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# Federal Probation

Choosing the Future of American Corrections: Punishment or Reform? ..... *James Byrne*  
*Mary Brewster*

The Impact of Critical Incident Stress: Is Your Office Prepared to Respond? ..... *Mark Maggio*  
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'the Future—Carving Out New Territory for American actions ..... *J. Michael Quinlan*

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# Federal Probation

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## This Issue in Brief

ACQUISITIONS

**Choosing the Future of American Corrections: Punishment or Reform?**—What does the future hold for criminal justice and corrections in this country? Authors James Byrne and Mary Brewster examine the four most important predictions of John DiIulio, Princeton University professor and author of *No Escape—The Future of American Corrections*, and offer some suggestions to those state and local corrections policy-makers who believe the United States is moving in the wrong direction.

**The Impact of Critical Incident Stress: Is Your Office Prepared to Respond?**—Physical assault of an officer while on duty, unexpected death of a co-worker, a natural disaster—all can be considered critical incidents which affect not only the individuals involved but the organization as a whole. Authors Mark Maggio and Elaine Terenzi define critical incidents, explain the importance of providing stress education before such crises occur, and offer suggestions as to what administrator and managers can do to respond effectively and maintain a healthy and productive workforce.

**Probation Officer Safety and Mental Conditioning.**—Author Paul W. Brown discusses mental conditioning as a component of officer safety that is all too often overlooked or minimized in training programs. He focuses on five areas of mental conditioning: the color code of awareness, crisis rehearsal, the continuum of force, kinesics, and positive self-talk.

**Federal Detention: The United States Marshals Service's Management of a Challenging Program.**—Focusing on the detention of Federal prisoners, author Linda S. Caudell-Feagan discusses the work of the United States Marshals Service. She explains how detention beds are acquired, how the Marshals Service administers funds to pay the costs of housing Federal detainees, what the ramifications of increased detention costs are, and what actions the Marshals Service has taken to address detention problems.

**Total Quality Management: Can It Work in Federal Probation?**—Author Richard W. Janes outlines the principles of total quality management and their

application to Federal probation work. The article is based not only on a review of the literature but also on the author's experience in a Federal probation agency where these concepts are being implemented.

**College Education in Prisons: The Inmates' Perspectives.**—Author Ahmad Tootoonchi reports on a study to determine the impact of college education on the attitudes of inmates toward life and their future. The results reveal that a significant number of the inmates surveyed believe that their behavior can change for the better through college education.

**Visitors to Women's Prisons in California: An Exploratory Study.**—Author Lisa G. Fuller describes a study which focuses on visitors to California's three state women's prisons. The study, designed to

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# Federal Detention: The United States Marshals Service's Management of a Challenging Program

BY LINDA S. CAUDELL-FEAGAN

*Program Analyst, Prisoner Operations Division, United States Marshals Service*

**T**HE UNITED States Marshals Service (USMS) is our Nation's oldest law enforcement organization. The agency was created by the Judiciary Act of 1789, which created the Federal judicial system, including the office of marshal and deputy marshal. Since 1789 the marshals have been the civilian enforcement power of the Federal Government and its courts. Today USMS is responsible for the following diverse functions:

- Protecting the Federal judicial process, including members of the judiciary and all judicial participants, and operating the witness protection program;
- Locating adequate housing for Federal detainees before and during the judicial process, including producing these prisoners for all court appearances;
- Executing the orders of the Federal courts;
- Investigating and apprehending Federal fugitives;
- Under the National Asset Seizure and Forfeiture Program, seizing and managing property under court order and taking custody of cash and property seized by other Department of Justice law enforcement agencies; and
- Operating the Special Operations Group to respond to high-threat and emergency situations, including major civil disorders, terrorist incidents, or hostage situations where there is a violation of Federal law or Federal property is endangered.

The focus of this article is the detention of Federal prisoners, which is one of USMS' functions most necessary to the successful operation of the Federal judicial process. Detaining the thousands of prisoners remanded to the custody of the U.S. Marshals Service is one of the Service's primary responsibilities—one which is successfully accomplished by managers in the field every day of the year. The staggering 262 percent growth in the USMS pretrial prisoner population over the past 8 years has served to compound detention problems faced by these managers. In fact, USMS is now charged with housing the eighteenth largest correctional population in the United States,<sup>1</sup> averaging almost 20,000 prisoners a day. It is important to note that the combined USMS pretrial detention popula-

tion and Federal Bureau of Prisons (BOP) sentenced population ranks as the second largest in the Nation—second only to the correctional population managed by the State of California.

