

May 1995

FEDERAL FUGITIVE APPREHENSION

Agencies Taking Action to Improve Coordination and Cooperation



General Government Division

B-259789

May 2, 1995

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Chairman, Committee on Government
Reform and Oversight
House of Representatives

The Honorable Cardiss Collins
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House of Representatives

This report responds to a recommendation contained in a report by the former Committee on Government Operations and a subsequent request by the Chairmen of that Committee and its Subcommittee on Government Information, Justice, and Agriculture that we review the Department of Justice's 1988 policy on federal fugitive apprehension.¹ This policy identifies the fugitive apprehension responsibilities of the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and the U.S. Marshals Service (USMS) and establishes conditions and coordination procedures for exceptions to these responsibilities.

We agreed with the requesters to focus on determining (1) the extent and nature of any interagency coordination problems among FBI, DEA, USMS, and other federal agencies involved in fugitive investigations and (2) if such problems existed, what actions had been or could be taken to address them. Coordination problems could include unnecessary duplicate or overlapping efforts, jurisdictional disputes, and noncooperation that could adversely affect the efficiency or effectiveness of efforts to apprehend fugitives.

To accomplish our objectives, we interviewed officials and reviewed various documents obtained from FBI, DEA, and USMS; other Justice offices including the United States National Central Bureau (USNCB), Criminal Division including the Division's Office of International Affairs (OIA), Executive Office of United States Attorneys, and Office of Investigative Agency Policies (OIAP); the Treasury Department's Bureau of Alcohol, Tobacco and Firearms (ATF), Customs Service, and Secret Service; and the State Department. We also reviewed the national wanted persons file, a database maintained by the FBI's National Crime Information Center (NCIC)

¹House Government Operations Committee report entitled "They Went Thataway: The Strange Case of Marc Rich and Pincus Green." H.R. Rep. No. 537, 102d Cong. 2d Sess. (1992).

and information from FBI and USMS internal inspection reports. Our review objectives, scope, and methodology are described in more detail in appendix I.

Results in Brief

Officials for FBI, DEA, USMS, and the other federal agencies we contacted, some of which had a prior history of coordination problems, all said that they did not have extensive interagency coordination problems in the fugitive apprehension area involving overlapping or duplicate efforts, jurisdictional disputes, or lack of cooperation. None of the agencies we contacted had any empirical data on the number of their fugitive cases that involved (1) coordination problems with another agency or (2) fugitives who were also wanted by another agency, and thus could potentially involve problems. Our analysis of NCIC data as of April 6, 1994, showed that of the 28,438 federal fugitives in the NCIC system, 727 or about 2.6 percent, were wanted by more than one agency. We could not determine whether the fugitive cases we found on NCIC that involved more than one agency experienced interagency coordination problems, including unnecessary overlapping or duplicate efforts. Nevertheless, if such problems do exist, they could jeopardize fugitive apprehension efforts, endanger law enforcement officials and the general public, and waste limited law enforcement resources.

In this regard, we did identify some interagency coordination problems that have or could have adversely affected the efficiency and effectiveness of federal fugitive apprehension efforts. These problems involved, primarily, FBI's and USMS' (1) failure to participate on each other's fugitive task forces; (2) disagreements over responsibility for prison escapes involving possible conspiracy charges; and (3) failure, at times, to cooperate when involved with the apprehension of other countries' fugitives. Also, in some instances, coordination problems occurred between USMS and other law enforcement agencies, such as the Customs Service, when the cases involved subjects who became fugitives subsequent to their arrest for violations under the jurisdiction of these other agencies.

During our review, FBI and USMS officials, responding in part to directions from top Justice officials to improve coordination and eliminate duplication, took or began taking actions to deal with their interagency problems. Similarly, USMS officials said they would address coordination issues with other agencies regarding postarrest fugitives.

Also, during our review, Justice established OIAP to resolve coordination problems and ensure efficiencies in areas where the responsibilities or activities of Justice's criminal investigative agencies overlapped. Among its specifically listed functions, OIAP was to establish procedures to coordinate fugitive apprehensions and to eliminate waste and duplication in the fugitive apprehension area. OIAP has said it expects the agencies to resolve their interagency coordination problems in a reasonable time and plans to stay abreast of the agencies' efforts.

Besides being a vehicle for ensuring that interagency coordination problems are addressed, OIAP represents a means to determine whether fugitive responsibilities are appropriately aligned among the Justice and non-Justice agencies to ensure efficient and effective use of federal law enforcement resources. OIAP may look at this issue in the future considering its other priorities, the availability of resources, and the facts at the time.

Background

The 1988 Justice policy on fugitive apprehension, which is still in effect, (1) designates FBI, DEA, and USMS' apprehension responsibilities, (2) establishes specific conditions for exceptions to these responsibilities, and (3) identifies the types of fugitives that the agencies are responsible for pursuing. Generally, fugitives are considered persons whose whereabouts are unknown and who are being sought because they have been charged with one or more crimes, have failed to appear for a required court action, or have escaped from custody. (See app. II for details on the 1988 policy.)

The Attorney General developed the 1988 policy in response to congressional and Justice concerns over long-standing interagency tensions and jurisdictional disputes, particularly between FBI and USMS. These situations were considered to have been adversely affecting the efficiency and effectiveness of fugitive apprehension efforts by these agencies. For example, FBI claimed that USMS' apprehension efforts were jeopardizing the safety of FBI agents, adversely affecting FBI investigations, and duplicating work done by FBI. (See app. III for a history of FBI and USMS fugitive apprehension responsibilities.)

In general, FBI and DEA, as well as other federal law enforcement agencies such as ATF, can pursue fugitives wanted for federal crimes that fall within their jurisdictions. Pursuant to the 1988 policy, however, DEA, according to

DEA and USMS officials, usually transfers its responsibilities for drug crime fugitives not caught within 7 days to USMS.

USMS generally is responsible for federal offenders who (1) after their initial arrest, fail to appear as required before federal courts, escape from confinement, or violate their probation or parole; (2) are wanted by federal agencies whose agents do not have arrest authority (e.g., Social Security Administration); or (3) are wanted on federal misdemeanor charges. Also, USMS and FBI are the principal Justice agencies responsible for other countries' fugitives who are believed to be in the United States.

OIAP, which was established in November 1993, is headed by a director (currently the FBI director serving dual roles) who is appointed by the Attorney General and is to be staffed with representatives from FBI, DEA, USMS, Immigration and Naturalization Service (INS), and Justice's Criminal Division. According to FBI and USMS officials, OIAP replaced the Associate Attorney General as the mechanism provided by the 1988 policy to resolve interagency problems involving the apprehension of fugitives.

The federal law enforcement agencies we contacted generally require entry of fugitive data into NCIC. This alerts other law enforcement agencies and facilitates fugitive apprehensions. For example, a fugitive wanted by FBI could be apprehended during a routine stop by local police for a traffic violation. An active entry in NCIC represents an open fugitive investigation by the entering agency. Minimally, the agency must have an arrest warrant or notice of escape for the subject and validate annually the fugitive data it has in NCIC. Appendixes IV, V, and VI provide additional information obtained from our analyses of the NCIC database regarding the percentage of federal fugitive entries or cases by agency, the general types of offenses for which federal fugitives were wanted, and the percentage of dangerous federal fugitives by agency.

No Indications of Extensive Problems Involving Interagency Duplication, Disputes, or Noncooperation

The law enforcement agencies' officials we contacted, our analysis of the NCIC wanted persons database, and our review of FBI and USMS internal inspection reports all indicated that there were not extensive interagency coordination problems in fugitive apprehensions.

Agencies Officials' Comments on Interagency Coordination Problems

Officials of the federal agencies we contacted, some of which had a prior history of coordination problems, all opined that, based on their experience, they did not have extensive interagency coordination problems, such as overlapping or duplicate efforts, jurisdictional disputes, or noncooperation with other agencies in the fugitive apprehension area. These officials generally did not have statistics or studies on the extent to which their respective agencies and others were pursuing the same fugitives or their fugitive cases entailed interagency problems. FBI officials, for example, said that while the fugitive area presented numerous opportunities for overlapping, redundant, and sometimes conflicting interests, interagency coordination was generally effective. Noting that any problems they had were generally with USMS, FBI officials said that the instances of problems between the two agencies had been minimal when compared to the number of fugitive investigations conducted by both agencies. USMS officials also made similar comments while adding that they had experienced some coordination problems with Treasury's law enforcement agencies.

Analysis of NCIC Wanted Persons Database

The overall data maintained by federal agencies on their fugitive caseloads varied. NCIC represented the best source, according to FBI and USMS officials, for obtaining relative comparisons of the number and types of fugitives sought by federal agencies. Our analysis of the NCIC wanted persons database provided some confirmation of comments we obtained from the agencies' officials in that the overall number of fugitives wanted by two or more agencies, i.e., involving overlapping jurisdictions, was not extensive.

