

INSIDERS AS COOPERATING WITNESSES: OVERCOMING FEAR AND OFFERING HOPE

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I. THE PROBLEM: CRIMINAL CONSPIRACIES AND A CODE OF SILENCE

Most nations and international organizations today recognize that criminal conspiracies pose greater threats to society than the actions of individuals. We have only to scan the headlines of any major newspaper in any country to see examples of criminal organizations and their impact on our nations. From violent organizations like Italian Mafias and drug cartels, to private armies of entrenched political groups in developing countries, to smaller, but insidious conspiracies that corrupt public officials, organized criminal activity has become a fact of modern life. Almost 50 years ago the United States Supreme Court summarized the danger of criminal conspiracies as follows:

*“[C]ollective criminal agreement--partnership in crime--presents a greater potential threat to the public than individual delicts. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that the individuals involved will depart from their path of criminality. Group association for criminal purposes often... makes possible the attainment of ends more complex than those which one criminal could accomplish. Nor is the danger of a conspiratorial group limited to the particular end toward which it has embarked. Combination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed. In sum, the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise has embarked.”*¹

The impact of these criminal organizations has resulted in increasing international cooperation and the adoption of international agreements such as the UN Convention Against Transnational Crime (UNTOC)² and the UN Convention Against Corruption (UNCAC).³ Such Conventions recognize that if left unchallenged by law enforcement, criminal organizations pose significant dangers to the foundations of our very institutions of government.

Standing in opposition to modern criminal conspiracies are the law enforcement systems of our individual countries. As we all know, because of our strong commitment to due process and the rule of law, we require formal evidence be presented in court before someone can be convicted of a crime. It is the experience of the United States that without witness testimony from “insiders” to entrenched criminal organizations, there is little likelihood of convicting the leadership. But the difficulties in obtaining the witnesses needed to convict the leaders of criminal conspiracies can be daunting.

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1 *Callanan v. U.S.*, 364 U.S. 587, 593-594 (1961).

2 In the Foreword to the UNTOC, UN Secretary General Kofi-Annan described the threats to civil society by criminal conspiracies in these words: “Arrayed against these constructive forces, however, in ever greater numbers and with ever stronger weapons, are the forces of what I call “uncivil society”. They are terrorists, criminals, drug dealers, traffickers in people and others who undo the good works of civil society. They take advantage of the open borders, free markets and technological advances that bring so many benefits to the world’s people. They thrive in countries with weak institutions, and they show no scruple about resorting to intimidation or violence. Their ruthlessness is the very antithesis of all we regard as civil. They are powerful, representing entrenched interests and the clout of a global enterprise worth billions of dollars, but they are not invincible.”

3 The preamble to UNCAC describes some of the dangers posed by official corruption as the reason for member states joining UNCAC in these words: “*concerned* ...about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering, *Concerned further* about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States, *Convinced* that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential...[member states have acceded to UNCAC].”

The leaders of organizations insulate themselves from criminal prosecution by passing orders through underlings; the criminal bosses often never personally “get their hands dirty” in the commission of criminal acts by their syndicate; and the leaders often use violence and intimidation to prevent witnesses from testifying. The resulting fears of the consequences that will follow if they cooperate with law enforcement stand in the way of obtaining the critical testimony of “insiders.” Therefore, effective responses to the threats of criminal organizations require special, coordinated tools that allow law enforcement officers to obtain the testimony needed to break the conspiracies and convict the leaders.

II. THE FEARS: VIOLENCE AND SOCIETY’S PUNISHMENT

The fear that deters insiders from giving testimony is twofold. First, they fear violence and retaliation from their fellow conspirators for becoming government witnesses. Second, they fear the punishment society will inflict if they admit their participation in the criminal conspiracy they are asked to unmask. Criminal organizations play on and reinforce these fears to deter cooperation with law enforcement by their members.

Examples of fearsome violence against those who become government witnesses are legion. One drawn from our experience involves the murder of a government witness’ brother early on the morning he was scheduled to testify against members of the La Cosa Nostra (LCN). Another involves the arson murder of five female, family members of a witness against a violent drug organization; murders arranged by the drug organization’s leader from jail.⁴ Each country represented at this conference can share its own experiences with such violence, including violence in corruption cases.

