



REPORT BY THE
Comptroller General
OF THE UNITED STATES

U.S. Marshals Can Serve Civil Process And Transport Prisoners More Efficiently

U.S. marshals are responsible for serving judicial process and moving Federal prisoners. These duties can be accomplished at less cost to the Government if

--the Congress revises legislation to permit marshals to recover the cost of serving process for private litigants;

--the Judicial Conference of the United States develops judicial procedural rules which would provide that marshals serve civil process only when required by law or deemed necessary and which would give all option of using certified rely serve civil summonses;

General makes better use effective National Prisoner on System.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20348

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The Honorable Max Baucus
United States Senate

ACQUISITIONS

Dear Senator Baucus:

This report is the second 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 the Marshals Service's efforts to serve civil process for private litigants and to transport Federal prisoners between judicial districts. Essentially, the report concludes that opportunities exist to reduce the Government's cost associated with the performance of both of these functions, as well as to reduce the potential dangers to the public associated with the transportation of Federal prisoners.

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

Sincerely yours,

Comptroller General
of the United States

D I G E S T

Senator Max Baucus asked GAO to review various functions performed by U.S. marshals. This report, the second in a series of three, evaluates the Marshals Service's efforts to serve and execute civil process for private litigants and to transport Federal prisoners between judicial districts. Opportunities exist to reduce the Government's cost of performing both functions, as well as to reduce the potential dangers to the public associated with the transportation of Federal prisoners.

THE SERVICE OF CIVIL PROCESS:
LEGISLATIVE AND PROCEDURAL
CHANGES NEEDED

Since their creation in 1789, marshals have been required by law to serve civil process when directed by the courts. Civil process (written directions issued by the courts to notify and/or compel certain actions during the progress of civil litigation) is served and fees are charged for this service in accordance with judicial rules and Federal statute. These rules and the statute are causing the process serving function to be uneconomical and inefficient.

Private litigants are charged a fee by marshals which varies by type of process served. These fees are set by statute and have not been changed significantly in 180 years. The current fee structure does not permit marshals to recover the cost of serving process for private litigants. As a result, in fiscal year 1980 the Government subsidized the service of private civil process (about 353,000 pieces) at an estimated cost of between \$2 and \$4.7 million. (See pp. 5 to 7.)

Furthermore, Rule 4 of the Federal Rules of Civil Procedure which governs the service of civil process causes marshals to be excessively involved with the performance of this function. It also restricts the routine use of an efficient

method of service for summonses and complaints--
certified mail.

Although recent changes have been made to Rule 4 to broaden the range of people with blanket authorization to serve civil process and the ability of the courts to specially appoint persons to serve civil process, these changes have not had a significant impact. Marshals continue to serve most civil process. The rules of procedure recognize that marshals do not need to serve most civil process. However, as long as Rule 4 continues to provide blanket authorization for marshals to serve all civil process, and the fees for this service remain low, private litigants have little incentive to use persons other than marshals to serve their process. (See pp. 8 to 10.)

Rule 4 also allows marshals to use certified mail to serve civil summonses and complaints to individuals, business concerns, and unincorporated associations. This method of serving process is allowed if the State where the Federal court is located has a law authorizing this manner of service. However, according to Marshals Service information, most States do not specifically allow the routine use of certified mail to serve civil summonses and complaints. Therefore, most judicial districts do not routinely use certified mail to serve a summons. GAO reviewed marshals' efforts to serve civil summonses in three districts that routinely use certified mail to serve this type of process. In these districts, certified mail was found to be an effective and efficient method of service and did not hamper court operations. (See pp. 10 to 13.)

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress

--revise 28 U.S.C. 1921 to give the Attorney General authority to periodically revise the fees that marshals charge for serving civil process for private litigants in Federal court and

--require that the established fees provide full recovery of marshals' actual operating costs to serve private civil process exclusive of the costs incurred to serve process for indigents. (See p. 14 and app. XIII.)

RECOMMENDATIONS TO THE JUDICIAL
CONFERENCE OF THE UNITED STATES

GAO recommends that the Judicial Conference (the policymaking body of the judiciary) develop amendments to Rule 4 of the Federal Rules of Civil Procedure which would

--require that civil process be served by persons specially appointed or approved by the courts to perform this function, except in those situations when service of process by marshals is specifically required by law or is deemed necessary by the courts and

--authorize all Federal judicial districts to use certified mail as one of the methods of serving summonses and complaints except when service is to be made to an infant or an incompetent, and designate the person(s) who may properly sign for the receipt of such process. (See pp. 14 and 15.)

THE COSTS AND DANGERS OF
FEDERAL PRISONER MOVEMENTS
CAN BE REDUCED

During fiscal year 1980, marshals transported about 36,000 Federal prisoners across Federal judicial district boundaries. In an effort to reduce the costs of this function, the Marshals Service in 1979 developed the National Prisoner Transportation System. The System is not being used to its full potential which results in unnecessary transportation costs and danger to the public.

The System consists of a regularly scheduled contract airlift with a ground support of marshal vans and automobiles as well as Federal Prison System buses. Trip coordinators attempt to reduce the amount of Marshals Service resources (staff and dollars) devoted to prisoner movements by evaluating all interdistrict

trip requirements and attempting to use the most efficient transportation component. When existing components cannot meet a particular movement need, a commercial flight is used.

Moving prisoners on commercial flights is more costly, inefficient, and more dangerous to the public than using other existing transportation components. Marshals Service data shows that the average cost to transport a prisoner on a commercial flight is four times greater than the most costly transportation system component. Also, Marshals Service policies require that there be at least one more guard than the number of prisoners on each trip made on a commercial flight. In comparison, only five personnel are used to staff the Marshals Service's contract airlift which can transport up to 44 prisoners. The use of commercial flights also exposes the public to potential harm because prisoners classified as maximum security risks are often transported by this mode.

While the National Prisoner Transportation System has improved the economy and efficiency of prisoner transportation, the Marshals Service has still not used it to its full potential because of management shortcomings. System operations can be improved by

- reducing the number of prisoners being flown on commercial flights without urgent movement needs (see pp. 21 to 22),
- ensuring that trip coordinators routinely have firm deadline dates before authorizing prisoners to be moved by commercial flights (see pp. 22 to 24),
- improving communication concerning prisoner movements among marshal personnel and prosecutors (see p. 23), and
- critically assessing proposed prisoner movements for cost-effectiveness (see pp. 24 and 25).

Such improvements would reduce the costs and dangers associated with moving Federal prisoners by keeping the use of commercial flights to a minimum.

RECOMMENDATIONS TO THE ATTORNEY GENERAL

GAO recommends that the Attorney General

- implement a definitive and detailed prisoner movement priority system for trip coordinators to use when scheduling trips,
- gather more specific deadline information for each prisoner movement,
- require U.S. Attorneys' Offices to provide marshal personnel more timely information in order that the maximum amount of lead times are provided trip coordinators when scheduling trips, and
- direct trip coordinators to critically evaluate each proposed prisoner movement for cost-effectiveness. (See p. 26.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Administrative Office of the U.S. Courts, the Department of Justice, and the chief judges in the eight districts where GAO performed extensive audit work commented on GAO's report.

- The Administrative Office said that all of GAO's recommendations relating to process service were either supported or were being considered. It did not comment on GAO's recommendations relating to prisoner transportation.
- The Department was in general agreement with all of GAO's recommendations.
- All chief judges specifically commenting on GAO's recommendation to raise the fees marshals charge for serving civil process and all but one chief judge specifically commenting on GAO's recommendations relating to prisoner transportation agreed with them. Additionally, five chief judges agreed with GAO's recommendations to utilize alternative methods of process service while three chief judges expressed some disagreement with these recommendations. (See pp. 27 to 33.)



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ABBREVIATIONS

GAO	General Accounting Office
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

At the request of Senator Max Baucus, we examined the operations of the Marshals Service and U.S. marshals. (See app. I.) This report, the second in a series of three, evaluates the Government's efforts to serve and execute civil judicial process for private litigants in Federal court and to transport Federal prisoners between judicial districts. The first report, "U.S. Marshals' Dilemma: Serving Two Branches of Government" (GGD-82-3), dealt with difficulties stemming from the organizational relationship of U.S. marshals to the Federal judiciary and the Attorney General. The third report will discuss the operation of the Marshals Service's Witness Security Program.

The office of U.S. marshal was established by the Judiciary Act of September 24, 1789, 1 Stat. 73,87. Marshals are the oldest Federal law enforcement officers. They were charged by the Judiciary Act to (1) attend district, circuit, and the Supreme courts and (2) execute all process and orders directed to them by the courts. They are appointed by the President, subject to Senate confirmation, to serve all of the Federal judicial districts except the Virgin Islands whose marshal is appointed by the Attorney General. In all, there are 94 U.S. marshals to serve the 95 Federal judicial districts. The marshal for the judicial district of Guam is also responsible for serving the judicial district of the Northern Mariana Islands.

SERVICE OF CIVIL PROCESS

Process is a general term for written directions (writs) issued by the courts to notify and/or compel certain actions during the progress of litigation. Since their creation in 1789, marshals have served process when directed by Federal district courts. Most civil process is served in person. Although Federal agencies have their process served for free, private litigants, other than indigents, are charged a nominal fee. Process fees are set by statute and have not been changed significantly for about 180 years.

Civil process is served in accordance with procedural rules developed by the Judicial Conference of the United States and approved by the Supreme Court and the Congress. The Judicial Conference is a policymaking body for the Federal judicial system. It consists of committees of Federal judges which have areas of responsibility, such as court administration, assignment of judges, just determination of litigation, general rules of practice and procedures, promotion of simplicity in procedures, fairness in administration, and elimination of unjustifiable expense and delay.

TRANSPORTATION OF FEDERAL PRISONERS

To better control resources and costs associated with moving prisoners between judicial districts, the Marshals Service established the National Prisoner Transportation System in 1979. The purpose of this System is to consolidate and coordinate interdistrict prisoner movements in the most efficient and economical manner possible. In fiscal year 1980, System personnel coordinated over 36,000 Federal prisoner movements. A movement may involve transporting a prisoner cross country to be prosecuted in a distant judicial district, to testify in a distant district court, to receive emergency or specialized medical treatment, or to serve a prison term in a facility located outside of the district in which the prisoner was sentenced. Sometimes the Marshals Service must carry out these interdistrict movements on short notice. Nevertheless, marshals must continue to meet judicial and prison system needs.

RELATIONSHIP TO PREVIOUS GAO REPORT ON MARSHALS BEING SUBJECT TO SEPARATE LINES OF AUTHORITY

In our prior report, "U.S. Marshals' Dilemma: Serving Two Branches of Government" (GGD-82-3), we reported that under existing laws U.S. marshals are subject to two separate lines of authority. Marshals are responsible for performing missions for both the Department of Justice and the Federal judiciary. We reported that, under the existing organizational relationship, an unworkable management situation exists which

- prevents the Director, Marshals Service, from effectively managing law enforcement programs assigned by the Attorney General and
- hinders the performance of essential duties necessary to the operation of the judicial process.

The report recommended that the Attorney General and the judiciary take specific administrative actions to resolve these problems. The report also recommended that the Congress take legislative action to correct these problems if our recommended administrative remedies are not acted upon. 1/

1/It should be noted that the Department of Justice, while acknowledging that management problems exist, strongly believes that inadequate funding, not separate lines of authority, is the cause of these problems.

This management problem also has an effect on the operation of the National Prisoner Transportation System and the service of civil process. This report, however, examines these two specific functions from strictly an operational perspective. The problems discussed in this report concern deficiencies which currently exist and will persist under any organizational structure unless corrective action is taken.

OBJECTIVES, SCOPE, AND METHODOLOGY

Senator Max Baucus' request asked for an evaluation of several Marshals Service functions. In accordance with discussions with his office, questions 2 and 5 (see app. I) were not pursued because preliminary information indicated no further review was warranted. To address the remaining five questions, our review focused on the following objectives: (1) how U.S. marshals' ability to accomplish their missions and utilize resources is affected by their being subject to two branches of Government, (2) what can be done to improve the efficiency of prisoner movements between judicial districts and the service of civil process, and (3) how effectively does the Marshals Service handle the Witness Security Program. This report deals with the second objective and was performed in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

This report is based upon audit work performed at the Marshals Service's headquarters, Tysons Corner, Virginia; the Marshals Service's Prisoner Transportation Division, Kansas City, Missouri; and 11 Federal judicial districts. U.S. marshal offices were selected to give our review a broad sampling of districts with differing prisoner movement workloads and different policies with regard to using certified mail to serve civil summonses. In seven districts--eastern Virginia, Maryland, southern Ohio, eastern Kentucky, eastern Louisiana, southern Texas, and central California--we performed detailed audit work relating to the districts' efforts to coordinate the movement of prisoners and schedule trips. In the above seven districts and in the western district of North Carolina, we performed detailed audit work relating to methods of serving civil process and the effectiveness of process service. In the southern district of California detailed work was performed relating to the transportation of Federal prisoners. In addition, limited audit work was also performed in the southern district of Florida and the District of Columbia.

