

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DRUMMOND COMPANY, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:11-CV-3695-RDP
)	
TERRENCE P. COLLINGSWORTH, individually)	
and as an agent of Conrad & Scherer, LLP; and)	
CONRAD & SCHERER, LLP,)	
)	
Defendants.)	

DECLARATION OF STEPHEN J. T'KACH

I, Stephen J. T'Kach, declare as follows:

I. **Background and Qualifications**

1. I am Stephen J. T'Kach, Associate Director (Ret.) of the Office of Enforcement Operations of the Criminal Division, U.S. Department of Justice ("DOJ"), Washington, D.C. I make this declaration based on my professional expertise and knowledge, as well as my hands-on experience and personal involvement with the United States Federal Witness Security Program. Attached as Exhibit "A" is a copy of my resume. Due to DOJ confidentiality rules, however, I have not discussed, revealed, or considered confidential or operational details in making this declaration.

2. I have been retained by Mr. Terrence P. Collingsworth and Conrad & Scherer, LLP, to provide an expert opinion in the above-captioned matter.

3. Prior to my retirement in August 2011, I worked for DOJ for twenty-two (22) years. I began as an attorney-advisor in the Electronic Surveillance Unit ("ESU") in 1990, reviewing requests from federal prosecutors for electronic surveillance orders and providing legal guidance to Assistant United States Attorneys and law enforcement agents to assist them in obtaining DOJ approval to seek judicial authorization to conduct federal wiretaps in major criminal investigations nationwide. In 1992, I was promoted to Deputy Chief of the ESU, where I supervised attorneys and staff and served as the primary DOJ electronic surveillance instructor for federal prosecutors and agents. Over the course of this assignment, I was involved in hundreds of electronic surveillance requests for crimes involving narcotics, gangs, weapons, organized crime, and public corruption, among others, as well as narco-trafficking activities of various Columbian cartels.

4. In 1995, I was named as an Associate Director of the Office of Enforcement Operations ("OEO") and I was concurrently appointed by the Department to serve as the Director of the Witness Security Program, replacing the creator of the Program who had run it since the Program's inception in 1970.

5. In addition to my Program responsibilities, as an OEO Associate Director, I was responsible at times for other areas of supervision, including the International Prisoner Transfer Unit and the Immunities Unit, and served on a number of *ad hoc* committees as assigned by the Department. During the absence of OEO leadership, I served as the OEO director.

6. As Director of the Witness Security Program, I was:

- responsible for the daily management, oversight, and coordination of the Program and its \$25+ million budget;
- formulated and implemented policies and guidelines regarding the use of the Program;
- supervised staff and Program activities within the Criminal Division, U.S. Marshals Service, and Federal Bureau of Prisons;

- traveled foreign and domestic to review security measures and to train and meet with international, federal, state, and local officials and Program partners;
- served as primary domestic and foreign DOJ instructor on Program operations, including before an international class of foreign officials at INTERPOL headquarters; and
- testified regarding Program operations before the U.S. Senate Committee on the Judiciary and the House of Representatives, Subcommittee on Crime, Committee on the Judiciary.

7. Just prior to my retirement in 2011, I also served as Deputy General Counsel for INTERPOL-Washington. Since then, I have worked as a public-safety consultant and volunteer deputy sheriff in Wisconsin, where I also serve as interim director of a county emergency services operation.

II. Summary of Opinion

8. In my experience with the Federal Witness Security Program, the only way to ensure witness's appearance and to obtain truthful testimony in major cases involving violence or violence-prone criminal enterprises is to assure the witness that they will be safe before, during, and after the completion of their testimony.

9. An important part of the Federal Witness Security Program was paying monthly subsistence payments to witnesses and their families. Neither I nor the Department of Justice viewed any of these subsistence payments or other payments or accommodations made as a "benefit" to the witness or their family. Those payments did not make the witness or their family members "whole" given what they had lost.

10. The Federal Witness Security Program is operated on a strict "Need to Know" basis, with each of the three main agency components sharing only that information necessary for the other to complete their tasks.

11. In my experience, the level of violence perpetrated on witnesses and their family members in Columbia was significantly worse than the situation confronted by witnesses in the United States.

III. Background and Purpose of the Federal Witness Security Program

12. The Federal Witness Security Program was created by an act of Congress in 1970 and is generally operated as a "three-part harmony," including operations in the Department's Criminal Division, the Federal Bureau of Prisons, and the United States Marshals Service. As Director, I was delegated all of the Attorney General's authority to run the Program, which operates pursuant to 18 USC § 3521, *et seq.*, and internal DOJ policies and procedures.

