



Office of the Inspector General  
United States Department of Justice

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Statement of Glenn A. Fine  
Inspector General, U.S. Department of Justice

*before the*

Senate Committee on the Judiciary

*concerning*

The United States Marshals Service  
Judicial Security Process

May 18, 2005

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Chairman Specter, Senator Durbin, and Members of the Committee on the Judiciary:

**I. INTRODUCTION**

I appreciate the invitation to testify regarding the work of the Department of Justice Office of the Inspector General (OIG) on issues relating to the security of the federal judiciary. I am sorry that previous commitments prevented me from testifying in person, but I am pleased to be able to provide this written testimony to the Committee.

My testimony will focus on the OIG's March 2004 report on the United States Marshals Service's (USMS or Marshals Service) protection of the federal judiciary, and the USMS's response to that report. I also will briefly discuss a report that the OIG issued earlier this week on the USMS's use of independent contract guards. These guards, who primarily are used to transport federal prisoners to and from court facilities and to guard federal prisoners in courtrooms or cellblocks, also have an impact on courthouse security.

In this testimony, I first will summarize the findings and recommendations contained in the OIG's March 2004 report on Judicial Security. Next, I will discuss what actions the USMS has said it would take and has taken in response to the recommendations in that report. I will also offer my observations regarding further actions needed to improve federal judicial security. Finally, I will summarize the findings of our recent report on independent contract guards.

**II. THE UNITED STATES MARSHALS SERVICE'S JUDICIAL SECURITY PROGRAM**

The OIG's March 2004 report, entitled "Review of the United States Marshals Service Judicial Security Process," examined the USMS's efforts to improve its protection of the federal judiciary. The review primarily examined the USMS's ability to assess threats and determine appropriate measures to protect members of the federal judiciary during high-threat trials and while they are away from courthouses.

The results of our review were not encouraging. After September 11, 2001, the USMS placed greater emphasis on judicial security by hiring 106 court security inspectors and improving the physical security of courthouses. However, we found that the USMS's threat assessments were often untimely and of questionable validity. Further, we found that the USMS had only a limited capability to collect and share intelligence on potential threats to the judiciary with USMS districts, the Federal Bureau of Investigation's (FBI) Joint Terrorism Task Forces (JTTF), and other law enforcement entities. Moreover, the USMS lacked adequate standards for determining the appropriate protective measures that should be applied to protect the judiciary against identified potential risks during high-threat trials and when they are away from the courthouse. I will discuss each of these findings in more detail.

USMS Threat Assessments. After the assassination of two federal judges, Judge Daronco in 1988 and Judge Vance in 1989, the USMS developed a system to assess the almost 700 threats that are made against members of the federal judiciary each year. Timely threat assessments are essential to alert USMS districts to threats that pose a higher potential for violence so that appropriate protective measures can be implemented. To ensure that threats are assessed rapidly, the USMS established policies and performance standards that require all threats to the judiciary be assessed and the results of the assessments made available to Deputy Marshals in the field within a specified time period.<sup>1</sup>

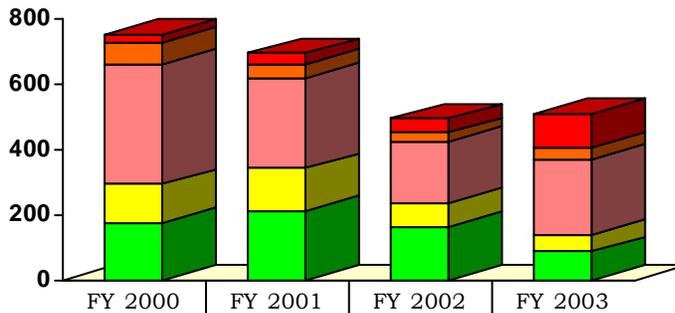
Using data in the USMS's Warrant Information Network (WIN), we examined the timeliness of the USMS's 2,443 threat assessments completed from fiscal year (FY) 2000 through FY 2003. We found that only 26 percent of the threat assessments (642 of 2,443) were completed within the standard time frame. Moreover, the number of assessments that were completed within the standard time frame fell by almost half from FY 2000 to FY 2003, while the number that were significantly late – meaning they took months to complete – more than quadrupled.

