

REPORT TO THE CONGRESS



BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

Drugs, Firearms, Currency, And Other Property Seized By Law Enforcement Agencies: Too Much Held Too Long

Department of Justice
Department of the Treasury
General Services Administration

Federal law enforcement officers seize large amounts of property in carrying out their work. Problems--loss of illicit drugs, loss of interest on currency, deterioration of seized vehicles, and accumulation of firearms--seem to have a common cause: too much is held too long.

GAO recommends several practices to hasten the disposal of drugs, firearms, currency, and other seized property including the increased use of evidence substitutions and samples.

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COMPTROLLER GENERAL OF THE UNITED STATES
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To the President of the Senate and the
Speaker of the House of Representatives

ACQUISITIONS

Federal law enforcement agencies seize large quantities of contraband and other property in carrying out their responsibilities. We questioned whether this property is stored and disposed of safely and effectively.

This report discusses the problems Federal law enforcement agencies have in handling seized drugs, firearms, currency, and vehicles and contains our recommendations for improvement.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report today to the Director, Office of Management and Budget; the Secretary of the Treasury; the Attorney General; and the Administrator of General Services.

A handwritten signature in cursive script, reading "Thomas B. Atwater".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

DRUGS, FIREARMS, CURRENCY,
AND OTHER PROPERTY SEIZED
BY LAW ENFORCEMENT AGENCIES:
TOO MUCH HELD TOO LONG

D I G E S T

Federal law enforcement officers seize large quantities of property--about 1,000 pounds of heroin and over 1,000,000 pounds of marihuana in fiscal year 1976 and about 7,900 weapons in fiscal year 1975--in carrying out their work. This property is often held a long time, either as evidence or waiting to be forfeited to the Government. Problems--such as loss, deterioration, or accumulation of property--seem to have a common cause: too much is held too long.

DRUGS

Entire drug seizures are often held several years as possible court evidence. This, along with the manner in which drugs are stored and accounted for, greatly increases the chances for loss. (See ch. 2.)

The Attorney General should direct the U.S. attorneys and law enforcement agencies to use samples of the seized drugs as evidence when permitted by the courts. Most seized drugs could then be destroyed.

For drugs that are held as evidence, the Drug Enforcement Administration and the U.S. Customs Service should:

- Periodically take independent inventories to verify drug existence in the vaults.
- Use adequate storage facilities that meet security standards.
- Use a proper follow-up system so evidence related to closed cases can be destroyed.
- Monitor regional offices to see they comply with procedures for handling evidence. (See ch. 6.)

CURRENCY

Large amounts of currency seized from alleged violators or recovered funds previously used by Federal agents to purchase evidence are held by agencies as evidence. Instead of storing this money in vaults and safe deposit boxes, it should be returned to the U.S. Treasury or the rightful owner. This would result in interest savings to the public and the Government. (See ch. 3.)

If the ownership of seized currency is in doubt, the money could be deposited in the U.S. Treasury until it is determined. Lists of serial numbers or photocopies should be used as evidence.

VEHICLES

Vehicles forfeited to the Government are either used by the seizing agency or sold. In fiscal year 1975 about 2,000 vehicles, including aircraft and ships, were forfeited to the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, and Firearms; and the U.S. Customs Service. (See ch. 4.)

These agencies'

--slow forfeiture processes, and custody problems resulted in depreciation, deterioration, and vandalism of automobiles and aircraft and

--sales methods varied, resulting in duplication of effort and use of employees for duties other than those for which they were hired.

Seizing agencies need to improve their administrative practices so vehicles can be promptly forfeited. Also, the Department of the Treasury and the General Services Administration should consider having the General Services Administration sell all vehicles not used by Treasury agencies.

The Congress should raise the limit of administrative forfeitures so agencies

can quickly process them and relieve U.S. District Court workloads. (See p. 37.) Now, vehicles valued over \$2,500 must be forfeited through the court system which usually takes longer.

FIREARMS

Law enforcement agencies should find a faster way to dispose of seized weapons. Weapons are being held and some are destroyed or acquired by agencies without authority to do so. Agencies have

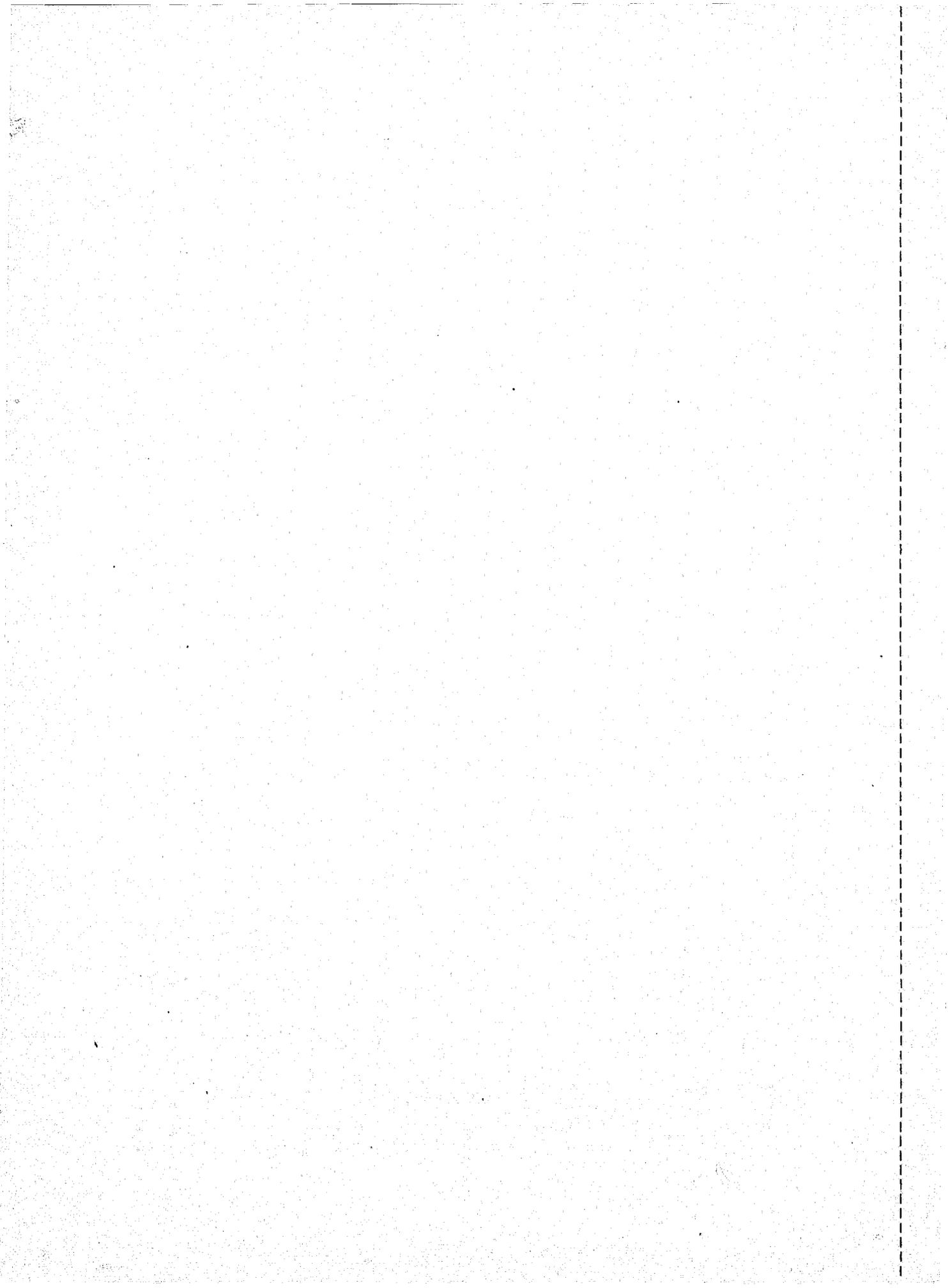
- difficulties in determining ways to dispose of firearms;
- difficulties with Bureau of Alcohol, Tobacco, and Firearms procedures; and
- limited communication with U.S. attorneys on the status of cases. (See p. 34.)