We determined that the 29,339 active federal fugitive entries in NCIC as of April 6, 1994, represented a total of 28,438 individual fugitives after adjusting for multiple entries for the same fugitive. Of the 28,438 fugitives, 727, or about 2.6 percent, were wanted by 2 or more federal agencies. Of these 727 fugitives, 705 were wanted by 2 agencies, 21 were wanted by 3 agencies, and 1 was wanted by 4 agencies. USMS and FBI were pursuing the most fugitives wanted by more than one agency. Specifically, USMS wanted 633 (about 87 percent) of the 727 fugitives, FBI wanted 316 (about 43 percent), and both FBI and USMS wanted 227 (about 31 percent).

The percentages of overlap for the 22,905 fugitives whose records were removed from NCIC in 1992 and for the 23,928 fugitives whose records were removed in 1993 were 1.3 percent and 1.5 percent respectively.²

While the results of our analyses of NCIC are consistent with the contacted agencies' views that interagency problems are not extensive, we could not determine the significance of the fugitive cases we found on NCIC that involved more than one agency. We could not readily identify what, if any, interagency coordination problems these cases involved, including overlapping or duplicate efforts. Nevertheless, if such problems do exist, they could jeopardize fugitive apprehension efforts, endanger law enforcement officials and the general public, and waste limited law enforcement resources.

Review of Internal Inspections

We also found no indication of extensive interagency problems in the fugitive apprehension area through our review of FBI and USMS internal inspections reports information. Both agencies require periodic internal reviews of their field offices to determine if their offices are effectively, efficiently, and adequately performing their program and administrative responsibilities. While there are some differences, these reviews by each agency are to include efforts to determine if relations are good with other federal law enforcement agencies. For example, FBI reviewers are required to interview local representatives of other federal law enforcement agencies. According to FBI and USMS officials, the resultant reports should identify significant problems and recommendations, if there are any.

Documents provided by FBI showed that 19 of 52 inspections of FBI offices during fiscal years 1992 and 1993 had findings in the fugitive area. We reviewed those findings and found none that dealt with interagency problems.³ Documents provided by USMS showed that there were no findings on fugitive matters in the 12 inspection reports issued on USMS offices in fiscal year 1993.

²FBI and USMS officials told us that records are removed from NCIC usually because the fugitive has been apprehended. An FBI official said that some removals occur because the charges against the fugitives were dismissed or the entry was a mistake.

³The findings generally involved delays in entering and removing information from NCIC.

Efforts to Address Interagency Coordination Problems

While the agencies we contacted did not reveal extensive interagency problems, we did identify some problems that have or could have adversely affected efforts to apprehend federal fugitives. The problem areas primarily involved FBI's and USMS' (1) failure to participate on each other's task forces, (2) disagreements over responsibility for prison escapes when a conspiracy may have been involved, and (3) unwillingness at times to cooperate or withdraw from cases where both had separately been asked to assist in finding other countries' fugitives who were suspected of being in the United States. A fourth problem area mentioned by some agencies' officials involved subjects who became USMS fugitives after their initial arrest for violations under the jurisdiction of other agencies. FBI and USMS provided examples claiming that the other's involvement in specific operations and failure to share information jeopardized investigative efforts or required that investigative steps or information be replicated (e.g., records of telephone calls made by known associates of the involved fugitive).

FBI and USMS officials told us that problems of overlapping efforts, disputes, and noncooperation will be corrected through additional interagency agreements and through the interagency planning and coordination that is to occur in each federal judicial district in conjunction with the Justice Department's National Anti-Violent Crime Initiative.⁴ Further, they told us in January 1995 that, contrary to when we started our review (July 1993), there recently has been a high state of cooperation and coordination between the two agencies, including the establishment of an interagency working group to address coordination problems.⁵ They attributed these changes to the (1) Attorney General and the new heads of FBI and USMS, who have made it clear that interagency duplication, disputes, and noncooperation will not be tolerated; (2) Department of Justice's emphasis on ensuring sound use of its limited law enforcement resources; and (3) Attorney General's establishment of OIAP. Consistent with its charter, OIAP plans to stay abreast of the agencies' efforts to address interagency coordination problems and to intervene if necessary.

⁴This initiative and the related OIAP violent crime resolution, both announced on Mar. 1, 1994, required field offices of FBI, DEA, USMS, and INS, in conjunction with U.S. Attorneys, to submit a single investigative and prosecutive strategy designed to maximize the federal response to the violent crime problem, including apprehending violent fugitives in each federal judicial district. Among other things, the strategy was to involve state and local enforcement authorities and a well-defined use of resources including the establishment, enhancement, and refocusing of existing task force operations.

⁵This group, which first met in November 1994, was established by several Justice law enforcement agencies on an ad hoc basis to enhance interagency coordination on violent crime issues, including fugitive matters. The group includes representatives from FBI, DEA, USMS, INS, Justice's Criminal Division, and Bureau of Prisons. Treasury's ATF is also a participant. Any of the participating agencies can introduce issues for the group's consideration.

FBI and USMS Participation in Fugitive Task Forces

Generally, over the last several years, FBI and USMS did not participate in each other's task forces, which at times, according to FBI and USMS officials, targeted the same cities and fugitives and competed for local police participation. FBI told us that USMS had generally declined to participate in FBI-sponsored "safe streets task forces," citing insufficient staff resources to participate on a long-term basis.⁶ For example, in November 1993, USMS staff were participating in 8 of 107 FBI-sponsored task forces. In contrast, FBI officials said that USMS had not invited FBI to participate in USMS' fugitive investigative strike teams. These teams operated for short periods and usually involved efforts in several U.S. cities. In commenting on one such USMS effort involving violence-prone fugitives in 58 U.S. cities ("Operation Trident," 1993), FBI officials said that Trident "created redundancy in fugitive apprehension efforts, presented problems of safety for 'Trident' and 'safe streets task force' personnel, jeopardized ongoing FBI investigations related to substantive FBI violations and gang investigations...." FBI officials also noted that the 1988 policy does not require that such projects be coordinated and discussed with FBI before they are implemented.

In addition to their strike teams, USMS operated ongoing fugitive task forces jointly with local police in several cities. USMS officials acknowledged that FBI generally had not been invited to participate in the strike teams or task forces, given the general atmosphere of distrust and noncooperation that had existed between the two agencies. They noted, however, that in some locations there was FBI participation due to good relations between the local USMS and FBI offices. The officials cited their "gulf coast task force" (in the Houston, TX, area) to illustrate the problems they experienced with FBI over task forces. According to USMS, FBI (1) was invited to participate as an equal partner but declined to do so and (2) sought warrants for unlawful flight for some local fugitives that were already targeted by the task force. If accurate, FBI efforts to obtain such flight warrants would have been inconsistent with the 1988 fugitive policy, which provides that FBI will not seek these type of warrants if USMS is already pursuing the fugitives. FBI and USMS officials told us that they will discontinue operating independent, redundant fugitive task forces in the same geographic area. The USMS official said that USMS will not conduct any fugitive investigative strike teams unless they are requested by the Attorney General and without first seeking the participation of FBI and other agencies. The officials also noted that the interagency working group

⁶These task forces focus on violent crime and/or violent fugitives. Many involve fugitive apprehension efforts alone or along with special investigative efforts, e.g., gang-related violence. In August 1994, FBI officials told us that about half of the "safe streets task forces" operating at that time were involved exclusively or partly in fugitive apprehension efforts.

they and other Justice law enforcement agencies established is addressing duplication in the task force area as well as interagency coordination problems in other areas. For example, according to FBI officials, following the working group's review of apparent overlap between FBI and USMS in the Houston, TX, area, both agencies instructed their respective field offices to work toward consolidating their efforts. Also, they said the interagency planning and coordination that is to occur in each federal district under the Anti-Violent Crime Initiative should provide a basis for determining what fugitive or other law enforcement task forces are needed, given the nature of the violent crime problem in each geographic area and the availability of federal and local law enforcement resources.

In commenting on a draft of this report, the Department of Justice reaffirmed that the issues involving task forces are being addressed by FBI and USMS through the interagency working group. Justice stated that in cities where each agency has an operating task force, efforts are under way to combine resources, and further stated that the implementation of USMS "strike teams" has been discontinued.

Responsibility for Prison Escapes and Escape Conspiracy Charges

FBI and USMS officials noted a disagreement over responsibilities involving prison escapees. Specifically, this disagreement concerned which agency had responsibility when the escape involved a conspiracy charge, i.e., involved persons who helped plan the escape. Our analysis of NCIC data showed that, as of April 6, 1994, USMS wanted 1,680 fugitives for prison escapes. Information was unavailable, however, on how many involved possible conspiracy charges.