As part of our review in the districts, we

--observed and evaluated operations and practices relating to coordinating prisoner movements and serving civil process;

--interviewed U.S. marshals, marshal personnel, Federal judicial officers, and attorneys, as well as private, State, and local personnel involved with the service of judicial process; and

--interviewed U.S. marshals, marshal personnel, Federal judicial officers, and attorneys regarding prisoner transportation policies and operations.

Additionally, at the Marshals Service headquarters, we

--analyzed procedures and operating policies of the National Prisoner Transportation System;

--identified and analyzed Federal laws, rules, and regulations applicable to safe prisoner movement and methods of serving process;

--evaluated specific, detailed information for a randomly selected sample of prisoner movements on commercial flights; and

--assembled and evaluated overall management statistics relevant to coordinated prisoner movements and process service.

To obtain a broader perspective of district operations, the Director, Marshals Service, sent a questionnaire at our request to all marshals in the continental United States. Eighty-five of the 88 marshals responded to a variety of questions concerning operations in their district. The questions related to the district's staffing and policies, workload priorities, warrant execution, courtroom security, prisoner transportation, civil process service, and the Witness Security Program.

CHAPTER 2

THE SERVICE OF CIVIL PROCESS: LEGISLATIVE AND PROCEDURAL CHANGES NEEDED

Process is a general term for written directions (writs) issued by the courts to notify and/or compel certain actions during the progress of litigation. The manner in which civil process is served is governed by the Federal Rules of Civil Procedure. 1/ Marshals, since 1789, have served and executed process and other writs when directed by the court. Marshals serve the process of Federal agencies without charge, but private litigants in civil cases, except those declared indigent by the court, must pay a fee and the mileage costs incurred by marshals in serving the process. Fees are set by statute and vary by the type of process served. Because the fees charged for serving civil process for private litigants in Federal courts have not been changed significantly in over 180 years, the Government is not recovering its cost. As a result, in fiscal year 1980 the Federal Government subsidized private litigants in civil proceedings at a cost of between \$2 and \$4.7 million. We believe that the law should be amended to (1) eliminate this subsidy by giving the Attorney General the authority to periodically revise the fees and (2) require the fees to be established at a level that will enable full recovery of actual operating costs (exclusive of the costs incurred to serve process for indigents).

Judicial rules governing the manner in which process can be served also contribute to uneconomical and inefficient operations. The existing rules contribute to marshals being excessively involved in the service of most civil process and hinder the routine use of the mails to serve process. Modification of the judicial rules could reduce the use of Federal resources without hampering the Federal district courts' operations.

THE COST OF SERVING CIVIL PROCESS IS NOT BEING RECOVERED

Civil process can be initiated by the Federal Government or by private parties (individuals, partnerships, or corporations). In fiscal year 1980, marshals received over 800,000 (401,000 private) separate pieces of process and successfully served over 670,000 of them. Of the pieces served, about 353,000, or 52 percent, were civil process initiated by private parties. There are numerous types of civil process; however, the majority served by marshals fall into two categories:

1/The Federal Rules of Civil Procedure are judicially established guidelines delineating procedures related to the conduct of civil litigation.

--Summons and complaint: A written notification from the court directing a response to allegations contained in a complaint.

--Subpoena: A written notification commanding the appearance of an individual and/or the production of specified items.

The fees marshals charge for serving process are set by statute and have not been changed significantly in over 180 years. In 1799, the Congress established a fee of \$2.00 for serving writs and \$.50 for serving subpoenas. A rate of 5 cents a mile was also allowed. In 1962, Public Law 87-621 (28 U.S.C. 1921) increased the basic fees to their current level: \$3.00 for serving writs and \$2.00 for serving subpoenas, plus 12 cents a mile. 1/ Private litigants are charged this fee by marshals for serving their civil process unless they are determined by the court to be indigent. The Congress currently has two bills under consideration (H.R. 3580 and S. 951) which would, among other things, authorize the Attorney General to periodically establish fees for serving process to recover marshals' expenses.

According to the Senate Report recommending passage of the 1962 process fee statute, marshals did not receive salaries at the time these fees were originally established by the Congress. Instead, they and their deputies were compensated by receiving a percentage of the process fees they collected. The excess of the fees collected over the amounts retained by marshals and their deputies was used to defray office expenses or was deposited in the U.S. Treasury. As a result, the serving of process for private litigants cost the Government little or nothing.

Today, however, marshals are paid salaries, and the fees are not sufficient to recoup the full cost of serving civil process for private litigants. Consequently, taxpayers now subsidize the difference between the cost of serving civil process for private litigants and the fees paid. For example, in fiscal year 1980, the average piece of process (both criminal and civil) cost the Marshals Service \$8.08 to serve in direct labor alone, 2/ while the largest fee allowed by 28 U.S.C. 1921 (excluding mileage costs) for civil process is \$3.00.

1/Litigants are not charged mileage fees in the District of Columbia.

2/The Marshals Service collects data on the total amount of labor devoted to serving all process, both criminal and civil. No breakdown of labor devoted solely to civil and criminal process is maintained.

The following table shows that during fiscal year 1980 the Government lost between \$2 and \$4.7 million as a result of serving about 353,000 pieces of civil process for private litigants. This loss represents the amount which taxpayers subsidized private litigants. The lower estimate includes only direct labor costs and does not include employee benefits costs, supervisory costs, overhead, or automobile expenses not covered by the current 12 cents a mile rate. ^{1/} The upper estimate is based on a cost estimate (\$15.80) made by the Marshals Service for serving private civil process. It includes not only direct labor, but also other costs such as transportation and overhead.

	<u>Fiscal year 1980</u>	
	(note a)	
	<u>Average</u> <u>cost of \$8.08</u>	<u>Average</u> <u>cost of \$15.80</u>
Estimated cost of serving process	\$2,852,000	\$5,577,000
Estimated fee collections (note b)	<u>883,000</u>	<u>883,000</u>
Estimated loss to the Government	<u>\$1,969,000</u>	<u>\$4,694,000</u>

a/Costs are rounded to the nearest thousands.

b/The Marshals Service does not maintain information on actual process fees collected by type of process served. This estimate of fees collected is based on an average of \$2.50 per piece served and does not include mileage fees collected. It is the simple arithmetic average of the \$3.00 fee for summonses and the \$2.00 fee for subpoenas. The estimate for fees collected is rounded to the nearest thousand.

Since 1962, when fees were last adjusted, the average deputy marshal salary has increased by 187 percent, and the number of civil cases filed in Federal district court has increased by 173 percent. As long as the fees are far below the cost of serving process, continued increases in salaries and operating costs will perpetuate the subsidy to private litigants at the expense of taxpayers.

^{1/}Government employees are currently reimbursed at a rate of 20 cents a mile for using their private vehicle on official business.

PROCEDURAL RULES GOVERNING
SERVICE OF CIVIL PROCESS
SHOULD BE REVISED

Marshals are excessively involved in the service of routine civil process. The general Federal rule governing all service of civil process needs to be revised to decrease the level of marshal involvement in this function and improve the efficiency of process service methods.

Marshals' involvement in serving
civil process is excessive

Federal civil process is served in accordance with the Federal Rules of Civil Procedure. Rule 4 is the general rule which governs the manner of serving all civil process. Until August 1, 1980, the rule, with few exceptions, required that all process was to be served by a marshal or by some person specially appointed by the court. It also stated that the special appointment should be made freely when substantial savings in travel costs would result. Rule 4 also stated that service of civil subpoenas could be made in accordance with Rule 45. Rule 45 provided that a marshal, or any person who is not a party to the civil action and is at least 18 years of age, could serve subpoenas. Thus, both rules permitted persons other than marshals to serve civil process. Further, Rule 4 did not place any restrictions on whom could be specially appointed, and, as stated earlier, Rule 45 only required that a person be at least 18 years of age and not a party to the litigation.

Rule 4 was amended, effective August 1, 1980, to broaden the range of people with blanket authorization to serve Federal civil process and to enhance the ability of the Federal courts to specially appoint persons to serve civil process. Under the amendment, civil summonses and complaints can be served by all persons authorized under State law to serve process (i.e. under the laws of the State where the district court is located). Generally, this means that State sheriffs and constables are now authorized to serve Federal civil process. In addition, the amendment eliminated the need to consider substantial savings in travel expense as a factor in making special appointments to serve civil process. As amended, Rule 4(c) simply provides that special appointments to serve process shall be made freely.

In addition to the above effort to broaden the use of persons other than marshals to serve civil process, the Congress, over the last 2 years, has considered several bills which would have greatly reduced the involvement of marshals in serving civil process. For example, during the 96th Congress, S. 2377 and H.R. 4272 contained provisions that would have precluded marshals from serving private civil process on behalf of any party other than the United States unless (1) ordered by the court in extraordinary

circumstances, (2) persons were determined by the court to be indigents, or (3) service by marshals was specifically required by statute. The Judicial Conference did not support these particular bills because satisfactory alternative methods of serving process did not exist in all jurisdictions. Furthermore, an official of the Administrative Office of the U.S. Courts told us that there was concern about whether the routine use of marshals to serve civil process, in districts which did not have established private process servers in business, would constitute an "extraordinary circumstance" under the proposed legislation.

Congressional consideration of this matter has continued in the 97th Congress. For example, two bills (H.R. 3580 and S. 951) have been introduced which would amend the basic statutory authority of the courts (28 U.S.C. 569(b)) to direct marshals to serve civil process. These bills would reduce the involvement of marshals in the service of private civil process by requiring that marshals serve civil process for private litigants only if the court authorized service on the basis of indigency or if the court issued an order concluding that marshals are needed to properly effect service. These bills would also authorize the Attorney General to periodically establish fees for serving process to recover marshals' expenses. An official of the Administrative Office of the U.S. Courts told us that these bills are supported by the Judicial Conference.

Despite the amendment to Rule 4 and the congressional attempts to enact legislation which would relieve marshals from serving private civil process, marshals continue to serve almost all civil process. During the first 4 months of fiscal year 1981, marshals served civil process at about the same rate as in fiscal year 1980 before the change to Rule 4 took effect. Furthermore, a Marshals Service official told us that the amendment had not substantially reduced marshals' involvement in the service of private civil process.

Although the courts have wide latitude to make special appointments for the service of process, this authority is not used extensively. The amendment to Rule 4 attempted to reduce the civil process service workload of marshals by trying to shift a part of the workload to State and local sheriffs. We believe it will be difficult to achieve such a shift because sheriffs' fees, like marshals', are often established by State law and are below the cost of the service rendered.

We contacted 12 sheriff and constable offices in eight Federal judicial districts to ascertain the fees they charged for serving process. The fees charged ranged from \$1.00 to \$12.00 and averaged \$4.65. Six of the 12 offices also indicated they charged for mileage. Coincidentally, the three offices charging the highest fees (\$10.00 and \$12.00, \$8.50 plus \$.70 a mile, and \$8.50) were the only offices that specifically indicated

a willingness to serve Federal process. Seven of the nine other offices stated their fees did not cover the cost of service, while the remaining two offices did not comment on this issue. We also contacted 11 private process servers in three districts. Their fees ranged from \$5 plus \$.70 a mile to \$45. As long as Rule 4 continues to provide blanket authorization for marshals to serve all civil process and the fees for this service remain low, litigants will have little incentive to use private process servers.

Using marshals to routinely serve civil process that does not require a law enforcement presence is costly and prevents private enterprise from performing a function it could be authorized to conduct. We believe the courts should always have the ability to direct marshals to perform this function if they deem it necessary to ensure that the litigative process is successfully accomplished. However, if the involvement of marshals in the process serving function is to be reduced, further refinements to Rule 4 are necessary.

Procedural rules promote inefficient service

Rule 4 also inhibits the routine use of certified mail to serve a specific type of civil writ--summons and complaint (summons). As previously stated, a summons is a written notification from the court directing a response to allegations contained in a complaint. Although Rule 4 favors in-person service of summonses, it does allow the service of summonses by certified mail if such method is authorized under State law. However, most district marshals do not routinely use certified mail to serve summonses because most States do not specifically authorize this type of service in their statutes. In the three districts we visited that routinely utilized this practice, we found certified mail to be an effective and efficient method of serving summonses which did not hamper court operations.