Fear of prosecution, the second fear deterring would-be cooperators, has been “institutionalized” by the United States’ Italian Mafia, known as La Cosa Nostra (LCN). As a prerequisite to full “membership” in the organization, the LCN requires a prospective member to participate in a murder. In addition to demonstrating that the member has the “qualities” desired by this vicious organization, it was believed that participation in the murder also made future cooperation impossible. Since the penalties for murder were so great and the societal repulsion to murder was so strong, the LCN believed that those who participated in murders would never become cooperating witnesses.⁵ The LCN has been proven wrong.

III. COUNTERS TO FEAR: WITNESS PROTECTION AND COOPERATION PLEA AGREEMENTS

Over the past 40 years the United States has developed two powerful mechanisms for overcoming the fears that deter insiders from becoming witnesses. These two tools, when properly utilized, allow police and prosecutors to acquire the formal witness cooperation from insiders needed to convict leaders of criminal conspiracies and demolish criminal organizations. These two tools are 1) the Federal Witness Protection Program and 2) Cooperation Plea Agreements.

A. Federal Witness Protection Program

The Federal Witness Protection Program (“the Protection Program”) was created in 1970 by an act of the U.S. Congress entitled “the Organized Crime Control Act of 1970.” The Protection Program was originally created to help obtain witness testimony in Italian Mafia cases. To this end, the law created a system to provide for the health, safety and welfare of witnesses and their families both during and after the

⁴ The drug boss is currently facing federal charges in Philadelphia, Pennsylvania relating to these cruel murders.

⁵ The LCN has a special “ceremony” where a man who is considered “qualified” to be a full or “made” member of the organization swears an oath of allegiance, i.e., the oath of Omertà, the Mafia code of silence. Though the ceremony varies from family to family, it usually involves the pricking of the trigger finger of the inductee, then dripping blood onto a picture of a Saint, which is then set afire in his hand and kept burning until the inductee has sworn the oath of loyalty to his new “family.” The oath is along the lines of “[a]s this card burns, may my soul burn in Hell if I betray the oath of Omertà,” or “As burns this saint, so will burn my soul. I enter alive and I will have to get out dead.”

conclusion of the trial proceedings. In the years since it was created, the Protection Program has been expanded to other types of significant criminal conspiracy cases, not just those involving Italian Mafia cases, and has been modified to address issues not originally foreseen, such as providing protection for incarcerated cooperating witnesses.

By statute the United States Witness Protection Program is prosecutor-driven. The statute gives the United States' Attorney General the authority to provide for witness relocation and protection. See Title 18, United States Code, Section 3521, a copy of which is attached hereto as Annex 1. Thus prosecutors decide who should be admitted into the Protection Program. Neither judges nor defense attorneys have a role in this decision. Over the last 40 years procedures and criteria have been established under the authority of the Attorney General to ensure that the Protection Program only admits people who are witnesses in important cases and who are not likely to constitute a future danger to society.⁶

In the implementation of the Protection Program a special unit in the Criminal Division of the Department of Justice in Washington, known as the Office of Enforcement Operations ("OEO"), oversees and administers the operation of all phases of the Protection Program, including the decision of who should be accepted into the Protection Program. In addition to the prosecutors in OEO, two other agencies have substantial roles in implementing the protection features of the Protection Program. These are the United States Marshals' Service (Marshals' Service) and the Federal Bureau of Prisons ("BOP"). The Marshals' Service handles protection for non-incarcerated witnesses and their family members; BOP handles protection for witnesses who are serving jail sentences by establishing "jails within jails" that only house cooperating witnesses.

Of course, no one can be forced to go into the Protection Program. It is purely a voluntary decision on the part of a witness to request and accept protection under the umbrella of the Protection Program. Indeed, a person can decide to leave the Protection Program at any time. However, because it is expensive and complex to protect people, at the outset there is written agreement that is signed by the witness and the Marshals' Service that details what each has agreed to do. Thus, when it has been determined that a witness is a suitable candidate for the Protection Program, the witness and his/her adult family members who are to be protected will be asked to sign a Memorandum of Understanding. The Marshals' Service agrees to satisfy each commitment set forth in the MOU as long as the witness remains in good standing in the Protection Program. On the other hand, the Marshals' Service will not be required to provide amenities or services not included in the document. Typically the Marshals' Service agrees to relocate the witness and family to another part of the United States, to provide a new identity, and to help the family start a new life, which includes basic job location assistance for the relocated witness and, as well as the payment of living expenses for a period. At the same time, the witness and family members must satisfy their obligations under the MOU, including cooperation in searching for new employment in the relocation area and not taking any action that may compromise their new identities and location.