The 1988 policy did not specifically address the conspiracy aspect of an escape case. USMS officials said that under their interpretation of the 1988 policy, USMS was generally responsible for prison escapes and related conspiracy matters. USMS officials did not view the conspiracy charge as falling within the 1988 policy provision that gave FBI the option of taking responsibility for the escape case if new charges were involved. USMS officials believed that it would be unnecessary and impractical for both agencies to be involved in the same escape case. However, FBI officials believed that FBI was better suited to address conspiracies than USMS and was, under the 1988 policy, responsible for escape conspiracies.

The disagreement persisted despite a December 1991 decision by the Deputy Attorney General that FBI would be responsible for escape conspiracies. USMS officials believed that the Deputy Attorney General's

decision was based on a misunderstanding that the 1988 policy limited USMS' role to actual escapes instead of also including conspiracy matters. Consequently, USMS did not consider the issue resolved and therefore did not change its operation to accommodate the 1991 decision.

Responding to their directors' mandates to improve cooperation, FBI and USMS officials agreed, in June 1994, on a memorandum of understanding that gave FBI responsibility to investigate conspiracies associated with escapes or escape attempts from federal facilities. USMS would have responsibility for the actual escapee unless the person had not been sentenced and was being investigated by FBI for an additional crime or in connection with an organized crime, terrorism, or national security matter. Also, the new agreement specified that USMS was to be responsible for conspiracies involving escapes or attempted escapes of sentenced federal prisoners housed under contract in state prisons or local jails, unless the situation involved a riot, hostage taking, or loss of life. USMS and FBI also agreed to "fully share information and the fruits of their respective investigations" The Federal Bureau of Prisons also signed the memorandum of understanding since it would ordinarily be the agency to first discover the attempted or actual escape.

In commenting on a draft of this report, the Department of Justice said that disagreements between FBI and USMS over responsibilities for prison escapees have been mutually resolved through the June 1994 agreement and that the agreement has been successful to date.

Interagency Problems Involving Foreign Countries' Fugitives

The interagency coordination problems experienced by FBI and USMS with foreign countries' fugitives stemmed in part from each agency's desire to be responsive to other countries' requests for assistance in locating their fugitives who were suspected of being in the United States, according to officials from both agencies. The 1988 policy generally assigned responsibility for these fugitives to USMS. Exceptions were when an FBI foreign office (legal attache) was directly contacted by the host country or if the case involved various other special circumstances, e.g., FBI was also seeking a foreign fugitive on an arrest warrant for a U.S. crime. Usually, USMS was to receive cases when countries requested aid through the U.S. National Central Bureau (USNCB). FBI and USMS officials said that problems generally arose when countries made requests or contacts through either USNCB or OIA and also through an FBI legal attache. In these instances, neither USMS nor FBI were willing to let the other take exclusive responsibility once they discovered that the other was involved.

Officials at USMS, FBI, OIA, and USNCB all mentioned the following case to illustrate the types of problems that can occur between FBI and USMS. USMS developed a lead on the possible location (California) of a Swiss national wanted in connection with a robbery in Geneva. Responding to USMS inquiries through USNCB, the Swiss authorities advised USMS that they were not requesting an arrest warrant at that time but would be requesting that the subject be interviewed and his residence searched in the future with Swiss police involvement. According to USMS officials, they were subsequently advised by OIA and USNCB that an arrest warrant had been requested and advised by FBI that FBI was working on the case pursuant to a Swiss request made through the FBI legal attache in Switzerland.

A difference of opinion existed between USMS and FBI concerning the case and who had jurisdiction; representatives of both agencies met to discuss the matter. According to USMS and USNCB (1) FBI wanted sole jurisdiction because of the direct contact made by Swiss authorities, even though USMS had been working on the case for about a year; (2) although it was mutually agreed that the two agencies would work on the case jointly, FBI continued its efforts, including interviewing the subject, without coordinating with USMS; (3) FBI did not give timely notice to USMS when FBI and Swiss police subsequently went to the subject's location in California with an arrest warrant; (4) the arrest warrant could not be served because the subject had apparently fled the state after being earlier interviewed by FBI; and (5) FBI later arrested the subject in Las Vegas, NV, without informing USMS.

According to FBI (1) it maintained liaison with USMS, (2) USMS officials were notified, but arrived late, for the initial arrest effort by FBI and Swiss police in California, and (3) USMS demonstrated little interest once it was determined that the subject's location was unknown. Further, according to USMS and OIA, FBI's aforementioned interview of the subject occurred unexpectedly while FBI independently was conducting a preliminary search for the subject without an arrest warrant.

USMS and FBI officials said problems similar to this example only involved a few cases a year. USMS and FBI officials believed that, given the overall emphasis by their directors and OIAP on improved cooperation, they would avoid further problems in the future. In addition, OIA and USMS officials told us that OIA in August 1994 established a fugitive unit to coordinate and monitor activities involving other countries' fugitives or U.S.-fled fugitives. USMS also planned to assign its foreign fugitive coordinator to OIA to further improve coordination.

In commenting on a draft of this report, the Department of Justice stated that OIA, in conjunction with FBI and USMS, will ensure that no duplicative efforts are pursued. The Department also stated that FBI and USMS will continue working together to avoid needless overlap and to ensure effective use of resources.

The Treasury Department, in commenting on a draft of this report, said that Customs Service and the Internal Revenue Service are supporting the OIA effort with respect to high profile fugitives. Treasury also stated that the Financial Crimes Enforcement Network will assist OIA by searching their databases for leads on fugitives.⁷

Overlapping Efforts Involving Fugitives Wanted on Obstruction of Court Charges

According to USMS officials and our analysis of NCIC data, overlapping efforts often involved USMS because a previously arrested offender subsequently became a fugitive based on an obstruction of court charge.⁸ These fugitives initially were the responsibility of the law enforcement agencies having jurisdiction over the crimes for which the offenders were earlier arrested. Our analysis of NCIC data showed that 418 fugitives, or about 57 percent of the 727 NCIC fugitives wanted by more than one federal agency on April 6, 1994, involved USMS court obstruction charges. These 418 fugitives composed about 5 percent of the 8,814 fugitives wanted by USMS for court obstruction.

USMS officials said that interagency problems in this area often involved offenders wanted by agencies not covered by the 1988 Justice fugitive policy. Particularly, problems involved fugitives wanted by USMS for a court obstruction charge who also were wanted by Treasury law enforcement agencies. Our analyses of the 418 NCIC fugitives showed that of these, 194, or about 46 percent, were also wanted by Treasury law enforcement agencies. Of these 194, 179 fugitives were wanted by Treasury agencies for offenses other than court obstruction. However, we could not determine how many of the 179 fugitives were being pursued by Treasury agencies on the basis of their original responsibility for the fugitives and the subsequent court obstruction charge or on the basis of the fugitives being wanted for additional crimes. A USMS official believed that such cases generally did not involve additional crimes, whereas a Customs Service official believed they did.

⁷The Financial Crimes Enforcement Network is a relatively small Treasury agency established in 1990 to support law enforcement agencies by analyzing and coordinating financial intelligence.

⁸Court obstruction is a category of NCIC offense codes encompassing various offenses such as failure to appear for a required court appearance and probation/parole violators.

Treasury and USMS officials said that they usually coordinated their investigations on overlapping cases. However, according to USMS officials, some duplication of effort still occurred because each agency generally conducted its own separate investigation and contacted the other agency only after a lead had proven to be successful. The USMS spokesperson said that the duplicated efforts between USMS and another agency to apprehend the same fugitives were a waste of resources and could have impeded both agencies' fugitive investigations. Furthermore, problems in this area may be increasing. In December 1993, a Customs Service official told us Customs considered court obstruction fugitives to be primarily USMS' responsibility. However, in September 1994, USMS officials informed us that Customs Service had recently begun pursuing more of these fugitives. In November 1994, a Customs Service official told us that Customs was updating its policy guidance on fugitive apprehension and that it would address court obstruction fugitives. USMS officials told us that they planned to resolve their interagency coordination problems in this area through discussions with the involved agencies and, if possible, by securing interagency agreements. If unsuccessful, they planned to seek OIAP's assistance.

ATF, Customs Service, and Secret Service officials subsequently told us that they were cooperating with USMS to resolve interagency coordination problems. In commenting on a draft of this report, the Treasury Department stated that Customs Service will retain responsibility for court obstruction fugitives, given the general complexity and international nature of Customs' investigations. We discussed Treasury's comment with Customs and USMS officials. USMS officials stated that they had met with the Treasury agencies and believed they had reached agreement that court obstruction fugitives in general would be USMS' primary responsibility. They said that they would be meeting again with the agencies to ensure that there is no disagreement or unresolved issue. A Customs Service official told us that many of the fugitives in question are integral parts of ongoing Customs' investigations and should continue to be pursued by Customs. He noted that Customs and USMS have a history of good relations and cooperation and that he expects that they will resolve in future discussions any differences they might still have.

