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REPORT BY THE

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118371

Comptroller General

OF THE UNITED STATES

U.S. Marshals' Dilemma: Serving Two Branches Of Government

Since 1969 U.S. marshals have been responsible for performing two fundamental missions--one under the control of the Department of Justice, an executive branch agency, and the other under the control of the judicial branch. The manner in which the existing organizational relationship has been implemented

--prevents the U.S. Marshals Service from effectively managing law enforcement programs assigned by the Attorney General, and

--interferes with the marshals' performance of essential duties for the Federal courts which hinders the judicial process.

This report contains recommendations that provide the Department of Justice and the judiciary an opportunity to administratively resolve the problems caused by the existing relationship. It also recommends that the Congress eliminate the dual authority structure if the two agencies cannot administratively resolve the dilemma faced by U.S. marshals.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-197739

The Honorable Max Baucus
United States Senate

Dear Senator Baucus:

This report is the first in a series of three in response to your request, dated September 17, 1979, to examine the operation of the U.S. Marshals Service. The report addresses the relationship of U.S. marshals to the Federal judiciary and the Department of Justice and the operational difficulties that result from this relationship. Essentially, the report concludes that the manner in which the Department exercises its authority over U.S. marshals prevents effective management of Federal law enforcement programs and hinders the judicial process. The second report being prepared in response to your request will discuss the Marshals Service's National Prisoner Transportation System and service of civil process and the third report will discuss the Witness Security Program.

As agreed with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to the heads of the agencies discussed in this report, to congressional committees having a jurisdictional interest in the matters discussed, and to other interested parties. Additionally, we will make copies available to others upon request.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

D I G E S T

Senator Max Baucus asked GAO to review various functions performed by U.S. marshals. This report, the first in a series of three, concerns the organizational relationship of U.S. marshals to the Department of Justice and the Federal judiciary, which is comprised of Federal judges, the Judicial Conference of the United States (a policymaking body), and the Administrative Office of the U.S. Courts, which gathers data and prepares reports on the business of the courts.

U.S. marshals are responsible under separate legislation for accomplishing missions and objectives of both the executive and judicial branches of the Government. As currently implemented, GAO believes this is a difficult and an unworkable management condition. Under it the Director, Marshals Service, cannot properly manage law enforcement responsibilities assigned by the Attorney General, and the operation of the Federal judicial process suffers.

Adding more resources conceivably could reduce, in the short term, the operating problems being encountered. However, the basic cause of the problems--the manner in which dual authority over U.S. marshals is exercised--would remain. Both branches of the Government would still have authority to take actions which would hinder the ability of the other branch to accomplish its mission.

DUAL AUTHORITY: ITS HISTORY AND EVOLUTION

The Judiciary Act of 1789 created the position of U.S. marshal to serve the courts. It required marshals to attend sessions of court when directed by the judiciary and to execute the lawful commands of the courts. In 1861, under confusing circumstances, the Congress enacted legislation which placed marshals under the "general supervision and direction" of the Attorney General and left unchanged the requirements of the Judiciary Act, thus, creating the dual authority condition.

For many years the Attorney General did not actively exercise control. However, as the Government acted to meet changing economic and social conditions, more law enforcement responsibilities flowed to the Attorney General and marshals were used to meet these needs. In 1969, a major change occurred--the Attorney General established the Marshals Service within the Department and soon began to rely heavily on marshals to conduct law enforcement programs. (See ch. 2.)

EXISTING CONTROL OVER MARSHALS HINDERS LAW ENFORCEMENT AND JUDICIAL ACTIVITIES

Under existing arrangements, marshals must apply their resources to meet the competing demands of both the executive and judicial branches. However, neither the Marshals Service nor the Federal courts can be assured that their missions receive the desired priority because the ability of both branches to control marshals is limited.

On one hand, the Marshals Service must accept (1) that by law marshals must assist the courts which limits their efforts to operate law enforcement programs, (2) existing judicial districts as its field organization, therefore, it cannot establish and staff offices according to law enforcement needs alone, and (3) that as political appointees, marshals are not subject to removal by the Attorney General and can prioritize their duties which often interferes with the administration of law enforcement programs. On the other hand, the judiciary cannot (1) control marshals' budgets as shown by the fact that court-related duties have borne the brunt of recently proposed budget cuts even when the judiciary believes existing courtroom security is inadequate and (2) prevent the Attorney General from assigning marshals further law enforcement duties. Because of these factors, the missions of both branches of Government have suffered. (See pp. 12 to 14.)

Department of Justice programs hindered

The Marshals Service is responsible for administering national law enforcement efforts such as

the Witness Security and Fugitive Warrants Programs. The existing dual authority relationship hinders the operation of such programs.

The Witness Security Program is inefficient, program services have been delayed, and the safety risk for witnesses has increased. (See p. 16.) Also, fugitives are often not actively pursued and investigative policies are not followed. This decreases the chances of successfully apprehending fugitives. (See p. 19.)

Judicial process hindered

The marshal is essential to the judicial process. They provide court security and enforce court orders to ensure the operational integrity of the courts.

Although originally marshals were not subject to supervision by other Federal agencies, this is no longer the case. Under dual authority, marshals must now respond to executive branch demands which compete with the marshals' original court-related duties. Consequently, pressures to perform law enforcement duties have resulted in delays in serving judicial notices and orders and have raised concerns about courtroom security. (See pp. 22 to 26.)

RECOMMENDATIONS TO THE ATTORNEY GENERAL

GAO recommends that the Attorney General take specific actions that will (1) make the performance of court-related duties each U.S. marshal's top priority, (2) substantially decrease U.S. marshal involvement in the performance of national law enforcement duties, and (3) keep the Congress apprised about the nature and status of the problems related to the use of marshal resources. (See p. 28.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

GAO recommends that the Judicial Conference authorize the Director, Administrative Office of the U.S. Courts to (1) assist the Attorney General in gathering information on each district

court's resource needs for marshal personnel and (2) apprise the Congress, during the appropriation and authorization process, about the nature and status of problems related to the use of marshal resources. (See p. 29.)

RECOMMENDATION TO THE CONGRESS

GAO's recommendations provide the Department of Justice and the judiciary an opportunity to administratively resolve the problems being caused by dual authority over U.S. marshals. However, if the agencies do not implement these recommendations, GAO recommends that the Congress take legislative action to eliminate the Attorney General's authority to supervise, direct, and control the operations of U.S. marshals. (See p. 29 and app. X.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Administrative Office of the U.S. Courts, the chief judges in six of the nine districts GAO visited, and the Department of Justice commented on this report. The version of the report provided to them for comment contained proposals that legislation be enacted that would repeal the statutory basis under which the Attorney General is empowered to supervise, direct, and control the operations of U.S. marshals. Five of the six chief judges fully agreed with GAO's findings and proposals. The sixth chief judge said the report was comprehensive and clear and emphasized that the courts cannot function without some agency responsible for courtroom security.

In contrast, the Administrative Office and the Department of Justice, while agreeing that operating problems exist, strongly disagreed with the report's conclusions and proposals. They believe the primary cause for the existing problems is inadequate funding and that interbranch cooperation can help to resolve the problems. The Department also stated that dual authority is an illusory concept. It said that authority to supervise and direct marshals is clearly and exclusively vested in the Attorney General by 28 U.S.C. 569(c). This statement conflicts with the Administrative Office's comments which state that dual authority is a serious management problem.

GAO believes that dual authority is not illusory because the law clearly requires marshals to serve process, execute court orders, and attend sessions of court when directed by the judiciary. (See p. 33.)

GAO does not agree that the problems are totally caused by inadequate resources, not dual authority. GAO believes that the Attorney General's delegation of additional law enforcement duties to marshals (such as the Witness Security Program) has resulted in a relatively fixed amount of resources being spread thinner because they are responsible for a greater number of duties. (See p. 36.)

GAO believes that the problems being caused by the existing organizational relationship are serious and need to be resolved. Because the missions of the Department and the Federal courts require them to interact and both agencies expressed the view that cooperation between them is improving, GAO believes they should be given the opportunity to administratively resolve these problems. Accordingly, GAO recommends specific actions to achieve that end. However, GAO also recommends that the Congress take legislative action to eliminate the Attorney General's authority over marshals if the agencies fail to take appropriate actions.

Contents

ABBREVIATIONS

GAO	General Accounting Office
NCIC	National Crime Information Center
OLC	Office of Legal Counsel
OMB	Office of Management and Budget
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

At the request of Senator Max Baucus, we examined the operations of the Marshals Service and U.S. marshals. (See app. I.) This report, the first in a series of three, concerns the organizational relationship of U.S. marshals to the Federal judiciary and the Department of Justice, and how this relationship affects the performance of duties and responsibilities assigned to marshals by both branches of the Government. Subsequent reports will discuss the operation of the Marshals Service's (1) National Prisoner Transportation System and the service of judicial process and (2) the Witness Security Program.

THE POSITION OF U.S. MARSHAL

U.S. marshals are executive branch officers. They were the original Federal law enforcement officers. The First Congress of the United States established the position of U.S. marshal by the Judiciary Act of 1789, 1 Stat. 73, 87. Marshals were to be appointed by the President for each judicial district for a term of 4 years and were to be removable from office by the President. Marshals could appoint one or more deputies, but deputies were subject to removal by the Federal judge of the district or circuit court sitting within the marshal's district.

The Judiciary Act directed marshals to (1) attend sessions of the Federal courts and (2) execute all process and orders directed to them. The act also authorized marshals to command all assistance necessary to execute their duties. Until 1951, marshals were the only Federal officers with broad powers of law enforcement.

After marshals were established, the Congress began imposing such a wide variety of assignments on them that they became Federal administration "handymen." They were directed to take the census and to supervise jails for Federal prisoners. Later, they were given custody of all vessels seized by revenue officers. Under other statutes, marshals became the courts' fiscal agents and the President's direct agents for executing his orders under the Alien Acts of 1798. Still other statutes subjected marshals' accounts to oversight by other Federal departments. As a practical matter, however, U.S. marshals remained basically autonomous from day-to-day direction by executive departments until 1969.

U.S. Marshals were created as part of the Federal district judicial system

The Congress enacted the Judiciary Act of 1789 which established a decentralized judicial system. Recognizing the need for

Federal courts in the individual States, the Congress established 13 judicial districts. A judge, an attorney, and a marshal were deemed necessary to perform the judicial business in each district.

The court is the primary unit, but it could not operate without representation before it and/or without the means to ensure its functional operation. Thus, the position of U.S. attorney was established to represent the Government in Federal cases, and the position of U.S. marshal was established to perform functions specified by statute that are essential to court operations. The three entities together support the operation of the Federal judicial system in each of the districts.

U.S. marshal law enforcement powers were broad but localized

U.S. marshal law enforcement powers were very broad within each individual district. Federal marshals could command all necessary assistance to form posses within their districts. The marshal's authority to confer law enforcement power on others could only be exercised by a marshal and only within his district. These posses were composed not only of bystanders and citizens but also of the armed services, whether militia of the State, or Federal troops. In the latter part of the 1800s, the power of a marshal to direct the military to assist in the execution of civil and criminal laws was eliminated.

THE MARSHALS SERVICE AND ITS RELATIONSHIP WITH U.S. MARSHALS

The Marshals Service, established by the Attorney General in 1969, is a bureau within the Department of Justice. As officers of the Department of Justice, marshals are supervised and directed by the Attorney General through the Director of the Marshals Service and are assigned responsibility for law enforcement program areas of national priority. These primarily include the Witness Security Program, the coordinated movement of prisoners between districts through the National Prisoner Transportation System and the apprehension of Federal prison escapees and other fugitives from justice through the execution of warrants. Although marshals are officers of the Department of Justice, they also are officers and instrumentalities of the Federal courts. They are required by law to attend court when ordered by a judge. They assist court operations by transporting and

producing prisoners as needed, serving process, 1/ executing various commands of the court, and providing security to the court.

The President still appoints a marshal, subject to Senate confirmation, for all of the Federal judicial districts except the Virgin Islands, whose marshal is appointed by the Attorney General. There is at least one marshal's office located in each of the 50 States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, the Canal Zone, and the Northern Mariana Islands. In all there are 94 U.S. marshals to serve the 95 Federal judicial districts. The marshal for the district of Guam is also responsible for serving the district court for the Northern Mariana Islands.

The President also appoints the Attorney General, subject to Senate confirmation. The Attorney General in turn appoints the Director of the Marshals Service. Deputy marshals are career civil servants and are hired from Federal employment registers maintained by the Office of Personnel Management. As of January 1981, there were 1,553 deputy marshals and 336 administrative personnel assigned to the judicial districts, and 221 personnel assigned to the Marshals Service's headquarters.

STRUCTURE OF THE FEDERAL JUDICIAL SYSTEM

The United States Supreme Court is the highest of three levels of courts in the Federal judicial system. On the second level are the U.S. Courts of Appeals, and on the third level are the U.S. District Courts. The Judicial Conference of the United States, made up of judges representing all three levels, is the prime policymaking body of the Federal judiciary. Associated with this structure is the Administrative Office of the U.S. Courts which is responsible for gathering data and preparing reports on the business of the courts.

OBJECTIVES, SCOPE, AND METHODOLOGY

Senator Max Baucus' request asked for an evaluation of several Marshals Service functions. In accordance with discussions with his office, questions 2 and 5 (see app. I) were not pursued because preliminary information indicated no further review was warranted. To address the remaining five questions,

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1/"Process" is a general term for a mandate or writ used by the court to notify a party that an action against them has been commenced, to compel the appearance of an individual, or to force compliance with a judicial order.

our review focused on the following objectives: (1) how U.S. Marshals' ability to accomplish their missions and utilize resources is affected by their being subject to two branches of the Government, (2) what can be done to improve the efficiency of prisoner transportation and the service of process, and (3) how effectively does the Service handle the Witness Security Program. This report deals with the first objective. Objectives 2 and 3 will be dealt with by separate reports which are currently being prepared.

This review was performed in accordance with our current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." To accomplish the first objective, we reviewed

--Federal laws, rules, and regulations regarding the establishment of the position of U.S. marshal, the Marshals Service, and their relation to the Federal judicial system;

--the organizational structure of the Marshals Service;

--congressional hearings and Department of Justice internal audit reports concerning the operations of U.S. marshals; and

--practices being followed by marshals to accomplish district and national Marshals Service responsibilities.

We performed audit work at Marshals Service headquarters and in 11 judicial districts. We selected the districts on the basis of their size, volume of activity, geographical location, and availability of our audit staff. At the Marshals Service headquarters located in Tysons Corner, Virginia, we interviewed agency officials and reviewed agency orders, regulations, available management data about operations, and historical records related to the establishment of the Marshals Service.

In seven judicial districts--eastern Virginia, Maryland, southern Ohio, eastern Kentucky, eastern Louisiana, southern Texas, and central California--we performed detailed audit work relating to the major responsibilities of U.S. marshals. These included courtroom security, transportation of Federal prisoners, protection of Federal witnesses, service of legal process and execution of court orders related to judicial proceedings, and apprehension of Federal fugitives and escaped prisoners. In western North Carolina extensive audit work was performed relating to the protection of Federal witnesses, the service of legal process, and the apprehension of Federal fugitives and escaped prisoners. In southern California detailed work was performed relating to the transportation of Federal prisoners. In addition,

limited audit work was performed in southern Florida and the District of Columbia.

In the seven judicial districts where we performed detailed audit work, we interviewed marshal personnel, Federal judges and magistrates, U.S. probation officers, U.S. attorney personnel, organized crime strike force attorneys, and officials of the Federal Bureau of Investigation and Drug Enforcement Administration about U.S. marshal operations. We reviewed in detail available district records showing efforts to apprehend fugitives and transport Federal prisoners, procedures to secure sensitive information on protected witnesses, and practices to provide courtroom security and serve Federal process.