The witness' obligations can be difficult to honor, including, specifically the agreement not to take any action that might divulge the new identity and residential location. This means the witness cannot return to the "danger area,"⁷ or stay in contact with friends and relatives, except through means authorized by the Marshals' Service. If the witness breaches his security, OEO will expel him from the Protection Program and no longer authorize the Marshals' Service to provide services. (This does not mean that the witness' new identity will be revoked; nor does it mean that in the event of an actual danger that the witness will not be provided protection. However, OEO may refuse to approve continued payment of subsistence or provision of other types of support.)

The restrictions on the witnesses are often as stressful as the testimony given in court.⁸ Some witnesses find the Protection Program so restrictive they are unable to adjust. Some even decide to return to

⁶ It should be emphasized that the Protection Program is only available to witnesses and their families. It is not designed to provide protection to non-witnesses who may feel threatened by criminal elements.

⁷ The "danger area" is the broadly considered to be the areas where the witness is likely to be known or recognized, and therefore potentially targeted for violent retribution. Thus, for example, the "danger area" for a witness from New York City could include a large area of the East Coast of the United States since that is the geographic area in which he is most likely to be recognized.

⁸ It is not uncommon for a wife of a prospective witness to break down in tears when told that she will not be able to attend her mother's funeral in the "danger area" when/if her mother should die.

their old home city. There are a number of instances where witnesses who withdrew from the Protection Program and returned to the “danger area” were murdered. For example, against the advice of the Marshals’ Service a man from Philadelphia, Pennsylvania who had been a cooperating witness against the LCN found the Protection Program too restrictive and decided to leave the Protection Program and return to his old hometown. He was murdered within a matter months of returning.

The humorous (and grossly inaccurate) portrayal of the Protection Program in the comedic movie *My Blue Heaven* does catch one element many familiar with the Protection Program have experienced. The principal character in the movie describes his attitude toward the changes required by participation in the Protection Program as follows:

*I get to never see my parents again or my loved ones. I get to live in a place ... it’s okay, don’t get me wrong ... the air is clean, the people are nice ... but for a guy like me, raised on the sidewalks of the city that never sleeps, it’s a living hell.*⁹

Perhaps as a result of its strict rules, it is unquestionable that the Protection Program has been a tremendous success. No relocated witness who followed the Marshals’ Service rules has been harmed, and there have been thousands of successful prosecutions throughout the United States as a result of courtroom testimony from protected witnesses. Most noteworthy, the entrenched leadership of the LCN organizations, which justified the original creation of the Protection Program, has been convicted in cities throughout the United States based upon the testimony of “insiders” who were protected by the Protection Program.

B. Cooperation Guilty Plea Agreements

The other “tool” that works hand-in-glove with the Witness Protection Program is the “Cooperation Plea Agreement.” It is a fact that most “insiders” in serious criminal conspiracies have personally committed criminal acts. The Cooperation Plea Agreement is a mechanism which allows criminal “insiders” to plead guilty and to receive reduced jail sentences if they provide “substantial assistance” to the prosecution by cooperating and testifying.

It is the policy of the United States, incorporated in statutory law, to encourage such cooperation by allowing judges to impose jail sentences that are less than the sentences they would have received if the defendant had not cooperated. This policy recognizes that persons who have committed serious crimes should not be allowed to avoid all penal sanctions by agreeing to testify. At the same time, the policy gives the “insider” hope that at the end of the process, the insider will still have the opportunity to start a new life. It is the collective judgment of the United States that the cost of allowing reduced sentences for cooperation against leaders of the criminal organization is justified by the need to defeat the criminal organizations that pose such serious threat to civil society.