We also noted from our NCIC data analysis that, as of April 6, 1994, FBI wanted 140, or about 33 percent, of the 418 fugitives wanted by USMS for obstruction of court charges. Neither USMS nor FBI officials knew precisely why they had such overlapping cases since the 1988 policy defined the circumstances under which either FBI or USMS would assume responsibility

for each case. An FBI official said that this overlap was caused, in part, by conflicts between one of their field offices and the local USMS office. However, FBI and USMS officials believed that any problems experienced in this area would be corrected, given the mandates they were under to improve coordination. Although the officials were not specific as to how these problems would be corrected, they did not believe that any systemic or procedural changes would be needed.

OIAP Role in Addressing Interagency Coordination Problems

The Attorney General established OIAP as a partial response to the Vice President's National Performance Review task force's recommendations for improving the coordination and structure of federal law enforcement agencies.⁹ OIAP's overall mission is to (1) improve coordination among Justice's criminal investigative agencies, (2) reduce interagency duplication, (3) resolve issues where there is overlapping jurisdiction, (4) facilitate better use of investigative resources, and (5) advise the Attorney General on administrative, budgetary, and personnel matters involving these agencies. Among other things, OIAP's charter specifically called for it to establish procedures for coordinating fugitive apprehensions and to perform other functions in the fugitive area, as necessary, for effective policy coordination and elimination of waste and duplication.¹⁰ An OIAP spokesperson told us that when OIAP was considering how to address the matter of fugitive coordination problems, it agreed to a request by senior FBI and USMS officials to defer OIAP involvement and allow the two agencies to first address these problems. He also said that fugitive matters were being addressed to some extent as part of the interagency cooperation required in connection with Justice's Anti-Violent Crime Initiative, particularly the interagency working group. Although the official did not have any specific timeframe, he noted that OIAP's deference would not continue indefinitely in the absence of positive results and that the agencies are expected to resolve the problems in reasonable time. He also said that OIAP has stayed abreast of the agencies' efforts through a variety of ways and will continue to do so.

⁹Similar recommendations were made to the Secretary of the Treasury. Among other actions, the Secretary established an Under Secretary position to coordinate Treasury's law enforcement activities. Also, according to Treasury's Deputy Assistant Secretary for Enforcement, Treasury recently revitalized its Enforcement Council to mirror Justice's OIAP. The Council is chaired by the Under Secretary and composed of representatives of Treasury's law enforcement agencies.

¹⁰OIAP does not have jurisdiction over non-Justice agencies and consequently any efforts to address issues involving Justice agencies and non-Justice agencies (e.g., Customs Service) would require the voluntary participation of the non-Justice agencies.

OIAP Provides a Vehicle for Determining Whether Fugitive Apprehension Responsibilities Are Efficiently and Effectively Aligned

In addition to its role in ensuring that fugitive matters are properly coordinated among the various Justice law enforcement agencies, OIAP represents a means for Justice to ensure that the current alignment of fugitive apprehension responsibilities among its agencies is the most efficient and effective use of federal law enforcement resources. The alignment of responsibilities has evolved over the years, in part, as a result of efforts to resolve intermittent interagency coordination problems. Consequently, this alignment has led to a division of responsibilities, which could cause interagency problems and may or may not represent the most efficient and effective use of resources. This matter has not been systematically examined.

Given its charter and with representatives from all Justice criminal investigative agencies, OIAP is positioned to help ensure that the current division of fugitive responsibilities among Justice agencies is well founded and results in the most efficient and effective use of resources. Also, by involving representatives from key non-Justice agencies, OIAP could help to ensure that efficient and effective use of limited law enforcement resources and fewer interagency coordination problems occur across the federal government.

No Assurance Fugitive Responsibilities Are Efficiently and Effectively Aligned

Although the division of fugitive responsibilities as it has evolved may be appropriate, no systematic assessment of the current alignment of these responsibilities has been conducted to determine whether the differences or inconsistencies are well founded and represent the most efficient and effective use of law enforcement resources. For example, under Justice' 1988 fugitive policy (see app. II), the FBI is responsible for fugitives wanted on arrest warrants for crimes that are within FBI's jurisdiction and for any of these fugitives who, after arrest, flee prior to adjudication of guilt. On the other hand, DEA may, and usually does, delegate its arrest warrant fugitives not caught within a short period to USMS. However, unlike the FBI, DEA does not have responsibility for any of its postarrest fugitives who flee prior to adjudication of guilt, unless new charges are involved and DEA elects to take responsibility.

Other federal agencies generally have retained responsibility for fugitives wanted on their arrest warrants, but, to varying degrees, they have deferred responsibility to USMS for postarrest fugitives. Also, Customs Service agents may, under Customs' policy, refer any fugitive cases to USMS after passage of a reasonable time.

The law enforcement agencies we contacted generally believed that investigative work and fugitive apprehension are distinct functions. ATF and Customs Service officials acknowledged that fugitive apprehension was secondary to their primary responsibility of conducting investigations. However, none of the representatives of the agencies, other than DEA, expressed or indicated any interest in giving up their basic responsibility for fugitives prior to the initial apprehension. They believed that apprehension was a logical part of their investigative case preparation responsibilities. They believed that they were most informed about possible locations or known associates that could lead to quick apprehensions. FBI officials noted that their agents were as capable as USMS' deputy marshals in pursuing fugitives. A Customs Service official stated that, due to the complexity of Customs' investigations and the sophistication of many of their fugitives, Customs case agents are the best people to pursue Customs' fugitives, who are often an integral part of a larger Customs' investigation.

The Treasury agencies had mixed views, however, on their responsibilities for arrested offenders who subsequently become fugitives. As noted earlier, USMS is seeking agreements with other agencies on what responsibilities they and USMS will have regarding postarrest fugitives.

DEA and USMS officials noted that assigning DEA fugitive responsibilities to USMS makes sense given that USMS's deputy marshals are trained and experienced at fugitive apprehension. DEA staff are then available to work exclusively on drug investigations. Under the 1988 policy, DEA may delegate responsibility to USMS if the fugitive is not caught within 7 days after issuance of the arrest warrant. DEA officials noted that the 7-day requirement gave them time to follow up on any "hot leads" as to the possible location of the fugitive and helped to ensure that the delegation process did not hinder the apprehension of fugitives. For example, according to USMS, DEA arrested 2,601, or about 44 percent, of all DEA fugitives caught in fiscal year 1993. According to a USMS official, most of these arrests were fugitives who had not been delegated to USMS and who were caught shortly after the issuance of their arrest warrants.

The basis for these policy differences among USMS, FBI, and other agencies and their relative efficiency and effectiveness are issues that could be considered in any examination of federal fugitive apprehension responsibilities. Besides looking at the agencies' specific responsibilities for arrest warrant and postarrest fugitives, such an examination also might include determining whether a single agency, such as USMS or FBI, should

have responsibility for fugitives in general who have remained in fugitive status for a specified time, i.e., where all leads have been exhausted and no active apprehension efforts exist. In this regard, we noted that many fugitives go unapprehended for long periods. For example, about 61 percent of the 29,339 federal fugitive entries in the NCIC database as of April 6, 1994, were for fugitives who had been wanted for 2 years or longer. In addition, consideration also could be given to how changes in fugitive apprehension responsibilities among the agencies would affect their other responsibilities or federal law enforcement in general.

OIAP Role in Addressing the Division of Fugitive Responsibilities

An OIAP spokesperson acknowledged the differences in the division of responsibilities for fugitive apprehension and told us that it might be appropriate for OIAP to address the overall issue of these responsibilities at some future time. He said that such an effort would be consistent with OIAP's charter. He noted, however, that while OIAP has had several successful initiatives, it is just beginning to develop credibility and has to work through the distrust that has built up among the various agencies over the years.¹¹ He said that to successfully review, and perhaps recommend changing the current alignment of fugitive responsibilities, OIAP must first have a high level of credibility with the affected law enforcement agencies. He also noted that whether OIAP would conduct such an examination would depend upon the facts, other priorities facing OIAP, and the availability of resources at the time.

Although OIAP has no jurisdiction over the fugitive responsibilities of non-Justice agencies, the OIAP spokesperson said that agencies, such as the Treasury Department's law enforcement agencies, might formally participate at the OIAP executive level at some future time. He noted that non-Justice agencies already have been involved in some OIAP initiatives at the working group level. For example, ATF was participating in an OIAP working group on the Anti-Violent Crime Initiative. He also said that OIAP can and would encourage the Treasury agencies to work out any problems they have with the Justice agencies.