To obtain the marshals' perspective on operations, the Director, Marshals Service, sent a questionnaire at our request to all the marshals located in the continental United States. Eighty-eight marshal offices were involved, and 85 marshals provided responses. However, only 71 districts provided information in a format useful for our analysis.

CHAPTER 2

LEGISLATION AND SUBSEQUENT ADMINISTRATIVE ACTIONS HAVE MADE U.S. MARSHALS SUBJECT TO DUAL LINES OF AUTHORITY

The Judiciary Act of 1789 created the position of U.S. marshal and required that marshals attend sessions of court when directed by the judiciary, serve process, and execute the lawful commands of the courts. However, 72 years later, in 1861, the Congress enacted legislation which placed marshals under the "general superintendence and direction" of the Attorney General and left unchanged the original requirement that marshals attend sessions of court and execute writs, process etc., when directed by the judiciary. Confusion surrounds the history and precise purpose of this legislation. It granted the Attorney General power

--far beyond the stated intent of the act's sponsor, and

--far greater than he could be expected to effectively use at that time in history.

The 1861 legislation established the legal basis for marshals to be given two distinct and separate missions. In 1969, the Attorney General, using the authority of the 1861 act, formalized his control over marshals and soon made marshals responsible for implementing nationwide Federal law enforcement programs. These missions cause conflicts over the use of marshal resources because one mission is subject to control by the judicial branch and the other by the executive branch.

LEGISLATION ENACTED OVER 100 YEARS AGO LAID THE FOUNDATION FOR DUAL AUTHORITY OVER U.S. MARSHALS

Each day marshals are faced with an operational dilemma because they are subject to supervision and direction by the Attorney General (28 U.S.C. 569(c)) and may, in the discretion of the respective courts, be required to attend any session of court (28 U.S.C. 569(a)) and perform other functions specified by statute to support the judiciary. The executive branch controls each marshal's budget and coordinates national law enforcement programs through the Marshals Service--a bureau of the Department of Justice. Judges can order marshals assigned to their district to assist in the conduct of the district's judicial business as provided by statute.

When originally established in 1789, marshals had only one mission--assisting the operation of the Federal courts. Six years later, the Third Congress vested marshals with the same enforcement powers as State sheriffs when executing the laws of the United States. With this legislation, U.S. marshals became the first and for many years the only Federal law enforcement officers.

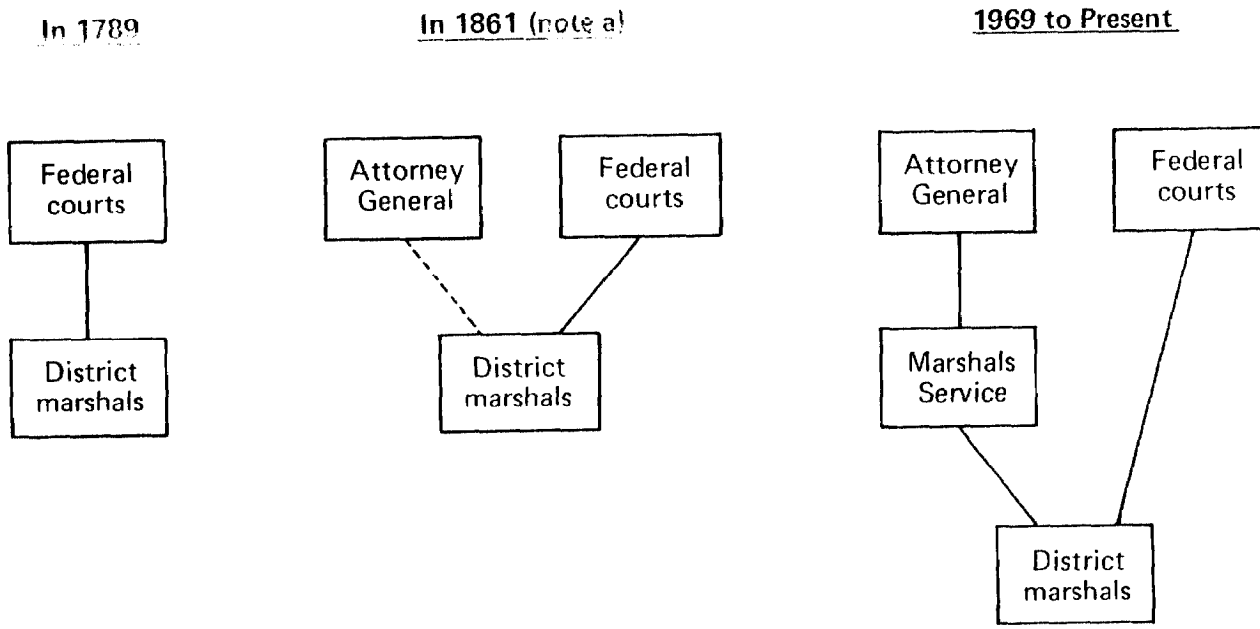
After Congress established marshals, their ability to serve the courts was diluted. For example, marshals became responsible for:

--taking the Nation's census in 1790,

--enforcing illegal alien statutes in 1798, and

--attaching property and collecting revenues due the Government in 1820 and 1830.

However, it was not until 1861 that the legal basis for dual authority over marshals was fully established. The following chart chronicles the significant changes in operational lines of authority over U.S. Marshals.



a/The dotted line signifies that, although the Attorney General had broad authority to direct and supervise marshals, he did not have the means to effectively use this authority in 1861.

Before 1861 the offices of U.S. marshals and the Attorney General were separate and distinct entities. Marshals performed Federal law enforcement functions in their districts without any overall direction from executive branch officials and agencies. They also attended to the needs of their district courts by providing courtroom security, executing writs, and serving legal process. They were the takers of the census--a task which was supervised and directed by the Departments of State and Interior at various times.

On August 2, 1861, an act of Congress (ch. 37, 12 Stat. 285) placed U.S. attorneys and marshals under the general superintendence and direction of the Attorney General. The 1861 legislation neither explicitly repealed nor made reference to any prior statutes affecting marshals. The act's sponsor stated that the purpose was to

> "* * * divest the Secretary of the Interior of all power which he now exercises over the judicial operations of the United States."

In 1849 the Congress had vested the Secretary of the Interior with "supervisory power" over marshals' census taking operations and their financial accounts. However, despite the stated intent of the 1861 legislation, as expressed by its sponsor, the statute's "general superintendence and direction" language was not qualified in such a manner as to be limited to the powers previously vested with the Secretary of the Interior. The authority given to the Attorney General by the 1861 legislation seems to go far beyond a mere transfer of "supervisory power" over marshal accounts.

In addition to the confusion about the intent of the 1861 act, the Attorney General was not at this time in history able to effectively use this authority. He was not the head of any Federal department and in reality had a very limited staff comprised of one assistant, five clerks, and one messenger. As a practical matter he could not, and in fact did not, direct and supervise marshals and attorneys.

On June 22, 1870, the Congress established the Department of Justice (16 Stat. 162) and designated the Attorney General as its head. This act compounded the confusion about the powers the Attorney General received in 1861. The 1870 act specifically provided that the supervisory powers exercised by the Secretary of the Interior over the accounts of marshals would henceforth be exercised by the Attorney General. This authorization would seem implicit in the 1861 act, particularly in view of the stated purpose of that act, as expressed by its sponsor. However, the 1870 enactment did not repeal or refer to the 1861 statute. As a result, the language of both acts was included in the

Revised Statutes (initial codification of Federal laws) enacted in 1874. Nevertheless, for many subsequent years the relationship between the Attorney General and marshals was casual in its nature rather than one where the Attorney General actively exercised control.

CHANGING CONDITIONS LED TO ESTABLISHMENT OF THE MARSHALS SERVICE IN 1969

The legislation enacted in 1861 used broad language and placed no explicit restrictions on the Attorney General's authority to direct and supervise marshals. The 1861 legislation together with the Judiciary Act of 1789 laid the legal foundation for today's present organizational and authority structure that subjects marshals to control by the Attorney General and the courts. This organizational situation did not immediately cause resource control problems. The problems associated with this dual authority relationship evolved gradually due to changing economic and social conditions within the Nation coupled with Government action to meet these changing conditions.

The depression which began in 1929 had a devastating impact on the economy and led to a change in the role and size of Government. The numerous Federal programs enacted caused a sudden growth in the size of the executive branch. In 1939 the Congress recognized a need to consolidate Federal agencies and programs and authorized the President to reorganize the executive branch. The continued growth of the Government led to a second reorganization in 1950.

The purposes of these reorganizations were to reduce expenditures, increase operational efficiency, consolidate agencies according to major purposes, promote better execution of the laws and more effective management, and expedite the administration of public business. The reorganization plans following the 1939 act formally recognized U.S. marshals as officers within the Department of Justice for the first time. Reorganization Plan No. 2 of 1950 specifically transferred to the Attorney General all functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department. In addition to the authority to supervise and direct marshals under the 1861 legislation, the reorganization plans were used to centralize the control and direction of marshals' law enforcement operations from Washington.

In the 1950s and the 1960s social issues and concerns became prominent. These included concerns about civil rights, riots, demonstrations against the Vietnam War, hijacking of aircraft, and the growth in organized crime. As a result of these conditions and the laws passed, substantial law enforcement responsibilities flowed to the Attorney General. This, in turn, increased

the need for law enforcement resources. During this period the Attorney General began utilizing marshal resources to meet law enforcement responsibilities. As these responsibilities increased, so did the use of marshal resources.

On May 12, 1969, the Attorney General formalized his relationship with the marshals by establishing the Office of the Director, Marshals Service. One of the authorities cited by the Attorney General for establishing this office was the authority granted by the 1861 legislation.

U.S. MARSHALS TODAY AND THE FUNDAMENTAL PROBLEM

The basic statutory responsibilities and law enforcement powers of marshals today closely parallel those granted by the Congress nearly 200 years ago. However, marshals are no longer the only Federal law enforcement officials. Today, there are more than 30 Federal departments and agencies which perform or support specialized police and investigative activities. Although it is clear that the basic powers of marshals have not changed materially over the course of two centuries, the designated officials with supervisory controls over them have changed. Today, marshals are officers of the Department of Justice as well as officers of the courts.

The Director of the Marshals Service, as the head of a Department of Justice bureau, has line authority powers to

--allocate staff resources, except for the politically appointed U.S. marshals,

--make final decisions for all personnel matters involving Marshals Service staff, except for U.S. marshals,

--procure necessary equipment, and

--set the priorities of the Marshals Service.

Despite these delegations of authority to the Director, the Department's control over marshals is not absolute and is clearly limited by law. The First Congress of the United States required marshals to attend court when ordered by the judiciary and this requirement remains law today. Also, U.S. marshals, unlike the Director, Marshals Service, are not subject to appointment or removal by the Attorney General. (See p. 3.)

With the creation of the Marshals Service in 1969, the potential organizational conflict inherent in having two distinct units able to direct the same resources was realized. To effectively carry out law enforcement programs of national concern,

centralized management and control was needed. To address this need, the Department of Justice supported on several occasions legislation that would have made marshals career service employees instead of political appointees and provided the Attorney General sole authority to appoint and remove U.S. marshals. This would have put the Department of Justice in the position to decide which court needs would be met and how they would be performed. In essence, this legislation would have allowed the Department of Justice to control the level and extent of services provided to court operations. However, these proposals did not win congressional support and were never enacted.

Later, in 1977, the Marshals Service and the Administrative Office of the U.S. Courts entered into an interagency agreement whereby the provision of courtroom security, above a minimum level, would be determined by the Marshals Service. The agreement would have allowed the Marshals Service to administratively determine the level of security required by the judiciary. However, this administrative attempt did not significantly improve the Marshals Service's control over resources because the agreement was not binding on the district courts. For example, the Attorney General testified in March 1981 that the Marshals Service is under court order in 78 Federal judicial districts to provide marshals in all courtroom proceedings. Therefore, U.S. marshals remain subject to two separate lines of authority.

CHAPTER 3

THE PRESENT DUAL AUTHORITY RELATIONSHIP OVER U.S. MARSHALS ADVERSELY AFFECTS LAW ENFORCEMENT AND JUDICIAL MISSIONS

For the past 12 years U.S. marshals have been formally responsible for performing two fundamental missions. Each mission, however, is for a different branch of the Government and both branches exercise control over marshal resources. The Judiciary Act of 1789 requires marshals to assist Federal district court operations. Since 1969 marshals have also been responsible for implementing national law enforcement programs under the direction of the Marshals Service and the Attorney General.

Dual authority over marshals, as it is being exercised, is an unworkable management condition.

--It prevents the Director of the Marshals Service from effectively managing the national law enforcement programs assigned by the Attorney General.

--It hinders the ability of marshals to perform court-related duties necessary for the effective operation of the judicial process.

Under the existing dual authority relationship, U.S. marshals must try to faithfully serve the judiciary and the Marshals Service simultaneously. Neither mission can be effectively accomplished under this operational arrangement. We believe that specific actions must be taken by both the Department and the judiciary to resolve these problems so that the missions and objectives of each branch of Government can be carried out in the most effective and efficient manner.

DUAL AUTHORITY, AS IMPLEMENTED, IS AN UNWORKABLE MANAGEMENT CONDITION

Authority is the right to do something and power is the ability to do it. According to basic management theory, when authority and power are closely equated, a workable management condition exists; however, when they are not equated, an unworkable management condition exists. Neither the Marshals Service nor the courts have adequate power under dual lines of authority. Each branch of Government has the ability to take actions which can negate the power of the other branch. This places U.S. marshals in an unworkable management situation.

Dual authority requires marshals to faithfully conduct distinct missions for two different branches of Government but

without any agreement between the branches on the priority of the various mission-related functions. As a result, marshals establish their own operating priorities.

The operating priorities marshals establish are governed by perceptions of their role as independent political appointees, personal views about the importance of each mission, the willingness of the district courts to share the marshal's resources with the Marshals Service, and administrative controls and budget restrictions established by the Marshals Service. Consequently, the level of attention each function receives varies among districts and can vary within each district on a day-to-day basis. Thus, neither the Marshals Service nor the courts can be assured that the functions related to their missions will routinely be performed as desired.

To demonstrate the varying views by marshals about operating priorities, 88 marshals in the continental United States were asked to provide us information about the relative importance of each basic function in their districts. Eighty-five marshals replied; however, only 71 provided information in a format useful for analysis. The table below shows the priority these marshals give to each of their fundamental responsibilities.

Marshal function	Priority of function and the number of times it was given priority (note a)				
	1	2	3	4	5
Court attendance	49	8	6	4	4
Execution of warrants	16	20	21	10	4
Service of process	2	18	9	9	33
Witness security	2	14	16	22	17
Transportation of prisoners	2	11	19	26	13

a/Number 1 represents the top priority and number 5 the lowest priority.

As shown, U.S. marshals' opinions about the priority of these functions vary greatly. As a result, no assurances exist that either mission will be performed as desired by the courts or the Marshals Service. To accomplish their missions, both branches of Government must exercise their authority over marshals in an effort to gain better control over these resources.

Through administrative actions the Marshals Service established a regular 40-hour workweek and created special program positions for deputy marshals. This gives the Marshals Service

a degree of control in the use of overtime and direct control over a limited number of deputies. It also encourages marshals to use deputies primarily for their assigned law enforcement program duties. The courts on the other hand have issued various orders to marshals detailing how they expect various court-related functions to be performed. Marshals failing to comply with court orders subject themselves to possible contempt of court charges. However, because marshals must share their resources between two missions, stronger control over the use of resources for one mission reduces a marshal's capability to effectively perform functions to accomplish the other mission. Thus, dual authority problems have not been corrected through self-regulation by the courts or the Marshals Service.

It is extremely difficult for one person to effectively serve two masters. Because marshals are subject to separate lines of authority, they must often choose whose mission will be performed. No matter whose mission is performed, the branch of Government responsible for the other mission will not be satisfied, and a no-win situation for marshals results.

