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REPORT BY THE

Comptroller General

OF THE UNITED STATES

Changes Needed In Witness Security Program

The Witness Security Program was established to protect witnesses from harm as a result of their testimony against individuals involved in organized criminal activity. But program experience has shown that the public also needs protection. In the past, procedural deficiencies have enabled some relocated witnesses to avoid their legal obligations to third parties such as creditors. An internal memorandum issued by the Justice Department in April 1982 will help to alleviate this problem. However, additional changes are needed to better enhance the protection of third party rights while continuing to ensure the safety of witnesses.

This report recommends that the Congress enact legislation which will result in a better balance of public and law enforcement interests and, for the first time, will establish specific criteria to guide the operation of the program. It also recommends that the Attorney General modify procedures to reduce the chances that third party problems will arise.

GAO/GGD-83-25
MARCH 17, 1983

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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 last in a series of three in response to your request, dated September 17, 1979, to examine the operations of the U.S. Marshals Service. This report evaluates operational aspects of the Justice Department's 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 Department of Justice, 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

COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE MAX BAUCUS
UNITED STATES SENATE

CHANGES NEEDED IN WITNESS SECURITY PROGRAM

D I G E S T

In 1970, the Congress authorized the Attorney General to protect the lives of persons endangered by their testimony against individuals involved in organized criminal activity. In response, the Attorney General established the Witness Security Program which is administered jointly by the Department of Justice's Criminal Division and the Marshals Service. Over 300 witnesses are admitted to the program annually and yearly program costs total about $28 million. Protection is provided by giving witnesses new identities, relocating them to other communities, and providing them with temporary living allowances until self-sufficiency can be attained through employment or other legitimate means.

Over the years the Witness Security Program has been criticized for inadequate services provided to persons in the program. The Department of Justice, to its credit, has taken steps to address these problems. (See pp. 9 and 10.) However, GAO found:

--Procedural deficiencies had enabled relocated witnesses to avoid legal obligations to the detriment of various third parties. An internal policy change in April 1982, could help to mitigate these problems. However, legislative changes are needed to enhance the rights of third parties to enforce court judgments against witnesses and establish specific criteria to guide the program.

--Program operations cannot be adequately assessed because the program does not have adequate information and procedures to facilitate evaluation.

PROCEDURES NEED TO BE IMPROVED TO PROTECT THE RIGHTS OF THIRD PARTIES

The Witness Security Program is difficult to administer effectively and fairly because of its traumatic effect on the lives of those entering it, the criminal backgrounds of most witnesses, and the inherent conflicts in program goals. As a result, each admission constitutes a high-risk because witnesses may not adjust to their new lifestyles and become law-abiding citizens. When adjustment problems happen, serious consequences can result such as new crimes committed by witnesses.

Prior to April 1982, the Marshals Service advised witnesses when they entered the program that they would not be shielded from the law. In practice, however, the Department would not disclose information on a witness' new identity or location to resolve a civil dispute. This practice acted to shield witnesses from civil obligations whenever the witness refused to comply with a court order. Because the Department refused to disclose this information, third parties could not identify either who and/or where to sue to seek the enforcement of their legal rights. This resulted in:

--Non-relocated parents, who were either separated or divorced, having extreme difficulty in exercising their legally established parental rights with respect to their relocated minor children. In the 10 cases GAO identified, non-relocated parents did not see their children for periods ranging from 2 months to 9 years. In three of these cases, the non-relocated parents were still waiting to be reunited with their children at the time of GAO's review. (See p. 19.)

--Creditors being hindered in their efforts to recover debts owed to them by witnesses. The Marshals Service provided GAO the latest available information which showed that during a 6-month period in 1980, creditors were trying to recover

about $7.3 million from 32 witnesses. Four other witnesses also owed money but the specific amounts could not be determined. Among the creditors were individuals, large companies, and the Federal Government. (See p. 23.)

The former nondisclosure practice adversely affected third parties and put the Department--the Nation's chief law enforcement agency--in the ironic position of being a barrier to law enforcement.

In April 1982, the Department issued an internal memorandum that revised its policy regarding the disclosure of witness information to facilitate the collection of unpaid debts. The memorandum generally outlined the circumstances when the Marshals Service will consider disclosing information on witnesses. The memorandum provides that if the witness does not pay his/her debts or arrange for a payment schedule, the Marshals Service will (1) investigate the creditor to determine if the debt is legitimate, and (2) consult with the Criminal Division, and with its concurrence, advise the witness in writing that he/she has 30 days to make arrangements to satisfy the debt or his/her location will be revealed to the creditor.

GAO believes the Department's actions could help. However, because the memorandum is general in nature and is subject to administrative change, GAO believes that specific legislative criteria need to be established to guide the operation of the program as it relates to third parties.

In addition, because the internal memorandum still provides for the Department to make the ultimate decision on disclosure, GAO believes that overall public interests would be better served if third parties had the opportunity to seek a judicial review of the facts that support the propriety of the Department's

nondisclosure decision. This would promote a more objective application of disclosure criteria but still provide for nondisclosure in appropriate circumstances. GAO also believes that additional administrative changes can reduce the chances that third party problems will arise and ultimately the need to make disclosure decisions. (See p. 27.)

PROGRAM EVALUATION HAS NOT OCCURRED

Although the program has cost over $100 million since its inception in 1970 and has been subject to frequent criticism, a system for gathering information on program operations and results has not been fully established. Additionally, procedures to facilitate an independent evaluation of the program have not been established. These shortcomings impede an adequate assessment of the program. In view of the cost and controversial nature of the program, GAO believes the time for an information system and a mechanism to facilitate independent evaluation is overdue. (See p. 39.)

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress enact legislation that requires the Attorney General to disclose a witness' identity to a third party possessing a court judgment against the witness unless available evidence indicates that (1) the disclosure could likely result in harm to the witness or (2) the witness does not have the ability (financial or otherwise) to resolve the judgment. The legislation should also provide, among other things, third parties the right to petition a Federal court to review the propriety of a nondisclosure decision. (See p. 32 and app. III.)

RECOMMENDATIONS TO THE ATTORNEY GENERAL

GAO recommends that the Attorney General modify program policies and procedures to reduce the chances of third party problems arising when it relocates witnesses by (1) informing witnesses of the disclosure policy and (2) offering all witnesses the opportunity and necessary assistance to safely litigate civil matters. (See p. 33.)

GAO also recommends that the Attorney General develop an information system and procedures to allow for appropriate evaluation of the program. (See p. 43.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Department of Justice agreed with all of GAO's recommendations to the Attorney General but disagreed with one element of GAO's recommendations to the Congress. The Department did not agree that third parties should be provided the right to seek judicial review of nondisclosure decisions by the Attorney General. The Department said, among other things, that the GAO recommendation could involve it in unnecessary and lengthy litigation and that existing statutes already provide third parties with adequate avenues of judicial review.

The statutes cited by the Department do not provide third parties with adequate avenues of judicial review. Therefore, GAO believes that the Congress should establish a mechanism for judicial review that would give fair recognition to the Department's interest in maintaining the safety of witnesses and the viability of the program while also enhancing the ability of third parties to pursue their legal interests. Such review would concern only whether or not the Government should remove the barrier (a secret identity and location) that it has created to protect the witness.

Thus, when viewed in conjunction with the Department's initiatives to better recognize third party rights, GAO believes that there would be a limited need for further litigation. (See pp. 33 to 38.)

Contents

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 last in a series of three resulting from this request, concerns the operation of the Marshals Service's Witness Security Program. The first report, "U.S. Marshals' Dilemma: Serving Two Branches of Government" (GGD-82-3, April 19, 1982), dealt with the difficulties stemming from the organizational relationship of U.S. marshals to the Federal judiciary and the Attorney General. The second report, "U.S. Marshals Can Serve Civil Process and Transport Prisoners More Efficiently" (GGD-82-8, April 22, 1982), discussed the opportunities that exist to enhance the efficiency of serving civil process [1/] and transporting Federal prisoners.

THE POSITION OF U.S. MARSHAL AND ITS RELATIONSHIP TO THE FEDERAL COURTS AND THE DEPARTMENT OF JUSTICE

The Judiciary Act of 1789 (1 Stat. 73,87) established the position of U.S. marshal as an executive branch officer to assist the courts. 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. Six years later, the 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 Federal law enforcement officers.

Until 1861, U.S. marshals were largely independent from the direction of executive branch agencies. However, in that year the Congress enacted legislation (ch. 37, 12 Stat. 285) that made marshals subject to the direction and supervision of the Attorney General. For many years the relationship between the Attorney General and marshals was casual in its nature rather than one where the Attorney General actively exercised control. As a practical matter, U.S. marshals remained basically autonomous from day-to-day direction by the Attorney General until 1969.

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 appearance of an individual, or to force compliance with a judicial order.

In 1969, the Attorney General formalized his relationship with U.S. marshals by establishing the Office of the Director, Marshals Service. The Marshals Service 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 program areas primarily include the Witness Security Program and the Fugitive Warrants Program. Although marshals are officers of the Department of Justice, they remain 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, executing various commands of the court, and providing security to the court.

The President 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, and the Northern Mariana Islands. In all there are 93 U.S. marshals to serve the 94 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 appoints the Attorney General, subject to Senate confirmation. The Attorney General in turn appoints the Director, Marshals Service. Deputy marshals are career civil servants and are hired from Federal employment registers maintained by the Office of Personnel Management. As of August 1982, the Marshals Service had 2,018 employees, of which 1,529 were deputy marshals. The Marshals Service has assigned 240 deputy marshals and 18 support personnel to operate the Witness Security Program.

The Office of Enforcement Operations, a component of the Department's Criminal Division, shares responsibility with the Marshals Service for managing the Witness Security Program. It has no direct authority over U.S. marshals. It does, however, make decisions regarding the conduct of the Witness Security Program. In making program-related decisions, it can directly affect the application and use of marshal resources.

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 p. 45) were not pursued because preliminary information indicated no further review was warranted. To address the remaining five questions, 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 control by two branches of Government; (2) what can be done to improve the efficiency of prisoner transportation between judicial districts and the service of civil process; and (3) how effectively the Marshals Service handles the Witness Security Program. This report deals with the third objective. Objectives (1) and (2) were discussed in the two prior reports. (See p. 1.)

We narrowed the scope of our review of the Witness Security Program to two basic issues--the problems that third parties encounter in attempting to enforce civil obligations against protected witnesses and fundamental program management. The narrowing of our audit scope was done with the consent of Senator Max Baucus' office because of the number of separate and complex issues being covered by our overall review and the audit arrangements the Department established for us. These arrangements enabled us to examine program operations without disclosing the identity of witnesses. However, the arrangements required program personnel to spend considerable time collecting requested information, copying numerous documents for our examination, and excising the names and locations of witnesses to protect their security. We believed that an overall examination of program operations under these circumstances would have seriously disrupted operations. Therefore, with the concurrence of Senator Max Baucus' office, we decided to focus on two areas where we believed problems were longstanding and serious.

This review was performed in accordance with generally accepted Government auditing standards. In reviewing the Witness Security Program, we conducted detailed audit work at the Marshals Service's headquarters in McLean, Virginia, and at the Office of Enforcement Operations, Criminal Division in Washington, D.C. during the period June 1980 to October 1982. In addition, we did limited audit work in 10 Federal judicial districts--eastern Virginia, Maryland, southern Ohio, eastern Kentucky, eastern Louisiana, southern Texas, central California, western North Carolina, southern California and southern Florida.

