the organized crime-type people that we sometimes speak of.

They are organized to the extent that it is a small group working together in Miami doing their thing, whatever it is, the illegal operation. If they are caught, their prime concern is beat the case or stay out of jail or their defense, rather than retaliation.

Chairman NUNN. Mr. Noe, you heard Mr. Partington's comment about the Marshals Service in effect becoming social workers in a way and they take on a particular witness and his family. Do you have time on the job in Miami, did you have time to really handle the social problems of relocated witnesses?

Mr. NOE. No, sir, I did not.

Miami being the unique city that it is, my workload, the number of witnesses I was usually maintaining did not permit me the luxury of time to devote to each witness that perhaps we would all like to have seen.

Chairman NUNN. What is the answer to this? Do you think marshals need more training in the social work or do you think we ought to have some liaison with the social agencies?

Mr. PARTINGTON. The reason that I went into the story from the beginning, the first witness:

I become, on the island, a marriage counselor, counselor for the child, counselor for the budget, you are allowed \$85 a week. The pressure every day, the constant pressure that I found that not only am I the protector, I have to be the social worker. I have to service all of these people. And unless the inspector out in the field has time to service these people, I don't know how good you are back in headquarters with computers, the number of people back there, unless that witness security specialist is out there serving everyday needs, it is not going to work.

Chairman NUNN. What is the answer to that?

Mr. PARTINGTON. Again, I have to go back to the unit. I am talking about, for example, in our service right now, the witness is placed in a Catch-22 situation. He is out there, he is nobody, he has dropped out of the sky, he has no documentation, he is by himself with his family. The only people he can turn to are the security people. He can't go back to the wise guys when he wants something. He can't go to the neighbor. We are told we are not to socialize with these people. There is no way you can take the witness, the lifestyle like in New York, and put them out in Butte, Mont., turn the light switch and say, "You are now a citizen." We have parole people, people in the Government who could be utilized. There is nothing that starts out wrong that cannot end up right. I think again if we have this control, we certainly have the units in the Federal Government of ours. We are all involved in this program that is operable. I think that the answer is maybe advanced training, but again dealing with people, get people hired, get people in social work perhaps. I don't know. I am not a social worker. I am a police officer.

Chairman NUNN. We had a suggestion yesterday from Mrs. Calimano that she felt that there needed to be a cooling-off period after the initial notification that the relocation was necessary, a cooling-off period for debriefing, for indoctrination as to the program itself, the explanation about some of the ramifications of it, as well as establishing some form of agreement on what the new identity was going to be and the circumstances and background.

Mr. PARTINGTON. That is so important. That is what I am talking about, the shock of coming in the program. I think the advantage of having the temporary hold area is the opportunity to establish a background, to establish an identity, to get the kids into school, to know where they are from.

A factor to consider is they are available for the case agents. That is why we have these people, to work them, to get the cases ready, to save money for travel to and from their final relocated area.

You teach them to support themselves. The temporary hold area is a place where they are from. If you take a person relocating right to his final relocation, he is going to be sitting in that hotel room, the cost alone for their eating, for lodging, where in the temporary hold area you can get them to a place, whether it be a base you are talking about or an apartment. In order to do any documentation, to get the

kids in school, register a car, you have to have a background. You have to be from someplace. You have to have an address.

In this temporary hold area, they could in fact take time out to discuss the program with the family, with the witness, and then send him only after 2 or 3 months, his documentation is that far along. Right now they tell me it takes 3 months for documentation. So he has no identification, we take it from him at the pickup area. He is nobody. If he has a valid driver's license, he can perhaps get the vehicle registered, too. So I say if we have that type of facility, a temporary hold area, you could certainly take the time to slow the people down, reverse the engine, to get these people off to a good start.

Chairman NUNN. Would it take 20 or 30 different safe houses around the United States?

Mr. PARTINGTON. A good point would be the air base or the military facilities. It could be a radius of 200 miles away from the danger area. It is not how far you go, it is what you do when you get there. That is the important thing. I think if we could go that way, sit down with these people in an apartment, I am talking about a regular apartment, get the kids back to a normal life, that is by going to school, and get the wife occupied.

The misconception is they can't go to work. They can go to work. That is the beginning of the normal life, that is the background, they are from someplace.

Chairman NUNN. What prevents the Marshals Service from being able to do this kind of thing now?

Mr. PARTINGTON. We did it at one time and it worked.

Chairman NUNN. What made you quit doing it? Was it budgetary, relationship with other agencies?

Mr. PARTINGTON. We came to our 14th chief in command, he said, "We cut out temporary hold areas, period."

Chairman NUNN. When did that occur?

Mr. PARTINGTON. That occurred probably 1½, 2 years ago.

Chairman NUNN. So you did have hold places and now you don't?

Mr. PARTINGTON. We did for working documentation reasons. You are taking school records, the way you trace these people is through records. That is our key, to keep these people alive, to try to teach them to live a normal life. The only way to find these people, is if they slip, we slip. You take the school records, you go to the school and tell them, "If any inquiry is made about the kid, where he is transferred to, let me know." Five minutes back to my office, two phone calls, the superintendent and the principal, excited, saying, "Two fellows are here looking for where the records are sent."

I say we start with documentation in the school system. Right now it is done haphazard. I am not blaming our people. They are overworked. You go to the danger area, you draw attention, you want the school records. The school records then go to our headquarters and they go on to the school where they are going, all you have is the name. Where are they from? No place. You draw attention on the receiving end, which is more important; on the other end it doesn't matter too much, but on the receiving end it is very important to me.

Chairman NUNN. You should work all of that out before.

Mr. PARTINGTON. You could very well send the inspector, release the records, get the records of the school in the temporary hold area.

Then you start your documentation. Then when you relocate to another area, they can say, I am from Philadelphia, there is a building here, a building there. People are curious when they go. They have no background, they don't know what to say, the children, especially. I say it is vital we have some kind of a hold area to slow everything down. Let's go and plan their lives properly, not rush them through where they don't want to go, where a marshal will take them because they are not busy. They should go where there is a job opportunity.

Chairman NUNN. Before these temporary hold areas were terminated, did you in fact hold the people there long enough to indoctrinate them?

Mr. PARTINGTON. We certainly did, with good results. According to the case agents and U.S. attorneys and it gave the people an idea of what the program is all about. The good and bad part of the program, we tell them we don't walk on water, we make mistakes. We tell them as it is. They can appreciate that. If you tell them no, you tell them why, it is this layer they go through, up and down, they never get an answer.

Chairman NUNN. How long have you been involved in this program?

Mr. PARTINGTON. Too long. I have been involved for a great part of my life away from home in dealing with these problems. It does reflect, you get carried away sometimes.

As a police officer I was told the name of the game was the informant. We have gone beyond that. We have developed so many witnesses for local, State and other Federal agencies. There are witnesses out there with so much intelligence, local, State police, that go by the wayside. This temporary hold area could be used as an intelligence-gathering unit. We have an intelligence unit in the Department of Justice. I don't know what they do. I really don't know. It is another place to appeal the problem, hot potato to our Division, nobody wants it. It then goes back to the inspector in the field.

I am saying, we should start this thing off in slow motion, gear it down, get them away from the danger area, and plan their life the best we can with what we have.

Chairman NUNN. Do you think other people in the field agree with that?

Mr. PARTINGTON. I would say the people who have gone through the program agree with it. And some of the inspectors learn from their mistakes like I have learned from my mistakes. I could write a book on my mistakes. But we learn by it. But I think you are in the right channel. Like I say, why rush? There is too much rushing around and waiting when you get there. You wait, you wait and that is when the problem starts.

Chairman NUNN. Mr. Noe, do you want to comment on this?

Mr. Noe. Yes. I would like to add a point. I agree with the neutral or sterile location for a period of time for these people to wind down. It is a very traumatic experience for them, for most of them. Children especially are not geared for this sudden interruption in their life. Wives are emotional, they don't want to leave their friends, they don't want to leave their home. For the male individual, the principals, he can usually handle this.

But I have moved too many people that have been in a totally emotional scene. By moving in, you have got to get them out of town

right now, you are going to the grand jury today, the word is going to be on the street, the bad guys are going to be after them tonight, you can't keep them here, they have got to go.

It is extremely difficult on a family to walk in and say, look, put everything you can pack in six suitcases, we are on the next flight out of here. In my opinion, that is really not the way to take people into the program.

I think it should be done, well planned, methodically and with total understanding of both parties.

Chairman NUNN. Mr. Noe, how do you feel about the political appointment of U.S. marshals and the effect of that on the witness security program?

Mr. NOE. I think the fact that U.S. marshals are politically appointed does have a bearing on their attitude toward the witness program. Unfortunately, the U.S. Marshals Service is not totally career personnel. U.S. marshals are appointed by the President of the United States, with advice and consent of Congress. They in turn, many of them, feel that they are hired by the President of the United States and they only really have to answer to him. Anything in between is OK if I can get through it, fine, or I have other things I have to take care of, other priorities that I have determined are first. The chain of command involving politically appointed U.S. marshals makes it extremely difficult, I am sure, for the Director of the U.S. Marshals Service to pointedly order certain phases of any operation put into effect the way he wants it done.

Chairman NUNN. Could you work around this by having certain people who were career employees in the U.S. Marshals Service that would be responsive directly to the witness security program in Washington and not have, that may be an awkward way, you have to bypass the marshals on certain occasions? What is the answer to this? If you start talking about eliminating that, it is going to be a long proposition. Is there a way you can work around it?

Mr. NOE. Yes, sir. In relation to what Mr. Partington just said about a special unit in Justice, this was my idea that the Attorney General possibly could have more direct clout so to speak, with the Marshals Service if he was in fact operating this program or directly responsible for the program. I think the Attorney General should do this through a U.S. marshal.

I think we would probably speed things along.

Chairman NUNN. In other words, still have the career people who handle witness security at the local level responsible to the marshal, but have the marshal more responsible to Washington?

Mr. NOE. Yes.

Chairman NUNN. How do you do that by law?

Is that done by personality or by changing law? If you have a strong enough man in Washington I suppose it could work.

Mr. NOE. I am not here to answer such a high-level question, but I am sure that the powers to be could make this type of an arrangement.

Chairman NUNN. It is a problem now, though, isn't it?

Mr. NOE. Yes. The U.S. marshal is responsible for a district. That is his district as far as his responsibility goes. He is the total manager of the Marshals Service in that area. He sets up priorities. He has respon-

sibilities to the court. He only has so much manpower. He is the one that says I do not have three or four men to give to you to go to the airplane and meet a witness and take to the motel, sit with him, the whole time he is here.

If he says you don't have it, you don't get the manpower, you don't get it. So we are on the telephone to headquarters, marshal here, in Miami, is totally committed manpowerwise to other operations, I have got a witness coming in, where do I get the manpower to set up my security in the motel? This encompasses other deputies flying, having to be on the spur of the moment, jump up, fly in, take care of the details.

In many cases the logistics are extremely difficult. The marshal in that area has no vehicle for the in-coming detail. The marshal does have commitments in this district and if he has committed his manpower to those priorities that he deemed No. 1, it kind of leaves that witness inspector who works with that marshal in a position of no argument. He can only inform headquarters and it has to be worked out through other channels to bring the manpower in.

Chairman NUNN. Mr. Partington, what do you think about this? You are a U.S. marshal, aren't you?

Mr. PARTINGTON. I feel that over the years the marshal's role has changed. He is dealing with police work on a daily basis. You would not take an undertaker and make him chief of police or a police officer and make him head of the fire department. We are dealing with all levels of law enforcement. I find as a police officer I never had to apologize for doing my job, but as an inspector I had to apologize every day to various U.S. marshals and explain why I was in their district. It is my district, says the marshal, it is my manpower, it is my vehicle, and so forth.

I was spending more time apologizing than doing my job that we lacked control. I didn't have time to really do my mission; being a PR man to satisfy the marshals throughout the country.

So in answer to your question earlier, when you said we should probably pass laws, not necessarily so. I think if we had the unit, like we have now like the Metro, the Metro in fact has worked because that is only one chain of command from the inspector, the chief witness security, whereas the district inspector has to go through the marshal. They know where the witness is located. I am not saying they are going out and telling where the witnesses are located, but it could happen quite by accident.

I think it is security. We are talking security here, too. It is a very sensitive and dangerous area, make a mistake, it is all over.

Chairman NUNN. Why do we have such great turnover in the witness inspection positions?

Mr. NOE. Stress, for one thing, frustration, aggravation, maybe a sense of not accomplishing what we really feel we should be accomplishing.

Chairman NUNN. Should we have the same kind of qualification required for a witness security position as investigative agencies require?

Mr. NOE. I can't see—qualifications for witness security inspectors should be rather fixed. I think it requires a different kind of individual.

It requires a total commitment from the person working the witness security program. It is not an 8 to 5 job. You can't go home because your wife wants you to cut the yard at 5 p.m. You are dealing with people, witnesses, time schedule means nothing.

Airplanes fly around the clock, U.S. attorneys work until midnight, case agents will work whenever you get the witness in. Time is of no consequence. It is the job, if it takes all day, all night to do it, that is the way you approach it.

Chairman NUNN. In other words, you think it ought to be professional, highly trained highly skilled people?

Mr. PARTINGTON. We have capable people out there. We lack degrees.

Chairman NUNN. It is not uniform either. It varies.

Mr. PARTINGTON. No, sir.

Mr. NOE. We have people that accept jobs as a witness inspector for the promotion, not necessarily because they are in love with what we are doing, what the program is doing. It is an avenue for promotion in an agency that has little room for promotion. So that people do take it. But immediately after, some look for other lateral moves to different administrative or other type position at the same grade level.

Mr. PARTINGTON. If we could write our job description exactly what we do from day to day, the unknown, I guarantee you it would upgrade our job.

Chairman NUNN. Would be what?

Mr. PARTINGTON. Would go to the top.

Chairman NUNN. Would go up?

Mr. PARTINGTON. Absolutely.

Mr. NOE. Senator, it is a little aggravating at times when you, in your association with other agents from other agencies, find out that you are the grade you are and they are the grade they are, they laugh and say, "I wouldn't have your job for any grade." You know, I think that kind of reaction.

Chairman NUNN. We have heard substantial testimony about the problems with documentation and so forth. Do you believe the Marshals Service now has the expertise and the resources available to it to provide adequate documentation?

Mr. PARTINGTON. We do to a degree. I think a lot of our problems come because on other Federal agencies will not cooperate. They are afraid of bad publicity, they are afraid of the law, oftentimes they can't reach out to get the proper documentation.

But going back, and I won't go back to the school situation, but records are all the same. If we are going to take a couple of months to get the school records to the new location by sterilizing them, all right, but the way it is done now, it should only take a couple of days. Earlier I mentioned the fact that tracing records is a way to get to our people, and I think that is one area, documentation, we should be concerned. In obtaining records we should have some type of high-level documentation program set up.

Chairman NUNN. Mr. Noe, in your statement you say, "The Marshals Service today does not in practice or in fact have any employment program which effectively replaces that formerly enacted by Mr. Hopkins." Why is this? Everyone seems to be rather high on that Hopkins plan and what he was trying to do.

Mr. NOE. We didn't see the plan totally implemented. We will never know. However, in my association with Mr. Hopkins in the short time that he was with the Marshals Service and other people that were associated with Mr. Hopkins led me to believe that he was probably the goose with the golden egg at that particular time. His ideas, his ability, his background placed him in the position that at least placed us where great expectations could have been brought forth.

Chairman NUNN. Do you feel now, Mr. Noe, that the witness security inspectors in the field have the time and resources to make adequate employment contacts?

Or on the other hand, do you feel you have enough assistance in Washington to really do that?

Mr. NOE. No, sir. I don't think we will ever have enough assistance. I don't think witness security inspectors in certain areas, the high-level crime areas, the very active areas do not; I did not have the time in Miami. You cannot work with 10, 15, or 20 witnesses in your area, plus bringing in the witnesses, picking up new ones, getting them out of town, making other necessary commitments on short notice. You do not have the time. It is just totally impossible to work.

Chairman NUNN. Would you go back to somebody like Mr. Hopkins and try to have a centralized employment capability in Washington to assist the field inspectors?

Is that the best approach?

Mr. NOE. Senator, we have nothing to lose. From the way people are talking, we are rock bottom right now. We don't have any way to go but up. If we can get someone to set up some type of a program, I don't care where he comes from as long as it is successful and it does the job.

Chairman NUNN. That is a very important element in this whole—

Mr. NOE. Documentation, of employment.

Mr. PARTINGTON. Without documentation you don't get employed, without being employed you can't tell a success story.

Chairman NUNN. Do you believe, Mr. Partington, that the program provides adequate credit now or adequate financial assistance?

Mr. PARTINGTON. I think it is an area where a person who comes in to the program, has good credit, established good credit, they should not be punished for it. We should certainly try to get the equivalent credit rating that they have.

Chairman NUNN. You think the institution can do that now?

Mr. PARTINGTON. No.

Chairman NUNN. You think somebody comes in, like a doctor, lawyer, businessman, has a good credit rating, do you think there is an institutional capability to transfer and get him a good start?

Mr. PARTINGTON. No. Today, negative, but it can be done and should be. We can do it, with small business loans.

Chairman NUNN. What would it take to do it?

Mr. PARTINGTON. I would take a chance. We are now going to the school, or going to different places like apartments or employers to say who we are, what we are doing. What is wrong with going to the top security man for American Bank and sit him down, say, "We have a problem here, a situation," without relating the name. On that level, discuss how credit cards can be issued. The man—certainly American Express is not a threat to this individual, or he wouldn't probably have

to know, we can work something out. There is a way of doing it. But by the same token, if people establish credit through the wrong way, that is another thing. The Department should not get involved in getting calls from the creditors or from oftentimes automobile dealers, saying that the witness works for the Government. He does not.

He is a Government consultant. He is not.

As a matter of record, they get their subsistence. They have no credit. If they run out of money, they can't go to the neighbors, they can't go anyplace. I think credit is an area that should be looked into. What do you do with these people, like everyday living today, within 1 week they are out of money, they have to wait to the end of the month to get subsistence. They can't establish credit unless they walk into the Sears & Roebuck place, a \$100 limit and explain that to the credit manager.

Chairman NUNN. That has got to be a frustrating experience for somebody trying to take care of it.

Mr. PARTINGTON. Again, you can't win. If you were to move right now and go to Rhode Island, wanted to get an apartment, where are you from, references, what do you do? You can't get an apartment. To go get a job, where did you work? I can't tell you. That is where the problem starts. All they want is help from us. I am not saying being dishonest. The man testified today you can get documentation like that, in 20 minutes. It is not right, it is wrong, it takes a short time, to do it legally takes time, to teach them to do things right. So what I am saying, all the documentation, starting with credit, the financial assistance, it is difficult, because we cannot vouch for them. They don't pay, Uncle Sam is not going to pay. I won't vouch for them. That is the problem every single day, when these people go to Sears, want to do Christmas shopping right now, the witnesses have no credit. They get that lump sum, whatever it may be, that is it. You can't go to the neighbor; they can't go back to New York to their families or wise guys. They have to rely on us.

Chairman NUNN. You think this can be improved?

Mr. PARTINGTON. Absolutely. I think they can go to Sears, Roebuck. Let's go to the people up at the top, say, "We have a type person in the program, his credit was lousy, now he may be getting a job," tell them the truth, "Would you give him \$100 limit of credit, at least start him with that?" If he can pay \$10, \$5 a week, to me this is building a program, to have a guy become somebody, from Sears you can go to another big company. That is how you establish credit.

Chairman NUNN. Do you both believe the witness security program should be augmented by adding specialists or consultants or full-time employees who are specialists in the area of employment, finances, documentation, social services?

Mr. NOE. Yes, sir. I do. I think expertise is exactly what it is, expertise in a given field. It is nice to know a little bit about a lot of things, but if you don't know a whole lot about one thing, you are certainly no expert.

Chairman NUNN. You certainly need some documentation.

Mr. NOE. I think they can borrow from the CIA. They seem to be able to put their people away overnight.

Mr. PARTINGTON. They need help. There is no question about it.

Chairman NUNN. I think both of you said you thought there ought to be a separate unit in the Department of Justice, charged with this program.

Mr. NOE. Absolutely.

Mr. PARTINGTON. Yes.

Chairman NUNN. The Marshals Service ought to be a part of that, at least a witness security part of the Marshals Service ought to respond to that separate unit.

Mr. NOE. No. Master control should not stop at the marshals office or headquarters. It should stop at the desk of the Deputy Attorney General assigned to oversee that program.

Chairman NUNN. Otherwise you are not going to have the clout you need to deal with other agencies, to deal with top level corporate people?

Mr. NOE. I think that is true.

Chairman NUNN. Is it that clout you need in high level more than it is just the organization itself? Isn't that the ultimate purpose of having a separate unit?

Mr. NOE. You need the clout. But you also need control; administrative control with clout.

Chairman NUNN. How many did you say, people we have had in charge of the witness security program?

Mr. PARTINGTON. I would say 14 or 15.

Chairman NUNN. How long?

Mr. PARTINGTON. Since 1967.

Chairman NUNN. In 13 years you have had an average stay in that job of about one a year, one person a year?

Mr. NOE. I think our present Chief of Witness Security maybe has been there longer than anyone else. I don't know. A year is a good average.

Chairman NUNN. By the time they learned the job, they are gone. That is what it amounts to.

Mr. NOE. That is about the answer to that.

Chairman NUNN. Both of you have had a very distinguished career and even though Mr. Partington, you said you could write a book on your mistakes, I think all of us could, but I think that book that you have in your head can be shared with a lot of other people and help avoid those mistakes because you do have a tremendous amount of experience out here in the field.

Mr. PARTINGTON. I couldn't tell it in half an hour. But over the years, putting so much of this into my life, I often ask myself, is the program fair to the witness and his family? Is it fair to the Government? Is it fair to the taxpayers? I often wonder because the story I started to tell, the first man I handled ended up murdered, gangland style, his wife still has the problem, documentation, which was 14 years ago. I learned we had to bring the body and the mind to the courtroom. That is why I wanted to illustrate that.

Chairman NUNN. From what we have heard in the last 2 days, my view is the program is not a failure, that it has helped in many, many cases, particularly in the area of protecting people's lives. There are two dimensions of it, making life worth living and the other is keeping a person alive. On the keeping them alive story, it has done a rather

remarkable job, based on all the statistics and records and considering the resources and considering what you have to work with and we had the prosecutor here that said that the program had done a lot of good things. So I think it is important for all of us to keep it in perspective.

What we are trying to do is make the program work much better than it is working now, and I think it can work much better than it is working now. That is not to say that we have to brand something a total failure in order to try to improve it. I think we can acknowledge that it has had a lot of good things happen and yet still do our best to try to improve it. At least that is the attitude I hope we will take.

Mr. PARTINGTON. I would still like to see the program, as I stated earlier, be controlled out of the understanding, compassion, respect, not out of fear like the hood in the street who survives.

The first guy you get as a witness, trying to control us, to run us. The same as our own people, our boss in the program, it should not be run by fear, by a demotion or a transfer or denied promotion or whatever. I think that holds true on our level, too. You can't run this program out of fear. You are dealing with human beings, no matter what they have done.

Chairman NUNN. Thank you very much for being here. We appreciate your cooperation.

Mr. NOE. Thank you, Mr. Chairman.

Chairman NUNN. Our next witness is Mr. John Schwartz, Director, Office of Security and Program Integrity, Social Security Administration.

Before you take the seat, if you will hold up your hand, we swear in all witnesses before the subcommittee.

Do you swear the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SCHWARTZ. I do.

TESTIMONY OF JOHN SCHWARTZ, DIRECTOR, OFFICE OF SECURITY AND PROGRAM INTEGRITY, SOCIAL SECURITY ADMINISTRATION

Chairman NUNN. Mr. Schwartz, we have received your prepared statement. I want to thank you for providing us with such a comprehensive explanation of the efforts of the Social Security Administration in relation to relocating witnesses. Rather than having you summarize the statement, we would like to go directly to questions, put your whole statement in the record. I think we can probably save your time and ours and still get all of the information.

Mr. SCHWARTZ. That is quite satisfactory, sir.

[The full testimony follows:]

STATEMENT BY JOHN B. SCHWARTZ, DIRECTOR, OFFICE OF SECURITY AND PROGRAM INTEGRITY, SOCIAL SECURITY ADMINISTRATION

Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you and discuss the activities which SSA carries out in support of the witness protection program administered by the U.S. Marshals Service of the Department of Justice. In the Chairman's letter requesting this appearance, there were three specific matters which you wish me to address. I will discuss each of these in the order in which they appeared in the letter and in this process will substantially cover the operations of the Social Security Administration which affect the witness protection program.

The first question involved the time span for processing new cards for relocated witnesses.

I have included as a part of this statement, a table which shows the processing time for the last 5 months for the new social security numbers issued to people under the witness protection program. This table includes 16 separate shipments of cards received from the U.S. Marshals Service totaling 197 cards altogether. The processing time is measured from the date the application for a new social security number is received by the Social Security Administration to the date on which the new card is delivered by the operating unit involved to my office. This table shows that the average processing time for these 16 shipments of cards was approximately 21 days. The shortest period represented in the table was 13 days and the longest was 29, which occurred on two occasions.

These applications for social security numbers are handled through a partly manual process which bypasses certain screening operations which are applied to applications received in the usual way. The processing time of 21 days however is very close to the time taken by the routine process. I cannot realistically predict any sizable reduction in this time. We have set up the process in such a way that only one operating person knows that these applications come from my staff, and therefore generally what they are. In most of the processing which takes place these applications are merged with others so that they do not stand out as a group.

There is some extra time required to issue numbers to witnesses under this program compared to the normal issuance to a person who goes into a district office and requests a new card. The processing time at SSA headquarters is virtually the same but in the case of the witness, the application for a social security number must be completed in the new identity by the witness and then has to be forwarded by the Marshals in the field to the Marshals Service headquarters in Virginia and from there it is brought by courier to Social Security in Baltimore where it is coded to make it similar to others received under more normal circumstances and then put into the issuance process. Again on the other end there may be some delay in getting the cards delivered to the witness because it is not mailed but is picked up by a courier and then must go back through the Marshals Service headquarters to the U.S. Marshals in the field where, I assume, it is delivered by hand. These extra steps, however, seem inescapable because of the security requirements involved.

The second question which the Chairman asked me to address involved the reasons behind the Social Security Administration's policy of not routinely transferring earnings from old to new accounts.

As I will explain in a moment, circumstances have led us to the conclusion that this policy needs to be changed and we are in the process of making a change which I will describe. However, with respect to the reason for the original policy, it was in a nutshell—security. To illustrate I think I need to describe the information which we receive about the witnesses whose identities are being changed and what we do with that information. We receive from the U.S. Marshals Service with respect to each witness, three pieces of information at the time a new number is to be issued. One of these, of course, is the completed application for a social security number with the names, dates, and places of the new identity. We also receive a waiver from the individual making the application, authorizing us to release information—essentially the new number—to the U.S. Marshals on his or her behalf. The only information that we receive about the old identity is simply the old social security number. We do not even get the original name of the individual nor the location from which he or she is being moved or anything else—just the number. When the new number comes back from the operating people and before we release it to the Marshals, we prepare a cross-reference card which lists the old number and the new name and number. These are kept in a safe.

Thus, at the time the people in the Office of Security and Program Integrity take care of the issuance of the new number, we ourselves do not know the true identity of the individual whose case we are handling. We do not call up the old record, we do not check the earnings record for the individual, we do nothing with the old number at all at that point. This seems to us to provide the maximum amount of security since there are no operations with respect to the old number which take place concurrently with the issuance of the new one and consequently no opportunity for anyone to put two and two together and conclude that we must be issuing a new number for a particular person whose old record we have

requested. Under the procedures as we have been following them we do not call up the old record until a claim is filed by the witness and it therefore becomes necessary to merge the two earnings records. This, of course, is sometime after the original issuance of the new number and may be years later. While we continue to take every precaution to avoid any inadvertent release of the information about the new identity of the witness including having the material handled only by people who have been cleared to do so, we assume that the sensitivity of the situation is to some extent lessened by the passage of time.

If we were dealing only with a few dozen individuals, I would argue that this approach should be continued because I think it is the most secure. However, since social security's cooperation with the witness protection program began in 1974, we have issued a fairly large group of numbers in new identities and we are continuing to establish a significant number each year. The volume of claims which will eventually result from this number of new identities has led us to conclude that we need to change our procedures and to have the earnings records under the old and new identities merged at a point earlier in time than the date when the claim is filed. The present process I feel is very secure but it has its price. The individual holding a new identity who attains retirement age, or becomes disabled, or is eligible as a survivor when a wage earner dies, is not able to file a claim and have it processed in the normal way. Because information about the two identities must be used at that time to merge the earnings records, it has been necessary for the Marshals to take the individual's claim and to forward it directly to my office bypassing the normal district office intake point.

We then arrange for processing by an individual in our central office who has been cleared to handle the material and who at that point will call up the two earnings records and merge them in the process of establishing the benefit amount. This is awkward both because of the time involved in having the claim go through several hands from the Marshals in the field to the U.S. Marshals Service headquarters, then to Social Security headquarters before it gets into the hands of a technical person who can process it and also because the Marshals necessarily are not as thoroughly trained in social security as our own claims people and are not infrequently if there is some complexity involved in the claim we will find that we have to go back for additional information or evidence to clear something up. And again any requests for such development have to go through this same round-about process. The result is a delay in these claims almost without exception compared with the time which would be required if the processing could be handled through the Social Security Administration field offices in the normal fashion. Given the volume of such claims which can be anticipated as the number of people whose identities have been changed continues to increase, we have come to the conclusion that we need to change the process in a way that will permit the claims to be handled in a more normal fashion, and that in turn requires that we consolidate the earnings record under the original and the new identities at a point well before the individual becomes eligible for a benefit.

To do this, we have worked out tentative procedures with the operating people in social security to have these cases handled in much the same fashion as SSA now does with what we call a "scrambled" wage record—that is, a situation in which an individual for some reason has worked under two different account numbers at different periods of his life. When these situations come to the agency's attention, the wage records are consolidated so that the individual's ultimate benefit will reflect all of the earnings, that he or she had in covered employment credited to a single account. The difference that will have to be observed in the case of the witness claims, of course, involves the need for security over the link between the two identities and the elimination of any cross-reference or possibility of tracing back from one to the other. We believe that this can be handled. The consolidation will be done by a cleared individual at a relatively high organizational level in SSA so that it is under more direct control than is normally the case with routine processing of this sort and we will eliminate the normal cross-references which indicate the different social security numbers which are included in the consolidation. We are planning to pilot such a process with a small number of witnesses because the electronic processes involved are fairly complex, and we want to be sure before we under-

take to consolidate any large number of records that we have eliminated all the possible ways in which the two numbers could be connected. We plan to begin this pilot of half a dozen or so accounts early in 1981.

Assuming this process works as we believe it will, our plan would be to consolidate the earnings records of those individuals whose identities have already been changed over a period of time and to consolidate the earnings records of future witnesses within 2 to 2½ years after the new social security number is issued. The reason for the delay between the point of issuance and the consolidation of the earnings records, relates to the process through which earnings are reported by employers and posted to individual social security accounts. As you know, social security credits are now reported annually using the mechanism of the W-2 which is also used to report taxable earnings to the Internal Revenue Service. The W-2 for an individual with covered employment or self-employment in calendar 1980, for example, will be received by the Social Security Administration in January 1981. Because of the very large number of these W-2's, the process of preparing an electronic record of all of the individual W-2's requires most of that year and it will be the end of November or thereabouts before the electronic file of W-2's for 1980 is complete. At that point, it will be used to update the master electronic file of earnings which includes a cumulative record of all of the reported earnings for various years listed under the social security number and name of each individual for whom a report was made in 1980. That process will be completed in the early summer of 1982 for our person with the 1980 covered employment.

It is after that point—that is, when we know that the earnings or self-employment for the last year in which the individual used the old identity are posted to the electronic record—that we will make the consolidation which will, under the new number show everything credited under the old one as if it had occurred to an individual who all along had the new identity. Once this is done, special handling will in most cases, not be necessary when the person becomes eligible for a benefit. Since no reference back to the old identity will be necessary to determine the eligibility for and the amount of, benefits it will be possible for these people to go to social security field offices and file for benefits in the normal way—this assumes, of course, that the appropriate proofs of birth and marriage and so forth will have been provided in the new identity by the U.S. Marshals at the time the new identity is established. Thus, the claims processing for these people will be no different than for anyone else and allowing for individual complications in family situations or the like should be generally faster than is now the case because of the special handling which the claims require at present. There will still be some cases where we will have to have special handling. These would include any situation in which one of the individuals who is given a new identity is already receiving benefits under the old identity and therefore a transfer has to be effected or situations in the case of a disability claim where medical evidence is required for a period that covers the transition between the old identity and the new. These cases which should, however, be a distinct minority will still need to be handled by the Marshals and by my office in the way that all claims are at present.

The third matter which the Chairman requested our views on is the current and anticipated problems that the Social Security Administration faces in its cooperation with the Department of Justice in the implementation of this program.

I believe that the response to the last question and to some extent to the first one also, outlined the problems which we face and which generally arise simply from the fact that what we do in these cases has to be done with security as a primary consideration which necessarily imposes some constraints on us. I have also explained, with respect to the earnings record problem, how we believe that a change can be made which will alleviate one of the major problems causing a delay in claims processing. Beyond this, I do not feel that we face any particular problems in cooperating with the Department of Justice or in handling our operations under the witness protection program. Relationships between our staff and the staff of the U.S. Marshals Service are, in my opinion, excellent and we have both learned from the experience we have already had with this program.

This concludes my statement and I'll be glad to answer any questions you may have.

PROCESSING TIME FOR SSN APPLICATIONS—U.S. MARSHALS WITNESS SECURITY PROGRAM

	Date application submitted	Date that SSN card received	Number of calendar days
Number of applications: ¹			
17	Nov. 3, 1980	Dec. 2, 1980	29
6	Nov. 4, 1980	Dec. 1, 1980	27
11	Oct. 23, 1980	Nov. 12, 1980	20
7	Oct. 15, 1980	Nov. 3, 1980	19
7	Oct. 8, 1980	Nov. 3, 1980	26
13	Oct. 3, 1980	Oct. 23, 1980	20
17	Sept. 24, 1980	Oct. 15, 1980	21
6	Sept. 17, 1980	Oct. 10, 1980	23
5	Sept. 10, 1980	Sept. 23, 1980	13
16	Sept. 4, 1980	Sept. 23, 1980	19
23	Aug. 28, 1980	Sept. 23, 1980	26
9	Aug. 20, 1980	Sept. 18, 1980	29
20	Aug. 1, 1980	Aug. 20, 1980	19
8	July 15, 1980	Aug. 30, 1980	15
7	July 28, 1980	Aug. 20, 1980	23
25	July 7, 1980	July 30, 1980	16

¹ Total of 197 applications (16 groups).

Note: The average processing time for these SSN's: 21 days.

Chairman NUNN. I will ask Mr. Steinberg to pose the questions.

Mr. STEINBERG. How long does it take the Social Security Administration to provide the Marshals Service with a new social security card for the relocated witness?

Mr. SCHWARTZ. The average time that we have the application in-house until the number is produced is, based on our recent experience, about 3 weeks, 21 days. There is some time on either end of course because the witness is somewhere else and the application which he completes or she completes in the new identity has to go from the inspector who is with the witness to headquarters of the U. S. Marshals in Virginia, then over to Baltimore, then we take 3 weeks. Then it is taken back to the Marshals Service by courier, then back out to the field.

So I do not have the end-to-end figure on it. We do not know when the application is first completed, and when it is delivered.

Mr. STEINBERG. We have heard complaints from witnesses and Government personnel alike that it takes anywhere from 6 months to 1 year to get a new social security card. Do you think that is entirely too long?

Mr. SCHWARTZ. Yes. It certainly is entirely too long.

Mr. STEINBERG. What can be done to speed up the process?