Prosecutors desiring the testimony of “insiders” always need to weigh the importance and public value of the insider testimony in a specific case against the risk that a serious criminal will not receive appropriate punishment. The Cooperation Plea Agreement is the balancing mechanism that allows both testimony and appropriate penal sanctions. Over the past thirty years the United States has developed considerable experience in the use of Cooperation Plea Agreements. It is now common to require criminal-witnesses to plead guilty to representative criminal violations and face the likelihood of jail sentences.

Unlike the Witness Protection Program that is controlled by the prosecutor, the Cooperation Plea Agreement requires the active involvement of the defense attorney and the judge, as well as the prosecutor. First, the prosecutor discusses the case with his/her supervisors and obtains approval from the leadership of the prosecution office to consider a Cooperation Plea Agreement with the specific defendant in the specific case. Next, the prosecutor and defense attorney discuss the proposed plea agreement and its likely meaning in the specific case. If the agreement is acceptable to the defense attorney and the client, the plea agreement must be set forth in writing and signed by the prosecutor, the defense attorney and the defendant. Next, the

⁹ From dialogue of “Todd Wilkerson”, a fictional participant in the Witness Protection Program, as portrayed by Steve Martin in MY BLUE HEAVEN (Warner Brothers Pictures 1990).

agreement is presented to the judge who can accept or refuse the agreement. Moreover, all parties understand and agree that the decision as to what sentence will be imposed is *solely* the decision of the judge. Cooperation Plea Agreements used by the US Department of Justice expressly state that the agreement does not bind the judge with respect to what sentence ought to be imposed. Thus, it is the judge, informed by his/her training and by having a full understanding of the case, who decides what sentence to impose.

If the judge decides to accept the agreement, the judge will require the defendant-cooperator to plead guilty in open court to the charges covered by the plea agreement. In most cases the defendant-cooperator will testify for the prosecution after the judge has accepted the plea agreement and after the defendant-cooperator has pled guilty. Thus, sentencing is deferred until the defendant-cooperator has completed cooperating with the prosecutor so that the judge may consider the significance of the cooperation. The expected cooperation can often involve several trials and different crimes, depending on the knowledge of the defendant-cooperator. In most violent criminal conspiracy or drug cases, the defendant-cooperator will be held in jail without bail and will be incarcerated in the Bureau of Prisons Protected Witness jail while cooperating and awaiting sentence.¹⁰

When the time comes to sentence the cooperating defendant, the judge is required by law to consider and evaluate these five factors:

- (1) the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance; and
- (5) the timeliness of the defendant's assistance.

Section 5K1.1 of the United States Sentencing Guidelines.¹¹ Applying these factors, the judge decides what the appropriate sentence should be for the cooperating witness in the specific case.

The positive effects of a cooperation plea bargaining system is that law enforcement has something to offer to overcome the fear of the potential witness that he will receive the same jail sentence as if he did not cooperate. Together with the Protection Program, the Cooperation Plea Agreement offers hope to the cooperating insider that he/she may have a new life free from the influences of the criminal syndicate they are exposing.

IV. WITNESS PROTECTION PROGRAM AND COOPERATION PLEA AGREEMENTS IN PRACTICE

One example of the effectiveness of these two tools, taken from our experience in prosecuting the LCN in Philadelphia, Pennsylvania illustrates this. In the period between 1991 and 1993 a war broke out between two competing factions of the LCN. During this period there were a series of murders and attempted murders, including a brazen motor vehicle ambush on a major expressway at the height of rush-hour. These competing acts of violence were ordered by the LCN "boss" and by his rival. Neither of the men actually pulled a trigger or was near the scenes of the violent crimes. Indeed, the LCN structure, depicted in Appendix III, is designed to insulate the leadership from the commission of crimes ordered by those leaders. As a result of investigation, prosecutors learned the identity of three men who were "shooters" in three LCN murders and built prosecutable cases against them. After much thought, prosecutors approached their defense attorneys and entered into separate cooperation plea agreements with the each of the three conspirators AND sponsored

¹⁰ The time spent in jail will count toward whatever jail sentence is ultimately imposed.