To accomplish our objective, we

--reviewed Federal laws, rules, and regulations governing the Witness Security Program and the establishment of the position of U.S. marshal and the Marshals Service;

--interviewed officials of the Marshals Service and Office of Enforcement Operations about the management and conduct of the Witness Security Program;

--reviewed the policies and procedures for operating the Witness Security Program;

--reviewed congressional hearings concerning the Witness Security Program;

--interviewed U.S. marshals, program personnel, U.S. attorney personnel, organized crime strike force attorneys, agents of the Drug Enforcement Administration and the Federal Bureau of Investigation, and Federal probation officials concerning their experiences, perceptions, and use of the program;

--conducted computer-assisted information searches and literary searches to identify and obtain court cases, news accounts, and books relating to the Witness Security Program (see p. 47);

--discussed the operations of the program with relocated witnesses who personally contacted us;

--assembled and evaluated overall management statistics related to program operations;

--evaluated specific case-related correspondence and documents provided to us by the Marshals Service and the Office of Enforcement Operations which primarily concerned (1) program use, (2) services provided to witnesses, (3) complaints by various third parties (e.g. creditors of relocated witnesses), (4) the reasons for multiple relocations of protected witnesses, and (5) recommendations for admissions to the program on the basis of preliminary interviews of witnesses; and

--examined documents that were gathered by the staff of the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, in preparation for hearings on the Witness Security Program that were held in December 1980.

CHAPTER 2

WITNESS SECURITY PROGRAM:

ITS EVOLUTION AND OPERATION

Except when testimony is protected by recognized constitutional or statutory rights and privileges (e.g. self-incrimination or husband/wife rights), every citizen has the duty of testifying in court to aid the enforcement of law. Not even the threat of death is a legal excuse from this duty (Piemonte v. United States, 367 U.S. 556, 559)(1960). However, the fear of reprisal or retaliation can cause potential witnesses to ignore this duty. This led the Congress to conclude that Federal law enforcement efforts would be enhanced if witnesses could be assured that they and their families would not be harmed as a result of their testimony in criminal proceedings. On October 15, 1970, the Congress formally authorized the Attorney General in Title V of the Organized Crime Control Act of 1970 (Public Law 91-452) to protect the lives of witnesses who testify against persons involved in organized criminal activity.

As a result, the Attorney General created a formal program to protect witnesses--the Witness Security Program. Program administration, usage, costs, and the methods used to protect witnesses have evolved since the program's inception. These changes have been spurred by several factors, including adverse operating experiences and the considerable controversy caused by the program.

THE EVOLUTION OF WITNESS PROTECTION

Before the Witness Security Program was established, witnesses were protected on an ad hoc basis. Police officers, investigative agents, and prosecutors periodically aided witnesses whose cooperation with the Government placed them in jeopardy. The assistance varied and included arranging for relocation to a new residence, assisting in establishing a new identity, or obtaining employment. Often, the assistance was little more than a bus ticket to some distant location.

In the late 1960's, the Congress became concerned about the increased influx of "organized crime" into both illegal and legal segments of society. Congressional hearings disclosed that organized crime groups were known to have murdered, tortured, and threatened witnesses. Law enforcement officials testified that this situation was hampering prosecutions and deterring witnesses from cooperating with law enforcement agencies.

The congressional hearings led to the passage of the Organized Crime Control Act of 1970. The purpose of the act was to seek the eradication of organized crime by strengthening the legal tools used in the evidence gathering process. A new tool was added under Title V of the act. Title V authorized the Attorney General to provide security to persons (and their families) intended to be called as Government witnesses in proceedings (including State trials) instituted against any person alleged to have participated in organized criminal activity.

The Witness Security Program was established to implement Title V. Since its establishment 12 years ago, many changes have occurred in the administration, usage, overall cost and size of the program, and manner in which witnesses are protected.

Initially, the Department's Criminal Division was responsible for protecting witnesses, and the Marshals Service's role was limited to supplying guards when a need for physical protection arose. However, program administration soon became burdensome for the Criminal Division, and questions arose about the appearance of impropriety associated with prosecuting attorneys securing money for witnesses. Therefore, in March 1971, a major administrative change occurred. The Marshals Service was tasked with the primary responsibility for administering and operating the program while the various operating units of the Criminal Division retained the authority to determine program admissions.

The types of cases investigated and prosecuted with the assistance of protected witnesses have changed over the years. Initially, the program was intended to protect witnesses testifying against persons allegedly engaged in organized criminal activity. Indeed, during the early years most witnesses admitted to the program were sponsored by the Criminal Division's Organized Crime and Racketeering Section--the Department's focal point for coordinating enforcement activities against organized crime. As time passed, however, the number of witnesses sponsored by other departmental units increased, and the prosecutive priorities of the Department changed.

To determine in what types of cases protected witnesses were predominantly being used, we randomly selected 103 of the 557 witnesses admitted to the program between January 1979 and July 1980. At our request the Office of Enforcement Operations provided us with case-related information for 98 of the 103 witnesses we selected. 2/ The following table shows that a variety of cases are being prosecuted using protected witnesses.

2/The Office of Enforcement Operations could not locate the other five case files we requested.

Type of case (note a)	Number of witnesses
Narcotics	26
Major organized crime groups	22
Other organized crime groups	16
Murder	14
Theft	7
Public corruption	5
Alien smuggling	3
Arson	2
White-collar crime	1
Conspiracy to commit murder	1
Prostitution	1
Total	98

a/As a representative sample of the universe, this sample had a confidence level of 95 percent and a sampling error rate of ± 10.1 percent.

The basic concept of how to protect witnesses has also changed since the program's inception. At first, witnesses were protected in secured facilities (safehouses) during the period they were in danger. According to the Marshals Service, operating experience showed that safehouses were not well-suited to the realities of protecting individuals. The location of safehouses was often inadvertently disclosed; they were unappealing for individuals who were not in custody or had families; and they were becoming prohibitively expensive to operate. For these reasons, the safehouse approach to protecting witnesses was discontinued.

The Marshals Service provides long-term protection currently by giving witnesses new identities with supporting documentation (e.g. birth certificate and social security card). Further, it relocates them to areas free from the criminal element they testified against and provides them with a temporary living subsistence until they can achieve self-sufficiency. The Marshals Service also provides or arranges for other types of social services based on individual needs such as employment assistance, resume preparation, emergency medical treatment, and psychiatric counseling services. All of this is done in hopes that the witness will become successfully established in his/her new community as a law-abiding citizen.

There has been a significant increase in the usage and, thus, the overall cost of the program. At the time Title V was enacted, management and budget estimates anticipated between 25 and 50

witnesses would be protected each year at a cost of less than $1 million. However, over 4,000 witnesses and over 8,000 family members have entered the program since its inception. Annual program costs are currently about $28 million. The following chart, provided by the Marshals Service, depicts the yearly size and cost of the program.

Fiscal year	Witnesses admitted	Program costs (note a)
		(millions)
Beginning of program through 1973	647	(b)
1974	324	$ 3.1
1975	371	11.4
1976	466	12.6
1977	469	12.0
1978	441	11.6
1979	427	19.9
1980	c/334	21.5
1981	287	24.4
1982	324	28.4

a/Yearly costs are comprised of employee salaries and expenses and financial maintenance expenses incurred for both newly admitted and reactivated witnesses and their family members.

b/Program costs were not available for this period.

c/The decrease in admissions resulted from Justice Department efforts to improve program administration.

Even though the number of witnesses admitted to the program each year has decreased recently, program costs have increased because of inflationary pressures and the fact that many witnesses and family members receive benefits subsequent to their initial relocation and subsistence. For example, in fiscal year 1982, 324 new witnesses were admitted to the program, but the Marshals Service provided services (protection and/or funding) to about 470 witnesses per month. In addition, because the Department recognizes a lifelong commitment to protect the lives of witnesses, there is an increased number of witnesses who may eventually need further assistance. For example, in fiscal year 1982, 74 witnesses, whose subsistence had terminated, were reactivated for funding because of a variety of reasons. These included breaches in witnesses' security and attempts to resolve problems with their dissatisfaction over their relocation area. Each time a witness is reinstated, additional expenses (e.g. subsistence, transportation, new documentation, and/or relocation) are incurred.

Actual program costs extend beyond the amounts appropriated to the Marshals Service. Other Government agencies incur expenses while assisting the Marshals Service in providing services to witnesses. Among these are the Immigration and Naturalization Service, the Veterans Administration, the Social Security Administration, the Department of Defense, as well as numerous State and local governments which cooperate with program administrators by providing services to witnesses and/or documents for identification.

A significant factor that has contributed to the changes in the Witness Security Program has been the controversy surrounding its operation. The program has been the subject of numerous critical newspaper and magazine articles, books, and television reports. Additionally, the program was extensively reviewed by a special Justice Department committee and was the subject of major congressional oversight hearings in 1978 and 1980. (See p. 47.)

In response to criticism of the program, the Department established in July 1977 the Witness Security Program Review Committee to assess the program and to make recommendations to improve it. 3/ The review committee looked at a number of issues including (1) program purpose and evolution, (2) admission standards and procedures, (3) program services, (4) administrative practices, and (5) program costs. The review committee concluded in early 1978 that the program had been successful in providing protection to witnesses and that there was a continuing need for the program. On the other hand, the review committee also found significant deficiencies in the program and made 28 recommendations to improve its operation. Some of the more significant deficiencies and the corrective actions taken by the Department follow.

--The program was used too extensively. As a result, the Marshals Service's limited resources could not meet witnesses' needs. In response, the Department revised the program's admission standards and established targets for the number of witnesses to be admitted each year. This reduced new admissions substantially.

3/At about the same time, the former Senate Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, expressed similar concerns about the program's responsiveness to witnesses' needs and offered suggestions for improvement. The suggestions of the Subcommittee and its staff, combined with the results of the Department's internal review committee, played an important role in revising the Witness Security Program.

--The decentralized admission process was characterized by inadequate screening and inconsistent admission standards. This reduced opportunities to make an objective judgment about the value of a witness' testimony in relation to the potential cost of admitting the witness into the program. In response, the Department centralized the admission decision-making process in the Office of Enforcement Operations.

--Too many witnesses were accepted under emergency entry procedures which prevented careful screening of witnesses. Consequently, for these witnesses, the Marshals Service had little information on their backgrounds and needs. This situation also placed undue strain on witnesses and their families and increased the overall level of tension and frustration for everyone involved with the program. In response, the Department, through better planning, has been able to reduce the number of emergency admissions.

--Services provided to witnesses were deficient. The major complaints involved employment assistance and the provision of documentation to support new identities. In addition, the Department's specific obligations to provide services were not being made clear to witnesses. In response, the Department now requires all witnesses to sign a Memorandum of Understanding before admission to the program. This memorandum explains the program to witnesses and clarifies the Government's obligations and responsibilities. The Marshals Service has also established agreements with various groups to assist with employment efforts and has attempted to improve the timeliness of its documentation services.

--There were administrative deficiencies including understaffing, insufficiently trained personnel, and poorly organized and incomplete program files. The Department has increased the amount of resources devoted to the program, trained and promoted personnel to conduct program operations, and improved its program files and records.

--Finally, the program's overall prosecutive results and societal impacts have never been evaluated. Recently, the Office of Enforcement Operations began collecting information so that it can better examine program benefits. However, the impacts of the program are still not examined in a routine and comprehensive manner. This weakness is discussed in chapter 4 of this report.

WITNESS SECURITY: HOW IT IS PROVIDED

As mentioned on pages 1 and 2, two entities within the Department of Justice control the operation of the program. The Office of Enforcement Operations is responsible for determining whether a witness is eligible for admission into the program, for coordinating the appearance of the witness for testimony, and for resolving differences between witnesses, marshals, investigators, and attorneys. 4/ The other entity, the Marshals Service, is responsible for the day-to-day operation of the program. This includes overall responsibility for protecting the witness and his/her family, providing documentation, employment, and housing assistance, and conducting program administrative functions such as preparing internal management reports.