Summonses account for about 50 percent of all civil process served by marshals. Rule 4 provides the basic guidance concerning the manner of serving summonses. For private parties (individuals, business concerns, and unincorporated associations), some form of in-person service is generally required. ^{1/} However, subsection (d)(7) of Rule 4 also allows summonses to be served to the above-mentioned private parties in any manner prescribed by an applicable law of the State in which the Federal district

^{1/}Under Rule 4 infants and incompetent persons are to be served in a manner prescribed by the law of the State where service is made.

court is located. According to Marshals Service information, 12 States have statutes which allow the routine use of certified mail to serve civil summonses. Because the other States do not have such statutes, the primary method of serving summonses differs among districts. As a result, about 75 of the 95 Federal judicial districts routinely require deputies to personally deliver summonses. The remaining districts use mail to varying degrees as the initial method of serving process. Information available at Marshals Service headquarters for the 95 districts indicates that the use of mail to serve all types of process ranged from over 74 percent in one district to no use of mail in 3 districts. Overall, the Marshals Service uses mail to serve 17.5 percent of its total process.

To analyze the efficiency of using certified mail to serve process, we stratified the 95 districts into three groups by the percentage of process the district served by mail. The table below was compiled by evaluating Marshals Service data for the period October 1979 to August 1980. The table indicates that the increased use of certified mail to serve process will reduce the average amount of resources devoted to this function. The Marshals Service collects data only on the aggregate use of mail to serve process, not on the type of process being mailed. Consequently, the data includes not only civil summonses but also process sent to State and Federal agencies and jury notices which can be mailed in almost every State. Although the data depicted below relates to all process served by mail, we believe it is representative of the resource savings that are possible if all districts were given the opportunity to serve civil summonses by certified mail.

<u>Number of districts</u>	<u>Percentage range of mail usage</u>	<u>Average percent of process served by mail</u>	<u>Staff hours per piece served</u>		
			<u>Operational</u>	<u>Administrative</u>	<u>Total</u>
32	0 - 5.5	3.16	.823	.362	1.185
32	5.9 - 17.2	10.74	.771	.324	1.095
31	19.0 - 74.4	35.71	.735	.315	1.050

We reviewed in detail marshals' efforts to serve civil summonses for eight districts. Three of the eight districts routinely served civil summonses by certified mail. The other five districts generally required in-person service of civil summonses. Judges, magistrates, and clerk of the court personnel (21 individuals) in the five districts not using certified mail expressed mixed views to us about this manner of service. Thirteen of these officials generally did not favor this manner of service, and eight officials were either not averse or were willing to use

this method. The reasons given to us for opposing the use of certified mail to routinely serve civil summonses were related to concerns about the adequacy of service:

- People would not accept the certified mail.
- The United States Postal Service was unreliable and unaccountable to the courts.
- In-person service better portrayed the importance of the summons.

We found that these perceived operating problems had not materialized in the three districts that were routinely serving civil summonses by certified mail. These three districts routinely use certified mail for the initial attempt to serve a civil summons. If the initial attempt to serve the summons by certified mail proved unsuccessful, all three districts used followup in-person service. We found that the success rate when using certified mail was about 80 percent on initial attempts to serve process. When used in conjunction with followup in-person service, these three districts returned only 5.1 percent of their total process to the court unserved during the period October 1979 to August 1980. This rate compares very favorably with the Marshals Service's overall rate for unserved process of 10 percent for the same period.

In these three districts, judges, magistrates, U.S. marshals, clerk of the court personnel, and U.S. attorney personnel had favorable perceptions of the effectiveness of certified mail for serving summonses. In all, 21 persons told us that certified mail was an effective and efficient means of serving civil summonses. 1/ They gave the following reasons why they believed certified mail was effective:

- U.S. marshals and Marshals Service personnel stated that certified mail substantially reduced the amount of marshal resources needed to serve process.
- U.S. attorneys, clerk of the court personnel, judges, and magistrates stated that using certified mail to serve process did not have any negative impact on court operations.

Thus, actual usage and experience indicates that service of summonses by certified mail has been successful and effective.

1/Two persons we interviewed told us that they did not have enough experience with the use of certified mail to formulate an opinion.

We also found that some disagreement exists among judges about who could properly accept the summons served by certified mail. When using certified mail to serve process under Rule 4 (d)(7), the authorizing State statute is referred to for delineation of which person(s) in a household can properly accept the process so that it constitutes proper service. These statutes, however, do not always address this concern. For example, the Ohio State law permits the use of certified mail to serve civil process, but it is silent on the issue about who can sign for receipt of certified mail. In contrast, the North Carolina State law specifies that the summons and complaint served by certified mail must be addressed and delivered to the party being served.

The most conservative approach to this issue is to require that the addressee sign the certified mail receipt. Although not specifically required by Ohio State law or Federal court rules, the U.S. marshal for the southern district of Ohio follows the conservative practice and has found this method of service to be effective. One judge in another district had a different view. He told us that he would consider service of a civil summons by certified mail to be acceptable if it could be substantiated that someone in the addressee's household signed a certified mail receipt for the process. Thus, to clear up any potential inconsistencies, we believe that any modification to Rule 4 to broaden the routine use of certified mail should also specify what constitutes proper service of process.

Despite the potential advantages of using certified mail, we recognize that there are circumstances in which in-person service of a summons might be preferable. For example, if service is to be made to a person whose last known address appears to be inaccurate or outdated and additional work might be necessary to locate the person, in-person service rather than service by certified mail might be the most prudent approach.

Even in these situations, however, we found that the initial effort to serve civil summonses by certified mail could result in substantial resource savings. For example, one district we reviewed had used certified mail in its initial attempt to serve summonses to a group of persons who had defaulted on student loans. The defaults had occurred several years before efforts were made to serve the summonses, and the persons' last known addresses were over 5 years old in some cases. Even so, summonses were successfully served to 50 percent of these persons. Thus, to the extent that the use of certified mail reduces the amount of in-person service to any group of litigants, deputy marshals will be more efficiently utilized. Consequently, we believe that all districts should have the opportunity to routinely use certified mail to serve civil summonses whenever feasible.

CONCLUSIONS

Federal law pertaining to fees charged for serving process for private litigants in Federal court and Federal judicial procedures governing the manner of serving process need to be changed. Appropriate changes could reduce Federal costs and marshals' involvement with the process serving function.

- Existing process fees have been adjusted infrequently, and consequently do not allow the Government to recover the costs of serving process for private litigants. In fiscal year 1980, the Government's fee revenue was between \$2 and \$4.7 million short of its cost.
- Although Rule 4 has been changed recently to broaden the range of persons with blanket authorization to serve Federal process and the ability of the courts to specially appoint persons to serve process, these changes have not had a significant impact. Marshals continue to serve most civil process. Furthermore, Rule 4 restricts the routine use of an effective and more efficient method of serving civil summonses--certified mail.

The rules of procedure recognize that marshals do not need to serve most civil process. However, because existing fees are set far below the cost of service, and judicial rules provide blanket authorization for marshals to serve all civil process, marshals continue to be excessively involved in this function.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress

- revise 28 U.S.C. 1921 to give the Attorney General authority to periodically revise the fees that marshals charge for serving civil process for private litigants in Federal court and
- require that the established fees provide full recovery of marshals' actual operating costs to serve private civil process exclusive of the costs incurred to serve process for indigents. (See app. XIII.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

We recommend that the Judicial Conference develop amendments to Rule 4 of the Federal Rules of Civil Procedure which would

- require that civil process be served by persons specially appointed or approved by the courts to perform this function, except in those situations when service of process by marshals is specifically required by law (e.g. in forma pauperis) or is deemed necessary by the courts and
- authorize all Federal judicial districts to use certified mail as one of the methods of serving summonses and complaints except when service is to be made to an infant or an incompetent, and designate the person(s) who may properly sign for the receipt of such process.

CHAPTER 3

THE COSTS AND DANGERS OF FEDERAL PRISONER MOVEMENTS CAN BE REDUCED

As officers of the Federal courts and the Department of Justice, marshals are responsible for transporting Federal prisoners to meet judicial and prison system needs. To assist in fulfilling this responsibility, the Marshals Service established the National Prisoner Transportation System to centrally coordinate and consolidate interdistrict prisoner movements so that Federal prisoners are moved in the least costly manner and the public is afforded the greatest protection. While the National Prisoner Transportation System has improved the economy and efficiency of prisoner transportation, the Marshals Service has still not used it to its full potential because of management shortcomings. As a result, excessive costs are incurred to move prisoners on commercial flights, and the public is exposed to potential safety risks.

NATIONAL PRISONER TRANSPORTATION SYSTEM: A CENTRALIZED METHOD TO MOVE PRISONERS

The Marshals Service established the National Prisoner Transportation System in 1979 to coordinate the movement of prisoners in response to judicial and prison system needs. The System consists of a regularly scheduled contract airlift, the Federal Prison System's buses, and the Marshals Service's fleet of vans and automobiles. The airlift is a key component of the System because it allows for the timely and economical movement of prisoners over long distances.

The airlift operates along two main coast-to-coast routes which are usually alternated each week. (See the map on p. 17.) For example, one week the airlift flies round trip, coast-to-coast on the northernmost route and the next week flies round trip on the southernmost route. Thus, all points along both airlift routes are generally serviced in both directions at least once every 2 weeks. The airlift pickup points are located close to Federal Prison System institutions. As the map indicates, the majority of institutions are served by the existing airlift routes.

The Federal Prison System also operates six bus routes which augment the airlift. With the exception of McNeil Island in Washington, these buses service those institutions that are not currently covered by the airlift. At the time of our fieldwork, because neither the airlift nor the buses routinely stopped at McNeil Island, prisoners leaving or destined for this institution generally had to be flown on a commercial flight. Although usually fixed in nature, both the airlift and bus routes can be altered to meet movement requirements. The Marshals Service's

CONTRACT AIRLIFT ROUTES AND FEDERAL PRISON SYSTEM INSTITUTIONS (note a)

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a/ The airlift routes depicted above were the routes in existence at the time of our fieldwork. Subsequent to our work, these routes were slightly altered and a smaller, separate airlift route, covering the western part of the country, was added.

vans and automobiles are also used to transport prisoners to air-lift and bus pickup points and over relatively short distances.

The Marshals Service's Prisoner Transportation Division located in Kansas City, Missouri, is responsible for coordinating interdistrict prisoner movements by utilizing these transportation components. The System receives movement requests from all the district marshal offices and the numerous Federal Prison System institutions. Trip coordinators handle the day-to-day scheduling of prisoner movements. Each coordinator is responsible for movements originating in a specific geographical area. In fiscal year 1980, System personnel coordinated the movement of over 36,000 prisoners.

Prisoner moves are scheduled on existing transportation components by evaluating a prisoner's destination and present location, type of movement, deadline date for the move, previously scheduled prisoner movements, and the availability of the System's transportation components. When a trip coordinator selects a mode of transportation, a specific district marshal is assigned responsibility for the prisoner movement. The assigned district marshal forwards a proposed itinerary to the trip coordinator. The itinerary lists cost estimates of the movement, such as overtime and per diem, and the proposed time frames and personnel assigned to the move. This information enables the trip coordinator to ascertain whether the trip conforms to cost-effectiveness guidelines. If the itinerary is found acceptable, the prisoner movement is authorized.

When the existing transportation components cannot meet a particular need to move a prisoner, a commercial flight is normally utilized. In fiscal year 1980, the Marshals Service transported about 2,800 prisoners on commercial flights. The Marshals Service relies on commercial flights as its last alternative when selecting a mode of transportation because it is the most costly and inefficient way to move a prisoner and subjects the public to potential harm from criminals.

Available Marshals Service data for fiscal year 1980 indicates that the average cost to transport a prisoner on a commercial flight was about \$800, while the contract airlift average cost was about \$170 a prisoner. The 2,800 prisoners moved by commercial flights in 1980 represented only 7.7 percent of the prisoners moved by the System; however, they accounted for an estimated 40 percent, or about \$2.2 million, of the total System expenses of \$5.3 million. ^{1/} The following example illustrates

^{1/}The Federal Prison System does not break down financial information related to the cost of operating buses solely for the National Prisoner Transportation System. Consequently, this estimate does not include bus transportation costs.

the cost savings offered by the airlift. A prisoner located in the southern district of California was moved to the eastern district of Virginia on a judgment and commitment order by a commercial flight. The commercial airfare cost for two guards round trip and one prisoner one way was over \$1,000, while the cost to transport this prisoner on the contract airlift would have been only about \$170.

The airlift also provides advantages in terms of utilization of personnel. Only four deputy marshals and a physician's assistant staff the airlift which can carry up to 44 prisoners, while the Marshals Service's policies state that each trip on a commercial flight must employ a minimum of two guards. For each additional prisoner moved on a flight one additional guard is required.