On the surface, this operating condition appears to be a simple problem related to a shortage of resources. Indeed, the provision of additional resources conceivably could mitigate operating problems. However, adding more resources would not resolve the problem because both branches of Government would still have authority to take actions which would negate the power of the other branch.

The existing dual authority relationship prevents effective management. Under it

--neither the Marshals Service nor the courts can be assured marshals will give their mission proper priority, and

--actions the Marshals Service and courts take to better control marshals' operations decrease marshals' capability to perform duties related to their other mission.

The Department and the judiciary need to take specific action to resolve these problems.

THE MARSHALS SERVICE CANNOT EFFECTIVELY MANAGE ITS LAW ENFORCEMENT PROGRAMS

The Marshals Service is a bureau within the Department of Justice having departmental responsibilities for certain centralized law enforcement programs. As the head of the bureau, the Director should have the authority to organize and control

resources under his direction to accomplish the objectives of the programs assigned to the Marshals Service. However, the Director is prevented from fully exercising these fundamental management prerogatives because of the dual authority problem.

The Congress has created judicial court districts and mandated that marshals attend court as required by the judiciary. The establishment of the Marshals Service in 1969 did nothing to change this condition. Consequently, the Director of the Marshals Service was forced to

--accept that U.S. marshals were political appointees, a fact which provides them with a certain degree of autonomy from the Department of Justice,

--accept the existing judicial districts as the basic field organization,

--continue to allocate staff resources to districts to meet not only law enforcement needs but also the needs of the Federal courts, and

--accept the fact that as officers of the courts, U.S. marshals (and their subordinate deputies) must comply with the lawful directives of the courts as defined by statute.

These conditions precluded the Director from exercising fundamental management prerogatives. The Director could not establish and staff offices according to the Marshals Service's law enforcement needs nor fully control the use of staff. As a result, the Director does not have adequate power to implement the centralized law enforcement programs assigned to him by the Attorney General. Instead, the Director must manage the Marshals Service's programs by seeking the cooperation of each U.S. marshal.

This framework does not provide an effective means to manage centralized law enforcement programs. Control is needed to ensure programs are implemented as desired. The current dual authority relationship prevents effective management because the Director's power over personnel is not commensurate with his responsibility. To assess and demonstrate the effects of the current organizational relationship, we reviewed the operations of the Witness Security and Fugitive Warrants Programs. We found that the operation of both programs was adversely affected.

Witness Security Program

Department officials have testified before the Congress that the Witness Security Program is a vital tool in prosecuting cases related to the Department's top law enforcement priorities. 1/ It is the Marshals Service's only responsibility that relates directly to the top law enforcement priorities of the Department. Since the program's inception, the Marshals Service has been criticized frequently by congressional committees, departmental evaluators, program participants, and the public for the manner in which it provides services to witnesses and conducts the program. While many changes have been made to improve program operations, the basic operational problem of dual authority has never been addressed and still remains. We believe the existing dual authority relationship is the fundamental problem that prevents the Marshals Service from controlling the districts' implementation of the program. It causes inefficient operations, delays the services provided to witnesses, and creates security problems for witnesses.

Title V of the Organized Crime Control Act of 1970 authorized the Attorney General to protect individuals who testify against persons involved in organized criminal activity. With this authority the Department established the Witness Security Program and delegated its operation to the Marshals Service. Persons admitted to the Witness Security Program are provided protection while testifying or assisting in criminal prosecutions, given new identities, geographically relocated, and provided services and financial aid to assist in their transition and adjustment to a new life.

Dual authority over marshals forces the Marshals Service to manage the program without adequate power to direct marshals and deputies. The Marshals Service has designated, trained, and promoted 131 deputy marshals as witness security inspectors. The inspectors are the key personnel responsible for implementing the program in their respective districts. They explain the program in detail to witnesses, supervise district program operations, and provide the program services to witnesses. The direct line of authority for most of these inspectors (91), however, is through the district marshal, not the Marshals Service's program officials. Consequently, the Marshals Service must rely on the cooperation of district marshals to manage the Witness Security Program.

1/The previous Attorney General had designated organized crime, narcotics trafficking, public corruption, and white collar crime as the Department's top law enforcement priorities.

District marshals, however, do not or cannot always cooperate with the Marshals Service. U.S. marshals are political appointees and they have varying perceptions about their duties and their relationship to the Marshals Service and the Federal courts. More important, marshals are subject to the direct control of all judges in their districts. These factors often prevent districts from cooperating with the Marshals Service's program officials.

The table on page 13 broadly illustrates the level of priority marshals give to each of their various functions. Despite the stated importance of the Witness Security Program in prosecuting cases involving the top priorities of the Department of Justice, only two districts (less than 3 percent) listed the program as their top priority. In contrast, 39 of the 71 offices (55 percent) listed the program as either their next to last or their last priority (22 and 17 offices respectively). Thus, despite the importance of the Witness Security Program to accomplishing Department goals and the fact that relocated witnesses reside in virtually every district in the continental United States, the Marshals Service is unable to assure itself that the districts accord it high priority.

The varying views of marshals about their operating priorities clearly demonstrate the program management problem the Marshals Service faces. Dual authority causes lapses in cooperation which lead to inefficient and ineffective operations. A Marshals Service official estimated that dual authority increases program costs by 20 to 30 percent. Detailed records do not exist to precisely identify these costs; however, we documented that inefficiencies exist and impact the services provided to witnesses as follows.

In 1978, the Marshals Service took administrative action to improve its control over district resources devoted to the program. The Marshals Service administratively designated a limited number of deputies as "metro" inspectors and made them directly accountable to the Marshals Service instead of to U.S. marshals. As of February 1981, 40 of the 131 program inspectors were under the direct control of the Marshals Service and were located in 15 different judicial districts.

Metro inspectors provided the Marshals Service with additional operating flexibility. For the first time the Marshals Service had personnel in the field whose actions it could directly control. Because of dual authority, the Marshals Service often has to use metro inspectors to perform tasks in districts which either do not or cannot respond to the needs of the program. While this improves the Marshals Service's operating capabilities, the actions the Marshals Service must take are inefficient and cause delays in providing services to witnesses.

We examined the travel of all metro inspectors during the first 4 months of fiscal year 1981 to determine the kinds of duties they performed and how often they performed them in other districts. In all, 32 metro inspectors made 89 trips outside of their assigned districts to perform routine program duties.

The chart below details some of these trips. It shows that at the direction of the Marshals Service, metro inspectors flew or drove to other than their assigned districts to perform routine duties such as escorting witnesses for court appearances and to obtain needed medical services. All of the districts that the metro inspectors assisted had designated witness security inspectors. However, according to the Marshals Service, these inspectors could not provide routine program services either because they had court-related duties to perform or marshals gave the program low priority.

Metro inspector	Assigned district	District(s) assisted	Type of service provided
A	Central California	Colorado and Western Oklahoma	Flew to Colorado to take custody of an arrested witness and delivered the witness to Oklahoma.
B	Northern Georgia	Northern Texas	Flew to Dallas to pick up a witness and escorted the witness to Missouri for medical treatment (surgery).
C	Eastern Virginia	Northern New York	Flew to California to pick up a witness and delivered the witness to northern New York.
D	Eastern Pennsylvania	Colorado	Picked up a witness in Colorado and delivered the witness for a court appearance in northern California.

Under the existing organizational arrangement the Marshals Service must rely on political appointees to operate this program. Because this arrangement provides marshals with a degree of autonomy from Marshals Service direction, the Marshal Service cannot be assured its orders will be followed. For example, Marshals Service officials learned that a witness security inspector had compromised the identities of several witnesses relocated to his district. Because of the seriousness of this matter, the Marshals

Service's Assistant Director for Operations, ordered the district marshal to no longer use that deputy on any witness security program assignments. However, the district marshal replied to the Director, Marshals Service that he alone was responsible for district operations, would use his deputies as he saw fit, and would continue to use the deputy to perform program duties in his district.

In this instance the lack of adequate power to direct marshals prevented the Marshals Service from taking action against an individual whom they believe violated a basic program goal. As a result, the Marshals Service had to relocate two witnesses to other districts and now because of security concerns the Marshals Service is no longer relocating witnesses in this district's jurisdiction. This unnecessarily limits future management options.

The existing dual authority relationship creates serious impediments to the operation of the Witness Security Program. Using metro inspectors to provide services to witnesses located throughout the country is inefficient and increases the cost of program operations. The existing dual authority relationship causes delays in providing services to witnesses and contributes to their frustration with the program. Previous congressional hearings have documented the dissatisfaction of many witnesses with the services they have or have not received. By using metro inspectors to fill gaps in the services provided, the Marshals Service is able to mitigate some of the delays but at increased Government expense. These kinds of operating problems will persist under the existing dual authority relationship.

Fugitive Warrants Program

A warrant is a document that authorizes the arrest of an individual. Marshals have always been able to execute Federal warrants issued in their districts. However, since October 1, 1979, the Marshals Service has become the primary Federal agency responsible for apprehending Federal fugitives. Before then marshals shared this responsibility with the Federal Bureau of Investigation.

The existing dual authority relationship prevents the Marshals Service from conducting a consistent and effective fugitive apprehension program. Because of dual authority, fugitives are frequently not actively pursued, and established investigative procedures are often not followed. These conditions have the residual effect of increasing the potential for the commission of new crimes while fugitives remain free.

To provide the districts and national headquarters with the necessary information to monitor, evaluate, standardize, and improve their enforcement efforts, the Marshals Service established administrative policies and procedures for implementing

the Fugitive Warrants Program. Generally, the investigative policies required marshals to:

--establish work priorities for their outstanding warrants, based on the danger posed by the fugitive and the seriousness of the offense,

--enter information about each fugitive into the National Crime Information Center (NCIC) 1/ within 48 hours after receiving a warrant,

--consistently and actively pursue fugitives; and

--establish files which facilitate the supervision and evaluation of enforcement efforts.

We reviewed the efforts of seven district marshal offices to implement the Marshals Service's warrant investigative policies for open and closed priority one warrants. 2/ The following table displays three separate sets of data depicting each district marshal's level of compliance with the Marshals Service's established guidelines. The number of cases analyzed for each set of data varies because case files often did not contain sufficient information to make each assessment and the circumstances surrounding each set of data and case varied. For example, there was no requirement that executed warrants be prioritized. Thus, the data on cases prioritized represent only open investigations. The second set of data on NCIC entries contains information from both open and closed cases because these data were available in most case files and it increased our perspective of the district's investigative efforts. The third set of data again represents only open cases. However, because many cases did not contain detailed records of investigative efforts, we were not always able to identify when investigative actions occurred.

1/NCIC is a computerized, online information system containing data on persons being sought by law enforcement officials. It provides authorities with the capability to check whether persons detained or apprehended are being sought by other law enforcement agencies.

2/The Marshals Service has designated probation and parole violators, prison escapees, and persons failing to appear for a scheduled court appearance or wanted on a bench warrant as priority one warrants. Within this category, warrants are to be prioritized A through D based on a fugitive's potential danger.

District	Cases prioritized (note a)		Timeliness of NCIC entries			Active investigation (note b)		
	Yes	No	On time	Late	Not made at all	Effort within 10 days	Effort after 10 days	Minimal or no effort
A	0	50	18	68	6	23	13	10
B	0	11	7	17	4	0	0	11
C	26	1	21	2	-	7	8	2
D	3	8	a/ 3	a/ 4	4	2	6	3
E	0	99	64	65	13	(c)	(c)	(c)
F	0	27	a/10	a/ 8	1	11	5	9
G	26	2	13	12	1	23	0	0
Total	55	198	136	176	29	66	32	35
Percent	22	78	40	52	8	50	24	26

a/Relates only to active cases at the time of our review.

b/This assessment was made only for active cases. The Marshals Service's policies emphasize the importance of expeditious and timely efforts to apprehend fugitives; however, they do not delineate specific time frames. Therefore, we evaluated the timeliness of investigative efforts according to whether the cases were pursued within 10 days after the marshals received the warrant.

c/This evaluation could not be made for this district because the files were incomplete.

The above table shows that basic procedures the Marshals Service deems essential for conducting an effective fugitive warrant program are not being consistently carried out. Seventy-eight percent of the warrants had not been prioritized by the danger posed by the fugitive as the Marshals Service's policy required, and 60 percent of the NCIC entries had been made either late or not at all. Furthermore, we found that warrants were not being actively handled. Marshals, prosecutors, and other investigative agents all agreed that the chances of apprehending a fugitive were greatly facilitated if quick investigative actions were pursued. However, our review of marshal investigative efforts for outstanding warrants showed that 24 percent were not pursued within 10 days of receiving the warrant, and in another 26 percent, we found little or no indication in the files of active investigative efforts.

The haphazard apprehension efforts and failure to follow established investigative procedures for the warrant program are largely caused by the existing dual authority relationship. We found that court-related duties often cause marshals to devote little attention to this program. For example, the marshal in

district F had not established a warrant squad as suggested in the Marshals Service's guidelines and told us that he did not plan to expand his activities because other judicial duties take priority. The marshal recognized that he was only touching the surface in his district's warrant operations. The chief judge in the district told us that marshals should be more concerned with their courtroom duties and should leave executing fugitive warrants to other law enforcement personnel.

Conditions were similar in district B which also did not actively work warrants. The marshal gave warrants the lowest priority, and the district's chief judge believed that marshal duties should be limited exclusively to court service. The marshal told us he would like to devote more time and resources to executing warrants, but court security, process service, and prisoner movement requirements prevent him from doing so.

The existing dual authority relationship does have an adverse impact on effective law enforcement. For example, in January 1981, four prisoners being detained on charges of armed robbery and interstate transportation of stolen property escaped from a marshal's holding facility. The district marshal accepted the assistance of the Federal Bureau of Investigation in this matter because his responsibility to transport Federal prisoners and serve Federal subpoenas prevented proper investigative efforts. Agents noted that the marshal's office was unable to cover leads in a timely manner. Several days later one escapee was arrested after wounding a local police officer. On the same day a second escapee was arrested following a high speed chase after robbing a bank. The other escapees had yet to be apprehended as of March 1981.

The top priority fugitives being sought by marshals are convicted criminals or are wanted in connection with criminal proceedings. The vast majority of these fugitives are individuals who present a high risk of committing additional crimes. The existing dual authority relationship prevents the Marshals Service from operating a consistent and systematic investigative program. It results in sporadic enforcement efforts which increases the potential for new crimes to be committed by fugitives.

DUAL AUTHORITY HINDERS THE JUDICIAL PROCESS

The fundamental goal of the Federal judicial system is to provide for the just, fair, and expeditious determination of all matters brought before the courts. The Congress created the position of U.S. marshal to facilitate the attainment of this goal. The rulings of Federal judicial officials must be enforced and security must be provided if the Federal courts are to operate effectively. When a law enforcement presence is required to carry out court orders, such orders are enforced by executive branch officials.

When the Congress established marshals in 1789, it made them subject to the direction of the courts, independent of other executive agencies, and gave them authority to command the necessary assistance to perform their duties. This provided marshals ample ability to assist the courts. Through the performance of essential court-related duties, marshals help to ensure the integrity of the Federal judicial process. Under dual authority, marshals are not fully independent from an executive branch agency. Dual authority interferes with the performance of court-related duties and hinders each court's ability to accomplish its fundamental goal.

The Constitution of the United States established three branches of Government--executive, legislative, and judicial--and gave each branch different powers and duties. The Federal courts comprise the judicial branch of the Government. Federal judges preside and administer the law in courts by controlling proceedings and deciding on questions of law. The Congress recognized that for the courts to be effective, their rulings had to be enforced. To help accomplish this essential condition, the Congress created the position of U.S. marshal and made them independent from supervision by any executive agency or department head.

The duties marshals perform for the courts help to ensure the effective administration of justice and the integrity of the judicial process. By providing security for court-related proceedings and judicial officers, marshals help protect the courts, jurors, and witnesses from physical harm as well as outside pressures to influence operations and decisions. Also by serving legal notices and executing the commands of the courts, marshals facilitate court operations and guarantee the meaningfulness of court decisions. The Judiciary Act of 1789 gave marshals authority to command all necessary assistance in executing their duties. The Congress recognized that maintaining the integrity of the judicial process would require all court orders to be enforced.