To place a witness in the program requires action by a number of parties. First the prosecuting attorney must transmit an admission request to Enforcement Operations. The request, among other things, attempts to delineate the significance of the case and the expected testimony from the prospective witness. After receiving the request (1) the appropriate investigative agency (e.g. Federal Bureau of Investigation) is required to submit a report concerning the threat to the witness' life; (2) the appropriate Criminal Division unit (e.g. Narcotic and Dangerous Drug Section, Public Integrity Section) is asked to review and comment on the specific case; and (3) the Marshals Service is asked to conduct a preliminary interview with the witness and his/her family.

At the preliminary interview, a trained deputy marshal explains the program to the potential witness and details what will be expected of the witness if he/she is accepted into the program. After the interview, the deputy marshal transmits a recommendation to the Marshals Service on whether or not the witness will be a workable case. The Marshals Service then makes its own admission recommendation to Enforcement Operations. Generally, Enforcement Operations will make its final decision on admittance only after it has received and reviewed the threat assessment, the Criminal Division unit's comments, and the Marshals Service's preliminary interview recommendation.

4/This office also has other duties not directly related to the program which include overseeing the use of court-approved wiretaps and approving requests for consensual electronic monitoring (the recording of a conversation where at least one party consents to be overheard).

If Enforcement Operations admits the witness into the program, he/she is given a Memorandum of Understanding to read. The memorandum describes the obligations of both the Marshals Service and the witness under the program. Each page of the memorandum (there are over 20 pages) is to be initialed by all adult family members to indicate their understanding and concurrence.

After the memorandum is signed the Marshals Service becomes almost entirely responsible for protecting the witness and other family members and providing for their day-to-day needs. A case manager at Marshals Service headquarters is assigned responsibility for coordinating all services to be provided to witnesses. At this time, moving arrangements will be made and efforts to obtain a legal name change and supporting documentation will begin. A relocation area (which is approved at Marshals Service headquarters) will also be chosen on the basis of the security needs of the witness and family, availability of employment opportunities, and if possible, the personal preference of the witness.

A deputy marshal in the relocation area will become the witness' primary point of contact with the Marshals Service. This deputy marshal will be responsible for providing services such as housing and employment assistance, routine medical care, and other services which cannot be provided by the headquarters staff.

After relocation, witnesses and their families are provided documentation to support their new identities. Typically, this involves a legal name change, a driver's license, and a social security card. It may also involve, in appropriate cases, the provision of professional licenses, birth certificates, school records, medical records, passports, religious records, and Department of Defense and Veterans Administration records. Witnesses are provided only documentation that is commensurate with their past lives and experiences. In other words, witnesses will not be given documentation indicating they earned a college degree or professional certificate unless it was earned under their former identity.

In accordance with the Memorandum of Understanding, the Marshals Service will provide a witness with one "reasonable" job opportunity commensurate with his/her skills or abilities. If the witness refuses to accept the "reasonable" job offer, subsistence funding can be terminated. To help find employment for witnesses, the Marshals Service has established a national job bank comprised of companies or agencies that have agreed to assist in hiring witnesses. The deputy marshal in the relocation area can utilize this job bank or can work independently to help assist the witness to find employment. The Marshals Service will also assist the witness in preparing a "sanitized" employment resume. This resume lists a witness' employment experience and the type of

company worked for but does not identify the company or its location.

Witnesses and their families are paid a monthly subsistence allowance during the period in which employment is being sought. The allowance is established on the basis of a sliding scale depending on the number of dependents the witness has and the geographic location to which the witness is relocated. The Memorandum of Understanding states that a witness' subsistence allowance may be terminated (without cause) after 6 months, or for other appropriate reasons (e.g., failing to abide by program rules). According to the Marshals Service, the average time a witness receives subsistence is about 18 months. After a witness leaves the subsistence stage of the program, the Marshals Service basically loses contact with the witness and will become involved again only if the witness contacts the Marshals Service or if third parties (other law enforcement groups, creditors, etc.) learn of the witness' participation in the program and seek assistance from the Marshals Service.

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The previous reviews of the Witness Security Program by the Department and congressional subcommittees have focused largely on the problems that witnesses experience in receiving program services. As discussed above, the Department and the Marshals Service have responded by making a number of changes to improve program administration and operations. Our work indicates that the changes have had positive effects even though they have not fully eliminated all problems. For example, witnesses now get more documentation supporting their new identities and get it sooner; however, in some instances, witnesses may not get their birth certificates or social security documents and benefits in a timely fashion. These concerns and delays continue to exist primarily because the Marshals Service must rely on other agencies for assistance in providing services to witnesses.

This report does not deal extensively with the provision of program services to witnesses. Rather, it concerns (1) problems that third parties have encountered in attempting to enforce civil obligations against protected witnesses and (2) factors that hinder program management.

CHAPTER 3

RELOCATED WITNESSES OFTEN AVOID CIVIL OBLIGATIONS

The Witness Security Program is a difficult program to administer effectively and fairly because of its traumatic effect on those who enter the program, the criminal background of most witnesses, and the inherent conflicts in program goals. As a result each use of the program is a high-risk because no one knows whether a witness will successfully adjust to his/her new identity and become a law-abiding citizen.

Whenever problems arise, they can have serious consequences. Over the years witnesses have been able to use their secret new identities and locations to avoid debts and rulings of various courts directed against them. Until April 1982, the Department did not balance the need to protect witnesses with the need to protect various third parties from the unscrupulous actions of witnesses. As a result, separated or divorced non-relocated parents were unable to exercise their court established custody or visitation rights with their relocated children, and creditors were precluded from collecting debts owed to them by witnesses.

In April 1982, the Department issued an internal memorandum that addressed the problems between witnesses and third parties. The memorandum now allows the Marshals Service to consider, on a case-by-case basis, whether it should disclose a witness' identity and location to enable third parties to seek enforcement of their legal rights. Disclosure, however, may occur only after a number of prerequisite determinations have been made. While this is a significant change and represents a good faith effort by the Department, we believe specific legislative requirements are needed to better enhance the ability of third parties to enforce judgments against witnesses.

In addition to the Department's action in April 1982 there has been increased congressional attention to this matter. During the 97th Congress, three bills were introduced that contained provisions affecting the Witness Security Program and the resolution of third party problems. In general, these bills were very similar to the Department's new procedure in that disclosure of a witness' new identity and location could be considered only after a number of prerequisite conditions have been satisfied. Even though the Department has revised its policy, we believe legislative changes need to be made to better balance the interests of third parties while maintaining the security of the program. The Department also needs to further modify its policies and procedures.

RELOCATING KNOWN CRIMINALS AND REESTABLISHING THEIR LIVES IS A HIGH-RISK

A number of factors make the Witness Security Program difficult to administer and hinder the chances that relocated witnesses will achieve a basic program objective--to successfully establish themselves in their new communities as law-abiding citizens. The program's basic operating concept--relocation under a new identity while leaving behind all previous ties--is traumatic. Further, inherent conflicts exist in this concept. For instance, witnesses are assisted in finding employment but verifiable employment references cannot be given because this action would conflict with the goal of keeping a relocated witness' identity and location secret. Finally, the Marshals Service's job is further complicated by the fact that most relocated witnesses have criminal backgrounds, limited education, and often do not have marketable job skills.

The trauma derives from the basic method of providing protection. Relocating and changing the names of persons in the program forces them to totally restructure their lives. Under the program, witnesses and their families must break all direct contact with non-relocated family members, past friends, and associates. Any subsequent communication with these individuals is to be made only in a secure manner, such as through the Marshals Service by using a central post office box. This prevents disclosure of the witnesses' new locations. The trauma is compounded because witnesses must often be evasive about their pasts in the course of establishing friendships and business associations in their new locations and face a never-ending fear that someone from their past might recognize them and cause them harm.

Inherent conflicts also exist in basic program goals. The need to keep a witness' new identity and location secret creates problems in helping a witness establish a new life. For example, witnesses must attempt to obtain employment in their new locations. However, to protect their identities they cannot provide prospective employers with any verifiable employment references. If such references were provided and checked, a link between the witnesses' past and their new identities could be established. Relocated witnesses encounter this same problem in trying to establish credit.

These conditions would make the program difficult for the Marshals Service to administer under the best of circumstances. However, the Marshals Service usually does not encounter the best circumstances. Most persons admitted to the Witness Security Program (about 95 percent according to the Marshals Service) have

criminal backgrounds. This not only creates additional problems in obtaining employment and credit for relocated witnesses; it requires the Marshals Service to be especially careful in its assistance efforts. For instance, Marshals Service officials have stated that one reason they do not give witnesses extensive background documentation or transfer credit histories is the fear of potential liability to the Government if the documentation is used for fraudulent purposes by witnesses.

Finally, the Marshals Service's efforts to assist witnesses in obtaining employment are complicated by the fact that witnesses often have limited job skills and many have limited education. In April 1982, the Marshals Service provided us with the latest available data on the education and job skills for 146 of the 287 witnesses admitted to the program during fiscal year 1981. As shown in the following table, 59.2 percent of the labor skills witnesses claimed to possess were of an unskilled nature, and 34.2 percent of the witnesses had not completed high school. 5/

Job skills	Percent	Education	Percent
Unskilled labor	59.2	Did not complete high school	34.2
Skilled labor/ craftsman	16.7	Completed high school	43.2
Office-related	4.2	Some college	16.4
Managerial	14.1	College degree	4.8
Skills indicating college training	5.8	Advanced/professional degree	.7
		Unknown	.7

All of these factors combine to make each use of the Witness Security Program a high-risk from the standpoint of whether relocated witnesses will be able to successfully adjust their lives and become law-abiding citizens under their new identities. In reality, witnesses do not always achieve this goal. As stated on page 4, we reviewed many different types of program-related information. In doing so, it was not uncommon to identify instances where witnesses had committed or allegedly committed crimes after

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5/Bureau of the Census educational data (for 1980) indicates that 19.6 percent of the Nation's population in age groups comparable to those of relocated witnesses did not complete high school.

being relocated. Some of these were of an extremely serious nature. For instance, we identified seven witnesses who have been convicted of murder, one who is currently charged with murder, and indications that four others were involved in murders. Other serious crimes committed by witnesses include arson, robbery, and assorted drug violations.

The Department did not effectively track criminal arrests of protected witnesses at the time of our fieldwork. Although the Marshals Service had attempted to establish an "arrest log," the log was not very useful because it was not consistently prepared or maintained. Its condition prevented any meaningful determination of the number of witnesses arrested or convicted. Two studies to assess the extent of criminal activity by relocated witnesses have been conducted in the past 5 years. In 1978, the Witness Security Program Review Committee, as a portion of its overall evaluation of the program, reported that 15 percent of a sample of 200 witnesses admitted between 1970 and 1977 had been arrested at least once since their entry into the program. In fiscal year 1982, the Marshals Service reviewed the files of the last 1,174 witnesses entering the program from October 1978 to April 1982 and found that about 17 percent of the nonprisoner witnesses had been arrested since their admission. These studies do not represent all the legal problems caused by the relocation of witnesses. Neither study adequately addresses adverse impacts created by witnesses who have failed to satisfy civil obligations or debts or who fail to respond to court orders.

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In commenting on our draft report, by letter dated December 10, 1982, the Department discussed actions it has taken, as well as several of its current policies, to safeguard the public from the criminal and unscrupulous actions of witnesses. (See app. IV.)

First, the Department said that the Marshals Service has instituted a program whereby all prospective witnesses are administered a battery of tests which evaluate each witness' vocational interests and general temperament, including potential antisocial behavior. These tests, which are evaluated by a team of vocational/behavioral psychologists, are envisioned to be helpful in finding employment for witnesses and in predicting possible adjustment problems.