EXPLOSIVES

Explosives seized by the Bureau of Alcohol, Tobacco, and Firearms either for forfeiture or as evidence are difficult to store and create dangerous conditions. Small samples with photographs and eyewitness testimony could be used as evidence. All other seized illegal explosives could be promptly forfeited to the Government and destroyed if proposed legislation were passed. (See pp. 32 to 34.)

AGENCY COMMENTS

The Department of Justice generally agreed with GAO's recommendations and said the report pointed out problems associated with handling, storing, controlling, and forfeiting property seized by Federal law enforcement agencies. (See app. I.) The Department of the Treasury, however, disagreed with several recommendations, citing legal restrictions against implementing them. (See app. II.) The General Services Administration agreed with the recommendation on the transfer of forfeited vehicles to the General Service Administration for sale. (See app. III.)



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ABBREVIATIONS

ATF	Bureau of Alcohol, Tobacco, and Firearms
DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
GSA	General Services Administration

CHAPTER 1

INTRODUCTION

Federal law enforcement agencies seize large quantities of property in carrying out their duties. Seized property includes

- contraband narcotics and drugs such as heroin and cocaine;
- currency obtained illegally such as from bank robberies or the sale of contraband narcotics and drugs;
- vehicles such as automobiles, aircraft, or vessels used to transport contraband, such as illicit narcotics or illegal firearms;
- firearms illegally possessed, used, or intended for use in the commission of Federal crimes; and
- illegal destructive devices and explosives.

Some property is subject to U.S. Government forfeiture. Forfeiture is the process through which the Government obtains legal title either through an administrative determination by the seizing agency or court proceedings. Contraband--such as illicit drugs--is subject to immediate forfeiture because its possession is illegal. Upon seizure, contraband becomes Government property and is destroyed following any evidentiary use it might have.

This report discusses the seizure and forfeiture activities of the Drug Enforcement Administration (DEA) of the Department of Justice, and the U.S. Customs Service and Bureau of Alcohol, Tobacco, and Firearms (ATF) of the Department of Treasury relating to narcotics and dangerous drugs, currency, vehicles, and firearms. Also discussed is the storage and disposition of seized property by the U.S. Marshals Service of the Department of Justice and the General Services Administration (GSA).

EXTENT OF SEIZURES

Seized contraband and personal property to be used as evidence generally remain in the seizing Federal agency's custody. At the time of the trial, the seized contraband and property are usually held by the U.S. Marshal or the

court clerk. When the trial ends, the court or the U.S. attorney may determine the disposition of the evidence. The U.S. Marshal may be designated to dispose of the property, but generally it is the responsibility of the seizing agency.

Three Federal agencies seize most of the contraband, vehicles, and firearms the Government confiscates. The following is a brief description of the responsibilities of each agency and the U.S. Marshals Service.

- DEA--established on July 1, 1973--enforces the controlled-substances law. It brings to the criminal justice system those organizations and principal members of organizations involved in the growing, manufacturing, or distributing of controlled substances appearing in or destined for illicit traffic in the United States. DEA also regulates the legal trade in narcotics and dangerous drugs. In fiscal year 1976 DEA was appropriated \$149.8 million.
- Customs collects duties and taxes on imported merchandise; inspects all international traffic; regulates certain marine and aircraft activities; combats smuggling and frauds on the Customs revenue; and performs functions related to importing and exporting merchandise. Customs was appropriated \$310 million in fiscal year 1976.
- ATF enforces the law designed to eliminate illicit activities and regulates lawful activities relating to distilled spirits, beer, wine, and nonbeverage products, tobacco, firearms, and explosives. In fiscal year 1976 ATF was appropriated \$106.8 million.
- The U.S. Marshals Service has custody of all Federal offenders until released by the courts or confined in prison; acts as an agent of the court in the executing process; and provides protection services to the courts and key Government witnesses. The Service was appropriated \$56.7 million in fiscal year 1976.

The following table shows DEA, Customs, and ATF drug removals during fiscal year 1976 and vehicles, weapons, and money seized during fiscal year 1975.

Drugs:	<u>DEA</u>	<u>Customs</u>	<u>ATF</u>
Heroin (lbs.)	693	264	0
Cocaine (lbs.)	430	1,030	0
Marihuana/ hashish (lbs.)	333,522	772,867	0
Dangerous drugs (d.u.) (note a)	8.5 million	21.4 million	0

Vehicles:

Automobiles	1,859	10,839	321
Aircraft	23	106	0
Vessels	8	167	1
Weapons	744	536	6,625
Money	\$3,104,335	b/\$1,191,039	Not avail- able

a/Dosage units are 10 milligrams for DEA and 5 grains (about 325 milligrams) for Customs.

b/Represents seized money for fiscal year 1974; fiscal year 1975 not available.

LEGISLATIVE AUTHORITY

Seizure and forfeiture authority for U.S. law enforcement agencies started with the July 31, 1789, act in which the Congress authorized Customs to seize merchandise to protect U.S. revenues. The Tariff Act of 1930 (19 U.S.C. 1202 et. seq.) clarified that merchandise, contraband, and vehicles are forfeited as a penalty to those who bypassed U.S. import laws.

The Congress stated its reasons for the vehicle seizure authority now accorded Treasury officers under the Contraband Seizure Act (49 U.S.C. 781 et. seq.) when it concluded that vessels, vehicles, and aircraft were the operating tools of criminals, and that seizure of vehicles transporting firearms, narcotics, and counterfeit paraphernalia was necessary to incapacitate and penalize the offender.