Additionally, we questioned the validity of the assessments because the database of past threats that the USMS used to conduct comparative analyses on new threats had not been updated, and it contained no information on the more than 4,900 threats made to judges since 1996. The USMS stopped entering information on new threats into the historical threat database because the USMS decided that it would be more cost effective to enter the data into WIN. However, WIN did not have the capability to conduct comparative threat assessments.

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<sup>1</sup> The exact time standards are considered by the USMS to be law enforcement sensitive information, so I do not disclose them in this statement.

**2,443 Threat Assessments Completed  
From FY 2000 Through FY 2003**



|                               |     |     |     |     |
|-------------------------------|-----|-----|-----|-----|
| ■ Significantly (Months) Late | 24  | 32  | 41  | 103 |
| ■ Several Weeks Late          | 65  | 43  | 27  | 36  |
| ■ Several Days to Weeks Late  | 365 | 273 | 188 | 229 |
| ■ Late, Within Several Days   | 119 | 131 | 74  | 51  |
| ■ Within Standard             | 176 | 213 | 163 | 90  |

**Source: OIG analysis of USMS data.**

We examined the reasons for the USMS’s failure to meet established time frames and found that the number of analysts that the USMS had dedicated to assessing threats against judges and other court personnel had decreased since the office was established in 1996. Initially staffed with six analysts, the number of positions was later reduced to five and, when we reviewed the program, only four of the five analyst positions were filled. Moreover, the analysts performed other duties in addition to assessing threats. Because of the short staffing and processing delays, the USMS had implemented a “triage system” in which it ranked threats for assessment. However, we found there were no written criteria for assigning the rankings, and, in any case, the triage system failed to ensure that all threats the USMS identified as being more serious were processed in a timely manner.

USMS Collection and Sharing of Threat Intelligence. In interviews with USMS headquarters and field executives, we found that the USMS had only a limited capability to collect and share intelligence on threats to the federal judiciary among the 94 federal judicial districts. The USMS had eliminated its centralized program to collect, assess, and share intelligence on threats to the judiciary in a 1994 reorganization. After September 11, 2001, internal USMS studies identified the need for a centralized program to collect and share intelligence from the districts and the JTTFs, but no action had been taken to address that need at the time of our review.

We also found that, based on outdated legal opinions, the USMS’s internal guidance unnecessarily limited the collection of intelligence in the databases that were used to track and assess threats to the judiciary.

Although the USA Patriot Act provided new authority for law enforcement agencies to collect and share intelligence related to terrorism and other threats, and the Attorney General Guidelines had been revised accordingly, the USMS had not revised its internal guidance.

We also found that, as of October 2003, the USMS's District Offices were participating in only 29 of the FBI's 56 JTTFs. Further, although the USMS's Memorandum of Understanding with the FBI required that JTTF representatives have Top Secret clearances, about a third of the USMS JTTF representatives did not have the required security clearances and so could not receive or disseminate classified information on potential threats. In addition, as of August 2003, 43 of the 94 USMS districts did not have the secure telecommunication systems necessary to transmit or receive classified intelligence on threats against the judiciary.

The limitations I have described were not just theoretical, but hindered the USMS's ability to provide security for the judiciary. For example, in one high-threat trial of individuals who were providing financial aid to terrorists, the USMS did not receive classified JTTF intelligence that the district considered critical to trial security operations because the district's part-time representative to the JTTF did not have a Top Secret security clearance. In another trial, the USMS was not informed of the imminent arrest of six terrorists identified by a JTTF investigation until just before the arrests. The short notice precluded the USMS from taking the extensive security measures required when detaining a large number of terrorist suspects after their arrest.

Standards for Determining Appropriate Protective Measures. In recent years, the federal judiciary has conducted an increasing number of high-threat trials, such as those involving international and domestic terrorism, international drug trafficking, organized crime, and gang activity. To assess the USMS's standards for protective measures used to guard against identified potential risks (risk-based standards) during high-threat trials and when judges are away from the courthouse, we compared the guidance to other risk-based models used by the Secret Service and the Capitol Police.

We found that the USMS lacked adequate risk-based standards. For example, the USMS's Policy and Procedures Manual had not been updated in over a decade and contained limited or no standards or other guidance on the use of specific protective measures (such as trace explosive detectors, armored cars, body armor, and enhanced prisoner restraints) for high-threat trials.<sup>2</sup> The information on individual protective measures also was outdated and did not include standards for the use of equipment that has become widely

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<sup>2</sup> *Marshals Service Policy and Procedures Manual*, Volume X, Judicial and Court Security, July 1, 1993.

available in recent years, such as perimeter cameras, car alarms, home alarms, and cellular phones.