¹¹ In the United States sentencing in Federal Court is guided by Sentencing Guidelines. The provision of these guidelines applicable in sentencing cooperators is Section 5K1.1. A copy of this provision is attached in Annex 2.

them for the Witness Protection Program. Each man was required to plead guilty to his participation in the murders. Based upon their testimony, together with other evidence developed in a 2 year investigation, prosecutors charged the entire leadership of the Philadelphia LCN, including the boss and 22 others, with the crime of Racketeering and multiple acts of murder and extortion. After a 3 month trial, interrupted at one point by the murder of a brother of one of the insider-witnesses, all were convicted.¹² At sentencing the boss and his “underboss” were sentenced to life in jail without the possibility of parole. The three cooperating witnesses were sentenced respectively to 10, 12 ½ and 15 years in jail for their role as “shooters” in murders ordered by the “boss.” Without the Cooperation Plea Agreements they would have been sentenced to life in jail. Each served his sentence in a Bureau of Prisons Witness Protection facility in different federal jails, and thereafter was protected by the Protection Program.

V. CONCLUSION

In order to defeat modern criminal organizations, modern law enforcement needs to adapt to the challenges posed by sophisticated criminal syndicates. This means civil society must realize that tools appropriate for dealing with individual criminal acts are not adequate when dealing with the modern, sophisticated criminal organizations. Accordingly, our nations must provide law enforcement with the tools necessary to obtain testimony from members of these criminal conspiracies. This testimony will protect society from criminal organizations and at the same time provide due process in the legal proceedings against the leaders of these conspiracies. In the United States the Witness Protection Program and Cooperation Plea Agreement have been effective tools in eliminating and minimizing entrenched criminal organizations, and offer a baseline experience that other countries may reference when considering how to deal with modern criminal organizations.

¹² The prosecution had offered to have the Witness Protection Program cover the brother and his family. However, the brother refused. At the time he was murdered he was living in his family home in Philadelphia.

APPENDIX I

Title 18, United States Code, Section 3521, Witness Relocation and Protection

(a)(1) The Attorney General may provide for the relocation and other protection of a witness or a potential witness for the Federal Government or for a State government in an official proceeding concerning an organized criminal activity or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness with respect to that proceeding, an offense set forth in chapter 73 of this title directed at the witness, or a State offense that is similar in nature to either such offense, is likely to be committed. The Attorney General may also provide for the relocation and other protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

(2) The Attorney General shall issue guidelines defining the types of cases for which the exercise of the authority of the Attorney General contained in paragraph (1) would be appropriate.

(3) The United States and its officers and employees shall not be subject to any civil liability on account of any decision to provide or not to provide protection under this chapter.

(b)(1) In connection with the protection under this chapter of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury and otherwise to assure the health, safety, and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may, by regulation--

(A) provide suitable documents to enable the person to establish a new identity or otherwise protect the person;

(B) provide housing for the person;

(C) provide for the transportation of household furniture and other personal property to a new residence of the person;

(D) provide to the person a payment to meet basic living expenses, in a sum established in accordance with regulations issued by the Attorney General, for such times as the Attorney General determines to be warranted;

(E) assist the person in obtaining employment;

(F) provide other services necessary to assist the person in becoming self-sustaining;

(G) disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the Protection Program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the Protection Program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of State or local law enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records, and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence;

(H) protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons; and

(I) exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provisions of law as may be required to maintain the security of protective witnesses and the integrity of the Witness Security Protection Program.

The Attorney General shall establish an accurate, efficient, and effective system of records concerning the criminal history of persons provided protection under this chapter in order to provide the information described in subparagraph (G).

(2) Deductions shall be made from any payment made to a person pursuant to paragraph (1)(D) to satisfy obligations of that person for family support payments pursuant to a State court order.

(3) Any person who, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under paragraph (1)(G) shall be fined \$5,000 or imprisoned five years, or both.

(c) Before providing protection to any person under this chapter, the Attorney General shall, to the extent practicable, obtain information relating to the suitability of the person for inclusion in the Protection Program, including the criminal history, if any, and a psychological evaluation of, the person. The Attorney General shall also make a written assessment in each case of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided and the possible risk of danger to other persons and property in the community where the person is to be relocated and shall determine whether the need for that person's testimony outweighs the risk of danger to the public. In assessing whether a person should be provided protection under this chapter, the Attorney General shall consider the person's criminal record, alternatives to providing protection under this chapter, the possibility of securing similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, results of psychological examinations, whether providing such protection will substantially infringe upon the relationship between a child who would be relocated in connection with such protection and that child's parent who would not be so relocated, and such other factors as the Attorney General considers appropriate. The Attorney General shall not provide protection to any person under this chapter if the risk of danger to the public, including the potential harm to innocent victims, outweighs the need for that person's testimony. This subsection shall not be construed to authorize the disclosure of the written assessment made pursuant to this subsection.