The major seizure and forfeiture authorities accorded ATF, DEA, and Customs are:

- Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, otherwise known as the Controlled Substances Act of 1970 (21 U.S.C. 801), authorizes the Attorney General to seize contraband drugs and drug paraphernalia. It also authorizes the seizure and forfeiture of vehicles transporting contraband drugs.
- The Criminal Code (18 U.S.C. 545) authorizes the forfeiture of contraband or merchandise attempted to be brought into the United States in violation of any law or regulation. The Tariff Act of 1930 (19 U.S.C. 1595a) accords Customs the authority to seize and forfeit vehicles transporting such contraband or merchandise.
- The Currency and Foreign Transactions Reporting Act (31 U.S.C. 1102) authorizes Customs to seize and forfeit money entering or leaving the United States without the proper declaration.
- Title I of the Gun Control Act of 1968 (18 U.S.C. 921, 924 (d)) authorizes the Secretary of the Treasury to seize and forfeit firearms, ammunition, and explosive materials used or intended to be used in violation of that act or any other U.S. criminal law.
- Title II of the Gun Control Act of 1968, otherwise known as the National Firearms Amendments Act of 1968 (26 U.S.C. 5801-5872), authorizes the Secretary of the Treasury to seize and forfeit any firearm in violation of the act.
- The Internal Revenue Code (26 U.S.C. 7302) authorizes the Secretary of the Treasury to seize and forfeit property, including money, for Federal wagering law violations.
- The Contraband Seizure Act (49 U.S.C. 781 et. seq.) authorizes officers of the Secretary of the Treasury to seize and forfeit vessels, vehicles, and aircraft used to transport narcotic drugs, firearms, and other contraband.

The Congress has considered extending the forfeiture authority of DEA. Proposed antidrug legislation sent to the Congress by former President Ford on April 30, 1976, entitled "The Narcotic Sentencing and Seizure Act of 1976" and

introduced as H.R. 13577 and S. 3411 would have required the forfeiture of cash or other personal property exchanged for illegal drugs.

Currently, law enforcement agencies not having authority to forfeit a particular item will seize the item and turn it over to the proper agency for forfeiture. For example, DEA cannot forfeit seized firearms but it turns them over to the appropriate Federal or State authorities for forfeiture. Law enforcement agencies may seize any property as evidence in a court proceeding.

SCOPE OF REVIEW

We reviewed the laws and regulations authorizing Federal agencies to seize and forfeit property. In addition we visited the following Federal law enforcement agencies:

- Headquarters offices of DEA, ATF, Customs, and the U.S. Marshals Service in Washington, D.C.
- Selected regional and district offices of DEA, Customs, and ATF in New York, California, and Arizona.
- U.S. Marshals Service offices in New York and California.

We also talked with GSA officials and the Chief Judges of the U.S. Circuit Courts in Houston, Philadelphia, Chicago, and New York about various aspects of seized property and evidence-handling procedures. In addition, we contacted offices of several U.S. attorneys in New York, California, and Arizona.

Our review did not include the Federal Bureau of Investigation (FBI). The FBI is an investigatory agency and generally seizes property for evidence and not forfeiture. 1/

Through interviews with agency officials, observations of seized property storage areas, and a review of pertinent documents and case files on seized property, we determined the various procedures agencies used to process property seized for evidence and forfeiture.

1/The Department of Justice comments on this report included detailed information on the FBI's procedures for handling seized currency. (See pp. 43 and 44.)

CHAPTER 2

OPPORTUNITIES TO REDUCE THE POTENTIAL FOR SEIZED DRUG LOSSES

Entire illicit drug seizures are often retained many years as evidence, except for some large amounts of marihuana. This greatly increases the potential for loss as the temptation to steal and sell drugs is great.

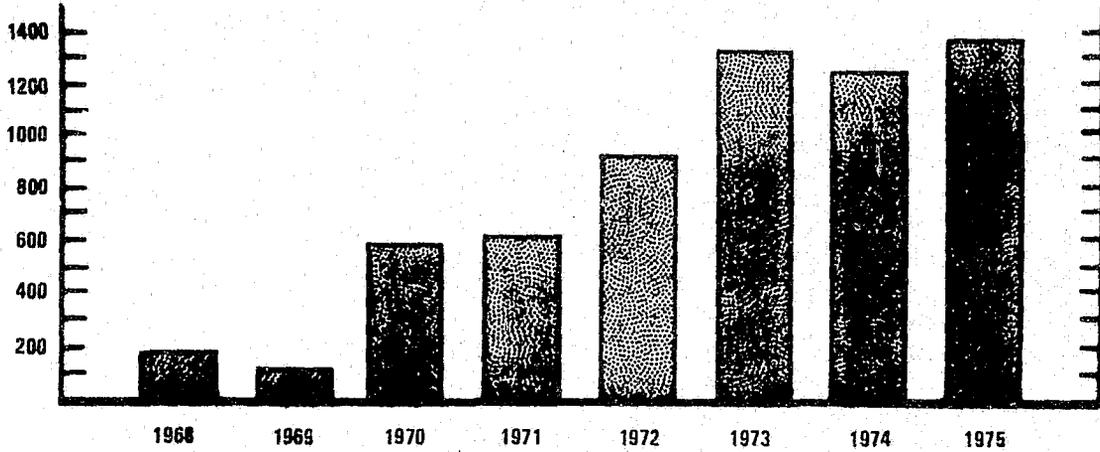
Thefts at State and local agencies occasionally resulted in large amounts of drugs being diverted to the illicit market. Thefts and losses at Federal agencies have generally been minor; however, the potential for significant losses exists because of weaknesses in the method of storing and accounting for drugs. To safeguard the evidence, minimize the potential for significant thefts and losses, and reduce possible diversion to illicit channels, a system of rigid controls covering storage, handling, and accountability, along with a faster disposal of the drugs through the use of drug samples for evidence, is necessary.

LARGE AMOUNTS OF DRUGS SEIZED

The amount of marihuana seized and removed from the U.S. market increased from 195,000 pounds in 1970 to 948,000 pounds in calendar year 1975. Total cocaine seizures and purchases more than doubled over the same period from 600 to 1,400 pounds. Seizures of other narcotics and dangerous drugs, while not increasing as rapidly, have been large.

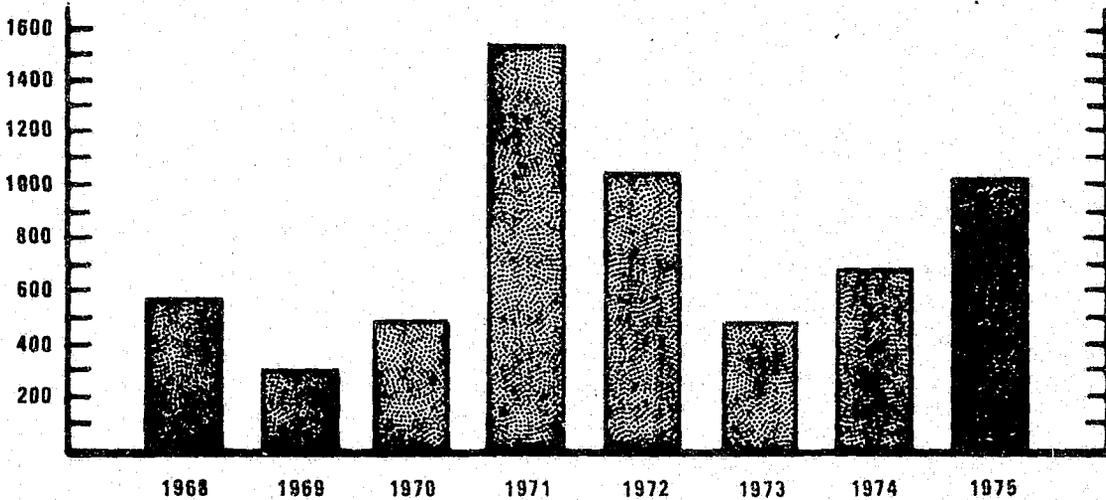
The following charts show the change in the quantities of marihuana, cocaine, and heroin seized from 1968 to 1975.

