

Fall 1982

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Recommended Citation

John J. Twomey, Susan A. Laniewski, The United States Marshals Service Role in the Attorney General's War on Violent Crime, 73 J. Crim. L. & Criminology 1012 (1982)

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THE UNITED STATES MARSHALS SERVICE ROLE IN THE ATTORNEY GENERAL'S WAR ON VIOLENT CRIME

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The United States Marshals Service (U.S.M.S.), is the oldest law enforcement agency in the federal government. Throughout the history of the Service, United States Marshals have performed a myriad of duties in support of both the judicial and the executive branches of Government. Today, the U.S.M.S. continues to function under the auspices of the Attorney General of the United States. Marshals and their deputies are the law enforcement officers of the Department of Justice and are also responsible for the security of the federal court system and its personnel. The expansion of the federal government¹ has encouraged a continually burgeoning number of responsibilities, functions, and varied activities for the U.S.M.S. With the advent of the Reagan administration's economic policies there has also been a reduced pool of resources and manpower with which to perform these missions.

The Attorney General's Task Force on Violent Crime examined two major programs of the U.S.M.S. - the Fugitive Warrant Investigation Program and the Witness Security Program. Both programs were seen as critical to the continued operation and administration of justice by the federal government.

THE FUGITIVE WARRANT PROGRAM

Federal law mandates that the U.S.M.S. seek and arrest persons charged with federal crimes.² Accordingly, the U.S.M.S. investigates and executes federal arrest and escaped fugitive warrants. In addition,

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¹ OFFICE OF THE DIRECTOR, THE OFFICE OF THE UNITED STATES MARSHAL 2 (1981).

² 28 U.S.C. § 569 (1976), states that "the U.S. Marshal shall execute all lawful writs,

federal law authorizes the United States Marshals to arrest without warrant for any federal crime committed in their presence³ as well as to make arrests based upon probable cause for any violation of federal laws.⁴ However, the primary enforcement responsibility of the United States Marshal is to execute federal arrest warrants which emanate from the United States courts under deadlines imposed by the Speedy Trial Act of 1974.⁵

In an effort to reduce duplication of investigative efforts, on October 1, 1979, the Attorney General transferred most federal fugitive arrest responsibilities from the FBI to the U.S.M.S. This enabled the FBI to concentrate the efforts of its agents on their statutory responsibilities to investigate organized crime and white collar crime.⁶

The transfer of the federal fugitive function has given the U.S. Marshals Service the responsibility to investigate, apprehend and assist in the prosecution of fugitives who escape from federal institutions, who fail to appear in federal court, who violate the terms of their parole, and who violate the conditions of their probation.⁷

Under this transfer of responsibility, the U.S.M.S. assumed primary criminal investigative responsibility for several types of federal fugitives, including federal probation and parole violators, mandatory release violators, bond default fugitives, and escaped federal prisoners.⁸ A recent survey showed that sixty-four percent of the U.S.M.S. arrestees had been involved in serious, violent crimes while in fugitive status, often in an attempt to subvert their prosecution.⁹

The procedures employed by the U.S.M.S. in the Federal Fugitive Warrant Program are similar to those employed by any law enforcement agency involved in warrant execution. Initially, a personal history form is completed on the defendant and entered into the National Crime Information Center (N.C.I.C.). Through the use of N.C.I.C. and other law enforcement information systems, the U.S.M.S. is able to acquire information and investigative leads that will assist in the prompt apprehension of the fugitive. These systems demonstrate a high level of

process, and orders issued under the authority of the United States," including all federal warrants.

³ 18 U.S.C. § 3053 (1976).

⁴ *Id.*

⁵ OFFICE OF THE CONTROLLER, JUSTICE MANAGEMENT DIVISION, U.S. DEP'T OF JUST., DECISION UNIT ANALYSIS & RECOMMENDATIONS: FY 1982 ZERO-BASED BUDGET (1980); Speedy Trial Act, 18 U.S.C. §§ 3153-3156 (1969 & Supp. 1981).

⁶ U.S. ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME: FINAL REPORT 3 (1981)[hereinafter cited as TASK FORCE REPORT].

⁷ J. Twomey, Response to Phase One Questions, Attorney General's Task Force on Violent Crime (1981) (unpublished manuscript).