Managing such a large, nationally diverse population is no small challenge in an environment where acquiring adequate detention bedspace close to Federal court cities has become a major concern over the past several years. The Federal Government has had to compete with state and local governments for scarce detention bedspace at a time when many state and local correctional systems have been experiencing overcrowding and are under court-ordered population ceilings. The detention problem is so great that the shortage of adequate detention space near Federal court cities has been recognized by the Office of Management and Budget as a high risk area of managerial concern to the Department of Justice.

Not only must USMS house this population, but prisoners must be transported for judicial proceedings at more than 450 locations in the 280 Federal court cities throughout the country. This results in a particularly arduous daily transportation juggling act for deputy U.S. marshals who are forced to transport prisoners from various jails, sometimes in distant locations, to their designated court appearances.

In past years, more than one-fourth of the deputy workload used for these transportation activities was accomplished by personnel who are not deputies, namely intermittent employees and guards. USMS is the only Federal law enforcement agency that must rely on intermittent law enforcement employees to accomplish such a substantial portion of its fundamental mission. This reliance on a "shadow workforce" poses profound security concerns for USMS. Lack of adequate deputy staffing has been identified as a material weakness, since a myriad of safety and security concerns arise with the continued inadequate staffing for critical prisoner-related functions.

## *Acquiring Much Needed Detention Beds*

To preclude transporting prisoners over long distances, which poses additional security risks to deputy U.S. marshals, prisoners, and the general public, USMS strives to acquire detention bedspace as close as possible to the Federal court city. Local bedspace is acquired at the least expensive cost to the Federal Government, through one of the four following ways:

1) *Intergovernmental Agreements (IGA)*—These contracts with state and local governments set per diem rates but contain no bedspace guarantees. This is the most desirable and cost-effective means of acquiring jail space, since these beds are already constructed and require no up-front capital expenditures. With no bedspace guarantees, these agreements allow the Federal Government the flexibility of only using these beds as needed, which is particularly important when dealing with fluctuating bedspace needs. Conversely, these agreements can be cancelled by the host jail at any time as local needs for additional bedspace arise.

2) *Cooperative Agreement Program (CAP)*—CAP agreements provide capital funding to local governments for renovation or construction of jail facilities in exchange for a guaranteed number of bedspaces for a specified number of years.

3) *Private Sector Prisons*—Contracts with private jail facilities set per diem rates for specified numbers of beds and time periods. Private sector prisons are a fairly recent phenomenon and are a new industry for unsentenced prisoners. Claims stating significant cost savings have not been validated, and several legal and philosophical issues related to the privatization of prisons remain unresolved. Currently, only one private contract to house USMS detainees exists; this contract is with the Correctional Corporation of America in Leavenworth, Kansas.

4) *Federal Detention Construction*—Federal detention facilities are constructed by the Federal Bureau of Prisons (BOP) as a last resort in those locations, usually large metropolitan areas, where it has become impossible to acquire state or local jail space for USMS prisoners. Depending on the detention need and the location, BOP can construct a Metropolitan Correctional Center (MCC), which is a stand-alone facility dedicated to housing Federal detainees, or a less expensive detention unit at an existing BOP institution.

USMS currently houses approximately two-thirds of its population in approximately 1,000 local and state facilities throughout the country. The remaining approximately one-third are housed in MCC's, detention units, or other available bedspace at BOP facilities.

The severe overcrowding in state and local facilities as well as in BOP facilities has made the task of maintaining adequate bedspace in some locations next to impossible. This has forced USMS to sometimes take drastic measures, as exemplified by the detention crises in New York City and Hawaii.

The New York City area had been faced with exacerbating detention problems for several years. In FY 1992, BOP housed approximately 1,700 USMS prisoners in the MCC in Manhattan and in the Federal Correctional Institutions in Otisville, New York, and Danbury, Connecticut. Even with this assistance, USMS was forced to find bedspace for approximately 350 additional prisoners on any given day. The result was a weekly airlift of these prisoners by the National Prisoner Transportation System (NPTS) to locations as far away as Texas, Tennessee, Louisiana, and Michigan. After months of intense negotiations, this situation was remedied in December 1992 when the New York City Department of Correction finally agreed to house USMS prisoners on one of the department's prison barges docked in the Bronx. This is only a short-term solution; the New York City detention crisis should be resolved once the new MCC in Brooklyn is opened, which is currently scheduled for early FY 1994.