Dual authority has altered the original organizational relationship of marshals to the Federal judicial system. The act of August 2, 1861, laid the framework for marshals to become subject to an executive agency whose primary mission is law enforcement, not assuring the effective operation of the judicial system.

As discussed previously, the existing dual authority relationship presents management problems for the Marshals Service. It encourages the Marshals Service to seek ways to improve its control over the use of district marshal resources and to increase the level of cooperation from each marshal. However, while these efforts improve the Marshals Service's ability to operate its law enforcement programs, they adversely affect each marshal's ability to fulfill the court-related duties the Congress initially created

U.S. marshals to perform. For example, the Marshals Service has taken administrative actions and established upgraded inspector and specialist positions in the districts for the Witness Security and Fugitive Warrants Programs. Over 200 deputies have been promoted to fill these positions. A part of this group, 40 metro inspectors for the Witness Security Program, is under the direct control of the Marshals Service, not district marshals. Thus, district marshals cannot directly control these field resources. The remaining deputies (over 160) are still under the direct control of the district marshals. In our opinion these promotions encourage district marshals to primarily use the inspectors to conduct the law enforcement duties they were promoted to perform.

The Marshals Service also has placed administrative controls on the use of overtime by the district marshals. Although marshals are allocated a basic amount of overtime as a part of their operating budget, the Marshals Service also reserves funds for operational overtime. Through the first 6 months of fiscal year 1981, the amount of overtime funded (about $1.3 million) by the Marshals Service from this operational reserve was equal to 80 percent of the overtime used (about $1.6 million) by all 95 districts. Sixty-three percent, costing about $800,000, of the Marshals Service's controlled overtime was used to fund Witness Security and Fugitive Warrants Programs, and the remaining 37 percent, costing about $480,000, funded court security needs. Administrative controls on overtime improve the Marshals Service's ability to direct the use of district resources outside of normal duty hours.

The effects of the existing dual authority relationship on the performance of duties for the courts, however, go far beyond the implementation of the Marshals Service's administrative actions. As exercised, dual authority also encourages the courts to share marshal resources with the Marshals Service so that its national law enforcement duties can be fulfilled. Under these conditions the performance of court-related duties suffers because resources are shared between both fundamental missions.

As shown on page 13, however, the extent to which resources are shared varies among districts. It depends on the policies of the courts relating to the duties of marshals and the individual attitudes of each marshal about his role in law enforcement and court assistance. Generally, the more tolerant courts are in sharing marshal resources with the Marshals Service, and the more cooperative marshals are in implementing the Marshals Service's law enforcement programs, the greater the impact that dual authority has on the performance of duties for the courts.

For example, two of the judicial districts we visited had judicial officials and marshals which generally cooperated with the Marshals Service. The marshal in one district had relinquished

control over two of his deputies to the Marshals Service. 1/ This reduced the marshal's capability to serve the courts but increased the Marshals Service's ability to manage the Witness Security Program. The marshal also established a warrant squad comprised of about 25 percent of his total resources to facilitate the operation of the Fugitive Warrants Program. These actions did not facilitate the service of judicial process in this district.

All six judges and magistrates in this district whom we interviewed complained about the timeliness of the marshal's efforts to serve civil process for the court. To determine the validity of these complaints, we sampled civil process received by the marshal's office in June 1980. Our analysis of the marshal's efforts to serve 68 pieces of civil process (35 Government and 33 private), showed that it took an average of 43 and 27 days, respectively, to serve 45 of these pieces. Four pieces had been returned unserved. In addition, 19 pieces were still pending service at the end of our visit, and no attempts had yet been made to serve any of them even though they had been received by the district at least 66 days earlier. 2/ As a result of slow process service, the administration of justice suffered because legal proceedings could not progress or were substantially delayed.

Similar conditions existed in the other district which strongly cooperated with the Marshals Service's law enforcement programs. The marshal had established a warrant squad of seven full-time deputies (23 percent of his staff), and it was his policy to isolate these deputies from the performance of other duties to the greatest extent possible. In fact, the marshal told us that either he or his chief deputy would attend a judicial proceeding before pulling a deputy away from performing warrant duties. This same marshal has also devoted three deputies solely to the Witness Security Program. These deputies are isolated from performing other duties. In this district the performance of court-related duties has suffered.

1/Two deputies from this district were designated at the request of the marshal as metro inspectors for the Witness Security Program. As such, they became subject to the direction of the Marshals Service, not the marshal.

2/In contrast, one of the districts we reviewed was not very supportive of the Marshals Service's law enforcement programs. Only 16 percent of district resources were devoted to the Witness Security and Fugitive Warrants Programs. Our review of this district marshal's efforts to serve 92 pieces of civil process showed that serving process took an average of 9 days and none of the process was left unserved.

For example, several judges expressed to us their concern about the level of security marshals provided to the courts. It was the marshal's policy to routinely provide only one deputy to attend court proceedings involving a prisoner. The chief judge and the clerk of the court told us about two separate disturbances which occurred during proceedings where more security had been requested by the court but had not been provided.

One disturbance related to a recent criminal proceeding involving two persons charged with armed robbery. The chief judge asked the marshal to provide four deputies because of the nature of the criminals. The chief judge told us he made this request because he understood the defendants were violent and skilled in the martial arts. The marshal, however, followed his basic policy and provided only two deputies. During the proceeding a disturbance erupted which the deputies could not control. It lasted several minutes and almost resulted in the prisoners getting control of the deputies' firearms. According to the judge, if the jurors had not intervened in the disturbance, the deputies would have been overpowered.

In this district the service of process also suffered. Officials of the U.S. Attorney's Office told us that poor process service by marshals was resulting in delays in filing cases. As a result, the U.S. Attorney's Office was so dissatisfied with the service of civil process for a certain group of cases that it had private process servers specially appointed by the court to serve its civil process.

CHAPTER 4

CONCLUSIONS, RECOMMENDATIONS, AGENCY COMMENTS AND OUR EVALUATION

CONCLUSIONS

U.S. marshals face an operational dilemma each day. They are subject to dual authority. Marshals are responsible for performing two distinct missions--one under the direction of the Attorney General and the other performed at the direction of Federal judicial officials.

This operating condition did not always exist. Nevertheless, dual authority over U.S. marshals, as it is exercised today, is creating an unworkable management condition. It prevents the Director of the Marshals Service from effectively managing national law enforcement programs assigned to him by the Attorney General and restricts the performance of court-related functions, thus hindering the judicial process.

The Department of Justice has recognized the problem of dual authority and has attempted to resolve it both legislatively and administratively. The legislative attempts were unsuccessful, and, in our opinion, undesirable because they would have placed the Department of Justice in a position to influence the ability of the courts to operate. The administrative solution also did not work because it was not binding on the courts.

American society and the size and scope of the Federal Government and the judicial branch have drastically changed in the almost 200 years since marshals were created. Advances in technology have made society and criminals alike more mobile, sophisticated, and organized. Additionally, the role of the Federal Government and its size have also grown drastically. There has been a sevenfold increase in the number of Federal judicial districts, a substantial increase in judicial officers, and an indeterminable amount of growth in Federal laws and regulations. There has also been an increase in Federal law enforcement agencies having specialized expertise and enforcement powers that are not confined to a particular judicial district. Thus, marshals are no longer the only Federal officials capable of enforcing Federal laws.

Both fundamental missions assigned to marshals were valid when established and remain valid today. The rulings of Federal judicial officials must be enforced and security must be provided if the Federal courts are to operate effectively. When a law enforcement presence is required to carry out court orders, such orders are enforced by executive branch officials. Also, if the Government is to combat the continued growth and sophistication of crime, law enforcement efforts must be effectively managed.

Dual authority, as it is currently exercised, prevents marshals from effectively performing both of these missions. Although providing additional resources conceivably could mitigate operating problems, the basic problem would not be resolved. Both branches of Government would still have authority to take action which would hinder the power of the other branch. Therefore, if the integrity of the judicial process is to be strengthened, and if Government law enforcement programs are to be properly operated, either the manner in which dual authority over U.S. marshals is exercised must be changed or the Congress must act legislatively to eliminate it.

RECOMMENDATIONS TO THE ATTORNEY GENERAL

Because the Attorney General has expressed a renewed willingness to administratively resolve the problems caused by dual authority and both the Attorney General and Administrative Office have stated that cooperation between them is improving, we recommend that the Attorney General take the following actions.

--Develop, with the assistance of the Administrative Office of the U.S. Courts, the base-level marshal personnel resource needs for each Federal district court. This information should then be used as a major factor to prepare the U.S. Marshals Service's budget.

--Establish a policy that the provision of court security and the execution of all lawful court orders are the top priority of each U.S. marshal. U.S. marshals should be supervised to ensure each is properly fulfilling the needs of their respective district courts.

--Assign law enforcement tasks to marshals only on the basis of those residual resources remaining after fulfillment of court-related duties. Because this will probably further hinder the Department's ability to use marshals to perform centralized law enforcement programs, responsibility for conducting these law enforcement duties should be reassigned from the Marshals Service to other Justice Department organizations.

--Apprise the Congress, during the appropriation and authorization process, about the nature and status of any problems related to the use of marshals' resources and actions taken to resolve these problems.

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

Because the Director, Administrative Office of the U.S. Courts, has expressed a renewed willingness to administratively resolve the problems caused by dual authority and both the Attorney General and the Administrative Office have stated that cooperation between them is improving, we recommend that the Judicial Conference require the Director to

- --cooperate with and assist the Attorney General in defining and obtaining pertinent information needed to determine each district court's base-level resource needs for U.S. marshal personnel, and

- --apprise the Congress, during the appropriation and authorization process, about the nature and status of any problems related to the use of marshals' resources and actions taken to resolve these problems.

RECOMMENDATION TO THE CONGRESS

The above recommendations provide the Department of Justice and the judiciary an opportunity to administratively resolve the problems being caused by dual authority over U.S. marshals. However, if the agencies do not implement these recommendations, we recommend that the Congress take legislative action to eliminate the Attorney General's authority to supervise, direct, and control the operations of U.S. marshals. (See app. X for a discussion of organizational options.)

AGENCY COMMENTS AND OUR EVALUATION

The Administrative Office of the U.S. Courts, 1/ the chief judges in six of the nine districts we visited, and the Department of Justice commented on this report. The version of the report provided to them for comment contained proposals that legislation be enacted that would repeal the statutory basis under which the Attorney General is empowered to supervise, direct, and control the operations of U.S. marshals. Five of the six chief judges fully agreed with the conclusions and proposals.

1/The Administrative Office responded for itself and also on behalf of the chief judge for the district court of southern Texas, and the Chairman of the Judicial Conference's Committee on Court Administration.

The sixth chief judge did not comment on the proposals. He emphasized that the courts cannot function without proper security. (See apps. II through VII.) In contrast, the Administrative Office and Department of Justice (see apps. VIII and IX), while agreeing that operating problems existed, strongly disagreed with the conclusions and proposals for several reasons but primarily because they believe the cause of existing problems is inadequate funding.

We do not agree with the objections and arguments presented by the Administrative Office and the Department of Justice to our proposals. We believe the problems being caused by the existing organizational relationship are serious and need to be resolved. Because the missions of both agencies require them to interact and both agencies expressed the view that cooperation between them is improving, we believe they should be given the opportunity to administratively resolve the problems caused by the existing relationship. Accordingly, we are recommending specific actions to achieve that end. However, we are also recommending that, should the two agencies fail to administratively resolve the dilemma faced by U.S. marshals, the Congress take legislative action to eliminate the dual authority structure.

Chief judges agree with report's message

All nine of the chief judges in the districts where we performed extensive audit work were provided an opportunity to comment on this report. However, only six provided comments. Five of the six chief judges agreed with our conclusions and our proposals. The sixth chief judge said the report was comprehensive and clear, and emphasized that the courts simply cannot function without some agency responsible for judicial security. The judges also commented about the adequacy of the services they were receiving from marshals, and their ability to perform their constitutionally mandated mission. Three chief judges responded as individuals, and three said their letters represented the views of all judges in their districts.

Also, while we were evaluating the comments received on the contents of this report, the chief judge for the eastern district of Virginia forwarded comments on the second of the three reports that we plan to issue on the operations of the Marshals Service and U.S. marshals. Our second report concerns marshals' efforts to serve civil process and transport Federal prisoners. The chief judge was one of the three judges who did not respond to our first report. However, in commenting on our second report, the chief judge attested to the existing problems of dual authority. In his letter of September 10, 1981, he stated:

> "In our judgment, if the Marshals Service were left to its duties to the Courts, such as process serving, which, as you say, goes back to 1790, and

were less buffeted by such Justice Department innovations as witness protection programs, we believe the business of the public would be better served."

Four of the six chief judges specifically complained about the inadequacy of court-related services provided by marshals in their districts. For example, the chief judge for the central district of California stated:

"During my many years of experience on this bench, I have witnessed a continuing diminution of services by the U.S. Marshal performed on behalf of the Judiciary. The cause for this, in my opinion, (as you point out in your report) is that the Marshal is called upon to perform law enforcement duties on behalf of the Attorney General under whose control he functions; and in addition, is required to perform vital services on behalf of the Federal Judiciary. Within this District, the Marshal's manpower has been adversely affected on numerous occasions because the Department of Justice required the use of deputy marshals to perform various law enforcement tasks ranging from serving as air marshals to patroling Indian reservations and maintaining custody over illegal aliens. As a consequence, service of court process takes a low priority and becomes severely backlogged, trials have been delayed because prisoners in federal custody were not readily available or brought to court because of the unavailability of deputy marshals to do so." (See app. VII.)

Also, the chief judge of the southern district of California stated:

"It has been our observation over the years that the dual authority described in the draft report creates numerous problems which contribute to confusion and inefficiency in performance of the basic mission of the United States Marshal." (See app. VI.)

Two chief judges said that their district courts have taken actions to reduce the court-related duties of their district marshals. Nevertheless, they expressed dissatisfaction with the services they are receiving. The chief judge for the central district of California said:

"* * * this Court has had to enter a local order restricting attorneys and litigants from utilizing the Marshal for service of civil process, except in very limited instances. It has been my experience, and the Marshals Service is living proof, one cannot

serve two masters and do so effectively." (See app. VII.)

The chief judge for the district of Maryland said:

"In this Court, we make every effort to try to arrange for service of process to be accomplished without involving our Marshals and utilize our Marshals in connection with service work on a minimum basis. Nevertheless, we find that our Marshals are overburdened and that often we are not able to have them available to provide the kind of security within our courthouse which both we as Judges and they as Marshals deem advisable." (See app. V.)

Finally, the chief judges for the districts of eastern Louisiana and central California expressed concern that dual authority has created problems of a constitutional magnitude. They said dual authority hindered their ability to operate as an independent, separate branch of Government. For example, the chief judge for the eastern district of Louisiana said

"* * * the recommendations set forth in this document are essential for the performance of the functions envisioned by the Constitution, namely, the maintenance and operation of the judiciary as a separate and independent branch of government." (See app. IV.)

Administrative Office and Department of Justice disagree with report's message

Both the Administrative Office and the Department of Justice strongly disagreed with the conclusions and the proposals of this report. In all, both agencies provided five separate reasons for their views as follows.

--There is no dual authority over marshals.

--The primary cause of the problems is inadequate funding.

--Cooperation between the Attorney General and the judiciary has produced tangible results.

--Even if the recommendations were implemented, they would not resolve the dual authority problem because the Office of Management and Budget (OMB) would still have budgetary control over marshals.

--The recommendations would result in an unworkable management problem for the Department.