⁸ *Id.*

⁹ Enforcement Operations Division FY 1981.

cooperation between local, state, and federal law enforcement agencies. Thorough and effective investigation and execution of warrants is dependent upon the ability of the investigative agencies to gather and exchange data. Contacts, however, are not limited to law enforcement agencies. The investigator will also make use of information available from employment agencies, financial institutions, bondsmen and public welfare/service institutions, as well as personal contacts to determine the whereabouts and status of a fugitive.

Throughout his involvement, the deputy will prepare investigative and field reports that will record and chart the progress of the investigation. In the case of federal fugitives, the documentation and case report prepared on the investigation must be significantly detailed to allow the United States Attorneys to prepare a "legally valid and binding case for the prosecution of the defendant."¹⁰ To assure valid arrests and binding prosecutorial action, the marshal and deputy marshals must be aware of the legally mandated policies and procedures for warrants and other forms of process. When positive information as to the location and status of the defendant is obtained, the deputy will assist in the preparation of the warrant and actual arrest.

In cases involving escaped prisoners, if the escape occurred prior to an initial appearance, conviction or sentencing, the deputy marshal will contact the United States Attorney for a prosecutorial opinion. The United States Attorney will then obtain a warrant of arrest before the U.S.M.S. is assigned the case.¹¹ The FBI remains responsible for a warrant when the fugitive commits one or more federal crimes over which the FBI maintains jurisdiction or when the fugitive's actions fall under the Fugitive Felon Act (F.F.A.).¹² The F.F.A. concerns persons involved in unlawful flight to avoid prosecution. These persons have outstanding felony warrants and there is evidence that they crossed state lines to avoid prosecution.

Individual cases show the diversity of investigatory techniques, cases, and cooperative procedures used by the United States Marshals Service in the execution of warrants:

- (1) U.S.M.S. personnel in Texas commenced an investigation of the escape of a prisoner in September, 1980. Information was transmitted to the District of Kansas regarding the subject; Kansas deputies arrested the suspect and developed additional evidence which enabled the State of Texas to charge the subject with first degree murder.
- (2) In November 1980, Deputy United States Marshals in Southern California arrested a subject for violation of parole. He had an extensive crimi-

¹⁰ TASK FORCE REPORT, *supra* note 6.

¹¹ *Id.*

¹² Fugitive Felon Act, 18 U.S.C. § 1073 (1976).

nal record, and had allegedly entered a private residence and, using an automatic weapon, murdered the owner of the property and critically wounded his wife. The arrest was the culmination of a sixteen day search conducted by federal, state and local authorities.

(3) Parole and probation violations often lead to significant arrests. At the time of a probationer's arrest in December, 1980, investigation revealed that he was wanted in three states for sexual assault, assault, fraud and burglary. A parole violator the U.S.M.S. arrested was wanted by local authorities for three separate murder charges.

(4) In February, 1980, Deputy United States Marshals in the State of Washington were investigating the escape of two convicts. Information developed on the subjects' whereabouts was transmitted to deputies of the District of Colorado where, after a two day stake-out, the subjects were arrested at a local motel. At the time of the arrest, the deputies discovered and seized evidence including weapons, money, narcotics and a vehicle implicating the fugitives in nine bank robberies and other offenses committed since their escape.

(5) Deputy United States Marshals arrested a subject known to be one of the top 100 narcotics traffickers in the City of New York. At the time of his arrest, the subject was in possession of two firearms, four ounces of cocaine and \$4,000 in cash.¹³

In addition to these individual case success stories, the U.S.M.S. periodically conducts large scale "strike force" operations. Operation F.I.S.T. (Fugitive Investigation Strike Force), was the first of several intensive investigation efforts undertaken by U.S.M.S. personnel to locate and apprehend large numbers of federal fugitives in a relatively short period of time. The strike force concept was initially implemented in Miami, Florida, where reports indicated a large number of federal fugitives were seeking safe haven, and an excessively high crime rate existed for the region. The effort proved an overwhelming success and similar programs are planned for other high crime metropolitan areas.