Mr. SCHWARTZ. There is not any reason why it should take anything like that. Assuming reasonable speed in getting the application completed and getting it to us, then getting it back again, the whole process from the time the witness signs the application until the card is handed to them should be within the limits of a couple of months and probably well within that.

I really cannot explain why it would take a year or more. I do not have any data about its taking that long.

Mr. STEINBERG. Mr. Schwartz, since the witness security program came into existence some 10 years ago, has the Social Security Administration routinely transferred earnings from old accounts to new accounts for relocated witnesses?

Mr. SCHWARTZ. No; we have not. At the time the witness is issued a new number we have not transferred the earnings. We have been doing that at the time the claim is filed on the account.

Mr. STEINBERG. Mr. Schwartz, why have those benefits not been routinely transferred in the past? Do you know?

Mr. SCHWARTZ. Yes. It was essentially a concern for security. We never looked up the old account. When the new application and the new identity comes in, we do not pull the old record at all. We simply set up the new one. It was our feeling that not bringing those two together at the time when the witness is first being redocumented and therefore his or her identity is presumably most sensitive, was probably the best way to avoid our creating any problems. The previous witness mentioned that it is through documentation that people get traced and we did not want to allow that to happen with our documents. So that was the reason.

Mr. STEINBERG. Are you now transferring those earnings on a routine basis for new applications from the Marshals Service?

Mr. SCHWARTZ. We will be soon. We are going to start in January a pilot of a process that would do that using for the purposes of the pilot some few witnesses where the sensitivity of the new identity is no longer what it was. We think that we can do that in a way that protects the identity, and that does not establish a link between the old and the new. It has been the possibility of that link existing that was the reason why in the beginning we did not even attempt that.

Chairman NUNN. I can easily see that there would be no security dangers if you never joined the old with the new. I can see why you would not for that reason do it until you needed to have a claim. I assume when you say a claim, though, that at the time you had the claim you would have to do it.

Mr. SCHWARTZ. Yes. We have been doing that as claims have been filed.

Chairman NUNN. Why does the time sequence of when you do it make any difference? Why would it not be just as risky to do it after 2 years as it is to do it immediately?

Mr. SCHWARTZ. I am not an authority on that risk. Our original reason for not doing it until the claim was filed was the feeling that the passage of time to some extent would take the heat off, by the time someone became eligible. There is always the possibility a witness can have a heart attack or something very early in their relocation, but in the normal course of events, a claim would probably be a short time later, and our feeling was that by not pulling that old record at the time when we were documenting the witness, we were avoiding creating any possibility that anybody could see the link between the two identities.

But you have to do it sometime.

Chairman NUNN. In your pilot project how are you going to—we do not want to know anything to jeopardize security, the way you are doing it. I am not asking for that information. But are you going to be able to join up the old and the new much quicker without jeopardizing security?

Mr. SCHWARTZ. We think so. Yes. The way we will do it is we are going to have only two people who understand and are familiar with

the details of that process, the supervisor and then one journeyman. They will both be people of a higher organizational level than is usually the case with the people who handle these things. What we are going to do is have them, one of them, take the two records, consolidate all of the earnings of the old record under the new identity without including anywhere the old social security number issued in the old name, using a basis for doing this that sounds reasonable in terms of our normal operations and would explain if anyone ever came across these two pieces of paper, why it had been done; and then have that consolidated record entered in the electronic media which is really where wage records are maintained for all practical purposes.

There is a paper record in storage, but if you want to look something up, you look it up on tape. And the process is rather complicated because there is more than one set of records involved. But we have talked to the people who manipulate this earnings process and they believe that they can do this in a way that will not create any link between those two identities.

Chairman NUNN. How long do you think it is going to take from the time a witness comes in to make the transfer under the new pilot system?

Mr. SCHWARTZ. We would not even attempt it for a couple of years. That is simply because of the way in which earnings are posted. Since 1978 earnings, instead of being posted quarterly the way they were before, are now recorded in the social security records on the basis of the W-2 which of course comes in in January for the prior year. Then because there are some 200 million W-2's, it takes 10 or 11 months to get them all posted. Then once there is a tape, with all the W-2's on it, that tape is run against the summary earnings record tape that has all the people in covered employment under social security listed on it and the W-2 information for each person is pulled off and is added to the cumulative record on the other tape. That process takes another 4 or 5 months. So that if you relocated a witness today, it would be the middle of 1982 before we had his 1980 earnings on electronic media. We do not want to make this transfer until that is done because if you did that, you would either have a gap—you would not have his earnings for 1 year represented in the new record—or else you would have to do what we do in the case of normal claims cases which is go back to the employer and develop the earnings through other evidence.

We do not want to be doing that kind of employer contact on a witness. So it is going to be probably on the average of about 2 years after the witness is relocated before we will consolidate these records unless there is a claims event that occurs in the meantime that would of course force us to do it the way we are doing it now.

Chairman NUNN. How does that compare with the way you are doing it now? How long does it take now?

Mr. SCHWARTZ. Now we do not even start until the person files a claim. By that time ordinarily you would not have to wait for that lag year because the redocumentation would be some time in the past. It now takes longer for these kind of claims than it does for our normal ones which is one of the reasons, really probably the big reason, why we want to consolidate the earnings record.

The problem now is that the witness cannot just go into a social security office and file because he would have to divulge the old identity in order to do that. So he has to file with the marshals, one of the inspectors has to take the claim, then it has to come round about to us.

Chairman NUNN. So right now you would admit it takes an awful long time?

Mr. SCHWARTZ. Yes. It does.

Chairman NUNN. Did this come to your attention before or did our inquiry trigger this reexamination or had you already heard about the problem?

Mr. SCHWARTZ. We had heard about it from the marshals either early in 1980 or late 1979. We had a conversation with the Marshals Service about this problem. We took some steps at the time to improve the in-house processing of the claims but had not at that point reached the position where we felt we could figure out how to consolidate the earnings records without causing potential problems.

Chairman NUNN. Do you think you have got it figured out now?

Mr. SCHWARTZ. We think so. We will try out these first few and if that works, we should be able to do it with the others.

Chairman NUNN. That is encouraging.

Mr. STEINBERG. Let me ask you a question that may be a little bit too simple because I do not quite understand the bureaucracy. Why can you not simply transfer the person's old earnings up to whatever point he has that are on a computer at that point in time and when his W-2 forms catch up with him simply transfer the last 2 years to that new card?

Mr. SCHWARTZ. We could. But the reason that I would prefer not to is that every time you take those two documents out of the file and put them together on somebody's desk, you create a risk that the connection is going to be made.

Mr. STEINBERG. But assuming you have a security division that is doing this anyway, and it is being done in the secure fashion, you assume that those same people would be handling the same records when they updated the person's earnings; would you not?

Mr. SCHWARTZ. Yes. They would be. Again, it is simply doing it twice doubles the risk for an accident. I also do not see that there is a particular purpose to be served because unless the individual is going to become eligible for a benefit within the 2-year period, the transfer of earnings has no relevance for him personally at all. The only time we use those earnings is when there is a claim. So if there is not a claim within that 2-year period the person is not affected by the transfer or the delay in the transfer.

Chairman NUNN. You heard the testimony earlier about a lady that the marshals said had been 14 years trying to get it straight.

Mr. SCHWARTZ. Yes. I heard that reference. I really cannot respond to it because I do not know anything about the case. Some of ours have been fairly slow, but 14 years seems impossible somehow.

Chairman NUNN. We will try to get you that information. See if you can not take a look at it.

Mr. SCHWARTZ. We would be happy to trace that case if we knew the people involved.

Mr. STEINBERG. What happens to the 3,500 witnesses and the some 12,000 dependents who have already been entered into the program

for the last 10 years? How long is it going to take to catch up with them?

Mr. SCHWARTZ. I cannot really tell you how long. As soon as we have piloted this transfer and know that it works securely, we are going to start working that backlog. Starting probably with the older cases first, unless there are some there where we know or the marshals know that we may be able to anticipate an early claims action in which case we would work them first. But we are just going to start to work that backlog until we get current.

Mr. STEINBERG. Does Social Security have a written agreement with the witness protection program?

Mr. SCHWARTZ. We do not at the present time. No.

Mr. STEINBERG. Are you going to develop one so that this type of program, the transfer of benefits and the transfer of earnings can be worked out in an efficient and secure way in the future?

Mr. SCHWARTZ. Yes. The Social Security Administration got a letter back in September from the Deputy Attorney General suggesting that there ought to be a memo of understanding between SSA and the U.S. Marshals Service. We met with the Marshals Service and agreed that as far as we were concerned that was OK and the Commissioner replied later on to the Deputy Attorney General and said we would work one out. The Marshals Service staff is working on a draft right now.

Mr. STEINBERG. We have been informed by other witnesses that they do not receive, or there is a long delay in receiving the benefits or disability benefits, that they were entitled to under their old identities. What can you do to cure this?

Mr. SCHWARTZ. These are people who were receiving benefits under the old identity and the problem is to transfer them over. About 4 or 5 months ago I guess we assigned the job of doing that to a unit that we have in Social Security that handles other types of sensitive claims. And the result of that seems to be that it is working more smoothly than it was before. The difference is that before we would have a different individual do it depending upon which program is involved. And now we have got essentially one person, although there are a couple of alternates in case one is not there, who does this. I do not have much experience but we had eight or nine, I guess, cases within the last year where we have done this. And it seems to be happening now within 2 to 4 months after we hear about the person.

The problem of doing that again involves killing the old record without establishing any link with the new one. We have the person who is doing this, call in the folder from wherever it is. It unfortunately is not in Baltimore usually. They call in the folder. They then create a new one. In doing that, they have to take some special steps because of course you do not have the actual documents for a new claim. So they create those. They kill the old record on the electronic medium so that the original payment will stop and then they have to wait for a cycle, set up the new payment in the new identity, and make sure that it takes. As I say we seem to be getting this done in most cases within between 2 and 3 months from the time we get the thing.

Chairman NUNN. Mr. Schwartz, I have got another meeting. I am running late. I would like to emphasize to you and I hope you would

to your agency that we think this is an enormously important problem and we think the witness security program is extremely important and of course peoples' benefits and social security under that is important, both financially and also psychologically.

I do not know all the answers to it. It is a complex area. I know from your point of view it is certainly complex and the records and so forth. We would like to keep an open line with you and through to your agency so that as we continue to look into this testimony, continue to monitor this program, hopefully try to make some suggestions to improve it, we could get some responses, whether you agree with us or do not agree with us, in a rather timely fashion and maybe sit down with a joint meeting with some of our staff, some of the people from the Marshals Service so that we can be kept informed of what is being done.

We also would like for you to, for the time being, hopefully at least for the next year, keep us informed of the pilot program, keep us informed of any progress, any new changes you are making. You are the experts, we aren't. All we can do is identify the problems for you, say we think these are serious problems, we hope you will address them, we would like the answers. So if you could undertake No. 1, to keep us informed of any progress, No. 2, to insure us that we will have an open line, either by written or oral communication so that we could make suggestions and hopefully get your views of those suggestions, whether you agree or don't agree, in a timely fashion.

Mr. SCHWARTZ. We would be happy to do both of those things.

Chairman NUNN. We will be making some suggestions tomorrow. But I probably will be making several different suggestions that need to be made. But I am not going to try to get into detail on the Social Security Administration because that is a matter that only experts I suppose can understand the questions of how you work it out, but I just think we need to emphasize the fact that we have got to work it out.

Mr. SCHWARTZ. Yes, sir.

Chairman NUNN. Thank you very much for your cooperation and assistance. We appreciate it.

We will meet in 3302, Dirksen Building, tomorrow morning at 9 a.m. We will hear from Mr. Norman Carlson, Director of Bureau of Prisons, Mr. Gerald Shur, Associate Director, Office of Enforcement Operations involving Justice, Mr. Howard Safir, Assistant Director of Operations, U.S. Marshals Service, and Mr. Paul Michel, Associate Deputy Attorney General, U.S. Department of Justice.

[Member present at time of adjournment: Senator Nunn.]

[Whereupon, at 3:15 p.m., the subcommittee was recessed, to reconvene at 9 a.m., Wednesday, December 17, 1980.]

TO WITNESS SECURITY PROGRAM A HEARING TO YOUNG
HOUSE OF REPRESENTATIVES

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WITNESS SECURITY PROGRAM

WEDNESDAY, DECEMBER 17, 1980

**U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.**

The subcommittee met at 9 a.m., pursuant to recess, in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia.

Members of the professional staff present: Marty Steinberg, chief counsel; W. P. Goodwin, Jr., staff director; Greg Baldwin, assistant counsel; Raymond Worsham and Jack Key, investigators; Myra Crase, chief clerk; Mary Robertson, assistant chief clerk; and Richard Shapiro, investigator to the minority.

[Member of the subcommittee present at the time of reconvening: Senator Nunn.]

Chairman NUNN. The subcommittee will come to order.

[The letter of authority follows:]

**U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.**

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on the Witness Security Program on Monday, December 15, 1980; Tuesday, December 16, 1980; and Wednesday, December 17, 1980.

**SAM NUNN,
Chairman.**

**CHARLES H. PRATT,
Ranking Minority Member.**

Chairman NUNN. Our first witness this morning is Mr. Norman A. Carlson, Director, Bureau of Prisons. We swear all of our witnesses in before the subcommittee, if you will stand and hold up your right hand.

Do you swear the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CARLSON. I do.

TESTIMONY OF NORMAN A. CARLSON, DIRECTOR, BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE

Chairman NUNN. You have a prepared statement this morning, do you not?

Mr. CARLSON. That is correct. I would like to read it, if I may.

Chairman NUNN. We are delighted to have you here this morning. We have had great difficulty not only with your statement and the other witnesses this morning, but with others who appeared before us, including the attorneys yesterday in getting statements in compliance with the subcommittee rules so we will have time to prepare our questions based on those statements.

I know you have to clear it through the Department of Justice and so forth. But I would certainly urge the representatives of the Department of Justice in the future hearings to do everything possible to get these statements to us in advance because I think in that way we can all have a more meaningful and objective hearing. But why don't you go ahead and read your statement this morning? We will be pleased to receive it.

Mr. CARLSON. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you today to discuss the Federal Prison System's role in handling Department of Justice witness protection cases.

Since the beginning of the witness protection program in 1970, the Bureau of Prisons has recognized its responsibilities to provide security for inmate witnesses. We have worked closely with the Justice Department's Criminal Division and its Office of Enforcement Operations, as well as U.S. attorneys throughout the country to monitor the cases of offenders admitted to the program.

At the present time, the Federal Prison System has 24,400 offenders in custody. Of this number, 251 are classified witness protection cases and an additional 450 to 500 are individuals who have been identified by Federal prosecutors as needing additional security due to their testimony for, or cooperation with, the Government.

The purpose of the witness protection program is to attempt, in every way possible, to provide for the security of Government witnesses—and potential Government witnesses—whose life or person is placed in jeopardy by virtue of being a witness or intended witness in legal proceedings against any person alleged to have participated in an organized criminal activity.

In 1978, we established the Inmate Monitoring Section within the Central Office of the Bureau of Prisons to coordinate witness protection matters. This office coordinates its daily activities with the Office of Enforcement Operations and regularly receives referrals from that office for placement of inmates into the witness protection program.

Depending on the degree of security required by the inmate, institution assignment is made to: (a) one of three specialized, secure, witness protection units within a Federal metropolitan correctional center in either New York, Chicago, or San Diego; (b) another Bureau of Prisons institution; or (c) a State correctional facility.

Currently, 60—24 percent—of the 251 witness protection cases are housed in metropolitan correctional centers; 163 are in Federal cor-

rectional facilities; and 28 are in State or local correctional institutions.

As you know, metropolitan correctional centers were not designed to house offenders serving terms of more than 1 year. They are basically jails for short-term Federal offenders, pretrial detainees, and individuals awaiting removal to more appropriate facilities. The witness protection units were placed in the metropolitan correctional centers because of the program's unique security needs and the lack of viable alternatives.

In an effort to provide more flexibility, we are currently considering establishing another witness security unit—which would house up to 70 inmates—in a Federal correctional institution in the Eastern United States.

The majority of witness protection cases monitored by the Bureau of Prisons are convicted felons, serving Federal or State terms. The Office of Enforcement Operations provides the Bureau of Prisons with information concerning the reason for each offender's placement in this program. It also supplies a list of persons from whom each witness must be separated.

The Federal Prison System attempts to house every witness protection case in the least restrictive setting consistent with security needs while maintaining the inmate's safety. If there is a significant threat to the prisoner's safety, the individual will be placed at one of the three secure metropolitan correctional center witness units. If both separation and safety needs can be met by placement in a less restrictive environment, the inmate witness will be placed in a Federal institution, or a contract State facility. Every effort is made to keep those offenders as close to their families as possible while taking into account both their security and protection needs.

All decisions regarding transfer, furlough, escorted trips, halfway house placement, and production in court on writs of habeas corpus, must be coordinated with the Inmate Monitoring Section and the Office of Enforcement Operations in the Department of Justice.

In some cases, a change of personal identity is required to insure that the offender is safeguarded. Name changes occur approximately in 10 percent of all cases referred for participation in the program.

We attempt to provide additional security safeguards to individuals housed in the witness protection units of the metropolitan correctional centers. Efforts are made to insure that they do not have contact with other nonwitness inmates and we endeavor to assign only experienced staff to the units.

Additionally, food served in the unit is selected at random by a staff member from food prepared for the general population and visits are conducted at other than regular visiting times to avoid contact with other offenders' families.

While we would like to provide individuals in witness protection units the same program opportunities as other offenders, physical as well as financial constraints prevent this. However, to the greatest extent possible, inmate witnesses have access to education, recreation, law libraries and various religious programs.

Special schedules exist for the witness protection inmates and in most instances, the program is brought into the unit. Similarly,

medical and mental health staff members visit these units on a regular basis.

Before transfer of a protected witness takes place, the Inmate Monitoring Office identifies prisoners from whom the witness must be separated for purposes of protection and ascertains the whereabouts of each prisoner. We attempt to insure that no protected witness is transferred to an institution where the separatee for that witness is located.

Before any transfer, the Inmate Monitoring Office must receive assurance from the Office of Enforcement Operations that the assistant U.S. attorney who has sponsored the prisoner witness has no objection to the transfer. Whenever the sponsoring U.S. assistant attorney objects to a proposed transfer, the transfer is reconsidered.

As I noted earlier, there are also 450 to 500 offenders in Bureau of Prisons' custody who have been identified by Federal prosecutors as having testified or otherwise cooperated with the Government.

As a consequence, they also require separation from certain other Federal prisoners. The Bureau of Prisons monitors the location and movement of these inmates; we also track the approximately 1,500 offenders these prisoners testified against.

The intent, again, is to assure that the specified parties are not placed in the same correctional facility during their period of incarceration.

While the witness protection program is not without its problems, particularly considering the type of inmates we deal with, I believe it has worked reasonably well, given the resources available.

Mr. Chairman, this concludes my prepared remarks. I appreciate this opportunity to discuss the witness protection program and would appreciate any suggestions you might have on how to improve the witness protection program. I would be pleased to answer any questions you or your subcommittee members might have.

Chairman NUNN. Mr. Carlson, you have a long background in overall law enforcement matters. Just how important do you think the witness security program is in terms of the overall governmental policy of going after organized crime and high-level narcotics dealers?

Mr. CARLSON. There is no question it is a tremendously important tool for prosecutors and for all law enforcement personnel. In reality, it is the only tool we have available in many cases.

Chairman NUNN. Is it the policy of the Bureau of Prisons to place witness prisoners in the general population of the Federal, State prison systems as soon as possible after their testimony is completed?

Mr. CARLSON. If we believe that the offender's security will not be jeopardized, yes, we do attempt to place them in as normal environment as possible rather than keep them in a restricted setting.

Chairman NUNN. Do you consider the circumstances in each individual case?

Mr. CARLSON. Yes. We do, Mr. Chairman, and also the security needs of that particular defendant.

Chairman NUNN. Does your policy recognize there are some prisoners that would never be safe in the general population?

Mr. CARLSON. Yes. It does.

Chairman NUNN. We have heard testimony that some prisoner witnesses cannot be placed in the general population at all because of the

intense danger to them especially when you are dealing with organized crime figures or prison gang members.

We heard considerable testimony yesterday about the California-based organization known as NF, and the particular witness described a lot of other gangs in the penitentiary. Is this an accurate portrayal in your view, or is it somewhat exaggerated or where would you fit this?

Mr. CARLSON. I was not present yesterday. I did have a chance to review the testimony. In that particular case it may well be, the individual could never be placed in any other correctional facility except one of our witness security units.

Chairman NUNN. So such cases do exist. We are not making a judgment on this particular one. I am sure you would have to look into the individual facts in more detail, but there are people who would be in grave danger no matter when they were put back in the general population?

Mr. CARLSON. Yes.

Chairman NUNN. We hear a great deal about the prisoner gangs and number of murders carried out by those particular gangs. Is this your general impression? Is this kind of situation growing in prisons?

Mr. CARLSON. There is no question that the presence of prison gangs has been felt throughout the country during the past 5 or 10 years. It is a fairly new phenomenon, one of great concern to all of us, particularly prevalent on the west coast, among the Mexican Mafia, and NF members as well as the Aryan Brotherhood.

Chairman NUNN. It seems from the testimony we heard the gangs originate in the penitentiaries and spread out later after they get out of the penitentiary or at least by people on the outside. So we have basically the penitentiaries sort of serving as breeding grounds for new organized crime families that have the potential at least in the long run of possibly being national. Is there anything that can be done about that? I am sure you are doing everything you know how to do, but is there any kind of national policy that goes beyond the Bureau of Prisons that comes to your mind?

Mr. CARLSON. Senator Nunn, it is virtually impossible to prevent inmates from organizing in the prison environment. Given the available resources, the limited number of institutions the Federal Government operates, as well as the States, it is virtually impossible to separate all of those potential gang members and isolate them from contact with other inmates.

Chairman NUNN. If some prisoner witnesses cannot be placed in the general population are the facilities that are available for them, in your view, now or the facilities that you have available for these that can't be placed in general population adequate?

Mr. CARLSON. No. There are not, Mr. Chairman.

Chairman NUNN. If you had a wish and I know none of us in Government ever can get everything we want, but if you had to draw up a resource request for making the prison system adequate for the witness security program, what would you include on that?

Mr. CARLSON. By way of background, Mr. Chairman, we use the three metropolitan correctional centers as I indicated in my testimony because they were available at the time. It was the only viable alternative we had. It certainly is not an ideal solution because the

metropolitan correctional centers are essentially short-term jails intended for only a maximum of 1 year's incarceration.

To answer your question specifically, I would certainly include in new institution designs a separate housing facility where we could house inmates and give them much more freedom, much more opportunity than they have in the metropolitan correctional centers.

Chairman NUNN. How many prisoner witnesses would you estimate that you have at this time that cannot be put into the general population? What percentage of them, just roughly?

Mr. CARLSON. Off the top of my head, I would say 50 percent.

Chairman NUNN. Are prisoner witnesses in the Federal Prison System placed in the hole or solitary confinement as they have termed it, on administrative segregation in order to protect them?

Mr. CARLSON. Sometimes that is necessary. It is the only way we can protect them.

Chairman NUNN. Has this happened very often?

Mr. CARLSON. Unfortunately it happens all too frequently. In essence the protected witness is given less freedom, less opportunity than other inmates in the institution simply because we have no other vehicle to assure his protection.

Chairman NUNN. What other options would be available if you had the resources?

Mr. CARLSON. If we had separate units in different institutions around the country, it would give us flexibility which we presently do not have. As I indicated in my testimony, in the very near future we are going to open another unit in one of our new east coast institutions; this will provide us up to 70 bed spaces in a totally isolated housing unit. We will have space for recreational activities and in a sense it will be a mini-institution within a larger institution, still providing protection but giving far more freedom and flexibility to the inmates confined there.

Chairman NUNN. How many of these new facilities would you like if you could, if you could get the resources? You are saying you have plans for one. How many do you really need?

Mr. CARLSON. Mr. Chairman, given the current caseload it would probably require two or three additional units. As you know this program has grown tremendously in the last few years. At this time we have no idea how fast it is going to grow in the future; this depends on the prosecution policy of the Department of Justice.

At this time, I would suspect we need at least two additional facilities.

Chairman NUNN. Beyond the new one?

Mr. CARLSON. We need three altogether.

Chairman NUNN. About 210 beds?

Mr. CARLSON. That is correct, at this time.

Chairman NUNN. How much money would be involved in the 1-year plan to build 70 beds? Approximately how much money is involved?

Mr. CARLSON. I couldn't give you that now. I would have to supply it for the record. I don't have that off the top of my head.

Chairman NUNN. Could you also supply for the record what it would cost in your best estimate to do what you describe here as being needed; that is, three different ones?

Mr. CARLSON. Yes. I will.

[The document referred to appears at the conclusion of the witness' testimony]

Chairman NUNN. You and I discussed it before, we have gone into it before in other hearings, about the Atlanta Penitentiary and the problems there that have been apparent for some time. I believe your department has made a recommendation that that penitentiary be closed and I think Congress has also made that recommendation. Isn't that generally accurate?

Mr. CARLSON. That is correct.

Chairman NUNN. I believe 1984 is the date?

Mr. CARLSON. Yes.

Chairman NUNN. Have you looked at any possibility of continuing that institution in a different form, possibly blending that into some kind of witness security program?

Mr. CARLSON. No. We have not at this time. Again, thinking off the top of my head, the physical location, and the size of the institution would not make it a suitable site for such a facility. I would prefer to have these units attached to our newer, smaller institutions.

Chairman NUNN. You mean it is almost too big?

Mr. CARLSON. It is too big to provide for a small number of witness protection inmates. That is correct.

Chairman NUNN. Are you studying the possibility of keeping that institution open in some other mode with a smaller group of prisoners, cut down in size and so forth, or would that be more expensive than it is worth?

Mr. CARLSON. Mr. Chairman, we have looked at it again. It is our conclusion that it is simply cost-prohibitive in terms of the physical facilities that are present in Atlanta. As you know, we have to keep it open at least in the short run, to take care of the Cuban detainees we have now confined there. Once they are released, we think the institution should be closed.

Chairman NUNN. Have you done a study?

Mr. CARLSON. Yes. We have.

Chairman NUNN. Is there a written study available?

Mr. CARLSON. As to the cost of renovation; yes.

Chairman NUNN. I would like for it to be furnished for the record.

Mr. CARLSON. It will be, sir.

[The document referred to is available in the files of the subcommittee]

Chairman NUNN. Apparently, the policy of the Bureau of Prisons is that visitors for witness prisoners should not mix with visitors for general population prisoners. Is that correct?

Mr. CARLSON. We attempt to keep them separate in every way possible, sir.

Chairman NUNN. Is that in the layout of certain MCC facilities basically precluding that policy being carried out?

Mr. CARLSON. It makes it extremely difficult. We have considered for example, of having them come at different times, than the regular visitors. That presents an additional problem, because they would immediately be identified by someone outside the facility as coming for the sole purpose of visiting a protected witness. So we are caught

in a catch-22 situation in a sense—trying to keep them separate from other visitors, yet not wanting them to come at a totally different time which would easily identify them.

Chairman NUNN. Is this problem a correctable problem? Can you do anything about it? Did you furnish alternate visiting rooms, things of that nature?

Mr. CARLSON. At the facility described where we will have the 70-inmate unit, we will have a separate visiting room. I will have to say in all candor that access to the front of the institution is public space. Anyone who wants to take the time can observe who comes into that institution.

Chairman NUNN. There is no way to correct this?

Mr. CARLSON. Not to my knowledge, Mr. Chairman. It would be very difficult.

Chairman NUNN. If you had three separate facilities would this help?

Mr. CARLSON. I believe it would. It would certainly give us greater flexibility; enable us to move the inmates around at various times, and to keep them more mobile than they are at the present time.

Chairman NUNN. How about the Metropolitan Correctional Center?

Is there any way to remodel visiting rooms there to correct this problem?

Mr. CARLSON. To my knowledge, Mr. Chairman, we are locked in architecturally in those facilities. It would be difficult to try to renovate those facilities to make them more adequate.

Chairman NUNN. Prisoner witnesses whom the subcommittee staff interviewed unanimously assert that they have been moved quickly into the general population without any advanced counseling. What is the policy of the Bureau of Prisons about advanced counseling before the move is made to general population?

Mr. CARLSON. It is our policy to provide advanced notice. However, I will admit that we have had some breakdowns in that area. We have looked into it. I assure you that in the future we will do a much better job giving them an opportunity to find out ahead of time where they will be going, and why they will be going to that particular institution.

Chairman NUNN. That kind of psychological, that kind of advanced notice would be psychologically almost essential with someone who has legitimate reasons to fear for their life, would it not?

Mr. CARLSON. It certainly would. I take the responsibility. We have not done a very adequate job in that particular regard.

Chairman NUNN. Have you changed that policy recently or are you in the process of changing it now?

Mr. CARLSON. We are in the process of reinforcing the policy, insuring it is done in all cases.

Chairman NUNN. It is not a matter of lack of policy?

Mr. CARLSON. It has not been followed through in all cases.

Chairman NUNN. Is it true that generally a protected witness does harder time than a nonprisoner witness because of the facility he is housed in, his protection needs, his lack of access to programs and facilities to the regular inmate?

Mr. CARLSON. Unfortunately, Mr. Chairman, it is.

Chairman NUNN. If you got three new facilities that would be comparable to what you are planning in the one case would that ease this problem?

Mr. CARLSON. It would certainly ameliorate the problem. It would not, however, totally eliminate the problem. I think anytime you have a protected witness he or she is obviously very fearful for their own personal safety. I think the units we are discussing and will be developing will certainly ameliorate the problem.

Chairman NUNN. Are there any alternatives—I don't know what facilities are not available to them. I assume there would be things that would relate to the machinery, equipment, things that would be very expensive unless you provided it for very large numbers of people.

That would be what they would be usually precluded from using, wouldn't it?

Mr. CARLSON. That is correct. They would not have access to the broad range of programs that would be available in the general institution. Because of the small number it would simply be cost-prohibitive to install large and very expensive programs for them.

Chairman NUNN. Could you undertake, maybe you already have, a study as to whether there are ways you can compensate for this with other types of facilities that would not be available to the general population? I don't know what that would involve, perhaps instructional films, perhaps other types of learning devices that might be too expensive to furnish to the general population but might be within reason for smaller groups. Could you look at that and undertake a policy in, it seems to me, we need a policy that would basically say if you are a witness, you cooperate with the Government, thereby jeopardizing your life that your treatment in the future is going to be at least comparable and not worse because it looks like we have created an incentive for people not to cooperate.

Mr. CARLSON. I agree fully. I assure you we will look into that possibility.

Chairman NUNN. I don't know what the other options are. We don't want to turn a penitentiary into a luxury living quarters and that kind of thing for people.

I don't think the general public or anyone else would support that. But it does seem the prisoners who cooperate should not be penalized in effect although it is not intentional for their cooperation.

Can you utilize the prison systems of the various States to place the prisoner witness in different locations?

Mr. CARLSON. Yes. We do insofar as we possibly can. As you will note in my statement, I believe we have some 28 protected witnesses now that are scattered throughout the 50 States and various State facilities. This, however, presents a problem to us because, as you well know, most State prisons are tremendously overcrowded today and many of the State systems are simply unable to accommodate additional inmates. We try to work out reciprocal arrangements with the various States whenever we possibly can. We place defendants in a State facility so he is removed from any possible Federal witness he may have testified against.

Chairman NUNN. Prisoner witnesses claim they are subjected to psychological and physical harassment by other prisoners, especially

when they travel to testify, must be produced in jail facilities near the court. How can we address this problem?

Mr. CARLSON. That responsibility rests with the U.S. Marshals Service and not with the Bureau of Prisons. It is a very difficult problem. As you know, many of these witnesses require considerable security, they do require the security that only an available prison provides. Given our very urban society, it is extremely difficult to find facilities where they are confined totally isolated from any other inmate in the population.

Chairman NUNN. Have you got any kind of agreement, I know this is Marshals Service jurisdiction, but any kind of agreement or oral understanding with the military forces and the bases that are located around the country?

Mr. CARLSON. We from time to time have been able to use military bases. As you know, the military has the problem of posse comitatus as a reason why we cannot use their facilities. We have on certain occasions been able to use military brigs or other facilities for this purpose, but on a limited basis.

Chairman NUNN. Has the Department of Justice done any kind of study to see whether posse comitatus goes that far in that kind of application or if that is a convenient excuse when they don't want to use the facilities?

Mr. CARLSON. I believe it has been researched. I think the conclusion is that posse comitatus is a real problem in terms of using military facilities for civilian law enforcement purposes.

Chairman NUNN. We will ask the Department of Justice to make a note, staff make a note, to furnish us any kind of study they have done on that. We are working on some very narrow but very important amendments to the posse comitatus statute that would apply to the military lending a hand in terms of intelligence, not anything to do with arrest, not anything to do with actual direct law enforcement, but this may be an area that needs examining also.

I certainly think the posse comitatus statute, we all adhere to the general philosophy behind that. We don't want the military directly involved in civilian law enforcement but I do think it may have been interpreted too rigidly in the past.

In the case of a prisoner or recently convicted person who agrees to cooperate and come into the program, do you believe it would be helpful to have an experienced Bureau of Prisons employee present during his initial agreement phase to explain the system to him and make sure no one represents to him promises the Bureau of Prisons cannot honor?

Mr. CARLSON. Yes. I certainly do, Mr. Chairman.

Chairman NUNN. Is there any way that can be set up so Bureau of Prisons sends someone, make sure they are there when those commitments are made?

Mr. CARLSON. Yes. We are already considering that possibility. I assure you that we will have such a program instituted shortly after the first of the year.

Chairman NUNN. Could you give us an update on that when you get it instituted?

Mr. CARLSON. Yes. I will.

[The document referred to appears at the conclusion of the witness testimony]

Chairman NUNN. I think that would be substantial progress. What additional plans are being formulated by the Bureau of Prisons to improve the status of prisoner witnesses? Have you got anything else that we haven't covered?

Mr. CARLSON. No. I think the primary thing is the unit I described earlier; it is in a new institution which I think provides us a much better facility. I think that would solve much of the concerns I have heard expressed about prisoner witnesses across the country.

Chairman NUNN. You will furnish us, too, not only your plans and budget projections on the one facility, but if you could also project plans for three of those facilities which you have described here today as to be necessary, we would appreciate it.

Mr. CARLSON. Yes, sir, Mr. Chairman.

Chairman NUNN. Are there any other recommendations that you made to the Department of Justice on this program that have not been approved in the process of being considered?

Mr. CARLSON. No, sir, Mr. Chairman. I think we have had excellent cooperation from the Department, the Marshals Service, particularly the Criminal Division, Office of Enforcement Operation, in terms of trying to upgrade and improve the program. It has grown as you know since 1970. I personally have seen a great deal of progress made even though there are some definite problems with it still. I think we have made substantial progress in the overall operation of the system.

Chairman NUNN. Mr. Carlson, I appreciate your being here today. I know you have got a tough, demanding job. Anything we say in this hearing, in our recommendations that would be taken as criticism, we hope it would be taken in a constructive spirit, because that is the way we mean. I know every time you plug up one problem, four more pop up. I think you have one of the most difficult and one of the most important jobs in our criminal justice system.

Mr. CARLSON. I appreciate that, Mr. Chairman.

Chairman NUNN. So we appreciate your cooperation. We look forward in continuing to work with you to improve this program.

Mr. CARLSON. Thank you very much, sir.

[Information submitted by Mr. Carlson in response to the chairman's request follows:]

U.S. DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEM,
Washington, D.C., January 13, 1981.

Hon. SAM NUNN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NUNN: During the hearings before your subcommittee on December 17, 1980, several questions were raised concerning the Federal Prison System's Witness Protection Program, as well as the feasibility of renovating the United States Penitentiary at Atlanta, Georgia. I indicated in my testimony that I would respond to these matters in detail. The following, with attachments, addresses those concerns.