As another example, Hawaii has presented USMS with a very difficult and unique detention problem. Although the Hawaii detention population is less than 10 percent of the detention population of the New York City area, finding detention space for Hawaii prisoners has proven to be a geographical nightmare. In January 1991, the State of Hawaii ordered the removal of all USMS prisoners above the 50 CAP bedspace guarantee because of a Federal court-directed population ceiling. Even though the state was offered additional CAP funding, Hawaii refused to execute a new CAP agreement. As a result, USMS has been forced to transport approximately 100 prisoners housed in California to and from the mainland for court appearances on the island. The only detention alternative left, then, was for BOP to construct a detention facility in Hawaii, which will house USMS detainees and sentenced prisoners from Hawaii, in addition to Immigration and Naturalization Service detainees. Until this facility is completed, however (BOP is in the site selection process), Hawaii prisoners will continue to be flown via commercial air to Hawaii for court proceedings at substantial cost to USMS.

#### *The Support of Prisoners Appropriation—Funding the Soaring Costs to House Federal Detainees*

In addition to finding detention bedspace, USMS is tasked with administering the Support of Prisoners Appropriation to pay state and local governments for jail space used in their facilities. Costs associated with housing Federal detainees have rapidly increased and are fast approaching almost \$300 million a year; these costs have tripled over the past 5 years alone.

Predicting the amount of funds that are needed each year to house detainees is extremely complex and is subject to many external forces beyond USMS control.

The level of funds needed are affected by uncontrollable prisoner intake levels and jail space availability. Prisoner intake levels are determined by Federal arrest and prosecution authorities and judicial rulings regarding detention and release periods. Jail space availability is largely the result of competing demands for this space by state and local entities, as well as the need for Federal space for sentenced prisoners.

The Support appropriation is affected by many factors: number of prisoners; increase in the average stay; increased jail rates, which are influenced by competition at state and local levels for jail beds; and medical costs. The number of prisoners and length of stay affects the number of jail days used annually. The number of jail days increases dramatically as more and more prisoners are staying longer periods of time in USMS custody. An increase in any of these four factors will cause the expense to this account to rise; over the past several years, all four of these factors have risen dramatically.

Since 1984, USMS has experienced an unprecedented growth in both population and jail day levels, due to the successful implementation of law enforcement investigative and prosecutorial programs during the past decade. While USMS average prisoner population has increased by 262 percent over the last several years, from 5,383 in 1984 to 19,474 in 1992, the average number of jail days used to house these detainees has increased by 236 percent, from 5,561 in 1984 to 18,672 in 1992.<sup>2</sup> Over the past 5 years alone, the growth in the Federal detention population has been more than double the growth in the Federal sentenced inmate population. It should be noted, however, that during FY 1993, the Federal detention population stabilized for the first time since 1987.

The increase in jail days is not only due to the unprecedented growth in pretrial detainees but also to the fact that prisoners are spending, on average, substantially longer periods in detention as a result of mandatory minimum sentences. The General Accounting Office (GAO) confirmed this in its August 1992 review of the impact of the Federal sentencing guidelines. GAO found that the median time between indictment and conviction rose 40 percent under the guidelines and the median time between conviction and sentencing rose 70 percent.<sup>3</sup> These findings cover the timeframe between 1986 and 1990.

Additionally, BOP's Office of Research, in more recent findings using data collected by the Administrative Office of the U.S. Courts, reported dramatic increases in length of stay from 1987 to 1992. The Office of Research concludes that the time between the initial hearing to adjudication/conviction increased 60

percent, while the time between conviction and sentencing increased 104 percent.<sup>4</sup>

The average jail day rate has also increased dramatically over the past several years. Competing demands for jail space have made acquiring this commodity much more expensive. The national average jail day rate in FY 1984 was \$32.62; by 1992, the national average jail day rate had grown 50 percent, to \$49.05.<sup>5</sup>

Finally, as is true in the private sector throughout the country, medical costs continue to escalate. For FY 1992, \$21 million was spent for medical costs; it is estimated that approximately \$30 million will be needed to cover medical expenses in FY 1994, an increase of more than 40 percent over a 2-year period.<sup>6</sup> Of course, this increased cost estimate is the result of many factors: inflation, more prisoners, and the projected increase in the number of acute medical illnesses USMS will be responsible for treating in the future.