Conclusions

Indications are that the percentage of fugitive cases involving interagency coordination problems, such as interagency duplication, jurisdictional

¹¹Among other things, OIAP has issued resolutions and taken actions involving (a) the sharing of federal drug intelligence and responsibility for drug-related investigations in foreign countries, (b) coordination of violent crime activities, (c) coordination of the budget requests of the various OIAP agencies, (d) location and use of Justice field offices and resources, and (e) savings relating to the purchase of law enforcement equipment.

disputes, and noncooperation, is not large. Nevertheless, there have been instances that agency officials said have or potentially could have adversely affected their efforts to apprehend federal fugitives. Officials from the principal agencies involved—FBI and USMS—believe that the problems will be sufficiently addressed as a result of (1) specific efforts they have made or will make to resolve problems, (2) the planning and coordination that will be done under Justice’s Anti-Violent Crime Initiative, (3) mandates from the Attorney General and their agency heads that interagency squabbles and noncooperation will not be tolerated, and (4) the establishment of OIAP. In addition, USMS officials are taking steps to resolve problems involving non-Justice agencies through direct negotiations, and, if unsuccessful, plan to request assistance from OIAP.

OIAP was established, in part, to improve interagency coordination and eliminate waste and duplication in the fugitive area. In this regard, OIAP plans to continue staying abreast of the agencies’ efforts to address interagency coordination problems and expects the agencies to do so in a reasonable amount of time. In view of the actions being taken by FBI, USMS, and OIAP, we are not making any recommendations.

OIAP also represents a unique opportunity to determine if the alignment of fugitive responsibilities among Justice and non-Justice agencies represents efficient and effective use of limited law enforcement resources. The current alignment of responsibilities has evolved over the years, in part, as a result of efforts to resolve intermittent interagency coordination problems. Consequently, this has led to differences in responsibilities that may or may not represent the best use of resources.

OIAP has acknowledged differences in the division of fugitive responsibilities and may, once it has established itself as a credible interagency management group, look into the issue of fugitive responsibilities among agencies. Such an examination would then depend upon the facts existing at that time and OIAP’s other priorities. We believe that this is a reasonable approach and consequently are not making any recommendation on this matter.

Agency Comments

The Justice Department and the Treasury Department provided written comments on a draft of this report. These comments are presented in appendixes VII and VIII. Overall, the agencies agreed that there are not extensive interagency conflicts or coordination problems. Justice also reiterated that appropriate corrective actions have been or will be taken to

address the interagency coordination problems that have occurred. Justice specifically mentioned actions relating to task forces, foreign fugitives, and prison escapes. Treasury specifically referred to assistance being provided to Justice's OIA and to Customs Service's responsibility for persons who flee after their initial arrest. These comments are noted earlier in this report.

Justice said that interagency disputes will not be allowed to affect its efforts to pursue federal fugitives and that any disputes that arise will be handled through interagency discussion, cooperation, and departmental oversight. Justice stated that it remained vigilant in its efforts to reduce or minimize instances that could jeopardize fugitive apprehension efforts, endanger law enforcement officials and the general public, or waste limited law enforcement resources. In this regard, Justice noted that its fugitive programs are continually reviewed by the responsible agencies to minimize any inefficiencies or duplication.

With regard to working with non-Justice agencies, Justice reiterated that OIAP does not have any jurisdiction over these agencies. Justice noted that consequently any discussion of Treasury Department participation in the OIAP process would require Treasury's consent. We recognize that participation by non-Justice agencies with OIAP would be voluntary and note that ATF is already cooperating with OIAP in connection with Justice's Anti-Violent Crime Initiative. Moreover, in its comments, Treasury reiterated that it had revitalized the Treasury Enforcement Council as a means, similar to OIAP, for providing enforcement agency coordination and for addressing specific enforcement issues. We believe that, through OIAP and the Enforcement Council, Justice and Treasury should be able to enhance interdepartmental cooperation in the fugitive area, as well as other areas, and surface and resolve any coordination problems such as those discussed in this report. Furthermore, OIAP and the Enforcement Council represent the means for Justice and Treasury to ensure the interagency cooperation that would be needed for any future review of whether the alignment of fugitive apprehension responsibilities among the involved agencies is the most effective and efficient use of their law enforcement resources.

We are sending copies of this report to the Attorney General; the Secretary of the Treasury; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

The major contributors are listed in appendix IX. Should you need additional information on the contents of this report, please contact me on (202) 512-8720.

A handwritten signature in black ink that reads "Daniel C. Harris". The signature is written in a cursive style with a large, looped initial 'D'.

Daniel C. Harris
Assistant Director, Administration
of Justice Issues

Contents

| | |
|--|----|
| Letter | 1 |
| Appendix I Objectives, Scope, and Methodology | 24 |
| Appendix II Summary of Key Provisions of the 1988 Justice Policy on Fugitive Apprehension in FBI, DEA, and USMS Cases | 28 |
| Appendix III History of FBI and USMS Fugitive Apprehension Responsibilities | 31 |
| Appendix IV Percentage of Federal Fugitive Cases by Agency Entered Into NCIC Database | 33 |
| Appendix V Types of Offenses for Which Federal Fugitives Are Wanted | 34 |

| | |
|---|----|
| Appendix VI Percentage of Dangerous Federal Fugitives by Agency Entered Into NCIC Database | 35 |
| Appendix VII Comments From the Department of Justice | 36 |
| Appendix VIII Comments From the Department of the Treasury | 39 |
| Appendix IX Major Contributors to This Report | 41 |

Abbreviations

| | |
|-------|---|
| ATF | Bureau of Alcohol, Tobacco and Firearms |
| DEA | Drug Enforcement Administration |
| FBI | Federal Bureau of Investigation |
| INS | Immigration and Naturalization Service |
| NCIC | National Crime Information Center |
| OIA | Office of International Affairs |
| OIAP | Office of Investigative Agency Policies |
| USNCB | U.S. National Central Bureau |
| USMS | U.S. Marshals Service |

Objectives, Scope, and Methodology

As a result of its study of two specific fugitives, the former House Government Operations Committee's Subcommittee on Government Information, Justice, and Agriculture was concerned about the overall effectiveness of the Department of Justice's 1988 policy in resolving interagency rivalries and problems in fugitive apprehensions.¹ This policy identifies the fugitive responsibilities of FBI, DEA, and USMS and establishes conditions for exceptions to these responsibilities. The chairmen of the Committee and Subcommittee requested that we review the policy. We agreed with the requesters to focus on determining (1) the extent and nature of any interagency coordination problems among FBI, DEA, and USMS and other federal agencies involved in fugitive investigations and (2) if such problems existed, what actions had been or could be taken to address them. Coordination problems could include unnecessary duplicate or overlapping efforts, jurisdictional disputes, and noncooperation that could adversely affect the efficiency or effectiveness of efforts to apprehend fugitives.

To accomplish our objectives, we interviewed officials and reviewed various documents obtained from FBI, DEA, and USMS; the Treasury Department's ATF, Customs Service, and Secret Service; Justice's USNCB, Criminal Division, Executive Office of United States Attorneys, and OIAP; and the State Department. The Treasury agencies were not part of the 1988 Justice policy. USMS officials identified these agencies as those agencies outside of the Justice Department with which it was likely to have overlapping efforts or interagency disputes in the fugitive apprehension area. We contacted officials of Justice's USNCB and the Criminal Division's OIA, and the State Department for their perspectives on interagency problems involving international fugitives. We contacted officials of the Executive Office of United States Attorneys for any overall perspectives U.S. attorneys might have on interagency problems. We contacted OIAP officials to identify ongoing actions and plans for addressing interagency fugitive matters.

We asked the designated spokesperson(s) of each agency, among other things, about the nature and extent of any interagency problems their agencies may have experienced with other agencies in the fugitive area. We requested any studies or reports they had on interagency fugitive activities and related problems.

¹House Government Operations Committee report entitled "They Went Thataway: The Strange Case of Marc Rich and Pincus Green." H.R. Rep. No. 537, 102d Cong. 2d Sess. (1992).

Documentation obtained from FBI and USMS included (1) policy guidance and descriptive information on their fugitive activities; (2) brief descriptions of fugitive cases they selected, at our request, to illustrate both good and poor interagency interactions; (3) statistics on their fugitive caseloads and accomplishments; (4) sections of reports dealing with internal reviews, inspections, or other studies of fugitive matters; (5) memorandums of understanding, agreements, and policies on the coordination and division of fugitive apprehension responsibilities among federal agencies; and (6) various other documents illustrating interagency relations and problems in the fugitive area. Documentation obtained from DEA and the other contacted agencies generally was limited to policy guidance on their fugitive roles and operations and related statistics. These agencies had far fewer fugitive caseloads than FBI and USMS.

It is possible that the representatives of the agencies we contacted might not have been inclined to point out problems their agencies had with other agencies. They were, however, sometimes critical of another agency in one or more specific areas. Further, they were generally consistent in noting that interagency relations were good overall and in identifying the areas where problems occurred. In view of their consistent views and the establishment of OIAP to address interagency problems, we did not attempt to specifically identify the extent of problems. Instead, we performed two limited analyses to provide some assurance that the perspectives provided by the agencies' representatives were reasonable.