We are in the process of developing a Program Plan for all Witness Protection Units operated in Federal Bureau of Prisons facilities. This plan attempts to ensure that all prisoner-witnesses, to the extent feasible in light of their security needs, have access to a variety of correctional programs.

The plan provides that the following activities will occur on a regular basis in all Witness Protection Units: Chaplaincy Programs, Counseling/Mental Health Programs, Education, Leisure Time Activities (e.g., Hobby Craft, Recreation), Industry, Library/Law, Social Education, Vocational Education, and Pre-Release Programs.

The above plan, which we will begin implementing in the near future, will increase correctional program availability within Witness Protection Units and should alleviate a number of the concerns expressed by some current witness participants. In addition, an FTS line will be available for prisoner-witnesses to make a reasonable number of calls to both family members and attorneys. Further, these inmates will be given the option to route their mail through the Central Office Inmate Monitoring Section as an added measure to ensure their anonymity.

In regard to visiting procedures, we are exploring ways to minimize participants exposure to possible danger and loss of anonymity. However, as I testified, this presents an almost impossible situation; if prisoner-witness visitors come at a different time than regular visitors, anyone would be able to observe them by waiting outside the entrance to the institution; if they come at the same time as other visitors, then there is a danger they may be recognized by members of other inmate's families.

Prior to entrance into the Witness Protection Program, all potential inmate witnesses will be interviewed and counseled by specially trained BoP personnel . . . (see Attachment A, Memorandum of Understanding). In addition to having the function of the Witness Protection Program explained to them, each participant upon entering a Witness Protection Unit, will receive a brochure (currently in preparation) which will thoroughly brief these individuals concerning how the program functions.

Once an individual has agreed to participate in the Witness Protection Program, very effort will be made to house the prisoner-witness as close to home as possible. However, it must be recognized that frequently this is precisely the area identified as the "danger zone" for the inmate-witness. Further, the Federal Prison System still has an obligation to house the prisoner in a facility which will be commensurate with the individual's security needs. If it becomes necessary to locate a prisoner-witness at a distance from his/her legal residence, there will be documentation placed in the inmate's files justifying why closer institutions were deemed inadvisable.

We agree that special training should be offered to all correctional staff who work in witness units. This will be accomplished by introducing a new segment into the regular training given to all BoP employees in Basic, Advanced, and Management training; we will also establish special in-house training at those institutions with witness units. Moreover, only experienced staff will be assigned to these Units; personnel who have not only been through the required security clearance but who have over the years demonstrated sound judgment in correctional matters.

During the hearings it was suggested that a separate witness unit be established for females. However, since the program's inception over ten years ago, only eight female inmates have been involved in the program and state facilities have been able to provide the security and protection these individuals require. As such, we do not believe the establishment of such a unit at this time is warranted.

In order to increase the Bureau's options in regard to post-testimony prisoner-witness incarceration, the development of two additional sites for 70-bed Witness Protection Units is being considered. In addition to the new unit in the Federal Correctional Institution, Otisville, New York, which will open in the near future, other units could be established in the mid-west and in the west. Attachment B outlines the costs attendant to the development of these resources.

In addition to the above, a Memorandum of Agreement (Attachment C) has been developed between the Federal Prison System and the U.S. Marshals which will expedite the movement of Witness Protection cases.

Attachment D is a copy of the Bureau of Prisons' feasibility study on the renovation of the United States Penitentiary at Atlanta, Georgia, which you requested at the hearing. While it had been a long standing goal of the Bureau of Prisons to close the Atlanta Penitentiary, in 1978 we decided to carefully review the feasibility of rehabilitating the facility before making a final commitment to an operational closing plan. A group composed of Bureau of Prisons staff was formed to study the issues. Although the study group concluded it was feasible to renovate the Atlanta Penitentiary, the costs were prohibitive. An estimated \$44 million would have been required to bring Atlanta into compliance with the existing American Correctional Association standards and what was then the

emerging Department of Justice Federal Standards for Prisons and Jails. Even after renovation, however, we would still not have a facility that would meet the standard that institutions should be no larger than 500 capacity, and the resulting physical plant would have been inefficient, awkwardly arranged, and difficult to supervise. For virtually the same amount, two new institutions of the size required by standards could be built, and they would have been operationally superior.

In view of the high cost of renovation, the oversized capacity and relative inefficiency of the institution, and the resulting surplus of beds in the Southeast region, we concluded it would be unwise to pursue this alternative further.

I trust you will find the above responsive to the concerns expressed at the Subcommittee hearing. If there are any further questions which need to be addressed, please contact me.

Sincerely,

NORMAN A. CARLSON, *Director.*

[Attachment A "Draft Memorandum of Understanding" has been made part of the confidential files of the Subcommittee.]

ATTACHMENT B

Cost estimates for additional witness protection units

Mid-West:

70 bed addition (in square feet):

Housing: 228 ft. ² × 70	16,000
Administrative and receiving area	1,600
Visiting	400
Recreation	1,000
Industries	800

Total (square feet) 19,800

Cost estimate \$80/ft. ²	\$1,584,000
Contingencies at 10 percent	122,000
A/E fees at 8 percent	100,000
Project supervision	45,000

Fiscal year 1981 total project cost 1,851,000

Use 1,850,000

Staff:

Unit manager—GS-12	29,000
Case manager—GS-11	24,000
Education specialist—GS-11	24,000
Correctional counselors—GS-9 (2)	40,000
Correctional officers—GS-7 (5)	80,000
Secretary—GS-5	13,000

Total, staff 210,000

Total 2,060,000

West: 70-bed addition to project budget, 19,8000 ft.² at \$80/ft.² plus same requirements as for Mid-West 1,500,000

Total 1,767,000

Plus 210,000

1,977,000

Grand total 4,037,000

[Attachment C, "Memorandum of Agreement Between the Federal Prison System and the U.S. Marshals Service" has been made part of the confidential files of the Subcommittee. Attachment D, "Atlanta Feasibility Study" is available for review in the Subcommittee's files.]

U.S. DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEM,
Washington, D.C., April 1, 1981.

Hon. SAM NUNN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NUNN: This is a follow-up to our January 13 letter concerning government witnesses who have been committed to the custody of the Federal Bureau of Prisons.

In our January letter we described a number of changes being made to improve program options available to witness security cases. We have made some progress on achieving those objectives and have attached a brief summary to bring you up-to-date. We have also enclosed a number of other documents at Mr. Baldwin's request that might be appropriate for publication in the Congressional Record.

Larry Taylor, Deputy Assistant Director of the Correctional Programs Division, will be happy to work with Mr. Baldwin should any issues arise that need clarification.

Sincerely,

NORMAN A. CARSON, Director.

Enclosure.

BUREAU OF PRISONS WITNESS SECURITY PROGRAM CENTRAL INMATE
MONITORING SYSTEM UPDATE, MARCH 27, 1981

1. STAFF TRAINING

On January 30 a workshop for half of our Regional Community Programs Administrators and the employees they supervise was held at our Staff Training Center in Dallas, Texas. Policy and procedures applicable to prisoner-witnesses in the Federal Prison System and contract facilities were emphasized. The remaining personnel responsible for community liaison activity will receive instructions on the Witness Security Program in April of this year.

During the week of February 2-5, 1981, we also conducted a special training program for key institution and Regional Office staff who administer the Central Inmate Monitoring System. Staff were given specific instructions on coordination of activity for Witness Security cases. The following issues were specifically covered:

- (a) Designation procedures for Witness Security Cases.
- (b) Procedures for moving committed witnesses from one institution to another.
- (c) Precommitment Interview and counseling procedures to be followed for potential prisoner-witnesses to acquaint them with the Federal Prison System. Experienced personnel from all institutions with Protective Custody Units were given a thorough orientation on the Witness Security Program.
- (d) Policy and procedures developed for the safety and security of prisoner-witnesses in Bureau of Prisons custody, e.g., Central Inmate Monitoring Manual.

2. PRECOMMITMENT INTERVIEW

Effective February 15, 1981, trained Bureau staff began interviewing cooperating government witnesses who were about to enter the Federal Prison System to begin service of a sentence. The interview takes place in the district where they testified so our representative has an opportunity to talk with the Assistant United States Attorney, the United States Marshal and other pertinent representatives of the Criminal Justice System.

3. ESCORTED TRANSFER

Also, effective February 15, 1981, Senior Bureau of Prisons Correctional Officers began transporting Witness Security inmates from one institution to another. The United States Marshals Service continues to coordinate this function in response to writs and requests for debriefings. When our staff serve as escorts special precautions are taken to conceal any indication of special handling.

4. CENTRAL INMATE MONITORING MANUAL

On February 23, 1981, the Central Inmate Monitoring Section Manual containing detailed instructions for coordination of Witness Security cases, was mailed

to all Bureau facilities. The manual includes procedures to be followed in handling numerous day-to-day activities including:

- (a) Telephone calls.—Specifically, prisoner-witnesses housed on Protective Custody Units are allowed four social and two legal calls a month, at government expense. FTS calls to sponsoring United States Attorneys are permitted as needed.
- (b) Mail handling.—Committed witnesses are given the option of having their mail routed through the Inmate Monitoring Section, Washington, D.C., ensuring anonymity.
- (c) Visiting program.—Clearance for proposed visitors will be coordinated by the Central Office of the Bureau of Prisons. This procedure will ensure that proper security measures are followed in each case.

5. PROTECTIVE CUSTODY UNITS

On March 9, 1981, a Protective Custody Unit at the Federal Correctional Institution, Otisville, New York, began receiving inmates. It has a capacity for 55 offenders and will be used for selected witnesses already in custody of the Federal Prison System. Once that Unit is fully operational, we will determine what other housing resources are needed and develop them accordingly.

Institution staff have been given minimum standards for program development in protective custody units. We are in the process of meeting those requirements at each facility. Industrial operations are also being implemented in the units at Otisville and San Diego, so that all protective custody units will have viable work programs. In addition, each protective custody unit has developed draft Admission and Orientation booklets. A national policy is being prepared to implement an Admission and Orientation Program in all units.

6. CENTRAL INMATE MONITORING NETWORK

The Bureau of Prisons has established a Central Inmate Monitoring Network to coordinate the care and supervision Witness Security cases. This network also monitors the placement and activities of other inmates whose offense, background or behavior identify them as requiring special management attention. We have identified several key staff members throughout the country to perform specific functions in implementing this program and they will be given the necessary training to satisfactorily meet these responsibilities. A packet of orientation material is being sent to them for self-study. In addition, training guides are being developed for use by institution training officers, regional staff and staff training centers directors to ensure that all employees will receive a proper amount of training on the Witness Security Program each year.

U.S. GOVERNMENT MEMORANDUM

Date: January 28, 1981.

Reply to attn. of: J. D. Williams, Assistant Director, Correctional Programs Division.

Subject: Central Inmate Monitoring Update.

To: Norman A. Carlson, Director, Federal Prison System.

The monitoring program has evolved over the years from a manual tracking system to a very sophisticated automated data processing program which utilizes SYCOR transmission equipment, and the Department of Justice Computer services. The system is designed to provide exact rapid feedback on the location, separation, and supervision needs of over 8,000 people being centrally monitored. Administrative steps are also being taken to assure that prison personnel are efficiently trained to use the Central Inmate Monitoring Program.

Administrative manual.—In April of 1980, an Advisory Committee was appointed to assist the Central Inmate Monitoring Section in developing a manual on regulations and procedures which govern the inmate tracking system. The manual was completed in August and has been carefully reviewed by all Regional Correctional Administrators and automated data staff. The final document has been printed, tabulated for easy reference, and distributed to appropriate employees during the first week of January 1981. The manual provides A-Z instructions for all twelve categories of the Central Inmate Monitoring System, and supplements Program Statement 5180.1.

Transfer of witness security cases.—Inmates enrolled in the Department of Justice Witness Protection Program are described as Categories 01 and 02 in the Manual on Central Inmate Monitoring. Previously, their transfer and trans-

portation was coordinated by the U.S. Marshals Witness Security Section. Effective February 15, 1981, Bureau of Prisons Senior Correctional Services personnel will be responsible for this function. Employees have been selected, and will be trained February 2-5, 1981.

Pre-Commitment interviews/witness security cases.—Individuals entering the Witness Security Protection Program do so based on their understanding of government precautions taken for their safety. Effective February 15, 1981, the Bureau of Prisons will begin a precommitment interview process to fully explain the program available in the Federal Prison System. Prospective prisoner/witnesses will be asked to acknowledge in writing that the interview took place. Selected staff are being trained February 2-5, 1981. A draft memorandum of agreement will be reviewed with them during that week; suggested changes incorporated; and final document will be published by February 15, 1981.

Central inmate monitoring organization.—The Correctional Management Branch is revising its organization chart and descriptive narrative for distribution to Regional and Institution personnel. This includes Correctional Programs as well as Central Inmate Monitoring Sections. The changes and narrative are targeted for distribution March 9, 1981.

Industries, protective custody units.—The Metropolitan Correctional Centers in New York and Chicago already have viable industrial operations. San Diego work space is being evaluated for a glove factory production and initial estimates, set April 1981, as the implementation date. Otisville space is being inspected January 28, for a parachute industries to begin March 1981.

Programs, protective custody units.—Correctional Programs personnel and the Inmate Monitoring Section developed a proposal for Protective Custody Units to be reviewed by the Executive Staff during the meeting being held February 12, 1981. Final steps will be taken after the Executive Staff Review is completed. An Admission and Orientation handbook is also being developed by institution personnel. Final drafts are due March 27, 1981.

Training.—Proper training is the key to effective implementation of Central Inmate Monitoring procedures in the Federal Prison System. An outline emphasizing general structural and procedural responsibilities for the program will be completed by January 30 to be used as a training guide for appropriate employees.

WORK SHOPS

On January 30, half of the Community Programs Administrators will receive training on Central Inmate Monitoring procedures. The second half will be trained in March of this year.

On February 2, Lieutenants from Correctional Services, caseworkers assigned to conduct precommitment interviews, Regional Central Inmate Monitoring Coordinators, and Regional Office Designators will be brought together for four days of training on their role and responsibility in the Inmate Monitoring Program. They will return to their job locations and provide other institution personnel and Community Programs Officers with instructions, by March 2, 1981.

STAFF TRAINING CENTERS

An Operations Memorandum accompanied the distribution of the Central Inmate Monitoring Manual and requires Staff Training Centers to include a segment on Central Inmate Monitoring in all future basic and advanced training classes for employees. In addition, institutions will include Central Inmate Monitoring requirements in refresher courses each year for all employees.

Dates of administrative changes:

Administrative manual distributed.....	January 1981.
Protective custody unit, Otisville.....	Feb. 9, 1981.
Witness security case transfer system.....	Feb. 15, 1981.
Precommitment interviews.....	Do.
Memorandum of agreement (WITSEC cases and BOP).....	Do.
Bureau of Prisons, central inmate monitoring.....	Mar. 9, 1981.
Organization and narrative review: program plan.....	Feb. 12 and 13, 1981.
Protective custody units admission and orientation handbook (completion).....	Feb. 27, 1981.

Training classes and workshop/conferences:

Training center classes.....	Mar. 2, 1981.
Community programs workshop.....	January and March 1981.
Designations workshop.....	Feb. 2, 1981.
Transportation workshop.....	Do.
Precommitment interview workshop.....	Do.
Training guide printed.....	Feb. 9, 1981.
Central inmate monitoring coordinators workshop.....	February 1981.
Industries for protective custody units:	
MCC, San Diego (Glove or textile factory).....	April 1981.
FCI, Otisville (Parachute factory).....	March 1981.
MCC, New York (Mailbag fasteners).....	Current.
MCC, Chicago (Mailbag fasteners).....	Current.

Initial training of Interviewers, Designation Officers, Central Inmate Monitoring Coordinators, and Witness Transportation Officers will be conducted jointly by the Assistant and Deputy Assistant Directors of the Correctional Programs Division for the Bureau of Prisons. In addition, the Office of Enforcement Operations, the United States Marshals Service, and the United States Probation Office will provide resource personnel. The Associate Director of Enforcement Operations will also meet with the Bureau of Prisons Assistant Director of the Correctional Programs Division to make the final transportation arrangements to move Witness Security Cases from the Metropolitan Correctional Centers to the Federal Correctional Institution at Otisville.

WITNESS PROTECTION UNIT

PROGRAM PLAN

Introduction.—Title V of Public Law 91-452 authorizes the Attorney General to provide for the security of Government witnesses and potential Government witnesses in legal proceedings against any person alleged to have participated in organized criminal activity. The Bureau of Prisons (BOP) has been delegated the responsibility for the care and safekeeping of prisoner witnesses. The following will outline the content of a Witness Protection Unit (WPU) Program Plan.

Philosophy.—The intent of the Program Plan for Witness Protection Units is to make available to prisoner-witnesses all program options to which regular Bureau of Prisons inmates have access while maintaining as a prime focus the safety of the individuals involved. The prisoner-witness should not, in effect, be "punished" by doing "harder time" as a consequence of having cooperated with the Government.

Staffing.—To the extent feasible in keeping within guidelines for optimum personnel utilization, Witness Protection Units should be staffed by full time BOP employees. At a minimum this shall consist of one full time Case Manager (whose office will be on the unit), one part-time (i.e., 20 hours per week) Correctional Counselor, and a designated full time teacher who will spend a minimum of 16 hours on the unit.

Larger WPUs (30+ prisoner-witnesses) shall use as a minimum the staffing pattern for a Specialized Unit; i.e., including the following full time staff: one Unit Manager, one Case Manager, two Correctional Counselors, and one Educational Specialist in addition to regular correction officer personnel.

Training.—Full time staff members on Witness Protection Units should be exposed to special training which will alert them to the purpose of this type unit and the specialized needs of its prisoner-witnesses. (Additionally, all Bureau of Prisons employees should be informed concerning Witness Protection Units through segments devoted to this topic in BOP Basic, Advanced, and Management Training Courses.)

The minimum standard for institutions with WPUs shall be: (a) segment outlining unique character of WPU in an initial orientation program for all new employees; (b) annual refresher training will contain material regarding operational standards and procedures of this unit.

Programs.—Prisoner-witnesses shall have available to them, to an extent compatible with their over-riding need for security, all types of programs accessible to regular Bureau of Prisons' inmates. At a minimum the facility's Top Execu-

tive Staff shall visit the Witness Protection Unit on a regular schedule (i.e., at least once a week) to review operation of the unit's program.

Chaplaincy programs.—Full time institution chaplaincy personnel shall visit the Witness Protection Unit on a regular schedule and be available at additional times on an as-needed basis. These individuals shall also have the responsibility for arranging special one-to-one visits by community-based clergy to meet the religious needs of a particular prisoner-witness.

At a minimum, chaplaincy personnel shall schedule visits to the WPU at least twice a week and be available on an as-needed basis.

Counseling, Mental Health Program.—Correctional Counselor(s) shall hold regularly scheduled group and individual sessions with prisoner-witnesses. In addition, the institution's full time Mental Health staff shall visit the Witness Protection Unit on a regular basis and be available at additional times on an as-needed schedule.

At a minimum each witness protection case shall be seen individually by a Counselor for at least 15 minutes twice each month; Mental Health staff shall visit the WPU at least twice a week.

Education.—The full time Education Specialist (or in smaller WPUs, a designated full time educator in the Unit on a 16 hour/week schedule) shall be responsible for conducting Adult Basic Education and high school classes leading to a GED. In addition, this individual shall coordinate any college-level classes which, because of security concerns, will have to be conducted on a correspondence course basis. The Education Specialist will also be responsible for coordination of other aspects of the Education Program, e.g., Vocational Training, Social Education, etc.

At a minimum regular or correspondence type classes shall be conducted on the WPU at least three times per week.

Hobby craft.—The popularity of this type activity will require that there be ample storage space available for projects being worked on. In view of the type of tools required to perform some of these activities, close attention will have to be paid to tool control and accountability. Despite the management problems engendered by this type program, such activity shall be made available to prisoner-witnesses.

At a minimum, the Hobby Craft program shall offer at least three choices of activity.

Industry.—Giving due consideration to the security needs of Witness Protection Unit cases, this shall not preclude providing these inmates with an opportunity to work for UNICOR (Prison Industries). All Witness Protection Units shall have an appropriate, labor intensive industrial operation.

Library/Law Library.—The basic law library, promulgated in the Program Statement as Bureau policy, shall be available in every Witness Protection Unit: control of this operation is vested in the unit's Case Manager. Additional legal material can be obtained by a request procedure in which the Case Manager becomes the individual requesting the information and keeping track as to which prisoner-witness received which material. Moreover, a regular general library will be established on each Witness Protection Unit. The books it contains can be rotated with those in the institution's library.

Recreation.—Each witness Protection Unit will have available TV, Pool table, and Universal weight machines on the unit. Other table game equipment shall also be accessible. Prisoner-witnesses shall be able to check-out cassette and/or record players through the institution's Education Department. The institution's recreation supervisor will, on a twice-a-week schedule arranged in collaboration with the Education Specialist, be on the Witness Protection Unit to help set-up organized recreational activities, e.g., tournaments, etc. Unit staff shall make every effort to arrange for prisoner-witnesses to participate in the institution's gym and/or other recreational facilities at times when regular inmates will not be there, providing the high-level security these prisoners require can be maintained.

Pre-Release program.—In collaboration with the Case Manager, a Pre-Release Program shall be established on the WPU with a particular emphasis on post-release survival skills and family counseling. At a minimum this will occur on a one-to-one basis to meet individual needs of soon-to-be-released inmates; starting no later than 90 days prior to a scheduled release date.

Social education.—The Education Specialist shall arrange for Personal Enhancement courses and activities (e.g., Positive Self Image, etc.) as trained full time facility staff become available.

Vocational training.—While it will not be possible to establish apprenticeship training on Witness Protection Units (cannot assure anonymity of participants) it is possible to conduct some types of Vocational Training (e.g., drafting, business office functions). Space and security limitations may circumscribe such activities, but need not eliminate them. At a minimum each WPU shall offer its inmates the opportunity to participate in at least one appropriate vocational training activity.

Conclusion.—The foregoing outlines a structure within which all Witness Protection Units will develop a program appropriate for each setting. Each Witness Protection Unit should submit its Unit Plan to the Central Office for review.¹ In addition, the Bureau shall establish a yearly auditing schedule in order to monitor the degree of compliance with these and other Bureau Policy and procedure.

[The Memorandum of Agreement between the Federal Prison System and the U.S. Marshals Service was also provided to the Subcommittee by the Federal Prison System on April 1, 1981. That Memorandum has been made part of the confidential files of the Subcommittee.]

Chairman NUNN. Our next witness will be Mr. Howard Safir, Assistant Director for Operations, U.S. Marshals Service.

Mr. Safir, would you introduce your associate here?

Mr. SAFIR. This is Philip Tucker, Assistant Chief of the Witness Security Division.

Chairman NUNN. Both of you hold up your right hand. We swear in all of our witnesses before the subcommittee.

Do you swear the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SAFIR. I do.

Mr. TUCKER. I do.

TESTIMONY OF HOWARD SAFIR, ASSISTANT DIRECTOR FOR OPERATIONS, U.S. MARSHALS SERVICE, ACTING CHIEF, WITNESS SECURITY SECTION; ACCOMPANIED BY PHILIP TUCKER, ASSISTANT CHIEF, WITNESS SECURITY DIVISION

Chairman NUNN. Again, I repeat, we get a little frustrated when we can't get the statements in time to go over them. I understand that you had given us as much as you possibly could in advance notice. But I do ask the Justice Department representatives here, we will be having a lot of hearings concerning the Justice Department, we would hope you would do everything possible to get these statements in in advance.

But I understand, Mr. Safir, you have done everything you could do in that respect. So we appreciate it. We are glad to have your statement, if you want to go ahead and present it to us.

Mr. SAFIR. Thank you, Senator.

Mr. Chairman, I appreciate this opportunity to appear before you to testify about the operation and functions of the Department of Justice witness protection program.

This program, which is one of the most important and effective tools in the battle against organized crime, is also one of the most difficult to effectively manage. It has, over its 10-year history, been the subject of

¹ The Witness Protection Unit Program Plan should be sent to the Assistant Director, Correctional Programs Division.

much controversy, numerous hearings, investigations, and adverse media publicity.

A prime example of this unsettled history is the fact that I am the 14th program manager and have also held that position longer than any of my predecessors—2½ years. It is a program that is difficult to manage for many reasons: The type of individual who becomes a witness—95 to 97 percent—have extensive criminal backgrounds; the fact that all the variables in creating a new life for a witness and his family are human and the program takes a toll on individuals and families in the trauma that they experience in both relocation and returning for testimony; the necessity of relying on State, local, and Federal agencies for assistance, who may not place the same priorities on the program as the Marshals Service does; and the enormous amount of resources, in both manpower and dollars, that the program requires.

I believe it would be helpful to discuss how the program evolved, what improvements have been made over recent years and also what problems we presently face.

The program was established by the Organized Crime Control Act of 1970, which contained the authority for the Attorney General to maintain safe houses for Government witnesses and to expend funds on their behalf. The act was not specific and there was no precedence or experience factor for the Service to rely on as this was, to my knowledge, the first such program on a large organized scale that had ever been attempted.

It was originally perceived that the program would have between 25 to 50 witnesses per year who would be kept in safe houses during their testimony and then would be free to continue their lives.

As we know, that is not what occurred. During the last 10 years, we have entered 3,515 principal witnesses and their families into the program; each witness has an average of 2.5 family members which means we have protected and relocated over 12,000 individuals.

By mid-1975, it became apparent that long-term confinement in safe houses was not a practical solution to protect witnesses and their families over an extended period of time.

Consequently, the safe houses operated by the Service were discontinued. The philosophy of protection through relocation of witnesses and their families with the provision of new identities, the documents to support these new identities, as well as housing, employment, medical services and other social services was adopted. Those individuals managing the program at that time had to call on all their talent and ingenuity to develop procedures to securely provide these services with a minimum of resources. Field personnel were not, at the time, adequately trained in how to handle witnesses, and the number of personnel dedicated on a full-time basis to the program was totally inadequate.

At the same time, the number of witnesses coming into the program increased at the rate of over 400 a year. Because of this increase and the lack of available resources, the Service found itself unable to meet many of the demands for social services by witnesses and their families.

In the spring of 1978, the complaints reached a peak and as a result two events occurred. The Senate Subcommittee on Administrative Practices held extensive hearings into the operation of the program

and the Attorney General appointed a Witness Review Committee to look at problems in the program and how to correct them. As a result, 28 specific recommendations were made. I have attached a copy of these recommendations to this statement.

The Service, over the last 2½ years, has implemented each of those recommendations and believes the program to be vastly improved. As you are aware, your staff conducted an extensive survey of witnesses who have participated in the program over the last 2 years.

Over 76 percent indicated that they were satisfied with the program. Your staff also surveyed U.S. attorneys throughout the United States. Seventy-seven percent of those who responded stated that there have been significant improvements over the last 2 years.

In 1978, the primary criticisms of the program were lack of documentation, lack of proper explanation of the program, unfulfilled promises, inadequate job assistance, lack of sensitivity on the part of Service personnel, no appeal process and unclear or nonexistent procedures.

We have addressed each of these areas extensively over the last 2½ years and I believe that those problems within the control of the Service have been corrected and solutions effectively implemented. We have developed and published a Witness Security Manual which creates a uniform and clear national policy which covers all facets of the program from first contact with a witness to the day when he hopefully becomes a productive member of society and no longer needs our services.

In 1978, witnesses complained frequently that agents, prosecutors and marshals made promises to them that were not kept, that the program was not clearly explained to them, and that they and their families were picked up by marshals in the middle of the night without knowing what was going to happen to them.

To some extent, this was true and to correct that we have implemented two procedures which I believe have solved these problems.

The first is the preliminary interview. In 1978, over 50 percent of the witnesses entering the program were "emergency" pickups. What this meant was that the defendants in the case had learned of their cooperation and if they were not picked up immediately they would be killed.

Most emergency pickups were the result of poor planning on the part of the investigative agencies and prosecutors, in that they did not notify this Service in advance of the need for program services.

Thus, the witnesses, and the Service, were both ill-prepared. This caused witnesses to lose money on the sale of cars, homes, et cetera, as well as causing extreme trauma for their families. They had no time to prepare for leaving behind a lifetime of friends and possessions.

Under our new procedure, the prosecutors are required to notify us well in advance of the indictments and arrests, so that in a calm atmosphere the witness and his family can have the program explained to him by a trained witness security inspector of the Marshals Service.

This preliminary interview is conducted in the presence of the case agent and the prosecutor and any promises made by them are responded to. If the Service can fulfill these promises, the witness is ad-

vised. If we cannot, the witness is also advised that we cannot and will not.

The witness security inspector then explains to the witness everything that will happen to him after he enters the program, what he must do prior to entering the program and what we will do after he enters.

At the end of the interview, the witness makes a decision as to whether or not he desires to enter the program. If he does, the inspector then makes his recommendation as to whether or not the subject will be a workable case.

I might mention that we do not make a ruling on whether or not the case is a viable, prosecutable case but whether or not we can handle it. This recommendation is then made to the Office of Enforcement Operations at the Department.

If the witness is approved for the program by the Department, we then have him and each adult family member sign a 21-page memorandum of understanding. This document which has been developed over the last 2 years clearly describes all the obligations of the Service and all the obligations of the witness. Each page is initialed by all adult family members so that there is no question as to their understanding of the program.

Chairman NUNN. How long do they have to read that understanding?

Mr. SAFIR. They have as long as they need, Senator, and if the procedure is followed then we can take as much time as necessary. I understand you have a person's testimony relative to quick reviews of the memorandum of understanding and I do know of a number of cases where that has happened.

However, that is not the policy. The policy of the Service is that the witness can take as long as he wants to review it, and also if he wants to have his private attorney present, not only do we allow it, we encourage it.

In 1978, there were 27 full-time witness security inspectors in 16 districts. Witnesses in the remaining districts were served by "contact deputies" on a rotating basis. Few of these deputies were trained and as a result, their handling of witnesses was often inadequate. Today we have 129 full-time witness security specialists in our 94 districts.

As a result, our ability to service witnesses and their families has significantly increased; each specialist has been to a 1-month intensive training school at the FLETC in Georgia dealing exclusively with WITSEC training.

Additionally, we have developed an advanced personal protection school and hold biannual training seminars for all WITSEC inspectors. A substantial part of this training relates to interpersonal relationships and the need for sensitivity in dealing with witnesses and their families.

In the past 2 years, we have increased our headquarters staff from 18 to 28. We have also obtained a secure computer and are in the process of entering all witness data into this machine. This will enable us to provide better service to both the witnesses and our field personnel.

Prior to 1978, the documents provided to witnesses were determined on a case-by-case basis, some were backstopped and some were not.

Since that time, we have adopted a policy that requires all witnesses to have a legal name change. This is done in a secure manner and the records sealed.

Based on this legal name change we issue each witness a new social security card, birth certificate or passport, driver's license, military discharge records and other documents as appropriate. All documents are authentic, issued by a State, local or Federal agency that we have established a cooperative agreement with.

At the present time, we have a tremendous backlog of documents to be provided to witnesses. This is a result of two factors, the first and most important is the lack of timely response on the part of those agencies that assist us. Some documents take as long as 1 year or more to be provided. As we have no control over the priorities of those agencies, we must wait for them to assist.

Chairman NUNN. One thing we are looking at in terms of possible recommendations is that this whole witness security program be placed at a high level in the Justice Department, still with the Marshals Service playing an integral part. We heard marshals, one a present marshal and one a former marshal, yesterday basically saying the witness security program under the Marshals Service now does not have the clout to call other agencies to really deal on a relationship basis with other agencies, and that if you do not get somebody about the level of the Assistant Attorney General involved, you certainly are not going to get cooperation from Social Security, from SBA, from the Labor Department, from HEW, HUD, and other places.

Do you agree with that? I know it is a difficult question asking a witness whether he thinks he has enough clout to get this done, but it seems to me your statement is basically concurring with what we have heard that you simply cannot get that done from your present leverage.

Mr. SAFIR. Senator, I agree with you that I certainly do not have that clout, but unfortunately I am afraid that we have already thought about this problem ourselves, the Deputy Attorney General has been involved and attempted to assist us as well as the Attorney General. However, what I believe is needed is not necessarily clout because that does not seem to move some of these agencies. What I believe is necessary from a personal standpoint is legislation which would mandate certain agencies to assist this program.

Chairman NUNN. What about an Executive order from the President?

Mr. SAFIR. That certainly would help.

Chairman NUNN. Has the Attorney General taken this to the President? Has the Attorney General gotten involved enough to say we have a big problem here, we have not got any cooperation, we are having difficulty with other agencies in cooperating, therefore, Mr. President, we want you to issue an Executive order?

Mr. SAFIR. I really do not know. I know the Attorney General and Deputy Attorney General have written strong letters to the Commissioner of Social Security asking for their assistance and to date we have really not seen any results.

Chairman NUNN. How long has that been?

Mr. SAFIR. The first letter I believe was in 1979. We recently had another letter I believe 2 months ago. I have personally met with the Social Security Administration since 1978, since I first got to the pro-

gram, and we have discussed the same problems over and over but either from a lack of resources on their part or priority, they have been unable to respond.

Chairman NUNN. We got certain commitments yesterday in the hearing from the Social Security Administration and we got a promise that they were going to follow up and also keep us informed. Are your staff aware of those commitments?

Mr. SAFIR. We have been asking for those commitments for over 2 years.

Chairman NUNN. Do you think the commitments we got yesterday will be followed through on, based on your experience?

Mr. SAFIR. Based on my experience we have not seen the follow through on these commitments. However, with the interest of this committee perhaps we will see them now.

Chairman NUNN. I think one of the things that is most difficult I am sure from your point of view is your people out in the field, and you up at the top get blamed for everything that goes wrong. You are the people who are directly responsible, yet there are many things in the Government you can not deal with. I am sure that is a source of great frustration, too.

Mr. SAFIR. That is correct, Senator. We are the visible entity in the witness security program and as a result of that the witnesses and rightfully so since we are the point of contact, see us as being responsible for all of their problems. We have endeavored very hard over the last number of years to get those entities that assist us to assist us in a more timely manner.

Chairman NUNN. Could you for the record document for this committee the various requests you have made on policy? I am not talking about detailed case requests; various requests you made either to your superiors in the Department of Justice or to outside agencies since you have been there so that we will know what you have requested. And could you also give us your impression of the replies that you have gotten?

Mr. SAFIR. I have brought a chronology of those requests and copies of the letters with me. I will be happy to provide them to the staff.

[The documents referred to have been provided and made a part of the confidential files of the subcommittee]

Chairman NUNN. That would be very helpful. We intend to try to follow through on this. We know it is not going to be easy no matter how involved we get. Where we need changes in the law, we will propose them, where we need to keep a constant oversight, we will do our best to do that. I suppose you would concur with previous witnesses that this program, if we are really going to do something about organized crime and high-level narcotics, high-level white-collar crime, this program is an essential tool.

Mr. SAFIR. Based on my previous experience, 13 years as a DEA agent, I can tell you without this program there is no other tool that can do anything near as effectively as the witness protection program.

Chairman NUNN. Why do you not go ahead? I wanted to make sure we got that point in the record.

Mr. SAFIR. As I stated, we currently have a backlog of documents. The second factor that causes us delay in documentation is we now provide a wider variety of documents that are securely backstopped

and the staff requirements to do this has surpassed our ability to keep up even though we have increased our documentation staff from two in 1978 to six at the present time. A witness today receives most documents that he would need to function in his new identity, and by using these documents he can obtain others on his own. I should point out that there are a number—14—of States that will not assist us because of their fear of liability should the witness use his new documentation for fraudulent purposes. We have attempted over the last 2 years to have the Department sponsor hold harmless legislation which would permit those States to help us.

Chairman NUNN. What has happened to that legislation?

Mr. SAFIR. We have submitted it to the Department where it was reviewed by the Civil Division and they had some concerns over liability and as I understand it, it is still being studied.

Chairman NUNN. How long has it been studied?

Mr. SAFIR. Over the last 2 years.