(d)(1) Before providing protection to any person under this chapter, the Attorney General shall enter into a memorandum of understanding with that person. Each such memorandum of understanding shall set forth the responsibilities of that person, including--

(A) the agreement of the person, if a witness or potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings;

(B) the agreement of the person not to commit any crime;

(C) the agreement of the person to take all necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this chapter;

(D) the agreement of the person to comply with legal obligations and civil judgments against that person;

(E) the agreement of the person to cooperate with all reasonable requests of officers and employees of

the Government who are providing protection under this chapter;

- (F) the agreement of the person to designate another person to act as agent for the service of process;
- (G) the agreement of the person to make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;
- (H) the agreement of the person to disclose any probation or parole responsibilities, and if the person is on probation or parole under State law, to consent to Federal supervision in accordance with section 3522 of this title; and
- (I) the agreement of the person to regularly inform the appropriate Protection Program official of the activities and current address of such person.

Each such memorandum of understanding shall also set forth the protection which the Attorney General has determined will be provided to the person under this chapter, and the procedures to be followed in the case of a breach of the memorandum of understanding, as such procedures are established by the Attorney General. Such procedures shall include a procedure for filing and resolution of grievances of persons provided protection under this chapter regarding the administration of the Protection Program. This procedure shall include the opportunity for resolution of a grievance by a person who was not involved in the case.

(2) The Attorney General shall enter into a separate memorandum of understanding pursuant to this subsection with each person protected under this chapter who is eighteen years of age or older. The memorandum of understanding shall be signed by the Attorney General and the person protected.

(3) The Attorney General may delegate the responsibility initially to authorize protection under this chapter only to the Deputy Attorney General, to the Associate Attorney General, to any Assistant Attorney General in charge of the Criminal Division or National Security Division of the Department of Justice, to the Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice (insofar as the delegation relates to a criminal civil rights case), and to one other officer or employee of the Department of Justice.

(e) If the Attorney General determines that harm to a person for whom protection may be provided under section 3521 of this title is imminent or that failure to provide immediate protection would otherwise seriously jeopardize an ongoing investigation, the Attorney General may provide temporary protection to such person under this chapter before making the written assessment and determination required by subsection (c) of this section or entering into the memorandum of understanding required by subsection (d) of this section. In such a case the Attorney General shall make such assessment and determination and enter into such memorandum of understanding without undue delay after the protection is initiated.

(f) The Attorney General may terminate the protection provided under this chapter to any person who substantially breaches the memorandum of understanding entered into between the Attorney General and that person pursuant to subsection (d), or who provides false information concerning the memorandum of understanding or the circumstances pursuant to which the person was provided protection under this chapter, including information with respect to the nature and circumstances concerning child custody and visitation. Before terminating such protection, the Attorney General shall send notice to the person involved of the termination of the protection provided under this chapter and the reasons for the termination. The decision of the Attorney General to terminate such protection shall not be subject to judicial review.

APPENDIX II

§5K1.1. Substantial Assistance to Authorities (Policy Statement)

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

(a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:

- (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
- (5) the timeliness of the defendant's assistance.

Commentary of the Sentencing Commission includes the following:

A defendant's assistance to authorities in the investigation of criminal activities has been recognized in practice and by statute as a mitigating sentencing factor. The nature, extent, and significance of assistance can involve a broad spectrum of conduct that must be evaluated by the court on an individual basis. Latitude is, therefore, afforded the sentencing judge to reduce a sentence based upon variable relevant factors, including those listed above. The sentencing judge must, however, state the reasons for reducing a sentence under this section. 18 U.S.C. § 3553(c). The court may elect to provide its reasons to the defendant in camera and in writing under seal for the safety of the defendant or to avoid disclosure of an ongoing investigation

APPENDIX III

Structure of La Cosa Nostra [Mafia] Organization