First, we reviewed the NCIC wanted persons database for indications of the overall extent and types of federal fugitives wanted by more than one federal agency. We did not determine the extent to which such fugitive cases involved any interagency disputes, noncooperation, or duplication beyond the minimum work needed by an agency to keep a fugitive record on NCIC and to maintain an open case file. We analyzed NCIC entries for (1) persons wanted as of April 6, 1994, and (2) wanted persons whose records were removed from NCIC during calendar years 1992 and 1993 to determine if two or more agencies had entered the same fugitive in NCIC. While we have no assurance that NCIC included all of the agencies' fugitives, every agency we contacted had a policy requiring entry into NCIC. Based on what the agencies told us, we determined that NCIC was the best source for identifying their fugitives as well as fugitives wanted by more than one agency. However, according to FBI and USMS officials, some federal fugitives generally are not entered into the NCIC wanted persons file and would not be identified in our analysis to determine overlapping fugitive efforts. For example, according to USMS officials, other countries'

fugitives suspected of being in the United States are not entered in the NCIC wanted persons database unless there is an arrest warrant authorized by OIA.

To identify the extent to which different federal agencies entered the same fugitive data into NCIC, i.e., fugitive matters involving overlapping jurisdictions, we conducted a four-stage computer analysis. We excluded all test entries and temporary warrant entries from our analyses. Entries made by two or more offices within the same agency were not counted as duplicate entries. We used the same analysis scheme for fugitives wanted as of April 6, 1994, as we used for fugitives removed from NCIC in 1992 and 1993. We discussed our methodology with USMS and FBI officials who generally agreed that it was a reasonable approach to identifying overlapping fugitive cases.

NCIC contains various identifying data on each fugitive. In the first stage of matching, we identified multiple entries using FBI numbers. An FBI number is unique to an individual and is assigned to all persons for whom FBI receives fingerprint cards. Consequently, the FBI number was the most reliable identifier of an individual in the NCIC system. However, not all fugitives on NCIC had an FBI number. In the second stage, for entries without such numbers, but with social security numbers, we identified multiple entries with identical social security numbers. In the third stage, we compared nonmatching entries from the first stage that had a social security number with nonmatching entries from the second stage. The fourth stage involved entries without an FBI or social security number. We matched these entries using name and birth date.

In addition to analyzing NCIC data, we reviewed policy guidance and various parts of reports on FBI and USMS internal inspections of their offices to determine what, if any, interagency problems were found in the fugitive area. In this regard, USMS officials provided us with copies of sections on fugitives from the 12 inspection reports they said were issued in fiscal year 1993; each involved a district office headed by a U.S. marshal. FBI officials provided us with inspection information from fiscal years 1992 and 1993. According to this information, 19 of 52 reports issued on FBI headquarters, field offices, and overseas offices during fiscal years 1992 and 1993 contained findings on fugitive matters. They provided us with copies of the findings sections of those reports. Given the nature and size of the FBI and USMS fugitive programs, we did not examine similar reviews conducted by the other federal law enforcement agencies we contacted. Any major

problems they had would likely have involved FBI or USMS and be reflected in those agencies' reports.

We further analyzed the information obtained from NCIC, interviews, and documents provided by the agencies to better identify the types of problems that occurred, their causes, actual or potential effects, and needed corrective actions. We queried FBI, OIAP, and USMS officials on and sought documentation of plans to implement needed corrective actions.

We also relied on NCIC data to obtain general comparisons between federal agencies on the number and type of their fugitive caseloads. These comparisons could not be made using the data regularly maintained and provided by the agencies on these caseloads because the level of information varied significantly among them. USMS regularly maintained a database of its warrants from which it could provide information on the number, type (e.g., DEA, bond default), and disposition (e.g., USMS arrested or other agency arrested) of the fugitives for whom it had apprehension responsibility. However, the same level of information on fugitive caseloads was not available from FBI and other law enforcement agencies, such as Customs Service and ATF. The focus of these agencies' efforts and management systems is on investigating crimes that fall within their jurisdiction. These investigations do not always involve pursuits of fugitives. Thus, their databases generally could provide information on the number and type of their investigations (e.g., fraud, organized crime, and smuggling), but did not specifically track the number, type, and disposition of their fugitive efforts. Although FBI could provide some information on the number and type of escaped federal prisoners and military deserters it wanted and state and local fugitives it wanted under the unlawful flight program, FBI, ATF, and Customs Service generally relied on NCIC data to obtain current information on the number and type of fugitives they were pursuing. Since the fugitive data we sought was unavailable from FBI, ATF, and Customs Service, we did not determine the level of information available from Secret Service.

Justice and Treasury provided written comments on a draft of this report. These comments are reprinted in appendixes VII and VIII and are incorporated in the report as appropriate.

Our work was performed from July 1993 to January 1995 in accordance with generally accepted government auditing standards.

Summary of Key Provisions of the 1988 Justice Policy on Fugitive Apprehension in FBI, DEA, and USMS Cases

| Category | Agencies | | |
|---|--|--|--|
| | FBI | DEA | USMS |
| Arrest warrants ^a | <p>Responsible for cases involving FBI investigations.</p> <p>For joint FBI/DEA and multiagency task force investigations, the lead agency decides whether to keep or give the case to USMS.</p> | <p>May delegate those cases from DEA investigations to USMS if the fugitive is not caught in 7 days.</p> <p>May take back these cases if new charges are involved.</p> | <p>May get delegation of authority from DEA or lead agency in task force investigation.</p> |
| Post-arraignment ^b | <p>Responsible for FBI cases.</p> | <p>May elect responsibility for DEA case if new charges are involved.</p> <p>If electing responsibility, DEA must provide written notice to USMS. Responsibility becomes effective 7 days after notification is received, with interim efforts to be coordinated between DEA and USMS.</p> | <p>Responsible for DEA cases unless new charges are involved and DEA elects responsibility.</p> |
| Post-conviction other than escapes ^c | <p>Responsible when FBI case involves counter-intelligence, organized crime, terrorism, or new charges.</p> <p>If electing responsibility, FBI must provide written notice to USMS. Responsibility becomes effective 7 days after notification is received, with interim efforts to be coordinated between FBI and USMS.</p> | <p>May elect responsibility for DEA case if new charges are involved.</p> <p>If electing responsibility, DEA must provide written notice to USMS. Responsibility becomes effective 7 days after notification is received, with interim efforts to be coordinated between DEA and USMS.</p> | <p>Responsible after judgment of guilt with noted exceptions (see FBI and DEA).</p> <p>Must notify original agency of the violation.</p> <p>May ask to be involved after a 7-day period. If denied, may appeal within the 7 days to Associate Attorney General, who is to decide within 48 hours. Agencies are to coordinate in the interim.^d</p> |
| Escaped federal prisoners ^e | <p>Responsible when FBI case involves counter-intelligence, organized crime, terrorism, or new charges.</p> <p>If electing responsibility, FBI must provide written notice to USMS. Responsibility becomes effective 7 days after notification is received, with interim efforts to be coordinated between FBI and USMS.</p> | <p>May elect responsibility for DEA case if new charges are involved.</p> <p>If electing responsibility, DEA must provide written notice to USMS. Responsibility becomes effective 7 days after notification is received, with interim efforts to be coordinated between DEA and USMS.</p> | <p>Responsible with noted exceptions (see FBI and DEA).</p> <p>Must notify original agency of the escape.</p> |

(continued)

**Appendix II
Summary of Key Provisions of the 1988
Justice Policy on Fugitive Apprehension in
FBI, DEA, and USMS Cases**

| Category | Agencies | | |
|--|--|---|--|
| | FBI | DEA | USMS |
| Unlawful flight fugitives ^f | <p>Responsible for pursuing these types of fugitives, but is not to seek unlawful flight warrant if USMS is already pursuing the fugitive because of an escape, a bond default, or a violation of probation, parole, or mandatory release conditions.</p> <p>Is to notify USMS of state/local government requests for unlawful flight aid when USMS special programs are involved (see USMS) and notify state/local government authorities if USMS is already pursuing the fugitive.</p> <p>Is to be told by USMS of state or local interest in FBI-pursued fugitive.</p> | <p>Is to be told by USMS of state or local interest in DEA-pursued fugitive.</p> | <p>May provide information to state and local governments about their fugitives. Formal pursuit is to be done by FBI under unlawful flight statutes, except for special programs such as USMS task forces that are to be approved by the Associate Attorney General.</p> <p>Is to notify state/local governments if fugitive is apprehended.</p> <p>If state/local governments ask for USMS aid for fugitive being pursued by FBI or DEA, USMS is to refer the requester to FBI/DEA and notify FBI/DEA of the state/local request.</p> |
| Foreign fugitives ^g | <p>Responsible if the case (1) involves counter-intelligence, organized crime, or terrorism; (2) is an investigation currently being conducted at the request of the concerned foreign government; (3) involves a fugitive FBI is seeking on an arrest warrant for a federal offense; or (4) involves a referral made exclusively to FBI via an FBI country attache.</p> <p>If the request is received directly from a foreign government, FBI is to notify USNCB^h to determine if other requests have been made and the case is being worked on by other agencies.</p> | <p>Responsible if the case involves a fugitive who is the subject of a DEA investigation that is currently being conducted at a foreign government request or when it exclusively is referred to DEA via a DEA country attache.</p> <p>If a request is received directly from a foreign government, DEA is to notify USNCB^h to determine if other requests have been made and the case is being worked on by other agencies.</p> | <p>Responsible for all cases except those that are the responsibility of FBI or DEA, and cases that USNCB^h refers to other agencies, such as Immigration and Naturalization Service and state/local governments, as appropriate.</p> <p>If a request is received directly from a foreign government, USMS is to notify the USNCB^h to determine if other requests have been made and the case is being worked on by other agencies.</p> |

(Table notes on next page)

Appendix II
Summary of Key Provisions of the 1988
Justice Policy on Fugitive Apprehension in
FBI, DEA, and USMS Cases

Note 1: USMS is to advise any federal agency seeking its help on a fugitive if FBI or DEA are already involved. If an agency insists on USMS aid, USMS is to notify FBI or DEA, which is to defer to USMS or assert need for their continued work. If the other federal agency does not accept deferral to FBI or DEA, then all parties are to confer and go to the Associate Attorney General, if not resolved.