Chairman NUNN. It has been studied for 2 years. Who did you send it to in the Department?

Mr. SAFIR. We sent it to the Civil Division.

Chairman NUNN. Who heads that Civil Division?

Mr. SAFIR. I am not quite sure who it is at the current time. We sent it to an individual named Babcock at the time.

Chairman NUNN. So that has been sitting there for 2 years?

Mr. SAFIR. We did get a response. We got a response saying that the liability was very large and that the Department could represent those people who were sued as a result of providing this documentation. However, they could not indemnify them.

Chairman NUNN. Why do the other 36 States have obviously no real problem with this, 14 States are requesting indemnification?

Mr. SAFIR. Every State does have a problem with it. A great deal of effort by our personnel and with assistance from others have encouraged them to help us. However, most States do have some kind of concern on the part of their legal counsel, some of them are stretching their statute somewhat to assist us, and on the other hand the HHS in their dealings with the States relative to a uniform vital statistics procedure encourage the States to do just the opposite of what they do in assisting us.

So this in fact is violating some of the provisions set out by HHS.

Chairman NUNN. HHS?

Mr. SAFIR. Yes; Health and Human Services, former HEW.

Chairman NUNN. Could you furnish what you have got documented on the record about that conflict?

Mr. SAFIR. Yes.

[The document referred to has been provided and made a part of the confidential files of the subcommittee]

Chairman NUNN. Could you also furnish to the subcommittee a copy of the request to the Department of Justice and the response?

Mr. SAFIR. I would be glad to.

[The material follows:]

In August 1978, the U.S. Marshals Service advised the Department of Justice that the Witness Protection Program was encountering problems in securing assistance from State and local authorities relative to the provision of identity documents. It was requested that the Marshals Service be authorized to commit

the United States to defend those individuals and their agencies who supplied documentation for relocated witnesses and indemnify them against any judgment subsequently rendered against them as a result of their cooperation.

The Civil Division replied in September that 28 U.S.C. 516 et seq. provided the necessary authority for the United States to undertake such representation. However, there was a question whether such representation could be extended to individual or agencies whose actions were deemed ultra vires under their own State laws or based upon their negligence. Consequently, any representation undertaken would be determined on a case-by-case basis. In any case whatsoever, the Civil Division advised that any agreement for indemnification was beyond the scope of Public Law 91-452.

On June 15, 1979, the U.S. Marshals Service proposed to the Office of Enforcement Operations that language be added to Title V of the Organized Crime Control Act of 1970, Public Law 91-452, Section 501, et seq., which would provide for the following:

1. Authorization for the Attorney General to enter into agreements with Federal, State and local authorities relative to the provision of identity documentation which were deemed necessary to assure the health, safety or welfare of protected witnesses and their dependents.

2. Any Federal, State or local official providing such documents pursuant to an authorized agreement would not be held liable as a result of the issuance or subsequent use of such documents.

3. The United States would be liable with respect to any claim for personal injury or property damage for the provision or use of such records or documents in the same manner and to the same extent as the United States would be liable in any other action brought under 28 U.S.C. 1346(b) and the Federal Tort Claims Act.

4. The remedy provided against the United States under the Federal Tort Claims Act would be exclusive of any other civil action or proceeding for personal injury or property damage against any government (as defined in Section 503 of this Title), or officer or agent thereof, whose provision of documents and records gives rise to the claim.

5. The Attorney General would defend any civil action brought against a government or any employee or agent thereof, based upon a claim alleging personal injury, death or property damage arising out of the provision of documents or records pursuant to this section.

6. Upon certification by the Attorney General that a civil action or proceeding brought in any court against any government, or officer or employee thereof, is based upon a claim alleging personal injury, death or property damage arising out of the provision or use of documents or records pursuant to this section, such action or proceeding would be deemed an action against the United States under the provisions of Title 28, United States Code. If such action was brought in a district court of the United States, then upon such certification the United States would be substituted as the party defendant.

7. Upon certification by the Attorney General that a civil action or proceedings which is brought in a state court against a government, or any officer, agent thereof, arises out of the provision or use of records or documents pursuant to this section, the action or proceeding would be removed to the United States District Court for determination. Upon the motion of the United States or any other party, the legal status of a government or person conferred under this section shall be revoked by the district court of the United States, if said government or person failed to cooperate, and the court would substitute such government or person as the party defendant in place of the United States and, upon motion, remand any such suit to the court in which it was instituted.

In August 1979, the Torts Branch of the Civil Division questioned the soundness of extending federal responsibility to non-federal activities in the absence of adequate control over the state and local official's day-to-day activities. The Civil Division reaffirmed its commitment to provide representation in such cases.

Chairman NUNN. I will also ask the Department of Justice and ask the staff to remind me of this when we have a witness to furnish their current opinion on that legislation.

Mr. SAFIR. Prior to 1978, the Service assisted witnesses with employment, but was not obligated to actually find a job for a witness. Present policy is to find the witness an actual and reasonable job offer commensurate with his qualifications and background.

Chairman NUNN. Let me back up to page 7. You say we have been unable to keep current with present personnel. This is talking about documentation, even though we have increased our documentation staff from two in 1978 to six at the present time. How many people do you need? You have got six. How many do you need to do the job, start getting this backlog down?

Mr. SAFIR. I would say that conservatively we would need at least 10 full-time people and the rest of the process being the assistance of the other agencies to respond in a more timely manner.

Chairman NUNN. You have got six. So you need to almost double your staff.

Mr. SAFIR. That is correct.

Chairman NUNN. Have you made their request?

Mr. SAFIR. We have made a number of similar requests within the constraints of prioritizing what is available to the entire Service.

Chairman NUNN. So you get a budget, instead of making a request of what you need, you say you are within this budget, you make your request on that basis?

Mr. SAFIR. I think what I have to say is we asked for what we reasonably believe we can expect in resources available to the whole service. Our belief is that the Service is significantly understaffed and a recent departmental study indicated we were 40 percent understaffed across the board.

Chairman NUNN. Could you furnish a copy of that study for the record?

Mr. SAFIR. Yes.

[The document referred to has been provided and is available in the files of the subcommittee]

Chairman NUNN. Could you also give us your personal view of what it would take to staff up not only in the documentation area but to have an adequate staff to carry out the responsibilities delegated to you under the law by the witness security program?

Mr. SAFIR. I would be happy to.

[Additional material follows:]

PERSONAL VIEW OF HOWARD SAFIR, ASSISTANT DIRECTOR FOR OPERATIONS, U.S. MARSHALS SERVICE, ON REQUIREMENTS TO ADEQUATELY STAFF AND EQUIP AN OPTIMUM AND EFFICIENT WITNESS SECURITY DIVISION

The attached proposed staffing and budgetary package is based on my personal observations and experience as Program Manager of the Witness Security Division of the United States Marshals Service.

It contemplates a stand-alone self-contained Witness Security Division within the Marshals Service that will have the capability to provide enhanced witness security services including protection, social services, employment, documentation, verification of previous employment and some credit activity. It anticipates a total budget of \$36,693,309 and 527 permanent positions. This is almost double the funds and personnel of what is now being expended. The division described below would be properly staffed and equipped and employ individuals with the necessary expertise to correct many of the program's present shortcomings. It would be able to support the entire mission without drawing on other resources of the Marshals Service. In my personal opinion a Witness Security Division staffed and funded as below will minimize witness dissatisfaction. It will not eliminate witness complaints as that is a variable that will continue as long as the human factor involved in a traumatic relocation exists.

I. STAFFING FIELD

To meet both the needs of witnesses and assure overall program security, certain procedural changes will be required to implement the centralized Witness Security Division concept within the Marshals Service.

Establishment of Central Metro Offices in 20 major metropolitan areas where activity is highest, with additional Metro Relocation Field Offices situated in the remaining 30 states and 3 territories will provide staffing to meet the protective detail requirements and the maintenance services requirements of the relocated witnesses.

The Central Metro Offices would be staffed with an average of 18 positions. Increments of personnel assigned each office would vary from 10-20 based upon protective detail volume and provide management with ready response force when required in other areas. The structure of the Central Metro would provide for a Supervisory WITSEC Specialist, Social Worker, Employment Specialist, Administrative Assistant, and a combination of Senior WITSEC Inspectors with deputy WITSEC Specialists. The Central Metro Offices would provide for maintenance services of relocated witnesses in their area of responsibility in addition to intake of new witnesses and providing around-the-clock protection for the witnesses whenever they return to the danger area. The assignment of both a Social Worker and an Employment Specialist will enable the Marshals Service to readily address both the social, environmental and employment requirements of the individual witnesses upon their acceptance into the program.

The Metro Relocation Field Offices situated in the 30 states where no Central Metro Offices are located will specialize in all relocation, maintenance, employment, and related social services for the newly relocated witness. These offices will be staffed with senior WITSEC Inspectors and deputy WITSEC Specialist assistance, and an Administrative Assistant.

It is anticipated at this time to place a Senior WITSEC Inspector and a Deputy WITSEC Specialist in the territories of Puerto Rico, Virgin Islands and Guam.

This staffing concept draws exclusively from specially trained and assigned WITSEC personnel for all program activities. All personnel will be subject to protective detail assignments away from their permanent duty station when required. This concept provides for a mobile force that is fully trained in all specialties of the multifaceted WITSEC program. This staffing concept further enhances both career ladder and chain of supervision necessary to a nation-wide operation.

II. STAFFING HEADQUARTERS

The very nature of the WITSEC program requires memorialization and documentation of all communication, services or other contacts with witnesses and with all other agencies (government and private). The volume of reports, memoranda and records presents an almost unequalled administrative challenge. Certain documentation requires an inordinate preparation resource capability to assure the witnesses' security in its use. The increase in the headquarters WITSEC staff will provide resources for greater support services and enhanced and expedited planning for the newly accepted witness. With the increased headquarters staff, overall program security will be enhanced with the addition of the following functions.

A. Security mail services. A centralized mail receipt and forwarding service for all protected witnesses will be implemented. The WITSEC Security Mail Room will be staffed with a Supervisory Mail Clerk and 5 clerks to handle all mail services for the 9,000 witnesses and dependents located throughout the country.

B. Verification services. To address the most sensitive backstop requirements for verification of witnesses' and dependents' employment, background, educational, medical, citizenship, or other inquiries forthcoming from either government or private sources, a new section for "verification services" will be established. This service will provide around-the-clock response and will be staffed with a Supervisory Specialist with 5 Verification Specialists specifically trained under the guidance of Legal Counsel to address this most difficult service.

C. Legal counsel. The requirement for a dedicated WITSEC Legal Counsel is self evidence. The Legal Counsel would also be responsible for the "Service of Process" activities that are centralized at the headquarters office. The volume of documents received, forwarded, and returned has increased significantly in the past two years. Currently, it is anticipated that one administrative position will be utilized on the "process" desk. However, the staffing requirement for this activity can be expected to increase in the future.

D. Internal inspections and management evaluation. The sensitivity in providing both internal and management reviews for a nationwide program requires an in-depth knowledge of WITSEC policy and procedures that can only be obtained through personnel that have actively participated in all areas of program operations. Staffing for this function is requested for 5 senior WITSEC Inspectors' positions.

E. Psychologist. Based upon past program history, WITSEC requires the expertise of a trained psychologist to provide management guidance in both protected witness cases and in addressing the needs of Service personnel involved in one of the most stressful occupations in law enforcement. The Marshals Service recognizes the importance of including psychology training for all WITSEC personnel.

F. Employment specialist. This senior position is required to plan, administer, supervise and design program resource recruitment, examination, selection, and placement of witnesses in like job skills under their new identity, and train and develop employable witnesses with no job skills. The 20 employment specialist located in the Central Metro Offices with the senior coordinator located at headquarters, will provide enhanced nation-wide resource capability and services to new witnesses.

G. Finance officer. The centralized management concept will require establishment of a separate headquarters disbursing and finance officer function. Currently, marshals/disbursing officers, provide advances of WITSEC funds to field personnel, and submit billings to the Headquarters WITSEC Witness Support Section for reimbursement. Under the centralized concept, advances will be made by the WITSEC Headquarters Finance Officer, and reimbursement billings to maintain an ongoing advance of funds will be made directly from the field to Witness Support. The finance officer will report directly to the Treasury and Justice Departments in the same manner as the district marshal/disbursing officers do at the present time. WITSEC will request that the disbursing officer symbol number 8172 be assigned to Witness Security Division.

H. Computer specialists. With the increased financial responsibilities, and the ever increasing requirements for statistical data, as well as case/witness information to perform ongoing daily activity, WITSEC will require computer specialist expertise to meet its necessary reporting needs.

I. Case managers and resource analysts. The Witness Security Division has requested additional case manager and analyst positions in the past, but because of the overriding priority for security/protection resources, has not staffed these two most essential areas in accordance with past management emphasis on field versus headquarters staffing. Under the centralized management concept, the requested positions for case managers and analysts are imperative to fully meet program goals.

III. OTHER REQUIREMENTS

Currently most of the non-METRO WITSEC personnel in the field are located in the district offices. The centralized management concept, while enhancing security by reducing all activities to personnel actively assigned to the Witness Security Division, will also require an increased budget to cover space, and necessary facility renovation in the METRO Central offices to provide holding cell capability for prisoner witnesses; communications; ADP; vehicles; supplies; and related security/anti-intrusion, voice and other devices as well as equipment and furniture modules for the increased number of personnel. Initially, one-time equipment and renovation costs, security background investigations for new personnel, relocation expenses for existing personnel, etc., will result in an increased "first" budget request.

IV. SUMMARY

The "Work Measurement, Resource Allocation, and Management Evaluation" for the U.S. Marshals Service, a report prepared jointly by the Justice Management Division and the Marshals Service in 1980, confirmed WITSEC management's contention that one field work year was required per active field witness to accomplish current and existing program services at that time. This report did not address the development, administration, operations, supervision, coordinative and support services required at the headquarters level. This presentation provides for a total of 527 positions that would provide not only the services comparable to prior years, but would assure enhanced program security

and services to the witnesses. The increase in administrative personnel assigned to the field is essential to the success of separate funding procedures, as well as providing necessary clerical support to field operations.

INITIAL YEAR—PROJECTED BUDGET REQUIREMENTS

(Based upon current fiscal year costs)

Object classification purpose	Initial year amount	Annualized amount
11.1 Salaries	11,733,812	11,733,812
11.3 Positions other than full time	35,000	35,000
11.5 Other compensation	4,928,210	4,928,210
11.8 Special personal services	30,000	30,000
11 Subtotal	16,727,013	16,727,013
12.1 Civilian personnel benefits	2,055,396	1,575,396
21 Travel and transportation of persons	4,895,700	4,795,700
22 Transportation of things	1,762,700	1,027,700
23.1 SLUC	2,791,800	2,791,800
23.2 Communications, utilities, and other rent	785,000	785,000
24 Printing and reproduction	52,700	52,700
25 Other services	1,624,800	1,624,800
26 Supplies and materials	818,200	818,200
31 Equipment	5,169,000	
42 Insurance claims and indemnities	10,000	10,000
Subtotal	19,966,296	12,557,296
Total	36,693,309	29,284,309

POSITIONS

Location title or series	Grade	Number of positions
Headquarters:		
WITSEC director	SES	1
Chief, operations	GS-15	1
Administrative officer	GS-14	1
Legal counsel	GS-13	1
Psychologist	GS-13	1
Employment specialist	GS-13	1
Finance officer	GS-13	1
Case manager supervisor	GS-14	1
Case manager	GS-13	10
Analyst supervisor	GS-14	1
Analyst	GS-9/11/12	10
Computer specialists	GS-11/12	2
Internal inspector/management evaluation	GS-13	5
Security mail supervisor	GS-7	1
Security mail clerk	GS-5/6	5
Verification services supply	GS-12	1
Verification services analyst	GS-9/11	5
Administrative assistant	GS-10	1
Secretary	GS-8	5
Fiscal assistant	GS-7/9/11	6
Clerks (typist)	GS-5/6/7/8	5
Subtotal		65
Metro Center:		
WITSEC specialist supervisor	GS-13	20
WITSEC specialist inspector	GS-12	44
WITSEC specialist	GS-9/11	236
Social worker specialist	GS-101	20
Employment specialist	GS-11	20
Administrative assistant	GS-7/8	20
Subtotal		360
Metro relocation office:		
WITSEC specialist supply	GS-13	6
WITSEC specialist, inspection	GS-12	33
WITSEC specialist	GS-9/11	33
Administrative assistant	GS-7/8	30
Subtotal		102
Total WITSEC positions		527

NUMBER OF POSITIONS BY GRADE ANALYSIS (BASED UPON ENTERING INTO POSITION LEVELS)

Grade	Number of positions
SES	1
GS-15	1
GS-14	3
GS-13	45
GS-12	81
GS-11	187
GS-10	1
GS-9	140
GS-8	31
GS-7	30
GS-5/6	7

EQUIPMENT REQUIREMENTS

Type equipment	Units	Approximate unit cost	Total cost
			Lease Purchase
Word processors	53	\$7,000	\$371,000
Centralized data information center	1	30,000	30,000
DEX machines	56	540	30,240
Lease/maintenance contract per year for vehicles (sedans)	221	3,500	808,500
Lease/maintenance contracts per year for vans	20	5,000	100,000
Copiers (Xerox, 3-M, etc.)	55	3,000	165,000
Datapoint terminals	15	1,250	18,750
Microfilm retriever	1	100,000	\$200,000
System and computer records index add-on to existing computer (mini)	2	50,000	
Security module for witness security specialist	222	16,000	3,552,000
Security alarm systems with special door locking systems for Metro central and field relocation offices	53	4,000	212,000
Limited protection voice equipment	130	3,500	455,000
Anti-intrusion alarm systems	75	5,500	412,500
Office equipment packages for \$337,500 new positions now-WITSEC specialists	135	2,500	337,500
Lease vehicles			908,500
Lease other			614,990
Total			1,523,490 5,169,000

Mr. SAFER. Present policy is to find the witness an actual and reasonable job offer commensurate with his qualifications and background. We have developed over the past 2 years a job bank of over 150 national corporations who assist us in placing qualified witnesses. We have also negotiated an arrangement with the Office of Personnel Management to place a limited number of qualified witnesses in Government jobs. I should point out that many of the witnesses in the program have little or no job skills and often the best we can do is to find them entry level positions. When appropriate, we will supplement their income for a reasonable period of time until their salaries increase. Additionally, we will provide employment training to those without skills. Over the past 2 years we have obtained jobs for 409 witnesses, ranging from construction to aircraft pilot. We will not cease funding to a witness until we have obtained a job for him or he refuses to work. If a witness is found to be unemployable we will aid him in obtaining public assistance.

Since 1978, we have emphasized the provision of social services to witnesses and their families. Recognizing that the program creates stress and trauma for its participants we make available psychiatric and psychological counseling. Additionally, our inspectors have received training to recognize overt signs of stress and accordingly offer

counseling to the individual. Also, we are presently coordinating a joint study with Yale University in developing a stress profile which will enable the Marshals Service to recognize potentially stressful situations and as a result, improve the transition and ease the trauma of relocation.

Often in the review of the program its primary purpose which is to keep the witness and his family from harm is not considered. We provide each year round-the-clock protection for over 3,000 witnesses. No witness to whom we have provided these services has been harmed by those he has testified against. Also, we have no knowledge of a witness who, having complied with program guidelines, has been harmed in his relocation areas as a result of those he testified against having discovered his location.

Chairman NUNN. I want to commend you on that because all the testimony is consistent on that point, that you have done by your record a good job in security. We have had various allegations that there were lapses that did not end up being favorable and I think you have to work on those lapses because any time you have a potential exposure I think the chances are at some point it is going to catch up with you. But the aspect of the program that you have done the best job on I think ought to be noted for the record; that is, protecting people's lives. Of course, that I am sure is your No. 1 priority, but a close No. 2 is making that life worth living. That is the area where I think we have all got to bear down.

Mr. SAFR. I agree, Senator, and nobody is more concerned with making that life more bearable than we are within the constraint of what we have available.

Now, 13 witnesses have been killed, but their deaths were as a result of their own security breaches or unrelated to the program. I believe this is an excellent record that the Service can be proud of.

I have described just a few of the improvements that we have made over the last 21½ years. This is not to say that there are not still significant problems. An individual's or a family's life cannot be restructured by the Marshals Service alone. We must depend on many others. The demands of constantly returning a witness for testimony disrupts his new life and also our ability to make that life normal, but that is uncontrollable. The type of individual who enters the program must adjust to a new and often more structured lifestyle. For most, this adjustment is difficult. The demands of other Service programs often decrease our ability to provide services as timely as we desire. However, the most important thing to recognize is that this is a last resort program. Witnesses should only enter when there is no other alternative. Under the best of circumstances, there will be considerable trauma. The program does not have the capability to make a witness whole again. It is a partnership between the witness and the Marshals Service. We can provide the tools to start a new life, the witnesses must be willing to use those tools in a noncriminal productive lifestyle. I will be happy to answer any questions at this time.

Chairman NUNN. That is an interesting aspect about this being a last resort program. I think that is true and certainly in one sense. It is true in the sense that prisoner witnesses who may be in danger of

their life and come to the program and start cooperating to protect their life, that is certainly true. It is also true, I am sure, in situations where people have been involved in the outside, organized crime, narcotics, either inadvertently or on purpose, and then they are discovered in some sense or exposed and their life is in jeopardy. I am not sure that that adequately described the case of the cooperating citizen who was inadvertently without any fault on their own been thrown into circumstances where their testimony is needed against organized crime. When you say last resort, they have more than one option. They can do nothing. They do not have to cooperate at all. They can continue to overlook the criminal activity that they could otherwise testify to. We are talking about an honest business person who is not directly involved and this program is not a last resort for them. I think that is where we are shifting gears when we go after white-collar crime in this country, when we try to get DEA to go after high-level conspirators instead of buy-bust and arresting a lot of people on the street; when we try to focus the FBI into the high-level organized crime area which I think they are beginning to do, we are dealing with a different type witness in the future.

That is the area I think the Marshals Service has a real challenge and all of us do to address, the honest person who has the option of not cooperating with the Government simply going about their business and not in any way involving themselves or their families.

So those are the kind of witnesses that I think we really, we simply have to design some special circumstances for those kind of witnesses.

Mr. SAFR. I agree with you, Senator. I want to point out that the program is not designed for those people. When it was originally constructed it was designed primarily for those people who were involved in criminal activity and it is not structured for noncriminal people. When I said at the end of my statement that we cannot make a person whole again, based on the resources available for this program, any private citizen who would come into this program under the circumstances that you described would find considerable trauma because we cannot replace his house, we cannot replace his car, we cannot replace his credit background. Those are the things that the program does not have the capability to do.

Chairman NUNN. I agree with you. I think the first step in trying to correct any problem is to acknowledge the problem. I am pleased this morning that you have acknowledged that the program was not designed to do that and is not capable of doing that, because that is consistent with our other testimony. I believe it is going to take some real thought and some innovative ideas in the Department of Justice and in the Marshals Service to add to the program that dimension, if we are really serious about going after the high-level people in organized crime, narcotics, white-collar crime. Because I believe these kind of witnesses are essential and we are also seeing organized crime move into legitimate areas, more and more and more in the areas where the business itself may not be illegitimate, but the source of funds is, the laundering of funds is, and that kind of crime problem I think is one of our most dangerous threats in the country today; as long as criminals rob banks, sell narcotics on the streets, at least

you know what that activity is, but when they move into legitimate businesses, it is much more difficult and the kind of witness you have got to have to testify against them is much different.

Do you have suggestions about how we can add that dimension on dealing with that kind of witness to this program?

Mr. SAFIR. I believe that what would be needed would be the ability to provide a legitimate witness with some kind of transfer of what he had when he left his original area. This would involve a very complex series of procedures that would require a great number of resources. And I should point out that based on what I can see coming down the road for the Marshals Service in budgetary authority and resources, that I can foresee no improvement along those lines in the program without additional resources.

Chairman NUNN. Have you done any kind of study about what type of resources would be needed? Do you have anything definitive there that could be turned into a budget request or into consideration by a congressional committee?

Mr. SAFIR. We have made some proposals relative to backstopping, credit background. Again, there is a tremendous amount of liability involved there and the Department is looking at that in transferring legitimate witnesses, these type of things. Also, the actual funding to get involved in real estate transactions and business transactions would require a tremendous amount of resources.

Chairman NUNN. What is your overall Marshals Service budget on the witness security program now? Can you break it out so that the witness security program is isolated in terms of cost within the Marshals Service?

Mr. SAFIR. Yes, sir, I have it here.

Chairman NUNN. Can you give us an approximate range and can you furnish for the record the details of it?

Mr. SAFIR. It is about \$21 million including both expenses for witnesses and salaries of U.S. marshals.

[Additional information follows:]

BUDGET HISTORY, U.S. MARSHALS SERVICE, WITNESS SECURITY PROGRAM

Fiscal year	USMS request		DOJ request		OMB request		Congress appropriations		Supplemental		Remarks	
	Amount	Positions	Amount	Positions	Amount	Positions	Amount	Positions	Amount	Positions	Amount	Positions
1976:												
0322					\$9,034	159	\$8,569	159			\$8,569	159
0311							4,030				14,486	
Total							12,599	159			13,055	159
1977:												
0322	\$8,977	156	\$9,067	205	9,147	205	9,119	178			9,119	178
0311	5,640						5,950				15,075	
Total	14,617						15,069	178			14,198	178
1978:												
0322	8,327	205	8,058	178	8,318	178	5,589	178			5,589	178
0311	5,284				4,940		6,056				15,998	
Total	13,611	205			13,258	178	11,645	178			11,587	178
1979:												
0322	5,183	178	5,174	178	5,452	178	6,212	178	\$1,463	0	7,675	178
0311	5,681		5,383		5,383		5,383				17,600	
Total	10,864	178	10,557	178	10,835	178	11,595	178	1,463		15,275	178
1980:												
0322	10,487	252	5,116	151	5,441	151	10,926	251	2,150		13,076	251
0311	8,885		5,383		5,383		5,383				17,449	
Total	19,372	252	10,499	151	10,824	151	16,309	251	2,150		20,525	251
1981:												
0322	13,233	260	13,361	260	13,954	260	12,372	260	3,432		15,804	260
0311	9,743		8,383		8,383		8,383				8,383	
Total	22,976	260	21,744	260	22,337	260	20,755	260	3,432		24,187	260
1982:												
0322	24,336	353	16,063	260								
0311	11,286		10,590									
Total	35,622	353	26,653	260								

1 Actual

* Reprogramed supplemental.

Chairman NUNN. The \$21 million is certainly a substantial amount of money in one sense, but when you look at the scope of crime today and the tremendous involvement, I believe the figure that strikes in my mind on narcotics involvement is \$40 or \$50 billion. Of course, I know this is only one phase of law enforcement. It seems to me if the Justice Department is indeed serious about the direction they are going in, white collar, top echelon narcotics violators, top echelon organized crime people, top echelon people in political corruption, if they are serious about that, they ought to get serious about this witness security program and they have got to add that dimension into it, that you acknowledge very frankly, that you do not have the capability to deal with. I believe this is a question that should be addressed by, hopefully, the Attorney General we have there now and his top people who are already familiar with it. I would hope before they go out of office on January 20, they could really look at this situation and make recommendations to their successors, no matter how good their successors may be, it is going to take a period of 6, to 8, to 12 months to even focus on all these problems.

If we simply throw all these in the lap of the new administration, I think we will be here 12 months from now asking the same questions and have them say they are studying. I hope we do not have that kind of time gap. I do urge you and urge the Justice Department witnesses to do everything possible to address this and come up with at least a set of recommendations for the new administration to deal with.

Mr. SAFIR, you have stated that the Marshals Service has implemented each of the 28 Department of Justice recommendations for the program made in 1978, around the time of the last congressional hearing concerning the issue. I want to ask you a series of questions about these various recommendations and how far along you have gotten in implementing them.

Recommendation 9 states that the marshals should set up a national housing bank into which relocated witnesses can be moved on short notice. Yet most witnesses, attorneys, and agents tell us that the families of four or more are stashed in cramped motel rooms for months until they can be relocated. Is there a problem in locating adequate housing for program participants?

Mr. SAFIR. Yes; there is a problem. As far as a national housing bank, we looked, and to this day I still do not know what it means. What we have done is set up local resources throughout the United States and we have provided our inspectors with the ability to use real estate companies and their expertise in finding housing. As to the facilities for witnesses in housing, it differs from area to area. There are some places in the country where the housing market is so acute that people who are not witnesses have to pay a premium to find adequate housing. In those areas, we do find difficulty. There are other areas in which we do not.

The inspectors in the last few years have been given the ability to pay fees to realtors to assist us in this manner.

Chairman NUNN. They have been given that?

Mr. SAFIR. Yes, they have.

Chairman NUNN. Recommendations 11 and 12 deal with employment assistance and direct the marshals to set up a team of employment

specialists with responsibility of developing and maintaining a bank of potential jobs by making contact with employers throughout the country.

Yet, we have been told that this duty is performed at headquarters by primarily one clerical worker with no specialized background in employment counseling and no contacts in the business community. With the exception of the Marshals Service itself and your official response, almost every witness in Government personnel we have dealt with inside and outside the Marshals Service have told us there is no realistic employment program using qualified professionals in existence. Do you want to make a general comment on that, and I have some specific questions.

Mr. SAFIR. Yes; I have heard the testimony. I know that you have introduced into the record Mr. Hopkins' proposals which I have reviewed in depth at the time it was made and discussed with Mr. Hopkins at length. Almost everything Mr. Hopkins proposed is now in effect. Our problem is not in getting companies to agree to assist us, which is the thrust of Mr. Hopkins' proposal. We have a list of over 200 companies who assist us. Our problem is, once the company agrees to assist us, adequately finding a slot in that company for an individual with extensive criminal background or no skills. We would like to have more qualified employment people who could spend more time doing what they need to do in getting witnesses employed. We have employed 409 witnesses over the last 2 years and those who want to work, we usually do find some type of employment, not necessarily at the level that we would like to, but when we are looking at the inability to transport witnesses to trials or to set up security details, I have to be honest and tell you that employment is not the first priority as far as headquarters' staffing.

So we have decentralized that employment to the field inspector, we provide him with employment contacts and we provide every district with employment contacts and encourage him to meet with that employer and set up mutual agreements to employ witnesses. And this has worked pretty well.

Chairman NUNN. It seems to me the Department of Labor could be of great assistance with almost minimal efforts on their part because of the number of people they are trying to find jobs for is huge. They have field offices all over the country. Do you have a working agreement with the Department of Labor?

Mr. SAFIR. We do not have a formal agreement. We do have contact with almost every State employment commission. We have found this probably our most successful contacts. State employment commissions.

Chairman NUNN. Could you furnish for the record whatever understandings you have, at least your interpretation of them, since they are oral, with the Department of Labor?

Mr. SAFIR. Yes.

[Additional material follows:]

In July 1978, employment representatives from the Headquarters staff met with the Assistant Secretary of Labor for Employment and Training to establish an employment contact nationwide with the different State Employment Offices.

Letters were subsequently sent from the Assistant Secretary to the State Employment Security Agencies advising them to cooperate with the Marshals Service.

The Assistant Secretary also provided the Employment Section with a liaison in the Office of Field Operations for the purpose of obtaining additional contacts in the State and local employment offices. These contacts are initiated by the Headquarters Employment Section through the Field Operations liaison. After the headquarters coordination of both agencies, direct contact and procedural agreements are established by the individual inspector and local state employment director.

This nationwide arrangement has been most beneficial in locating employment for Program participants, especially those individuals with limited skills. The Department of Labor has also agreed to assist the Service in the placement of witnesses pursuant to Schedule A Authority.

Chairman NUNN. I want the staff to ask the Department of Labor, through a letter, what it is they are now doing to cooperate with the Marshals Service in the witness security program and ask them for any ideas about how this could be improved, including possibly a formal understanding in writing.

Yesterday a field inspector testified he had no time to worry about employment. They have the same problem out there that you have in Washington. They have protected witnesses there, a lot of other duties. Employment has to consume the last part of their operation.

Mr. SAFIR. I think that is accurate. The field inspectors are overworked, they are often diverted to other programs within the Marshals Service because of our lack of staffing and as a result, employment often suffers.

Chairman NUNN. Could you not set up some kind of direct responsibility on the Department of Labor, maybe by law, maybe we need to amend the law, saying you have a number of people in the security program every year and it would be their duty to give this a priority treatment within the Department of Labor and let them, through you, in some coordinated sensible fashion assume direct responsibility?

Mr. SAFIR. I think that would be helpful.

Chairman NUNN. The other thing is the question, usually you have got field inspectors dealing with the heads of certain businesses. Is it possible to place employees on this basis or should you have someone in Washington making these high-level contacts? Or maybe they are not high level. Maybe you are dealing with people at lower level?

Mr. SAFIR. We do deal at both high level and security levels within the companies. It would be a nice thing to have somebody in Washington doing it. As a matter of fact, over the last year, we did appoint one of our senior specialists in the field to do just that, to travel to different corporations and make employment contacts. However, recently we have been unable to send them because of the restriction on travel.

Chairman NUNN. And that restriction on travel is imposed by OMB, imposed by Congress or both?

Mr. SAFIR. It is imposed as a result of the fact that we are running out of travel funds, Senator.

Chairman NUNN. I understand, and we will get to this in future questions, that you do not have very much flexibility in your shifting funds, your overtime funds and travel funds, sometimes you have to do strange things with the witnesses in order to get the money out of the right pot, is that right?

Mr. SAFIR. That is correct. Often we have to look to certain—we have separate appropriations in the witness program. We have appro-

priation for fees and expenses of U.S. marshals and appropriations for—I am sorry, salaries and expenses of U.S. marshals and fees and expenses of witnesses. In conserving our resources, we often have to use the fees and expenses of witnesses more sparingly because we do not have that much in the salaries and expenses of marshals.

Chairman NUNN. Could you not get some authority to manage those funds with more flexibility? Are those guidelines imposed by Congress or are they imposed by the executive branch?

Mr. SAFIR. I really prefer somebody from the Department to answer that because I really do not know.

Chairman NUNN. Could you get us something for the record about the problems you have had with these funds and transferring funds from one account to the other?

Mr. SAFIR. I sure will.

[Additional material follows:]

The Congress has chosen not to provide the Attorney General with the authority to transfer funds between appropriations. Such appropriations transfer authority is provided in varying degrees to the Secretaries of Defense and Interior, for example, and in fiscal year 1981, the President sought transfer authority for the Secretary of Energy related to withdrawal of oil from the strategic petroleum reserve. The Department of Justice has sought appropriation transfer authority from the Congress in the past; however, Congress has not granted the Attorney General such authority. The dialogue below is drawn from the fiscal year 1977 hearings of the House Appropriations Subcommittee on the Departments of State, Commerce, Justice, the Judiciary and Related Agencies.

PROPOSED AUTHORITY TO TRANSFER FUNDS BETWEEN APPROPRIATIONS

Mr. MILLER. Fine. One last question. A new section 208 is proposed to allow the Attorney General to transfer 3 percent from one appropriation to another. That is in changes in general provisions. Is that an item that you would want in order to have the freedom to make the transfer of funds without coming to committees? Do you feel it would solve the problem of small supplementals?

Mr. POMMERENING. We would have to advise the committees of these transfers. The purpose of the provision is to give the Attorney General the flexibility to meet unforeseen priority changes within existing appropriations, rather than to seek supplemental funding as has sometimes been the case in the past.

Mr. LEVI. That was 2 years ago.

Mr. POMMERENING. Yes; it was.

Mr. MILLER. It was in, but not approved?

Mr. POMMERENING. That is correct, Mr. Miller.

Mr. MILLER. Could you give us an example? This may save quite a workload for you and the committees?

Could you give us an example of how it could be used were it approved?

Mr. POMMERENING. Two years ago, I believe it was 2 years ago, there was a necessity to come to the committee for a supplemental of \$600,000 for the Antitrust Division for unforeseen litigative expenses in connection with one of their major lawsuits. There were some appropriations in the Department which had the flexibility at the time to provide the funds if a transfer could have been realized, but that could not be done, so a supplemental was required.