Marshals Service officials believe the use of commercial airlines is undesirable because it presents safety risks to the public. For example, about 85 percent of the U.S. marshals responding to an August 1980 questionnaire said that using commercial airlines to transport prisoners presented safety risks. In this regard, we found, on the basis of a sample 1/ of all prisoners flown on commercial flights during the first 5 months of fiscal year 1980, that 65 percent were classified as maximum security risks. Because the Marshals Service's prisoner transportation policies state that prisoners cannot be routinely shackled during a commercial flight, a potential danger to the public exists when commercial flights are used extensively to move maximum security prisoners.

Although no serious security problems have occurred, a number of minor incidents have taken place. For example, we analyzed the U.S. marshals' responses to our August 1980 questionnaire and found that

- at least six prisoners briefly escaped or attempted to escape before takeoff of a commercial flight or while in a public terminal;
- a prisoner locked himself in an airplane's restroom and threatened to set the plane on fire; and
- numerous other prisoners created such a commotion before boarding the airplane that airline officials refused to allow them to board.

1/The sample was randomly selected and represents about 8 percent of all prisoners flown on commercial flights during this time period. The data presented has a confidence level of 90 percent with a sampling error of ± 10 percent.

Opportunities exist to more fully utilize existing transportation components and reduce the use of commercial flights. For instance, the contract airlift flies at an average 65 percent capacity and about 75 percent of the prisoners it moves do not have urgent movement needs. Thus, even when segments of the airlift's route are full, adequate flexibility exists to replace prisoners who have less urgent movement needs with prisoners who have time-critical needs. Better management of the transportation system can reduce both the costs and dangers to the public associated with moving prisoners.

BETTER MANAGEMENT AND MORE
EFFICIENT UTILIZATION OF THE
NATIONAL PRISONER TRANSPORTATION
SYSTEM IS POSSIBLE

The formal establishment of the National Prisoner Transportation System is the gradual result of attempts by the Marshals Service to make Federal prisoner transportation more effective and efficient. According to Marshals Service officials, before 1969, each marshal district acted autonomously with regard to prisoner movements. If a district had to move a prisoner cross country, the movement was made without consulting or coordinating with surrounding districts. In 1969, an initial procedure to coordinate movements was established. However, the primary transportation modes at that time were buses and cars. This proved to be time-consuming and inefficient. Therefore, the National Prisoner Transportation System, which relies on both a charter aircraft and ground transportation, was developed. Thus, a framework has been established to centrally control and coordinate prisoner movements.

Opportunities exist, however, to move prisoners more efficiently through more effective management of the System. For instance, we found

- no formal procedure exists for trip coordinators to prioritize prisoner movements when scheduling trips;
- information about prisoner movements is often vague or unavailable, and routine communication does not exist among district marshal personnel and prosecutors regarding prisoner movements; and
- trip coordinators do not critically evaluate proposed prisoner movements for logistical reasonableness.

These deficiencies allow inefficient prisoner movement trips to be made while more efficient transportation components are underutilized. This causes an unnecessary reliance on more costly commercial flights and needlessly exposes the public to potential danger.

Procedures for prioritizing prisoner movements should be part of the trip scheduling process

Federal prisoners are moved between judicial districts for a variety of reasons such as to be prosecuted, to testify, to receive emergency or specialized medical treatment, or to serve their sentence in a prison located in another district. Not all prisoner movements require expeditious action. For example, court orders committing individuals to specific prisons usually do not require urgent movement. Likewise, the transfer of inmates between Federal Prison System institutions is not usually an urgent matter. On the other hand, court orders to produce a prisoner for prosecution or to testify usually involve specific dates and can be time-critical. According to a Marshals Service official, the following three specific types of movements are considered low priority, and prisoners generally should not be moved on commercial flights under these circumstances:

- Judgment and commitment: An order committing a prisoner to serve a sentence.
- Federal Prisons System transfer: A request to move an inmate from one institution to another.
- Return writ of habeas corpus: An order returning a prisoner to his/her original institution after completing a specified judicial purpose.

Although these types of movements have been recognized as being low priority, no procedural guidance has been given trip coordinators specifying how this designation relates to the trip scheduling process decision. As a result, trip scheduling decisions are made by trip coordinators which do not represent the most efficient method of moving prisoners.

We found that prisoners without urgent movement deadlines were being flown on commercial flights even though the Marshals Service views this mode of transportation as its last alternative. Our examination of all prisoner movements 1/ on commercial flights between October 1979 and March 1980 showed that 11 percent of the prisoners moved were considered by the Marshals Service to have a low-priority need to move. Thus, they did not have urgent move-

1/Medical and security transfers, movements involving juvenile prisoners, and trips outside the continental United States or outside the System's capability were excluded from our analysis. We excluded trips of this nature because these situations could justify prisoners being flown on commercial flights even though the movement's purpose was designated a low priority.

ment needs and probably should have been moved by existing transportation components of the National Prisoner Transportation System. For example:

--A prisoner was moved on a return writ of habeas corpus by a commercial flight from the western district of Virginia to the southern district of California. The commercial flight was authorized by a trip coordinator on October 26 and was taken on November 2. The contract airlift left the eastern district of Virginia on October 31 and arrived in the central district of California on November 2. If the contract airlift had been utilized, routine van movements between the western and eastern districts of Virginia and the central and southern districts of California could have completed this trip at less cost to the Government.

--A prisoner located in the southern district of California was moved to the eastern district of Virginia on a judgment and commitment order by a commercial flight. A trip coordinator authorized the commercial flight on November 27, and the movement was made on December 2. On December 4 the airlift left the central district of California and arrived in the eastern district of Virginia the next day. A routine van movement from the southern district of California to the airlift takeoff point in the central district of California would have allowed this movement to occur in about the same time and at less cost to the Government.

Accurate and timely information
about prisoner movements is needed

The date when a prisoner must be delivered is one of the most critical pieces of information needed to properly use the System's existing transportation components. Also, the longer the time between the receipt of a prisoner movement request and the deadline date for that movement, the better the chance that a trip coordinator will be able to schedule the movement on a System component rather than on a commercial flight.

At the time of our fieldwork, the Marshals Service had not established comprehensive formal procedures or given adequate guidance to the district marshals regarding their responsibilities in (1) submitting prisoner movement information, (2) obtaining this information, or (3) understanding its importance. As a result, trip coordinators are forced to make scheduling decisions without knowledge of all pertinent facts, and opportunities for marshals to provide trip coordinators with longer lead times are lost.

We found that only 50 percent of the prisoners transported in our sample of commercial flights (see footnote on p. 19) had deadlines specified by the district submitting the movement request. For the remaining 50 percent, the need for the movement was described in vague terms such as "forthwith" (12 percent), "as soon as possible" (20 percent), and "soon" (1 percent), or no deadline information was submitted at all (17 percent). Thus, information vital to trip coordinators in their decision-making process was not available for half of the prisoners moved on commercial flights.

The meanings of terms such as "forthwith" and "as soon as possible", although indicating a sense of urgency, do not provide concrete information about actual movement time frames for trip coordinators to use in scheduling trips. We examined the prisoner movements in the above sample that were designated "forthwith" or "as soon as possible" and found that 30 percent of these moves actually were low priority and did not have urgent movement requirements. The 30 percent was comprised of prisoners moved on judgment and commitment or return writ of habeas corpus orders.

As mentioned previously, the failure to prioritize various types of prisoner movements can lead to excessive use of commercial flights. Vague or missing information about prisoner delivery deadlines can have the same effect. Compounding this problem, we found evidence that in one of the seven districts we reviewed, personnel sometimes created arbitrary deadline dates for a movement rather than attempting to establish reasonable dates on the basis of actual judicial necessity.

A major cause of inadequate information being submitted to trip coordinators results from the poor communication that exists in the districts between the Marshals Service's personnel and Federal prosecutors whose daily operations generate the need to move Federal prisoners. The Marshals Service has failed to give district marshals adequate guidance on how the System is supposed to operate. District marshals are almost always reactive to court demands resulting in prisoner movements. Information supplied to us by 85 U.S. marshal district offices showed that 84 percent merely wait until they are handed a court order before notifying System officials about prisoner moves.

Better communication can increase movement planning time and increase the chances of utilizing existing transportation components to move prisoners. At times, prosecutors know their future prisoner movement requirements and could advise marshals well in advance of the movement deadline. In addition, court calendars and dockets could also be checked by marshal personnel to determine and confirm prisoner movement needs. By marshals and attorneys working together to assess upcoming prisoner movement needs, opportunities will become available to enhance the effectiveness

of the airlift and reduce the use of commercial flights. For example:

--System officials were given only 6 days to move a prisoner cross country to a judicial proceeding. This short deadline could be met only through the use of a commercial flight. In this instance the case had been set for trial 70 days before System officials were notified of the need to move the prisoner. The responsible Marshals Service official told us that he believed that earlier notification would have eliminated the need to utilize a commercial flight.

--System officials were given an 8-day deadline to transport a prisoner halfway across the country. As a result, this prisoner, who had previously been convicted of first degree murder, had to be transported by a commercial flight. In this case, attorneys knew of the need to move the prisoner 34 days before notification was given to System officials.

We believe the use of commercial flights could be reduced if better communication existed between marshal personnel and prosecutors. Better communication among the principal parties can increase the efficiency of prisoner movements.

Critical oversight of proposed trip plans needs to be implemented

As previously discussed, the district tasked with handling a prisoner movement forwards a proposed itinerary for the movement to the trip coordinator. With the itinerary, the trip coordinator is in a position to evaluate the logistics of a scheduled trip. We found, however, that only a cursory review of trip itineraries is being made. Although Marshals Service officials admitted to us that commercial flights have been used unnecessarily, they have not developed procedures or benchmarks for trip coordinators to use in assessing trip itineraries. For example, trip coordinators do not routinely use a road atlas, airline guide, or per diem chart when reviewing trip itineraries. Thus, they have a limited basis to evaluate itineraries for cost-effectiveness--a fundamental operating concept and a specific goal of the Marshals Service's National Prisoner Transportation System. As a result, inefficient trips are being approved.

--In one district, during a 6-month period, eight commercial flights were taken which were inefficient from a cost-effectiveness standpoint. As scheduled,

these trips required unnecessary overtime and per diem. Seven other flights also appeared questionable from a cost-effectiveness standpoint, but data could not be obtained to document the inefficiencies. There was no indication that any of these trips were ever questioned by a trip coordinator. Other logistical problems surfaced while evaluating these trips. For instance, 2 of the 8 trips had prisoners who missed their established deadlines, and another trip violated existing safety regulations by transporting 3 prisoners considered maximum security risks on one flight. 1/

--A trip itinerary which was submitted by a U.S. marshal and which was approved by a trip coordinator appeared to have been manipulated for the marshal's convenience. We referred this matter to GAO's Fraud Prevention Group who referred it to the Department of Justice. The Marshals Service's Office of Internal Investigations found the marshal culpable. Subsequently, in September 1981, the marshal resigned under pressure from the Department.

Additionally, without clear procedures and benchmarks to assess proposed itineraries, it is difficult for trip coordinators to consider whether it is feasible to use commercial airlines to complement the airlift's operation. Prisoners can be either flown by commercial airlines to airlift pickup points intermediate to their ultimate destination or by the airlift to the point nearest their ultimate destination. From this point a commercial flight can be used to complete the movement. Opportunities exist for such scheduling and can increase the utilization of the more efficient airlift. For example, one prisoner was moved on a judgment and commitment order (a low-priority movement) from Oregon to the southern district of Indiana by a commercial flight. This same movement could have been accomplished in about the same time and at less cost to the Government by flying this prisoner on a commercial flight from Oregon to Los Angeles to meet the airlift. Six days were available to move the prisoner from Oregon to Los Angeles before the airlift departed.

Poor evaluations of proposed prisoner movements allow trips of the type described above to occur. Procedures are needed to ensure that trip coordinators critically assess proposed trip itineraries and movement alternatives.

1/Federal Aviation Administration regulations (14 Code of Federal Regulations 121.584) state that no more than one person considered dangerous should be carried on a plane.

CONCLUSIONS

Opportunities exist to better utilize the National Prisoner Transportation System. Several management deficiencies exist in the operation of the System. Procedures are needed to prioritize the various types of prisoner movements, obtain information vital to the effective coordination of prisoner movements, improve communication between key decision points in the movement process, and evaluate proposed prisoner movements. Without these procedures, commercial flights to move prisoners will continue to be relied on too extensively. The continued excessive use of commercial flights will result in unnecessary Government costs and will unnecessarily expose the public to potential danger. Management initiatives can be taken with little or no additional cost to the Marshals Service to correct these deficiencies and enhance the efficiency of prisoner movements by the National Prisoner Transportation System.

RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommend that the Attorney General

- implement a definitive and detailed prisoner movement priority system for trip coordinators to use when scheduling trips,
- gather more specific deadline information for each prisoner movement,
- require U.S. Attorneys' Offices to provide marshal personnel more timely information in order that the maximum amount of lead times are provided trip coordinators when scheduling trips, and
- direct trip coordinators to critically evaluate each proposed prisoner movement for cost-effectiveness.

CHAPTER 4

AGENCY COMMENTS AND OUR EVALUATION

The Administrative Office of the U.S. Courts, the chief judges in the eight districts where we performed extensive audit work, and the Department of Justice commented on our report. (See apps. II, III, and V through XII.) All parties that commented on our recommendation to raise the fees marshals charge to serve private civil process agreed with it. Also, there was general agreement with the other recommendations made in this report. However, the chief judges for the eastern districts of Kentucky, Virginia, and Louisiana took exception to part of the recommendations relating to civil process being served by persons other than marshals and the use of mail to serve summonses and complaints. The chief judge from eastern Kentucky also disagreed with our recommendations to improve the management of the National Prisoner Transportation System.

MARSHALS ARE NOT NEEDED TO SERVE MOST CIVIL PROCESS

The Administrative Office stated that proposed amendments to Federal procedural rules governing the service of civil process by persons other than marshals are currently under consideration and address our recommendations. The Department supported our conclusions that most civil process can be served by persons other than marshals. However, the Department proposed an alternative approach and criticized our evaluation methodology. Five of the eight chief judges agreed with our recommendation, while three judges disagreed stating that process service by persons other than marshals would be unsatisfactory and/or would slow down the judicial process.

The Administrative Office said that the Judicial Conference is considering amendments to Rules 4 and 45 of the Federal Rules of Civil Procedure. The proposed amendment to subsection (c) of Rule 4 states that service of summonses and complaints and subpoenas shall be made by any responsible person who (1) has reached the age of majority, (2) is not a party to the action, (3) is not an attorney of any party to the action, and (4) is registered with the Clerk of the Court. The proposed amendments, which are supported by the Department (see app. IV), also delineate specific instances where marshals would continue to serve process. Primarily marshals would serve process whenever required by law or whenever a court concluded that service by marshals was necessary. Rule 45 would be amended to state that subpoenas could be served by persons authorized to serve summonses and complaints under Rule 4(c). We agree that the amendments to Rule 4 would provide that process should be served by persons other than marshals

unless required by law or deemed necessary by the courts. Thus, the proposed amendments would achieve the purpose of our recommendation.

The Department agrees that marshals are excessively involved in the service of most private civil process and that changes are needed. However, the Department proposed an alternative approach. In addition to supporting the amendments to Rule 4, the Department also supports pending legislation (S. 951 and H.R. 3580, 97th Congress) that would amend a portion of the basic statute (28 U.S.C. 569(b)) governing the duties of U.S. marshals for the courts while at the same time encouraging the adoption of local court rules to facilitate the initial use of alternative methods to serve process. Provided the amendments pending before the Judicial Conference are adopted, the Department's position that the basic legislation governing U.S. marshal duties be amended would seem unnecessary for two reasons.

First, the legislative language contained in Section 10 of S. 951 and Section 2 of H.R. 3580 would accomplish no more than the proposal now pending before the Judicial Conference to amend Rule 4. Essentially both amendments provide that

- marshals will continue to serve process related to cases proceeding in forma pauperis pursuant to 28 U.S.C. 1915 or any other express statutory provision; and
- marshals will serve process pursuant to a court order whenever the court concludes they are needed to properly effect service.

Second, any additions or amendments to the Federal Rules of Civil Procedure have the full force and effect of a Federal law. The Congress has 60 days to review any proposed new rules or changes to existing rules before they take effect. It also should be recognized that the proposed changes are fundamentally procedural in nature. Rather than amending legislation that is over 190 years old and that delineates the basic duties of marshals, we believe a procedural innovation of the type involved here can best be handled through an amendment to the Federal Rules of Civil Procedure. We note that the Federal Rules already cover the matter of service of process by marshals and others.

In summary, the service of judicial process is only one procedural component of the litigation process that is performed in accordance with established rules. As currently structured, these rules provide blanket authorization to marshals to serve all civil process and require special appointments to authorize service by private process servers. These requirements, operating in conjunction with the low statutory fees that can be charged for serving process, keep marshals significantly involved in the

service of private civil process. Thus, to correct this situation, we believe the existing procedures (and the provisions of the statute governing fees) should be amended.

In addition to supporting an alternative approach to reducing marshal involvement in private civil process service, the Department stated that we ignored several important factors in our analysis of the problem. The Department said that our conclusions about the impact of an amendment to Rule 4(c) dated August 1, 1980, was based on an inadequate sample size. This amendment became effective about the same time we completed our fieldwork and, therefore, the courts had no practical experience with its impact. The information presented in the report reflects the information we obtained from local sheriffs and constables operating in the judicial districts we reviewed. It was presented to provide insight about their views on serving Federal civil process. Our conclusion about the ineffectiveness of the amendment in shifting private civil process service away from marshals was made on the basis that marshals were serving civil process in fiscal year 1981 at about the same rate as before the rule change and on a discussion of the amendment's impact with a Marshals Service official who said that the amendment had little effect.

The Department also said that our report does not specifically delineate the types of process for which marshals' involvement should be limited. Specifically, it believes routine, nonenforcement process (i.e., summonses and complaints and subpoenas) can be served by alternative methods and that marshals should continue to serve the types of process which necessitate a law enforcement presence. We agree with the Department and have modified the report to better clarify the situation. (See p. 10.)

Finally, the Department also specifically criticized our report for not fully examining process service alternatives authorized under existing procedural rules. In discussing this matter, the Department referred frequently to an internal study released on October 29, 1981, which was specifically concerned with process service. On the basis of the internal study, the Department states that we underestimated the potential impact of State sheriffs and ignored the possible impact of municipal constables, local marshals, and nonparty, disinterested adults 1/ in reducing marshals' process service workload. We believe these criticisms are not supported by a careful reading of either the Department's study or our report.

1/The Department's internal study used this term primarily to refer to persons employed by private process serving companies.

First, we did not ignore the potential impact that sheriffs and constables have had on the amount of process being served by marshals. (See pp. 8 to 10 and 29.) As we pointed out, the impact of sheriffs and constables has been limited. Second, the Department indicates, on the basis of its study, that 80 percent of the State sheriffs interviewed would serve a limited amount of routine Federal process provided that their actual operating costs were recoverable or their current State fees for serving local process are used. It is important to recognize that the Department's use of the word "limited" is significant. It indicates that, under current conditions, only minimal relief in marshals' process workload can be expected. Our report (see p. 9) shows that marshals are serving substantially the same amount of civil process as they did prior to the August 1980 change to Rule 4 which basically authorized State officials (sheriffs) to serve Federal process.

Furthermore, the Department did not mention other caveats delineated in its study which also temper the Department's assertions. For example, the Department failed to mention that its study concludes that sheriff's fees are usually higher than Marshals Service fees and that State sheriffs would serve Federal process only at a level that would not impede their own operations. These comments indicate that an economic incentive to continue to use marshals to serve process would remain and that serving Federal process will get low priority from sheriffs and constables. We believe these caveats support, rather than refute, our conclusion that the effect of the recent change to Rule 4 has been limited and that marshals continue to serve almost all civil process (a point which the Department does not dispute). The Department's study also included this same general conclusion.

Five of the eight chief judges commenting on this recommendation concurred with the principle of relying to a greater extent on persons other than marshals to serve most civil process while three chief judges took exception to our recommendation.

The chief judge for the eastern district of Kentucky believed circumstances unique to his district and the quality of local officers would make process service by anyone other than marshals unsatisfactory. Because we recognized that, undoubtedly, there will be circumstances where marshals are the only viable method of serving process in a district, our recommendation provides that the courts be authorized to use marshals to serve process whenever they deem it necessary (see p. 15). In addition, we want to emphasize that our recommendation goes beyond the use of local officers to serve Federal process. We believe that Federal fees for service of process should be set at a level that would recover the cost of this effort and that Rule 4 should be amended to reduce its present emphasis on service by marshals. We believe these two changes should allow the development of private process serving enterprises whose eventual success or failure rests on

their ability to serve process effectively and expeditiously. Where such development occurs, we believe the judge's concerns relating to process service would be mitigated.

The chief judge from the eastern district of Virginia did not favor our recommendation to more fully utilize alternative process servers because he believed that additional hearings and problems would occur if marshals did not serve process and that Federal process would be given low priority by State law enforcement officials. While we believe these are legitimate concerns, we found no evidence of there being a significant problem in the Federal districts which have been able to rely on alternative service methods. We believe the comments from the chief judge for the district of Maryland best reflect this point. He said that Federal courts can help themselves considerably by utilizing available alternative methods to serve process and that there are not too many instances in which civil process served under Rule 4 requires service by a marshal. (See pp. 56 and 57.) We believe that private process servers as well as marshals can fulfill the objective of ensuring that litigants receive all proper judicial notices and orders in a timely fashion for most private civil process.

The chief judge from the eastern district of Louisiana also did not agree with our recommendation because he believed marshals provide a service which is readily available for litigants and in which litigants can have confidence. We do not believe our recommendation will change this condition. First, under our proposal each court will retain its ability to direct marshals to serve process when they deem it necessary. Second, the reason private process servers are not readily available now in some districts is that the current fee structure and procedural rules discourage their usage. We believe that to the extent alternative process servers are used to serve civil process, Federal process service operations can be streamlined.

Additionally, the chief judge from the eastern district of Louisiana believed that appointing special process servers would place an additional burden on the courts. We recognize that the appointment of special process servers will create some administrative burden for the courts at the outset. However, we believe the administrative problems will be minimized after limited experience has been gained with the use of private process servers. The appropriate local officials and/or private process servers should become readily known to the Clerk of the Court, and process could then be channeled to these individuals in a routine manner.

ALL DISTRICTS SHOULD HAVE THE
OPPORTUNITY TO USE CERTIFIED MAIL

The Administrative Office stated in its comments that the Judicial Conference is considering a rule change that would implement our recommendation to give all districts the opportunity to use certified mail to serve process. The Department and five of the eight chief judges agreed that certified mail can be an effective method of service while three chief judges believed that reliance on certified mail would hamper court operations in their districts.

The Administrative Office said that the Judicial Conference is currently considering a change to Rule 4 of the Federal Rules of Civil Procedure which would allow all districts the opportunity to use registered or certified mail to serve summonses and complaints. This proposal delineates specific requirements that must be met to constitute proper legal evidence that service was made and procedures that must be adhered to before a default judgment can be rendered if mail service is used. This proposed amendment is more comprehensive than our recommendation, however, we believe it is basically in accord with our recommendation because it will allow all districts the opportunity to use certified mail to serve summonses if they so desire.

Three chief judges took exception to the use of certified mail to serve summonses and complaints. The chief judge for the eastern district of Kentucky believed that circumstances unique to his district (poor mail service and illiteracy problems) would make the use of mail ineffective. However, he also said that he believed this method of service might work reasonably well in metropolitan districts. Because we recognized that such conditions exist, we have recommended that the courts retain authority to designate proper methods of service. Thus, our proposal would not mandate district courts to serve summonses by certified mail.

The chief judges from the eastern districts of Virginia and Louisiana believed the use of certified mail would be disruptive to their court process. The chief judge for the eastern district of Virginia said that while many receivers of process by certified mail will respond, hearings related to receipt, claimed forgeries, etc., will abound. The chief judge for the eastern district of Louisiana said that although there are undoubtedly circumstances suitable for the use of certified mail, he was concerned that further hearings might arise related to whether the process was delivered to and receipted for by authorized persons.

We found no evidence of these types of problems existing in the districts we reviewed that were using certified mail as a method of service. However, we believe the courts should have

the discretionary authority to limit and define appropriate circumstances for the use of certified mail should such problems arise. The primary purpose of our recommendation concerning the use of certified mail is to remove the existing requirement of Rule 4 which hinges the use of this method on whether it is authorized by the State law where the Federal court is located. The recommendation also states that in amending this portion of the rule, the Judicial Conference should designate the person(s) who may properly sign for the receipt of such process.

PRISONER TRANSPORTATION
OPERATIONS CAN BE IMPROVED

The Department of Justice and four of the eight chief judges agreed with our recommendations to improve the Marshals Service's efforts to transport Federal prisoners. One chief judge disagreed with our recommendations and three chief judges and the Administrative Office did not comment on them.