Note 2: This policy does not preclude an agency from delegating any case(s) to USMS or vice versa.

^aThese cases involve persons for whom federal agencies hold arrest warrants but cannot find.

^bThese cases involve persons who default on bond or fail to appear in court.

^cThese cases involve probation, parole, and conditional or mandatory release violators.

^dThe investigating agency is to return apprehension responsibility to USMS if the reason for the exception is no longer applicable. For example, if FBI is seeking a probation violator because it has an arrest warrant for a new crime, and the warrant is later withdrawn because the case was dismissed, apprehension responsibility for the fugitive is to be returned to USMS.

^eThese cases involve violations which are, as a group, referred to as the federal Escape and Rescue Statutes.

^fThese cases involve state/local fugitives who have been charged with federal crime of unlawful flight.

^gThese cases involve other countries' fugitives sought in the United States.

^hOIA is to notify USNCB of any request it receives from a foreign government for assistance in locating or apprehending a foreign fugitive. This is to be done to determine if a parallel request exists.

History of FBI and USMS Fugitive Apprehension Responsibilities

Prior to 1979, USMS' fugitive apprehension efforts were limited to those cases referred specifically by the courts or undertaken as thought appropriate by individual U.S. marshals. In 1979, at the request of FBI, the Attorney General transferred primary responsibility to USMS for fugitive cases involving federal prison escapes, bond defaulters, and parole and probation violators. The intention was to free FBI resources for higher priority work, such as organized crime investigations. These changes were agreed to by FBI and USMS and presented in a memorandum of understanding.

In 1982, FBI sought to regain responsibility for any such USMS fugitives who had originally been the subject of an FBI investigation or who had committed additional crimes that fell under FBI's responsibility. USMS, in return, asked that FBI transfer responsibility for the unlawful flight fugitive program to USMS. Neither agency agreed to the other's proposal, and the division of responsibilities between the two remained as defined in the 1979 agreement. However, in 1982, an agreement between FBI and DEA gave DEA the option of delegating to FBI responsibility for DEA's "significant" fugitives (from DEA class 1 and class 2 drug cases).¹ This was one result of a debate over whether FBI should take over DEA and assume responsibility for federal drug law enforcement. Although there was no formal agreement, DEA also turned over to USMS responsibility for some of its lower priority fugitives (from DEA class 3 and 4 drug cases).

In 1986, we reviewed the feasibility of transferring responsibility for FBI's unlawful flight program to USMS.² This review was in response to congressional concerns over jurisdictional disputes between FBI and USMS, whether USMS could perform the responsibility more cheaply than FBI, and whether FBI resources could be better used on higher priority matters. Given the general lack of data, e.g., cost of individual fugitive investigations, we reported that there were no clear-cut answers about whether the program should be transferred. We said that the matter appeared to be a policy decision for the administration or Congress.

In 1987 and early 1988, disputes between USMS and FBI over fugitive apprehension responsibilities again received congressional attention. FBI claimed that USMS' fugitive efforts were jeopardizing the safety of FBI

¹Subjects of DEA investigations are classified under one of four classifications indicating their relative role in the drug traffic and investigative priority. There are four classifications, denoted as 1, 2, 3, or 4, with 1 being the most significant.

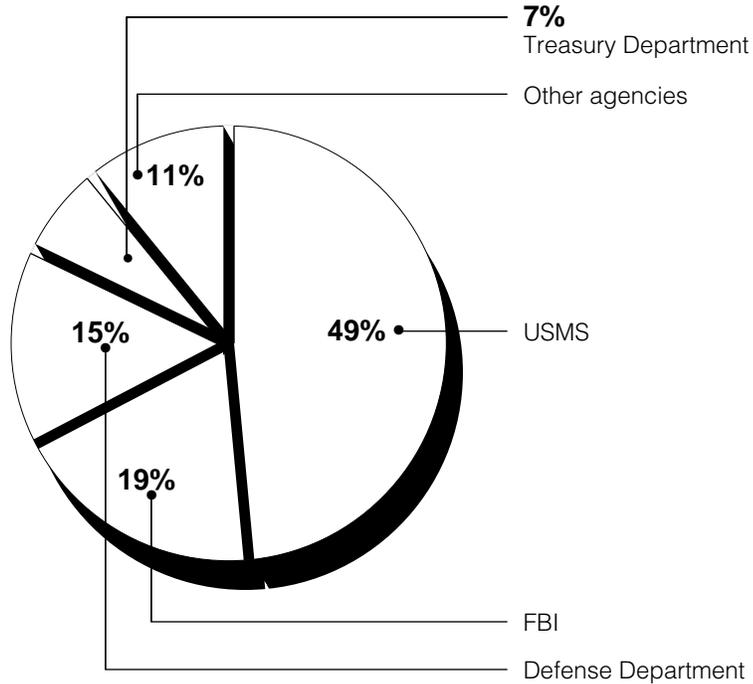
²Criminal Justice: Who Should Be Responsible for State Fugitives—the FBI or U.S. Marshals? (GAO/GGD 86-115BR, Sept. 10, 1986).

**Appendix III
History of FBI and USMS Fugitive
Apprehension Responsibilities**

agents, adversely effecting FBI investigations, and duplicating work done by FBI. USMS responded that these claims were unsupported and that FBI wanted USMS to be subservient to FBI. The Attorney General told the interested congressional committees that he would correct the problems, and the result was the August 1988 Department of Justice policy on fugitive apprehensions (see app. II).

The 1988 policy and its effectiveness in eliminating interagency problems came into question during the House Government Operations Subcommittee hearings on two high profile fugitives. These hearings led to the request for our review and this report.

Percentage of Federal Fugitive Cases by Agency Entered Into NCIC Database



Note 1: Defense Department includes entries by the U.S. Army, U.S. Navy, U.S. Marines, U.S. Air Force, and their investigative agencies.

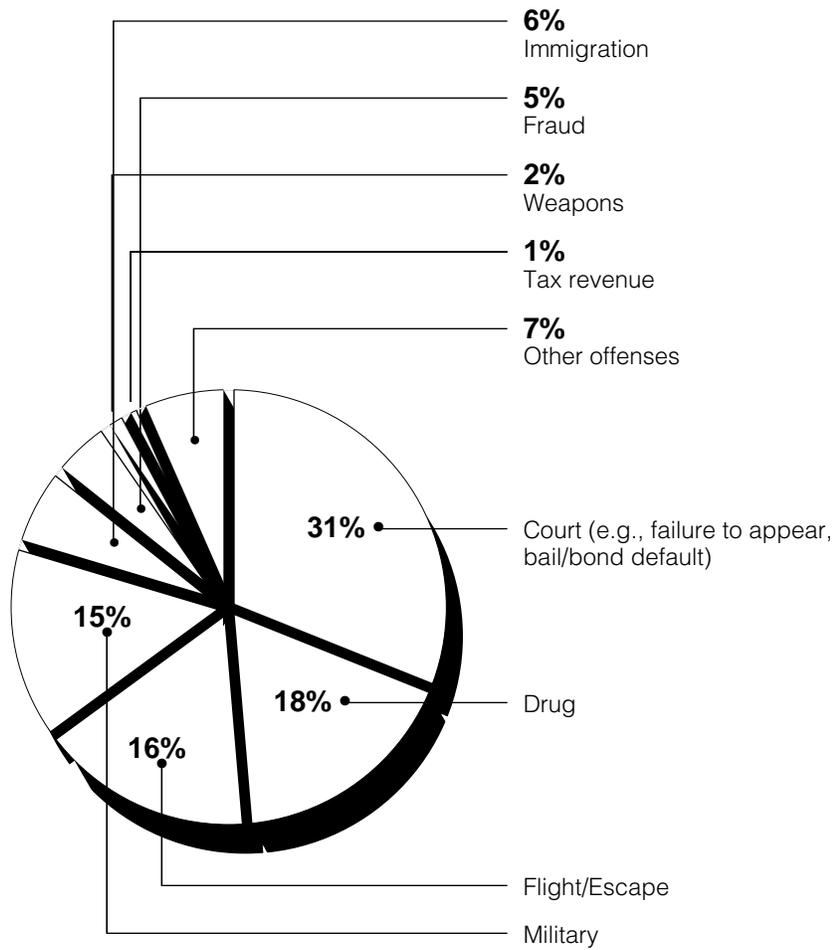
Note 2: Treasury Department includes entries by ATF, Customs Service, Internal Revenue Service, and Secret Service.