Without adequate risk-based standards, the USMS could not ensure that the districts' responses to similar threats were consistent. For example, we found that one district used the USMS Special Operations Group (a specially trained and equipped unit deployed in high-risk law enforcement situations) extensively during a high-threat trial, while another district did not use the group at all for a similar high-threat trial.

The lack of risk-based standards also prevented the USMS from effectively managing the limited resources it had to support districts during high-threat trials. In FY 2002, the USMS provided additional funding to districts to support 117 high-threat trials.<sup>3</sup> However, in their responses to our national survey, the districts estimated that about 20 percent of all trials in 2002 involved a "substantial potential for violence." Given that rate, the number of trials with "substantial" risks among the 12,817 trials completed in U.S. District Courts in FY 2002 would have exceeded 2,400 – far more than the 117 instances in which districts received additional resources.<sup>4</sup> Without adequate risk-based standards, the USMS could not ensure that its limited resources were distributed to support the districts facing the greatest risks.

### **III. OIG RECOMMENDATIONS AND RESPONSE OF THE MARSHALS SERVICE**

In our March 2004 report, we made six recommendations for the USMS to address the specific findings detailed in our report. We recommended that the USMS:

1. Ensure that all threats to the judiciary are assessed within established time frames;
2. Update the historical threat database or develop a new database to perform comparative assessments;
3. Assign full-time representatives to all 56 FBI field office JTTFs and ensure effective USMS liaison with other intelligence agencies;
4. Create a centralized capability to identify, collect, analyze, and share intelligence;
5. Ensure that all Chief Deputy Marshals and all JTTF representatives have Top Secret clearances and ensure that each district has operational secure communication equipment; and

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<sup>3</sup> We asked the USMS how many funding requests it had rejected, but the USMS Judicial Security Division (JSD) responded that it tracked only approved requests.

<sup>4</sup> *Administrative Office of the United States Courts FY 2002 Annual Report*, Table C-7, U.S. District Courts – Civil and Criminal Trials Completed.

6. Revise USMS guidance to establish risk-based standards and require after-action reports for high-threat trials and protective details.

The USMS concurred with all of our recommendations and, since the report's issuance, has been providing us with information on the status of the corrective actions it has said it would implement. The following is the current status of those actions, as reported by the USMS.

Improving Threat Assessments. In response to our recommendation to ensure that all threats are assessed within established time frames, the USMS agreed to revise its policy and establish criteria for categorizing and completing threat assessments and make adherence to these revised time frames a factor in the staff's annual performance evaluations. The USMS also stated that it planned to review the workload of the threat assessment unit and request additional resources during the FY 2006 budget process, if necessary. The USMS estimated that the new policies would be implemented by the end of August 2004 and later provided draft policies to us for review in September 2004. However, in April 2005 the USMS told us that it was delaying the formalization of the policies pending the establishment of its Office of Protective Intelligence.<sup>5</sup> On April 26, 2005, the USMS testified at a hearing before the House Committee on the Judiciary, that other revisions to threat assessment policies may result from the ongoing Attorney General's review of judicial security. At that hearing, the USMS also reported that it has "instituted rating criteria to identify, assess, and prioritize all inappropriate communications to ensure that all threats to the judiciary are assessed within established timeframes."

As described to OIG staff by the USMS on May 13, 2005, the USMS has modified the triage system it uses to rank threats for assessment. When threats are received at headquarters for assessment, they are divided into two categories, "expedited" and "standard." The "expedited" threats, which are those deemed to be more serious, are processed first. According to the USMS, until March 2005, it continued to receive threats at its historical rate of 50 to 60 threats a month. USMS data indicated that, under the new system, about three to five threats a month received an "expedited" rating and all them were processed within the new time frame for expedited threats.

However, in March and April 2005, after the attacks on the family of Judge Joan Henry Lefkow in Chicago, Illinois, and on Judge Rowland Barnes

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<sup>5</sup> The Office of Protective Intelligence has been designated as the entity responsible for the analysis and dissemination of judicial threat information. On February 16, 2005, Congress approved the USMS's proposed realignment to formally establish the Office of Protective Intelligence.

and others in Atlanta, Georgia, the number of reported threats increased. There were 136 threats reported in March and 83 threats reported in April. Because of the spike in reported threats, the USMS told us that it has not been able to process all “standard” threats within the established time frame, but it is working to reduce the backlog.