IN POUNDS



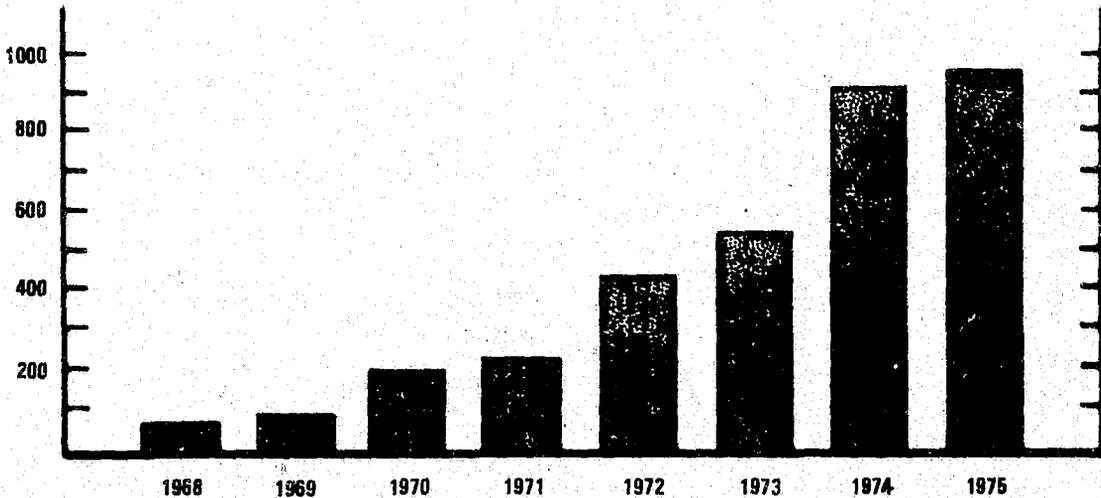
DOMESTIC COCAINE REMOVALS BY FEDERAL AGENCIES

IN POUNDS



DOMESTIC HEROIN REMOVALS BY FEDERAL AGENCIES

IN THOUSANDS OF POUNDS



DOMESTIC MARIHUANA REMOVALS BY FEDERAL AGENCIES

DRUGS STOLEN FROM FEDERAL, STATE,
AND LOCAL GOVERNMENTAL FACILITIES

In recent years, seized narcotics and dangerous drugs have been stolen from Federal, State, and local law enforcement agencies and diverted for illicit sale and use.

- In 1973 the Baltimore City Police Department lost 1,202 packets of heroin from storage.
- Four to 5 pounds of cocaine were stolen in 1971 by a chemist from a Customs laboratory in Baltimore.
- Approximately 800 pounds of marihuana were stolen in 1974 by an agent from a DEA district office storage facility.
- About 169 pounds of heroin and 131 pounds of cocaine were stolen in 1972 from the New York City Police Department.
- One hundred pounds of marihuana were stolen in 1972 by military guard personnel from a Navy ammunition bunker in Florida which was used by Customs for storage.
- In 1975 airport ground service employees stole 748 grams of cocaine that were being sent by DEA to an assistant U.S. attorney as drug evidence. About 677 grams were recovered.
- In 1972 a chemist was arrested shortly after stealing 90 bags of heroin from a State laboratory in Connecticut.
- In 1975 a New Jersey State Police chemist was arrested for stealing a pound of cocaine.
- In 1974 a former laboratory employee was arrested for stealing an estimated \$300,000 of heroin and cocaine from a Massachusetts laboratory.
- In 1974, 105 grams of suspected cocaine were stolen from a DEA laboratory in Texas and not recovered.

There have also been instances where seized drugs could not be located and were presumed lost or stolen. During a 1973 inventory, a New York Customs office could not locate

--01.5 grams of morphine sulfate,
--12 grams of crude opium,
--884 grams of smoking opium, and
--789 grams of cocaine hydrochloride.

From July 1973 through 1975 DEA lost

--16.23 grams of heroin (0.03 percent purity),
--07.3 pounds of marihuana, and
--0.69 grams of heroin.

During the same period three incidents were reported where State or court officials lost the following drug evidence seized by DEA:

--17 grams of amphetamine.
--07.61 grams of cocaine.

NEED TO REDUCE DRUGS IN CUSTODY

Since July 1, 1973, Customs has been required to turn drug seizures over to DEA. However, Customs still maintains custody of illicit drugs if they were seized before July 1973 or if DEA refuses custody. Except for large marihuana seizures, DEA and Customs retain the entire drug seizure for evidence until after final adjudication of the case. As a result, seizures are being held for years. This increases (1) handling and storage problems and (2) the potential for theft or loss.

Samples of seized drugs used as evidence

For several years marihuana seized in California as evidence for prosecution was sampled in varying amounts (most recently 1 kilogram and 10 core samples) and the balance destroyed immediately.^{1/} To support the samples, photographs

^{1/} DEA initiated this practice because of difficulties encountered along the southwest border in storing multi-ton marihuana seizures.

of the entire seizure were taken and submitted as evidence. According to an assistant U.S. attorney in San Diego, this practice worked reasonably well. There were no indications of lost prosecutions and the practice significantly reduced Federal agencies' evidence storage problems in southern California.

In December 1974 the Ninth Circuit Court of Appeals, in affirming a marihuana conviction,^{1/} advised on the possibility of reversal any time that evidence is lost or inadvertently destroyed. Although the practice of using a representative sample was approved, the Ninth Circuit stated that evidence destruction should be permitted only after sufficient notice is given to the defendant's counsel. Consequently, Federal agencies in the Ninth Circuit changed their evidence procedures to permit destruction of all but a sample of marihuana only after the defense has been given time to examine the seizure.

According to the Chief Assistant U.S. attorney in San Diego, the notice procedure has worked well, and the need to store large marihuana seizures for indefinite periods has been eliminated. The Solicitor General noted that the new procedures should satisfy the requirements of the Ninth Circuit Court to overcome any allegation of capricious, arbitrary, or unilateral destruction of evidence which would be prejudicial to a defendant.

Generally, because of storage problems, large marihuana seizures are sampled and destroyed throughout the country. Other drugs such as heroin, cocaine, and amphetamines continue to be completely retained. For example, when we first visited a DEA regional office in California, we found in the vault seized illicit drugs held for over 2 years. The New York Customs regional office was storing drugs seized before July 1973 as evidence. Department of Justice and Customs officials told us that most U.S. attorneys prefer that entire seizures be kept as evidence to be introduced into court for its emotional impact on the jury.