Note 3: Other agencies include entries by 12 different federal agencies/departments.

Note 4: Does not add to 100 percent due to rounding.

Source: GAO Analysis of NCIC Wanted Persons File, Apr. 6, 1994.

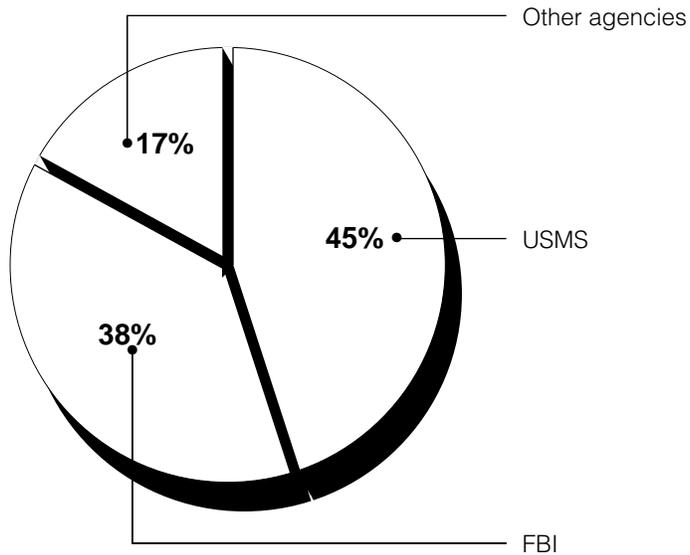
Types of Offenses for Which Federal Fugitives Are Wanted



Note: Does not add to 100 percent due to rounding.

Source: GAO Analysis of NCIC Wanted Persons File, Apr. 6, 1994.

Percentage of Dangerous Federal Fugitives by Agency Entered Into NCIC Database



Note 1: Dangerous fugitives include those entries with caution notations on their records. According to FBI and USMS officials, a caution notation generally means that the fugitive should be considered dangerous. About 30 percent of all NCIC entries contained caution notations.

Note 2: Other agencies include entries by 22 different agencies/ departments.

Source: GAO Analysis of NCIC Wanted Persons File, Apr. 6, 1994.

Comments From the Department of Justice



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

March 15, 1995

Mr. Norman J. Rabkin
Director
Administration of Justice Issues
General Government Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Rabkin:

After a review of the General Accounting Office (GAO) draft report entitled "FEDERAL FUGITIVE APPREHENSION, Agencies Taking Action To Improve Coordination And Cooperation," the following comments are being provided for your consideration:

Department of Justice (DOJ) entities with fugitive apprehension responsibilities have reviewed the aforementioned draft report and agree that there are no extensive interagency conflicts or coordination problems negatively impacting DOJ efforts. We support the findings of this report and concur with the conclusions that no proactive corrective measures are required under existing interagency relations. Should any disputes arise, they will be appropriately handled through interagency discussion, cooperation, and DOJ oversight, and will not be allowed to affect the continuous efforts within the DOJ to pursue federal fugitives.

The report identified several areas in which the GAO expressed concern that FBI and United States Marshals Service (USMS) interagency cooperation was not complete. The GAO asserted that the FBI and USMS were not participating on each other's task forces. Through ongoing liaison and discussion within the interagency working group of the USMS and the FBI, this issue is being addressed. Currently, there are 16 task forces which have both USMS and FBI participation. In cities where each agency has an operating task force, efforts are underway to combine resources, thereby streamlining the fugitive apprehension process. The implementation of the noted USMS "strike teams" has been discontinued. Another issue raised by

Appendix VII
Comments From the Department of Justice

Mr. Norman J. Rabkin

GAO involved foreign fugitives. This matter has been addressed by both agencies, and measures have been established to avoid future problems. Officials from the Office of International Affairs, DOJ, in conjunction with representatives of the FBI and USMS, will continue to monitor and coordinate investigation pertaining to foreign fugitives to ensure no duplicative efforts are pursued. The aforementioned working group, comprised of these two DOJ entities, will continue to focus on eliminating needless overlap on fugitive investigations, and will ensure the most effective utilization of federal resources.

Further, the GAO report identifies investigations of escaped federal prisoners as an area where FBI/USMS coordination was problematical. The FBI and the USMS each expressed differing interpretations of the 1988 policy on fugitive apprehension as it was originally constructed. These disagreements have been mutually resolved through an agreement reached in June 1994. The result of this agreement was a delineation of investigative responsibilities among the FBI, USMS, and Bureau of Prisons. This agreement has been successful to date.

The Office of Investigative Agency Policies (OIAP) reviewed this report and provided the following comments: 1) the OIAP does not have jurisdiction over non-DOJ investigative agencies. Therefore, any discussion about the Treasury Department's participation in the OIAP process (See pp. 4-5, 23-24, 27, and 33 of the draft report) would require the Treasury Department's consent to participate; 2) on page 26, the next to last paragraph in the first full paragraph should be modified as follows: "Although the official did not have any specific timeframe, he noted that OIAP's deference would not continue indefinitely [in the absence of positive results], and that the agencies are expected to resolve the problems in reasonable time"; and 3) contrary to page 32, the OIAP official does not know whether "Customs Service representatives" are participating in the Anti-Violent Crime Initiative. Moreover, Customs Service representatives are not "participating in an OIAP working group on the Anti-Violent Crime Initiative." As noted at page 13, footnote 5, that working group was established on an ad hoc basis and addresses a wide range of issues relating to violent crime.

DOJ entities are cognizant of their assigned responsibilities and of the need to coordinate their investigative activities to ensure the most effective and efficient efforts to apprehend fugitives. The FBI and USMS, which have the more extensive responsibilities regarding DOJ fugitive apprehension efforts, have appropriately addressed any issues or problems which have arisen in this area. The historical problems of the past have been addressed and current programs are continually reviewed by these agencies to minimize any inefficiencies or duplication of

Now pp. 3, 13, 15, and 18.

Now p. 14.

Now p. 17.

Now p. 7.

Appendix VII
Comments From the Department of Justice

Mr. Norman J. Rabkin

efforts. We remain vigilant in our efforts to reduce or minimize instances which could jeopardize fugitive apprehension efforts, endanger law enforcement officials and the general public, or waste limited law enforcement resources.

Sincerely yours,



John E. Collingwood
Inspector in Charge
Office of Public and
Congressional Affairs

Comments From the Department of the Treasury



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

MAR 13 1995

Mr. Norman Rabkin
Director, Administration of Justice Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Rabkin:

This is in response to your letter of February 23, 1995, to Secretary Rubin requesting the Department's review and comments on your draft report entitled FEDERAL FUGITIVE APPREHENSION. Treasury representatives previously met with GAO staff, and our comments were generally incorporated into the current draft. We agree with the report that the overall level of cooperation is good.

Both the U.S. Customs Service and the Internal Revenue Service are providing support to the Department of Justice (Criminal Division) Office of International Affairs project on high profile international fugitives. Treasury's Financial Crimes Enforcement Network will assist by searching their databases in an effort to develop leads to locate the fugitives. The Customs Service has and will continue to maintain investigative responsibility for locating and effecting apprehension for failure to appear fugitives. Customs investigations are generally complex and international in scope. The Customs Service has close links to the international community which has been an important element in the capture of these fugitives.

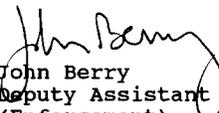
I would like to mention an ongoing effort at Treasury, which is similar to the Department of Justice Office of Investigative Agency Policies (OIAP). Under Secretary (Enforcement) Ronald K. Noble recently revitalized the Treasury Enforcement Council (TEC) as a means of providing Treasury enforcement agency coordination, and also provide a management tool to effectively address specific enforcement issues. TEC is chaired by the Under Secretary, and its members are comprised of each of the Bureau Heads within Enforcement. Working Groups are tasked to review specific issues and report back within specified time periods with recommended courses of action. We believe TEC will provide significant assistance to senior policy officials at the Treasury Department.

**Appendix VIII
Comments From the Department of the
Treasury**

-2-

If you have any questions, or if I can be of further assistance, please let me know.

Sincerely,


John Berry
Deputy Assistant Secretary
(Enforcement)

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