Updating Historical Threat Database. In response to our recommendation that the USMS update or develop a new historical threat database to perform comparative assessments, the USMS prepared an analysis of the functional requirements for the database and the cost and time to complete the project. The requirements analysis, completed in March 2004, proposed incorporating the historical threat database into the USMS’s Justice Detainee Information System (which includes the WIN database) and developing new programs to allow the comparative analyses to be conducted within that environment. According to the USMS, incorporating the historical threat database into Justice Detainee Information System would (1) allow additional data from closed cases with known outcomes to be utilized in the comparative analysis, (2) allow the program to be used with greater ease by the analysts, and (3) improve the accuracy of the comparative analysis process.

On September 30, 2004, the USMS informed us that the historical threat database had been merged into the Justice Detainee Information System and later informed us that the additional software to support comparative analyses was tested and released USMS-wide at the end of October 2004. On May 13, 2005, we met with USMS staff responsible for managing the system so that we could observe the system in operation. The historical threat database has been merged into the Justice Detainee Information System. To merge the databases, fields were added to the Justice Detainee Information System database so that it includes variables used for the comparative assessments. The implementation also included technical improvements such as the use of drop-down windows to speed data entry. The data from the old database was transferred to the new system, and data on the approximately 4,900 threats that had not been entered into the previous threat database have been entered into the new system. The database now includes data on about 7,000 threats from 1980 to the present that are used for the comparisons with new threats.<sup>6</sup>

Representation on JTTFs. The USMS indicated in its response to our recommendation that it would assign representatives to all 56 FBI field office Joint Terrorism Task Forces and ensure effective liaison with intelligence agencies.<sup>7</sup> The USMS stated it would seek additional positions in the FY 2006

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<sup>6</sup> There are about 8,400 threats in the database, but about 1,400 of the threats do not include outcomes or other information needed for the comparative assessment.

<sup>7</sup> Examples of intelligence agencies included in the recommendation were the U.S. Secret Service National Threat Assessment Center, the Central Intelligence Agency, and the National Security Agency. The USMS recently testified that it has assigned criminal

budget to assign at least 1 full-time employee to each of the 56 JTTFs. We asked the USMS for quarterly rosters of all full-time and part-time representatives on the JTTFs to monitor the progress made toward attaining full-time representation on all 56 Task Forces.

Unfortunately, it appears that the USMS has reduced rather than increased its representation on the JTTFs. When our report was issued in March 2004, the USMS had 50 representatives assigned to the JTTFs, 25 of whom were full-time and 25 who were part-time. In its April 26, 2005, testimony before the House of Representatives' Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, the USMS testified it now has 51 representatives assigned to the JTTFs, but only 18 are full-time and 33 are part-time.

The USMS also told us that it still is evaluating its staffing needs in connection with our recommendation and direction from Congress.<sup>8</sup> In its most recent response to our report on April 4, 2005, the USMS stated that it is currently evaluating its staffing needs USMS-wide to determine what segment of this increase can be directed to increasing participation in the JTTFs.

Centralized Intelligence Analysis Capability. In response to the OIG report's recommendation that it create a centralized capability to identify, collect, analyze, and share intelligence, the USMS responded that it would seek the resources needed to fully staff an Office of Intelligence as part of the FY 2006 budget process. According to information provided by the USMS on May 14, 2004, the Office of Protective Intelligence would be placed within the Judicial Security Division and it would be responsible for the collection, analysis, and dissemination of all intelligence relating to the safety of USMS protectees, employees, facilities, and missions. The USMS reported that the office was established on June 1, 2004, with a staff consisting of a Chief, three Criminal Investigators, and one Intelligence Analyst. In addition, the USMS stated that "a number of analysts from the Analytical Support Unit" would be reassigned to the office shortly thereafter. The USMS also reported that the Office of Protective Intelligence implementation priorities were to (1) immediately develop a plan to transfer all threat analysis responsibilities from the Analytical Support Unit to the Office of Protective Intelligence, (2) prepare and propose an organizational and staffing plan, and (3) assist the Management and Budget Division in preparing a submission for the FY 2006

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investigators to the National Counterterrorism Center, the FBI's National Joint Terrorism Task Force, and the Department of Homeland Security.