^{1/}United States v. Heiden, 508 F. 2d 898 (9th Cir. 1974).

U.S. attorneys' and Circuit Court judges' views on samples

The three U.S. attorneys' offices we contacted had varying views on the propriety of using samples in court. In Arizona, the U.S. attorney believed that photographs and samples should be sufficient evidence. The Chief Assistant U.S. Attorney in New York City, however, was unequivocally opposed to sampling drug seizures. He said that it was important to retain the entire seizure to show the magnitude and severity of the crime, particularly when the crime involved lengthy sentences. The San Diego Chief Assistant U.S. Attorney believed that the procedure used for marijuana seizures could be used for other types of drug seizures.

Several U.S. Circuit Court judges said the destruction of the drug seizure before the trial was a possible basis for a defendant to appeal his case. None of the four chief judges interviewed favored a blanket policy of only retaining a sample of the drug seizure for evidence. However, three said that if the prosecution and defendant agreed (stipulated) that a sample would be acceptable as evidence, then the remainder of the drug seizure could be destroyed. They felt that if this practice was encouraged, large quantities of drugs could be destroyed much earlier. The fourth chief judge believed that the entire drug seizure should be retained until the time for appeals has expired.

Sampling procedures need to be established

We believe that establishing procedures requiring drug samples for evidence, when acceptable to the prosecution and defendant, would help solve many drug custody problems. There is precedence for the use of such procedures. ATF has authority to destroy immediately large seizures of contraband liquor (26 U.S.C. 5609). Samples of the seizure and the expert testimony of ATF agents are accepted as evidence. Because of the possible reluctance of U.S. attorneys to use drug evidence samples and of Federal District Court judges to accept them, plus the possible use of sampling as a basis for appeal, similar legislation may be needed to establish a workable drug evidence sampling procedure.

In April 1973, a bill (H.R. 6683, 93rd Cong.) was introduced which would have required the prompt destruction of all contraband, including narcotics and dangerous drugs, following seizure. Before destruction a sample, never to exceed 50 grams, would be taken from each exhibit for evidence. The

proposed legislation was intended to lessen the potential for illegal diversion of contraband while in Government custody. Both the Treasury and Justice Departments favored passage of the bill with minor amendments. The bill did not come before the Congress for a vote and has not been reintroduced.

Officials of the Criminal Division of the Department of Justice believe that a drug sampling procedure established by the Attorney General is more desirable than legislation and would be effectively implemented by the U.S. attorneys. They said that such a procedure could provide more flexibility than legislation and allow all seized drug evidence to be retained where it is deemed necessary. One official suggested that retention of the entire drug seizure should be allowed in some cases but that this decision should be made only at headquarters. He stated that in most cases samples of seized drugs and the expert testimony of DEA chemists would be adequate evidence.

DEA agrees; however, should the U.S. attorney think it necessary to present the entire seizure in court, then DEA believes that the entire seizure must be saved. DEA wants no changes adopted which might have an unfavorable impact on the prosecution of a drug case. DEA officials said that in some cases, such as a conspiracy case, it is necessary to present the entire seizure where other evidence is not as substantial; however, where several eyewitnesses and other strong evidence are available, it should not be necessary.

STORAGE FACILITIES AND RECORDKEEPING NEED TO BE IMPROVED

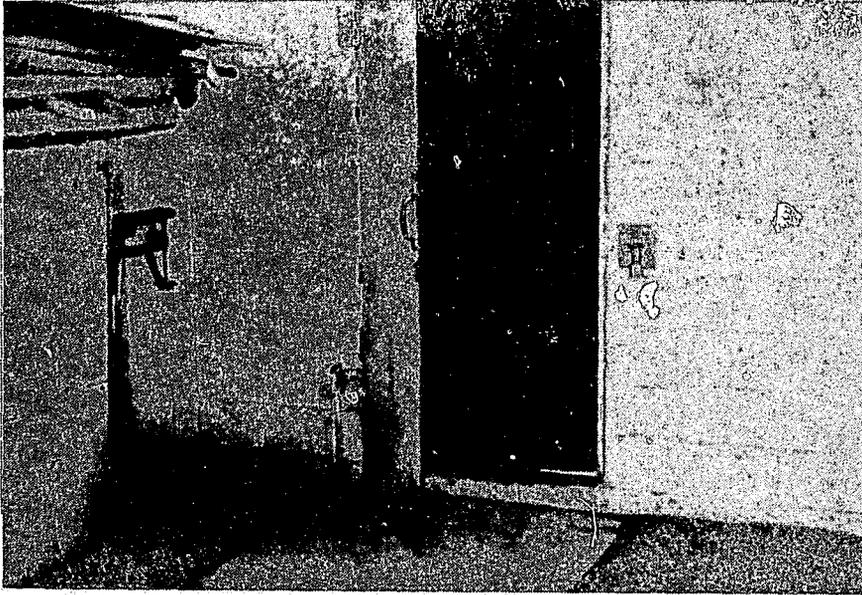
In our visits to the regional and district offices of DEA and Customs and two DEA laboratories, we noted several instances where storage and recordkeeping controls were not adhered to and thefts and losses could have gone undetected.

Storage facilities

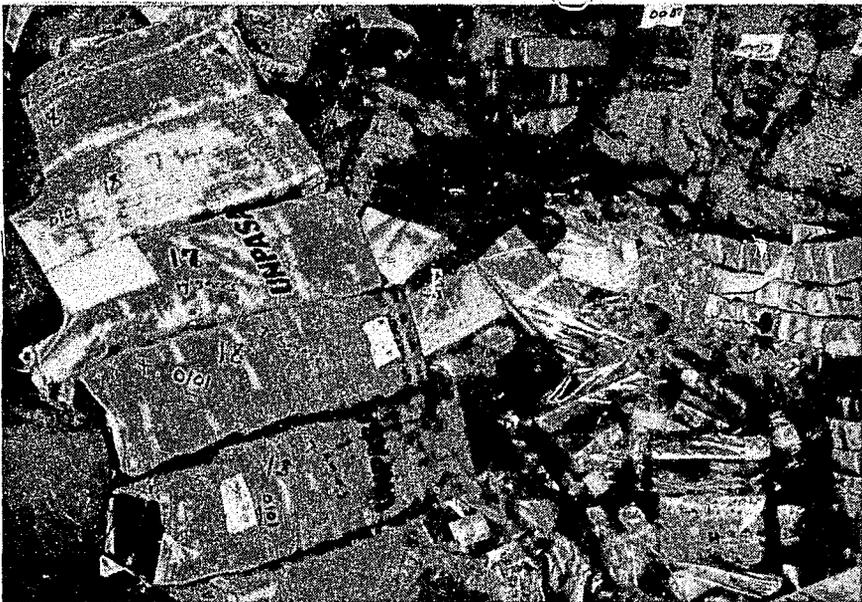
At the time of our visit certain DEA drug storage facilities in Arizona and California were overcrowded and did not meet DEA's minimum security standards. (See photos, p. 14.) For example, at a laboratory where large quantities of drugs were stored, the drug storage vault was located several floors below the DEA personnel work area and had no alarm system.