Second, the Department stated that its policy is to (1) assist other law enforcement agencies in any legitimate investigation of criminal activity by witnesses and (2) fully advise prospective employers of witnesses of the nature and extent of the witnesses' criminal background. Further, it has reached agreement with the Probation Division of the Administrative Office

of the U.S. Courts and the U.S. Parole Commission to provide for the supervision of all Federal probationers and parolees in the Witness Security Program. It also stated that it supported legislation during the 97th Congress that would have required all State parolees and probationers admitted to the program to be supervised. Although, we did not examine these new initiatives, we believe they represent an affirmative effort by the Marshals Service to improve program operations in light of the criminal nature of some witnesses and the problems they have caused.

PROCEDURES NEED TO BE IMPROVED TO PROTECT THIRD PARTY RIGHTS

A longstanding problem that has been encountered in the conduct of the Witness Security Program is the frequency with which third parties have encountered difficulties when attempting to enforce judgments against relocated witnesses. Until April 1982, the Department had not attempted to establish adequate measures to deal with this problem. As a result, third parties have been adversely affected.

As discussed on page 12, the Memorandum of Understanding between the witnesses and the Marshals Service delineates basic program policies and the various obligations of the witnesses and the Government. The memorandum identifies two principles the Department attempts to balance: the need to protect witnesses from physical harm resulting from their testimony and the need to protect the public from the unscrupulous actions of some witnesses. These principles must be carefully balanced because they can and do conflict with each other at various times.

First, the memorandum advises witnesses that security assistance provided by the Marshals Service is continuing in nature and that they must share responsibility with the Marshals Service to maintain their security. It states that all future security problems should be brought to the attention of the Marshals Service for evaluation. Thus, even though subsistence payments might be finished from a security viewpoint the Department recognizes a lifelong commitment to protect the lives of witnesses.

Second, the memorandum contains several specific policies designed to protect third parties after witnesses are relocated. The memorandum requires witnesses to list all of their outstanding debts and liens and court orders issued against them. It advises witnesses that they are responsible for settling their own debts and that the Marshals Service will not shield them from the law or legitimate creditors. The memorandum advises witnesses that the Marshals Service will serve them with legal process (summonses, subpoenas, court orders, etc.) on behalf of third parties. It

also states that court orders which grant custody of minor children to persons other than the witness will be honored, and children will not be relocated in violation of these orders. Finally, the memorandum states that witnesses' subsistence funding can be terminated if they fail to follow program rules.

The policies to protect third parties conflict with the principle of lifelong security whenever relocated witnesses do not comply with court judgments served them by the Marshals Service. This occurs because until April 1982, program procedures relied heavily on the integrity and cooperation of witnesses and did not call for active involvement by the Marshals Service in trying to resolve problems caused by the relocation of witnesses. The most severe program sanction mentioned in the memorandum--termination of subsistence funding--is ineffective whenever a witness' funding has already been terminated or when the possible penalty (debt or court judgment) exceeds the value of subsistence. It had been the Department's policy not to disclose the identity or location of witnesses to permit third parties to pursue the resolution of civil disputes in accordance with the due process of law even when witnesses ignored court judgments directed against them. This action, in effect, shielded some witnesses from civil obligations and creditors. In the past this has resulted in the following:

--Separated or divorced parents, who are not relocated, encounter hardships when trying to enforce their legally established parental rights against the relocated parent.

--Third party creditors suffer substantial financial harm because they are being hindered in their ability to collect debts from witnesses.

Parent/child relationships have been seriously disrupted

In the past the Department did not aggressively attempt to identify or resolve problems that arise whenever a divorced or separated parent with minor children is admitted to the Witness Security Program. Rather, it relied largely on the relocated parent to settle his/her own domestic matters. By not taking appropriate actions, the Department perpetuated problems for the concerned parents and children.

Matters related to domestic relations between husband and wife and parent and child are governed by the laws of the States. Disputes that may arise between concerned parties about these relationships are addressed by State courts. In congressional testimony the Department has recognized both the serious nature of parent/child relationship problems created by the program and the principle that these matters are properly resolved at the State

court level. In 1978, the Director of the Marshals Service told the former Senate Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, that

> "You would have to certainly work to secure some accommodations so the rights of the other party are protected. I don't think we would ever want to be in a posture of telling one parent: We have relocated your children; you are just out of luck forever. I think that would be horrible."

In December 1980, in response to a question on what was being done to resolve the program problems related to child custody matters, a Marshals Service official told the Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs, that the Department had changed its policies governing these matters so that "* * * we don't impose ourselves as being a domestic court." The Department began to offer relocated witnesses involved in child custody problems the opportunity to litigate these disputes before appropriate courts. The Department offers to provide and pay for a witness' counsel and to provide transportation and protection so that they can return in a secure manner and litigate the issues in State court proceedings.

The Department's policy was a step in the right direction and may have helped to reduce the extent of these problems. However, it did not resolve all such problems because it relied heavily on witness cooperation and did not address what would happen if a witness refused to cooperate by rejecting the Department's offer. When witnesses rejected the Department's offer, third parties face the same problem they did before the revised policy was established. They possessed a court judgment, but the Department would not disclose the necessary information to permit them to seek enforcement of the judgment.

At the time of our fieldwork the Marshals Service did not know how many parent/child relationship disputes had occurred since program inception. Through discussions with agency officials and private attorneys and by reviewing court cases and newspaper articles, we identified 10 separate instances where the relocation of a witness caused problems of this sort. The problems identified primarily related to non-relocated custodial parents attempting to regain custody of their relocated children, non-relocated parents attempting to enforce court-granted visitation rights, and non-relocated parents attempting to enforce custody rights granted to them after the relocation of their children. The problems persisted because the Department did not disclose a witness' identity to assist in the resolution of a civil dispute.

One type of parent/child relationship problem arises when children are relocated with a parent who does not have legal custody. In 3 of the 10 cases, minor children were relocated with their parents despite the fact that the parent did not have clear legal custody at the time of the relocation. For example, the Department relocated two children with a noncustodial mother who was admitted to the program in September 1979 with a witness who testified against members of a motorcycle gang. Neither the attorney who sponsored the mother and children into the program nor the Marshals Service adequately verified the custody status of the children before they were accepted into the program. Additionally, no notice was given to the non-relocated father before the children were relocated. It took the father 7 months after relocation to discover his children had entered the program. At that time, the Department advised the father's attorney that the mother would be produced for a State court hearing on the custody matter. In May 1980, a State court hearing was scheduled for late June. However, the mother never appeared at the hearing. The father subsequently brought suit in Federal court to have the children returned. In May 1981 a Federal judge ordered the Marshals Service to return the children to the father, and he was reunited with them shortly thereafter.

This example illustrates a number of shortcomings in the program. First, by failing to properly verify the custody status of the children, a needless third party problem was created and the father was unable to see his children for over 1-1/2 years. Second, the Department's offer to return the mother to the danger area and pay her expenses to attempt to gain legal custody did not resolve the father's problem because she never appeared at the hearing. The offer did not improve the father's situation because he still did not know where or against whom to seek enforcement of his custodial rights. Finally, by not advising the father until April 1980 that his children were in the program (even though it knew of his custody rights in October 1979), the Department hampered his ability to seek the return of his children.

In another custody-related incident similar problems occurred. In January 1980, the Department relocated a father with his son. At the time the father entered the program, the child's mother had legal custody but had allowed the child to live with the father because of discipline problems with the child. The Department did not adequately verify the custody status or notify the mother about the admission of her son into the program with his father. While the child was still with the father, the Marshals Service arranged a visit between the mother and her son. According to the mother's attorney, the visit took place in a motel room at a neutral location with deputy marshals present. The mother found this arrangement totally unacceptable and would not accept further visitation offers. The mother also initiated

an action in State court to enforce her custody rights so that she could ascertain whether the relocation was in the best interest of the child. However, in January 1982, before the State court rendered any ruling on the mother's petition, the child ran away from the father and returned to the mother.

Custody-related problems of this sort can be avoided by verifying the existing legal custody status of all minor children before they are relocated. Appropriate court documents should be examined before relocation takes place. Program procedures should specifically delineate how to verify a witness' child custody claims. Inadequate efforts were made in the three cases to verify the custody status of the relocated children.

In commenting on our draft report, the Department stated that it has been a longstanding verbal policy of the Marshals Service to verify all child custody orders and that this was formalized in a September 1981 memorandum. The verification policy was reemphasized again in a memorandum 8 months later. However, we were not provided a copy until December 1982. Because the Department's formal written policy implemented several of the recommendations contained in our draft report, we modified our recommendations. We believe the Department's actions could help to mitigate situations similar to the three described above.

In other situations non-relocated parents have not been able to exercise their court-established visitation rights. This occurred in 7 of the 10 cases we identified. These non-relocated parents did not see their children for periods ranging from 2 months to 9 years (median of 4 years 2 months). For example, one non-relocated parent had visitation privileges to his three children granted to him in 1974 and exercised those rights until February 1978 when his ex-wife entered the program with a witness. Since then he has had no contact with his children. The Marshals Service has conveyed to his ex-wife the request of the father to visit the children, but she will not agree to allow him to visit them. The Marshals Service states that his ex-wife is in the program on a voluntary basis and she is not in Federal custody. Thus, it cannot require her to allow the father to visit the children. The Marshals Service states that all it can do is to convey to the ex-wife the father's request for visitation and if she agrees, it may facilitate the visitation by selecting a neutral site and providing transportation of the children to the neutral site.

We believe the Marshals Service should have done more than just convey the father's visitation request to the mother. It should have advised her that if she did not comply with his

visitation rights, her new identity and location would be subject to disclosure to enable the father to seek the legal enforcement of those rights. By doing this, the Department could have created a more equitable balance between the need to protect a witness and the need to enhance the ability of third parties to enforce judgments.

Another type of custody problem that arises involves situations where non-relocated parents win legal custody of their children after the children have entered the program. Again, problems resulted because the Department would not disclose the relocated parents' or children's location or identity to facilitate enforcement of the non-relocated parents' court-ordered custody rights. This situation occurred in 2 of the 10 cases. In both instances, the non-relocated parent was awarded complete custody over the child(ren). However, only one of the two relocated parents abided by the court order. In the other case, the State court custody order was not enforced because the identities or locations of the relocated parent or the children were not divulged by the Department to facilitate enforcement. As a result, the father did not see his children until his ex-wife decided she had done an injustice to the children and their father and put the children in contact with him. This occurred about 8 years after the children were relocated.

Custody and visitation problems caused by the relocation of witnesses have been longstanding and have proven to be difficult to resolve. The Department tried to address these matters (1) by offering to transport relocated children to neutral sites to allow their non-relocated parents to visit with them and (2) by offering to aid relocated parents' efforts to litigate problems before appropriate courts. However, these attempts have not fully resolved problems because at times relocated parents have not cooperated or accepted the Department's offers. Thus, non-relocated parents continued to be faced with the problem of not being able to exercise their legitimate parental rights.

Creditors have not been fairly protected

The basic program policy of not disclosing a witness' new identity and location to resolve a civil dispute also adversely affected creditors of witnesses admitted to the program. It interfered with creditors' ability to recover legitimate debts owed to them by witnesses, resulted in litigative expenses for creditors, and in effect, shielded witnesses from paying their lawful debts.

The problem of witnesses leaving behind unpaid debts is also longstanding. This was recognized by the Marshals Service in congressional hearings in 1978 and 1980. The problem remained over

the years because program procedures only required the Marshals Service to act as a secure conduit for transferring information between the creditors and witnesses and did not require the Marshals Service to actively assist creditors. This resulted in the Marshals Service being a barrier to the resolution of debt-related problems.

The Memorandum of Understanding advises witnesses that they are responsible for settling all of their debts. It states that the Marshals Service will not shield them from creditors and will serve them with legal process should they be sued by creditors. It warns witnesses that creditors may resort to private investigators whose activities will seriously jeopardize their security. It had been the Department's policy, however, that the Marshals Service would not disclose a witness' new identity or location to resolve a civil debt.