Mr. MILLER. Thank you.

POTENTIAL ABUSES OF TRANSFER AUTHORITY

Mr. SMITH. I want to say on that point that I think it is a good provision if it is used properly. Some of the Secretaries, however, merely use it to take out of money what they had not asked for and to put funds into an area where we had refused to give them quite as much as they wanted, and that abuses the system, but if it is used right, I think it is a good provision.

In other words, for unforeseen circumstances you sometimes take the money from funds that were over and above the appropriation requested.

Mr. SLACK. If there are no further questions of the Attorney General, we thank you, sir, for your appearance before the committee this morning.

The Attorney General can allow for the limited transfer of funds among United States Marshals Service programs and the Attorney General can allow the transfer of some funds among the Marshals Service, the U.S. Attorneys and the U.S. Trustees, i.e., these three organizations comprise budget activities within the U.S. Attorneys and Marshals appropriation. However, significant transfers of resources (\$150,000-\$250,000 or more) required the approval of the Office of Management and Budget and the formal notification of the Judiciary and Appropriations Committees of the Congress.

Chairman NUNN. Is it correct that there are over 650 witnesses waiting for employment now?

Mr. SAFIR. I would say that 650 witnesses, of the 3,500 that have come in over the last 10 years, I would say that is an accurate figure. As to the witnesses who have come in over the last 2½ years, I would say that is not accurate. I would say certainly, and I do have something I can provide for the record as to percentage, we have employed the majority of the witnesses who have come in over the last 2½ years.

Chairman NUNN. The majority still could theoretically leave 49 percent unemployed. What is the percentage?

Mr. SAFIR. It is 56 percent in 1979 and 91 percent in 1980.

Chairman NUNN. It was 56 percent in 1979 and 91 percent in 1980?

Mr. SAFIR. 1980. I should point out that is a gross number and we have some folks breaking it down as to the entry years of the witnesses. But the number of jobs supplied in 1980 is 91 percent relative to the number of witnesses that entered the program last year.

Chairman NUNN. Is that giving credit if you offered one job, whether they stick or not, whether that job proves to be satisfactory, does that say it is one job for one person or does that mean they actually have a job?

Mr. SAFIR. Those are actual jobs provided.

Chairman NUNN. Are these people who entered during 1980 or is this a cumulative figure?

Mr. SAFIR. That is what I do not have a breakout of at this time, having it down as to program year entry for each of those witnesses.

Chairman NUNN. Is the number of witnesses entering the program decreasing or increasing?

Mr. SAFIR. It has decreased over the past year.

Chairman NUNN. Is that because you are using more rigid criterion for entering the program?

Mr. SAFIR. I believe it is a result of the program that has been implemented by the Department, the Office of Enforcement Operations which does a closer job of screening the witnesses and bring all of the witness requests into one place. I don't know if you are aware, Senator, but prior to the Office of Enforcement Operations, each separate section in the Department of Justice got witness requests from the field relative to the crime that was committed and separate sections in the Department had different criteria for letting the witnesses into the program.

Since the Office of Enforcement Operations was created, all requests for witness protection came to that office, they are screened under a careful procedure. We, for the first time since 1978, have an opportunity to make a recommendation relative to whether or not the witness is a workable case and we work very closely with the Department in

deciding whether or not this person is the type of individual that we can help as far as the program is concerned.

Chairman NUNN. So you think you have significant improvement in that area?

Mr. SAFIR. I certainly believe we have.

Chairman NUNN. Who, specifically, are your employment specialists? How many of them are there and what do you call them?

Mr. SAFIR. They are called resource analysts. Right now we have one on board and two vacancies. However, we are currently changing our resource analyst concept, one where all of our resource analysts will handle specific cases pretty much which we think will have a significant effect.

Chairman NUNN. How many do you have all together? How many people do you have all together in Washington dealing with employment?

Mr. SAFIR. We have three positions, right now we have one filled. Recently two left.

Chairman NUNN. Have those two vacancies been there for a long time, or have they just come up?

Mr. SAFIR. They have been there about 6 months.

Chairman NUNN. What kind of employment background does she have in terms of her expertise?

Mr. SAFIR. Her background is strictly on-the-job training.

Chairman NUNN. And that on-the-job training took place in the Marshals Service?

Mr. SAFIR. That is correct.

Chairman NUNN. What level is she?

Mr. SAFIR. She's a grade 11.

Chairman NUNN. What kind of educational background does she have?

Mr. SAFIR. She is a high school graduate with some additional—I think she has a few college courses. If the point is, is she a trained employment specialist, she is not.

Chairman NUNN. Do you need trained employment specialists?

Mr. SAFIR. I believe that would be helpful.

Chairman NUNN. How many would you need?

Mr. SAFIR. I would say that we need a minimum of four, but I must state again that the primary responsibility and the practical handling of jobs has to be done in the field; that employment specialists in Washington can obtain contacts, but contacts have never been a problem.

The problem is placing an unskilled witness in a position in the field and that can only be done and done most effectively in the field.

Chairman NUNN. We have heard testimony the field people don't have time to do it.

Mr. SAFIR. That's true.

Chairman NUNN. So it's a catch-22, you don't have the people in Washington and you don't have them in the field, either. You have got a real problem in employing people.

Mr. SAFIR. No question, Senator.

Chairman NUNN. How about getting the Department of Labor to send you four or five people over there for 1 year. I am sure in that

big Department they can find four or five employee specialists running around who might be able to help you.

Mr. SAFIR. I certainly would not object to that, Senator.

Chairman NUNN. They have a tremendous number of people in this area. It looks to me this could be something that could be taken up between the Attorney General and the Secretary of Labor. Even three people will be able to lend significantly to your program, wouldn't they?

Mr. SAFIR. I agree.

Chairman NUNN. What about having someone like Mr. Hopkins, the executive of the national chamber of commerce to assist in employment matters?

Mr. SAFIR. We have contact with many chambers of commerce and they do assist us. However, I cannot overemphasize the fact that contacts with the chamber of commerce provide employment resources, and in plain language, that means a company that says: Yes, we will assist if we have an opening. What we need more than people who have contact with companies are employment placement specialists who can counsel somebody on what skills they need to develop to fit into a particular job.

Chairman NUNN. Really what you are saying is it not the overall philosophy contracts and policy between companies that is the problem, it's the problem of somebody getting down to the nitty-gritty and saying: These are the particular witnesses we have, these are the potentials, these are the missing skills, here is where you need to go to get training. That is the kind of one-on-one counseling that you need.

Mr. SAFIR. That is exactly right. I have a list of 200 companies that are perfectly willing to assist us if we can place somebody in the particular slots they have.

Chairman NUNN. It seems to me that is a correctable problem in we have the kind of relationship between Justice and Labor that could not be ironed out in 2 or 3 hours in high-level meetings. It seems to me that problem could be addressed, don't you agree?

Mr. SAFIR. Yes, sir.

Chairman NUNN. For the record, could you furnish how many witnesses have obtained jobs strictly through the use of your employment specialist job bank without including those assisted by field marshals, Government agencies or self-help?

Mr. SAFIR. Yes.

[The information furnished follows:]

Primary responsibility for employment of program participants rests with the Witness Security Specialist in the field. The Headquarters Employment Section serves the field in identifying potential employment contracts at the national level. Assistance from these corporations is solicited through a letter of introduction which explains the program and serves to introduce the field inspectors. The field specialist subsequently meets with representatives from the corporation and establishes a working relationship within the security parameters of the Witness Program. Liaison with the assisting corporation is maintained by the field inspector who is responsible for the subsequent arrangements and placement of relocated witnesses in position within the company. The local field inspector is best equipped to maintain these relationships given his proximity to the company personnel and his familiarity with the individual witness and his employment skills.

To date, 238 employment contracts within the private sector and 12 within the public sector have been established with the assistance of the Headquarters Employment Section. Although job placement is the Field's responsibility, the Headquarters Employment Section placed 12 individuals in private industry positions and four in government related positions during the period from March through September 1980. Of these 16 individuals, one entered the Program in 1976, three in 1978, nine in 1979, and three in 1980.

Chairman NUNN. Recommendation 13 relates to documentation. Virtually every witness, both relocated, Government and otherwise, all agree that the documentation given to witnesses is inadequate, late in arriving, and never forthcoming.

Time delays alone and coordination with other agencies seem to be the primary problems. Why can't the executive branch agencies accomplish this with the minimum amount of delay after 10 years of experience with the program? Another way of saying it: What are your major problems in documentation?

Mr. SAFIR. Our major problems in documentation is a timely response by State, local, and Federal agencies in assisting us.

Chairman NUNN. Has the Marshals Service or Department of Justice entered into any written agreements with any Federal agency to assist them?

Mr. SAFIR. Yes.

Chairman NUNN. You have a written agreement?

Mr. SAFIR. We have a written agreement with the Department of Defense, we have a memorandum of understanding.

Chairman NUNN. With the Department of Defense?

Mr. SAFIR. Yes.

Chairman NUNN. Who else, any other agencies?

Mr. SAFIR. We have talked about for 2½ years, one with Social Security and have been unable to enter into one to this point.

Chairman NUNN. And you have been working on that?

Mr. SAFIR. Yes, we have.

Chairman NUNN. Somebody in the executive branch ought to be able to get the Marshals Service and Social Security Administration together, wouldn't you agree? If you were John Q. Citizen out there looking at this situation, you have all these Government people running around, you would say: No matter whose fault it is, somebody ought to be able to do that from the President on down.

Mr. SAFIR. Nobody desires that more than we do because the primary documents that a witness needs to get started in his new area is a social security card as quickly as possible.

Chairman NUNN. What you are saying is you have done all you can do, now the higher level has to tackle it. Have you had complete cooperation from the higher levels of Justice?

Mr. SAFIR. Yes, we have had tremendous support right up to and including the Attorney General.

Chairman NUNN. Even the Attorney General can't get the Social Security Administration to move. That's what the public suspect about Government, that it just doesn't work. We just have separate kingdoms and can't get people to work together. That is the discouraging part about it. I know it is discouraging to you.

You say someone is working on these 14 States that do not cooperate?

Mr. SAFIR. That's right.

Chairman NUNN. Who is doing that?

Mr. SAFIR. Our resource supervisor and myself.

Chairman NUNN. Has the Marshals Service or the Department of Justice entered into any written agreements with any States concerning the program?

Mr. SAFIR. I will have to submit that for the record. I do know we have entered into agreements with certain States on various parts of the program.

I will submit the specific documents.

[The document furnished follows:]

The following is a sample of the letter¹ used by the USMS to introduce our Program and contact Inspector to a cooperating Registrar. To date, there are 38 states which are providing both certificates to Witness Security Program participants pursuant to individual state agreements within the parameters of the states' laws and Marshals Service security requirements.

Chairman NUNN. In your statement you say that you "provide a wider variety of documents that are securely backstopped." We have been told over and over about the so-called sanitized résumés and school records which are merely Xeroxed copies of the witness' old records with his name and the names of the companies and school blotted out. Is this what you mean by "securely backstopped?"

Mr. SAFIR. No; it is not.

What I mean by "securely backstopped," birth certificates that are backstopped, driver's licenses that are backstopped. DD-214 which are proof of discharge, which are backstopped. Passports, baptismal certificates, and other kinds of documents. As to the employment résumé, the employment résumés come back with a security problem and the inability for us to set up a mechanism where somebody can go directly to a former employer and ask whether or not this individual worked there. We are not happy with sanitized résumés but that is the only mechanism we have to assist the witness.

Chairman NUNN. What can be done to improve that problem? The sanitized résumé basically puts everybody on notice that there is something unusual about this situation and it doesn't really provide the information they need. What can be done about that?

Is that something that can be corrected?

Mr. SAFIR. It can only be corrected if a backstop mechanism, which would take a tremendous amount of resources, is set up where the witness on his own can go to the employer. The problem the witness has in his relocation area is that he is dependent on the Marshals Service during the first number of months of his relocation for everything. He is dependent for employment, he is dependent for getting his children to school. The alternative would be to provide him with the kind of background that he could go and present and could be checked and the answer that would come back would be, yes, this is the individual that is representing himself. That is not something that is easily done.

It would take a tremendous amount of security procedures and resources to do it.

Chairman NUNN. Haven't you, Mr. Safir, as well as other knowledgeable law enforcement officials, suggested a system whereby a witness

¹ The letter referred to is designated sensitive material and is retained in the confidential files of the subcommittee.

could be given his real but modified background in terms of a résumé, credit, school records, and so forth, and also that this be backstopped by a secure telephone switching system so in case of the witness' employer or creditor, in case they call, the program can provide accurate information about the witness, modified only to protect his security?

Mr. SAFIR. I have.

Chairman NUNN. Who did you make that suggestion to?

Mr. SAFIR. To the Department, Office of Enforcement Operations.

Chairman NUNN. What response have you gotten?

Mr. SAFIR. I got a response from Civil explaining the liability and at this point it is still being studied.

Chairman NUNN. How long has it been studied?

Mr. SAFIR. I believe I made the suggestion earlier this summer.

Chairman NUNN. About a year—

Mr. SAFIR. This past summer. This past June.

Chairman NUNN. Could you give us that proposal for the record and also any response you have gotten?

Mr. SAFIR. I would be happy to provide the responses.

Chairman NUNN. If any of these matters may be of a classified nature because of security, if you furnish them for the record and make sure you designate it such and coordinate with our staff, they can be in terms of sealed documents.

Mr. SAFIR. OK, sir.

Chairman NUNN. Any response you have gotten on that point we would like to have also.

In other words, you believe the system can be significantly improved if you implement a new type system here?

Mr. SAFIR. I believe it can be improved relative to employment and to some extent credit. Unfortunately, computer technology relative to credit is something which is difficult to overcome with the most secure resources they could have.

Chairman NUNN. It seems to me the goal on credit ought to be to see that a witness does not have credit that is diminished, that his credit background and rating in some form is furnished on a comparable basis. Wouldn't you agree that is the goal so that if he has good credit, he does not lose that credit when he is going into the program?

Mr. SAFIR. I think that is true and I think it would be less of a problem mostly because of the fact that very few of our witnesses that enter the program, at least right now, have substantial credit histories.

Chairman NUNN. I don't think the goal would be to take someone with bad credit and give them good credit. That would not be what you are trying to do, would it?

Mr. SAFIR. No; it certainly would not be.

Chairman NUNN. Don't you agree if we could go into this higher level effort against higher level people of organized crime, you are going to have an increasing number of witnesses coming into this program, hopefully, that have good credit?

Mr. SAFIR. I believe that's possible.

Chairman NUNN. Have you gotten any help from CIA, FBI, DEA, those type agencies, in providing background stories for relocating witnesses?

Mr. SAFIR. As far as I know, there are no agencies right now other than the CIA that we have not dealt with. None of the other agencies that you mentioned have the capacity or capability to provide a backstopped background that can be used on a long-term basis.

Chairman NUNN. Theirs is mainly short term?

Mr. SAFIR. Yes; they are used for agents in operations.

Chairman NUNN. Are you trying to develop this talent within the Marshals Service?

Mr. SAFIR. Yes, sir, we are. I believe we have more expertise along those lines than any other agency for long-term backstop background.

Chairman NUNN. Do you agree it would be helpful to sit down with witnesses who are going to be relocated, particularly families, and go through an indoctrination of backgrounds so they know the stories they are going to use, so supposedly if they are giving backgrounds for a certain city, they would be acquainted with the city, and so forth?

Mr. SAFIR. I think it would be useful if we had the capacity to backstop those stories, which we do not.

Chairman NUNN. But the proposal you made would give you that capacity?

Mr. SAFIR. To some extent.

Chairman NUNN. To what extent, what else would be missing even if your proposal were implemented?

Mr. SAFIR. Any fabricated background for any individual can only go back so far. Once you get beyond a certain step, you have to involve a wide spectrum of individuals. As you do that, security breaks down. So it would give an individual what I believe is a limited background, but the ability to go out and get started.

I don't think we are ever going to be able to provide backgrounds which involve every aspect of an individual's life in the area from which he came.

Chairman NUNN. We have heard two different views on documentation. One view is that all documents a witness receives should be real, that is issued by a real Federal, State, or local agency. The witness claim those documents are hard to obtain and have no background behind them if anyone checks, which usually means the marshal has to tell everyone from the witness' employer to his banker to his children's principal so they will accept these documents, thus causing potential security breaches.

The other view which we heard here yesterday is that witnesses should be provided with identification and background commensurate with their past history. The argument against this view is that the Government is creating fake documents and this will mislead innocent third parties. What is your view on that general debate?

Mr. SAFIR. There are two separate issues there, Senator. One is that the documents we do provide, birth certificates, passports, baptismal certificates, driver's licenses, are in fact backstopped. If we take John Jones and make him John Smith, when somebody calls that in to the issuing agency, it comes back exactly as called in and not only that we are notified so that we also have an indication that somebody is looking for this individual. As to providing false background and documents, it is a fact, we have had witnesses defraud innocent parties in a number of areas using the documents we currently provide.

As to providing false documents and backgrounds, I am against providing false documents because they are not secure, there is no way they can be backstopped. Credit histories and employment can be. The actual documents as far as licenses, passports, those kinds of things cannot. At least not to my knowledge.

Chairman NUNN. How many cases, and what is the scope of cases where people have misused these documents that are provided? Do you have widespread misuse, are there many witnesses who abused the process, are there many third-party suits?

Mr. SAFIR. We have quite a number of third-party suits. I wouldn't say it is widespread, but it is happening frequently enough to be a problem.

Chairman NUNN. When you say third-party suits, are they suing the U.S. Government directly, U.S. Marshals Service directly?

Mr. SAFIR. We have both. I probably answer 35 letters a month from either creditors who are left in the danger area or from creditors who are left in the relocation area or from people who have in fact been defrauded as a result of witnesses using our documentation.

Chairman NUNN. About 35 letters a month?

Mr. SAFIR. That's correct.

Chairman NUNN. How many lawsuits are pending, do you know?

Mr. SAFIR. I don't.

Chairman NUNN. Could you furnish the number of law suits pending either against the Marshals Service or against any State, local agency that has cooperated with you as a result of the witness security program and the amount of claims that have taken place?

Mr. SAFIR. I will be glad to.

[The information furnished follows:]

The following represents lawsuits against the Marshals Service.

1. *No. WC 2579, A Black Citizen of the U.S. v. U.S.*, C.A. No. 79-1846 (E.D. Pa.)—witness claim.
2. *Billie Cameron, et al. v. U.S.*, C.A. No. C79-233 (N.E. Ohio)—witness claim.
3. *Robert Probst v. U.S.*, Ct. Cl. No. 172-80C—witness claim.
4. *Roger and Patience Young v. U.S.*, C.A. No. 80-0418-T-(I).
5. *Emilio Garcia v. U.S.*, C.A. No. 75-1309-Civ-JAG (S.D. Florida).
6. *John Doe v. U.S.*, Ct. Cl. No. 438-79C.
7. *Joseph A. Danese, et al. v. U.S.*, C.A. No. CA-79-0292 (D. R.I.).
8. *John Doe v. U.S.*, C.A. No. C-1-79-693—claim (FOIA) for production of Witsec documents.
9. *John Doe v. U.S.*, C.A. No. 77-440-GT.
10. *Dwight Jones v. U.S.*, C.A. No. 79-827 (D. S.C.)—third party claim for injury caused by protected witness.
11. *Leona Bergman v. U.S.*, C.A. No. 79-1041-C(3) (E.D. Mo.) third-party plaintiff.
12. *Bill William Barton, et al. v. U.S.*, C.A. No. Civ 80-1265 (D. Idaho).
13. *Donna Ruffalo v. U.S.*, C.A. No. 80-0675-CV-W-6 (W.D. Mo.) claim by parent for return of relocated child in custody of protected witness.
14. *Eugene Grossman, et al. v. U.S.*, C.A. No. 80-CIV-5589 (S.D. N.Y.)—claim by parent for return of relocated child in custody of protected witness.
15. *Judith Ann Creech v. U.S.*, C.A. No. LR-C-78-136 (E.D. Ark.)—claim by spouse of protected witness for support payments.
16. *John A. Grundy, et al. v. U.S.*, C.A. No. 79-0336 (D. R.I.) third party claim for damages and services by owner of former safehouse used for protected witnesses.

Additionally, the Witness Security Division served relocated witnesses with 134 pieces of legal process during 1979, and 197 pieces in 1980. These processes emanate from civil and criminal actions originating in the danger area against Program participants.

Chairman NUNN. If you give comparable credit, in other words, if Mr. X is relocated, he has a credit rating that would extend credit to him before he is relocated, about \$10,000, and then you relocate him and give him a comparable credit rating and then he goes bankrupt or he defaults on his payments, what difference does it make that he has been given a transfer in another name of credit? How could the Marshals Service be liable if he had that same credit rating before?

Mr. SAFIR. I am told by the Civil Division that there is liability.

The problem, from our perspective, is not necessarily the liability as much as a secure manner of transferring that credit.

Chairman NUNN. Do you have anything in writing from the Civil Division on this?

Mr. SAFIR. Yes; I do.

Chairman NUNN. Could you furnish that for the record?

[The information furnished follows:]

Because of growing concern over the increasing necessity to involve numerous state and local officials in the documentation process and the inability to transfer credit ratings and employment histories, the U.S. Marshals Service requested guidance in May 1980 from the Office of Enforcement Operations with respect to the law and potential liabilities were the Service to initiate a secure verification system. Such a system would provide potential creditors and employers with accurate background information concerning a witness, but under a different name and location. As a result, the witness would be able to reestablish his credit rating and seek employment without disclosing his association with the Marshals Service or the Witness Security Program.

Representatives from the Office of Enforcement Operations and the Torts Branch met in June. Following this discussion the Civil Division formally replied in December that the Department's involvement in the maintenance of such a "cover" presented substantial exposure to liability. The Civil Division did agree to consider individual cases.

Chairman NUNN. Recommendation No. 16 requires a formal complaint system. Our staff, plus most Government personnel, including the witnesses, feel there is no adequate complaint system and that most complaints they have must be processed through many of the people the witnesses complain about. What system do you have for handling witness complaints and who handles those?

Mr. SAFIR. Witnesses are, No. 1, not bashful to complain, Senator. I receive a good number of calls from witnesses who do complain. All of our witnesses are given a central number that they can call and have not been hesitant to call when they do have problems.

Also, when we do stop funding for a witness after we have either provided services for him or he has not complied with our regulations, we do provide him with a document that he can list his complaints on, send it to us, and we do investigate them.

Also, the Office of Enforcement Operations has also encouraged witnesses to express any of their dissatisfactions with any of the entities in the program to them. We do that also.

When these complaints come up, the Office of Enforcement Operations and the Service get together and we try to resolve them, not always to the satisfaction of the witness or the prosecutor who is advocating that particular witness in a case but we do try to resolve them.

Chairman NUNN. Recommendation No. 17 states that the Marshals and the Department of Justice, Office of Management and Finance, should review the staffing for the program and assign such personnel as are required to adequately manage this program. In interviews

with our staff and again this morning you stated that you were 40 percent understaffed and substantially underfunded. In fact, everyone who deals with the Marshals Service believes that you are understaffed and underfunded. Is this accurate?

Mr. SAFIR. It is accurate.

As I mentioned before, the Justice Management Division earlier this year did a study of all Marshals Service programs. It said across the board the Marshals Service was 40-percent understaffed. As a result of that, you cannot put the witness security program in the Marshals Service in a vacuum. As long as the entire Service is understaffed, we will continue to divert resources to other programs because our first responsibilities in the Marshals Service is judicial security and if the courts require additional security and the manpower is not available, it often comes from the witness security program.

Chairman NUNN. So Recommendation No. 17 has not been implemented at all?

Mr. SAFIR. That is one not under our control, Senator.

Chairman NUNN. We have been told in at least two instances where witnesses were flown to distant locations at the end of their trial testimony each day and returned to testify the next day simply because the Marshals Service had more money in their travel budget than in the overtime budget; is that correct?

Mr. SAFIR. Could you repeat that?

Chairman NUNN. We were told of instances where witnesses were flown at the end of their trial testimony and returned the next day again by plane simply because the Marshals Service had more money in their travel budget than in their overtime budget.

Mr. SAFIR. Very often we do do that, to conserve our limited overtime funds. We will move witnesses to a central location out of the danger area where they are more secure and don't need 24-hour around-the-clock protection by deputy U.S. marshals.

Chairman NUNN. Would it make more sense to have some flexibility so in those cases you could use your travel budget, shift the overtime, in lieu of travel? You don't have that flexibility?

Mr. SAFIR. That is correct, Senator. We do not.

Chairman NUNN. What prevents you from having that flexibility; is that an internal Justice Department allocation or is that something imposed by OMB or Congress?

Mr. SAFIR. I am not a budget type, but as I understand it, you cannot shift appropriated funds for one purpose to appropriated funds for another. These are separate appropriations.

Chairman NUNN. That does not really make much sense when you back off from it and look at it from the witness' point of view, having the witness able to testify, and so forth, does it?

Mr. SAFIR. No. It is not a desirable alternative, but if we don't have the money to pay for overtime, it is the only way to keep him safe.

Chairman NUNN. Have you made a recommendation on how that could be addressed?

Mr. SAFIR. Yes.

Chairman NUNN. What is your recommendation?

Mr. SAFIR. We have got to get some increases. However, I should point out that the Senate Appropriations Committee cut \$1.5 million from the witness security program in the upcoming 1981 budget.

Chairman NUNN. That happened on the continuing resolution?

Mr. SAFIR. That is correct.

Chairman NUNN. That just happened when?

Mr. SAFIR. That happened about 1 month ago.

Chairman NUNN. \$1.5 million out of how much?

Mr. SAFIR. That is \$1.5 out of our salaries and expenses of the U.S. marshals. That would be, I guess, about \$11 or \$12 million.

Chairman NUNN. So you are going to be in worse shape in 1981 than you were this year?

Mr. SAFIR. Considerably.

Chairman NUNN. Is the Justice Department going to appeal that and try to get something in the supplemental?

Mr. SAFIR. Yes.

Chairman NUNN. Would you keep this subcommittee informed so we can try to be of assistance there?

Mr. SAFIR. I will.

[Additional information furnished follows:]

A fiscal year 1981 supplemental appropriation request in the amount of \$8,868,000 has been approved by the Department of Justice and the Office of Management and Budget. The supplemental will be transmitted to the Congress in January 1981.

The supplemental request includes \$3,432,000 for the Witness Security Division unit.

Chairman NUNN. Recommendation No. 19 indicates that the marshals should hire social workers to deal with the witnesses' problems in readjusting. Do you have any individuals with expertise in social services?

Mr. SAFIR. None; nor the positions to fill those kinds of slots.

Chairman NUNN. You do not have those?

Mr. SAFIR. Do not; nor the flexibility to hire those people. We do not have the allocated positions to do that.

Chairman NUNN. Have you made a request on that?

Mr. SAFIR. We have not.

Chairman NUNN. Why not?

Mr. SAFIR. Because we are so understaffed in deputy U.S. marshals and witness security inspectors that certainly it does not rise to a priority.

Chairman NUNN. So Recommendation No. 19 hasn't been implemented?

Mr. SAFIR. That is right.

Chairman NUNN. Recommendation No. 23 deals with specialized training of marshals and others who deal with witnesses. Do all witnesses security personnel including those in the field and under the supervision of the U.S. marshals receive this specialized training?

Mr. SAFIR. All witness security inspectors have been trained. We have had each of them go through a 1-month intensive school at the Federal Law Enforcement Training Center in Brunswick. We hold semiannual witness security seminars to keep them up to date on whatever changes in policy are made. We have also over the past years gone to DEA and the FBI, talked to agents about the program and what we can do and cannot do. The Office of Enforcement Operations and we have traveled to every U.S. attorney's office in the country over the

last 2 years and briefed them on the changes in the program and its limitations. There has been a significant amount of training.

Chairman NUNN. Do all marshals that serve witnesses either as witness security inspectors, contact deputies, or detail agents receive this training?

Mr. SAFIR. No. The contact deputies who rotate through our witness security details are not all trained in this type of school. Their training primarily comes from the witness security inspector in the field.

Chairman NUNN. Is there inservice training for marshals already in the field?

Mr. SAFIR. Yes.

Chairman NUNN. What does that kind of training consist of?

Mr. SAFIR. It is usually conducted by the specialists we have, both witness security specialists and enforcement specialists in the field and they do the training in the district.

Chairman NUNN. Recommendation No. 28 calls for the Department of Justice to set up a Witness Security Review Board to handle such matters as general program oversight and coordination, recommendations regarding major program changes and resolution of deputies. We have been told that this Board has met only once since 1978; is that correct?

Mr. SAFIR. That is true. However, the members of the Board, or should I say the working level of the Board met almost daily during that period.

Chairman NUNN. So you have recommendation on the Board? Who is on that Board?

Mr. SAFIR. On the Board, it is chaired by the Deputy Attorney General, there is an Associate Deputy Attorney General, the Criminal Division, the Marshals Service, Bureau of Prisons, and we often have people from the investigative agencies attending.

Chairman NUNN. How is that distinguished from the working level? Who is on the working level?

Mr. SAFIR. Primarily myself, Gerry Shur, up until recently Judith Bartnoff, Deputy Associate Attorney General.

Chairman NUNN. You people were already working together before the Board was ever created, weren't you?

Mr. SAFIR. No. I believe the Board was recommended in 1978.

I believe that is when I arrived there.

Chairman NUNN. But the Board really is superfluous if it is not meeting in the working level doing all of it anyway, and the Board is not giving general oversight, is it?

Mr. SAFIR. I think the Deputy's Office is giving the continuing oversight, and there have been a number of times over the last 2½ years when specific witness problems have been resolved at that level.

Chairman NUNN. Are you saying there is no need for the Board to ever meet?

Mr. SAFIR. No. What I am saying is the Board met at a time when I think a number of major policy changes, such as the creation of the Office of Enforcement Operations, the implementation of new witness security procedures in the Marshals Service and in the Bureau of Prisons had been implemented and had been given a chance to

operate and the Board met to review those. I think that was appropriate.

Chairman NUNN. What recommendations has the Board made since 1978 for major program changes?

Mr. SAFIR. They have made recommendations relative to production of witnesses, they have made recommendations relative to the utilization of witnesses in the program in future cases, they have made representations, policy decisions relative to continuing protection for witnesses in the program.

Chairman NUNN. They made all of these in that one meeting they had?

Mr. SAFIR. That is correct.

Chairman NUNN. Didn't the Attorney General ask the Board to meet every 6 months, or put out an order saying they should meet every 6 months?

Mr. SAFIR. I don't know if he did or not. I assume he did.

Chairman NUNN. Are you on the Board?

Mr. SAFIR. Yes, sir.

Chairman NUNN. Who calls the Board to a meeting?

Mr. SAFIR. The Deputy Attorney General's Office.

Chairman NUNN. Do you think it would be helpful if the Board met more often and you had more high-level discussions? You have testified that you don't have leverage with these other agencies, you have got a Board here that theoretically has more leverage, more clout. Don't you think it would be helpful if you were able to present your problems to that Board on a periodic basis?

Mr. SAFIR. Honestly, Senator, I have had absolutely no problem in getting the problems of the Witness Security Division brought to the attention of the highest levels in the Department, none whatsoever.

Chairman NUNN. It is just that nothing happens after you do.

Mr. SAFIR. I can't comment.

Chairman NUNN. Mr. Safir, at least nine of the most vital of these recommendations, it seems to me, by your own testimony, have not been addressed in any kind of significant way, certainly it has not been fully resolved. Would you generally agree with that, that there are a number of these recommendations that have not been?

Mr. SAFIR. I think there is some question as to some of them. However, I think that the recommendations under the control of the Service have been addressed.

Chairman NUNN. I don't want to detract from the positive things you have done, but neither do I believe should we unrealistically really claim credit for solving problems that have not been fully resolved.

When you say the Service has implemented each of these recommendations, you really need to qualify that by saying: Which are under the control of the Marshals Service?

Mr. SAFIR. That is correct.

Chairman NUNN. A number of them which were not under your control have not been implemented.

Mr. SAFIR. That is correct.

Chairman NUNN. Is there any really effective and efficient way to run a program such as this without centralized control, authority, responsibility, and accountability?

Mr. SAFIR. That is certainly the ideal way to run it, Senator. The requirements of the witness security program require close and daily scrutiny and the ability to hold people accountable for their actions. That is best done by a centrally controlled headquarters.

However, the Service, based on its resources and its structure, is not in the position to do that.

Chairman NUNN. You are not in the position to really control agents out there in the field who work for marshals?

Mr. SAFIR. Direct line authority for the majority of the witness security inspectors is through the U.S. marshals.

Chairman NUNN. Have you made any suggestions as to how that should be changed, if it should be changed?

Mr. SAFIR. I am not sure that it can be changed within the Marshals Service, Senator, unless each program in the Service is given the resources necessary to function. As long as any program within the Marshals Service does not have adequate resources because of our statutory responsibility to the courts, resources from other programs will be diverted.

Chairman NUNN. Do we need, as some of the other witnesses have said, a special division in the Department of Justice with line authority up to an Assistant Attorney General to give the program the priority and attention it deserves?

Mr. SAFIR. That is an interesting question which I have given a lot of thought to. Based on the fact that we see no anticipated resources coming to us, at least not at that point, based on what we have been told our 1981 and 1982 budget looks like, I can forecast no significant improvement in program services with those kinds of resources.

So unless, as I have just stated, each and every program in the Service is given the resources it needs to do the job—it probably would operate better in that fashion.

Chairman NUNN. It probably would be a good thing to do, then?

Mr. SAFIR. I think it would be good if the Service did get the resources that it needs to adequately do it.

Chairman NUNN. By that you mean by kicking it up higher in the line authority that it might get more resources and might get a higher visibility and more priority.

Mr. SAFIR. No, Senator. What I mean by that is that this program needs adequate resources to do its job and whether it is in the Marshals Service or in the Department, unless those resources are there, they are going to have the same problems.

Chairman NUNN. You are saying create the additional division. You are saying as it now exists you see no evidence you are going to be able to increase resources for the witness security program based on the present budget projection?

Mr. SAFIR. The Director and I have discussed this at length and based on our projected budgets for 1981 and 1982, we do not see increased resources in this area.

Chairman NUNN. We have heard stories from witnesses and law enforcement officials like—concerning the issues of inexperienced marshals from various portions of the country on protection details. Generally the stories emphasize the lack of concern for the security, lack of sensitivity to the witnesses, lack of training and awareness. Whether

these are true or not in all detail, whether they are exaggerated, do the present union rules in the Marshals Service affect this situation?

Mr. SAFIR. Yes; we do have a national union. They have local agreements for rotation of deputies. That includes all assignments. We are constrained by this union agreement to rotate deputies through witness security assignments which means that every deputy in the district has an opportunity to work on that assignment.

Chairman NUNN. Why is that? Is that because they consider this assignment to be a plum or do they get more overtime, get more pay? Why is it they want to rotate through there?

Mr. SAFIR. Witness security assignments, because of their 24-hour nature do provide a significant amount of overtime.

Chairman NUNN. How can this problem be addressed?

Mr. SAFIR. The primary way in addressing that problem would be to have the union, the witness security function exempted from the bargaining unit.

Chairman NUNN. Has this recommendation been made?

Mr. SAFIR. We have explored it. It is not an easy process. It requires a Presidential approval, as I understand it.

Chairman NUNN. Can the President, within his authority, make this change without coming back to Congress?

Mr. SAFIR. Again, I am not an expert, but I believe he can.

Chairman NUNN. Has the Department of Justice studied this problem?

Mr. SAFIR. It is under study right now.

Chairman NUNN. So what we have is the union rules requiring the rotation of all of these deputy marshals to the witness security area which means no matter how hard you try to have a specialized group there now that are really highly trained the rotational policy requires you to put inexperienced, untrained people in charge of security areas?

Mr. SAFIR. Not in charge. The details are run by witness security inspectors, but they do participate.