<sup>8</sup> In the FY 2005 appropriation, Congress provided the USMS with 94 new Deputy Marshals to enhance the protection of the judiciary. The Conference Report stated that when determining resource allocations, the USMS should be mindful of the recent recommendations of the report from the OIG.

budget supporting the creation and continuity of the Office of Protective Intelligence. Congress approved the establishment of the Office in February 2005. On April 26, 2005, the USMS testified that it had established the Office of Protective Intelligence, but added the caveat that “the availability of resources will determine the rate of progress with regard to staffing the office.”

On May 13, 2005, we met with the Chief of the Office of Protective Intelligence to discuss the staffing and implementation of that office. We found that the assigned staffing still is only the five positions that were transferred to create the office in June 2004. The Chief of the Office said the current plan is for the analysts from the Analytical Support Unit to be moved into the Office of Protective Intelligence, but no timetable has been established for the transfer.

We were informed that the Office of Protective Intelligence receives all threats and researches them using the National Crime Information Center, the Warrant Information Network, and other information sources before forwarding the threats to the Analytical Support Unit for the threat assessment.

Security Clearances and Secure Communication Equipment. In response to our recommendation that all Chief Deputy Marshals and representatives to JTTFs have Top Secret clearances and that each district has secure communications equipment, the USMS stated that all Chief Deputy Marshals and JTTF representatives would have Top Secret clearances within 30 days after their background investigations were completed. In addition, the USMS told us that all newly appointed Chief Deputy Marshals and JTTF representatives would have background investigations initiated within 15 days of appointment and Interim Top Secret clearances within 30 days of appointment.

We asked for a copy of the new USMS policy for issuance of security clearances, quarterly reports on clearance information for each Chief Deputy Marshal and JTTF representatives, and status reports on the progress of the installation of secure telephone communications equipment in each of the 94 districts. Subsequently, the USMS told us that its revised personnel security policy would have to undergo review and approval by the Department’s Security Officer. USMS officials later told the OIG that they had undertaken a new initiative to rewrite all existing security program policies. On April 26, 2005, the USMS reported at a Congressional hearing that all 94 Chief Deputy Marshals now have Top Secret clearances, but we have received no documentation from the USMS to confirm that statement.

Regarding the secure communications equipment, in its most recent response to the OIG on April 4, 2005, the USMS told us that all USMS district offices now have operational secure communications equipment.

Risk-Based Standards. In our recommendation regarding risk-based standards, we stated that the USMS should revise its *1993 Judicial and Court Security Manual* and its *1999 Offsite Security Booklet for Judicial Officers* to establish risk-based standards and require after-action reports for high-threat trials and protective details. The USMS concurred and convened a working group comprised of Chief Deputy U.S. Marshals and Senior Inspectors from throughout the USMS to analyze and respond to the specific policy issues and concerns we raised. This action is partially completed. The USMS has reported to us that it completed a new protocol for conducting judicial threat assessments and provided a copy of risk-based criteria it developed and posted on its intranet for planning high-risk trials, protective details, and threat investigations.<sup>9</sup> The USMS also provided a copy of the updated publication, the *1999 Offsite Security Booklet for Judicial Officers* that was distributed in September 2004 to all U.S. Marshals and Chief Deputy Marshals for dissemination to judges in their districts. However, in its April 4, 2005, update to us the USMS indicated that draft policies that the working group prepared will not be finalized until the USMS receives and incorporates any recommendations made by the ongoing Attorney General's judicial security working group.

#### **IV. FURTHER ACTIONS TO PROTECT THE FEDERAL JUDICIARY**

The recent events involving the family of Judge Lefkow in Chicago and Judge Barnes and others in Atlanta serve as tragic reminders of the dangers facing members of the judiciary. Protecting the judiciary requires effective intelligence to identify potential threats, timely and accurate threat assessments, and implementation of appropriate protective measures to thwart attempts to harm judges or other members of the federal judiciary. The USMS has begun to address the shortcomings in its judicial security process that we identified in March 2004, but that work has not been completed. There are several areas where we believe more attention is urgently needed.

First, we believe it is essential that the USMS Office of Protective Intelligence be staffed appropriately to effectively carry out its critical mission of collecting, analyzing, and disseminating intelligence related to the safety and security of the federal judiciary. The initial staffing plan reported to us by the USMS on May 14, 2004, has still not been fully implemented. The analysts from the Analytical Support Unit have not been moved to the Office of Protective Intelligence, and the total staffing remains the five individuals who were initially transferred to create the office.