Several of these arguments were made by both agencies. Others reflect the individual views of each agency. However, one major conflict exists. The Department claims that dual authority does not exist while the Administrative Office states that dual authority is a serious management problem for both the judicial and the executive branches. The Administrative Office concluded that the report contributes very little to constructively identifying real problems and workable remedies. The Department stated that dual authority is an illusory concept and that the difficulties encountered relate more to inadequate funding. Both agencies prefer to maintain the existing organizational structure. They believe that additional funding and interbranch cooperation can resolve the existing problems.

We do not agree with the arguments used by either agency in objecting to the report's conclusions and our proposals. Contrary to the Administrative Office's assertion, we believe this report represents the first independent assessment of a complex problem and describes the history and dynamics of this management environment. Furthermore, it does not advocate what appears to be the easy, but inefficient and highly unlikely solution to the problem by recommending the expenditure of more Federal funds. The following sections discuss in detail the reasons we believe each of the arguments raised by the Administrative Office and the Department lack merit.

Dual authority is not illusory

The Department stated that dual authority is an illusory concept. It argued that the authority to supervise marshals is clearly and exclusively vested in the Attorney General by 28 U.S.C. 569(c). The Department stated that the fact that 28 U.S.C. 569(a) provides that the marshal for each district "may in the discretion of the [district court] be required to attend any session of court," hardly changes the analysis. The Department argued that this provision merely sets out a statutory responsibility like others to be executed under the overall supervision and direction of the Attorney General.

We believe it is clear that subsection 569(a) of title 28, United States Code, gives the courts, not the Attorney General, the discretionary authority to decide whether marshal attendance at sessions of court should be required. The courts' authority was even confirmed by the Director, Marshals Service on March 25, 1981, in response to a question raised during appropriation hearings. The discussion concerned the Service's proposed reduction of 135 positions for use in court security. The Director was asked what would happen if a judge did not want to remove this kind of security support. The Director replied:

"The Judge, under the United States Code, has the authority to order the presence of United States

marshals in court in any type of judicial proceeding." (Underscoring supplied.) 1/

Obviously, this statement is not consistent with the thrust of the Department's comments. We believe present law is clear on the point that the judiciary has the discretionary authority to require marshal attendance at sessions of court.

Furthermore, subsection 569(b) of title 28, United States Code also gives marshals a statutory duty to execute lawful orders directed to them by a Federal court of competent jurisdiction. Case law supports this view. Several courts have concluded that it is the mandatory duty of a U.S. marshal to execute a writ and order once it comes into his possession. 2/

We do not question the proposition that the Attorney General's responsibility to "supervise and direct U.S. marshals in the performance of their public duties" encompasses the discharge of marshal courtroom security, process serving, and court order execution functions. However, under 28 U.S.C. 569(a) and (b), Federal courts have authority to direct marshals to attend court sessions and can control their actions through the issuance of lawful orders. This is the fundamental reason why the Department cannot efficiently operate national law enforcement programs with marshals. The courts have the authority to issue lawful orders, and the marshals have the statutory duty to obey these court orders. This situation can, and does, hamper their ability to carry out Department programs.

The Department continued its argument that dual authority is illusory by stating that its Office of Legal Counsel (OLC) advised the Deputy Attorney General by memorandum dated June 20, 1980, that 28 U.S.C. 569(a) was not intended to act as a limit on the supervisory authority given to the Attorney General in 28 U.S.C. 569(c). The memorandum concluded that nothing in subsection (a) or, in any other statute, gave the courts some independent authority to supervise and direct the marshal which would overlap that of the Attorney General. The Department thus charges that the basic premise upon which our report is based is totally and demonstrably fallacious.

1/U.S. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Appropriations for 1982, U.S. 97th Cong., 1st sess., Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, Mar. 25, 1981, Part 6, p. 688.

2/United States ex rel. Brown v. Malcolm, 350 F. Supp. 496 (D.N.Y. 1972); McMillan v. Scott, 10 Fed. Cas. No. 5,620 (D. Pa. 1868). Also see 3 Op. Atty. Gen. 497 (1846).

The OLC memorandum referred to by the Department concerned an analysis of the Attorney General's authority to reprogram funds for the Marshals Service to avoid violations of the Antideficiency Act. A footnote in this memorandum contained the statements quoted in the Department's letter commenting on this report.

The first point of the OLC memo was that "subsection (a) [of 28 U.S.C. 569] was not intended to operate as a limit on the supervisory authority given the Attorney General in subsection (c)." This is a true statement but it should be recognized that subsection (a) preceded subsection (c) by 72 years. The first Congress could not have envisioned a limit on the Attorney General's supervisory authority over marshals so far in the future. Furthermore, even though the position of Attorney General was created in 1789, his duties then were very limited and bore no relationship to marshals. The Attorney General was to represent the United States before the Supreme Court and, upon request, give opinions on matters of law to the President and heads of departments.

The second point raised was that nothing in 28 U.S.C. 569 (a)--and nothing in any other statute--gave the courts "some independent authority to supervise and direct marshals which would overlap that of the Attorney General." Our report does not suggest that the courts have authority which overlaps the authority of the Attorney General. Rather, it states that the courts do have authority to control marshals as prescribed by statute. In any event, the OLC opinion does not conclude that Federal courts lack authority to direct a marshal's attendance at sessions of court. Nor do we believe the OLC opinion implies that the Attorney General's supervisory authority could be exercised in such a manner that marshals could properly refuse to execute a lawful court order or refuse to serve process.

The Department concluded its argument that dual authority is illusory by stating that U.S. marshals and the judiciary maintain an erroneous perception that marshals are subject to the control of the courts. The Department contends that this perception is primarily the historical consequence of how the marshals' role evolved and not the result of a formal delegation of authority. The Department concludes we have erroneously given this perception the stature of a law and this does not support the report's conclusion that marshals "serve two masters" in such a way as to prevent effective management as a structural matter.

We believe the Department's analysis overlooks the central issue in our report. As both a practical and legal matter, the judiciary exercises substantial control over the operations of marshals in the area of courtroom security, process serving, and execution of court orders. We are not suggesting that the Attorney General lacks the authority to direct and supervise marshals in the discharge of these functions, or that the courts

have authority to direct marshals in the conduct of national law enforcement programs. Our use of the term "dual authority" in the report is designed to illustrate that the courts and the Attorney General can, and do, make competing lawful demands on a single resource--the marshal.

Additional resources is not the answer

A fundamental theme found in both the Administrative Office's and the Department's comments is that the single most critical factor behind any deficiencies in the Marshals Service's performance is inadequate funding. The Administrative Office stated that dual authority is a serious management problem and that the existing management structure is not an ideal arrangement in terms of management efficiency. Nevertheless, the Administrative Office believes that increased Federal funding is the rational solution. The Department stated that to be moderately understaffed is not inherently bad because it forces managers to carefully consider policy choices and to set program priorities; however, to be critically lacking in manpower limits the level of service which can be directed toward any element of the Marshals Service's mission.

We cannot accept either agency's assertion that the problems discussed in this report are caused by inadequate resources, not the existing dual authority relationship. We believe the proper question both agencies should have addressed to determine the cause of the recognized problems is: "Why are there resource shortages?" We believe it is clear that the level of funding represents only a superficial condition surrounding the problems in the Marshals Service's performance of court-related and law enforcement duties, not the true cause.

The Attorney General is responsible for making resource decisions for the Marshals Service. Administrative Office officials told us that the judiciary has had very little input into the compilation of the Marshals Service's yearly budget submissions. We believe the report shows that, because the Attorney General has authority to direct and supervise marshals, he is able to impose activities on marshals which do not directly relate to the performance of the court-related mission.

The delegation of operational responsibility to the Marshals Service for the Witness Security Program in the early 1970's and the Fugitive Warrants Program in 1979 clearly demonstrates how district marshals have been given additional law enforcement duties unrelated to the provision of court security, the service of process and enforcement of court orders. The imposition of these other duties creates an environment whereby the Attorney General and the courts compete for the use of marshal resources. Because the Department of Justice controls marshals' budgets, there is a

natural tendency to emphasize functions related to the Department's law enforcement mission.

An examination of recent Marshals Service budgets shows how resources have been shifted to a Department law enforcement program. Resource levels have remained relatively constant over the long-run. There has, however, been an increased resource commitment to the Witness Security Program.

Fiscal year	Permanent positions authorized	Positions allotted to Witness Security Program	Percent of total
1972	1,971	(a)	-
1973	2,005	(a)	-
1974	2,005	90	4.49
1975	2,049	134	6.54
1976	2,076	159	7.66
1977	2,136	178	8.33
1978	2,210	178	8.05
1979	2,328	178	7.65
1980	b/ 2,402	251	10.45
1981	2,177	260	11.94
c/1982	1,968	258	13.11

a/Budgetary information did not define positions allotted to the Witness Security Program for these years.

b/This number does not include 370 positions for Judicial Security Officers which were authorized by the Congress but were not funded by OMB. These positions were subsequently deleted in fiscal year 1981.

c/Estimated authorization.

The shifting of these resources reflects the natural tendency of the Department to give priority to its basic mission--law enforcement. The Department has stated that the Witness Security Program is one of its most effective prosecutive tools. In giving the Marshals Service operational responsibility for the program, marshals suddenly had to staff and fund a new program. The above chart shows that these resources came at the expense of other duties. Similarly, in fiscal year 1980, the Marshals Service became responsible for conducting the Fugitive Warrants Program. As a result, in fiscal year 1980, the Marshals Service increased its efforts to apprehend fugitives by almost 50 percent over its fiscal year 1979 effort. Again, this increased commitment to law enforcement programs occurred while overall resources remained relatively constant and at the expense of other marshal duties.

The effects of the existing dual authority relationship can also be seen by examining recent budgets for the Marshals Service by functional activity. The following table shows proposed position reductions between fiscal years 1980 and 1982. The table shows that the proposed reductions were primarily designated for functions related to marshals' court-related duties. In effect, under dual authority, marshals are becoming more of a law enforcement arm of the Department and less of an instrumentality for assuring the functional integrity of the Federal courts.

Marshal function	1980 (actual)	1982 (proposed)	Estimated increase/ (decrease)
Process/warrants (note a)	705	441	(264)
Courtroom security	b/ 377	256	(121)
Witness security	251	258	7
Fiscal management	156	156	-
Training	9	9	-
Handling of prisoners	706	684	(22)
Supervision of prisoners	67	40	(27)
Executive direction	44	43	(1)
Administrative services	87	81	(6)

a/This budget function includes both the execution of warrants and the service of private civil process. The decrease in positions reflects several separate reductions including a net decrease of 287 positions for serving private civil process and a net increase of 23 positions to execute fugitive warrants.

b/This figure does not include 370 positions for Judicial Security Officers which were authorized by the Congress but were not funded by OMB.

We believe these facts, when viewed in conjunction with other actions taken by the Department, show that the Attorney General has been able to shift resources away from traditional

court-related duties to law enforcement programs. Thus, we believe the existing dual authority relationship is the underlying cause of the operating problems, not inadequate funding. As discussed in chapter 2, the Department recognized early the inherent operating problems associated with dual authority. Since at least 1966, efforts have been under way to either reduce the control which the courts exercise over marshals and/or reduce the functions marshals perform for the courts. For example:

--The Department supported legislation in 1966, 1967, and 1968 that would have provided the Attorney General authority to appoint and remove marshals. Similar bills were proposed again in 1973. If the proposed legislation had been enacted, it would have given the Department greater control over the use of marshal resources and put it in the position to decide which court resource needs would be met and how they would be performed.

--In 1977, the Department entered into an interagency agreement with the Administrative Office to attempt to control the use of marshal resources for court security. Under the agreement the provision of court security services, above a minimum level, would be determined by the Marshals Service. The agreement, however, was unenforceable because district judges were not bound by it.

Regarding the Department's comment that moderate understaffing forces managers to carefully consider policies and set priorities, we believe the statement pinpoints the cause of the Department's management problems. As stated in chapter 3, under the existing dual authority relationship the Department cannot set meaningful program priorities for marshals to follow because the courts can direct a marshal's attendance in court regardless of where the Department may place courtroom security in its priorities. This explains why the current dual authority situation is unable to work. While increased funding can eliminate the resource shortages, it would not resolve the inefficiencies associated with the Department trying to operate centralized law enforcement programs with marshal resources. Even with increased funding, district marshals would still be required by law, and rightfully so, to attend sessions of court and execute all lawful commands of the courts. Thus, no guarantees would exist that the law enforcement programs assigned to marshals would be accomplished as desired by the Marshals Service.

Furthermore, increased Federal funding is not a realistic solution in today's environment. Federal funds are not unlimited. Major cuts in Federal spending dramatically demonstrate this fact. As a result, we not only believe that it is unwise to continue

to operate an inefficient management system; but it is also inappropriate to assume that additional funding for inefficient operations is forthcoming.

Interbranch cooperation efforts cited will not resolve the problems

The Administrative Office stated that our second proposal, which pertained to limiting the use of marshals' law enforcement authority to situations necessary to carry out court-related duties, has already been initiated through cooperation between the judiciary and the Department of Justice. It points to four accomplishments as proof of the tangible results of this cooperation. They are:

--Legislative proposals pending before Congress (H.R. 3580 and provisions of S. 951) which structure the gradual elimination of U.S. marshals from the service of routine private civil process;

--House Appropriations Committee approval (in August 1981) of a reduction in the original cut requested by the Administration for both the civil process service and the court security activities of the United States Marshals Service;

--Judicial Conference processing of amendments to Rules 4 and 45 of the Federal Rules of Civil Procedure, to facilitate and encourage the use of alternative means of serving private process (other than by U.S. marshals); and

--Agreement by the Department of Justice to conduct a security needs assessment (protection of court environment including judicial personnel, participants in proceedings, and persons in attendance) which will facilitate coordinated planning between the Department of Justice and the judiciary. The Department states that the study of the judiciary's security requirements is designed to provide a system applicable to all judicial districts.

The "tangible results" referred to by the Administrative Office in no way limit marshals' law enforcement authority. Thus, we believe the Administrative Office's statement that our second proposal "has already been initiated" is incorrect.

Furthermore, while interagency cooperation is commendable and should be encouraged, referring to these efforts as "tangible results" is a little premature. As of yet, none of these efforts have come to fruition. The Department's comments state that the

cooperation with the judiciary relates to the use of marshals for court security purposes: "* * * the Marshals Service and the judiciary are willing to cooperate with each other to make the best use of resources in the court security area." Thus, we believe that the Department's comments merely emphasize cooperation in performing court security duties and do not emphasize cooperation in the performance of the law enforcement duties administratively delegated to marshals.

Also, the second "tangible result" still ends up with the Marshals Service planning to devote fewer resources than in previous years to the performance of court functions. If the previous levels of support for these activities were inadequate, we cannot understand how the Administrative Office can claim that a reduced level of support for a statutorily mandated duty is an accomplishment.

Furthermore, we believe it is important to note that the reduction in the budget does not seriously affect law enforcement functions assigned to marshals by the Attorney General. The best evidence of this is found in the fiscal year 1982 budget request. For example, compared to the 1981 budget request, the 1982 budget request called for a decrease of 2 staff years for the Witness Security Program but a decrease of 135 staff years for courtroom security activities.

Another result of this cooperation that was touted by the Administrative Office concerns an agreement by the Department of Justice to conduct a security needs assessment to facilitate interbranch planning. We discussed in chapter 2 (see p. 11) how a similar assessment was conducted in 1977. The previous effort resulted in a memorandum of agreement which contained statements on how marshals would provide court security. This type of agreement was rendered ineffective because it was not binding on the district courts and, in our opinion, any future agreement arising out of this assessment will face the same problem. Interestingly, the Marshals Service reached this same conclusion when responding to recommendations made in a Department internal audit report. 1/ In this report, it was recommended that the Marshals Service attempt to reach an agreement with Federal court judges concerning each group's respective roles and authority pertaining to the direction provided to U.S. marshals for all mission activities. The Marshals Service replied that this type of coordination had been attempted in the past; however, the attempts had failed because each judge has his own impressions as to how his court should function. The Marshals Service believed this could result

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1/"Execution of Warrants Program, United States Marshals Service" June 1980, Internal Audit Staff, Justice Management Division.

in 800 to 900 separate agreements. The Marshals Service went on to state that any policies, orders, or memorandums of agreement which are signed are not binding on judges. They supported this contention by quoting the court's authority to direct marshals to attend sessions of court (28 U.S.C. 569(a)). Thus, while cooperation among agencies should be encouraged, we do not believe these particular cooperative efforts will solve the problems discussed in this report.