DEA, aware of the poor security at these locations, has been working with GSA to improve storage conditions. Since our initial visit, DEA has moved to improved facilities at two of these locations.

Storage facilities used by DEA and Customs in New York appeared to be adequate.



ENTRANCE TO DEA'S EVIDENCE STORAGE ROOM IN ARIZONA



MARIHUANA EVIDENCE IN STORAGE IN ARIZONA

Recordkeeping

DEA procedural controls over seized drugs require that inventory records be kept for stored evidence and that periodic accountability inventories be taken. At the time of our visit the regional office in California was taking the required physical inventory but was not verifying the results with inventory records. As a result, this office identified only drugs present and would not know if drugs were missing. A regional order was subsequently issued which requires inventories to be reconciled to inventory records twice a year.

Similar situations existed at the U.S. Customs offices in New York and California. No periodic physical inventory was taken to verify the existence of evidence in storage even though Customs requires an accountability drug inventory every 3 years at each office. In New York spot checks were taken each month from five randomly sampled drug case files to verify drug existence. In one California storage location Customs' last inventory was taken in February 1973.

DEA policy also includes procedures for documenting the transfer of evidence and maintaining a drug evidence inventory file for each regional and district office. This file shows the total drug evidence responsibility for each office. Customs has similar procedures for retained drug evidence. A comparison of items to inventory records at one DEA storage facility in California showed that the records were sometimes incomplete. In one case, 95 grams of heroin were in storage although listed in the file as destroyed. Regional officials are revising their recordkeeping system to strengthen controls over seized drugs.

According to DEA, a program of unannounced laboratory inspections, conducted at least twice a year, is being implemented to supplement the control system. These spot checks focus on those exhibits most subject to theft such as large quantity, high-purity heroin. However, DEA said that operational exigencies, together with manpower shortages, have kept it from performing inspections as frequently as desired.

Our review of 268 drug cases at Customs in New York revealed several instances of inadequate recordkeeping. For example, in 14 instances involving 10,586 grams of drugs, records showed that the drugs were released to DEA or other agencies when in fact they were still at Customs. We found 26 other cases involving 2,244 grams of cocaine and codeine

that could not be routinely scheduled for destruction because of inaccurate records, including

--missing case files,

--case-file numbers that were recorded as being canceled but were assigned to drugs located in the vault, and

--drugs that were not assigned a case-file number.

Subsequent to our fieldwork, Justice Department internal auditors reported on the adequacy of selected DEA regional and district offices' and laboratories' records which document the chain of custody to preserve and safeguard acquired evidence and other property. The report concluded that prescribed procedures for drug evidence generally were adequate and effective and that drug evidence was safeguarded, documented, and forwarded to laboratories in a timely manner. The report did point out improvements that could be made, including a need for more careful documentation of the chain of custody of evidence in the case files.

Drug evidence accumulating unnecessarily

The large amounts of drugs held in custody and the limited space available at most DEA and Customs offices make it imperative that evidence be promptly destroyed. At DEA, the agent assigned to the case is responsible for keeping abreast of its status and generating the destruction paperwork; whereas at Customs, the Fines, Penalties, and Forfeitures Branch prepares the necessary documents. Both agencies said they are dependent on the U.S. attorney for the information and authority to destroy evidence when it is no longer needed.

Eighty of the 268 cases we reviewed at the Customs office in New York were checked to determine how long the seizures had been in custody and the present status of the related criminal cases. The seizures contained about 370,000 grams of drugs, most of which had been held 20 to 39 months. Neither the Fines, Penalties, and Forfeiture Branch nor the seizure unit in Customs was aware of the case status. Each believed it was the other's responsibility to take appropriate action.

We checked 80 cases at the U.S. attorney's office in New York and found that 16 of these cases were closed and the evidence should have been destroyed. From the records at the U.S. attorney's office we were not able to establish the

status of the remaining 64 cases. This information indicates a need for Customs to improve its system for determining case status.

CONCLUSIONS

If prompt destruction of most marihuana seizures is permitted once samples are taken and notice is given, it would seem that sample quantities of other seized drugs should also suffice as evidence. If established nationwide by the U.S. attorneys, Customs, and DEA, the use of drug samples as evidence would reduce storage and security problems and the potential for serious drug losses at Customs and DEA storage locations. We recognize, however, that any such procedure would require court concurrence.

Effective controls are needed by Federal agencies to safeguard seized drugs from theft and loss. The conditions described at various DEA and Customs offices indicate that they need to strengthen their practices to better insure that the drug evidence is adequately controlled and the possibility of drug diversion to illicit channels is reduced.

CHAPTER 3

SEIZED CURRENCY COULD EARN INTEREST

Large amounts of currency are being held as evidence by Federal law enforcement agencies. This money generally is either (1) taken from an alleged violator as fruits of a crime (i.e., bank robbery and narcotics transactions) or (2) used by agents to purchase evidence (buy money) and recovered when arrests are made. Sometimes the seizing agency will turn the money over to the U.S. Marshals Service while awaiting its use as evidence or retain it as DEA normally does.

Following whatever evidentiary use the money may have, the court may decide on its disposition. If the court does not decide the agency may turn it over to the Internal Revenue Service or State for tax proceedings or return it to the owner. The agency normally cannot forfeit the money and must return it to the owner if the Internal Revenue Service or State does not accept it. If no one claims it, the agency can declare the the money abandoned. This sometimes happens when a claim of ownership would be self-incriminating.

The Narcotic Sentencing and Seizure Act of 1976 proposed by the President in April 1976 but not enacted, would have amended the Controlled Substances Act of 1970 to give DEA authority to forfeit cash and other personal property used in illegal drug transactions.

We believe that seized money should be deposited in the U.S. Treasury or returned to the rightful owner immediately following seizure. Lists of serial numbers and photocopies of the money could be used as evidence. If the ownership of the seized money is in doubt, the money could be deposited in a U.S. Treasury interest-bearing account until the court determines the rightful owner and then be returned.

Although there appears to be no major problem with using photocopies, photographing money for evidentiary purposes could possibly violate 18 U.S.C. 474. The purpose of this legislation is to protect the currency by prohibiting activities which could potentially constitute counterfeiting. However, the Secretary of the Treasury may grant exceptions to the statute.

INTEREST COULD BE EARNED

The U.S. Marshals Service usually takes custody of seized property including money that is to be used as evidence in a Federal court trial. At the beginning of fiscal year 1975 the Service had about \$4.6 million in custody, almost all of which was kept in safe deposit boxes. During the year the Service took custody of another \$3.7 million and returned \$328,500 to Treasury and \$4.8 million to individuals, banks, and other private institutions. It had \$3.2 million on hand at the end of fiscal year 1975. If the average monthly balance of \$3.9 million, computed from the beginning and ending yearly totals had been deposited in a 6-percent U.S. Treasury account, it could have earned about \$234,000 for the Government and private parties.