The chief judge who disagreed with our recommendations said that any monetary savings that might result would be illusory because they would be offset by increased court costs. We disagree. Our recommendations are aimed at gathering pertinent information on planned movements so that prisoners can be placed on the most efficient mode of transportation while at the same time meeting the needs of the court. Our recommendations are aimed at improving the Marshals Service's existing transportation system, not circumventing judicial scheduling decisions or delaying judicial proceedings.

EDWARD M. KENNEDY, MASS., CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

DAVID BOIES
 CHIEF COUNSEL AND STAFF DIRECTOR

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 Marshals 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?

Honorable Elmer B. Staats
September 17, 1979
Page Two

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,

A handwritten signature in black ink that reads "Max Baucus". The signature is written in a cursive style with a large, prominent "M" and "B".

Max Baucus
Chairman

Subcommittee on Limitations of
Contracted and Delegated Authority

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTORJOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

October 1, 1981

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

Dear Mr. Anderson:

We appreciate the opportunity to comment on the recent draft report of the General Accounting Office entitled "U. S. Marshals Can Serve Civil Process and Transport Prisoners More Efficiently". The draft report addresses two recommendations to the Judicial Conference of the United States pertaining to an amendment to Rule 4 of the Federal Rules of Civil Procedure dealing with service of process.

The first recommendation suggests that the Rule be amended to authorize service of process in civil cases by persons specially appointed or approved by the courts to perform this function, except in those situations when service of process by marshals is determined necessary by the court. This proposal is currently under consideration by the Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure which, early in September, submitted proposed amendments to Rules 4 and 45 to the Bench and Bar for comment. For your information, a copy of the proposal is enclosed.*

The second recommendation, that Federal district courts utilize certified mail as a method of serving summonses and complaints, except when service is to be made on an infant or an incompetent, and designate the person or persons who may properly sign for the receipt of such process, is also included within the proposed amendment to Rule 4. I should point out that in the past the Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure has doubted that use of certified mail was practical since mail service would not be sufficient to support a default judgment. The proposal, however, is being reconsidered.

The draft report also recommends to the Congress that 28 U.S.C. 1921 be amended to authorize the Attorney General to revise periodically the fees that U. S. Marshals charge for serving process for private litigants in the Federal courts. I would like to point out that the Judicial Conference of the United States at its session in March 1981 voted to support the efforts

*GAO note: The enclosure has not been included, however, specific information about the amendments is discussed in chapter 4.

Mr. William J. Anderson
Page Two

of the Department of Justice to have the fee statute amended so that the Marshals Service and other process servers may be adequately compensated for their service to private litigants. (See Conf. Rpt., March 1981, p. 20)

Again, I would like to express our appreciation for the opportunity to comment on the proposed report to the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph F. Spinkol, Jr.", written in a cursive style.

Joseph F. Spinkol, Jr.
Deputy Director

Enclosure



U.S. Department of Justice

OCT 9 1981

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 "U.S. Marshals Can Serve Civil Process and Transport Prisoners More Efficiently."

The Department has reviewed the draft report and, with respect to the service of civil process, while we support the legislative recommendations to the Congress designed to alter the manner and level United States Marshals Service (USMS) fees are set, we question the feasibility of the procedural recommendations to the Judicial Conference of the United States which propose to amend Rule 4 of the Federal Rules of Civil Procedure (FRCivP). Regarding the transportation and movement of Federal Prisoners by U.S. Marshals, we generally agree with the policy and procedural recommendations to the Attorney General. Our comments with respect to each group of recommendations are provided below.

Recommendations to the Congress

The Department supports the General Accounting Office's (GAO) recommendations to the Congress that 28 U.S.C. 1921 be revised to (1) give the Attorney General authority to periodically revise the fees that marshals charge for serving civil process for private litigants in Federal court, and (2) require that the established fees provide full recovery of marshals' actual operating costs to serve civil process. These recommendations are in concert with current Department legislative initiatives.

Recommendations to the Judicial Conference of the United States

The Department agrees with GAO that the marshals are excessively involved in the service of most private civil process and that appropriate changes could be made to reduce Federal costs and marshals' involvement in the process serving function. However, we question GAO's approach of amending Rule 4 of the FRCivP to resolve the above objectives.

Rather than amending Rule 4 of the FRCivP*, we propose an approach which includes: (1) statutorily redefining the U.S. Marshals' traditional role in serving private civil process; and (2) encouraging the adoption of local rules and/or general court orders by U.S. district courts which either mandate or facilitate the initial use of alternative methods of serving private civil process, currently available through the FRCivP, prior to seeking a U.S. Marshal as a Federal

*GAO note: On November 6, 1981, the Department advised the Judicial Conference that it supported the proposed amendments to Rules 4 and 45 (see appendix IV). We subsequently met with Department officials to clarify their position. They stated that rather than only amending Rule 4, the Department actually favors amending both Rule 4 and the basic statute governing the duties of U.S. marshals (28 U.S.C. 569(b)) while continuing to encourage the adoption of local court rules to facilitate the use of alternative process servers.

process server. Moreover, unlike the GAO recommendation, we propose to reduce the U.S. Marshals' role by type of private civil process served; namely, requiring initial service of routine nonenforcement process (i.e., summonses, complaints and subpoenas) by alternative methods, and continuing service by USMS personnel of all such process which necessitates a law enforcement presence. We believe that this approach allows each Federal judicial district the flexibility to respond individually to the service of process needs of its private litigants, and provides a better definition of the U.S. Marshals' role in serving private civil process.

Both the Carter and Reagan Administrations have proposed legislation to remove the USMS from the service of most private process. The Reagan Administration has worked closely with the judicial branch to see that a workable solution to the service of private process issue is implemented. The Attorney General met with the Chief Justice on May 5, 1981, to discuss a number of issues, including the service of private process. This meeting was preceded by a series of working level meetings by staff from the Department of Justice and the Administrative Office of the U.S. Courts. The outcome of this meeting was a new legislative proposal on the service of private process issue introduced by the judicial branch to the Congress--specifically to the House and Senate Judiciary Committees.

The Administration supports the version of this legislation which appears as Section 10 of the Senate Judiciary Committee's version of the Department of Justice's Appropriation Authorization Bill, FY 1982. Section 10 of S 951, along with pages 12-13 of Senate Report No. 97-94 detailing further the Senate's view on the service of private process issue are enclosed.* The suggestions which appear on page 13 of Senate Report No. 97-94 were provided by the judicial branch to become part of the legislative history of the service of private process proposal.

With respect to GAO's examination of alternative process servers under Rule 4, we agree with the overall conclusion that the impact of the August 1, 1980 amendment to Rule 4(c) has been limited. While we agree with the conclusion, we consider the examination to be incomplete because it was based upon limited and insufficient information (inadequate sample size) and ignores other salient factors, such as the viability of other alternative methods of service under Rule 4(c) and the effect of local rules of the U.S. district courts designed to encourage the use of alternatives under Rule 4(c).

As a result of an evaluation study of all U.S. district court clerks and U.S. Marshals (90% and 84% response rates, respectively), and 56 county sheriffs and 26 private process serving companies (10% - 15% of the total number of sheriffs and companies advertising as process servers in each of the 12 study sample Federal judicial districts), the Department reached the same conclusion as GAO regarding the limited use of Rule 4(c) alternatives. However, we also obtained some insight as to why this situation is true, whereas the GAO study did not. For example, many of the sheriffs indicated that the principal reason they are not serving more Federal process, or are not serving it at all, is simply that they have not been requested to do so. Moreover, our study survey revealed that approximately 80% of those sheriffs interviewed would, if asked, accept and serve a limited amount of nonenforcement Federal civil process (i.e., summonses, complaints and subpoenas) provided that actual operational costs were recoverable or their current State fees for serving local process are used.

*GAO note: The enclosures have not been included, however, the provisions of section 10 are discussed on page 28 of this report.

Furthermore, the GAO report does not fully examine all alternatives authorized by Rule 4(c). For example, our review of process servers eligible under State law, and in turn, authorized by Rule 4(c) included not only county sheriffs (available in 49 States), but also other classes of Rule 4(c) servers, including "other local officials" such as municipal constables and marshals (authorized by 37 States covering 63 Federal judicial districts and about 75% of all private civil process served by U.S. Marshals) as well as nonparty, disinterested adults (authorized by 23 States covering 39 Federal judicial districts with about 40% of all private civil process served by U.S. Marshals). Because of GAO's narrow examination of Rule 4(c), the viability of private process serving companies as an alternative to the U.S. Marshals was ignored. In contrast, we found that, where available (usually via the broad-based State authorization of nonparty disinterested persons), private process serving companies are viable substitutes to the U.S. Marshal especially for the service of routine, nonenforcement process.

Perhaps as important, the GAO report did not fully examine the special inter-relationship between the FRCivP, local rules of the U.S. district courts and State laws governing the service of process. In reviewing this relationship we found a strong correlation between the use of Rule 4 alternatives and the existence of local rules endorsing the use of alternative methods of service. Our study uncovered a recent trend in several Federal judicial districts of adopting local rules which encourage or require increased use of alternative methods of service under Rule 4. This judicial remedy appears to be a feasible approach to meeting the individual needs of private litigants and court operations in the various districts, and at the same time, limiting the traditional role of the U.S. Marshal in serving private civil process.

Similarly, we question GAO's proposed recommendation to amend the FRCivP to

"authorize all Federal districts to utilize certified mail as a method of serving summonses and complaints except where service is to be made to an infant or an incompetent, and designate the person(s) who may properly sign up for the receipt of such process."

Based upon our study findings we conclude that mail service is of questionable viability as an alternative method of service. Three major factors led to this decision:

1. The postal service is not a process server; any attempt made to deliver a summons by mail will be made as an attempt to deliver mail and no more.
2. Because service by mail does not permit the entry of a default judgment upon the failure of the party to appear, there is a potential for disruption to the smooth execution of the court calendar.
3. Unless mail service is uniformly accepted by all districts, jurisdictional differences as to the effect of mail service has the potential to create delays in court proceedings.

We feel that other more viable personal service alternatives, such as county sheriffs, private process serving companies, where available, as well as some use of specially-appointed persons in all Federal judicial districts, are a more feasible approach to address the concerns of the Congress, the Judiciary, and the Department regarding the service of private civil process. Consequently, we question the feasibility of total reliance on service by mail for summonses and complaints, although we do endorse the use of this alternative as a supplemental method of service in concert with other personal service alternatives.

Finally, it should be noted that total reliance on mail service by the USMS would require an increase in support staff for most U.S. Marshals' offices--an augmentation to administrative personnel that is unlikely to be forthcoming in light of present budget constraints.*

Recommendations to the Attorney General

The Department supports GAO's recommendations that procedures should be developed for prioritizing the various types of prisoner movements, obtaining information vital to the effective coordination of prisoner movements, improving communication between key decision points in the movement process, and evaluating proposed prisoner movements. As the report points out, improvements in the transportation of Federal prisoners have already occurred, and we are constantly looking for improved techniques to transport significant numbers of prisoners each year in a safer, more cost effective manner.

As GAO notes, the National Prisoner Transportation System (NPTS) is a relatively new venture that started only 3 years ago. Furthermore, the USMS and the Federal Prison System have absorbed the costs associated with operating NPTS through fiscal year 1981 in that no specific program enhancements have been provided by the executive or legislative branches for NPTS. In the President's fiscal year 1982 budget, the first program enhancement totaling \$1 million was sought for NPTS operations. The \$1 million was subsequently reduced to \$500,000 through the appropriations process. After several attempts by the executive branch, the Congress provided, in fiscal year 1981, the necessary authorization and appropriations language to allow the USMS to acquire, lease, operate and maintain aircraft. The USMS will be continually assessing the cost effectiveness of operating its own aircraft versus chartering with private firms for dedicated aircraft.

With the additional funding which could be made available in fiscal year 1982 for NPTS and with management improvements such as those suggested by GAO, we believe the USMS can make additional progress in limiting the number of prisoners transported via commercial airlines and in scheduling for better load factors on NPTS flights. Furthermore, we believe that as the USMS moves toward implementation of the SENTRY on-line prisoner information system--as part of its overall master automated data processing and telecommunications plan--there will be enhanced prisoner coordination/prisoner movement exercised by the USMS and the Federal Prison System.

The Department remains optimistic about NPTS. The Attorney General's Fiscal Year 1981 Policy and Program Guidelines stated that the Federal Prison System, Immigration and Naturalization Service (INS), and USMS must work closely to develop a fully operational program which will coordinate the movement of prisoners. We believe that in some cases INS detainees could be flown on

*GAO note: We met with Department officials to discuss the Department's comments. During this meeting, it was learned that the Department had interpreted our report as placing "total reliance" on certified mail for serving summonses. We told the Department officials, however, that our report merely states that certified mail is an efficient method of serving process and should be used as an alternative whenever possible (see pp. 10 to 13). As such, the Department officials indicated total agreement with our recommendation. However, to clear up any misunderstanding of our recommendation, we have clarified it by indicating that certified mail should be authorized as one of the methods available for serving summonses and complaints.