Dual authority would not exist if GAO's proposals were adopted

The Administrative Office stated that our proposals would merely eliminate the Attorney General's supervisory authority over the Marshals Service and would not eliminate the Office of Management and Budget's realistic budgetary control over resources. Thus, it concluded that our proposals would not correct the dual authority problem.

This assertion is not germane to the issue at hand. This report is not concerned with the appropriateness of OMB's budget review. Obviously, the President of the United States centrally budgets for executive branch agencies of the Government. Likewise, the Congress examines the President's budgets, listens to the positions of all concerned parties, and provides appropriations based on its evaluation of national needs and priorities.

The point of this report is that there is a need to have an officer of the executive branch--marshals--whose basic mission is to uphold the functional integrity of the courts. Other executive branch agencies with different basic missions should not impose additional duties which are unrelated to and disrupt the performance of the marshals' basic mission. Thus, the context of dual authority as discussed by the Administrative Office in this section is unrelated to the report's message.

Department reorganization is possible

The last argument raised by the Department was that there would be an appearance of impropriety associated with some departmental entity other than marshals paying and protecting Government witnesses. It contended it would appear largely improper for an investigative agency to be the one operating this program. We believe this argument has little merit because the Attorney General could designate a noninvestigative unit to run the program.

Specifically, the Department said that this report failed to assess the effects of distributing the Marshals Service's law enforcement functions among other Department units. Using the Witness Security Program as an example the Department stated:

--Decentralizing the program among its various investigative agencies would create the intolerable appearance of impropriety in that witnesses would be protected (and paid) by the agency having the most to gain by their favorable testimony. The Department states this would require the creation of duplicate staffs to provide protection in each agency, increase program costs, and dilute expertise needed to run the program effectively.

--Centralizing the program in one investigative agency would also create the same appearance of impropriety with respect to that agency's own witnesses. The Department states this approach would likely lead to a greater number of conflicts among the different investigative agencies using the program.

We agree that the two organizational alternatives described by the Department sound undesirable. However, this does not mean that better alternatives do not exist.

For example, the Office of Enforcement Operations, a component of the Department's Criminal Division, is already greatly involved with the operation of the Witness Security Program. In effect, this Office shares operating responsibility for the program with the Marshals Service. The Office usually makes the final decision about which witnesses are admitted to the program, gets involved with coordinating program operations with other agencies, and often resolves disputes about the services given to witnesses. The objections raised by the Department in its comments about the "centralized and decentralized" reorganizations would be eliminated if this Office were provided additional resources and made fully responsible for this program. While this option might sound radical, we believe that a look at history will show that it is not. For example, the Marshals Service grew out of a small departmental office in 1969 called the Executive Office of United States Marshals.

Overall perspective

We believe that it is important to recognize that no differences in opinion exist among GAO, the Administrative Office, and the Department on the existence of the operating problems discussed in chapter 3. Neither agency challenged any of the information presented in this chapter. In fact, the Administrative Office stated that there has been a serious decrease in

court security services and this has directly contributed to additional burdens on judicial personnel. Furthermore, the speedy resolution of cases is being indirectly impeded by disruptions or delays in the service of process and the transportation and detention of prisoners. Also, the Department states that it is unquestionable that some management problems exist within the Marshals Service relating to the operation of its law enforcement and court security programs.

The Administrative Office's comments reflect the same concerns that were expressed to us by the district judges who commented on this report. Specifically, the Federal courts are very concerned about the adequacy of security surrounding judicial proceedings and their ability to provide timely justice because of delays in serving and executing judicial process. Both matters concern statutory duties given to marshals and impact on each court's ability to accomplish its mission.

The Department stated that some management problems unquestionably exist; however, it chose not to discuss these problems. Characterizing the problems discussed in this report in such a vague manner obscures their seriousness. Quite simply, the problems discussed in this report relate to inefficient Government operations. In addition to these problems, two district chief judges indicated that the existing dual authority structure has constitutional overtones which can be susceptible to charges that it violates the separation of powers doctrine.

We believe the Department's previous actions explain in part the sentiments of these judges. The Department went before Congress requesting major decreases in resources for court security and service of process duties while at the same time leaving the Witness Security Program and other law enforcement programs virtually untouched (see p. 38.) Marshals are required by 28 U.S.C. 569(a) and (b) to provide court security and to serve and execute judicial process. If the Department were successful in not staffing these needs, the integrity of the judicial system would suffer. As stated by the chief judge for the central district of California:

> "The Court depends upon the U.S. Marshal to execute its orders. For after all, the viability of any court system is its ability to command adherence to its lawful orders. Where the Executive Branch, through the Attorney General, can so dramatically affect the court's ability to function, then there is clearly an intrusion on the constitutional doctrine of separation of powers." (See app. VII.)

We continue to believe that an executive branch function must exist which has one unimpeded basic mission: to ensure the

functional integrity of the judicial branch of Government by providing security at judicial proceedings and by serving and executing lawful judicial process, whenever necessary. As long as the current unworkable management condition exists and the Department continues to budget, supervise, and delegate additional duties to marshals which are unrelated to this judicial mission, it will interfere with the proper performance of statutorily mandated, court-related duties. Furthermore, any such additional duties delegated to marshals will not be performed efficiently because

--the courts would be able to interrupt the performance of those duties by compelling marshals to attend sessions of court, and

--the marshals would retain the statutory duty to execute court orders.

We believe that our proposals (basically to eliminate the Attorney General's authority to supervise and direct U.S. marshals) would have solved the problems caused by dual authority. We also believe that the problems being caused by the existing organizational relationship are serious and need to be resolved. Because the missions of the Department and the Administrative Office require them to interact and both have expressed a renewed willingness to cooperate with each other, we believe they should be given the opportunity to administratively resolve these problems. However, we are also recommending to the Congress that it enact legislation to resolve the dual authority problems if the agencies fail to take appropriate action.

APPENDIX I

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

September 17, 1979

Honorable Elmer B. Staats
Comptroller General
General Accounting Office
Washington, D. C. 20548

Dear Mr. Comptroller General:

Because of the jurisdiction of my subcommittee, and ongoing work it is performing on the Justice Department, I feel that certain areas and functions within the Justice Department are long overdue for evaluation by the General Accounting Office. One such area of substantial concern is the U.S. Marshal's Service. Therefore I wish GAO to undertake such a review and provide me with a report that will answer the following specific questions:

1. Is it the proper function of the U.S. Marshal's Service to serve warrants and subpoenas, or could these responsibilities be delegated elsewhere?

2. Why has this Service had such a high turnover in personnel in recent years?

3. Does the Service handle the movement of Federal prisoners with efficiency and economy?

4. How effectively does the Service utilize its personnel?

5. Is it appropriate to headquarter so many Marhsals in or near the District of Columbia while so much of their work is performed in district court areas?

6. How effectively does the Service handle the witness protection program? I feel this is a critical part of this report. If there is any resistance to GAO's entry into this area, the agency should press vigorously for access, while safeguarding anonymity and privacy where appropriate.

7. Has the U.S. Marshal's Service outlived its usefulness, and should it be merged into another organization?

Any further recommendations that you choose to make are most welcome. Agency comments are not required. The contact on my subcommittee will be Franklin Silbey. If for any reason, such as workload, the job cannot be immediately commenced, I am content to wait for a short while until adequate GAO personnel become available.

Thank you.

Sincerely,

Max Baucus
Chairman
Subcommittee on Limitations of
Contracted and Delegated Authority

APPENDIX II

United States District Court
Southern District of Ohio
Cincinnati, Ohio 45202

Chambers of
Carl B. Rubin
Chief Judge

June 29, 1981

William J. Anderson, Director
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for sending me a copy of the proposed report on the United States Marshal's Service. This report is comprehensive and clear. I have no comment to make other than to emphasize the critical necessity of the United States Marshal's Service for purposes of court and witness security. Whatever other functions may be delegated to them it should be understood that the courts simply cannot function without some agency responsible for security.

In accordance with your instructions I will retain the draft in my personal possession.

Very sincerely yours,

Carl B. Rubin, Chief Judge
United States District Court

APPENDIX III

United States District Court
Eastern District of Kentucky
June 30, 1981

Chambers of
Bernard T. Moynahan, Jr.
Chief Judge

Federal Building
Lexington, Kentucky 40501

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I have received your letter of June 26th and the enclosed copy of the proposed report relating to the structural relationship of United States Marshals to the Federal Judiciary and the Department of Justice.

The divided allegiance of the United States Marshal to the Department of Justice and the Courts has created abrasive problems for me ever since I have been on the Bench; and this situation has been exacerbated by recent so-called economy measures which have been adopted by the Marshals Service.

I agree with the report's conclusion that the United States Marshal should be responsible only for performing essential duties for the Courts and that the law enforcement should be directed towards exercising those powers necessary to carry out court related duties.

I am returning the draft report and your letter of June 26th herewith.[1]

Very truly yours,

Bernard T. Moynahan, Jr.

BTM:dmw

Enclosure - 2

1/Because of their magnitude GAO did not include these enclosures in the final report.

APPENDIX IV

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
500 CAMP STREET
NEW ORLEANS, LOUISIANA 70130

CHAMBERS OF
EDWARD J. BOYLE, SR.
DISTRICT JUDGE

July 14, 1981

Mr. William J. Anderson, Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

Reference is made to your letter of June 26, 1981 and the enclosed draft of a report on the structural relationship of United States Marshals to the Federal Judiciary and the Department of Justice.

The view of the judges of our court is that the recommendations set forth in this document are essential for the performance of the functions envisioned by the Constitution, namely, the maintenance and operation of the judiciary as a separate and independent branch of government.

It is further the consensus of our judges that the decentralized approach is the more desirable in that the duties and functions of the United States Marshals can be directed from the district level in a more efficient and expeditious manner and would enhance the ability of the marshals to meet exigent needs of other districts through cooperation between districts.[1]

We appreciate your consideration in permitting us to review this document and to give you our comments thereon.

Sincerely,

Edward J. Boyle, Sr.
Acting Chief Judge

1/This comment and our evaluation of it relates to material originally presented in Chapter 4 but which is now contained in appendix X.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FRANK A. KAUFMAN
Chief Judge
Baltimore, Maryland 21201

July 22, 1981

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I refer to your letter of June 26, 1981 to which I responded briefly, on an interim basis, on July 8, 1981. Since receiving your letter, I have carefully reviewed and discussed with the other Judges of this Court your proposed report to Senator Baucus concerning the structural relationship of United States Marshals to the federal judiciary and to the Department of Justice. The Judges of this Court are in agreement with the recommendations set forth under the heading "Recommendations to the Congress" on page 27 of your proposed report. In this Court, we make every effort to try to arrange for service of process to be accomplished without involving our Marshals and utilize our Marshals in connection with service work on a mininum basis. Nevertheless, we find that our Marshals are overburdened and that often we are not able to have them available to provide the kind of security within our courthouse which both we as Judges and they as Marshals deem advisable.(See note on p. 53.)

The Judges of this Court have always worked together, and continue to work together, in a close collegial setting. We meet regularly for a working lunch at least once a week. Once a month, we are joined by the heads of each section of our court family including the Marshal. Our Marshal works closely not only with the Judges of this Court but with all parts of the court family. We would welcome, and we believe that our Marshal would welcome, a clear understanding that the Marshal of our District would be subject to the sole supervision, direction and control of this Court. To the extent that coordination of the work of the United States Marshals in all of the Districts is needed--and clearly a considerable amount of such coordination would be required--we would suggest that a central coordinator, who would perform administrative and service functions and who would operate under the direction of a representative group of District Marshals, should be able to provide such coordination. Thus, we favor the decentralizated rather than the centralized approach which is discussed at pages 28 and 29 of the proposed report.[1]

The subject matter of your report is of vital concern to this federal district court and, in my opinion, to every federal district

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1/Comments related to the centralized and decentralized approaches and our evaluation of them pertain to material originally presented in Chapter 4 but which is now contained in appendix X.

court. Accordingly, I will be more than happy to participate in any way that I can, with the full backing of each and every Judge of this Court, to bring about the changes discussed in your proposed report and in this letter. For that reason, I thank you for soliciting the views of this Court.

Sincerely,

Frank A. Kaufman

cc: All Judges of the United States
District Court for the District of Maryland

United States District Court
Southern District of California
San Diego, California 92101

Chambers of
Edward J. Schwartz
Chief Judge

July 22, 1981

Mr. William J. Anderson,
Director
General Government Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Director Anderson:

Thank you for your letter of June 26, 1981 and the excellent draft report recommending modifications in the structure and authority of the United States Marshal and the Marshals Service.

The draft report has been considered by the judges of the Southern District of California, and they are in unanimous agreement with the "Recommendations to the Congress" set forth on page 27 of the draft.[1] It has been our observation over the years that the dual authority described in the draft report creates numerous problems which contribute to confusion and inefficiency in performance of the basic mission of the United States Marshal. The demands made upon the Marshal by the Attorney General are usually on an ad hoc basis, tend to place unpredictable demands on the Marshal's personnel and interfere with their normal functioning. The Anti Air Piracy program, the Wounded Knee incident, the Cuban Refugee episode, and, on the Pacific coast, the Vietnam refugee situation, all occasioned great disruption of manpower allocations. The Protected Witness Program has imposed upon the Marshal onerous responsibilities, including sensitive and difficult policy decisions which the Marshal is not equipped to handle effectively.

If the recommendations of the draft report are effectuated, the judges of this district favor the decentralized approach under which a Marshal would continue to be appointed for each judicial district. The very nature of

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1/This comment refers to the proposals contained in the draft report sent to the agencies for comment. Chapter 4 explains why our proposals were modified after review of agency comments.

the Marshal's responsibilities would require such a localized structure.

The judges are strongly opposed to the so-called "centralized approach" as they do not believe it would serve the specific needs of the courts. Moreover, the centralized arrangement would doubtless result in a new superimposed bureacracy distant from and unresponsive to the day to day requirements of the courts which the Marshals are to serve.[1]

Sincerely,

EDWARD J. SCHWARTZ

EJS/eap

1/This comment and our evaluation of it relates to material originally presented in Chapter 4 but which is now contained in appendix X.

APPENDIX VII

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES COURTHOUSE
LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
A. ANDREW HAUK
CHIEF JUDGE

July 24, 1981

Mr. William J. Anderson, Director
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Anderson:

Thank you very much for your letter and a copy of your agency's proposed report concerning the structural relationship of the U. S. Marshals to the Federal Judiciary and the Department of Justice.

Upon receipt of the report I forwarded a copy to our Court's Marshals Committee. This committee has been reviewing the Marshal's operation here in the Central District. I requested comments from the Committee regarding the report; however, due to vacation schedules and case loads, it is unlikely that I will receive their comments within the time frame set forth in your letter. Rather than cause any delay in moving ahead in this very important area, I personally telephoned Mr. John Ols, Jr., your Senior Group Director, and in his absence, talked to a member of his staff, Mr. Stabb. At his request I am writing to you to advise you that I concur wholeheartedly in the conclusions reached in your report.

During my many years of experience on this bench, I have witnessed a continuing diminution of services by the U.S. Marshal performed on behalf of the Judiciary. The cause for this, in my opinion, (as you point out in your report) is that the Marshal is called upon to perform law enforcement duties on behalf of the Attorney General under whose control he functions; and in addition, is required to perform vital services on behalf of the Federal Judiciary. Within this District, the Marshal's manpower has been adversely affected on numerous occasions because the Department of Justice required the use of deputy marshals to perform various law enforcement tasks ranging from serving as air marshals to patroling Indian reservations and maintaining custody over illegal aliens. As a consequence, service of court process takes a low priority and becomes severely backlogged, trials have been delayed because prisoners in federal custody were not readily available or brought to court because of the unavailability of deputy marshals to do so.