U.S. marshals handle seized money according to court orders. Consequently, funds are handled differently in various judicial districts. Money seized as evidence may be held for years while related court proceedings are concluded. At one time a marshal in California had about \$2 million in a safe deposit box. This included about \$360,000 from an Army base payroll robbery. The money was kept in California for 13 months while the case was tried in Louisiana. It was never introduced as evidence, and no apparent reason existed for holding the money for such a long time.

In a 1964 case ATF recovered \$17,000 used to purchase evidence in an illegal firearms transaction. Because of the many appeals, the money was held by the U.S. marshal for over 10 years.

DEA usually maintains custody of seized money instead of transferring it to the U.S. marshals. At the end of the 1973-75 fiscal years DEA was holding as evidence the following amounts of money that were not bearing interest.

Fiscal year 1973	-	\$1,948,428
Fiscal year 1974	-	\$ 883,122
Fiscal year 1975	-	\$2,129,240

At a 6-percent annual interest rate, these funds could have earned about \$300,000 in 3 years in a U.S. Treasury interest-bearing account.

One regional office had in custody, in its various storage locations, about \$200,000 in seized and recovered funds as of May 31, 1975. Although some funds were in court during

trials, most of the funds were stored in agency safes. Individual amounts ranged from \$5 to several thousand dollars.

Another regional office was holding about \$1.4 million in seized and recovered currency at the time of our review. Funds pertaining to 16 cases, involving \$134,508, had been held 24 months. The funds were held in sealed evidence envelopes in vaults.

Customs handles seized money like any other evidence. Money seized because it was not declared properly is usually promptly returned to the owner upon payment of a fine. Customs could not tell us how much money it has in custody. The New York regional office was not holding any seized money at the time of our review, nor were there any significant amounts at the district office in Arizona. In a California Customs district office evidence vault we located \$45,000 seized in February 1975 and still in custody in September 1975.

ACTUAL MONEY NOT NEEDED FOR EVIDENCE

Where the defendant's attorney is given the opportunity to examine the entire seizure and substitute evidence is available, the actual money involved in a criminal transaction may not be needed as evidence. A certified list of serial numbers, together with photocopies of the money, would constitute admissible evidence.

The four judges in various circuit courts of appeal did not favor establishing a rigid policy calling for the routine use of serial numbers and photocopies as evidence. Three of the judges indicated, however, that such a policy could be pursued on a case-by-case basis with stipulations agreed to by the defense and prosecution.

Recovered funds

Buy money recovered by DEA is generally stored in a safe until the case is adjudicated. Money not used as evidence or no longer needed is returned to the Treasury. While the money is in custody, DEA must obtain additional funds to purchase evidence. We believe evidence needs could be satisfied with serial numbers and photocopies and the recovered money reused. A DEA official told us that some State and local law enforcement agencies routinely recirculate funds provided by the Law Enforcement Assistance Administration to purchase evidence.

Reuse of the money is not delayed because it is not retained intact for use as evidence. Instead, serial numbers and photocopies of the money are used for evidence.

CONCLUSIONS

We believe the Federal Government, private individuals, and institutions could realize additional interest if recovered and seized money were deposited in U.S. Treasury interest-bearing accounts or returned sooner to its rightful owner rather than stored in vaults and safe deposit boxes. Recovered buy money could be made available for reuse by the agency. Evidence needs could be met with serial numbers and photocopies of the actual money provided the courts and attorneys concur with the substitution.

CHAPTER 4

IMPROVEMENTS NEEDED IN SEIZED VEHICLE STORAGE, FORFEITURE, AND DISPOSITION PRACTICES

Federal laws subject vehicles involved in the commission of certain crimes to seizure and forfeiture. Those that are forfeited to the Government are either placed into service by the seizing agency or disposed of through public sale. The following table lists the numbers of vehicles seized, forfeited, and disposed of by ATF, DEA, and Customs during fiscal year 1975. These three agencies seize and forfeit most of the vehicles confiscated by the Federal Government. Those vehicles seized but not forfeited are returned to the original owner. Some of the figures do not total because some forfeited vehicles were awaiting placement or sale at the time of our review.

<u>Seizing agency</u>	<u>Vehicle</u>	<u>Number of vehicles</u>			
		<u>Seized</u>	<u>Forfeited</u>	<u>Placed in service</u>	<u>Sold</u>
ATF	Automobiles	321	228	66	162
	Vessels	1			
DEA	Automobiles	1,859	<u>a/702</u>	360	<u>b/342</u>
	Vessels	8			
	Aircraft	23			
Customs	Automobiles	10,839	1,054	158	892
	Vessels	167	7	7	0
	Aircraft	106	23	12	8

a/Another 805 vehicles seized were pending possible forfeiture and disposition at the time of our review.

b/Sold by GSA.

During our review of various agencies' practices regarding the custody, forfeiture, and disposition of seized vehicles, we found unnecessary delays in the administrative forfeiture process by seizing agencies and in processing certain vehicles through judicial proceedings. Also, vehicle storage problems have subjected seized vehicles and aircraft to depreciation, deterioration, and vandalism while in Government custody.

CUSTODY AND FORFEITURE PROBLEMS

Seized vehicles valued at \$2,500 or more are required by law to be judicially forfeited. Anyone claiming an interest in a vehicle valued at less than \$2,500 may file a claim and post a bond on the vehicle and transfer the forfeiture case to court. In an administrative forfeiture the seizing agency can declare the forfeiture. In the judicial method the U.S. attorney brings the case to court where a judge determines a forfeiture. In both procedures notices of the pending forfeiture are published to alert parties with an interest in the seized vehicles. The U.S. marshal takes custody of vehicles undergoing judicial forfeiture; however, in some cases they remain at the seizing agencies' storage facility.

The time required to forfeit a vehicle can vary from a few months to a year or more depending upon (1) the vehicle value at the time of seizure, (2) the extent to which the owner attempts to regain possession, and (3) the effectiveness and speed with which the agencies process those vehicles that can be forfeited administratively.

Judicial forfeitures generally take more time than administrative forfeitures because of overcrowded court dockets and the low priority given such cases by U.S. attorneys and the Federal courts. These cases sometimes last several years resulting in excessive vehicle depreciation. For example:

- In the DEA New York regional office four cases sent to the U.S. attorney took between 117 to 389 days before the court made a forfeiture decision.
- In the ATF New York regional office, at the time of our review, seven cases had been in process an average of 342 days and were still pending. One vehicle had been in custody only 39 days but another had been held over 3-1/2 years.
- One case at the New York Customs regional office had been with the U.S. attorney since March 1970.
- In the DEA Los Angeles regional office eight cases completed from August 1974 to June 1975 averaged 210 days from the day they were sent to the U.S. attorney to the day the forfeiture decision was rendered by the court. The cases had been with the U.S. attorney from 36 to 395 days. Twenty-three other cases initiated during the same period were still with the U.S. attorney at the time of our review.