#### *Ramifications of Increased Prisoners/Detention Costs*

Effectively managing the Federal detention population is one of USMS' most difficult program areas, since the workload is uncontrollable and directly related to programs and policies outside of USMS' control. As a result of tremendous growth experienced over the last 2 years, insufficient resources were available in FY 1992 and FY 1993 to pay the necessary jail costs for USMS prisoners. In this austere budget climate, supplemental appropriations are virtually unavailable even for an appropriation with such a mandatory nature as the Support of Prisoners account. As a result, alternative sources of funding were critical to avoid a resource deficit in the Support appropriation. The Department of Justice was able to transfer some funding from other Department components to help with the projected deficit in 1993. In addition, USMS has been required to reserve much sought after CAP funding to pay for jail day costs.

In FY 1992, \$15 million was appropriated for CAP, of which \$10 million was used to support a resource deficit in jail day funding. Likewise, the \$7.4 million appropriated for CAP in 1993 was held by the Department to fund an initially anticipated deficit in FY 1993. This use of CAP funds to pay for jail bills has debilitated the CAP program at a time when state and local governments are increasingly receptive to CAP agreements as a result of depressed economic conditions. Not only do these agreements help USMS obtain guaranteed bedspace in critical areas, but they provide economic stimulus to the local economies, both through the initial capital investment and also through the per diem payments when USMS prisoners

are actually housed in these jails. The CAP program, instrumental in obtaining scarce detention bedspace, has, in many instances, also averted the loss of vital jail facilities which would not otherwise house USMS prisoners without this incentive.

Additionally, loss of CAP funding results in increasing numbers of prisoners being housed far from their respective Federal court cities. This, in turn, causes additional USMS expenses to be incurred for transportation and overtime, as deputies are forced to travel further distances to produce these prisoners for court appearances. As previously discussed, the unfortunate result is increased security risks to the deputies, the general public, and the prisoners.

Finally, the acquisition of jail bedspace through the CAP program avoids the most expensive bedspace acquisition option, which is for BOP to construct Federal jail beds. A September 1992 General Accounting Office report on acquiring Federal jail bedspace favorably viewed the CAP program as a cost effective means of acquiring bedspace in areas where BOP could not economically do so. Fortunately, the FY 1994 appropriation contained resources for CAP to enable USMS to continue with this worthwhile program.

### *Future Workload Projections*

Probably the most difficult aspect of managing the Support account is predicting future population levels, which will then of course determine detention space requirements and jail day levels/costs. This is probably best illustrated by table 1, which illustrates the wide variations and unpredictability of the Federal detainee population over the past 10-year period.

TABLE 1. FEDERAL DETAINEE POPULATION GROWTH

Fiscal Year	Average Prisoner Pop.*	% Change Over Previous FY
1984	5,383	Not Available
1985	6,428	19.4
1986	7,329	14.0
1987	7,262	-0.9
1988	8,857	22.0
1989	11,740	32.6
1990	13,390	14.1
1991	16,233	21.2
1992	19,474	20.0
1993**	20,000	2.7

\* An annual average of prisoners in custody at the end of each month.

\*\* FY 1993 estimate only.

Source: U.S. Department of Justice, U.S. Marshals Service, Prisoner Operations Division statistics

It is obvious from the data displayed in table 1 that predicting future detention population levels would be

any statistician's nightmare. As previously discussed, there are so many factors, many yet unknown, that influence population levels, and it is still unclear as to the exact relationship between Federal detention population numbers and associated variables that influence these numbers. The pretrial detention rate would be affected by any new legislative and prosecutorial initiatives and proposed changes in the sentencing guidelines. The number of Federal detainees would also be affected by the level of resources approved for Federal Bureau of Investigation and Drug Enforcement Administration special agents, Immigration and Naturalization Service border patrol officers, and assistant U.S. attorneys.