One of the most critical problems facing us today is a lack of a Metropolitan Correction Center in the downtown Los Angeles area. Since the county sheriff refuses to house federal prisoners in his jail, deputy marshals are required to travel 40 miles to the nearest federal facility at Terminal Island in order to transport persons in custody to this court for various court proceedings. This is one of the busiest criminal courts in the federal system; the Marshal moves scores of persons between the court and the Terminal Island facility regularly. In spite of this added burden, the Attorney General has further reduced the Marshal's staff. As a consequence, this Court has had to enter a local order restricting attorneys and litigants from utilizing the Marshal for service of civil process, except in very limited instances. It has been my experience, and the Marshal's Service is living proof, one cannot serve two masters and do so effectively.

The Court depends upon the U.S. Marshal to execute its orders. For after all, the viability of any court system is its ability to command adherence to its lawful orders. Where the Executive Branch, through the Attorney General, can so dramatically affect the court's ability to function, then there is clearly an intrusion on the constitutional doctrine of separation of powers.

I concur in your conclusions that the U.S. Marshal should be responsible for performing only essential duties for the courts, and that the use of the Marshal's law enforcement authority should be limited to situations necessary for carrying out court-related duties. The question as to how this might best be implemented is one which will no doubt require close study and appropriate hearings. I am sure that members of the Judiciary would gladly provide their views in this regard.

Very truly yours,

cc: Hon. James R. Browning
Chief Judge
Ninth Circuit

Hon. William P. Gray, Chairman
Hon. William Matthew Byrne, Jr.
Hon. Mariana R. Pfaelzer, Members
Marshal's Office Ad Hoc Committee

Mr. Edward M. Kritzman
Clerk

1/This comment and our evaluation of it relates to material originally presented in Chapter 4 but which is now contained in appendix X.

APPENDIX VIII

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

August 25, 1981

Mr. William J. Anderson
Director, General Government Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I appreciate this opportunity to comment upon your proposed report to Senator Baucus concerning the United States Marshals Service's relationship to the Federal Judiciary and the Department of Justice. I am commenting not only on behalf of the Administrative Office of the United States, but also on behalf of Judge Elmo B. Hunter, Chairman of the Court Administration Committee of the Judicial Conference and Judge John V. Singleton, Chief Judge of the United States District Court for the Southern District of Texas.

I do not believe I need to address sections of the report which deal with the historical background of the United States Marshals Service or its ability to manage functions performed exclusively for the Attorney General, such as witness security and fugitive warrant functions. The judicial branch appropriately defers to the Administration and the Attorney General in commenting upon such functions.

I do want to comment upon the third chapter of the Report, "Dual Authority over U. S. Marshals Adversely Affects Law Enforcement and Judicial Missions". While we agree that dual authority is a serious management problem for both the judiciary and the executive branches, we believe that the report erroneously relies upon the dual authority issue as the only premise for fact finding, descriptive analysis, and final conclusions. The report does not identify or study any other problems; it merely describes the detrimental effects of "serving two masters". We believe that other problems -- such as funding -- which is not related to the dual authority issue -- are just as significant.

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For example, the United States Marshals Service has in recent years requested what can only be considered to be a "minimum level" of funding to accomplish its statutory and Department of Justice imposed missions. In each year that amount has been reduced by the Department of Justice to accommodate other priorities. Thereafter, there have been inevitable reductions in the functions performed by the United States Marshals Service. In addition, in each year for the past several years the Office of Management and Budget has further reduced the amount of funding requested for the United States Marshals Service in order to fund other Administration functions or reduce the amount of total budget. From the Judiciary's perspective, the lack of adequate funding for the United States Marshals Service activities is a far more serious problem than "dual authority". It has caused a serious diminution in court security services, and directly contributed to additional burdens on judicial personnel; it has indirectly impeded the speedy resolution of cases by disrupting or delaying the service of process and the transportation and detention of prisoners.

Let me candidly advise you that, in our opinion, the proposed report views the existing situation only from a theoretical management perspective. The report calls the United States Marshals Service situation -- with law enforcement officers in the executive branch performing services for the judicial branch -- an "unworkable management condition". While we agree that the existing structure is not an ideal arrangement in terms of management efficiency, the separation of "judicial functions" from "executive branch enforcement functions", is a constitutionally mandated one, and efficiency or the lack of efficiency cannot outweigh that reality.

The report recommends that Congress:

-- make the position of U. S. Marshal responsible only for performing essential duties for the courts by repealing the statutory basis under which the Attorney General is empowered to supervise, direct, and control the operations of U. S. Marshals; and

-- limit the use of marshals' law enforcement authority to situations necessary to carry out court-related duties.

The first recommendation merely eliminates the Attorney General's supervisory authority over the United States Marshals Service; it

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does not eliminate the Office of Management and Budget's realistic budgetary control over United States Marshals Services' resources. If implemented, that recommendation alone would not "correct" the dual authority problem. The second recommendation has already been initiated through cooperation between the Judiciary and the Department of Justice. Tangible results of that cooperation are:

1. Legislative proposals (H.R. 3580 and provisions of S. 951) which structure the gradual elimination of U. S. Marshals from the service of routine private process;

2. House Appropriations Committee approval of a reduction in the original cut requested by the Administration for both the civil process service and the court security activities of the United States Marshals Service;

3. Judicial Conference processing of amendments to Rule 4 and Rule 45 of the Federal Rules of Civil Procedure, to facilitate and encourage the use of alternative means of serving private process (other than by U. S. Marshals); and

4. Agreement by the Department of Justice to conduct a security needs assessment which will facilitate coordinated planning between the Department of Justice and the Judiciary.

These four items are representative of the inter-branch cooperation instituted by the Attorney General and the Chief Justice, on their own initiative.

Regarding "Matters of Consideration by the Congress" [1] (pages 27-29), we question the justification for the simplistic approach of defining two management structures as the only "two basic policy options" for Congress to consider. The "centralized approach" advocated by the Report ignores the constitutional reality of the executive branch being solely responsible for enforcement functions. If that approach is implemented by placing the United States Marshals Service in the Administrative Office, a part of the Judiciary which has no authority to perform any enforcement duties, who will perform them? Despite the theoretical management advantages of that approach, we find it thoroughly unacceptable. The existing enforcement duties must be performed by someone, and it is clearly unconstituional for court personnel to perform them.

1/This comment and our evaluation of it relates to material originally presented in Chapter 4 but which is now contained in appendix X.

While a "decentralized approach" may have several of the management advantages which the Report describes, it is still presented in the same narrow context in which other parts of the study are frozen. The issue of adequate funding has not been addressed at all realistically. The funding problem, which we believe has impaired the existing system more than any other identifiable factor, will also impair the decentralized structure recommended by the Report. In addition, of course, this approach does not eliminate the "dual authority" problem which the study argues is the "real problem".

In summary, we believe the Report contributes very little to constructively identifying real problems and workable remedies. Obviously, there is a managerial stress derived from the need to "serve two masters"; abandoning services for one or the other, however, is not immediately possible. "Transferring" functions exclusively to one or the other is probably unconstitutional. Providing necessary recources to sustain the performance of both functions is a rational solution for the present. We believe, in light of the cooperative efforts noted, supra, that it deserves consideration.

I would welcome an opportunity to discuss our comments with you in greater detail. Again, I appreciate the opportunity to file our comments while this Report is still in a "proposed" status.

Sincerely,

William E. Foley
Director

cc: Honorable Elmo B. Hunter
Honorable John V. Singleton

U.S. Department of Justice

Washington, D.C. 20530

AUG 27 1981

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "U.S. Marshals Cannot Effectively Serve Two Different Branches of Government."

The General Accounting Office (GAO) recommends that the national law enforcement functions of the Marshals Service--witness protection, fugitive apprehension, prisoner transport, and special operations--be separated from its court-related (or "bailiff") functions, such as courtroom security and service of judicial process. GAO further recommends that this division be accomplished by abolishing the Marshals Service, making the U.S. Marshal responsible only for performing essential duties for the courts, and reassigning those national law enforcement functions now assigned to the Marshals Service.

The Department strongly disagrees with many of the premises, most of the findings, and all of the conclusions of the GAO report. In essence, the report charges that the Marshals Service has been placed in an "unworkable management situation." This condition is said to be the result of the existence of a "dual authority" over the Marshals Service exercised by both the Federal courts as well as the Attorney General. According to GAO, these competing authorities exercise a pull at the Marshals Service from both sides and prevent it from carrying out any of its missions effectively.

It is unquestioned that some management problems exist within the Marshals Service relating to the operation of its law enforcement and court security programs. But it is unquestionably wrong to assign all or even most of the responsibility for this condition to the existence of a claimed "dual authority." The fact is that there is no "dual authority." Moreover, the single most critical factor affecting the ability of the

Marshals Service to effectively meet its responsibilities to all branches of government can be simply stated: budget constraints. This factor, however, received only minimal and casual attention in GAO's report.

Having exaggerated the scope of the problem and then inaccurately identified its cause as "dual authority," GAO inaccurately identifies the remedy: a drastic and draconian change that would place the court-related functions directly under the courts (without specifying just what these functions are) and disperse the law enforcement functions among existing units of the government (without specifying which units and without addressing the problem of having the same functional activity conducted by many different agencies).

This letter will show the illusory nature of the "dual authority" argument, discuss the impact of the resource problem on Marshals Service management, suggest less drastic ways of coping with any management problems that do exist and address some of the more serious disadvantages that would flow from accepting GAO's recommendations.

There Is No Dual Authority

While it is true that U.S. Marshals have a dual responsibility to serve the Federal judiciary and enforce Federal laws, there is no dual authority. The authority to supervise and direct the U.S. Marshals is clearly and exclusively vested in the Attorney General by virtue of 28 U.S.C. Section 569(c). The fact that 28 U.S.C. Section 569(a) provides that the U.S. Marshal for each district "may in the discretion of the [district court] be required to attend any session of court" hardly changes the analysis. That provision merely sets out in statutory form one of the U.S. Marshals' responsibilities--a responsibility like the others to be executed under the overall supervision and direction of the Attorney General. This proposition flows clearly from the plain language of the statute.

While this point is self-evident, it is confirmed in a recent opinion from the Department's Office of Legal Counsel (OLC) in the form of a memorandum dated June 20, 1980 to former Deputy Attorney General Renfrew. Construing 28 U.S.C. Section 569, OLC found that "subsection (a) was not intended to operate as a limit on the supervisory authority given the Attorney General in subsection (c)." OLC concluded that nothing in subsection (a)--and nothing in any other statute--gave the courts "some independent authority to supervise and direct the Marshal which would overlap that of the Attorney General." Thus, the basic premise upon which GAO builds its

entire analysis--that the U.S. Marshals operate under a "dual authority"--is totally and demonstrably fallacious.

This is not to say that the Marshals Service does not confront operational difficulties in executing a mission involving two branches of the Federal Government. Part of the problem is that there is a perception--albeit an erroneous one--that the U.S. Marshals are subject to the control of the courts. This perception, held by the judiciary as well as the Marshals, is primarily a historical consequence of the evolution of the Marshals' role and not the result of a formal delegation of authority. For example, originally and for many years, Deputy Marshals were removable by the district and circuit courts; this judicial power to control Deputy Marshals was superseded in 1966 by 28 U.S.C. Section 562, which transferred the power to remove Deputies to the Marshal himself, who must act in accordance with Civil Service regulations. Thus, while statutorily the authority to supervise and direct the Marshals is solely within the executive branch of the Federal government, the memory of such power appears to reside within both the Federal judiciary and the Marshals Service. But this perception--although erroneously given the stature of a rule of law by GAO--hardly supports the conclusion that the Marshals "serve two masters" in such a way as to "prevent effective management" as a structural matter.*/

GAO Gave No Attention to the Resource Problem

The issue of budget constraints--the single most critical factor in the ability of the Marshals Service to effectively meet all its responsibilities--was only casually mentioned in the draft report.

In 1980, a joint task force of the Department and the Marshals Service developed a work measurement system to determine the manpower requirements of each of the Service's district offices. Through work measurement, the task force was able to quantify the resources required to perform all elements of the Service's mission at the complete level of

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*/ Interestingly, GAO's position in the draft report on "dual authority" is at odds not only with the clear wording of the applicable statute but also with GAO's own reading of the statute five years ago. In a 1976 report on the Marshals Service ("U.S. Marshals Service--Actions Needed to Enhance Effectiveness") GAO stated that "marshals are officers of the Department of Justice and are supervised and directed by the Attorney General." GAO further stated that Federal judges exercised only "de facto control." 1

1/We do not agree with the Department's allegation because we believe it is obvious that the judiciary could not control marshal attendance at sessions of court without authority. For further discussion of this matter see page 33 of this report.

effectiveness. The total operational requirement significantly exceeded the total availability. An insufficient level of personnel resources will impair the ability of any activity to effectively meet its responsibilities, and the Marshals Service is no exception. To be moderately understaffed is not inherently bad, as it forces managers to carefully consider policy choices and to set program priorities; however, to be critically lacking in manpower--the situation identified by the task force--severely limits the level of service which can be directed toward any element of the Service's mission.

In the past, the Marshals Service has seen a consistent and significant increase in its workload without a concomitant increase in resources. A prime example of this was the addition of 115 district court judges provided by the Omnibus Judgeship Act of 1978. The Marshals Service requested a modest increase in personnel of 345 positions. The final allocation was 117 new positions. No allowance was made for the workload each new judge would generate in the areas of service of process, enforcing orders, attending court, moving prisoners, and providing for security. Obviously, one Deputy Marshal cannot perform all such duties.

This is but one of numerous examples of increases in the Marshals Service workload unaccompanied by the provision of adequate resources to meet the challenge. Yet this problem, so real and so obvious, was introduced and dismissed in the GAO draft report in one short sentence--"Adding more resources conceivably could reduce the operating problems being encountered." In our opinion, a legitimate evaluation of the resource factor would in all likelihood have demonstrated that this was the single most critical factor behind any deficiencies in Marshals Service performance.

Less Drastic Remedies Were Not Explored by GAO

Aside from the omission of any extended discussion of budget constraints, the report failed to analyze potential remedies within the existing organizational framework designed to assist the Marshals in more efficiently and effectively carrying out their dual responsibilities.

GAO ignores the fact that the Marshals Service and the judiciary are willing to cooperate with each other to make the best use of available resources in the court security area. In furtherance of this effort, the Department has just begun a study of the security requirements of the judiciary designed to provide a system applicable to all judicial districts. When completed, the study will be presented to the Administrative Office of United States Courts and to the

Judicial Conference of the United States. The study will serve as the basis for negotiations among all concerned parties so that a solution can be reached that will provide the best possible security system-wide within existing constraints.

GAO ignored this and other cooperative initiatives, preferring instead to imply that the executive and judiciary were locked in hostile combat for the U.S. Marshals' services and that no accommodation was possible.

GAO's Recommendations Would Be Unworkable

The report's recommendation that the U.S. Marshals be made responsible for "court-related" duties alone is unclear to say the least. All of the Marshals Service's functions identified in the report can be described as court-related. While the court-related support responsibility obviously includes court security, enforcement of court orders, and the service of judicial process, all the U.S. Marshals' responsibilities are an undefinable blend of court-related functions and law enforcement. As an example, the witness protection program safeguards the integrity of the judicial process by insuring the safety of those who are to testify. Similarly, the fugitive warrants program, which is primarily directed against bond defaults, failures to appear, escapes, redresses offenses against the courts by those in court custody or serving court-imposed sentences. The GAO report supplies no principled basis for determining which functions or parts of functions are "court-related." The Department submits that, as a practical matter, the line is undrawable.