F.I.S.T. One, in Miami, resulted in the arrest without injury of seventy-six federal and state fugitives. INTERPOL leads resulted in the arrest of three persons wanted by Canadian authorities, and one fugitive sought by Swedish officials. During the five week strike force investigation, over 293 fugitive cases were closed.¹⁴

THE WITNESS PROTECTION PROGRAM

The Witness Protection Program was established under the Organized Crime Control Act of 1970.¹⁵ The objective of the Witness Protection Program is to prevent physical violence against witnesses and thereby help to ensure the successful prosecution of those in the hierar-

¹³ J. Twomey, *supra* note 7.

¹⁴ F.I.S.T., THE PENTACLE, 4 (Nov.-Dec. 1981).

¹⁵ Omnibus Crime Control Act of 1970, 42 U.S.C. § 3701 (1976 & Supp. 1981).

chy of organized crime.¹⁶

Violence and intimidation have become the means by which organized criminal groups further their illegal operations. As an integral part of the Justice Department's program against organized crime, the major objective of the Witness Protection Program has been to take away the tool of coercion traditionally employed by organized criminal groups to defeat the efforts of state and federal prosecutors.¹⁷

The Act empowers the Attorney General to provide for the protection of government witnesses and potential government witnesses, and members of their families, whose lives are endangered by virtue of being a witness. The U.S.M.S. provides twenty-four hour protection to all witnesses while they are located or testifying in a dangerous or "threat" area, and whenever they may be required to return to a dangerous area for a conference or court appearance.

After entering the program, the witness and his/her family are relocated and provided with new identities, including new names, birth, medical, and other identification records. Once settled in a new location that has been determined to be "a safe and non-threatening environment,"¹⁸ specially trained personnel of the U.S.M.S. assist them to locate a new residence, gain employment, and eventually to become self-supporting members of their new community.

The U.S.M.S. provides monetary and personnel support to those persons who have entered the program. To assure that the witness is aware of the limitations, difficulties, and potential hazards involved in attempting to guarantee safety and security, U.S.M.S. personnel advise the witness of the pitfalls and regulations of the program prior to actual entrance into the program.

During the past decade, approximately 3,600 principal witnesses and about 9,000 family members have been relocated to safe areas with new identities. Many of these persons had been the victims of violent attacks which triggered their initial placement in the Witness Security Program. Although each case is different due to individual needs and circumstances, there are some fundamentally similar factors pertinent to all cases.¹⁹

The highest priority in every case is the protection of the individual and, when necessary, his/her family. The U.S.M.S. provides actual physical protection of a witness from the time that a valid threat is recognized until it is no longer viable, or the witness has been removed from the threat by geographic relocation and identity change. The pro-

¹⁶ J. Twomey *supra* note 7.

¹⁷ *Id.*

¹⁸ See *supra* note 1.

¹⁹ J. Twomey, *supra* note 7.

cedure is altered somewhat if the witness is an incarcerated felon. In this case, specialized isolation procedures and transfer to non-threatening custodial settings become necessary.

Of the almost 3,600 witnesses who have entered and participated in the program, there is no evidence that any witness who complied with the established security guidelines has been harmed in his new relocation area by those against whom he testified.²⁰ However, there have been at least seven persons who met with violent deaths after choosing not to participate in the program, or when they returned to a danger area without or against authorization. In recent congressional hearings, every agency connected with the administration of justice characterized the Witness Security Program as "one of the single most effective tools against organized crime."²¹

For many of the witnesses, the program is their only alternative in a life or death situation. Even so, the change in identity and location, which requires permanent isolation from family and friends, is traumatic and in many cases more than the witness had expected. U.S.M.S. personnel try repeatedly to illustrate the complex nature of the program to witnesses and prosecutors alike. Many of the promises made to the witnesses by attorneys eager to ensure prosecution are not feasible or lawful under the Witness Security Program. For example, the U.S.M.S. can only provide limited funding to the witness. They cannot guarantee a lifestyle of the same socio-economic status as the witness had prior to his testimony. The Witness Security Inspector must impress upon all prosecutorial personnel what guarantees the program can and cannot give.