Although the Marshals Service serves (in a secure manner) legal process on a witness if litigation is initiated, this often does not resolve debt-related problems. Witnesses can and do ignore the litigative process served on them and subsequently this often results in courts rendering default judgments 6/ to the creditors. Further, witnesses often ignore the default judgments served on them. When this happens it is difficult, if not impossible, to enforce these judgments without information that identifies and locates witnesses.

The Department's procedures acted to shield and encourage witnesses not to satisfy their lawful debts and have caused third party creditors unnecessary hardships in attempting to collect money owed to them. In fact Marshals Service officials told us they knew of witnesses who had deliberately run up revolving credit type debts in their old identities before they were relocated because they believed they would not be responsible for the debts after relocation.

The hardships encountered by creditors in attempting to recover money from relocated witnesses were acknowledged in a recent Federal court case. In this situation the Government was sued by a company claiming that a witness had failed to repay a loan and that the Government's concealment of the witness was depriving the creditor of its right to enforce repayment of the loan. The creditor sued to recover the amount of the loan under the theory that the money was taken by the Government without payment of just

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6/A default judgment is a judgment rendered on behalf of the plaintiff because the defendant failed to appear in court or plead his/her case at the appointed time.

compensation. Although ruling that the creditor had not made a claim upon which relief could be granted, the court stated

> "We recognize it is not unlikely that the consequential effect of government actions in carrying out the program may be to delay, or make inconvenient or difficult, plaintiff's enforcement of [the witness'] financial obligations while he continues in the program." 7/

It is difficult to estimate the amount of financial losses to third parties resulting from the actions of relocated witnesses. At the time of our fieldwork the Marshals Service did not systematically gather information to identify the extent of this problem. In December 1980, however, the Marshals Service testified that it answers 35 letters a month from creditors or persons alleging they have been defrauded by witnesses. In an attempt to gauge the extent of this problem, the Marshals Service provided us, at our request, with the latest available information on relocated witnesses. For a 6-month period in calendar year 1980, the Marshals Service provided us with credit-related information for 36 witnesses.

The 36 witnesses' cases involved instances where the Marshals Service had received correspondence indicating the existence of a complaint and/or litigation against a witness. Four of the 36 had liabilities for which a specific amount could not be calculated. The total obligations owed or allegedly owed by the remaining 32 witnesses was over $7.3 million. 8/ These debts could be categorized as follows:

--20 witnesses owed debts which were affirmed by court orders, or owed criminal fines or had tax liabilities ($807,000),

--15 witnesses owed debts which were alleged in ongoing litigation ($6,441,000), and

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7/Melo-Tone Vending Inc. v. United States 666 F.2d 687 (1st Cir. 1981).

8/This information should not be construed as being statistically projectable to all witnesses or to a specific time period because the sample was not randomly selected.

--10 witnesses owed debts which were alleged but not litigated ($90,000). 9/

The types of third parties financially harmed by relocated witnesses were individuals, large companies, and the Government itself. For example, there were doctors seeking to recover money for services rendered, non-relocated parents seeking to collect child support, a woman seeking to recover a personal loan, a stock brokerage firm seeking to recover money from a former employee, and Government agencies seeking to recover unpaid criminal fines (Department of Justice) and taxes (Internal Revenue Service). Creditor-related problems can arise from events occurring either before or after relocation. In both instances the effects were the same--third party creditors had their ability to recover legitimate debts disrupted by the program.

One example of this problem involved a witness who defaulted on an automobile lease agreement and was indebted to the leasing company when he entered the Witness Security Program. In July 1980, the company initiated legal action against the witness to collect the money, and the Marshals Service served the initial complaint on the witness. In January 1981, the court rendered a default judgment against the witness for over $8,400. The Marshals Service served the judgment on the witness, but the witness did not act to resolve the debt. As of August 1982, no money had been collected by the company to satisfy the debt. The judgment has been unenforceable because the company does not know where the witness is located.

Another example involved a witness and his wife who were relocated to a midwestern State. In February 1979, the Marshals Service contacted a local bank and explained to the bank's representative that the individuals were in the Witness Security Program, recently relocated in the area, and needed a car to provide them with transportation to their places of employment. Although the bank could not obtain specific background information on the couple, the Marshals Service representative related that they had no record of bad credit. Subsequently, the bank loaned the couple $6,600 to purchase automobiles.

After several payments, the couple defaulted on the loans and left the relocation area with the cars. At this point, the bank instituted legal proceedings against the couple to recover its money. The whereabouts of the couple was known to the Marshals Service because it served process on the couple several times

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9/The total number of debts owed does not equal 32 because some witnesses had debts in more than one category.

during the progress of the litigation. The bank eventually won a judgment against the couple for about $6,000. Notice of this judgment was served on the couple, however, they failed to respond. Although the Marshals Service knew the location of the couple after the problem arose and followed its policy of serving process on them, the bank had not recovered any of the money. It was unable to enforce its judgment on the couple because it did not know which court to petition for enforcement action and the Department would not disclose the location.

Government agencies are also adversely affected by the program's procedures. For example, 6 of the 36 witnesses for whom the Department gave us information owed either Federal and/or State fines (totaling over $34,000). As with the other cases, we could find no indication that the Department disclosed a witness' location to permit enforcement.

NEW DEPARTMENT PROCEDURES AND LEGISLATIVE INITIATIVES: EFFORTS TO BETTER RESOLVE THIRD PARTY PROBLEMS

In April 1982, the Department issued an internal memorandum that modified its policy for handling third party problems and during the 97th Congress several bills were introduced to provide a more equitable solution for third parties attempting to enforce judgments against relocated witnesses. In general, all of these initiatives provide for the disclosure of a witness' identity and location in circumstances where the witness has been unreasonable in his/her efforts to comply with a court judgment and where the Attorney General believes no danger to the witness would result from the disclosure.

All of these initiatives call for Department officials to make the final decision on whether disclosure will take place. However, because the Department operates the Witness Security Program, these approaches raise questions about the Department's ability to make objective disclosure decisions. We believe these basic approaches to resolve third party civil problems can be enhanced by

--clarifying in law the circumstances under which a witness' new identity and location will be disclosed and

--providing third parties the right to seek judicial review of nondisclosure decisions.

New procedures: a major change but further refinements needed

In April 1982, the Department issued an internal memorandum to facilitate the collection of legitimate debts by third parties. On a case-by-case basis, the Marshals Service now considers whether it should disclose a witness' identity and location to enable creditors to seek enforcement of court judgments. Essentially, when the Marshals Service learns a witness has unpaid legitimate debts, it will encourage creditors to serve legal obligations through the Service. If the witness does not pay the debt or arrange for a payment schedule (which the Marshals Service would facilitate for security purposes), the Marshals Service will (1) investigate the creditor to determine whether the debt was legitimate and (2) advise Enforcement Operations about the witness' debt and, with its concurrence, give the witness written notice that he/she has 30 days to arrange to satisfy the debt before their location will be revealed to the creditor. A Marshals Service official told us that before making a disclosure, a number of other factors will also be considered. These include whether (1) the witness has been unreasonable in his/her efforts to satisfy the judgment and (2) the disclosure would compromise any ongoing criminal investigation or trial.

Neither the authorizing statute nor the legislative history gave the Attorney General any guidance on handling third party problems. As such these problems have created a difficult dilemma for the Department. On one hand, the Department has made a commitment to protect the lives of witnesses in the program. The protection it provides them is enhanced by keeping their new identities and locations a closely guarded secret. On the other hand, as the Nation's chief law enforcement agency, the Department has a basic obligation to uphold the law and assist in its enforcement. When a third party seeks to enforce a court order against a relocated witness, the Department must make a difficult choice between these principles.

We believe the Department's new procedure for handling third party debt-related problems is a significant change. The Department has recognized that third parties can be treated more fairly and, under appropriate circumstances, disclosures of witness information can be made without compromising the safety of the witness or the integrity of the program. We believe, however, that several actions can be taken to enhance the resolution of third party civil problems.

First, because the internal memorandum is general in nature and subject to administrative change and because the authorizing statute contains no guidance on handling these matters, we believe specific legislative criteria needs to be established that

will guide the program as it relates to third parties. Second, under the new procedure, the final decision on disclosure rests within the Department--the agency which operates the program. Instead, we believe that difficult decisions such as the balancing of two parties' respective equity rights, would be better achieved by the establishment of a judicial review mechanism that allows third parties to appeal nondisclosure decisions. Third, the Departments' memorandum is silent on how the Department will handle situations involving parent/child relationship problems. We believe that any policy established in this area should also apply to these types of civil problems.

It is understandable why the Department would not want to have a blanket disclosure policy. For example, it is possible that the third party may represent a threat to the safety of the witness or that disclosure will not benefit the third party because the witness has no ability or resources to satisfy a judgment. Thus, we believe the initial decision point on disclosure should rest with the Department. However, we believe third party rights can be better recognized and protected if the law provided clear guidance to the Department on when it should disclose witness information to third parties seeking to enforce judgments and if the law established a clear right for third parties to contest, in a Federal court, whether the Department had met the criteria for nondisclosure established in law.

Legislation has been introduced addressing the problem

During the 97th Congress, several bills were introduced that contained provisions addressing third party civil problems. The basic intent of two of these bills (S. 2420 and H.R. 6508), which were nearly identical 10/ was to enhance the Government's ability to protect victims and witnesses of crime. However, both bills contained major sections that would have amended the legislation governing the Witness Security Program. In August 1982, H.R. 7039 was introduced. This bill would have made changes involving all of the Marshals Service's operational areas, including amending the legislation governing the Witness Security Program. We believe the bills clearly show congressional interest in correcting the civil problems third parties encounter as a result of the program, and we have several observations about them.

10/In October 1982, S. 2420 was enacted into law; however, the provisions of the bill relating to the Witness Security Program were deleted before passage by the Congress.

In general, each bill required the Attorney General to take affirmative actions to urge the relocated person to comply with the judgment and to determine whether the relocated person had made reasonable efforts to comply with the judgment. If the Attorney General determined that the relocated person did not make reasonable efforts to comply with the judgment, he could, at his discretion, after weighing the danger to the person relocated, disclose the identity and location of that person to the plaintiff attempting to enforce the judgment.

House bill 7039, however, contained two differences from the other two bills. First, H.R. 7039 would have allowed the procedures listed above to be implemented when a witness was named in a civil action arising both before and after a witness was relocated; whereas S. 2420 and H.R. 6508 would have limited these procedures to those civil actions arising prior to relocation. We believe the expanded coverage proposed in H.R. 7039 was more desirable because it would have been a broader solution to the third party problem and would have addressed situations such as those illustrated on page 26. Second, the general procedures of H.R. 7039 would have applied to all civil actions while the other two bills' procedures would have applied only to civil actions "for damages resulting from bodily injury, property damage, or injury to business." Again, we believe the expanded coverage proposed in H.R. 7039 was preferable because it would have addressed the child custody/visitation problem described in this chapter whereas the other two bills would not. It should also be noted that, in commenting on our draft report, the Department stated it fully supported the provisions proposed in H.R. 7039 relative to witnesses' debts and other legal responsibilities of program participants.

We believe these bills clearly demonstrate congressional interest in solving a difficult problem. However, similar to the Department's new procedure, all of the bills would have vested the ultimate decision on whether to disclose with the Attorney General. As mentioned earlier, these disclosure decisions place the Attorney General in the difficult position of balancing the relative importance of the judgment to be enforced against the need to protect witnesses enrolled in the very program the Department is charged with operating. Thus, while all of these bills indicated a congressional interest in the program, we believe any legislative initiative in this area should contain a provision for a judicial review of the Attorney General's nondisclosure decisions if a third party so desires. In addition, if disclosure is granted, then sanctions against third parties for improper use of the information should be established.