NPTS--at less than present cost--to coastal international airport cities or land border ports as part of the exclusion/deportation process. In the past, there have been discussions about whether the Department of Defense (DoD) could become a reimbursable participant in the movement of military prisoners via NPTS. As NPTS gains operational experience and added capacity, INS and DoD could benefit from the cost efficiencies offered by NPTS.

As a final comment, we note that page 2 discusses the relationship of this draft report to a previous GAO report on marshals being subject to two separate lines of authority. There is no relationship between this draft report and the previous draft report and this fact is clearly indicated in the last sentence on page 2. That it is being addressed in the body of this draft report is irrelevant and it should be removed from the draft because of its irrelevance. If it is not removed from the report, we consider it essential that the Department's disagreement with GAO's premise that the U.S. marshals are subject to two separate lines of authority and with the recommendations to Congress be expressly noted in the report.*

In summary, the Department agrees that improvements can be made to better coordinate the movement of prisoners. As the USMS moves toward implementation of the SENTRY on-line prisoner information system, communication concerning prisoner coordination and movements will be more efficient and timely. Improvements associated with the SENTRY system will reduce the Government's cost by transporting fewer prisoners via commercial flights as well as reduce potential safety risks to airline travelers.

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

Sincerely,



Kevin D. Rooney
Assistant Attorney General
for Administration

Enclosures

*GAO note: The Department's disagreement with our previous report is discussed on page 2 of this report.



Office of the Associate Attorney General

Washington, D.C. 20530

November 6, 1981

Standing Committee on Rules of
Practice and Procedure
Judicial Conference of the United States
Administrative Office of the United States
Courts
Washington, D.C. 20544

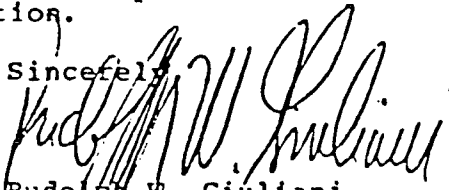
Gentlemen:

I write to express the support of the Department of Justice for the proposed amendments to Rules 4 and 45 of the Federal Rules of Civil Procedure, which generally eliminate the obligation of the United States Marshals to serve private civil process. These amendments will serve the salutary purpose of freeing the Marshals for necessary functions and passing the burden of this service to those directly benefitted. Moreover, the amendments will complement the efforts of the Attorney General and the Chief Justice in support of proposed legislative changes limiting the involvement of the Marshals in the service of private civil process and authorizing the Attorney General to establish fees that would recover the costs of service.

I should also note that the amendments to Rules 4 and 45 are consistent with the findings of an independent evaluation report recently completed by the Department of Justice. The Attorney General recently provided a copy of that report to the Chief Justice. I have enclosed a copy for your information.

Thank you for your consideration.

Sincerely,



Rudolph W. Giuliani
Associate Attorney General

Enclosure

United States District Court

Southern District of California
San Diego, California 92189

September 9, 1981

Chambers of
Howard B. Turrentine
Judge

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

Re: Draft of Proposed Revisions re U.S. Marshal's
Service, Civil Process and Prisoner Transportation

Dear Mr. Anderson:

The judges of this district have reviewed the draft of the proposed report of the General Accounting Office re U.S. Marshals and the service of process and make the following recommendations:

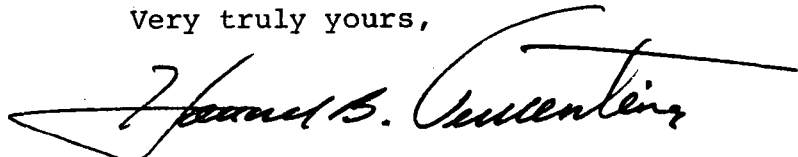
1. U.S. Marshals and Service of Civil Process

The recommendations set forth in the proposed draft are reasonable and necessary to the administration of justice. These provisions should be adopted in the immediate future. The provisions are sufficiently broad to permit each district to adopt rules that will take into consideration local conditions, security, and customs.

2. Movement of Federal Prisoners

The recommendations to the Attorney General appear reasonable and will facilitate the movement of prisoners from place to place at a minimum cost to the government.

Very truly yours,



HOWARD B. TURRENTINE, Acting
Chief Judge

HBT:pp

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA
NORFOLK, VIRGINIA 23510

September 10, 1981

CHAMBERS OF
JOHN A. MACKENZIE
CHIEF JUDGE

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

Re: PROPOSED REPORT AND RECOMMENDATIONS ON
SERVICE OF PROCESS BY UNITED STATES
MARSHAL'S SERVICE.

Dear Mr. Anderson:

The District Court for the Eastern District of Virginia is one of the most efficient, if not the most efficient overall, of all District Courts. Statistics will show this district to be within the top two percent in ratings for cases filed, tried and completed. This record is the basic reason this district is in every survey for almost any purpose. I include this laudatory statement only because it should give some weight to my criticisms of your report.

Service of Process

Much of our success is directly related to the excellent cooperation between this Court and its Marshals. Process and subpoenas are quickly served, even during trial. Great pride is taken in locating the person to whom Court papers are directed. We never have to continue a case set for trial over any witness problem.

Virginia does not allow service by mail and we object to any extension of such service in the federal field. The four federal judges at Norfolk average over 15 years of service. We have had experience with mail and juror summons. We are in unanimous agreement that while many receivers of certified mail will respond, that great difficulties will ensue in the important contested matters where trouble will be fomented. Hearings over receipt, non-receipt, claimed forgeries, etc. will abound.

Likewise, service of process by interested parties, i.e. process servers hired by law firms and lawyers, will

Mr. William J. Anderson
 Director
 September 10, 1981

Page Two

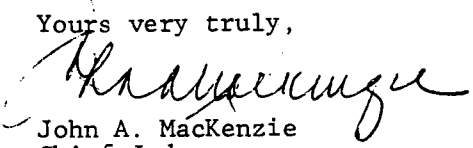
trigger problems and the endless hearings that will surely follow.

Service of federal process and subpoenas by state agents, such as Sheriffs and High Constables, will be put in last place on their effort lists. The local Sheriff has candidly so informed me.

We agree that the cost of service by the Marshal should be increased to more nearly reach his cost. We disagree that any recommendation should be so restrictive as to "require that such fees provide full recovery". Many items of process service fall within the pauper laws. Much of it is either free or on some adjusted basis for the Government itself.* The cost ought not to be so high and to serve GAO to reach its announced goal of taking service of process away from the Marshal by pointing to the high cost which GAO has mandated. After all, the public must support the Court to which it turns for civil and criminal service. What real difference does it make if public funds are appropriated to support the Marshal in the process problem, or whether such funds are paid to process servers for service of Government papers and which fees would include a profit?***

In our judgment, if the Marshal's Service were left to its duties to the Courts, such as process serving, which, as you say, goes back to 1790, and were less buffeted by such Justice Department innovations as witness protection programs, we believe the business of the public would be better served.

Yours very truly,



John A. MacKenzie
 Chief Judge
 United States District Court
 Eastern District of Virginia

*GAO note: We recognized in the draft report provided for comment that pauper laws provide for free service of process. However, to clarify this point, we have modified our recommendation. (See p. 14.)

**GAO note: We want to emphasize that it was not our intent to totally take process service away from marshals. Our recommendation does not restrict the discretion of the Federal courts to have marshals serve civil process when it deems it necessary.

Mr. William J. Anderson
Director
September 10, 1981

Page Three

The Honorable John W. Warner
The Honorable Robert W. Daniel, Jr.
The Honorable M. Caldwell Butler
The Honorable G. William Whitehurst

United States District Court
Eastern District of Kentucky

September 22, 1981

Chambers of
Bernard T. Moynahan, Jr.
Chief Judge

Federal Building
Lexington, Kentucky 40501

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

Dear Mr. Anderson:

I have received your letter of September 3rd and the proposed report to Senator Baucus evaluating efforts by the United States Marshals to serve federal civil process and to transport federal prisoners.

I must respectfully disagree with the report's conclusion that federal civil process can satisfactorily be served by local officers or by mail. The problems of a substantial part of the Eastern District of Kentucky are unique and service in either of these manners will, in many instances, not be satisfactory. In fact, I am of the opinion that the illusory benefits of such service will be more than offset by the problems which it will cause.

This is due to the fact that mail service is poor, and a substantial number of the people residing in the District receive little or no mail and are illiterate. The quality of local officers frequently leave something to be desired, especially constables and deputy constables.

In regard to the transportation of prisoners, the National Prisoner Transportation System has been unsatisfactory on many occasions. The mandates of the Speedy Trial Act frequently require that an indigent fugitive who is apprehended be immediately transported to this District for trial. If there are multiple defendants and this transportation is not accomplished quickly, the net result is that the Court is obligated to conduct two or more trials regarding the same case. This is simply intolerable.

Again I am inclined to think that some of the costs saved by the prisoner movement are illusory since they are more than offset by the increased cost of running the Court.

I feel that perhaps both of these proposals might work reasonably well in metropolitan districts, but they simply will not work well in the Eastern District of Kentucky, which is a large, mostly rural, mountain area constituting roughly one-half of the geographical area of Kentucky and having six places

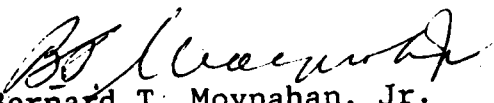
Mr. William J. Anderson

Washington, D. C.

of holding Court.

I am returning herewith the draft of the proposed report in accordance with your request.

Very truly yours,


Bernard T. Moynahan, Jr.
Chief Judge

BTM:dmw

Enclosure

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

UNITED STATES COURTHOUSE

HOUSTON, TEXAS 77002

CHAMBERS OF
JOHN V. SINGLETON
CHIEF JUDGE

September 29, 1981

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

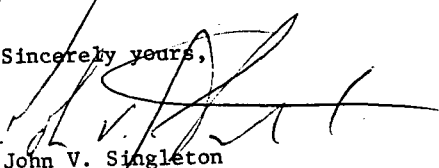
Dear Mr. Anderson:

I have reviewed the draft of the report to Senator Max Baucus which evaluates efforts by United States marshals to serve federal civil process and to transport federal prisoners. In my capacity as Chief Judge of the Southern District of Texas, I fully concur in that report and the recommendations to the Congress and to the Judicial Conference.

For whatever purpose it might serve, I enclose a copy of an amendment to Rule 10 B. (2) and (3) of our local rules of court relating to the service of civil process in this district.* As indicated, this rule was adopted by all of the judges of this court, effective September 2, 1981. As you will note, in general this rule provides that service of process shall not be executed by the United States Marshal except for government-initiated process, in forma pauperis process, extraordinary writ, or when ordered to do so by a judge. It provides for service by anyone over the age of 18, who is not a party or an attorney in the case. It permits service by registered or certified mail, return receipt requested, except that personal service is required on the United States Attorney. It requires the attorney or pro se plaintiff to file an affidavit with the clerk reflecting whether or not service was completed, together with evidence of the completing of the service. It provides that private process servers may be utilized. As you will note, there are other technical provisions of the rule. Since this amendment was effective as of September 2, 1981, we do not have any history as yet concerning the effectiveness of this rule.

I have just received a letter from Judge Wilbur D. Owens, Jr., Chief Judge of the Middle District of Georgia, addressed to the Attorney General commenting on the proposed change of Rules 4 and 45 of the Federal Rules of Civil Procedure. You were not an addressee of this letter; therefore, I enclose a copy of it for whatever purpose it might serve insofar as your report is concerned.**

Sincerely yours,


John V. Singleton

*GAO note: We have not included a copy of the local rule because its provisions are explained in this letter.

**GAO note: Because we did not do any of our audit work in the middle district of Georgia, we have not included a copy of this letter.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS 70130

CHAMBERS OF
FREDERICK J. R. HEEBE
CHIEF JUDGE

September 30, 1981

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

Dear Mr. Anderson:

Thank you for furnishing for review and comment your draft report to Senator Max Baucus concerning service of federal civil process and the transportation of federal prisoners.

Consideration of this subject matter is obviously needed and is long overdue. The factual statements made in the report are basically in agreement with my perception of the existing situation. I would, however, arrive at somewhat different conclusions and therefore comment on each of the recommendations separately.