Chairman NUNN. In guarding a witness properly, every person on the detail really needs to have the most training possible.

Mr. SAFIR. That is certainly the most desirable way to have it.

Chairman NUNN. So this is a real deficiency that needs addressing?

Mr. SAFIR. I believe so.

Chairman NUNN. Do you know whether the Department of Justice has requested the President to institute this exemption?

Mr. SAFIR. I do not believe they have.

Chairman NUNN. How long has that been under advisement? Do you know?

Mr. SAFIR. We have not made a formal request to the Department to do that. We are currently studying whether or not it has a possibility of being implemented.

Chairman NUNN. If the U.S. marshals position were a merit position with a blue ribbon selection panel or some other form of merit selection, instead of an outright appointment by a recommendation of the President with consent of the Senate would this affect the witness security program or the overall Marshals Service possibly or would it have any kind of real change?

Mr. SAFIR. Let me say that the vast majority of U.S. marshals are professionals and have been of tremendous assistance to us. However, on occasion the selection process has interfered with our ability to control witness security details.

Chairman NUNN. Do you have any recommendation for us along that line?

Mr. SAFIR. It would be only a personal recommendation.

Chairman NUNN. What is your personal recommendation?

Mr. SAFIR. My personal recommendation is: A law enforcement agency with a national mission should have merit selection professionals who report to a centralized headquarters. That is my personal opinion.

Chairman NUNN. Do you think that is being considered by the Department of Justice?

Mr. SAFIR. I do not know.

Chairman NUNN. Of course, the Congress has the major decision here.

Mr. SAFIR. Yes; they do.

Chairman NUNN. Since the Senate of the United States in particular has the major input in the selection of the marshals.

Mr. SAFIR. That is correct.

Chairman NUNN. So this is something that would have to be considered here, as well as in the Department of Justice. But you do believe it would have a very positive effect professionalwise on the Marshals' Service?

Mr. SAFIR. I should point out, yes, the Department has addressed it. In fact, they have proposed legislation changing the appointment process of marshals.

Chairman NUNN. When did they propose that?

Mr. SAFIR. I don't have a specific date. There is, in fact, specific proposed legislation for the change of the appointment process.

Chairman NUNN. Do you have any U.S. marshals who have refused to handle witnesses in their jurisdiction and who do not cooperate with the program?

Mr. SAFIR. Yes.

Chairman NUNN. What can you do about it when that happens?

Mr. SAFIR. I can try to change their minds, which I have been successful in doing on occasion, or I can use the people who report in line authority to me to fulfill the mission in the district.

Chairman NUNN. How many of these would you have out there in the field that will not cooperate in this program?

Mr. SAFIR. It is a small number. I would say under five. However, we get back, which I hate to keep talking about, but it is a fact to the resource problems, and often when a marshal of the best intention wants to cooperate with the program and help us, if his courts or his other requirements are demanding often he cannot respond to the witness program.

Chairman NUNN. Do you presently have line control and authority over 70 percent of the witness security inspectors?

Mr. SAFIR. No; I have authority over 40 of 131.

Chairman NUNN. Is that by law?

Mr. SAFIR. It is by policy.

Chairman NUNN. Whose policy?

Mr. SAFIR. The Service, Marshals Service.

Chairman NUNN. Could you have line authority over more of them if you decided to yourself?

Mr. SAFIR. I think the Director possibly could do it. But it would be taking resources away from other programs and, of course, our first priority has to be court security.

Chairman NUNN. Do you agree with suggestions made by others that a highly qualified team of experienced personnel in matters of employment, documentation, social services, finance, and other necessary disciplines should be required by the program to assist witnesses?

Mr. SAFIR. I think any qualified people in any of those areas would be helpful.

Chairman NUNN. Is there a basic inconsistency between the promise given to a prisoner-witness that his family will be located near enough to his prison to visit him and what we have been told are the security rules of the Marshals Service which do not permit prisoner-witness families with new names to visit the prisoner who is protected in an MCC jail under his original name?

Mr. SAFIR. That is not our policy. Our policy is that prisoner-witnesses' families are located in an area which is safe and where they can most reasonably be expected to be employed and adjusted. We do not take as a primary factor consideration, the fact that a witness is in a particular institution. The primary reason for that is, witnesses are often transferred from institution to institution and we would be moving people on a continual basis, which is disruptive not only for the family, but also very expensive for the Service. There is no prohibition by us on witnesses visiting prisoners. However, I should point out that we do not provide the funds for those visits.

Chairman NUNN. Why do we hear so much frustration in this respect?

Mr. SAFIR. Because I believe that prisoner-witnesses and certainly from a human standpoint, rightfully so, want to visit with their families. We do not have the capacity to locate a witness next to the institutions in which they are, and very often that does become a security problem.

Chairman NUNN. Are you saying the families are free to visit them if they want to, but they are so far away they cannot afford to do it?

Mr. SAFIR. In some cases that is true, in some cases it is not. In some cases witnesses are located not far from institutions and do visit.

Chairman NUNN. But you do not have any policy precluding their families visiting them?

Mr. SAFIR. We do not.

Chairman NUNN. We had a witness yesterday who testified he had been in the program, witness-prisoner for 2 years, 2½ years, and he had only visited with his family one time, and it was the impression that I got that he felt that was the policy.

Mr. SAFIR. I read the statement and it was his impression, but that is not our policy, Senator.

Chairman NUNN. Would you look into that particular case for us and see what happened there? Would it be a big security problem if the families did visit them?

Mr. SAFIR. No; I don't believe it would be as long as the mechanism for them entering the prison and the technical details of the identification for them would be worked out. We have done it.

Chairman NUNN. Suppose the family had a new name and the prisoner had his old name. Wouldn't that create—

Mr. SAFIR. It would, but we have worked it out with the Bureau of Prisons and they have been very cooperative in facilitating entry of these people into the prisons.

Chairman NUNN. Is it accurate to state that witnesses are not provided with a copy of the memorandum of understanding or agreement which they signed into the program?

Mr. SAFIR. That is accurate. For security reasons, we do not provide them with this document. However, they can review the document or their attorneys can review the document any time that they like.

Chairman NUNN. Why is it that they don't get a copy?

Are you afraid they will lose it?

Mr. SAFIR. We have had occasions in which the witnesses have had thefts of their homes or they have lost property, and it has clearly identified them as members of the program.

Chairman NUNN. Many witnesses have stated there should be a cooling off period for the relocated witness in a nearby interim area, where the Government agencies and prosecutors can debrief the witness, where the witness can receive the necessary counseling and expert advice he and his family need to relocate and where they can wait for adequate documentation to arrive.

What is your opinion on this?

Mr. SAFIR. In the ideal situation, that probably is a good idea. However, reality as to the availability of personnel, funds, and the documentation process, I have found that what this cooling off period does under the current circumstances is cause the trauma of two moves, taking children out of school twice, having wives and teenagers uprooted on two different occasions. I found that under our current capabilities it is not a viable alternative.

Chairman NUNN. With your current capabilities. Do you think it is a viable alternative if you had more capabilities?

Mr. SAFIR. I think it is something that could be looked at. I think we really have to study closely what a witness gains in the security in that 2- or 3-month period; again, additional funds, and it would depend on who was available for counseling in the area.

Chairman NUNN. Would you furnish for the record the amounts you have spent on temporary facilities like motels in the last couple of years?

Mr. SAFIR. Yes.

[The material referred to follows:]

The Marshals Service has no current mechanism for extracting temporary versus permanent housing expenses except on an individual case compilation basis. Estimated expenditures for temporary housing in the relocation area (before the witness finds permanent housing) and in the danger area when the witness returns for testimony are as follows: fiscal year 1979—\$2,001,053; fiscal year 1980—\$1,675,564.

Chairman NUNN. It seems to me if the Marshals Service kept several apartments around it might be cheaper than having to rent motel rooms on the temporary basis and the apartments could facilitate a longer stay?

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Mr. SAFIR. Our policy is that temporary motel housing should be used on a limited basis and people should be put in apartments as quickly as possible.

Chairman NUNN. You mentioned legislative changes, at least changes that you feel can be implemented either by Presidential changes, or Executive orders, or the Department of Justice policy.

One of the things you mentioned was the Fair Labor Standards Act. We just went into that and in the interviews with staff I think you mentioned the Federal Vital Statistics Act and legislation to protect the liability of States that offer assistance. Are there any other legislative changes that we should be looking at?

Mr. SAFIR. I think some kind of legislation that would mandate other Government agencies to assist us and give them the ability to dedicate resources to that assistance would be helpful.

Chairman NUNN. We have been told there should be certain safe sites to house prisoner-witnesses in major metropolitan areas, so they can have some security, peace of mind, prior to testimony.

Is that something that is being considered? Do you think you can make improvements there?

Mr. SAFIR. Yes; we are looking at safe sites. In fact, we have actually gone out and done security surveys of one site and have negotiated with another Government agency for acquisition of it. We are also looking at a number of private sites right now.

Chairman NUNN. We have heard about the *Ruffalo* case which involved a child custody issue in the witness security program. That received a good bit of publicity. Other rather severe problems have come to our attention regarding child custody and the estranged relocated spouse. I can't think of a more difficult area than this myself and I don't have any pretense to having solutions to it, but what are you working on in this respect?

Mr. SAFIR. We recently, in conjunction with the Deputy Attorney General's Office, have come up with a policy which we hope will mitigate at least some of the trauma involved in this kind of problem. Often the problem is that the witness who is relocated has custody of the child at the time of relocation but then the individual remaining behind has the custody changed in a court of law and the witness has the inability to respond.

We have changed our policy recently where we will provide and pay for counsel for the witness who has been relocated to go and answer the State court proceeding. So that we don't impose ourselves as being the domestic court. We will produce the witness back in the area and the remaining parent gets a court order or files an action to change custody or gets the custody changed, we will provide a mechanism and the funds for the witness to return in a secure manner and answer that proceeding in the State court.

Chairman NUNN. Mr. Safir, you state in your statement that 95 to 97 percent of the individuals in the program have extensive criminal backgrounds.

Is that correct?

Mr. SAFIR. Yes, sir.

Chairman NUNN. Does this figure include the individual who is not a career criminal but somehow got mixed up in criminal activity?

Mr. SAFIR. This would be based on—if he had a criminal record, that would be the criteria, Senator.

Chairman NUNN. You very frankly and candidly admit that the program is not designed, nor equipped, to handle people who have good backgrounds without past criminal records and who have good credit ratings and that kind of thing. You really just aren't designed and equipped to handle that kind of individual?

Mr. SAFIR. We can handle them, but as far as restoring them to the same standard of living that they left behind, in many cases we cannot.

Chairman NUNN. You can basically protect their lives, but that is about it?

Mr. SAFIR. We can protect their lives, get them employed, but we cannot give them what they had. That is correct, Senator.

Chairman NUNN. We have also heard complaints about the witnesses that feel that they are over the barrel because they cannot pursue lawsuits, that kind of thing. One witness said the moving of his furniture caused a great deal of damage and the moving company knew he was relocated and knew he would have a hard time pursuing any kind of action. How do you handle that?

Mr. SAFIR. That is not true. Witnesses can sue movers and we can facilitate that by getting the records sealed in the court in which the suit is filed.

Chairman NUNN. Have you recently discontinued using a certain moving company because of the various claims?

Mr. SAFIR. Yes, we have.

Chairman NUNN. Mr. Safir, our staff has been working with yours. In some areas we have gotten good cooperation and others we have been very frustrated. One of the areas we have been frustrated is on the questionnaires we had sent out and the other areas in verifying complaints. We had hoped we would be able to verify the complaints with more of these witnesses. We did not want to put witnesses on we had not been able to check out because we know allegations can be made freely. We want to make sure we have at least done what we can to check that. I am going, rather than go into the past I am going to submit those questions to you for the record on these points. What we are looking forward to is working with you in the future as closely as possible and assist you in every way we can to improve this program. I am not going to dwell on past frustrations. I have a series of questions I would like you to answer. I think it is important you realize some of the frustrations we have had in trying to put this set of hearings together.

Mr. SAFIR. Senator, I appreciate that. I do want to state for the record that we look at this as a constructive hearing and a helpful one. I believe that my staff has worked very closely with your staff and has spent many man-hours and a lot of work in assisting them. Very often in a security program, a staff's interpretation of what is security and ours are not always the same.

Chairman NUNN. That is understandable. I do not want to dwell on it. I want to make sure we look at these problems only as some of the things we need to iron out as we continue to work together.

One other area that counsel calls to my attention, there have been several allegations made in public session about the Marshals Service

in certain cases. We would give you right at this time, if you want to, or through further written submission to the record, to respond to those if you think they are inaccurate or unfair.

Mr. SAFIR. We have advised your staff in writing of a number of the complaints that we see are inaccurate. As to any others it would serve no purpose as to "who shot John" with particular witnesses. Our purpose here is to constructively help the systematic problems in the program, not debate specific complaints.

Chairman NUNN. Thank you very much, Mr. Safir. We look forward to working with you to try to improve this program. We recognize that you do get blamed for a lot of things that are beyond your control. While we have been critical, we, again, repeat we hope the criticism is constructive and hope we can work with you and with the Department of Justice as well as the other Federal agencies to try to strengthen the program and make it as effective a tool as we possibly can against high-level organized crime figures as well as other important prosecutions. I also hope the new administration will study the hearings here and we certainly are going to make them available to them because they are going to have to do an awful lot in this area, I think, to improve the program.

But I also, again, repeat that I am very hopeful that the Attorney General and the Assistant Attorney General and others at high levels in the Department of Justice will look at these problems and will have before they leave office a set of recommendations to be made for the incoming administration.

Thank you and your assistant.

Mr. SAFIR. Thank you, sir.

Chairman NUNN. Our next witness is Mr. Paul Michel, Associate Deputy Attorney General, U.S. Department of Justice.

Mr. Michel, do you have anyone else with you who will testify?

TESTIMONY OF PAUL MICHEL, ASSOCIATE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY JUDITH BARTNOFF, FORMER ASSOCIATE DEPUTY ATTORNEY GENERAL

Mr. MICHEL. Good morning, Senator. I have asked Judith Bartnoff, formerly also an Associate Deputy Attorney General, to join me, if the Chair would agree.

I also had the understanding the order of witnesses—obviously you decide that, and it makes no difference to me, but that you might hear from Mr. Gerald Shur who is the Director of the Office of Enforcement Operations in the Criminal Division, prior to my being available to answer questions and to make a few observations. But we can proceed in either sequence, of course.

Chairman NUNN. I did not know the order of witnesses had been questioned here. We had intended to call Mr. Shur after we go through this with you. If you would like him to be up here at the same time?

Mr. MICHEL. Senator, I would suggest it might be most helpful from the committee's standpoint to hear from Mr. Shur first because he is in the chain of command for normal operational matters, in between the Marshals Service and those of us working in the Deputy Attorney General's Office.

Chairman NUNN. One of the big problems we think exists in the program is that those at high levels in the Department of Justice do not focus in detail on these programs. We heard pretty vividly from Mr. Safir not only does he not have the resources, he does not have the capability of dealing with a great number of these problems. There are a lot of things turning around, pending recommendations that have been made. We think we need to get down to the heart of it and that is what the top level people in the Department of Justice think about it. We will hear from Mr. Shur at a later point. If there are questions you think are detailed and cannot address yourself, that you cannot adequately respond to, we will certainly respect that.

Mr. MICHEL. Thank you, Senator.

Chairman NUNN. Could you stand, please. Do you swear the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MICHEL. I do.

Ms. BARTNOFF. I do.

Chairman NUNN. Ms. Bartnoff, are you with the Justice Department now?

Ms. BARTNOFF. Yes; I am. After 2 years in the Deputy Attorney General's Office, I arranged to be sent over for a while to the U.S. attorney's office in the District of Columbia where I have been handling civil cases. None of the cases I have been handling involve claims of protected witnesses.

Chairman NUNN. You are still with the Department of Justice, you just shifted jobs?

Ms. BARTNOFF. Yes; I am.

Mr. MICHEL. Senator, would you like me briefly to explain a little bit about my relationship with the program and Judy Bartnoff's and how the office is organized?

Chairman NUNN. That will be fine before we get into questions. You do not have a prepared statement?

Mr. MICHEL. No, I do not, Senator. As you know, I am an Associate Deputy Attorney General. I am the senior career person in the Deputy Attorney General's Office. I serve as Acting Deputy Attorney General when, as is the case today, Judge Renfrew is out of town. The Deputy Attorney General's Office, as you know, Senator, has reporting to it all of the major law enforcement components of the Department of Justice, including the FBI, the Drug Enforcement Administration and, of course, the Marshals Service as well as others. Because the affairs of the Marshals Service are of very high priority and interest to Judge Renfrew as they were to now Attorney General Civiletti, one of the several Associate Deputy Attorneys Generals in the office has had as a full time and priority assignment assisting the Marshals Service with its most urgent matters which certainly has included the witness protection program. I have not served in that role myself but Judith Bartnoff did for more than 2 years and it was indeed a critical period when the major review and changes in the program were first identified and decided on and then implemented.

I might add that presently another member of Judge Renfrew's staff, Jane Genster, has taken over those responsibilities formerly carried out by Judith Bartnoff. I think it is fair to say that from the stand-

point of Attorney General Civiletti and Judge Renfrew and certainly from my standpoint, when I act in Judge Renfrew's stead, matters relating to the witness security program are of absolutely highest priority and they receive continual and urgent attention. As Mr. Safir pointed out, that attention runs the whole gamut from periodic review of broad policy questions to dealing with emergency circumstances involving a particular witness at a certain stage of his association with the program. I might add too that—

Chairman NUNN. So who is in the direct chain of command here now? Ms. Bartnoff was in that. What was your position?

Ms. BARTNOFF. Associate Deputy Attorney General.

Chairman NUNN. Is there more than one of those running around?

Ms. BARTNOFF. Yes.

Mr. MICHEL. There are several.

Chairman NUNN. For what? Do you have another part of the title?

Ms. BARTNOFF. I think that title is long enough, Senator.

Chairman NUNN. If somebody said they want the Associate Deputy Attorney General, do you go, or do four people report? How many people are in that category?

Ms. BARTNOFF. I think the largest number there have been is four. I believe now there are two.

Chairman NUNN. How do we know which one is in charge of this program? Is it just by designation?

Ms. BARTNOFF. They are basically staff designations within the Deputy Attorney General's Office. When there were some problems that involved more than one of us, more than one of us would become involved.

Chairman NUNN. Mr. Michel, what is your present position?

Mr. MICHEL. Associate Deputy Attorney General, but I am the senior one of the Associate Deputies in the office now.

Chairman NUNN. Some Associate Deputy Attorney Generals are more equal than others and you are most equal of all, right?

Mr. MICHEL. Yes, sir. The difference is who becomes Acting Deputy Attorney General when the Deputy Attorney General is unavailable.

Chairman NUNN. Who has Ms. Bartnoff's job now?

Mr. MICHEL. Jane Genster.

Ms. BARTNOFF. I think technically—this may be more bureaucraties than you want to hear, Senator—technically she has taken over many of my responsibilities. Her title is Special Assistant to the Deputy Attorney General.

Chairman NUNN. She has the title you formerly had dealing with the witness security program?

Ms. BARTNOFF. That is right. My responsibilities in the deputy's office included general oversight of the Marshals Service, the Bureau of Prisons and the witness security program, among others.

Chairman NUNN. Have you just left that position, is that the reason you are here?

Ms. BARTNOFF. That is right. I am here because I was involved with it for 2 years and was, in particular, involved with the Witness Protection Program Review Committee that made the recommendations that you discussed this morning, as well as with implementation of those recommendations. With that, Senator, I began in the Depart-

ment of Justice working with Mr. Civiletti in the Criminal Division. I started out in the program as the Criminal Division representative on that committee. When we moved to the Deputy's office, I changed roles.

Chairman NUNN. Is Ms. Genster here? How do you spell her name?

Mr. MICHEL. J-e-n-s-t-e-r.

Ms. BARTNOFF. G-e-n.

Chairman NUNN. Is she here today?

Mr. MICHEL. She is, Senator.

Chairman NUNN. Could she come up too?

Ms. GENSTER. I am she.

Chairman NUNN. Let me give you the oath also. Do you swear, the testimony you give will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. GENSTER. I do.

TESTIMONY OF JANE GENSTER, SPECIAL ASSISTANT TO THE DEPUTY ATTORNEY GENERAL

Chairman NUNN. Since she assumes your responsibilities, I want to make sure she is here and I am glad she is.

Mr. MICHEL. Senator, could I outline the chain of command because you asked about that earlier and we did not give you a very direct answer. Starting with the Marshals Service, of course, Mr. Safir reports to the Director of the Marshals Service. The Director of the Marshals Service and the Marshals Service institutionally report to the Deputy Attorney General directly. But in order to have very extensive involvement on a day-to-day basis and sometimes indeed many times per day, we have in addition to the direct involvement of the Deputy the system of designating one of the staff members in the Deputy Attorney General's Office to work on an extensive basis with regard to this program. The Criminal Division is among the enforcement entities of the Department of Justice that reports directly to the Deputy Attorney General and generally to the Office of the Deputy Attorney General.

Mr. Shur, who is the director of what is known as the Office of Enforcement Operations, which is a part of the Criminal Division, of course, reports presently to Assistant Attorney General Philip Heyman who is in charge of the Criminal Division. But with regard to many detailed matters, Mr. Shur would be working directly with, formerly Judy Bartnoff, and now Jane Genster, and also on occasion with the Deputy Attorney General.

Chairman NUNN. Let me just go through a series of these problems and get your response to it. I have a lot of questions here. I hope we can go through them rather rapidly. Mr. Safir has said what he can and cannot do. I think the essential questions now are what are those at higher levels are doing to help correct these problems. There seems to be a great number of problems with adequate documentation. On one hand the witness security program insists that only real documentation be issued by the appropriate State, local and Federal entity. Oftentimes this documentation is slow in coming and more often than not it is only surface documentation with no background which is capable of being checked.

On the other hand, the witness security program will not use the real background of a witness and modify it for security purposes to secure an adequate background. What is being done by the Department of Justice to solve this documentation problem? It seems to me so-called sanitized résumés and school records now being provided only invite curiosity and make the witness and his family dependent on the marshals forever. Several questions on that score.

Has the Department of Justice sought the counsel and assistance of experts in the CIA on this problem or the FBI?

Mr. MICHEL. Senator, I think Mr. Safir covered the extent to which other agencies were able to be helpful on the basis of their own experiences. I do not really have anything to add to that. Our main role is to try to use the full leverage that the Deputy Attorney General may be able to bring where another agency is slow or incomplete in complying with requests that we made for documentation. We take those steps frequently.

For example, this fall Judge Renfrew had an exchange of correspondence with the Social Security Commissioner to try to improve the timeliness and degree of assistance we have been getting all along from that entity. The Marshals Service is quick to bring to our attention those things which they feel they are not making headway on. When they bring those facts to our attention, we get into action right away. The problem is that it is one thing to ask for and it is something else to be able to command cooperation. I would think that this problem of protecting witnesses' lives, which, after all, is what the witness security program is all about, can be compared to emergency circumstances that from time to time face the Government although it is long term and not short-term emergency. As I am sure you know, Senator, in other emergency programs there is direct authority conferred on the responsible official to be able to, as the operational people will say, task other agencies, and there is a mandate on other agencies to comply.

For example, the Federal Emergency Management Agency has that kind of authority as a matter of statute. And the Attorney General and deputy do not. One subject of possible legislation which it seems to me the Senate and the House as well might want to consider is either, as a matter of general sense of the Congress, to encourage other agencies to cooperate even more fully than in the past, or, alternatively, to provide some specific authority. It would not be complicated to draft such a thing parallel to that given to the FEMA people that would empower the Attorney General or the deputy to task these other Federal agencies that are involved in producing documents.

Chairman NUNN. Has the Justice Department proposed any such legislation?

Mr. MICHEL. Not to my knowledge.

Chairman NUNN. Would you check into it and see if there is anything that is in the bill on that and let us know whether you do propose it? There is a lot of difference in proposing a piece of legislation with Justice's backing and without it. I think if you were to make that kind of proposal, we certainly would do what we could to assist you.

Mr. MICHEL. Thank you, Senator. I will look into it.

Chairman NUNN. We have been told there are problems with States that will not cooperate in providing documentation. Yet the witness

security program is available to States. Has the Department of Justice contacted each State's attorney general or Governor to secure their cooperation?

Mr. MICHEL. Senator, I can not relate State by State exactly what contacts or at what level have been occurring. But I know that there has been an extensive effort spearheaded by Mr. Safir and his colleagues to establish and maintain the best possible contact with people who are in various State agencies.

Chairman NUNN. We just heard from Mr. Safir that he could not get this done at his level. This is why we are going to a higher level. We are going to go through a whole string of questions here and if the answer to every one of them is Mr. Safir has been working on this, it is easily understood why we have not gotten more done in terms of cooperation with States and with Federal agencies. Somebody at the high level has to make these kind of contacts. Someone with leverage and clout has to follow through with it.

Mr. MICHEL. Senator, I agree with that. That is exactly the theory with which we try to operate. My problem is there are many problems that can effectively be solved and are effectively solved by Mr. Safir. The system works best where the things that can be solved at that level are solved at that level and, as you say, where they cannot that they get higher level attention.

Chairman NUNN. He pretty well put on the record this morning that some of the most significant problems in the witness protection program have not been able to be solved at that level, including recommendations the Justice Department itself made 2 years ago.

Mr. MICHEL. Senator, that is true. I think virtually every one of them become enmeshed in the budget process where in the final analysis it is not the Attorney General either. You should know that the cutbacks in the Marshals Service positions and money which Mr. Safir commented about were strongly contested by Judge Renfrew with regard both to fiscal 1981 and 1982 with OMB. But in the final analysis, the administration has to make trade-offs and choices. We have not been able to always prevail in those contests.

Chairman NUNN. I certainly understand the budgetary problem. We can't quarrel with that. You do what you can there. All of us hopefully will give more attention to that in the future. There is a whole set of problems here. Most of the ones that could not be solved by the Marshals Service, other than resource problems, cannot be solved by the Marshals Service. It seems to me the Attorney General's Office and higher levels have to address that problem.

Mr. MICHEL. That is right. With regard to the specific problem you highlighted, I would just say I do not have great hope that any number of contacts, regardless of what the level would be, would have a very high chance of success because those States have made a judgment presumably based on opinions of their own lawyers that they have got problems of liability which, under their particular legislative structure they think are too heavy to make it sensible for them to cooperate, though many other States do.

Chairman NUNN. Do you exempt those States from having any cooperation on the other side of the witness security program so if they are not going to cooperate with the witness security program, we do not cooperate with them?

Mr. MICHEL. I do not know the answer to that, but I will find out.
Chairman NUNN. Nobody has contacted these States, but you are making a judgment it would not do any good to contact them anyway? Nobody at high level has contacted?

Mr. MICHEL. I do not know what levels or exactly what contact there has been with those 14 States. My understanding of the problem is that it goes back ultimately to the State's judgment about legal liability and other legal problems.

Ms. BARTNOFF. Let me also add, Senator, I do not know that there are State witnesses from any of those States now in the program, but we can check on that. One recommendation that we have made that I believe we have been essentially forced to follow through on even more than we might have liked to because of our budget problems, is that when State witnesses come into the program, generally the Federal Government is reimbursed by the States for the expenses that are occurred in protecting those witnesses.

Chairman NUNN. One of the things that I think is a big roadblock on State participation as we understand it is the Model Federal Vital Statistics Code, is that accurate?

Mr. MICHEL. I do not know, Senator.

Chairman NUNN. Could you look into that to see if there can be an exception made in the Federal Vital Statistics Code?

Ms. Bartnoff, do you know that?

Ms. BARTNOFF. I do not know that. I know there were certain modifications in the program that I believe might have addressed some of these problems that were in the draft of the criminal code reform bill which as we know has not been passed. To my knowledge the major legislative changes that have been proposed were proposed in that bill. It is true the major change that was proposed was to change the emphasis, from safe houses to relocation. It is my understanding that that whole question of civil liability and what hold harmless legislation would mean is now under study in the Deputy's office although other parts of the Department had been looking at it I believe. What they wanted to do was present a package to the Deputy's Office after it was studied.

Chairman NUNN. We understand that it has been studied now for 2 years. Every time you propose changes in the law you take another period of time.

Ms. BARTNOFF. That is true. It is my understanding it has been in the Deputy Attorney General's Office for the last few months.

Chairman NUNN. We heard from time to time various interested Government officials have made suggestions such as setting up a secure system involving the use of corporate entities set up by the Government which provide a telephone switching service to enable the witness security program to provide potential creditors and employers with basically true but modified information concerning the relocated witnesses. We understand this is something that has been suggested to the higher levels of the Justice Department.

What is the status of that? Is it being actively considered?

Mr. MICHEL. I think it is. I do not know what the resource requirement of that would be. But I assume they are not prohibitive. I think something along that line may well be done.

Chairman NUNN. Who's shop is that in now?

Mr. MICHEL. I think Mr. Shur might be able to provide some information on that.

Chairman NUNN. Mr. Shur? Come on up.

Mr. SHUR. Thank you.

Chairman NUNN. Please stand. Do you swear the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SHUR. Yes, sir.

TESTIMONY OF GERALD SHUR, ASSOCIATE DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS, U.S. DEPARTMENT OF JUSTICE

Chairman NUNN. What is the status of that, Mr. Shur?

Mr. SHUR. We do not have the hold harmless legislation in our shop. It is under discussion. It was reviewed, as Mr. Safir pointed out, 2 years ago, and it was apparently rejected by the Civil Division. The use of corporations as a subterfuge for supplying credit in that area creates a great many considerations that we have to look at. I personally have great reservations about utilizing corporations, if that is the question you want me to direct, as opposed to the first hold harmless legislation.

Chairman NUNN. I am really not trying to go into the merits of that right now, but rather the process by which these recommendations are considered. The question is, Who's shop is this in now?

Mr. SHUR. I do not know. It is over at the Marshals Service. Where it is I do not know. They have had a rejection from the Civil Division. Whether they have gone further with it or not, I do not know. I think there might be an explanation that I could amplify perhaps with respect to Mr. Michel and the procedures that we follow as to where responsibility falls.

Chairman NUNN. That is one of the big things we have had problems with. We have been investigating this for 8 months. We cannot grab hold of anybody over there that really will take responsibility with this over Mr. Safir.

Mr. SHUR. I can explain that, if I can, if it would be helpful to the chairman.

Chairman NUNN. It would be helpful.

Mr. SHUR. At least as I see it from the Criminal Division.

Chairman NUNN. It seems when we get over Mr. Safir and certainly over your level, at that stage the chain of command goes in many different directions.

Mr. SHUR. The Deputy Attorney General has oversight over the program and the Deputy Attorneys General over the past years—

Chairman NUNN. Who is Deputy Attorney General?

Mr. SHUR. Judge Renfrew and before that Mr. Civiletti. I suppose it is only useful to go back about 2 years when the Gibson Committee report came down recognizing the problems in the program. That report came about because I had written a paper that was critical of the program for the then-Assistant Attorney General, Mr. Civiletti. Mr. Civiletti asked Ms. Bartnoff as his special assistant to pursue that. She in turn wrote a report, a recommendation to the Deputy Attorney

General that this matter be reviewed, that it was in very, very serious trouble. The Deputy Attorney General then appointed a panel which Ms. Bartnoff was put on to take a good look at the program.

At about the same time Senator Abourezk was examining the program. Recommendations were made. As you found some were not implemented, many were implemented. We are assigned, one of the recommendations I should say was the creation of the Office of Enforcement Operations which is assigned to the Assistant Attorney General's Office. We look to the Deputy Attorney General as a person to resolve the problems that we are not able to resolve at a staff level.

Chairman NUNN. That is Judge Renfrew?

Mr. SHUR. Yes. We have worked through Ms. Bartnoff, we work through Ms. Genster, we talked to Judge Renfrew directly. That is on behalf of Criminal Division. I do not always take up the marshals' problems.

Chairman NUNN. That specific proposal about documentation has gone to the Civil Division and rejected.

Mr. MICHEL. Senator, I should have mentioned earlier that the Civil Division has just taken a position just a week or so ago on this matter, and communicated it both to Mr. Heymann and to Judge Renfrew and the underpinnings of the Civil Division position and a weighing of it against the needs of the Marshals Service will be done by Judge Renfrew and are matters Jane Genster is looking into at the present time.

Chairman NUNN. Did it take the Civil Division 2 years to decide that?

Mr. SHUR. No, that decision was requested, 5, 6 months ago. When we began to get frustrated we did contact Ms. Genster, ask if she could assist in getting a reply which she did in a few days.

Mr. MICHEL. This is the second go-round, Senator. It's not that there was no answer for 2 years. There was a series of papers and studies done nearly 2 years ago as a result—the first time this issue was raised and studied. The result of all that was that the decision was made not to go ahead with this because of the judgment that risks of substantial liability, additional liability for the Federal Government, were too high. The Marshals Service, with further experience with the program and taking into account all the other reforms and changes, raised the issue again this past summer because it still seemed to them to be a substantial issue. It then initiated a whole second review over the fall of this issue which resulted in the Civil Division's memo of 1 week ago that I mentioned.

Chairman NUNN. Could we get a copy of that memo for the record? Again any of these matters you consider to be confidential can be handled by way of sealed exhibits.

[The requested information appears on page 247, supra.]

Ms. BARTNOFF. Sending it to the Civil Division was a good idea. The Civil Division represents the Marshals Service in the Department of Justice in circumstances when we are sued. So it was a natural and logical thing to send such a proposal.

Chairman NUNN. I understand. You have the Civil side of it. The top has to weigh the Marshals' need—

Ms. BARTNOFF. If that proposal had come to me without the Civil Division's views, I would have sent it to the Civil Division.

Chairman NUNN. I understand. It makes sense. Do we really need a Federal statute to hold States harmless? Is that a document misused by relocated witnesses?

Mr. MICHEL. I guess the question is whether the States really need it. If it were provided, the States who do not cooperate would change their position and would cooperate. I do not know whether they would without more or whether they would want more. And the second problem is, as the first time this issue was studied, we have to weigh the conflicting considerations of increased Federal liability versus how much would it add to the impact of this program. It is probably going to be a rather close call as I think it was before.

Mr. SHUR. If I may add, Senator, I think that is a close issue in that, we would be compelling State employees, albeit we may try to hold him or her harmless, a State employee to do something that his particular Governor or attorney general may not want him to do. Although we may be able to hold them harmless in some form, I am not sure we can effectively do that throughout his career.

Chairman NUNN. I think that depends on large measure whether somebody at high level in the Department of Justice is willing to, on occasion, pick up the phone and call the attorney general in the State and say, look, Mr. Attorney General, we have a real problem here, we have a problem here vital in attacking organized crime. If you have to do it with letters coming from the Marshals Service, we know how Government works, that does not do the job. It takes years. It really depends on whether somebody high level in the Justice Department first of all decides it is important and second decides it is important enough to take a few hours, days to deal with it.

Mr. SHUR. If I may amplify an earlier answer to one of your questions with regard to documentation; you asked if there was any submission to the Senate about that. In the new criminal code bill there is listed as one of the specific pieces of items that the Attorney General may issue documentation. It says for the first time in the statute that the Attorney General may provide to witnesses documents as may be necessary for their protection. Second, with the help of the committee there was placed in the legislative history the sense of the Senate that this was a useful thing to do to force States to cooperate with the Department of Justice.

Mr. MICHEL. Senator, I would like to add, I think your suggestion about calling States' attorneys general, Governors, or other top officials is a good suggestion. Like other steps, the key thing is to take it at the right time. It seems to me those kinds of phone calls would be timely when the Justice Department called and said Judge Renfrew has something to offer that solves the other fellow's problems.

The best time would be when the Civil Division has studied it and Judge Renfrew has made a judgment, and if he overrides the Civil Division, as he might do, and says, no, we are going to sponsor this anyway, then he would be in a position to have a meaningful conversation with his counterparts at the State level.