CONCLUSIONS

The Witness Security Program is a difficult program to administer fairly because of the effects it can have on the lives of various people. Furthermore, its use is risky because of the trauma it causes witnesses admitted to the program, their criminal backgrounds, the limited education and job skills witnesses often possess, and the inherent conflict in the program goals of keeping witnesses' new identities and locations secret while at the same time helping them to become self-sufficient and protecting the rights of the public.

A longstanding problem that has been encountered in the conduct of the program is the frequency with which third parties have encountered difficulties when attempting to enforce judgments against relocated witnesses who have ignored their civil obligations. Although the Department has recognized the need to safeguard the public from the unscrupulous actions of some witnesses, until April 1982, it had a policy of not disclosing a witness' new identity and location to a third party seeking to enforce a court judgment. As a result, third parties (non-relocated parents and creditors) were adversely affected and the Department put itself--the Nation's chief law enforcement agency-- in the ironic position of being a contributing factor in witnesses being able to avoid their lawful obligations.

The Department issued an internal memorandum in April 1982 and during the 97th Congress several bills that addressed the resolution of these civil problems were introduced but not enacted. Both sets of actions were significant because for the first time each specifically allowed the Department, at its discretion, to disclose pertinent information on witnesses if the Attorney General believes (1) a witness has not made reasonable efforts to comply with a court judgment and (2) the disclosure will not result in harm to the witness. However, because under all of these approaches the final decision on disclosure rests with the Department, a question could arise about the objectivity of the Department's decision.

Third party problems create a dilemma for the Department. We believe that a better balance between the need to protect witnesses and the need to protect the public from unscrupulous actions by witnesses can be reached through a combination of legislative and administrative actions. To give the Attorney General guidance in this difficult area, the Congress should clearly define the circumstances under which disclosure will and will not occur. The Congress should also provide third parties the right to seek judicial review of whether the facts support the propriety of a nondisclosure decision. We believe such changes would

promote the more objective application of disclosure criteria while at the same time protect the security of the witness where the circumstances dictate. Also, the Department should take administrative actions to reach an upfront and secure resolution of these third party problems before a decision on disclosing a witness' identity or location becomes necessary.

RECOMMENDATIONS TO THE CONGRESS

To better recognize the rights of third parties seeking to enforce court judgments directed against relocated witnesses, while at the same time protecting the safety of witnesses, we recommend that the Congress enact legislation that requires the Attorney General to:

--Make reasonable efforts to serve legal process, especially court judgments, on a relocated witness and, in the case of a court judgment, to advise third parties in a timely manner about the witness' intentions to comply with or otherwise respond to these judgments.

--Disclose, in a secure manner, the best known information on the current identity and location of a witness only after a witness is given a chance to comply with or appeal a judgment and only in circumstances when the Attorney General is unable to determine on the basis of available evidence that (1) the disclosure could likely result in physical harm to the witness or (2) the witness does not have the ability (financial or otherwise) to resolve the judgment.

We further believe that the legislation should:

--Provide, upon petition of the affected third party, for Federal judicial review as to whether the disclosure decision made by the Attorney General was arbitrary and capricious (without any reasonable factual basis).

--Provide that any information disclosed to a third party by the Attorney General can be used only in connection with the process of seeking the legal enforcement of a court judgment and establish criminal penalties for the improper use of this information. (See app. III.)

RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommend that the Attorney General modify program policies and procedures to reduce the chances of third parties being harmed by the relocation of witnesses while at the same time ensuring the safety of witnesses by:

--Advising witnesses when they enter the program that they are expected to comply with court judgments directed against them or to take the necessary legal actions to resolve such disputes, otherwise their new identity and location will be disclosed to third parties who possess court judgments unless the Attorney General determines on the basis of available evidence that disclosure could be harmful to the witness' physical safety or that the witness does not have the ability (financial or otherwise) to resolve the judgment.

--Notifying non-relocated parents of the pending admission of a minor child to the program and of the procedures that the Department will follow to ensure that his/her legally established parental rights may be exercised after the child enters the program.

--Offering all witnesses the opportunity and necessary assistance (transportation, protection, etc.) to safely go into court and litigate civil matters.

AGENCY COMMENTS AND OUR EVALUATION

The Department of Justice commented on this report by letter dated December 10, 1982. (See app. IV.) The Department stated that on balance the report is a thorough and well researched study of a very sensitive operational and legal area. The Department stated that it agreed with our recommendations to the Attorney General. It also agreed with our recommendations to the Congress except for the one that would provide third parties the right to seek judicial review of any nondisclosure decision by the Attorney General. The Department also proposed the use of court-appointed masters to resolve third party problems. The Department's reservation with the judicial review recommendation and our rebuttal, along with the Department's proposal to use court-appointed masters and our discussion of this proposal are detailed below.

Judicial review of nondisclosure decisions

The only area of disagreement between the Department and us is whether the Congress should enact legislation giving third parties possessing court judgments against relocated witnesses the right to appeal nondisclosure decisions. The Department objects to our recommendation for judicial review because it believes its new administrative procedures and those under consideration should be given a chance to work. It stated that the report has not substantiated that fair decisions on disclosure cannot be made simply because it operates the program. Rather, because the Department has access to all relevant information, it stated that it should make the final decision on disclosure. Thus, the Department believes our recommendation could involve it in unnecessary and, possibly, lengthy litigation. In addition, the Department stated that existing statutes already provide adequate avenues for judicial review.

First, we do not agree with the Department's contention that providing qualifying third parties the opportunity to petition for judicial review of nondisclosure decisions is unnecessary. Neither the authorizing legislation nor its legislative history provide any guidance to the Attorney General on the resolution of these matters. As a result, the Attorney General has broad discretion in establishing the program's operating policies. Because no specific duties have been placed upon the Attorney General in this area, third parties have little recourse in dealing with a refusal by the Attorney General to disclose information needed to enforce a judgment. Thus, we believe the Congress should rectify this situation by providing for judicial review and by clearly defining the circumstances under which disclosure will and will not occur.

Additionally, we believe our recommendation for judicial review will establish a system of "checks and balances" which considers the interests of all parties from an independent viewpoint. As the report clearly shows, the secret relocation of witnesses can interfere with a third party's ability to enforce a judgment against a witness. Questions regarding the balancing of one party's rights versus another's are generally reserved for the judicial branch of the Government. Thus, we believe the Congress should establish a mechanism--judicial review--that would more appropriately handle these difficult tradeoffs rather than leaving their resolution subject to an executive agency's internal procedure.

Second, we do not concur with the Department's concern that providing for judicial review could possibly result in lengthy litigation. The relative lengthy or brevity of litigation would be a function of each individual case. If our point about the necessity to better balance the interests of both third parties and the Department is accepted, then it is clear that the overriding concern is not the possible length or brevity of litigation, but rather the importance of resolving these conflicts in a fair manner. But even beyond this basic point, it should be recognized that our recommendations limit both the number of parties who qualify for judicial review as well as the issue(s) subject to review. Specifically, only third parties who (1) possess court judgments against relocated witnesses, (2) have followed, unsuccessfully, Department procedures for resolving these disputes, and (3) have petitioned the Attorney General for disclosure and been denied would qualify for judicial review. Further, the judicial review would be limited in scope to matters related to the Department's nondisclosure decision, and whether such decision was arbitrary and capricious.

In this regard, we believe our recommendation concerning judicial review complements the Department's April 1982 memorandum on resolving third party problems. Given the Department's position, which provides for disclosure as a solution, there should be a reduction in the number of instances when it makes nondisclosure decisions. (As pointed out on page 19, prior to April 1982, the Department had a blanket policy of not disclosing information to resolve a civil dispute.) Also, we believe that if the Department implements our recommendations to the Attorney General, it can reduce the possibility of third party problems arising. Thus, we believe our proposal for judicial review establishes a rational system to resolve these difficult problems.

Moreover, the Department stated that existing statutes provide adequate avenues for judicial review of the Department's decisions concerning these matters. It stated that persons aggrieved by its refusal to provide information could bring a private action under existing statutes--the Civil Rights Act (42 U.S.C. 1983) or the Freedom of Information Act (5 U.S.C. 552).

Neither the Civil Rights Act nor the Freedom of Information Act provide adequate remedies for persons aggrieved by the Department's refusal to disclose information needed by third parties to enforce judgments against relocated witnesses. The basic purpose of the Civil Rights Act of 1871 is to be an enforcement mechanism for the provision of the Fourteenth Amendment of the Constitution prohibiting States from infringing on the constitutional rights of its citizens. The act generally

provides that any person who, under the color of State law, deprives another of rights secured by the Constitution, is liable to the injured party. The courts consistently have held that this act provides no cause of action against Federal officers acting under color of Federal law.[11]/ In particular, it has been held that officials of the Department of Justice acting within their official capacity under Federal law, could not be liable under the act.[12]/ A refusal by Justice to disclose information concerning a protected witness presumably would be based on the broad authority contained in Title V of the Organized Crime Control Act of 1970. Thus, it would appear that any such refusal would be viewed as an action taken by a Federal officer under the color of Federal, not State law, and, therefore, would not be actionable under the statute. Further, it is uncertain whether the Federal courts would have jurisdiction over these matters even if the action was performed under the color of State law. This uncertainty exists because the refusal to disclose information to a third party does not appear to violate the type of constitutional protections contained in the Fourteenth Amendment and the Civil Rights Act.

Similarly, we do not believe satisfactory redress would exist for a third party under the Freedom of Information Act. The types of information a third party would need to help enforce his/her judgment (e.g. a witness' present location) has been held to be exempt from Freedom of Information Act disclosures. For example, in Librach v. Federal Bureau of Investigation 587 F.2d 372 (8th Circuit, 1978), it was held that

> "The records [being requested] pertain to the relocation of a witness under the Department of Justice's Witness Security Program. The [district] court agreed with the government's contention that to release these materials would jeopardize the effectiveness of the Witness Security Program and would invade the personal privacy of the witness. We [the circuit court] agree ***"

11/Stonecipher v. Bray, 653 F.2d 398 (9th Cir. 1981); Campbell v. Amax Coal Co., 610 F.2d 701 (10th Cir. 1979); Soldevila v. Secretary of Agriculture of U.S., 512 F.2d 427 (1st Cir. 1975); Williams v. Rodgers 449 F.2d 513 (8th Cir. 1971), cert. denied, 405 U.S. 926 (1972).

12/Norton v. McShane, 332 F.2d 855 (5th Cir. 1964), cert. denied, 380 U.S. 981 (1965).

Additionally, in another decision 13/ directly relevant to a third party problem (i.e. child custody), a similar interpretation was made. In this instance, a non-relocated mother was attempting to obtain information concerning her relocated minor son under the Freedom of Information Act. The court held:

> "We agree that release of some of the information sought would likely interfere with the operation of the Witness Protection Program and thereby be protected from release by exemption 7 of the [Freedom of Information Act]. Other information, however, such as that relating to [the son's] current health and educational arrangements, would not appear to be exempt from disclosure except to the extent that the documents containing the information might indicate his present location."

Questions exist about the proposed master concept

The Department stated that it is proposing the use of a court-appointed master or referee who can enforce the judgment in the area where the witness has been relocated. The Department stated that its research indicates that the court in which the judgment was obtained can appoint a master or referee who can, with appropriate instructions, provide for the security of the witness while performing those acts necessary to enforce the creditor's judgment. This approach would require the Attorney General to divulge the witness' location to the master and not to the third party.

A master or referee acts essentially as an assistant to a judge. They can generally be appointed only to certain types of cases. Both Federal and State courts have limitations on the appointment of masters. The scope of a master's duties or responsibilities are generally limited to those which have been delegated by a judge. The master or referee can be authorized to hear testimony, secure evidence, and give a report to the court. The final report, which is subject to a judge's approval, is a matter of public record. During the process, parties are able to exercise their due process rights by filing objections, exceptions, and motions to attempt to modify all or part of the report.