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<sup>9</sup> The USMS stated that the *1993 Judicial and Court Security Manual* became obsolete on October 20, 2003, with the institution of a web-based directives system. The web-based system consolidates various directives, policies, and instruction documents and provides USMS employees ready access to current policies, as well as the ability to generate paper copies.

We also believe that it is essential for the USMS to be represented on the 56 JTTFs. We previously have expressed our concern about the lack of USMS representation on the JTTFs, and we remain concerned because the number of full-time USMS representatives has actually decreased since our March 2004 report. We believe that the lack of representation on the JTTFs presents a potential intelligence vulnerability, not only to the judicial security mission, but to all USMS missions.

The delay in staffing and implementing the Office of Protective Intelligence and achieving full USMS representation on JTTFs is especially troubling because Congress provided an additional \$8.9 million and 94 positions to the USMS in the FY 2005 Consolidated Appropriations Act specifically to enhance the protection of the federal judiciary. The USMS also has requested funding for an additional 65 Deputy Marshals for judicial security in FY 2006. However, the USMS has not yet indicated how it intends to use these additional resources to address the shortcomings we identified.

The USMS also needs to move forward with guidance on risk-based standards and threat assessments. The USMS has told us, and indicated in testimony, that it is delaying issuing the guidance it has drafted on these issues pending completion of the Attorney General's judicial security working group, so that any recommendations resulting from that effort may be incorporated in the guidance prior to issuance. We have met with representatives from the Attorney General's working group, and we are providing it with information to support its effort. While the Attorney General's working group may issue recommendations that should be reflected in USMS directives, I believe that the USMS should move forward and issue its guidance. It has been over a year since our report was issued and the interim guidance on risk-based standards and threat assessments that were developed in response to our recommendations are still undergoing review and approval. Final guidance that will help ensure the consistent and effective protection of the judiciary should not be continually delayed, even though some portion of the guidance may be revised in the future.

## **V. OIG REVIEW OF UNITED STATES MARSHALS SERVICE'S USE OF INDEPENDENT CONTRACT GUARDS**

Finally, I want to briefly summarize a report that the OIG issued this week that examined the USMS's use of independent contractors hired as guards. The USMS hires more than 2,700 independent contract guards

annually and uses them primarily to transport federal prisoners to and from court facilities and guard federal prisoners in courtrooms or cellblocks.<sup>10</sup>

The OIG audit assessed the USMS's controls over the hiring of independent contractor guards, whether the USMS was adequately monitoring the performance and duties of the guards, whether the guards met the USMS experience and fitness for duty requirements, and whether the initial training for such guards was adequate. The audit found significant deficiencies in the Marshals Service's hiring and use of the independent contract guards. Some of these deficiencies concerned problems in the contracting with these guards, including disparities in wage rates and lack of controls over the procurement process. However, other problems relate to the training, experience, use, and monitoring of independent contract guards, all of which could have security implications for judges at courthouses.

For example, the OIG found that some of the independent contract guards hired by the USMS lacked the experience required to qualify as contract guards. The OIG audit also found that 30 percent of the armed contract guards did not receive their firearms refresher training every 6 months, as required by USMS policy. We found that 13 percent of the armed independent contractors had gone a year or longer without re-qualifying with their firearms. Also, due to a lack of documentation in USMS files, we could not verify that applicable background investigations were performed on all contract guards prior to their employment. We also could not verify from USMS records that all independent contractors had been medically certified as fit for duty. In addition, the USMS lacks a reliable system to record and maintain contract documentation relating to hiring, training, and evaluating independent contractors.

The OIG made seven recommendations to help the USMS better manage its independent contractor guard force, including revising fitness-for-duty requirements, instituting a formal evaluation process of independent contract guards on an annual basis, tracking and documenting contractor training, and ensuring timely firearm qualifications. The USMS concurred with the recommendations and stated that it would implement corrective action.

## **VI. CONCLUSION**

The OIG reports discussed in my statement identified significant deficiencies in the United States Marshals Service's effort to ensure the security of federal judges and federal courthouses. We believe that it, and the Department of Justice, must take action to address these issues. While the

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<sup>10</sup> In addition, the USMS has entered into 12 separate contracts with regional guard companies for 4,500 contract guards to provide security at about 400 federal court facilities nationwide.

USMS has begun to take some steps to respond to our recommendations, more action is needed, on an expedited basis, to ensure the safety and security of judges and courthouses throughout the country.