Under provisions of the Organized Crime Control Act, the federal government assists state and local jurisdictions by accepting non-federal witnesses in the protection program. The complex security and logistical requirements of properly protecting a witness from organized crime assassination greatly exceed the resources available to agencies other than the federal government. Since the Program's inception, the U.S.M.S. has protected and relocated 188 witnesses solely to assist state and local organized crime prosecution efforts. Additionally, many federally sponsored witnesses have testified in both federal and state proceedings. These protective services have been provided to state authorities on both a reimbursable and nonreimbursable basis. To date, a total of \$2,003,693.41 has been expended on the security and maintenance of state and local witnesses.²² Without this arrangement, it is likely that

²⁰ *Id.*

²¹ U.S. Marshal Service, U.S. Dep't of Just., Plans and Programs Division, Congressional Hearings, Budget Justification, and The Spring Planning Call (1982).

²² *Id.*

organized crime prosecutions below the federal level would be severely hampered or unfeasible.

TASK FORCE RECOMMENDATIONS

The major recommendations of Phase One of the Task Force addressed the need for adequate resources to fight crime. "The Federal Government's first priority should be to provide adequate resources to its own offices which are involved in fighting violent crime, and to assure that its policies are clear and sound in all matters which impact upon state and local law enforcement."²³

The Task Force recommended that substantial increases for federal law enforcement and prosecutorial agencies were essential for effective performance and to accomplish the goals of the task force. "Our call for an increased effort against dangerous fugitives will require additional resources for either or both the FBI and U.S.M.S."²⁴

While the U.S.M.S. fully supports the President's policies for reducing federal expenditures, reduction in the level of effort by the U.S.M.S. will impair the Administration's war on organized crime, and hamper the efficiency of the federal judicial system by creating delays in legal proceedings due to unexecuted criminal arrest warrants.

Other law enforcement agencies, particularly the Federal Bureau of Investigation, Drug Enforcement Administration, the Bureau of Prisons, and the Immigration and Naturalization Service, as well as the United States Attorneys would be affected by proposed budget reductions in the level of assistance and field support the U.S.M.S. currently provides. Other agencies which do not have arrest powers and depend upon the U.S.M.S. for felony warrant execution will also experience negative effects.²⁵

The U.S.M.S. has developed specialized training programs for both warrant investigation and witness security. These training programs consist of intensive classroom and practical experience training for the Witness Security and Enforcement Specialists. Periodically, the U.S.M.S. also conducts training for deputy and administrative personnel in the various aspects of these functions. The increased number of trained professionals not only enhances the efficiency of the Marshals service but also improves the U.S.M.S.' ability to assist other agency investigations. The Attorney General's Task Force specifically cited in several recommendations the need for more training at all levels, and

²³ TASK FORCE REPORT, *supra* note 6.

²⁴ *Id.*

²⁵ OFFICER OF THE CONTROLLER, *supra* note 5.

encouraged the increased funding of training programs for law enforcement personnel.

Once trained personnel are available, the U.S.M.S. uses a work measurement formula to determine manpower allocation for its district offices. This formula uses historical and statistical data on tasks and resource needs to determine the personnel and resource needs for the offices.²⁶ Under the Speedy Trial Act of 1974, the U.S.M.S. must demonstrate "due diligence in the prompt execution of warrants."²⁷ To assure that the district has sufficient personnel to complete this task, the work measurement formula takes into account the many complex factors that will affect the ability of the marshal or deputy to execute a warrant. Depending upon the location and district, this can include terrain and topographical considerations, population density or sparsity, extreme weather conditions, degree of cooperation and assistance available from other agencies, the existence and access of U.S.M.S. personnel to state and local intelligence networks, and the presence of manned sub-offices in the area.

Once this information is developed and analyzed, the U.S.M.S. is able to predict the amount of manpower needed to execute a warrant in a particular area. Although this method does not guarantee that the resources will be available, it can be used by the U.S.M.S. to demonstrate the level of success that can be expected with a given amount of resources.

In the case of the Witness Security Program, it is more difficult to estimate both operational and administrative personnel needs. Here, as in the Warrant Program, factors that are pertinent to individual districts are considered. The formula also looks at the number of new witnesses a district takes in on a yearly basis, the number of witnesses that are relocated to the districts, and the number of court appearances and conferences witnesses are attending.²⁸

Lack of adequate resources in the budget for training and personnel is by far the most severe threat to the success of the Witness Protection and Warrant Programs. Training monies at the federal level are extremely limited. Additionally, there are other problems in the system that tend to diminish the effectiveness of program managers.