Chairman NUNN. I know there are a lot of considerations here. I can't make judgment on all this. I don't pretend to be an expert on this. There are civil problems, criminal problems; otherwise, I would

like to believe that people at high levels of the Justice Department were giving this program and the problems they are now experiencing, the kind of attention that most people in law enforcement feel it really deserves.

Mr. MICHEL. Senator, I would like to say on that score, because you are clearly correct that the Deputy Attorney General meets on a regular basis with the Director of the Marshals Service. Where specific questions and suggestions have been made, as in the case of the Social Security matter, which I mentioned earlier, immediate action has been taken by Judge Renfrew. We rely, I think, properly, to a very heavy extent, on Director Hall and also on Mr. Safir, who I think has done a superior job over the last 2½ years in vastly improving this program, to be the best judge, since they work with it on a day-to-day basis of when it is timely for the Deputy Attorney General to send a letter, make a phone call, call a meeting, forward a legislative proposal, or take whatever other steps seems to be needed to overcome obstacles which Mr. Safir or Director Hall have not been able to overcome on their own.

I think that Mr. Safir would agree and Director Hall would agree that every time they have made a specific request of Judge Renfrew—and in prior times of Benjamin Civiletti—they got prompt and very vigorous action.

Chairman NUNN. I think that is what Mr. Safir testified to. I don't think we heard anything different to that if I recall his testimony. I guess that gets to the question, whether the Attorney General has to go to the President with it? Certainly somebody controls the Social Security Administration. That is the frustration we have. I know people in the executive branch do, too. Sometimes you come to the conclusion Government doesn't work. Theoretically there is somebody who controls these agencies. When the Attorney General can't get something done on a lateral basis, it ought to go to the President. I know people are hesitant to bring witness security problems and social security problems to the desk of the President of the United States.

If we can't get cooperation between agencies at lower levels, it seems to me the President has to get involved and I also think heads are going to have to start rolling because somebody ought to be willing to cooperate without the President. This is not a matter the President of the United States should have to deal with. You heard one of your own people yesterday say they have been working on one case now, on a key witness against an organized crime family, 14 years and they still have not gotten the social security matter straight.

Mr. MICHEL. Senator, the landscape is not as bleak as it may appear when viewed from the standpoint of particular cases which may present specific problems. For instance, with regard to the social security matter, I see from the way it is developing that some changes have been made that a formal memo of understanding is being drafted and that Commissioner Driver in a recent letter to Judge Renfrew has assured that the Social Security Administration is going to be working things out essentially to all of our satisfaction.

Chairman NUNN. Most of those have occurred since we started investigating this program. Which is good. I am glad they are responding. That is why we are investigating it. You would like to think when

this problem of social security has been festering for a long number of years that somebody at high level, without having to tell the President he needs to worry about this, could get it done.

Mr. SHUR. The issue was raised, sir, at the meeting of the Council, which you referred to, with the Deputy Attorney General about 6 months ago. At that point the Deputy Attorney General requested the Marshals Service to prepare letters for him to the Social Security Administration.

I suppose that action and certainly the impetus of this committee has helped considerably in bringing about what progress has been made. He did respond at that time. The committee may also be interested in a memorandum which we will furnish later from the Deputy Attorney General to those of us involved in the operation of the program suggesting that meeting and suggesting that the reason we waited so long, which is about 18 months, was to allow us to get things in place. He said it was now time to evaluate the program. This was one of the problems that came up and was evaluated.

Ms. BARNOFF. I might add, the Deputy Attorney General changed at that time, as you may recall. Judge Renfrew scheduled that meeting in early June and held it in late June. I believe he actually came into office sometime in March. One of his first directions to me was that he wanted, after he learned his way around the building a little bit, one of the first things he wanted to devote his attention to was the witness security program. That meeting was a mechanism both to introduce him to the program and get people together.

There had been first Charles Ruff and then Mr. Michel has been Acting Deputy Attorney General for several months. We undoubtedly would have had an earlier meeting of the Review Board if there had been a Deputy Attorney General.

Mr. MICHEL. Senator, you were correct, too, in saying that the plan all along was that once it was time to begin meetings of that group that they ought to meet about every 6 months. Judge Renfrew reiterated that as the normal expectation when he set up the meeting last summer.

So that there would be another meeting coming up first thing in the new year.

Chairman NUNN. That is good. On the question of employment, one of the Department of Justice's recommendations back in 1978 was for the Marshals Service:

To establish a team of employment specialists charged with responsibility of developing and maintaining a bank of potential jobs for protected witnesses by making contact with employers throughout the country.

Do you think the recommendation has been carried out?

Mr. MICHEL. Not fully enough. As Mr. Safir pointed out, he would need, I think he said a minimum of four people doing that.

He now has one. But I think the other point—

Chairman NUNN. We also heard him say that he left it up to the witness security specialists in the field to do that. We had testimony just yesterday that they couldn't do it because they didn't have time. So everyone has relegated this employment down to the very bottom of their priorities, which I understand. I mean I know that you have priorities. The life of the witness has to come before getting a job, but somebody has to make this a priority too.

Mr. Safir also said he has no one to help him in headquarters except one person. That person is doing a fine job, but we must consider her background. No criticism of her is intended, but she is a high school graduate with no employment specialty or particular training in helping people find jobs. And she is only one person. We find this is the situation 2 years after the Department of Justice recommended the establishment of a "team of employment specialists." At some point somebody has to jump up to say to the Congress or OMB, look, we just can't make this work like this.

Mr. MICHEL. Senator, I think that is exactly right. We have done that. I think the point that Mr. Safir made bears reemphasis is that when we are being cut back a substantial number of deputy marshals, the very desirable step of adding both in the field and at headquarters additional employment specialists automatically falls by the wayside.

We have been substantially cut back in deputy marshals affecting all programs including the witness security program. That was a result of decisions made both at the level of the Office of Management and Budget and by the Senate Appropriations Committee.

Chairman NUNN. What about getting somebody in the Labor Department over there?

Mr. MICHEL. Senator, I think qualified people would be helpful and where they come from is almost irrelevant provided that they are under the management of Mr. Safir and other people. If we were to fragment responsibility for finding the jobs between the Marshals Service and the Labor Department, I think that would be undesirable. But if we can get the assistance of qualified Labor Department personnel working under Mr. Safir, that would certainly be one good way to solve this problem and improve the job location activities.

Chairman NUNN. We have already asked Mr. Safir to give us a documentation list of what he needs to make this job a necessity, I think, as part of the program a reality and he says he would. I hope you would help follow up on that because what we would like to do with it is ask the Department of Labor if they can furnish some people, he is talking about three or four people. It seems to me that that is feasible. We know that the Labor Department furnishes people for the strike forces.

Of course, we have got involved in that. We weren't doing very much on that score until we really came down hard a couple of years ago, but we are willing to try to help in this respect, if you could furnish really what you need.

What we really have here is the program that protects life but in many cases, not all, but in many cases does not make that life worth living.

Mr. SHUR. One comment. If the Labor Department were to rotate personnel, it probably would breach security or cause some security problems in that you would have a substantial number of people learning about where witnesses are living and are employed. It may be better to build within the Marshals Service a working staff that is large enough and competent enough to do the job.

Chairman NUNN. That is a judgment I can't make. I am sure there are problems, no matter which way you go, but I do think the biggest

problem is doing nothing. It seems to me a topnotch employment program, if you had one, would lessen the problems in terms of the extensive subsistence funding for the Government and also many of the psychological problems that cause the Marshals Service so much trouble.

I am sure when they take on a witness they don't have adequate jobs available so that the Marshals Service spends more time probably trying to comfort them on many other problems that are caused by this lack of job opportunity than they would take if you had adequate people trying to find jobs.

Again, I know it is not easy, but I think it has got to be addressed.

Mr. MICHEL. You are right. It might save money. We would like to do it. We do it as well as we can now within the limits that we have and I would think that since the problem is a long-term problem, not just a short-term problem, that it would be vastly preferable to increase the positions of the Marshals Service in order for them to have people directly responsible in their chain of command working under Mr. Safir who are also qualified to do this kind of work and are hired specifically for that purpose. But that means adding positions and what we are experiencing is a sharp cutback in positions we previously had. We are going to have to change the whole environment in which budget decisions are being made if there is going to be any hope of making serious progress on this front.

Chairman NUNN. Is this throughout the whole Department of Justice where you have been cut or is it primarily in the marshals area?

Mr. MICHEL. It is in a number of areas, Senator, and it is compounded by all of the things that all of your constituents know about, including the vastly increasing prices of gasoline, so that we end up with a problem sometimes where we have investigators who can't efficiently and effectively investigate because of limits on travel funds. There are limits that not only are a question of whether enough dollars were appropriated by the Congress in the first place, but also additional limitations imposed even under those figures as a result of congressional mandates and OMB dictates. We have had a series of problems this year in a fairly aggravated form all having to do with maintaining vital services that are essential to our law enforcement activities.

We have sought and in many cases obtained at least partial relief and in other cases full relief and in some cases we have not succeeded in obtaining relief that we thought was adequate. But it is very tough in a circumstance where the dollar buys less, less gasoline, less personnel to have both positions and dollars being cut back on the one hand and on the other hand say we should add positions, we should add personnel to do employment work.

Chairman NUNN. I understand that. I would like for you to prepare, if you would, a realistic cost estimate of the funding necessary to run a program with a reasonable opportunity to assist relocated witnesses.

Mr. MICHEL. We can do that. We will do that.

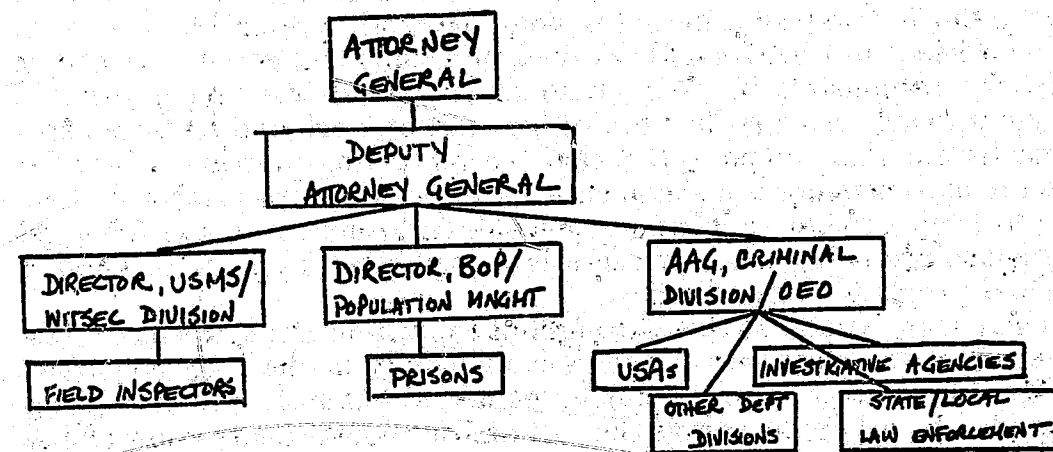
[The requested information appears on page 252, supra.]

Chairman NUNN. Also I would like for the Department of Justice to supply this subcommittee with an organizational chart which would

possibly reorganize the witness security program in such a way as to make sure we have direct line control authority, responsibility, and accountability from top to bottom. If you think you have already got that, then just furnish what you have got now, but we had a lot of testimony that says that we ought to have a rearranged situation. I think Mr. Safir himself said if the resource allocations remain as they are the only thing he knows to do is to have some line authority further to the top and give it would help give this program more priority.

Mr. SHUR. I think the failure is that the line of authority isn't going down. It is that Mr. Safir does not have direct line authority over those who are functioning in the program.

FEDERAL WITNESS SECURITY PROGRAM



LINES OF AUTHORITY

Chairman NUNN. What do you think we ought to do about that?

Mr. SHUR. I have to speak personally. I will give you my personal opinion.

Chairman NUNN. That is what we are asking.

Mr. SHUR. I think there should be a division within the Marshals Service; a division that is staffed entirely by the personnel that is needed. It ought to employ enough people to guard witnesses; it ought to employ social workers; it ought to employ what psychologists might be needed, and surely employment counselors. I think we ought to evaluate the entire needs of the program, put it in one division as you were suggesting earlier.

I would suggest putting it in the Marshals Service rather than having another free-floating division throughout the Department of Justice.

Chairman NUNN. I would agree with that. I think there are a lot of good people out there. I don't think it would make much sense to pick the whole thing up and move it. I think they need a lot of help.

Mr. SHUR. That is right. I think if Mr. Safir had line authority over everybody in the program they would have accountability and responsibility to one person which they do not have now.

Chairman NUNN. Couldn't this centralization be done within the Department of Justice without any kind of change in the law?

Ms. BARTNOFF. You mean within the Marshals Service?

Chairman NUNN. I am speaking of the centralization of the witness security program within the Department of Justice, making sure that everyone within that program does report directly to the Marshals Service.

Mr. SHUR. I have to give you a best guess. My understanding is that that would require the Director to take personnel from other places, from Marshals, and that would require an OMB decision and of course would raise havoc within the Service. It would just foul up every other program.

Mr. STEINBERG. I think the question is can the Department of Justice, does the Department of Justice have the authority to centralize the control over the WITSEC program?

Mr. MICHEL. The control is centralized.

Mr. STEINBERG. The testimony we have had is that it is not centralized. Mr. Safir just said they didn't have control over 70 percent of the people who work for him. The question is does the Department of Justice have the authority to order that the WITSEC program have control over each and every one of the WITSEC inspectors in the field?

Mr. MICHEL. Mr. Safir testified that the answer was yes, the Director can do that, but he can only do that if he had a lot more people because he would have to take people from other programs, he would have to operate these people on a totally dedicated basis where this is all they would do. Those people would not be available to guard Federal judges, courtrooms, do the many other things that the marshals are obligated to do.

So, yes, the authority is there, but the manpower isn't there and we are a long way. It would take a substantial increase in manpower to be able to do that.

Ms. BARTNOFF. Let me add one other thing because I think there has been some confusion in the way we are talking about this. There are certain functions in the witness security program now performed by the Marshals Service and others now performed by the Criminal Division. I don't believe you are suggesting this, but in case you are, I would like to suggest that it would not be a good idea to take the functions currently performed by the Criminal Division and merge them with the functions currently performed by the Marshals Service.

When the Witness Program Review Committee was first looking at this one of the suggestions that was made was to take everything out of the different places and put it together. The one decision that we made that I believe was a very sound one was to separate prosecutive decisions from witness services decisions. I think that part of what had been a problem earlier was corrected when everything was centralized within the Criminal Division.

I think it would cause serious legal problems, perhaps due process problems.

Mr. STEINBERG. We are not talking about prosecutive decisions, only decisions that affect the WITSEC program.

Ms. BARTNOFF. In that case, if your question is could the Marshals Service have control over all Marshals Service employees providing services to the witnesses without going through the local marshals. the answer is yes, it could. The question is whether as a practical

matter that is feasible. As a legal matter, I don't believe it would need any legislation or anything like that.

Chairman NUNN. We have heard various complaints that the Department of Justice throughout the years has not given the witness security program the oversight or priority it deserves. I know you probably quarrel with that, but the Witness Security Program Review Committee was set up in 1978 after the Judiciary Committee's Subcommittee on Administrative Practices and Procedures held a hearing on this subject matter and the Department of Justice came up with some new changes.

One recommendation was that a witness security program review board be set up to provide criminal program oversight and coordination, recommendations regarding major program changes, resolution of disputes.

Could you tell us who is on this Board and how often it has met since 1978?

Mr. MICHEL. Senator, I think the prior answers on that were accurate, that it was formed in 1979, that it did not meet initially because the program was in such a state of fluidity with major changes being made that once most of those changes had been fully made, the Board met this past summer and that the plan for it now that the program is stabilized is to meet every 6 months.

The Board includes representatives from the Marshals Service, the prisons, the Criminal Division, the Deputy Attorney General's Office and several other parts of the Justice Department.

But the most important observation I could make to try to assist the committee's understanding is that that Board is just a formalization of the day-to-day working relationship. Judith Bartnoff, during much of the period of flux, spent many hours a day every day on this, on problems associated with this program. Ben Civiletti spent many hours on this program.

Judge Renfrew has spent many hours on this program. There is no other program that I can think of that gets more attention when it is called for or that would be ranked by any of the officials in the Department as more urgent than this program. It clearly is vital to the most serious prosecutions we bring, and that is our most important business, bar none.

Chairman NUNN. Do you know if the 28 specific recommendations made by the 1978 Witness Security Program Review Committee have been carried out?

Mr. MICHEL. I would agree with that characterization of Mr. Safir, that all the ones that are within the capacity of the Marshals Service and I would add the Criminal Division and the Deputy Attorney General's Office, the Justice Department generally, to implement fully, have been fully implemented. In fact, as you very carefully cataloged there are a handful of recommendations that have either been only partially implemented or barely implemented at all. But I think in virtually all of those cases there would be a requirement, either of substantial additional positions and dollars or legislation.

Chairman NUNN. What recommendations have been made for legislation?

Could you give us a list of those recommendations the Justice Department has made on legislation concerning the witness security program that have not been passed by the Congress?

Mr. MICHEL. The only one that I have been made aware of was the proposal made I believe early in the present administration by Attorney General Bell to have the marshals appointed by the Attorney General rather than selected as they have been and still are.

Chairman NUNN. That one has not been passed?

Mr. MICHEL. That did not get very far.

Chairman NUNN. Could you furnish before this administration goes out and we still have people who are familiar with this program at the very tops of the Justice Department, could you furnish a set of legislative recommendations that you believe are necessary or the Department of Justice believes are necessary that would help improve this program, including those we have talked about in these hearings and perhaps those that we haven't, some we haven't talked about?

Mr. MICHEL. We certainly will endeavor to do that, Senator. It comes at an appropriate time because for example the Civil Division has now taken a final position and they either get overruled or they don't. If they do get overruled, we would want even without your request to frame a bill and send it up.

[The proposal referred to follows:]

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 7, 1973.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Attached for your consideration and appropriate reference is a draft bill "To provide for the appointment of United States marshals by the Attorney General".

Under existing law United States marshals are appointed by the President, by and with the advice and consent of the Senate, except in the Virgin Islands where the marshal is appointed by the Attorney General. Marshals are appointed for a term of four years, except in the Canal Zone where the term is eight years and in the Virgin Islands where no term of office is prescribed. All marshals are under the general supervision of the Attorney General.

For many years deputy and supervisory deputy United States marshals have been career employees. In 1959 the chief deputy marshals were given career status. In 1966 the Civil Service Commission placed these employees under the competitive civil service. Before that time they had been in the excepted civil service and were required to meet appointment qualifications prescribed by the Commission.

As a result of the career status afforded them, the caliber of deputy marshals, supervisory deputies, and chief deputies has improved considerably through the years and the turnover rate among these employees is the lowest of any category in the Department of Justice. We believe that similar results can be achieved by making the office of United States marshal a career position. Essentially, the marshal must have a knowledge of Federal and local laws, court rules and procedures, departmental rules and regulations, Civil Service Commission regulations, General Accounting Office procedures and pertinent decisions of the Comptroller General in the administration of civil procedures, criminal procedures, accounting procedures, and personnel actions. Suffice it to say, the Government and the taxpayer have a tremendous investment in such a man; hence, it is in the national interest that the position of United States marshal be converted into a career-merit service.

Section 1 of the draft bill would provide for the appointment of marshals by the Attorney General. The marshals would then be appointed in accordance with qualification standards prescribed by the Civil Service Commission. Such a change should make the office more attractive to qualified persons and would afford a

better opportunity for appointment as marshal to those who have experience as deputy marshals.

Sections 2 and 3 of the draft bill make the necessary changes to provide for career appointments of the marshals for Guam and the Canal Zone.

Section 4 would provide that marshals serving under a Presidential appointment on the date of enactment would be covered into the competitive service under title 5, United States Code, upon passing a suitable, noncompetitive examination prescribed by the Civil Service Commission.

The present method of appointment of the United States marshals has no relevance to the needs of modern law enforcement or the requirements of efficient administration. While marshals may have been policy making officials to some extent in the early days of the service, they are not today. This measure would provide for the appointment of non-policy making employees strictly on the basis of proven merit. Also, it would provide an improved structure of responsibility within the Department of Justice, would permit continuity and improvement of service in the marshals' offices, and would provide for advancement within the service which should serve as an incentive to qualified employees who aspire to the position of United States marshal.

This recommendation was made as early as 1912 by President Taft's Commission on Economy and Efficiency, in 1937 by President Roosevelt's Commission on Administration Management, and in 1949 and 1955 by the first and second Hoover Commissions.

The Office of Management and Budget has advised that enactment of this legislation would be consistent with the Program of the President.

Sincerely,

RALPH E. ERICKSON,
Deputy Attorney General.

A BILL to provide for the appointment of United States marshals by the Attorney General

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 561(a) of title 28 of the United States Code is amended to read as follows:

The Attorney General shall appoint a United States marshal for each judicial district.

(b) Section 561(b) of such title is hereby repealed, and subsection (c) of section 561 is redesignated as subsection (b).

(c) Section 565 of such title is hereby repealed.

(d) The sectional analysis at the beginning of chapter 37 of such title is amended by changing "565. Vacancies" to read "565. Repealed."

SEC. 2. (a) Section 24(b) of the Organic Act of Guam, as amended (64 Stat. 390; 48 U.S.C. 1424b(b)), is amended to read as follows:

The President shall appoint, by and with the advice and consent of the Senate, a United States attorney for Guam to whose office the provisions of chapter 35 of title 28 shall apply.

(b) Section 24 of such Act is further amended by redesignating the present subsection (c) as subsection (d) and inserting a new subsection (c) reading as follows:

The Attorney General shall appoint a United States marshal for Guam to whose office the provisions of chapter 37 of title 28 shall apply.

SEC. 3. (a) Section 45(a) of title 3 of the Canal Zone Code is amended to read as follows:

The Attorney General shall appoint a United States marshal for the District of the Canal Zone to whose office the provisions of chapter 37 of title 28, United States Code, shall apply, except as otherwise provided in this Code.

(b) Section 45(b) of such title is hereby repealed.

(c) Section 45(e) of such title is amended to read as follows:

The appointment and tenure of deputies and clerical assistants of the United States marshal are subject to section 562 of title 28, United States Code.

(d) Subsections (c), (d) and (e) of section 45 of such title are redesignated as subsections (b), (c) and (d), respectively.

(e) The caption of section 45 of such title is amended to read "§ 45. Appointment, leave, and residence of United States marshal; deputies and assistants."

(f) The sectional analysis at the beginning of subchapter II of chapter 1 of

such title is amended by changing item 45 to read "Appointment, leave, and residence of United States marshal; deputies and assistants."

SEC. 4. A United States marshal serving under a Presidential appointment on the date of enactment of this Act shall be covered into the competitive service under title 5, United States Code, upon passing such suitable noncompetitive examination as the Civil Service Commission may prescribe.

MS. BARTNOFF. Let me add there were a few recommendations made by the Committee that were not accepted by the Deputy Attorney General and were not implemented in the form that the Committee suggested. The one that I think of in particular is that the Committee recommended that the number of witnesses admitted to the program be limited to 20 witnesses a month. The Deputy Attorney General did not accept that recommendation and what was implemented instead was a goal of 90 witnesses a quarter, which I understand is now being met. There may be a few other specific recommendations that were modified in some way. We can supply that.

Chairman NUNN. Could you supply that for the record? That would be helpful. We have been told that, because of union regulations, deputies are rotated to deal with witnesses. We have been told that this leads to confusion and inexperienced, ill-trained, or insensitive personnel being involved with relocated witnesses.

We have further been informed that the Government itself can exempt certain priority programs under the Fair Labor Standards Act in situations where specialized personnel are required.

Has the Department of Justice attempted to obtain any such exemption which would enable it to cultivate a well-trained, experienced, sensitive group of personnel to assign to these witness details?

Mr. MICHEL. Senator, I think the answer is "No." What we have done is we have tried to obtain enough resources for the program through the budget process and that has not been entirely satisfactory from our standpoint. What we also could do and I think should do is to provide for training of deputies who are not permanently part of the program, but do participate in it through this kind of rotational program so that they are better equipped than they may be now to provide the absolute highest level of service.

It seems to me that that would be very desirable not only because it would best assure the result, but it would add to the flexibility of the program. It would help us for example where we get very sudden needs as we sometimes do for a very large number of people, if we could turn to a large force—ideally all deputy marshals, but maybe it would have to be done in increments—who would all have this training, that would be the way that we could strengthen this program best not only to serve individual witnesses but to be able to cope with unexpected surges in demand.

Chairman NUNN. How long is that going to take to get all of these people who are now assigned to security details trained?

Mr. MICHEL. That is not the problem. The problem is it takes money.

Chairman NUNN. In the meantime what we have got is the Fair Labor Standards Act as interpreted and negotiated, it requires that all of them be rotated. The testimony is that many of them are not qualified and have had no training at all. Your testimony further is there is not enough resources available to train them. In the meantime the wit-

nesses who are out there are in the hands of the people who are not trained.

So the question is: Is this a governmental problem that has no solution?

Mr. MICHEL. Senator, it has a solution. I think the best solution is what I mentioned.

Chairman NUNN. That is the best solution; maybe we could all agree with that, but if you think the budget is not going to be there to do it, then you have to find some other solution, don't you, or either go to the mat on the budget? Maybe you have already done that. But the solution you just proposed you have said is not happening and not going to happen.

Mr. MICHEL. It didn't happen this fall. I won't try to predict the future. But Senator, the thing that has to be kept in mind is, yes, it is a problem, it is not ideal. But how great a problem is it? I am not an expert on this program. But I am not unfamiliar with it, either.

I was a prosecutor for 8 years in Philadelphia, before I entered the Federal Service, and I was in the Watergate Special Prosecutor's Office and had many protected witnesses, and I ran the Korean payoff investigation and I had some very unusual protected witnesses, including Tong Sung Park, and including a former Korean central intelligence agent who defected to this country in the middle of the night. And both of those witnesses had presented extreme problems of safety and had unusual problems because they are both Oriental gentlemen; the one needed protection, the other needed a new identity and a new life.

I worked day and night with teams of marshals, including those who did not have the special training, and I saw the way that they worked under the direct on-the-spot supervision of the witness security inspectors who do have all of this training, who do have this experience and perform these functions on a day-in, day-out basis. I have to say to you, assure you, that while there may be individual cases where something was done that wasn't ideal, that the experience that I have had is that the supervision by the highly trained inspectors of all of the people on the detail is extremely tight and their performance is very impressive and successful.

Chairman NUNN. It seems to me then they don't need any additional training.

Mr. MICHEL. I think it is valuable to have. I don't think it is a huge problem. It is a marginal problem and we ought to try to improve on the margin as well.

Chairman NUNN. In the meantime, until you can have this additional training which we don't see in the future with budgets, don't you think it would be worth considering to have some exemption from the Fair Labor Standards Act so that you could give at least Mr. Safir the right to make sure he has adequate security there and that he is not forced to rotate people who may have demonstrated that they not only don't have any training, but don't have any capacity to adjust?

Mr. MICHEL. Senator, I think that is certainly one of several options and that they ought to get full consideration, including the one to get exemption.

Chairman NUNN. I agree with you, ideally, if you had them all trained, that would be better. I would hate to have a security problem. It is not just whether you have a problem, it is not just whether the program has protected the lives of people, it is whether the potential witnesses of the Government believe the program has protected lives.

When you have television specials, when you have criticism of the program in newspaper articles around the country, in examples like giving people the name Ted Kennedy at airports, like calling somebody John Philip Sousa in a prison, like putting a dog under the protection program, and talking to the veterinary about a relocated dog—when you have these kinds of things going out about the program, you had better deal with not just the reality, but you had better deal with perceptions. I do not think we have got 3 or 4 more years on this program, if the crescendo of adverse comments and publicity, the spreading kind of disrepute the program is in among witnesses and potential witnesses is devastating to it. So it is not one of those things we can wait for ideal solutions. You will have to have some interim steps, as I see it, including possibly borrowing personnel from other agencies, including maybe some crash training programs, including maybe some exemptions to the Fair Labor Standards Act, even if it makes a few people mad that represent the unions.

I think the public will understand this.

Mr. MICHEL. Other personnel are being borrowed, Mr. Chairman, in many instances. When witnesses are now brought back to danger areas to testify, we frequently ask the investigative agency to guard them. I think your point is well taken. The rotation of deputies just allows more people to know about witnesses than perhaps really should know about them. But we are borrowing personnel. It is still confusing, I think, the security part, which has really held up quite well in spite of this problem, which I would like to see eliminated, personally, has held up quite well as opposed to the services which the people so badly need to resume their normal lives.

Chairman NUNN. I agree with you. That is the bigger problem. I would agree with that. I think that is apparent.

Mr. MICHEL. Could I say by way of thanks to you, Mr. Chairman, and the committee, not only for your high level of interest and attention, including the details in this program, now and previously, but also recognition and thanks for giving people like Mr. Safir, who are so knowledgeable about the program and the rest of us, the opportunity to appear to tell some of the strengths of the program and its level of success. It is not a failure. It is a success. It has problems, but it has overcome many problems and it is basically a success. It needs to get better. I am sure it will get better. Your point about how the perception of the program is almost more important than the reality is exactly correct. What counts is what is in the mind of the guy who may become a cooperating Government witness next year. That is more important than almost anything else except maybe keeping the present witnesses actually alive and safe. You are correct, too, that there is severe risk of damage to that credibility of the program where there are highly dramatic instances found by the media, and broadcast in a very widespread fashion.

The opportunity that you give the Department and the Marshals Service in these hearings to present the full picture, or the other side of the story, tell about some of its successes, is vital to trying to help maintain the credibility of the program, which credibility of the program I think fully deserves.

Chairman NUNN. I hope within 6 months to a year we would have another hearing before this subcommittee or some other subcommittee on the Hill and have some testimony about changes that have been made, other things that are being done.

I think it is extremely important. I think we have an obligation to follow through and the program is doing well and to try to give that a high degree of attention, to the greatest degree we can. I think also the news media has the responsibility here to put it in perspective.

I have said in my opening statement, I have said many times throughout these hearings that the program in terms of protecting the people's safety has worked reasonably well, even though there are problems there that we are discussing.

I don't think there is any doubt about the fact that we could back up 10 years and say whether the Government and the taxpayers and the whole criminal justice system have benefited by this program or whether it has been a net minus, you come out with a strong net plus. We are much better off, much better served than if we never had such a program. So that kind of perspective is, I think, essential. But at the same time, if the problems are not pointed out by both this committee and by the media itself, then many times problems that are not pointed out just don't get the kind of attention and priority they deserve. That is unfortunate, but that is the way the system works.

Mr. MICHEL. Senator, I would suggest that we do have with you and other interested committees in the Senate and the House what could be described as a partnership and it has worked rather well. You referred earlier to I believe, the hearings held about 2 years ago by the Administrative Practices Subcommittee, and to your own prior efforts and your current efforts with regard to this program.

On a parallel track, the issues of trying to improve the program have been of great interest to the leaders of the Justice Department. Even before the Administrative Practices Committee had its hearings 2 years ago, then Assistant Attorney General Civiletti had ordered a review of the whole program.

The hearings then followed that added some impetus to it. The reforms were charted; they were implemented. Now we are having what is sort of a checkup kind of a hearing. I want to assure the committee that the Department, both its career people like myself and its present and future politically appointed people would welcome the opportunity 6 months from now, or at some other suitable interval, to review this once again and chart the further progress and what the remaining problems are because nothing could be more important than to make sure that this program is operated on an absolutely optimal basis.

Chairman NUNN. I completely agree.

I appreciate that attitude on the part of you and the other witnesses, as well as the Department of Justice. We have got two or three other areas I would like to cover here in the sense of policy. I have a good many questions for Mr. Shur. I am going to furnish some of those for

the record because the main thing we are trying to do here is get at the policy, particularly with the witnesses that we have in front of us now.

The area we have heard over and over again that needs a great deal of attention, and Mr. Safir emphasized this this morning, by saying that the program, as it was envisioned, is not designed, nor is it capable of dealing with reputable citizens who are exposed inadvertently to organized crime, narcotics, white collar crime, who testified, or are willing to testify and are then put into that program, that it is not designed, nor can it furnish the kind of comparable credit, comparable opportunity. I do not have an answer for that, but I do think the problem has been well documented. Do you have anything going on or will you undertake a serious review in the next couple of months to make recommendations as to how the program can be strengthened in that very important aspect, particularly since the Justice Department itself is now, I think, correctly aiming more toward high-level criminal activity in the people at the top rudder than medium and low levels?

Mr. MICHEL. I think it is reasonable to expect that we may have an increasing number of middle-class witnesses who do not have any significant criminal background. I think that the program does need to be further strengthened in that area. I hope that we can produce better than what you asked for.

I hope that we can produce not only a review over the coming months but concrete steps to further strengthen that part of the program. I would add, though, Senator, that while not designed for a noncriminal middle-class type of person, the program is not without capacity to provide for people in that category fairly well.

I mentioned having just by happenstance had the experience with regard to that KCIA agent, but there was a person with totally non-criminal background, foreign language, appearance, and origin and the Marshals Service was able to successfully reestablish that individual despite all of those handicaps, and in an extremely fine fashion.

I am sure there are many other individual cases where they have been successful even though, true enough, the program wasn't really designed for that. So there is a basis to build on. It would not be a question of opening up a whole new aspect of the program. There is a basis but it does need to be strengthened.

Chairman NUNN. I would agree that there is a foundation there that really needs a great deal of attention. The people at high levels like the KCIA agent, Tong Sun Park, and so forth, I think probably the distinction has to be made there.

These are cases developed at very high levels of the Justice Department in Washington. Everyone, the Marshals Service, every one in the Justice Department, knows that these cases have a great deal of attention, that the people in your position and others, even higher, are going to be looking at them. That is a little different than having the prosecuting attorney in Buffalo, strike force head in Miami, having someone who in that area may be just important to me but would be more involved in the long run in terms of the justice in this country, having them receive the same kind of attention. Also, you have got the opportunity to centralize all of the capabilities and resources in those high priority areas.

Mr. SHUR. There have been some cases, Mr. Chairman, of people in the real estate business; as I recall a physician; in which there have been successful relocations. But it certainly needs to be strengthened.

Chairman NUNN. I think everybody agrees with that. You don't disagree with Mr. Safir's earlier testimony on that?

Mr. SHUR. Nobody disagrees.

Mr. MICHEL. Senator, you should perhaps have clearly in mind, too, that a prosecutor in a rather routine case, say in Buffalo, as you use in your example, has a friend in court, if you will, in the person of Mr. Shur, because if I am in Buffalo and I am the most junior prosecutor in the whole Justice Department, I have got an organized crime witness or any other kind of witness that is under protection and that is not being dealt with in a way that I think is effective, I am on the phone to Jerry Shur immediately and his whole mission in life is to look into that kind of thing and make sure that it gets settled and settled properly and settled fast and I think there are a lot of prosecutors around the country who could tell you stories about the success of Mr. Shur's intervention. That is really his most important job and he works at it full time, I think very ably.

Chairman NUNN. So Mr. Shur is the man over there that can turn people into Tong Sung Parks as far as priority is concerned. You have that authority to really give that degree of priority?

Mr. SHUR. I have the authority to plead to do that and cajole, request, go to the Deputy Attorney General and seek his assistance in getting it done. But I don't have magic, sir.

Chairman NUNN. But you are there and the prosecuting attorneys know you are there and that is your assignment?

Mr. SHUR. Yes; members of your staff can attest to that. We have talked many a time.

Chairman NUNN. We appreciate the cooperation we have had. The whole question of prisoner witnesses is another dimension of this. We have had Mr. Carlson testifying this morning. We all know that the prison system has many problems, resources are enormous in terms of requirements and unmet needs, and so forth. But he testified this morning that if you are really going to handle the witness-prisoners, that he needs immediately one other facility and that he has made a request for that or it is in the planning stage. He said on further questioning what he really needs is 3 other facilities with about 70 beds each. Will you make a review of that? He is going to send a copy of that plan with the budget implications to the subcommittee.