13. The Program was created because of a general failure of the Department's Organized Crime Section to bring successful prosecutions against members of the Mafia; witnesses were reluctant to testify, refused to testify, changed their testimony once up on the witness stand, or disappeared prior to their testimony. As my experience has shown in major cases involving violence or violence-prone criminal enterprises, the only way to ensure witness's appearance and to obtain truthful testimony is to assure the witness that they will be safe before, during, and after the completion of their testimony. The main purpose of the Program is to provide safety and security to witnesses, which may include protection while in custody and/or relocation with a new identity to a new community.

14. Since the Program's inception in 1970, nearly 10,000 witnesses and another 10,000 family members have been admitted into the Program; no one following the rules of the Program has ever been injured or killed. The successful operation of this Program is widely recognized as providing a unique and valuable tool in the government's battle against major criminal conspirators and organized crime. The enviable record of the Program provides important support for law enforcement and prosecutors by eliminating an obstacle to obtaining testimony and getting to the truth; something more likely to occur when witnesses feel safe about testifying and reassured for their security, and their family's security, post-trial. The mere existence of the Program can itself foster truth telling; witnesses know in the back of their minds that a mechanism is available to protect them in the event that they are threatened. This serves as a powerful means to obtain truthful testimony and reassures society that its government can protect those that have valuable, incriminating information about these criminal organizations and are willing to come forward and truthfully testify to that effect.

15. The Department's Criminal Division oversees the Program, processes and approves or denies all applications for Program services, and handles the numerous duties and tasks associated with running the Program. Witnesses are admitted to the Program based on four (4) criteria: 1) significance of the case, 2) significance of the witness's testimony, 3) the existence of a *bona fide* threat to the witness, and 4) the witness posing less of a risk to a new community than the defendant(s) that the witness testified against.

16. The Federal Bureau of Prisons ("BOP") protects the over 80% of witnesses that initially enter the Program and who have sentences to serve. BOP operates seven (7) PCUs (protective custody units) spread across the United States that house nothing but federally protected witnesses admitted to the Program. Special staff and security procedures are in place for all inmates housed in the PCUs. Families of protected inmates are eligible for relocation services by the Department.

17. The U.S. Marshals Service ("USMS") is responsible for those witnesses that will be relocated to a new community; USMS processes new identity documents, provides subsistence payments to witnesses, and assists witnesses and their family members with assimilation into a new community.

IV. Witness Relocation

18. Because of the extreme danger to witnesses and family members, USMS protection requires witnesses to move out of their home and community.

19. Witnesses and/or family members relocated to a new community are provided plane tickets or other transportation subsidies allowing them to reach their new community. USMS will provide initial lodging arrangements until suitable housing can be obtained. Food and clothing will also be provided by USMS during this transition period. USMS will also provide certain household furnishings, oftentimes as replacement for items that witnesses were forced to leave behind.

20. Because witnesses and their family members generally arrive in the new relocation community with no employment, income, or assets, and with no support system, USMS will provide subsistence payments to them. Those subsistence payments were expected to last for a period of approximately six to eighteen months; however, typically, witnesses were funded for longer periods.

21. Because each and every Witness Security case is unique, with facts and circumstances never the same, it was common for witnesses to remain on "funding" longer than eighteen months. The duration and amount of subsistence payments could vary even among those witnesses that appear to be similarly situated.

22. Common reasons subsistence payments were extended would be:

- failure to get a job;
- under employment--failure to get a job that paid sufficiently;
- the need for the witness to get further education.

23. It was particularly common for families to be provided extended subsistence payments in situations where the witness/father was incarcerated. This was due in part to difficulties in obtaining suitable employment for the mother, as well as the high cost or availability of day care.

24. From my experience, the more difficulties encountered by USMS in assimilating a witness into a new community, the longer the need for subsistence. In some cases, I am aware of witnesses have remained on funding for periods exceeding eight years.

25. Some witnesses continued to receive subsistence payments even after getting a job in their new community. This was done to make sure that witnesses were not discouraged from getting jobs and to assist them in acclimating to their new community. This also ensured that witnesses received enough money to live.

26. Some witnesses continued to receive subsistence payments even after receiving cash rewards from a law enforcement agency paid for their assistance in their case. This was done again to assist the witness acclimate to their new community and to encourage them to develop a long-term income stream.

27. The starting point to determine the amount of subsistence payments for a witness and/or a witness and family generally came from U.S. Department of Labor ("DOL") models for average family income in the new community. After that starting point was determined, USMS would add an additional amount to the subsistence payment. This additional amount was added to account for future unanticipated or additional expenses incurred by the witness and/or family. This DOL dollar amount combined with the USMS additional allocation would then become the witness's monthly subsistence payment.