13/Ruffalo v. Civiletti: Order granting in part and denying in part Federal defendants' motion to dismiss and denying plaintiffs' motion for partial summary judgment. No. 80-0675-CV-W-6 (Western District, Missouri, April 30, 1982).

We believe that any secure mechanism which enables third parties to enforce their judgments against witnesses is worth consideration. However, we believe there are areas of concern (some of which are highlighted in the Department's own research) which raise questions about the potential usefulness of its proposal. These questions include:

--Would the appointment of a master be appropriate in these types of cases given the limitations on their use contained in both Federal and State laws?

--Under what authority would a master or referee, appointed by the court in which the judgment was obtained, be able to enforce that judgment against a witness located in another jurisdiction?

--Will the master or referee concept be as costly and burdensome to the parties as it has proven to be in the past?

--Can the master concept be effectively and legally operated when one party (third party) cannot have complete access to the information pertaining to the suit (thus limiting their ability to object or take exception to the master's report)?

We want to emphasize that we are not against the master or referee concept. We simply wish to highlight some potential problems that we perceive may limit the concept's effectiveness in resolving third party problems. If these perceived problems can be overcome, then we believe the master or referee concept is worthy of consideration as a complement to our judicial review recommendation. The effective use of the master or referee concept could further limit the need for third parties to apply for Federal judicial review to only the disputes which cannot be resolved by the master.

CHAPTER 4

IMPROVEMENTS IN MANAGEMENT INFORMATION AND PROGRAM EVALUATION ARE NEEDED

Managers must have adequate information in order to plan and control the activities of an organization. Furthermore, procedures must be in place for managers to determine if the goals and objectives of an organization are being met. However, after the admission of over 4,000 witnesses, 12 years of operation, considerable controversy, and the expenditure of over $100 million, these fundamental management elements are not fully in place for the Witness Security Program. Without adequate information and procedures to facilitate evaluation, neither the Department nor the Congress can fully assess program effectiveness, identify problems, or develop strategies for improvement.

BETTER MANAGEMENT INFORMATION NEEDED

The Department's Witness Security Review Committee made specific recommendations in 1978 to improve the management information system for the program. The review committee found that program files were poorly organized and incomplete. The committee, in its report, stated that the Marshals Service should monitor the criminal arrests and convictions of witnesses involved with or previously relocated by the program. Finally, it noted that program records did not allow anyone to determine how successful the program has been in fighting organized criminal activity and that it was impossible to determine what kinds of witnesses were most likely to be productive.

Actions have been taken to correct some of these deficiencies. For instance, a Department internal report issued in April 1981, also called for improvements in collecting information to assess how successful the program has been in gaining convictions. As a result, in May 1982, a revised program admission application was adopted. The new application attempts to capture more qualitative details about (1) the significance of the prosecution, (2) the scope of the illegal activity for which the defendants are being investigated, and (3) each defendant's role in the illegal activity. If properly utilized, we believe this application will be a good starting point in attempting to assess the overall prosecutive value of the program.

Additionally, actions have been taken by the Office of Enforcement Operations and the Marshals Service to improve the maintenance and organization of files. For example, a common identification number is now assigned by Enforcement Operations and the Marshals Service to all witnesses who enter the program.

In addition, the Marshals Service's program files are organized by subject matter (documentation, movement of household goods, etc.) to provide easier access to various types of detailed information about the support provided to witnesses.

Other deficiencies in collecting and assessing program information, however, have not been addressed. The Marshals Service has not properly tracked information related to the overall costs and impacts of relocating witnesses (e.g. criminal activity and unresolved debts by witnesses). At the time of our fieldwork, the Marshals Service had established a procedure to track the arrests of witnesses relocated by the program; however, this arrest log was not prepared or maintained in a consistent fashion. Its condition prevented any meaningful determination of the number of witnesses arrested and/or convicted as suggested by the review committee. Also at the time of our fieldwork no attempts were being made to gauge the extent of losses suffered by creditors or problems of non-relocated parents caused by witnesses who ignore court orders of a civil nature.

As a result, many questions about the "true" cost of the program remain unanswered. For example:

--Is there a need to vary the way security is provided to witnesses based on the potential risk their placement in an unsuspecting community may pose?

--What has been the extent of financial losses incurred by various third parties because of their inability to enforce civil judgments against witnesses?

The Department needs to routinely gather information of this nature to properly assess the benefits and costs of the program as well as to identify and correct problems caused by program operations. As discussed on page 15, most witnesses have criminal backgrounds. Some have committed crimes (including murder) after relocation, and some have caused substantial harm to various third parties. The net benefit of the program cannot be properly monitored without this information.

Another basic problem pertains to obtaining information about the backgrounds of witnesses and their current status in the program. The Marshals Service has attempted to centralize information on individual witnesses in an automated records system. This system was designed to provide quick access to pertinent information as well as to generate overall data on program operations. After over 2 years of operation, this system remains largely unusable because it is incomplete and sporadically updated.

Several times during our review we tried to obtain general information from the Marshals Service's automated records system to examine various aspects of the program. Each time substantial problems existed with the information we received. We initially requested detailed background information about persons in the program (e.g. education, job skills, employment, and criminal history) and documentation services given to witnesses. We chose a random sample of 300 witnesses. Of these, 150 witnesses were admitted to the program during 1976 and 1977, and 150 witnesses were admitted to the program during 1979. As shown in the following table, however, the information provided was substantially incomplete.

	Sample period			
	1976 - 1977		1979	
	Number	Percent	Number	Percent
Witnesses in sample	150	-	150	-
Number of witnesses for whom information was received:				
General background information	16	10.7	12	8.0
Documentation information	1	.7	21	14.0
Both general background and documentation information	0	0.0	5	3.3

In April 1982, we requested the general background information for the same 300 witnesses. This time we found that substantially more data was available, but it was still largely incomplete. Specifically, we received general background information for only 17.3 percent of the 150 witnesses in the 1976-1977 sample and for 45.3 percent of the 150 witnesses in the 1979 sample.

Furthermore, even when information was provided, it was often of limited value. For instance, the listing provided by the Marshals Service for the witnesses admitted to the program from April 1979 through January 1982 (approximately 40 percent complete) showed that 88 percent of these witnesses were listed as "unemployed" and the criminal history for 71 percent of these witnesses was listed as "unknown."

Because this data appeared to conflict with previous congressional testimony regarding the general unemployment rate and criminal backgrounds of witnesses in the program, we pursued the matter further. Subsequent discussions with Marshals Service personnel revealed that when most witnesses are admitted to the program, their employment status is listed in the computer as "unemployed" and their criminal background is listed as "unknown." According to the Marshals Service, the data in the listing given to us had not been thoroughly updated. Thus, for the witnesses

most recently admitted to the program, we could not accurately assess their employment status or criminal background.

PROCEDURES ARE NEEDED TO FACILITATE INDEPENDENT EVALUATION

Because of the program's highly sensitive nature, the Marshals Service and the Office of Enforcement Operations established audit arrangements that enabled us to examine program operations and documents without disclosing the new identities and locations of witnesses. Essentially, at our request program personnel reviewed selected case files and provided us with summarized information on various operational aspects of the program and copies of various types of documents. However, before any documents were provided, the names and locations of witnesses were deleted to avoid compromising a witness' security.

While these audit arrangements protected the new identity of witnesses, they were cumbersome and time consuming to our efforts. The staff of the Senate's Permanent Subcommittee on Investigations had similar complaints during December 1980 hearings on the program. Their objections primarily concerned the Marshals Service's assistance in the use and preparation of questionnaires sent to witnesses. Finally, we believe the audit arrangements significantly and needlessly detracted from the available time that program personnel had to devote to their regular duties. This is particularly critical considering the resource problems continually cited by the Marshals Service.

We recognize that the Witness Security Program is extremely sensitive and that much of its success relies on the security given program information. We further recognize it is vital for the Department to limit access to some program information to maintain security. Nevertheless, we believe independent program reviews can be made without diminishing the overall level of security. Secure conditions under which independent reviews will be conducted can be established without seriously disrupting program operations. These could include establishing required security clearances for persons granted access to files, mandating controls over records and files, and restricting the number of people granted access. Similar types of conditions already exist for personnel who work in the program. For example, program personnel have access to information and can take program knowledge with them when they get reassigned or leave Government service.

Program decisions by the Department and the Congress should be made with a clear understanding of the benefits (effectiveness in gaining criminal convictions) and the costs (Federal expenditures and impacts on third parties) attributable to the Witness

Security Program. After 12 years of operation, a system to facilitate an independent evaluation of the program needs to be established. In view of the controversy generated by the program, the complexity of its operation, and its overall cost, we believe it is time for the Department to establish such a system.

CONCLUSIONS

Managers must have adequate information in order to control the activities of an organization, and procedures must be in place for managers to determine if the goals and objectives of an organization are being met. However, after the admission of over 4,000 witnesses and the expenditure of over $100 million, these fundamental management elements are not fully in place for the Witness Security Program. Without adequate information and procedures to facilitate evaluation, neither the Department nor the Congress can fully assess program effectiveness, identify problems, or develop strategies for improvement.

We believe the Department should develop a more effective system to gather information on the operation of this difficult program. This system should be designed to allow independent evaluation of program operations and should include information to assess overall program results (convictions, sentences, provision of services to witnesses, etc.,), and costs to the Government, and impacts on various third parties.

RECOMMENDATION TO THE ATTORNEY GENERAL

We recommend that the Attorney General develop an information system and procedures to allow for appropriate evaluation of the program.

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In commenting on our draft report, the Department stated it supports our recommendations to develop an information system and procedures to allow for appropriate evaluation of program operations. It cited several recent initiatives which show its support for enhanced evaluation of the program. For example, the Marshals Service has conducted on-site inspection audits of its operations. It has also designed and implemented computer software programs to facilitate operational and financial activity and said that, notwithstanding resource constraints, this effort has proven to be most beneficial to the headquarters and field staff in planning and controlling program activities. Additionally, the

Office of Enforcement Operations has begun gathering statistics for management purposes, but has been hampered by resource limitations. We encourage the Department to continue its efforts to complete this task and we believe that, if completed, both internal and external management evaluation capabilities will be enhanced.

APPENDIX I

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?

APPENDIX I

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

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7. Graham, Fred P. The Alias Program. Boston: Little, Brown, 1977.

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PROPOSED AMENDMENT TO TITLE 18, UNITED STATES CODE

Based on our recommendations to the Congress, the proposed legislation would read:

AN ACT

To better provide for the rights of third parties seeking to enforce court judgments directed against a witness relocated or protected by the Attorney General, while at the same time protecting the safety of such witnesses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that part II of title 18, United States Code, is amended by adding the following new section:

"Section _____ [1]/

"(a) Notwithstanding any other provision of law, if a person relocated or protected by the Attorney General under Title V of the Organized Crime Control Act of 1970, 84 Stat. 922, is named as a defendant in a civil cause of action, all process in the civil proceeding may be served upon the Attorney General. The Attorney General shall make reasonable efforts to serve a copy of the process upon the person relocated or protected at the person's last known address. The Attorney General shall notify the plaintiff in the action whether such process has been served and, in the case of a judgment entered against the relocated or protected person, inform the

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[1]/ The proposed legislation deals with matters contained in a number of bills that were introduced in the 97th Congress. However, those bills also concerned matters not related to our recommendations. A section number for our proposed legislation is not included because its location in the United States Code would depend on the manner in which such legislation was enacted.

plaintiff whether that person intends to comply with or otherwise respond to the judgment.