Even with some standard policies and procedures throughout the country, it appears that each of the 94 Federal judicial districts basically operates autonomously. Population growth between districts is often erratic, possibly due, to a large extent, to individual prosecutorial initiatives pursued and the level of law enforcement resources dedicated to each district. What has become increasingly clear is that developing a scientific national population projection model for Federal detainees is next to impossible.

Although USMS has experienced a stabilization in the Federal detention population over the past several months, there is no firm basis for projecting a decline or permanent stabilization in the pretrial rate of detention until changes are implemented and the effects of those changes are analyzed.

### *Actions Taken to Solve Detention Issues and Reduce Costs*

Faced with continuing severe fiscal constraints, USMS has recently taken a renewed, proactive approach to determining those elements of the detention program that are within the Service's control to improve. As a result, USMS is working closely with other Department of Justice and Federal Government administration of justice components on the following initiatives:

#### *Expediting the Designation Process*

In April 1993, a joint letter was issued by the directors of USMS and BOP and the chief of the Probation and Pretrial Services Division, Administrative Office of the U.S. Courts, to all U.S. marshals, BOP wardens, BOP community corrections managers, and chief U.S. probation officers.<sup>7</sup> This letter addressed expediting the designation process. Prisoners who have been sentenced have traditionally been housed for long periods of time in contract facilities awaiting designation. Expediting this process will reduce these unnecessary jail days and save Support funding for pretrial prisoner housing.

### *Video Conferencing*

USMS and BOP have designed and tested a video conferencing system linking courthouses and the detention centers at which the Federal detainees are housed. This new technology is currently being operated on a pilot basis at BOP facilities in Tallahassee, Florida, and San Juan, Puerto Rico; a similar system is being designed to link the courthouse in Philadelphia, Pennsylvania, and the Federal Correctional Institution in Fairton, New Jersey. Employing the in-house expertise of BOP and USMS, sufficient funds were saved to fund three projects instead of two in FY 1993.

This system will initially be used mainly for detention hearings, initial appearances before the magistrates, and attorney/client visits. Although cost savings will certainly be realized through the use of this technology, this initiative was endorsed by USMS more as a security measure for USMS deputies. Video conferencing will significantly enhance prisoner security since it will enable a prisoner to remain within the secure confines of a Federal detention facility for pre-trial hearings, instead of being transported to the Federal courthouse. As a result, this system will potentially save deputy time and transportation resources.

### *Reducing Prisoner Medical Bills*

One area of increasing concern for both USMS and BOP, as well as for the rest of the Nation, is the escalating cost of medical services. BOP has been at the forefront in attempting to contain medical costs. For example, many BOP facilities are in the process of negotiating advantageous medical services contracts with local hospitals and/or physicians to provide medical services to inmates. These medical contracts, in most instances, provide considerable cost savings.

A health care delivery working group has been established by USMS and BOP which will focus on reducing health care costs. The first step being taken is to have BOP include USMS in any medical contracts with local hospitals and/or physicians. Since USMS has so many more detention locations throughout the country than BOP has prisons, options other than sharing arrangements and joint contracts, such as the use of a fiscal intermediary, managed care, and paying only Medicare-allowed expenses for standard medical procedures, will continue to be explored.

### *Detention Planning Committee*

Recognizing the interdependence of many components of the Department of Justice in the successful operation of a detention program, officials of the Department organized the Detention Planning Committee. This policy group, which has been chaired by the

Deputy Attorney General's Office, is comprised of the directors of USMS, BOP, and the Community Relations Service, the commissioner of the Immigration and Naturalization Service, the executive director of the Office of Immigration Review, senior Justice Management Division officials, and an official of the Executive Office of U.S. Attorneys. This group was organized to solve detention problems affecting all Department components, with an emphasis on resolving the Federal detention bedspace shortage through the acquisition of additional CAP beds and Federal detention construction.

The Detention Planning Committee has proved to be successful not only in establishing detention construction priorities, but in resolving a myriad of operating issues and problems encountered by all the components with detention activities. By bringing all the resources of the Department to bear, the Department and USMS have been much more successful in meeting the extremely difficult challenges of finding adequate detention space.