GAO's failure to confront this issue is directly responsible for its apparent belief that the witness protection and fugitive warrant functions are somehow a drain on Marshals Service's resources that comes at the expense of the judiciary's interest. The fact is that protecting witnesses and executing fugitive warrants are as directly supportive of the judiciary as is the provision of courtroom security. This point raises considerable doubts about GAO's basic proposition--that there is an irreconcilable tension between the U.S. Marshals' "court-related" duties and its other tasks. There is no such tension. As shown above, most of the U.S. Marshals' work is involved with court support.

In addition, the GAO report failed to make any assessment of the effect of distributing Marshals Service's law enforcement functions among other governmental units. The witness protection program is an example. GAO apparently believes (erroneously, as indicated above) that this program is not "court-related". Accordingly, this function would be removed

from Marshals Service's jurisdiction if GAO's recommendations were accepted.

An examination of this alternative would have shown its disadvantages. Decentralizing the program among the various investigative agencies would create an intolerable appearance of impropriety because witnesses would be protected (and paid) by the agency having the most to gain by their favorable testimony. Moreover, decentralization would require the creation of duplicate staffs to provide witness protection in each agency, thereby increasing the program's cost dramatically. Law enforcement efforts would suffer as the experience and expertise needed to effectively run the program would be diluted or lost.

Centralizing witness protection in one of the investigative agencies would also create problems. An appearance of impropriety would arise respecting that agency's own witnesses. There would be a greater likelihood of conflicts among the different agencies participating in the program, and the experience and expertise needed by each agency would again have to be built up from scratch.

Surely some evaluations of these problems should have been made before recommending that so-called law enforcement functions be removed from the Marshals Service's jurisdiction.

Finally, GAO's recommendations could very well be unworkable as a matter of constitutional law. Transferring the U.S. Marshals' "court-related" duties to the Federal courts would shift to the judiciary Federal law enforcement functions traditionally vested in the executive branch and would thus implicate the principles behind the separation of powers clause. The effect of such a transfer could well be to place an unreasonable amount of power in one branch of the Federal government. This organizational arrangement would create a situation in which the judiciary could perform enforcement functions for itself, thereby upsetting the traditional balance of power between the courts and the executive. GAO should have made, or requested, an in-depth assessment of the constitutionality of its proposed remedy before making its recommendations.[1]

Summary and Conclusion

"Dual authority" is an illusory concept. U.S. Marshals are directed and supervised by the Attorney General. While the Marshals Service occasionally encounters difficulties in satisfying all its responsibilities, this is a resource problem that can be addressed by additional funding or more effective use of existing funds; it is not a structural problem

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1/This comment and our evaluation of it relates to material originally presented in Chapter 4 but which is now contained appendix X.

APPENDIX IX

that can be addressed only by dismantling the Marshals Service. Moreover, to remove from the Marshals Service all activities not "court-related" would involve the making of many artificial distinctions. To distribute these activities among existing agencies would mean that many different agencies would have to conduct the same functional activity--a very poor management concept in theory and practice. Indeed, if the Marshals Service were to cease to exist, it would eventually be necessary to reinvent it, with attendant expense and organizational turmoil.

The Department appreciates the opportunity to comment on the draft report. Should you desire any additional information, please feel free to contact me.

Sincerely,

for Kevin D. Rooney, Acting

Kevin D. Rooney
Assistant Attorney General
for Administration

A DISCUSSION OF ORGANIZATIONAL OPTIONS THAT WOULD EXIST IF LEGISLATIVE ACTIONS NEED TO BE TAKEN TO RESOLVE THE PROBLEMS DISCUSSED IN THIS REPORT AND OUR EVALUATION OF AGENCY COMMENTS ON THE OPTIONS

The following material was contained in chapter 4 of the draft report commented on by the agencies. The material was moved to this appendix because we modified our proposals. This appendix includes the agencies' comments on this section of the draft report and our evaluation of their comments.

ORGANIZATIONAL OPTIONS

Marshals were created to attend sessions of court, serve process, and execute court orders. Six years after their creation, marshals were vested with the same general law enforcement powers as State sheriffs. Changes in society and in the Government since 1789 have increased the need for marshals to go beyond their district boundaries when performing their duties. This is particularly true when marshals must pick up and deliver Federal prisoners and must provide additional security to courts handling extraordinary trials.

In correcting the problems caused by dual authority through legislative actions, the Attorney General would need broad discretion in designating which Department components would assume the law enforcement duties currently assigned to the Marshals Service and U.S. marshals. Additionally, the Congress would need to consider what the best method is for the Government to provide the judicial branch with the essential services necessary to its operation. In considering how marshal services should be provided the Congress would have two basic policy options. The existing decentralized method can be maintained by continuing to have the President appoint a marshal for each judicial district with the advice and consent of the Senate. However, a second option exists. Legislation could be enacted to provide that only one U.S. marshal be appointed to oversee the performance of traditional marshal duties for all the courts. Under this latter alternative, the U.S. marshal would direct a centralized agency consisting of career service personnel whose sole mission would be the performance of duties assigned to them by statute to assist court operations. While each approach has its advantages and disadvantages, neither would vest the judiciary with any additional statutory authority over marshals. Marshals would continue to perform the law enforcement side of their court related duties (e.g. court order enforcement) as executive officers. Because marshals were created to serve the Federal courts, the views of the judiciary would be crucial to reaching a final decision on which approach is best.

Decentralized approach

A continuation of the existing decentralized system would tend to make each district marshal more capable of responding to the needs of his district court. Marshals would need to retain the ability "to command all necessary assistance" in their district to perform their duties because no guarantee would exist that assistance could be obtained elsewhere in meeting short-term extraordinary needs. The decentralized approach would probably require several other fundamental elements:

--A central group to perform administrative functions common to the operation of all districts. This would include efforts such as procurement, the collection of pertinent operational data, attempts to coordinate (for efficiency purposes) the movement of Federal prisoners between judicial districts and the cooperative sharing of deputy resources to assist districts in meeting unusual short-term workloads.

--A representative group of district marshals should exist to address operating problems and to establish fundamental operating policies for the central group and the district marshals.

Under this decentralized approach the administrative group's efforts would have to be based on cooperation from the districts because, with the exception of the President, a direct line of authority would not exist to direct district marshals to comply with the established policies. Thus, the kind of cooperation problems described in this report could continue to exist. We believe the courts should be made primarily responsible for monitoring the adequacy of each marshal's efforts to perform his statutory duties. Otherwise, the President and the Congress would be the only level of oversight for each of the district marshals.

Centralized approach

Another option would be to establish a centralized system where only one U.S. marshal is appointed by the President to direct an agency consisting of career service personnel who perform marshal related duties for all of the district courts. This option would require legislation beyond eliminating the Attorney General's authority over U.S. marshals. There are three alternative organizational arrangements this unit could take.

--It could be a component of the Administrative Office of the U.S. Courts; however, only for administrative support purposes. Neither the Administrative Office nor the judiciary would be given any additional statutory authority over marshals. The judiciary's authority to direct marshal attendance at sessions of

court would remain substantially the same, as would its authority to direct marshals to execute court orders. Despite the administrative placement of the marshal unit in a judicial branch agency, the placement, in our opinion, would meet the requirements of the Constitution because the U.S. marshal would remain an executive officer authorized to perform law enforcement functions. The chief distinction between present law and this alternative is that marshals would no longer be subject to direction and supervision by the Attorney General.

--It could remain a component of the Justice Department, or any other executive agency, as long as the U.S. marshal was not subject to any direction, control, or supervision from the agency. As with the above alternative, the placement of this unit in an executive agency should only be for administrative support purposes.

--It could be established as a separate executive agency or office. This alternative, however, would require the establishment of an entire administrative support structure to meet the unit's needs.

Under a centralized system, the U.S. marshal would no longer need the power "to command all necessary assistance" because he could direct resources between districts based on court resource needs. A centralized system would provide a direct line of authority for the U.S. marshal over district marshal personnel. A centralized system would

--allow uniform operating policies to be established and implemented,

--provide flexibility in resource management to help meet extraordinary district court needs for marshal resources, and

--minimize the need to have the courts concerned with the daily management of marshal operations.

A centralized system could facilitate the efficient provision of marshal services common to all district courts.

A centralized approach also has several disadvantages. This approach is not amenable to providing additional resources on very short notice to districts experiencing unusual resource requirements. Without deputation powers the U.S. marshal would have to meet operational needs with his established resources. Some level of review and coordination would be needed before actions could be taken.

Furthermore, the centralized approach would alter the original organizational design of the Federal judicial system. It would establish a centrally directed service function to assist a decentralized court system. This approach would allow for the possibility that the sum total of all the district court demands for marshal services would exceed the U.S. marshal's resources. Additional legislation would be required to handle such a situation. The U.S. marshal would need authority to advise a court(s) that its total requests could not be satisfied due to limitations on available marshal resources. Without such authority, the U.S. marshal would be subject to a court order to satisfy the request or face the ultimate consequence of a contempt of court citation.

AGENCY COMMENTS AND OUR EVALUATION

Four of the six chief judges commented on the organizational approaches discussed. Three of the four favored the decentralized approach. Their basic reason for favoring this option is best expressed by one chief judge who said that the centralized approach would likely require a new superimposed bureaucracy distant from and unresponsive to the daily requirements of the district courts and marshals. Additionally, one chief judge did not favor either approach because he believes the issue would probably require close study and appropriate hearings.

The Administrative Office and the Department both alleged that constitutional problems may arise if our proposals were implemented. We do not agree. To clarify the matter, however, we have expanded upon our discussion of the decentralized and centralized options.

Administrative Office

The Administrative Office stated that our proposals could create problems with the Constitution's separation of powers concept. Its statements are based on the perception that our proposals pertaining to the relationship between U.S. marshals and the courts and our discussion of the centralized approach intend to place U.S. marshals in the judicial branch of Government. Because marshals would still have to perform law enforcement functions as part of their court-related duties, it contended that the placement of marshals in the judicial branch would violate the separation of powers doctrine. (It should be noted that the Department raised a similar point.)

In the draft report the Administrative Office commented on, we stated that the position of U.S. marshal under the "centralized approach" would be an appointed position. It was our intention that the appointment to this executive branch position would be made by the President with the advice and consent of the Senate. The U.S. marshal would be an Officer of the United States within

the meaning of the Constitution and therefore qualified to perform executive branch enforcement functions. We did not intend to imply that the judiciary would appoint the U.S. marshal. In fact under the "decentralized approach", we recognized that all U.S. marshals would remain political appointees. Nevertheless, we have clarified this matter in the final report. (See p. 69.)

Furthermore, the Administrative Office also objected to making the U.S. marshal a component of the Administrative Office. Our intention was simply to place the U.S. marshal in the Administrative Office to economize on the provision of support services such as office space and supplies. Under our proposal the Administrative Office would have had no authority to direct the operation of the U.S. marshal. We have made changes to this section of the report to clarify our position. (See p. 69.)

It is important to recognize that, historically, the judicial branch has relied on executive branch officers for the good faith execution and enforcement of its orders, including the use of police power when necessary. 1/ Under the Constitution, the President is charged with the duty to "take care that the laws be faithfully executed."

Under a number of court decisions dealing with the separation of legislative and executive powers, the courts have held that Article II, § 3 responsibility can only be discharged by officials who receive their commission in conformity with the Appointments Clause of the Constitution, and as a result are Officers of the United States. 2/ The Appointments Clause, (Article II, § 2, cl. 2) in effect provides that to qualify as an Officer of the United States, the official must be appointed to office by the President with the advice and consent of the Senate. To the extent that the U.S. marshal performs executive functions incident to the execution and enforcement of court orders or otherwise, he unquestionably does qualify as an Officer of the United States. U.S. marshals are appointed by the President with the advice and consent of the Senate. Although appointed for a fixed term of 4 years, U.S. marshals serve at the pleasure of the President and can be removed from office prior to the expiration of the

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1/In re Subpoena to Richard M. Nixon, 360 F. Supp. 1,9 (D.D.C. 1973), 487 F.2d 700, 708 (D.C.Cir. 1973); United States v. Lee, 106 U.S. 196, 223 (1882).

2/Buckley v. Valeo 424 U.S. 1 (1976); Springer v. Phillipine Islands, 277 U.S. 189 (1928).

statutory term. 1/ Our proposals would not have changed the manner of appointment for the U.S. marshal. Thus, the U.S. marshal would have continued to be an Officer of the United States. The President's power to remove him from office also would have been retained.

We believe the marshal's constitutional ability to perform executive functions would not be impaired by the placement of a marshal unit in the Administrative Office of the U.S. Courts because (1) the marshal would continue to be an officer of the United States and (2) the Administrative Office would perform only administrative support functions and would have no authority to direct or supervise marshal operations. 2/ In summary, our proposals would not have changed the relationship that exists between the courts and the marshals. It did not vest either the Administrative Office or the judiciary with any new authority over marshals.

Department of Justice

The Department stated that our report supplied no principled basis for determining which functions are "court-related." It stated that all marshal responsibilities are an undefinable blend of court-related and law enforcement functions. As an example, the Department stated that protecting witnesses (Witness Security Program) and executing fugitive warrants (Fugitive Warrants Program) are as directly supportive of the judiciary as is the provision of courtroom security. It stated that the transfer of marshals' court-related duties to the Federal courts would shift to the judiciary Federal law enforcement functions traditionally vested in the executive branch. This action would implicate the principles behind the Constitution's separation of powers clause.

We do not agree with the Department's rationale. We believe that marshals' responsibilities are definable and separable. The implementation of our proposals would have resolved the question of what represents a "court-related" duty. Essentially, under our proposals marshals would have no longer been involved in performing responsibilities assigned by statute specifically to the Attorney General. Primarily, these include duties such as conducting the Witness Security Program, implementing a national Fugitive Warrants Program, and moving Federal prisoners at the behest of the Federal Prisons System. Under our proposals mar-

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1/Farley v. United States, 139 F. Supp. 757 (Ct. Cl. 1956).

2/Eltra Corp. v. Ringer, 579 F.2d 294 (4th Cir. 1978); Buckley v. Valeo, supra at 128, fn. 165.

shals would have remained executive officers and their duties would have been to

--attend sessions of court when required to do so by the judiciary, and

--serve and execute lawful court orders.

Furthermore, we do not agree that the Department's statement that all marshal duties, such as the Witness Security and Fugitive Warrants Programs are an undefinable blend of law enforcement and court-related functions. While it is true that each impacts on court operations, neither is an essential element of the courts' business. The court-related aspects of each program is merely a by-product of law enforcement activities. An examination of these functions shows that both of these programs are clearly law enforcement functions.

The Organized Crime Control Act of 1970 authorized the Attorney General, not the Federal courts, to provide security for Government witnesses whose lives would be endangered for testifying against persons involved in organized criminal activity. The Witness Security Program was established as a tool to improve the Attorney General's ability to investigate and prosecute members of organized crime. It is true that witnesses in the program are protected while testifying before the courts and this protection enhances the security of judicial proceedings. It is also true, however, that considerable amounts of marshals' time and resources are devoted to program operations outside of the courtroom.

Likewise, the Fugitive Warrants Program represents a law enforcement function. This is evidenced by the fact that before October 1, 1979, the Federal Bureau of Investigation had the prime responsibility to apprehend fugitives. We do not believe that efforts to apprehend fugitives relate to the daily conduct of judicial business. Successful apprehensions relate to judicial business only in that they provide a workload for the courts and in certain instances can represent the enforcement of a court order.

Finally, our proposals would not have shifted Federal law enforcement functions to the judiciary as the Department contends. Marshals would have remained executive officers and would have been responsible for providing security for judicial branch operations and executing the lawful commands of the judicial branch. These have always been statutory and traditional duties of marshals.

In summary, nothing in our proposals was intended to change the relationship that currently exists between marshals and the courts. Only the relationship between marshals and the Attorney General would have been changed by implementing our proposals.

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