"(b) If a judgment in such action is entered against such person, the Attorney General shall take appropriate steps to urge the person to comply with or otherwise respond to the judgment. If the Attorney General thereafter determines that the person is not making efforts to comply with the terms of, or otherwise respond to, the judgment, the Attorney General, upon petition by the plaintiff in the civil action, shall disclose the best known information on the current identity and location of that person if he is unable to determine on the basis of available evidence that (1) the disclosure could likely result in physical harm to the person or (2) the person lacks the ability to comply with the judgment. Any such disclosure or nondisclosure by the Attorney General shall not subject the

not subject the United States to liability in any action based upon the consequences thereof.[2]/

"(c) Any disclosure under subsection (b) of information relating to the identity and location of a relocated or pro tected person shall be made upon the express condition that further disclosure by the plaintiff may be made only if essential to and in connection with the lawful enforcement of the judgment, and only to such additional persons as is necessary to effect the recovery. Any person who knowingly discloses or uses such information other than in connection with the lawful enforcement of the judgment, in violation of this subsection, shall be guilty of a [misdemeanor] [felony punishable by

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[2]/ Some courts have examined claims by protected witnesses based on alleged oral agreements and written memorandums of understanding entered into with officials of the United States Government, and have held such agreements not to be enforceable. To protect against the possibility that future agreements, oral and/or written, are entered into and are held to be enforceable, Congress may wish to consider including language in the proposed legislation providing that disclosure or nondisclosure by the Attorney General shall not be considered a breach of any agreement entered into with the person protected. This could be accomplished by adding the following language after "thereof" in paragraph (b): "or be considered a breach by the Attorney General of any agreement entered into with the person protected." In any event, we would recommend that such language be included in legislation if bills, such as those that were introduced in the 97th Congress, which provided for an agreement between the Attorney General and the protected person are enacted. See section 101 of H.R. 7039 (97th Congress) adding a new subsection 3521(c) to title 18, United States Code.

imprisonment of not more than five years] and fined not more than $5000.[3]/

"(d) Any person who has had a court judgment entered in his favor against a person protected or relocated by the Attorney General shall be entitled to a hearing in a United States district court if the Attorney General fails to disclose the information requested as provided in subsection (b). The person may apply for a hearing to the United States district court (A) in which the judgment was entered, or (B) of the district in which the judgment was entered in a State court. A decision by the Attorney General not to disclose information on the current identity and location of a relocated or protected person shall be affirmed unless the court finds that the decision of the Attorney General was arbitrary and capricious. Upon such a finding, the court may enter an order requiring the Attorney General to disclose such information to the person as is necessary to recover under the judgment."

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[3]/ The criminal penalties identified are those contained in two laws for violating prohibitions against disclosing certain types of information. The misdemeanor penalty is contained in the Privacy Act of 1974, 5 U.S.C. 552a(i), and the felony penalty is contained in the Internal Revenue Code, 26 U.S.C. 7213(a)(1). Both laws provide for the $5000 fine. The purpose of including these penalties in the proposed legislation is illustrative. We recommend that action on the proposed legislation include providing for criminal penalties for improper disclosure as Congress deems appropriate.

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U.S. Department of Justice

DEC 10 1982

Washington, D.C. 20530

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 "The Witness Security Program: Changes Needed to Better Protect Civil Interests and Improve Management."

On balance, the General Accounting Office's (GAO) draft report covering the Witness Security Program is a thorough and well researched study of a very sensitive operational and legal area. Further, the report does recognize that Program initiatives have been implemented to specifically address the problem areas identified in the report. While we agree with the recommendations to the Attorney General, we express reservation as to the necessity for the recommendation to the Congress for Federal judicial review of the Attorney General's disclosure decision upon petition by an affected third party. Our comments with regard to the three major areas of the report are discussed below.

DISCLOSURE OF A WITNESS' IDENTITY TO A THIRD PARTY POSSESSING A COURT JUDGMENT

In Chapter 3, the report discusses current Program policy for resolution of civil matters involving relocated witnesses. GAO has recommended that Congress enact legislation which will better recognize the rights of third parties by compelling the Attorney General to disclose the identity of a relocated witness under certain conditions. That portion of the proposal is currently the established policy of the Department. However, there is also included a provision for Federal judicial review to determine whether a disclosure made by the Attorney General was arbitrary and capricious. To this the Department takes exception.

The basis for GAO's recommendation of a judicial review--that inasmuch as the Department administers the Witness Security Program it cannot make a fair decision in determining whether to disclose witness information to a third party--is unsubstantiated. Rather, it is because the Department has access to all relevant information that it should make the final decision. We have proposed, as a means for a judgment creditor to satisfy his or her judgment, the use of a court appointed master who can enforce the judgment in the relocated area. Our research indicates that the court in which judgment was obtained can appoint a master or referee who can, with the appropriate instructions, provide for the security of the witness while performing those

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acts necessary to enforce the judgment of the creditor. This approach would require the Attorney General to divulge the witness' location to the master and not to the third party. Without first determining that the new administrative procedures already in place and those under consideration do not adequately address the problem, we believe that judicial review of the Attorney General's disclosure decision could involve the Department in unnecessary and possibly lengthy litigation, further burdening the judicial system. GAO has not given the Department sufficient time to demonstrate that its new policy will alleviate these concerns, nor has GAO demonstrated that judicial review, at great expense to taxpayers, will make a significant change. Moreover, existing statutes provide adequate avenues for judicial review of Departmental decisions in this area. Persons aggrieved by the Department's refusal to provide information could bring a private action under the Civil Rights Act, 42 U.S.C. 1983, or the Freedom of Information Act, 5 U.S.C. 552. Therefore, we question whether further legislation is necessary.

SAFEGUARDS ARE NEEDED TO PROTECT THE PUBLIC FROM UNSCRUPULOUS ACTIONS OF WITNESSES

GAO discusses the difficulty in attempting to balance the need to protect the new identities of witnesses with the need to protect various third parties from the unscrupulous actions of some witnesses. These actions relate to physical harm or illegal activities, child custody and visitation rights, and collection of unpaid debts.

Physicial Harm or Illegal Activities

The GAO report states that ". . . each admission of a witness to the program constitutes a high-risk gamble because no one knows if a witness will successfully adjust to his/her new identity and become a law-abiding citizen." The Witness Security Division recognized the possible potential problem relative to a witness' peaceful assimilation into a new community, especially in light of the fact that over 97% of the Program participants do have criminal backgrounds.

In an effort to predict possible anti-social behavior and also to assist the witness in the difficult process of relocation, the Division contracted this past spring with a team of vocational/behavioral psychologists with considerable experience in individual counseling and personality assessment, to counsel witnesses who have to make difficult relocations. At the time of entry, each witness is administered a variety of questionnaires to evaluate his/her vocational interests and general temperament. The psychologists examine the results of these questionnaires and prepare individual reports for the witness relative to possible avenues of employment, and for the Division relative to any potential adjustment problems the witness may encounter. In some cases, the psychologists may recommend further testing and evaluation. In those instances, the witness personally meets with one of the psychologists for in-depth interviewing and testing. Additionally, the Division requires that these "face-to-face" evaluations be conducted for all witnesses recently released from prison and for those participants with a history of violence or suicide. The Division has also had these evaluations conducted for several individuals who were under consideration for participation in the Program by the Criminal Division's Office of Enforcement Operations to determine their suitability for the Program.

The results of these professional evaluations have been particularly helpful in assisting both the Headquarters and field staffs of the U.S. Marshals Service in working with "difficult" cases. On the basis of the psychologists' recommendations, the Division has been able to require special supervision for a State murder parolee and counseling for other program participants as a condition of their admission to the Program. In other instances, these evaluations have assisted the witnesses in dealing with their new environments and exploring the options available to them. All in all, these assessments provide the Division with an ability, in many cases, to foresee potential behavioral problems and take corrective actions to protect the public.

In those instances where a Program participant does commit a crime or is suspected of criminal involvement, it has always been the policy of the Marshals Service to assist a State or local law enforcement agency in any legitimate investigation.

When the Marshals Service assists a Program participant with employment, the prospective employer is advised of the nature and extent of the individual's criminal background.

The Marshals Service does not have a custodial relationship with its protectees; such a relationship is not within its legal jurisdiction. However, it is the opinion of the Marshals Service that all individuals who are on parole or probation should be supervised. To that end, an agreement was reached with the Probation Division of the Administrative Office of the U.S. Courts in December 1980, requiring supervision of all Program participants on Federal probation. In January 1982, a similar agreement was established with the United States Parole Commission. The Marshals Service supports legislation presently pending which would require all State parolees and probationers to be supervised.

Child Custody and Visitation Rights

It has been a long-standing verbal policy of the Marshals Service to verify all child custody court orders. This policy was subsequently formalized as a written policy in a memorandum of September 4, 1981. Additionally, in those instances where there is not a court order, the Marshals Service does not relocate minor children without the consent of the non-Program parent.

The Marshals Service realizes that Program relocation does restrict normal visitation. Security considerations, however, do necessitate special procedures. The Division has facilitated many "neutral site" visitations between Program-children and the non-Program parent. Generally, these visits must be in the presence of Marshals Service personnel for obvious security reasons.

Collection of Unpaid Debts

It has been a long-standing policy of the Marshals Service to encourage Program participants to meet their legal responsibilities (e.g. debts, child support, court orders, etc.). Witnesses are advised when they enter the Program that the Marshals Service will not shield them from their obligations. The Marshals Service assists creditors in serving Program participants with any legal process. In those cases where a witness continues to ignore his responsibilities, the Marshals Service, with the concurrence of the Department, advises creditors of the witness' new address and identity to enable the creditor to pursue legal action in the witness' relocation area. The Marshals

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Service does not attempt to determine whether or not the witness has sufficient assets to satisfy the judgment, as the GAO report states.

The Marshals Service fully supports those portions of H.R. 7039 relative to witness debts and other legal responsibilities of the Program participants.

MANAGEMENT INFORMATION AND PROGRAM EVALUATION NEEDED

Chapter 4 of the draft report recommends that the Marshals Service and Office of Enforcement Operations develop a comprehensive management information system and procedures to allow for appropriate evaluation of the Witness Security Program. The Department supports these recommendations.

As for the Marshals Service, GAO accurately points out that actions have been and are being taken to improve the organization of its files. Currently, the Witness Security Division is in the process of automating over 4 million witness security documents. Additionally, over the past two years, the Division has designed and implemented computer software programs to facilitate operational and financial activity. Notwithstanding the manpower and financial restrictions of the Division, coupled with the inordinate volume of data, this effort has been successful and proved to be most beneficial to the Headquarters and field staff in planning and controlling Program activities.

In an effort to evaluate its own operation, the Marshals Service has also conducted on-site inspection audits of its Witness Security Headquarters and field operations. These audits have also proved to be most helpful in improving the administrative, as well as operational, aspects of the Program.

The Witness Security Division is also aware that the Office of Enforcement Operations has improved its admission screening process. This improved screening process has also been enhanced by the Division's ability to provide in-depth professional assessment of the potential witness' suitability through its psychologists' evaluations.

As the GAO report also points out, the Office of Enforcement Operations supports the need for a comprehensive management information system, and a study recently completed by the Justice Management Division at the request of the Criminal Division recommends a system to be used by the Office of Enforcement Operations to accomplish this goal. The system is compatible with that of the Marshals Service to minimize costs and allow for interchange of data. The Office of Enforcement Operations has been unable to implement all of the Justice Management Division's recommendations because of budgetary limitations. The Office of Enforcement Operations' staff is doing some statistical gathering but, of necessity at this time, all available resources are devoted to the substantive aspects of the Program. However, efforts to implement the Justice Management Division's recommendations will continue.

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Except for GAO's recommendation to Congress regarding the enactment of judicial review legislation, we essentially agree with all other GAO recommendations for improving the operation of the Witness Security Program and appreciate the opportunity given us to express such views. We believe the actions we are taking, all of which are in various stages of progress, will meet the objectives of the recommendations set forth in the report. Should there be a need for additional information regarding our response, please feel free to contact me.

Sincerely,

Kevin D. Rooney
Assistant Attorney General
for Administration

*U.S. GOVERNMENT PRINTING OFFICE : 1983 0-381-843/39

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