Will you take a look at that and at least give us your view on it? Even if it doesn't get budgeted in the administration budget, I would like the Department's view on it, so that we can look at it over here. Congress has to decide some of these priorities, too.

It may be that my view of priorities differs from the majority. That has happened many times and may happen again, but we would at least like to get your view on that, because we believe this is a high-priority program in our overall pursuit of high-echelon criminals.

Mr. MICHEL. Senator, you will certainly get a review. I should just add that all proposals of that kind automatically go to the Deputy Attorney General. He has been in the business of trying to get money

for additional prison facilities all along and that is part of our standard procedure, so that it is not a special instance for us to look into Mr. Carlson's request in this instance, though maybe we will do it with even more urgency than normal. But those things routinely go directly to the Deputy.

Chairman NUNN. Thank you.

One other area that I want to pursue at the policy level. I know I have talked with the former Attorney General Bell on this. I believe maybe to a lesser extent with Attorney General Civiletti, but I know it is a matter of concern in the Department of Justice; that is, the relationship between the Parole Commission and the Department of Justice. We have had one experience and I think some of our interviews indicate that that may be the result—not an exception, but rather the policy. The one experience where a cooperating witness, his testimony about his involvement in crimes for which he had not been convicted and for which he was not being prosecuted and would not be, but his revelation of those in the course of testimony in both criminal cases and in front of this subcommittee led the Parole Board to the conclusion that he was a much worse character than they ever had envisioned, therefore, his parole was going to be looked at very negatively. I am afraid without a great deal of attention from us, that would have been the result.

We cannot give attention to all the people in that situation. Do you consider it a problem in the parole review that the Parole Commission is so independent of the Department of Justice that even cooperating witnesses may very well end up being penalized in their parole review because they have given, through their own frank testimony, more information about their past activities?

Ms. BARTNOFF. Senator, I think I can answer that a little bit. As you know, the Parole Commission is an independent agency within the Department of Justice. Fortunately or unfortunately, I happen to believe it is unfortunately, but that is just my view as someone fairly knowledgeable about corrections—the Parole Commission does not take kindly to certain kinds of substantive suggestions about its policies.

I can merely report to you that I have discussed this issue with many members of the Parole Commission on various occasions, including sentencing institutes sponsored by the Bureau of Prisons for Federal judges. I was not alone when the Federal judges agreed with you and with me that that was a strange policy for the Parole Commission to have adopted. But I do not believe there is any way that the Justice Department could change it, except through cajoling, pleading, or perhaps magic could change it, or the new Parole Commission may have different views.

Chairman NUNN. Has the Department of Justice had under review any kind of legislation that would change the relationship of the Parole Commission?

Ms. BARTNOFF. I think more importantly the Department of Justice has proposed legislation that would substantially change the function of the Parole Commission.

Chairman NUNN. In the form of legislation pending?

Ms. BARTNOFF. In the Criminal Code Reform Act. That is the important part of the sentencing reform in that proposal.

Chairman NUNN. Would it address this specific problem or was it more of a broad change?

Ms. BARTNOFF. It would address it in the sense that eventually what would happen would be an abolition of parole.

Chairman NUNN. A what?

Ms. BARTNOFF. Abolition of parole.

Chairman NUNN. That would change it. [Laughter.]

[The proposed legislation follows:]

“§ 3824. Release of a Prisoner

“(a) DATE OF RELEASE.—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of his term of imprisonment, less any time credited toward the service of his sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

“(b) CREDIT TOWARD SERVICE OF SENTENCE FOR SATISFACTORY BEHAVIOR.—A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of thirty-six days at the end of each year of his term of imprisonment, beginning after the first year of the term unless the Bureau of Prisons determines that, during that year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner. If the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such credit toward service of his sentence or shall receive lesser credit as the Bureau determines to be appropriate. The Bureau's determination shall be made within fifteen days after the end of each year of the sentence. Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted.

“(c) PRE-RELEASE CUSTODY.—The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last ten percent of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for his re-entry into the community. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-lease custody.

This is a problem that we are going to look at in the long range. We have got some preliminary inquiries going on about the Parole Commission at this time. We are interested in it. I know it is not something you can solve independently and overnight. But it does seem to me that a witness has a right to look at the Federal Government and say: This is one Government, not several. When they do testify, at the very least that testimony should not be used against them in a further parole hearing.

Mr. MICHEL. Senator, I certainly agree with you. The problem from our standpoint is that the Congress, in the independence they gave to the Parole Board, made the opposite judgment. We have tried in the criminal code legislation that we have worked so hard and long on, in conjunction, I might say, with many members of the staff of the Senate to remedy that problem, but that legislation did not fare so well, either. So we certainly need some support on this subject of parole and also the related subject of sentencing and it would require legislation.

The only other observation to make, I guess as was implied by Judith Bartnoff, is it also makes a difference who is put on the Parole

Board, what their particular attitudes and values are. That is another way to influence it, even short of abolition, or major change in function, or degree of independence that might come from new legislation.

Chairman NUNN. I certainly don't hold the Department of Justice officials accountable for this. This has got to be worked out in the legislative field. There is no doubt about it. We would appreciate furnishing a copy of what you have already prepared; there is no new preparation in terms of that legislation in your written case that has been made for it.

One other thing that was brought out this morning was in some cases you used military facilities to house witnesses on a temporary basis that may be in danger zones and need protection without putting them in local facilities, jail facilities.

The reference was made, I believe, by Mr. Safir, that they are running into roadblocks with the posse comitatus statute because of military involvement in housing civilian witnesses. Has the Justice Department looked at this, whether that is really a real roadblock or whether it is just used in certain cases as an excuse?

Mr. MICHEL. Senator, I think it would be fair to say that we have a long-running and substantial disagreement with the lawyer for the Defense Department about what it was that was prohibited when Congress passed the so-called posse comitatus statute a 100 years ago. It has been interpreted authoritatively by the Justice Department to cover this much and the Defense Department says it covers twice that much and therefore they declined to do various things that are covered under their interpretation of it, which is so broad an interpretation. It shows up in many areas. This is only one of six or seven areas where they declined to do things because of that particular interpretation.

I should say, though, that despite limitations they have put on their personnel with regard to assisting in matters that they consider law enforcement-related under the prohibition of the Posse Comitatus Act, that they are substantially helpful and cooperative with us in many areas and I believe including the witness security program, in making available facilities and in other contexts, equipment. So that they are very helpful in some ways, but in terms of what their own employees will do, they impose what seemed to us severe, perhaps unnecessary limitation.

Chairman NUNN. I have a bill that addresses this posse comitatus, relating to narcotics only in the intelligence sense. We sent that over to Justice several months ago and never got a response from the administration on that as to the administration's view.

That may reflect the difference between Justice and DOD. Does the Department of Justice have a view on that bill? Could you look into it and at least furnish the Department of Justice view on that?

Mr. MICHEL. We certainly have a view. I can guess what it is, but I do not want to testify about it without reviewing it. We will certainly advise you of what our views are; also the status of the debates among all the different agencies.

Chairman NUNN. Also, would you furnish for the record whether the Department of Justice feels you need any change in the present law to accommodate this particular problem which I realize is prob-

ably not under the same scope as the narcotics problem, whether you have any view on that.

I am going to ask the staff to type me up a letter to the Department of Defense and get a similar response from them.

Mr. Shur, we have already covered a great number of questions we were going to ask you. We may have some more for the record, but just a couple of them. Does the Department of Justice receive a copy of every complaint a witness sends to the witness security program?

Mr. SHUR. No.

Chairman NUNN. How does that work?

Mr. SHUR. The witnesses complain through the Marshals Service chain of command as described by Howard Safir. When that breaks apart, the witness usually complains to his agent—usually; I can say he always complains to the agent he works with, or prosecuting attorney, who in turn would get in touch with me. We would review the problem and oftentimes meet with the witness.

We do not receive copies of complaints.

Chairman NUNN. Is that working satisfactorily, in your opinion?

Mr. SHUR. I think it probably would be better if the witnesses were told outright there was another number to call outside the chain at some point.

Chairman NUNN. That is what it seems to me psychologically might be needed because they just feel their complaint is being handled by the complaine, if there is such a word as that.

Mr. SHUR. There is no hesitancy on their part, Senator. At 8 o'clock this morning I came in to read what I thought I should prepare for today and there was a phone call from a witness who wanted to see us. The word is out that they can get in touch with us. I should point out, the complaints have dropped significantly in 2 years. We were inundated with complaints at one time. Over the last 2 years, they have dropped so much. However, each one is important because to that particular person it is a vital problem and we address that.

Chairman NUNN. That is the difficulty. I suppose we are in in addressing this. I do agree with you improvements have been made in the last few years on this program. It has a long way to go and a lot can be done. I again repeat I think it is better than it was 2 years ago, better than it was 5 years ago.

Mr. Shur, in many courtrooms across the country, witnesses under the program are portrayed as persons whose testimony is bought and paid for. Of course, that is a defense tactic. In this respect, the total amount of money the program has expended on the witness and family is usually thrown up to the jury as: The Government is buying a witness for \$20,000 or \$30,000. Can you clarify or correct this apparent misinterpretation of the money spent on behalf of witnesses and whether the witnesses actually benefit to the extent it is alleged in courtrooms?

Mr. SHUR. First, it would be a violation of 18 U.S.C. 201 to buy a witness' testimony, a violation by the prosecutor, by the agent, whoever participated in that. What the witness receives in subsistence which pays for his temporary lodging and for his food and medical assistance, and he is generally materially worse off than he was before he entered the witness program. So it is not a benefit at all for

the witness to enter the witness relocation program for financial gain. It is not that type of program.

Chairman NUNN. That completes our questioning. Do any of you have anything else you would like to say at the present time? Any other clarifications, any other comment on previous testimony?

Mr. MICHEL. Senator, besides saying thanks for your interest and the opportunity to appear, I would like to add there was some reference earlier to some problems between your staff and the Department. I was totally unaware of that. I have been told as late as yesterday there was no impasse or problem and I just want to assure you that if there are additional types of information or documents which your staff has wanted or in the future wants, assuming that they can be properly provided, we certainly will provide them. If there is a circumstance that should develop where there is an impasse, I would like to urge your staff after working with our legislative people to bring any impasse to my attention and I will look into it immediately. Our posture is to fully cooperate with the committee.

Chairman NUNN. I certainly think that has been the overall intention. Some of these roadblocks, I think, are probably inadvertent. We will take you up on that offer as we run into them. We have another set of hearings coming up in February on the waterfront and the problems there and possible legislative remedies there. We are going to need a great deal of assistance in the next few weeks in order to get those ready. I must say the Department of Justice has done an overall outstanding job in that area. Perhaps unlike the witness protection program, I think there will be all sorts of institutional reasons for speedy compliance with these requests. I know it is not always easy for people to furnish speedy information when it is obvious the program is under a great deal of critical review. But I do believe these hearings have given you an opportunity to present the program in its broader perspective. I do think the witnesses who have been here this morning have been rather frank about the problems and the reasons for it.

I again repeat, until we get that kind of frank assessment and testimony, we really cannot do much about it over here. That is what we want to do, help you.

We have several staff people who have done an outstanding job here, Greg Baldwin, Ray Worsham, Jack Key, Kitty Dias, Mary Robertson, Suzanne Davis, Rosemary Kennedy, have all worked long hours and much overtime without overtime pay. I want to thank all of you on the staff for helping put this together.

We certainly have certain observations I would like to make. We will be preparing a report on this. I have a few observations I would like to make at this time. I do believe it is extremely important with the transition going on now that these problems not await the new administration to arrive on the scene and spend 6, 8 months, or 1 year to come to grips with this. The Department can take a lot of steps in the immediate future.

We heard a great deal of testimony about the witness security program. I have this. I can give you a copy of it so you do not need to make any notes on it.

We heard a great deal of testimony about the witness security program, and I believe the record is clear that there are certain identifiable problems which have plagued this program for many years.

On the other hand, it would be unfair if I did not mention the fact that there are well respected, well intentioned, and extremely able U.S. marshals who literally risk their lives to protect Government witnesses.

Moreover, these same marshals are presented with some of the most complex problems our society has to handle on a daily basis. Also I should point out that it appears that the program has improved. All of these positive things should be said about the witness protection program. However, problems still plague the program.

I firmly believe that there are two considerations the Government must have with respect to this program. The first consideration is a commitment to a person who, for whatever reason, places himself and his family in a situation of great risk to assist the Government with his cooperation.

The second consideration is that, in order to effectively combat organized crime, a program set up to assist witnesses has to have the type of reputation that would encourage other witnesses to come forward to assist the Government in this difficult endeavor.

In this respect, the subcommittee will try to formulate suggested recommendations which should be considered by the Department of Justice and all other agencies, both Federal and State, that deal with the witness protection program. I hope that the subcommittee will issue a report which will contain our recommendations and explain them in some detail. However, I believe it would be appropriate at this point for me to make some suggestions that can be considered by the Justice Department between now and the time our report is filed.

I suggest the following actions be taken with regard to relocated witnesses:

One: I feel the witness security program should be reorganized and must have central control with a direct line of authority responsibility and accountability. All persons involved in the WITSEC program must be responsible to headquarters. Whether this entails a special unit in the Department of Justice, separate from the marshals, or a special division in the Marshals Service itself, subject to the overall control and supervision of the Department of Justice, must be examined. However, the need for reorganization and centralization is imperative.

Two: There must be effective oversight control and coordination of the witness protection program at the highest level of the Department of Justice. In this regard, I believe that the witness protection program should be given extremely high priority.

And I am delighted to hear the testimony this morning from the Department of Justice officials that they agree with that assessment.

Three: The witness protection program must have adequate funding, manpower, and resources to accomplish the job that it is responsible for.

This is addressed to the Congress as well as to OMB and the executive branch.

Four: The program must attract and hire expert, well-qualified professionals to assist relocated witnesses in complex matters, such as employment, documentation, finances, and social services.

Five: The Department of Justice must immediately seek a method to obtain adequate background documentation for a witness which will fairly reflect his past employment, credit, and schooling but also with

modifications to protect the witness' security. This background documentation must be backstopped by some system, whether by telephone or otherwise, which allows a relocated witness' prospective employer, creditor, or school official to check the witness' record. This step alone, it would seem to the subcommittee, would eliminate the dependence the witness and his family have on the Marshals Service for the rest of their natural lives.

Six: The danger to each witness, the size, location, and ability of the criminal organization to reach out to that witness, and the realistic needs of the witness for relocation should all be addressed prior to entering any witness into the witness relocation program. In this respect, the Government should be required to seek any alternate means of assuring the witness' security without exposing him and his family to the trauma of a complete witness relocation package.

Seven: The executive branch must encourage all Federal agencies to cooperate with the witness program. Whether this is accomplished by Executive order or by written, formal agreements with each agency, this must be accomplished so that 10 years from now the Senate will not be sitting here asking the Social Security Administration why it has not transferred the earnings of witnesses who have entered this program. In this respect, it seems obvious that formalized agreements are needed with Government agencies, such as the Social Security Administration, the Veterans' Administration, Small Business Administration, the Federal Housing Administration, the Department of Defense and many others. This could and should have been done years ago.

And of course, I will add to that, if a statute is needed as has been suggested here this morning, mandating those kinds of cooperative efforts, then I certainly would look favorably on pushing that kind of legislation.

Eight: With respect to State agencies that are necessary to assist the program in licensing, documentation, and social services, the Department of Justice should, by whatever means available to it, enter into specific written agreements with various States to enable the program to work smoothly and efficiently with those State agencies the program needs. The witness program also must develop a high-level contact at each Federal and State agency not only to assure security but also to provide ready solutions to problems which affect the witness.

Due to the trauma of relocation, the Department of Justice should study the feasibility of establishing interim relocation sights where witnesses and their families can be taken for the purposes of being debriefed by law enforcement officials, counseled concerning the financial, employment, and social problems they may face and enable them to obtain an appropriate background story and adequate documentation prior to their final relocation.

Nine: It is my opinion that many of the problems we have discussed are capable of being solved within our own Government. The Department of Justice must explore the possibility of using other Government expertise to assist the program. In this regard, it takes no great imagination to call on the services of agencies such as the FBI and the CIA to obtain expert advice and assistance in documentation. The

same can be said about the Department of Labor in securing employment; the various social agencies in handling problems, and the many banking and financing agencies in handling financial matters for witnesses. Government resources are available; they must be sought out and utilized.

Ten: The witness security program should not be a program which attracts only the low-level hoodlum. It should be a program that is capable of assisting the businessman, the lawyer, the politician, or anyone else who either by inadvertence, or by his own errors, or by design gets involved with organized crime. By necessity, the Government's recent direction toward high-echelon organized crime figures, white-collar crime, official corruption and other highly sophisticated ventures are creating and will create increasingly in the future a new class of witness. The witness program must be flexible enough to deal with people who have different backgrounds in a manner appropriate with their background.

Eleven: Many individuals familiar with the program within the Justice Department have made suggestions for legislation which they believe is necessary for the program to be effective. Yet, to my knowledge, the Department of Justice has not proposed any legislation to assist the program. And we have heard suggestions about professionalizing the Marshals Service, which I think is a suggestion that should be carefully considered, particularly by those of us here in the Senate.

I would request that the Department carefully review all legislative suggestions concerning this program and report back to this subcommittee within 90 days concerning any legislation necessary to improve the performance of the witness program.

Twelve: The Department of Justice must make a definitive effort to resolve the question of whether or not the Government itself can provide access to Government loans and financing for those relocated witnesses who would otherwise qualify except for their cooperation with the Government and their relocation. In other words, servicing with respect to Federal loans with the cooperation of the witness should not be a barrier for a qualification for at least the Government lending assistance.

Thirteen: Provisions must be made in the witness security program to grant the investigative agency and the prosecutor adequate access to the witness for purposes of debriefings and preparation for grand jury and trial matters.

Fourteen: an adequate and formalized complaint procedure must be established to allow witnesses with legitimate problems a court of last resort, so to speak.

We have heard Mr. Shur's recommendations this morning on that.

Fifteen: The Department of Justice should immediately consider the use of agents from sponsoring agencies to assist and coordinate with the marshals when they are relocated or when the relocated witness returns to the danger zone on a temporary basis.

Sixteen: The Department of Justice should immediately study the feasibility of obtaining an exemption of overtime practices under the Fair Labor Standards Act to eliminate the problem which exists by the random rotation of inexperienced and ill-trained deputies on witness details.

Seventeen: The new administration should consider the feasibility of merit selection of U.S. marshals, but at a very minimum have witness security personnel directly responsive to the Witness Security Unit in the Department of Justice.

With respect to prisoner-witnesses, I suggest that the following actions be taken:

One: The Department of Justice should consider the feasibility of establishing separate facilities for prisoner-witnesses so that they are not, in effect, punished by doing harder time in the existing facilities when they have cooperated with the Government.

Two: Serious consideration should be given to the establishment of safe sites in major metropolitan areas to hold witness-prisoners when they are transported from prison back to the danger area for grand jury, trials, or debriefings. This would eliminate or greatly reduce the security problems involved in placing such prisoner-witnesses in local jails. It may very well be that effective use could be made of existing military establishments. And we will pursue that when we get the Department of Justice's view on that and hopefully also a view from the Department of Defense.

Three: The Bureau of Prisons should assign specially trained personnel to work with and guard prisoner-witnesses.

Four: Every effort should be made by the Government to keep the prisoner-witness in adequate contact with his family. And I am pleased to hear this morning that is done. I am hoping it can be done more successfully in the future considering all the security problems which I know exist.

Five: The Government should also make an adequate effort to either finance or obtain employment for family members who cannot be supported financially by the prisoner-witness.

Six: When a prisoner-witness agrees to cooperate with the Government and enter the program which entails his protection by the Bureau of Prisons, an experienced Bureau of Prisons employee should be available to the prisoner to explain the implementation of the witness program as it applies to the prisoner-witness.

Seven: Finally, with respect to the Parole Commission, the Department of Justice should insure that: (1) The cooperating individual receives credit from the Parole Commission for his cooperation, and (2) that information which the witness volunteered by cooperating with the Government not later used against him by the Parole Commission.

I am hopeful that my suggestions and recommendations will be seriously considered by the Department of Justice. It has always been this subcommittee's intention to improve the program to assist the Government in its fight against organized crime. I certainly hope that the Government will assist itself in this battle.

I certainly hope these hearings will end up being constructive in nature, although at times we have been pointedly critical of certain aspects of the program. I might add this is not a subcommittee statement. These are my own individual views. The subcommittee itself will review, I am sure, my recommendations and either agree or not agree with them. I do offer these views at this time because I think it will be 2 or 3 months before we get our comprehensive report on this

and other Senators will have a chance to study these records. I am hoping these recommendations can at least be looked at by the Department of Justice and other agencies. Because I am making these judgments rather rapidly after hearing testimony for 3 days, there may be some I would alter myself before certainly making them absolutely final. They are preliminary in nature and I hope they will be reviewed.

I want to thank all the witnesses for appearing this morning and I hope you will express our appreciation to Attorney General Civiletti and Judge Renfrew for their cooperation. Mr. Safir, I see you are still here. We appreciate your cooperation and look forward to working with you and others to improve the program.

Any other comments?

Ms. BARTNOFF. Thank you, Senator.

Mr. MICHEL. Thank you very much.

Mr. SHUR. Thank you very much, Senator, and I will submit my prepared statement for the record.

[The prepared statement of Mr. Shur follows:]

STATEMENT OF GERALD SHUR, ASSOCIATE DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS, CRIMINAL DIVISION

I appreciate the opportunity of appearing here today to present the views of the criminal division with respect to the operation of the witness security program of the Department of Justice. The continuing interest of the Congress in this most important program is vital to its continuing improvement.

The witness security program has been instrumental in the Federal Government's ability to combat organized crime, public corruption, major narcotics organizations and other highly sophisticated and very dangerous criminal activity. During the 1970's, the emphasis of Federal law enforcement shifted to the pursuit of very sophisticated criminal organizations which are making millions of dollars each year from their criminal activity. These organizations are extremely difficult for law enforcement to infiltrate and, as a result, the cooperation of insiders has become crucial to successful prosecutions of these groups. These criminal organizations have the resources necessary to protect themselves, including enforcers who maintain the internal integrity of the organization. Insiders who provide information about the organization's activities to law enforcement must face the consequences in the person of the enforcer should their cooperation become known.

The witness security program has provided an alternative and has been very successful. The need for the program is no longer questioned. In recently concluded trials, the testimony of protected witnesses helped convict five high-ranking members of a major syndicate in Los Angeles, and the boss of one of New York's syndicate families. These convictions would not have been possible, in fact, the defendants may never have been indicted, if the witness security program had not been available to protect the government's witnesses. It was recently said that virtually every major organized crime case involves a relocated witness.

The witness security program was created by the Organized Crime Control Act of 1970 with a singular purpose: To prevent the murder of witnesses against members or associates of organized criminal groups. As a result of the ability of the U.S. Marshals Service to successfully carry out that mandate, the number of witnesses entering the program increased dramatically in the 1970's. In 1971, 92 witnesses were protected under the program. From 1975 through 1977, an average of 450 new witnesses entered the program each year. The large number of cases being made and the resulting number of witnesses entering the program placed tremendous burdens on the Marshals Service. The ability of the Marshals Service to assign sufficient personnel to administer the program was not keeping pace with the number of witnesses requiring assistance.

As a result of the severe shortage of staff, complaints about the program abounded. There were continuing efforts to correct the program's deficiencies and in July 1977, the Deputy Attorney General responded to the continuing in-

ternal concern about the program by creating an independent committee to review the program and make recommendations to him for its improvement. About the same time the Senate Committee on Administrative Practice and Procedures shared its concern about the program with the Department. The Witness Security Program Review Committee conducted a thorough review, and recommended that substantial changes be made in both the U.S. Marshals Service and the criminal division. And, as we shall detail later, our continuing experience suggests further changes are necessary.

In response to the review committee's recommendations, the Office of Enforcement Operations was created in the criminal division in February, 1979, to administer for the division certain special programs including the witness security program. The Office of Enforcement Operations has the primary authority for authorizing an individual's entry into the program. A witness may be authorized to participate in the program if he/she is to testify as an essential witness in a specific case which is important in the administration of criminal justice and which has a connection to organized criminal activity, where, because of the testimony, there is a clear indication that the life of the witness is or will be in jeopardy. Similarly, the relatives and associates of witnesses may be offered assistance if their lives are jeopardized by virtue of the witness' testimony.

The office is also charged with the responsibility of monitoring and coordinating, in behalf of the criminal division, other aspects of the program, including coordinating arrangements for testimony and debriefing of witnesses. The office also attempts to resolve differences that may arise among witnesses, marshals, bureau of prisons personnel, prosecutors and investigators when these are brought to our attention. The office also coordinates with the United States Parole Commission matters involving witnesses who are on probation or parole. The Office of Enforcement Operations has presided over briefing sessions for Federal prosecutors concerning the new guidelines for the program, and participates in U.S. Marshals Service and investigative agency training sessions.

The Office of Enforcement Operations works very closely with the United States Marshals Service Witness Security Division and the Bureau of Prisons (in the case of prisoner-witnesses), which are responsible for the actual physical security of the witnesses and the furnishing of services to them once the Office of Enforcement Operations has authorized his/her participation in the program. In the case of a prisoner-witness, the Bureau of Prisons will select an institution, in coordination with the Office of Enforcement Operations, which will be safe for the prisoner and which is suitable in terms of his/her sentence, prior record, and current offense. The Bureau of Prisons coordinates all future transfers and other movement of prisoner-witnesses with the Office of Enforcement Operations, as well as furloughs, visitors, and many other matters concerning the prisoner.

The United States Marshals Service is responsible for all aspects of a non-prisoner witness' relocation and change of identity. Based upon the Review Committee's recommendations, the United States Marshals Service since 1977 has increased its witness security program personnel from 12 to 160 individuals. In 1977, with 2,376 witnesses in the program, the ratio of witnesses to United States Marshals Service personnel was 198 to 1. In 1980, with over 3,500 witnesses in the program, the ratio is 22 to 1. (See attachment for table).

These figures make it clear that while the number of witnesses in the program increased steadily, the number of United States Marshals Service personnel assigned full time to the program also increased significantly to meet the needs of the witnesses. You will note that the number of new entries authorized by the Office of Enforcement Operations in 1979 and 1980 decreased significantly. This increase in United States Marshals Service personnel has resulted in an extraordinarily sharp decrease in complaints to the Office of Enforcement Operations from witnesses, agents, and prosecutors about the assistance rendered to witnesses. What was once a flood of complaints has become a trickle.

However, despite these significant improvements, the Program today is not without its problems. The "trickle of complaints" received in the Office of Enforcement Operations is still a cause of great concern not only to us but to the Marshals as well. Ideally, we would all like to see the number of complaints from witnesses reduced to none. However, we recognize the complexities of relocation and can only realistically work toward providing the most efficient service while recognizing that relocation is a trying experience. We would like to see the transition from old to new identity, and old to new environment flow as

smoothly as possible with as few shocks to the witness and his family as possible. But, the trauma experienced by an individual who must enter the program is extraordinary, especially when family members must also be relocated. If one considers the trauma experienced by a family moving as a result of a normal business transfer, then adds to it a complete change of identity, the severing of all ties to the past, great uncertainty about the future, with killers looking for them, the stress experienced by a relocated family becomes clear. It is, therefore imperative that the problems encountered by these people after entering the program be minimized to the extent possible. This demands the introduction into their lives of a variety of disciplines; social, psychological, occupational, medical, and security. Even with all of this, we can anticipate a still very difficult and unpleasant period of adjustment. It should be made clear that almost all relocations result in a satisfactorily relocated family. What we are speaking of is the trauma experienced in reaching that stage.

The single greatest problem in the program today is the very long delays in obtaining new documentation for the witnesses and family members. When this situation is prolonged for an extended period of time, it becomes intolerable for the witness because he and his family are unable to resume their normal activity. The primary cause of the documentation problem is the dependence of the United States Marshals Service on the cooperation of other agencies, both Federal and State, to issue the new documents. Steps have been and are being taken by the Deputy Attorney General and the Director of the United States Marshals Service to remedy this situation. It is a situation that remains most disturbing to the Marshals Service and to us.

A major problem, partly stemming from lack of documentation, is the securing of employment. It appears to us that the Service needs appropriate funding to provide the number of people necessary to assist the witnesses in locating suitable jobs. It should be noted that even with an increased staff, securing employment will always be difficult because of the geographical considerations for safety, the economy, and the frequent lack of skills of the witnesses, as well as many other factors.

Another often heard complaint in the program is the witness' inability to secure credit as a result of his lack of verifiable background (this is also sometimes a problem in securing employment). The Civil Division has been asked to address this issue in order to determine the liability of the United States should a witness use a background provided by the Department for fraudulent purposes. Perhaps of greater significance is the possibility that the relocated witness may commit crimes after relocation, utilizing a furnished background. This presents a very serious problem and must be carefully addressed before any action is taken in this regard. We must not overlook our obligations to the communities into which the witnesses are relocated. We have also noted however, that many witnesses have, on their own, re-established credit after being employed in their new area.

There have also been complaints concerning the handling of prisoner-witnesses by the Bureau of Prisons. We share the concern of the Bureau of Prisons in dealing with the problems raised by the prisoners. Currently, several matters are being addressed to provide those prisoners who have assisted the government with the same privileges other prisoners receive, while maintaining their safety. This is an extraordinarily difficult job because of the environment and has been handled extremely well under the circumstances by the Bureau of Prisons. No protected prisoner-witness has been killed since the inception of the witness security program, and this record speaks for itself. However, the problems encountered by prisoner-witnesses incident to maintaining their safety are of great concern to the Bureau of Prisons and they are being addressed at the highest levels of that agency. The Bureau of Prisons has been and continues to be extremely cooperative in our efforts to resolve the unique problems encountered by prisoner-witnesses.

All of us who work in the Witness Security Program, in the Criminal Division, Bureau of Prisons, and U.S. Marshals Service, are very much aware of the problems that exist in the Program; that they exist is not evidence of disinterest only of the complexity of the problem. However, it should never be forgotten that the protection afforded to the witnesses by the Marshals Service has been extraordinary. I emphasize that not a single witness who has complied with the Service's directions has been killed. And, it should be stated quite clearly that whatever criticism anyone may make of the program, the willingness of each deputy to place his life between the witness and the would-be killer is a most courageous act that is all too often overlooked in our reviews of other Program concerns.

The Criminal Division is deeply grateful and appreciative of the dedication of these men and women, and those who lead them in a most dangerous and difficult job. Through our frequent discussions with Marshals Service personnel, we know their dedication to be true and we all share the same concern over the existing problems. To resolve these problems we think it imperative that the Marshals Service appropriation be sufficient to allow for whatever number of people is required to save the lives of those who testify under life threatening circumstances, and to provide them with the services necessary to resume as normal a lifestyle as possible.

The witness security program needs additional people with specialized training in all aspects of the relocation process including documentation, employment, and housing, as well as security specialists. In addition, social and psychological counselors should be available to assist witnesses in overcoming the especially difficult adjustment. These individuals should be readily available to the witnesses, preferably in the relocation area itself, so that the problems a witness may experience can be addressed quickly and efficiently by someone who is on the spot and can understand the circumstances.

I appreciate this opportunity to discuss the witness security program, and hope that this statement will assist the subcommittee in its review. Any suggestions the subcommittee may have for improving the program are very welcome. The success of this committee's effort is vital to all of us.

[Whereupon, at 1 p.m., the subcommittee was recessed, subject to the call of the Chair.]

APPENDIX

STANDING RULES OF THE SENATE

[The 1979 general revision of the rules was accomplished by the adoption of S. Res. 274 on Nov. 14, 1979, a resolution submitted by Mr. Robert C. Byrd for himself and Mr. Baker; the preparation of the proposed revision was pursuant to the adoption of S. Res. 156 on May 10, 1976, a resolution by Mr. Robert C. Byrd; the general revision of the rules set forth in S. Res. 274 was somewhat altered in form by the adoption of S. Res. 389 on Mar. 25, 1980, to consolidate and renumber certain standing rules of the Senate.]

[For the origin of various changes in Senate procedure since 1884 as set forth in rules changes, adopted resolutions, and Legislative Reorganization Acts, see *Standing Rules of the United States Senate and Statutory Provisions Relating to Operation of the Senate*, dated Apr. 10, 1979, and *Rules and Manual, United States Senate*, 1977 edition.]

RULE XXV

STANDING COMMITTEES

1. The following standing committees shall be appointed at the commencement of each Congress, and shall continue and have the power to act until their successors are appointed, with leave to report by bill or otherwise on matters within their respective jurisdictions:

(1) Committee on Governmental Affairs, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Archives of the United States.
2. Budget and accounting measures, other than appropriations, except as provided in the Congressional Budget Act of 1974.
3. Census and collection of statistics, including economic and social statistics.
4. Congressional organization, except for any part of the matter that amends the rules or orders of the Senate.
5. Federal Civil Service.
6. Government information.
7. Intergovernmental relations.
8. Municipal affairs of the District of Columbia, except appropriations therefor.
9. Organization and management of United States nuclear export policy.
10. Organization and reorganization of the executive branch of the Government.
11. Postal Service.
12. Status of officers and employees of the United States, including their classification, compensation, and benefits.

(2) Such committee shall have the duty of—

(A) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

(B) studying the efficiency, economy, and effectiveness of all agencies and departments of the Government;

(C) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(D) studying the intergovernmental relationships between the United States and international organizations of which the United States is a member.

[S. Res. 361, 96th Congress, 2d session]

RESOLUTION authorizing additional expenditures by the Committee on Governmental Affairs for inquiries and investigations

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, the Committee on Governmental Affairs is authorized from March 1, 1980, through February 28, 1981, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed \$4,610,800, of which amount (1) not to exceed \$58,735 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed \$500 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee, or any duly authorized subcommittee thereof, is authorized to study or investigate—

(1) the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public: *Provided*, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting their particular branch of the Government;

(2) the extent to which criminal or other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities;

(3) syndicated or organized crime which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, what facilities, devices, methods, techniques, and technicalities are being used or employed, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violation of the law of the United States or the laws of any State, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activities have

infiltrated into lawful business enterprise; and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against the occurrences of such practices or activities;

(4) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety;

(5) riots, violent disturbances of the peace, vandalism, civil and criminal disorder, insurrection, the commission of crimes in connection therewith, the immediate and longstanding causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquility within the United States;

(6) the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(A) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(B) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge, talents, and

(C) the adequacy of present intergovernmental relationships between the United States and international organizations principally concerned with national security of which the United States is a member; and

(D) legislative and other proposals to improve these methods, processes, and relationships;

(7) the efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including, but not limited to their performance with respect to—

(A) the collection and dissemination of accurate statistics on fuel demand and supply;

(B) the implementation of effective energy conservation measures;

(C) the pricing of energy in all forms;

(D) coordination of energy programs with State and local government;

(E) control of exports of scarce fuels;

(F) the management of tax, import, pricing, and other policies affecting energy supplies;

(G) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(H) the allocation of fuels in short supply by public and private entities;

(I) the management of energy supplies owned or controlled by the Government;

(J) relations with other oil producing and consuming countries;

(K) the monitoring of compliance by governments, corporations, or individuals with the laws and regulations governing the allocation, conservation, or pricing of energy supplies; and

(L) research into the discovery and development of alternative energy supplies;

Provided, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government.

(b) Nothing contained in this section shall affect or impair the exercise of any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946, as amended.

(c) For the purpose of this section the committee, or any duly authorized subcommittee thereof, or its chairman, or any other member of the committee or subcommittee designated by the chairman, from March 1, 1980, through February 28, 1981, is authorized, in its, his, or their discretion (1) to require by subpoena

or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents, (2) to holding hearings, (3) to sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate, (4) to administer oaths, and (5) to take testimony, either orally or by sworn statement.

SEC. 4. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1981.

SEC. 5. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

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