28. At no time did Program officials take into consideration a witness's past income, employment, or assets in setting monthly subsistence payments.

29. In addition to the witness's monthly subsistence payment, there were also times when witnesses received additional monies. This was done for actual expenses incurred by the witness (or family member) for significant and unexpected events such as car repairs, hospital visits, accidents, etc. At other times, USMS provided additional money to witnesses to start up a business

30. On all occasions when relocated families in a new community traveled to prison to visit an incarcerated witness, those costs were borne by USMS.

31. Even with the subsistence payments made to the witnesses, it was understood by Program officials that witnesses could seldom be made "whole" in a new community. The act of abandoning their homes, family, friends, jobs, and other associations, was oftentimes a major life stressor for witnesses. Given the significance of this lifetime disruptions, over half of all witnesses entering the Program leave the Program voluntarily or commit a violation of Program rules, most commonly contacting someone back in the danger area, and are removed from the Program. Only 40% of all witnesses entering the Program will remain in the Program for life. Recognizing these difficulties, Program officials attempted to accommodate witnesses in different ways to ensure they remained in their new community. This might involve such unconventional things as paying to move domestic animals, including horses, to the new community.

32. Neither I nor the Department of Justice viewed any of these subsistence payments or other payments or accommodations made as a "benefit" to the witness or their family. Those payments did not make the witness or their family members "whole" given what they had lost.

33. The Internal Revenue Service ("IRS") has long agreed and issued an opinion that these subsistence payments and other payments made to the witness by Program officials are neither income nor benefits and, thus, they are not taxed.

34. The Program is designed and set up to protect witnesses and their families before, during, and after their cooperation with the intent that they will remain Program participants for their lifetime. In addition, I felt a moral obligation to assist the people who entered the Program and err on the side of caution to protect these people.

V. Secrecy

35. The Witness Security Program is operated on a strict "Need to Know" basis, with each of the three main agency components sharing only that information necessary for the other to complete their tasks. Despite serving as Director of the Program, with the full power and authority of the Attorney General to run the Program, I was never informed of a relocated witness's new location nor did I ask. For me, or my immediate staff, to learn of a relocated witness's new identity or location resulted in a security breach and the witness would have to be relocated and provided with a new identity. Likewise, if a federal prosecutor or agent inadvertently learned of a witness's new identity or location, such action would constitute a security breach and would require that the witness again be relocated.

36. Elaborate systems were put into place to ensure that subsistence payments made to witnesses were kept secret. Knowledge of how payments were made could compromise witness security.

37. The Program took great care in making disclosures to defense attorneys of information about, among other things, subsistence payments and other financial assistance to the witness to make sure their security was protected. In certain cases, where the information was considered particularly sensitive and the defendants were considered unusually dangerous, some disclosures were made under seal to defense attorneys with an order of the court directing that defendant's counsel not share the information with the defendant.

VI. Columbia

38. During the course of running the Witness Security Program for approximately 16 years, I reviewed every single application for Program services, which included dozens of individuals from Columbia or individuals involved with Columbian drug cartels. As part of the application process, I was informed by law enforcement of the threats to these individuals in the United States and in their home country.

39. In my experience, the level of violence perpetrated on witnesses and their family members in Columbia was significantly worse than the situation confronted by witnesses in the United States. It was not unusual to receive calls from sponsoring federal prosecutors or law enforcement agents informing me of the serious, violent consequences witnesses would face if denied Program services and forced to return to Columbia. Also, during personal interviews with a number of these Columbian national witnesses, I was also informed of the high level of violence in Columbia perpetrated against witnesses or against family members of witnesses once the witness's cooperation with authorities was discovered, including spouses and children killed and stuffed in 55-gallon barrels, tortured and dismembered family members, and family members who were missing and presumed killed. Witnesses also told stories of being forced out of their homes or off farms that were taken over by cartel members or members of a paramilitary group operating in Columbia. Resistance was generally met with death.

40. On at least three occasions, I met for hours with Columbian prosecutors and other high-ranking government officials to discuss difficulties these individuals were having in operating a functional, viable, and secure witness security program in Columbia. I understood from what they said that Columbia faced a situation similar to the United States with the Mafia in the 1960's; they were confronted with witnesses who were reluctant to testify, refused to testify, changed their testimony once up on the witness stand, or disappeared prior to their testimony. I was also informed that as a result of the high level of violence committed by the cartels and others, combined with incredible levels of cash flowing through the country related to narco-trafficking, corruption was a serious issue in maintaining the necessary secrecy of such a program. In addition, many different agencies were involved in protection efforts, and it was not uncommon to have to report the whereabouts of witnesses to government officials who absolutely had no "need to know." The country, unlike the United States, was not nearly as diverse, and the relocation of witnesses between cities or regions would often raise suspicion or cause some to suspect the newcomer did not belong there. Columbian officials often expressed frustration with their attempts to successfully relocate witnesses within their country.