One of these problems is the very nature of the law that authorizes federal jurisdiction. Federal jurisdiction of crimes is appropriate when:

- (1) A federal statute designates an act to be criminal,

²⁶ EVALUATION STAFF, U.S. DEPT OF JUST., WORK MEASUREMENT, RESOURCE ALLOCATION AND PERFORMANCE EVALUATION FOR THE U.S.M.S. 6-15 (1980).

²⁷ Speedy Trial Act, 18 U.S.C. §§ 3153-3156 (1969 & Supp. 1981).

²⁸ EVALUATION STAFF, *supra* note 26.

- (2) A crime or action occurs on a federal reservation, federal property, or in the District of Columbia,
- (3) There is the involvement of large criminal organizations or conspiracies that are known or can be presumed to operate in several states, or affect interstate commerce, or
- (4) An action is directed at a target of overriding national importance.²⁹

If a criminal action comes within federal jurisdiction, several agencies become involved in the subsequent investigations. Although this creates the potential for overlap in agency investigations, the problem can be somewhat alleviated by increased cooperation, better communications and improved inter-agency data and information systems.

The Task Force addressed the problem of overlapping investigations, focusing particularly on the Fugitive Warrant Program. "The Attorney General should consider the feasibility of designating one law enforcement agency as the coordinator of all Federal and State unlawful flight to avoid prosecution, and other fugitive activities."³⁰

The multi-agency activity discussed does not apply solely to the warrant investigation aspect of the United States Marshal's duties. The U.S.M.S. must also assure that it is advised of any investigations of persons involved in the Witness Security Program. If a witness becomes the subject of an investigation while he is actively involved in the relocation process, the U.S.M.S. must be aware of the origin and nature of the investigation. This is not to prevent a witness from being prosecuted for a crime that he commits, but rather to assure that the charges and investigation are not part of a plot against him by those whom he helped to indict. The sensitive nature of the program makes this a difficult problem for the U.S.M.S. to resolve. While U.S.M.S. does not insulate relocated witnesses from prosecution for new offenses, it does seek to assure that the former identity of the witness is not publicized in a way that would alert former associates of his whereabouts.

On-going but subtle competition among federal agencies poses a further danger to protected witnesses. Each agency is seeking to increase its arrests, public image and public approval, as illustrated by statistics reporting how many of another agency's warrants, prisoners, or activities you have performed or executed. Although this competition may be healthy, in the case of protected witnesses it can also prove deadly. The Law Enforcement Coordinating Committees recommended by the Task Force³¹ can eliminate much of this concern by providing information on a need to know basis of active investigations to agencies involved in similar actions.

²⁹ TASK FORCE REPORT, *supra* note 6.

³⁰ *Id.* at 7.

³¹ *Id.*

Any cooperative effort must not be limited to the federal agencies. The burgeoning problems in law enforcement demand extension of the technical and informal communication and cooperation networks. Through the shared use of local law enforcement communications networks, all levels benefit. Integration of information on known and wanted felons helps all investigating agencies to develop profiles of wanted fugitives. Should an agency locate, encounter, or arrest a wanted fugitive, the communications and information systems will assure that the person remains in custody until he can be remanded to the agency holding the warrant for his return. The Task Force specifically encouraged technical assistance to state and local agencies, improved prosecutorial procedures and implementing more stringent procedures for enforcement control.

Cooperation appears to be the most important single element to ensure success in law enforcement programs. Cooperation among agencies and agency personnel for the common use of information and other resources was cited by the Task Force as vital to the war against violent crime. The U.S.M.S. continues to depend upon the cooperation and interested involvement of other agencies and organizations for assistance in performing their wide range of functions.

In the next decade, the expansion of violent crime must be combated with declining resources and personnel. The success of law enforcement agencies such as the U.S.M.S. will depend upon professionalism, dedication, and assistance at all levels of law enforcement. It is only with interagency cooperation and continued support from the Administration that the U.S.M.S. will be able to increase its involvement and success in the war against crime.