1. The recommendation to Congress to authorize periodic revision of the fee schedule and to require that fees provide full recovery of the Marshal's actual operating costs for service of civil process is a good and necessary one. Adoption of this recommendation, alone, may obviate the need for some of the other recommended changes. Collection of fees commensurate with costs will eliminate the excessive subsidy by the Government of private litigation. It will also reduce the volume of process service required of the Marshal by encouraging use of alternate means of service which will offer economy and certain other advantages to some litigants.

2. The recommendation to the Judicial Conference for changes in civil procedure should be reconsidered.

Service of process is an integral part of civil litigation and should be performed in a manner conducive to the most expeditious administration of the civil case. Service by the Marshal does this by providing a standard method of procedure within which all may function easily and with confidence. Litigants unfamiliar with federal courts have a ready method of obtaining service; the Clerk has a clear mandate directing routine issuance of each writ; the court has the assurance that process has been made properly. Further, persons who must receive service of process are reassured in this unexpected personal contact with a person unknown to them, by the official insignia of the United States Marshal.

Mr. William J. Anderson

September 30, 1981

Establishing the Special Serving Officer as the primary person to effect service on the other hand is undesirable as it cannot supply these benefits, and further in that it transfers to the court an additional burden that does not properly belong to it.

The court must approve the Special Serving Officer. Meaningful approval requires establishing and enforcing standards of competence and conduct, maintaining rosters of qualified persons and providing some guidance, either formal or informal for the performance of their official functions. Some identification must be issued to give the serving officer entry into homes and offices and access to persons who must be served personally. Issuance of official identification requires even closer screening to avoid the likelihood of abuse.

I believe this is a burden which has been largely overlooked.

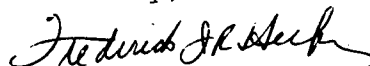
Service of process by certified mail appears on the surface to be the easiest and least expensive method, and there are undoubtedly circumstances in which it is suitable. However, used routinely it will necessarily create additional problems of uncertainty and increased workload for the court. Every judgment obtained by default will be suspect as it is always subject to recession upon a showing that the process was delivered to and receipted for by an unauthorized person.

To accomplish delivery of certified mail is itself not always easy. Repeated issuance of process by the court will be required in instances where the intended recipient attempts to evade service or merely fails to act positively to obtain the mail delivery which he may not have been at home to receive.

In summary, I believe that the Marshal should remain the primary vehicle for service of process. An adequate fee schedule will enable the Marshal Service to perform the function which is vital to the proper administration of civil litigation. Some expansion of alternate methods of service may be permitted to lessen the burden, but in no event should this burden be shifted to the courts nor should the function of the court be jeopardized by it.

I am also in agreement with your suggestion and recommendation regarding movement of federal prisoners, and would look only for clarification and assurance that no regulation will be adopted which would hinder prompt transportation of prisoners by the most expeditious means available, when necessary for compliance with the provisions of the Speedy Trial Act.

Sincerely,



Chief Judge

all



CHAMBERS OF
A. ANDREW HAUK
CHIEF JUDGE

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

September 30, 1981

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

Dear Mr. Anderson:

Thank you for your letter of September 3, and a copy of your agency's proposed report regarding the efforts by the U. S. Marshal to serve federal civil process and to transport federal prisoners between federal judicial districts.

In respect to the inter-district transportation of federal prisoners, I have no comment on that portion of your report. I do, however, have comments in regard to that portion of the report which deals with service of civil process and the fixing of appropriate fees for such service by the U. S. Marshal. Initially, let me advise you that in this court we have, by order of the court, eliminated the need for special appointment of someone other than the U. S. Marshal to serve a summons and complaint. We have also eliminated the service of civil process by the U. S. Marshal, except where that service is specifically required by an order of the court, statute or treaty. Writs for seizure of property, however, continue to be served by the U. S. Marshal. We have been able to relieve the Marshal of the burden because of the liberal service provisions of the state statutes in California.

As you may know, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States is currently considering amendments to Rules 4 and 45 of the Federal Rules of Civil Procedure. These two rules deal with the issuance of summons and other processes and the service of a subpoena. These proposed amendments fall directly within the subject matter of your report, and as a consequence, have significant relevance. Because the proposed amendments involve certain activities that might have to be performed by the Clerk's Office, I asked Mr. Kritzman, our Clerk of Court, to review both your report and those proposed amendments.

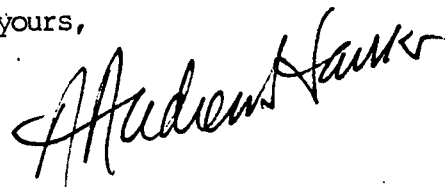
Mr. Kritzman's staff attorney, Christine Harwell, has prepared a comprehensive analysis of both your report and the proposed amendments to the Federal Rules of Civil Procedure. Rather than reiterate her information, I

Mr. William J. Anderson
September 30, 1981
Page 2

have included a copy of her report with this letter* It spells out not only our present practices in this district, but identifies certain problems that would be encountered were your recommendations to Congress or the proposed amendments adopted. I believe the type of problems that she identifies would be similar to those faced in other districts where state statute provides a liberal approach to the service of process. Any recommendations or proposed rule changes should, therefore, take into consideration a solution which would not create a service impediment in those districts which have the benefit of liberal service statutes under state law.

In regard to service fees currently provided for by the U. S. Marshal, Miss Harwell also has commented on the comparable types of service and fees which are allowable to state officers. Those much more liberal fees still, I am told, do not cover the cost that local government expends for the service of process. Nevertheless, they are considerably higher than allowed the U.S. Marshal.

Very truly yours,



EMK/vu
Enclosure

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

*GAO note: This analysis generally identified problems that would result if a change to the Federal Rules of Civil Procedure precluded this district from continuing to benefit from liberal service statutes under State law. Our recommendations are not meant to hinder the ability of districts to continue to benefit from liberal State service laws. Rather, they are intended to allow districts without liberal State statutes to also use efficient methods of process service.

Woodrow W. Jones
Chief Judge

United States District Court
Western District of North Carolina
Judge's Chambers
Rutherfordton 28139

October 2, 1981

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

Dear Mr. Anderson:

I have your recent letter and a draft of a proposed report which evaluates efforts by U. S. Marshals to serve federal civil process and to transport federal prisoners. I have read your report with interest and accept your invitation to comment on its contents since some of your audit work involved my District.

I endorse your recommendations in both categories. There is no valid reason why civil process cannot be served by registered mail and the laws and rules should be changed to permit it. We find that the service of jurors by mail works well.

I have long felt that the Marshal's service spends entirely too much time in travel with prisoners and in the service of process. I have also observed over the years that the Marshal and his deputies spend too much time in the court room during trials. There is no need for a Marshal in the court room during the trial of a civil action. The law clerk/crier can open and close court, assist in swearing witnesses and look after the jury. A busy trial judge has a hard time keeping a law clerk busy during trial unless he performs these extra duties.

With best wishes, I am

Sincerely yours,

Woodrow W. Jones
(25)

Woodrow W. Jones

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLANDFRANK A. KAUFMAN
Chief Judge
Baltimore, Maryland 21201

October 13, 1981

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

Dear Mr. Anderson:

I have your letter of September 3, 1981 and thank you for the same. I am sorry that I was not able to respond to it within the thirty-day period provided in the second paragraph of your said letter. However, as I am certain you have been informed, my secretary called your office, before the said thirty-day deadline, and was informed that it would be appropriate if I responded within an additional ten days. The reason I wanted to delay writing to you before now is that I wanted to have available to me the results of certain discussions and explorations which we have been undertaking within our own court family with regard to the services performed by the Office of the Marshal of this Court. As of this date, I want to reaffirm what I wrote to you in my letter of July 22, 1981 in response to your letter of June 26, 1981 and in furtherance of my interim letter to you dated July 8, 1981. In that connection, I do not believe that there is anything in your proposed report to Senator Max Baucus (enclosed with your letter of September 3, 1981), which is at odds with your earlier proposed report to Senator Baucus concerning which I commented in my said July 22, 1981 letter to you. However, I note that your new proposed report to Senator Baucus does deal specifically with several additional items.

One of those additional items is service of civil process. In that connection, I am certain that you are familiar with the recent report of the Advisory Committee on Civil Rules of the Judicial Conference of the United States which solicits comments of bench and bar with regard to proposed changes in certain of the Federal Civil Rules, including Federal Civil Rules 4 and 45. I believe the experience of this Court, with regard to service under Rule 4, and particularly Rules 4(c) and (d)(7), leads this Court to believe that a federal Court can help itself considerably if it utilizes state procedures which are available to it. Maryland permits service by special process server and by certified mail, return receipt requested, on a restricted basis. Under the "restricted" limitation, service must be upon the specific person to be served. Maryland rules also permit any person, including the

attorney of record, but excluding any party, to serve as a special process server without any Order of Court. Our own experience in this Court, utilizing Maryland procedures, leads this Court to believe that there are not too many instances in which civil process under Federal Civil Rule 4 requires service by a marshal. However, we would be helped considerably if service could be made, on other than a "restricted" basis, i.e., on anyone who specifically states that he or she is acting as an authorized agent of the person upon whom service is desired.*

Insofar as Federal Civil Rule 45 is concerned, it may well be that there is no need, in the ordinary case, for subpoenas to be served in any way different than process is served under Federal Civil Rule 4.

I would suggest that all duties under Federal Civil Rules 4 and 45 could normally be accomplished without the use of a marshal, but that the Court should have discretionary authority to utilize service by the marshal in a given instance when the Court believes that the same is required. For example, where a recalcitrant witness is involved, the services of one or more marshals may well be required. However, those types of occurrences seemingly take place only rarely. Accordingly, I would think that we should be able to relieve marshals of almost all — though not all — duties under Federal Civil Rules 4 and 45.

With regard to attachments, arrest of vessels and the like, it may well be that more formalized process is required than the type of process I am suggesting hereinabove with regard to Federal Civil Rules 4 and 45. Nevertheless, I would think that attention should be given to the possibility of having all duties in connection with such matters handled by persons other than marshals, subject to the Court having the discretionary authority to use marshals when the occasion demands. In that connection, I have been informed that in some districts, mortgage foreclosure sales involving one or more federal governmental agencies as mortgagees are presently being handled by government officials other than marshals. It might well be that similar duties in admiralty cases could be handled without involving marshals. To my way of thinking every effort should be made to enable marshals to perform security duties for the courts — and for the federal Bureau of Prisons, i.e., in transporting federal prisoners, and to confine themselves to the greatest extent possible to such duties.

The part of your report which deals with the transportation of federal prisoners would seem, on the whole, to make very good sense. However, I do not believe I have available to me sufficient background and information to comment in depth with regard to the same. However, I do point out that while every effort to reduce

*GAO note: Our recommendation is not specific as to who can properly receive service by certified mail. However, we have recommended that any such change to Rule 4 should designate the person(s) who may properly sign for the receipt of such process. (See p. 15.)

costs in connection with transportation of federal prisoners should be made, the longer a federal prisoner spends in a state or local (as opposed to federal) detention facility the more the federal courts will be contributing to the overcrowding of such non-federal institution. In this Court we presently have pending a number of important cases in which we are dealing with overcrowding and similar issues as they relate to state and local confinement and detention facilities within the State of Maryland. We often find ourselves, as judges, rather embarrassed by the fact that from time to time a more than minimal segment of the population of a particular state or local confinement or detention institution is made up of federal prisoners awaiting trial, sentencing and/or transportation to a federal institution. We in Maryland have no federal confinement or detention institution within our borders.

If there is any additional information or comments which you would like me to submit, I will greatly appreciate it if you will let me know.

Sincerely,



Frank A. Kaufman

cc: All District Court Judges

PROPOSED AMENDMENTS TO TITLE 28,
UNITED STATES CODE, FOR THE SETTING
OF FEES FOR PROCESS AND RELATED MATTERS

Sec. 1. Section 1921 of title 28, United States Code, is amended by striking the first four paragraphs thereof, and inserting in substitution, the following--

"Except as otherwise provided by law, the United States marshals shall collect, and a court may tax as costs, fees for the following:

For serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, copies, or any other writ, order, or process in any case or proceeding;

For serving a subpoena or summons for a witness or appraiser;

For forwarding any writ, order, or process to another judicial district for service."

Sec. 2. Section 1921 of title 28, United States Code, is further amended by striking from the tenth paragraph thereof "12 cents per mile, or fraction thereof,".

Sec. 3. The last paragraph of section 1921 of title 28, United States Code, is amended to read:

"The marshal may require a deposit to cover all fees and expenses prescribed by or under the authority of this section. The Attorney General shall prescribe regulations for the fees to be collected under this section, and from time to time by regulation establish the fees to be assessed where such fees are not specifically fixed by statute. Such fees shall to the maximum practicable extent provide for the recovery of the costs of the particular service or endeavor involved."

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