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 15, 2015



Stephen J. T'Kach





EXHIBIT A

Stephen J. T'Kach
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Hudson WI 54016-0955
443-994-3300
sjdc@hotmail.com

EXPERIENCE

T'Kach & Associates
Hudson, Wisconsin

Law Enforcement & Legal Consultants
Interim Director, St. Croix County Emergency Services (Jan-Jul 2015)
2011-Present

St. Croix County Sheriff's Office
Hudson, Wisconsin

Deputy Sheriff, "Cold Case" Investigator/Part-Time Deputy (*pro bono*)
2012-Present

U.S. Department of Justice, Criminal Division
Washington, DC

Associate Director, Office of Enforcement Operations (OEO)
Director, Federal Witness Security Program
1995-2011

Responsible for the daily management, oversight, and coordination of the Federal Witness Security Program and its \$25+ million budget; formulated and implemented policies and guidelines regarding the use of the Program; supervised staff and Program activities within the Criminal Division, U.S. Marshals Service, and Federal Bureau of Prisons; provided counsel and advice to senior Department officials and other Government executives; communicated regularly with United States Attorneys and the leadership of law enforcement agencies; dealt extensively with immigration authorities for issues related to foreign national witnesses; traveled foreign and domestic to review security measures and to train and meet with international, federal, state, and local officials and Program partners; served as primary domestic and foreign DOJ instructor on Program operations; testified before U.S. Senate and House of Representatives; responded to executive, congressional, citizen, and media correspondence; provided instruction at numerous venues; oversaw covert operations unit and Criminal Division victims rights office; served as DOJ/FEMA Continuity of Government designee; held TOP SECRET/NSI clearances; appointed Special Deputy U.S. Marshal. Served as Deputy General Counsel, INTERPOL-Washington (2011)

Attorney Advisor/Deputy Chief, Electronic Surveillance Unit, OEO
1990-1995

Reviewed electronic surveillance requests and supervised attorneys and staff in the Electronic Surveillance Unit, while providing legal, policy, technical, and operational guidance to Assistant United States Attorneys and law enforcement agents to assist them in obtaining Department approval to seek judicial authorization to conduct federal wiretaps in major criminal investigations nationwide; designated technical liaison to investigative agencies, including the FBI Laboratory; primary Department electronic surveillance instructor for federal prosecutors and agents, and state and local law enforcement authorities, as well as foreign officials

Stephen J. T'Kach

EXPERIENCE (cont.)

St. Croix County
Hudson, WI

Director, Emergency Communications and 9-1-1 Center
1981-1990

Directed the day-to-day operations of consolidated county-wide 9-1-1 and emergency communications center for 51 public-safety agencies, including law enforcement, fire, rescue, and emergency medical services; managed and supervised department staff; served as agency spokesperson, responded to press inquiries, and conducted media interviews; prepared budgets, wrote proposals, and made presentations to county and city officials; designed, procured, and implemented communications and computer-aided dispatch systems; served as Deputy Sheriff and Deputy Director, Office of Emr Gov

INSTRUCTOR/PRESENTER (WitSec & Electronic Surveillance)

American University, *Washington Semester Program*, Justice & Law
Drug Enforcement Administration (including "HIDTA")

FBI Academy

Federal Law Enforcement Training Center ("FLETC")

INTERPOL HQ (Lyon, France)

Police Executive Research Forum ("PERF")

U.S. Attorneys' Offices

-inc federal, state, and local prosecutors and law enforcement personnel

U.S. Marshals Service

U.S. Secret Service

ADMISSION/CERTIFICATIONS/LICENSES

State of Minnesota

Attorney

State of Wisconsin

Attorney

Law Enforcement Officer

Federal Court

District of Minnesota

Western District of Wisconsin

U.S. Court of Appeals – District of Columbia

U.S. Supreme Court

EDUCATION

William Mitchell College of Law

St. Paul, MN Juris Doctorate (*cum laude*)

University of Wisconsin-River Falls

Bachelor of Science-Sociology/Criminal Justice

TESTIMONY

United States Senate Committee on the Judiciary

House of Representatives, Subcommittee on Crime, Committee on the Judiciary

U.S. v. Wadiah El-Hage (SDNY)