### *Federal Detention Plan*

A systematic plan of action to acquire these critically needed jail beds is outlined in the annually updated Federal Detention Plan. This plan clearly establishes that intergovernmental agreements (IGA's) are the first preference as the most economical means of meeting detention housing needs. Where IGA's are not possible, use of the CAP program should be explored. Federal construction, as the most costly alternative, should be employed as a last resort. The December 1992 Federal Detention Plan was transmitted to the House and Senate Appropriations Committees to underscore both the severity of the detention crisis and the Department's commitment to resolving these detention problems systematically.

USMS continually reevaluates and reprioritizes Federal detention needs to reflect changing detention needs throughout the country. As a result of a recent detention assessment, USMS identified two previously funded Federal detention construction projects that were no longer needed. It was determined that, due to changing economic conditions and detention needs, the local governments in these areas could now accommodate USMS projected detention bedspace needs either through IGA's or CAP. Congress approved a reprogramming of these construction funds to the CAP program for use in FY 1994.

### *Coordinating With USMS Counterparts at Other Administration of Justice Entities*

#### *U.S. Attorneys*

In March 1993, USMS Director Henry Hudson sent a letter to all U.S. attorneys in which he identified

several areas of concern to the Marshals Service, as well as opportunities for improvements in detention procedures, with major cost implications for USMS.<sup>8</sup> For example, the director requested that in only truly essential cases should the U.S. attorneys request USMS to produce those prisoners who are potential cooperating witnesses. Furthermore, the director asked that the U.S. attorneys immediately notify USMS when these prisoners can be returned to their designated institutions. Another suggestion was that the U.S. attorneys not recommend that defendants be assigned to specific detention locations without consideration of the costs to USMS. These are just a few examples of how the Marshals Service is trying to work more closely with the U.S. attorney offices to save Support funding.

#### *Administrative Office of the U.S. Courts*

The Administrative Office of the U.S. Courts (AOUSC) is represented at regularly scheduled Department of Justice detention working group meetings. An offshoot of the Department's Detention Planning Committee, these meetings bring together operational managers from USMS, BOP, INS, and AOUSC to discuss related detention issues and solve working-level problems. Through AOUSC's participation in these meetings, the Marshals Service is able to understand better how changes in this organization will ultimately affect the Service. USMS is also working with AOUSC to expedite presentencing investigations.

In addition, AOUSC has generously agreed to share its database of pretrial detainee information to support USMS' efforts to develop a better Federal detainee database and therefore facilitate future data projections.

#### *A Proud Tradition Continues*

As the Nation's oldest law enforcement agency, the United States Marshals Service has proudly accom-

plished its mission for more than 200 years. The Service's major responsibilities lie right at the heart of the judicial process—protecting the courts and ensuring that pretrial prisoners appear for court proceedings. While the responsibility of protecting the entire court family is widely recognized, the equally critical function of ensuring that prisoners are safely and securely detained and transported to court appearances often goes unrecognized. By successfully administering the Federal pretrial detention program, the Marshals Service helps to ensure that the American judicial system continues to be a model for democratic nations throughout the world.

#### NOTES

<sup>1</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Prisoners in 1992* (May 1993), at 2 and 4.

<sup>2</sup>U.S. Department of Justice, U.S. Marshals Service, Prisoner Operations Division statistics compiled monthly for prisoner population and jail day levels.

<sup>3</sup>General Accounting Office, *Sentencing Guidelines: Central Questions Remain Unanswered* (August 1992), at 22.

<sup>4</sup>Letter from Gerald Gae, chief, Federal Bureau of Prisons' Office of Research and Evaluation, to Kathleen Hawk, director, Federal Bureau of Prisons (January 29, 1993), at 2.

<sup>5</sup>U.S. Department of Justice, U.S. Marshals Service, Prisoner Operations Division statistics.

<sup>6</sup>U.S. Department of Justice, U.S. Marshals Service, Budget Division statistics.

<sup>7</sup>Letter from Donald L. Chamlee, chief, Probation and Pretrial Services Division, Administrative Office of the U.S. Courts, Henry E. Hudson, director, U.S. Marshals Service, and Kathleen M. Hawk, director, Bureau of Prisons, to all chief U.S. probation officers, U.S. marshals, Bureau of Prisons wardens, and community corrections managers (April 12, 1993).

<sup>8</sup>Letter from Henry E. Hudson, director, U.S. Marshals Service, to all U.S. attorneys (March 17, 1993).