In many cases the time used by an agency to process an administrative forfeiture is also excessive, mainly due to clerical errors and lack of management attention to the forfeiture program. Forfeiture programs are also weakened by the poor security and storage given to the vehicles while in Government custody.

At Customs and DEA, many vehicles were in storage for a year or more awaiting forfeiture. For example, the New York Customs office's average time to process an administrative forfeiture was 323 days; sometimes it took more than 500 days. During such long periods, depreciation considerably reduces the value of the vehicle.

Although we found examples of extended time elapsing between vehicle seizure and its forfeiture by the agency, it is possible for a seizing agency to administratively forfeit a vehicle in a relatively short time. An administrative forfeiture must be advertised for 21 days. If no petition is received, the vehicle can be forfeited by the agency. Investigations of petitions can be completed (and often are by DEA) in another 20 to 30 days. Even if petitions are investigated and ruled on by the agency's general counsel, administrative forfeitures can be accomplished in a relatively short period compared to those cases that have to be processed judicially through a district court. This can be seen from the following examples of administrative forfeiture cases.

--ATF's New York regional office processed 12 cases in an average of 96 days. Five of these cases which entailed petition investigations were processed in an average of 149 days.

--DEA's New York regional office processed 26 cases in an average of 79 days.

--At Customs' district office in San Diego, 23 cars seized in 1974 were forfeited and sold in an average of 135 days.

--ATF's Los Angeles district office has processed 10 forfeitures in an average of 82 days from seizure to forfeiture since 1973.

Storage problems

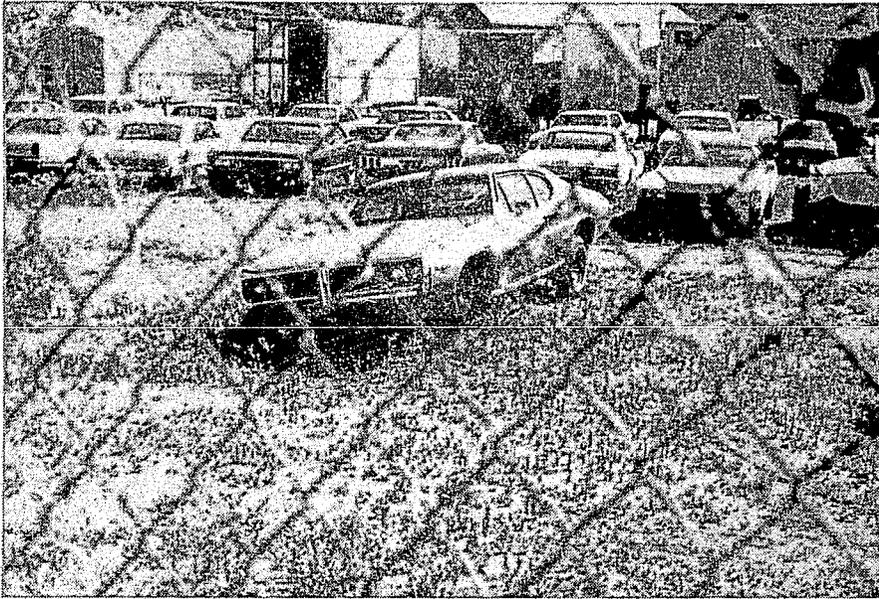
The DEA San Diego district office was storing at least 28 seized vehicles in various stages of the forfeiture

process that could have been forfeited and sold after a small amount of paperwork. Some of these vehicles were held for 2 to 3 years, accumulating storage costs and decreasing the vehicles' value. It appeared that a lapse in communication between the district and regional offices had prevented the vehicles from being sold. At the DEA office in Los Angeles at least 13 vehicles were similarly delayed from being forfeited and sold.

The security provided seized vehicles varied from agency to agency, even in the same geographical area. In San Diego, about 25 percent of the 189 vehicles we observed at Customs were subjected to vandalism and theft of parts because of inadequate security. A similar condition existed at Customs and DEA in Nogales where vehicles were stored on leased property with little security. (See photos, p. 26.) Because of excessive depreciation and vandalism, the value of forfeited vehicles sold at public auction is decreased. Also the vehicle should be maintained in the event it is returned to the original owner or lienholder.

In New York, DEA had about 40 seized vehicles in a midtown building at the time of our visit. Rent for the storage space was \$55,000 annually. Another 20 seized vehicles were stored in a garage also used by DEA employees. Customs in New York stores vehicles at a Government warehouse in New Jersey. ATF uses a private garage in Manhattan for vehicles undergoing judicial forfeiture. We found no incidents of theft or vandalism at any of the locations.

While depreciation and deterioration result from storing automobiles over long periods, storage problems for seized aircraft are even more significant. Seals can harden and crack, rubber deteriorates, engine and controls can fuse from rust, and aluminum skin corrodes. A Beechcraft D-50, seized by Customs in June 1971, was appraised at \$26,000 when it was stored at an Army missile site in Long Beach, California. The aircraft was forfeited and awarded for Customs use in February 1973; however, in September 1974 it was still parked in a deteriorated condition and was unsuitable for service. The airplane apparently had received no maintenance while in storage. It was finally sold in March 1975 for \$7,500. Another plane, a Piper Cherokee Six, was also deteriorating at the same site. When seized in 1972 it was valued at \$18,000 and customs requested the plane for official use. In February 1975, forfeiture took place and Customs determined that the plane had deteriorated and was not desired for official use. The aircraft was sold in June 1975 for \$9,500. Both planes had been in the custody of the U.S. marshal during the judicial forfeiture process.



**SEIZED VEHICLE WHICH WAS VANDALIZED WHILE IN STORAGE
AT THE CUSTOMS DISTRICT OFFICE IN NOGALES, ARIZONA**



**SEIZED VEHICLE STORAGE LOT AT THE CUSTOMS DISTRICT
OFFICE IN SAN DIEGO, CALIFORNIA**

(Source: GAO)

After we advised Customs personnel of the condition of seized aircraft, a regional circular was issued requiring the storage and maintenance of airplanes at Customs air support facilities.

The administrative forfeiture limit should be raised

A reduction in time required to forfeit a vehicle would allow (1) a decrease in depreciation and deterioration losses, thereby increasing the sales value of the vehicles, (2) vehicles desired for agency use to be obtained in less time, and (3) storage costs to be reduced.

Judicial forfeiture sometimes requires more time than administrative forfeiture and burdens the U.S. attorney and courts with more work. Vehicles valued at more than \$2,500 must be submitted to the court for judicial forfeiture. Since values of vehicles have greatly increased since 1954 when the \$2,500 ceiling was established, we believe an increase in the dollar amount is needed. Officials from Customs, DEA, and the U.S. attorney's offices support such a change to shorten the forfeiture time and reduce the workload of the U.S. attorneys and the courts.

The legislation mentioned on page 4 would have raised the ceiling for administrative forfeitures to \$10,000 in an effort to make the law against drug traffickers swifter and more effective and relieve court congestion.

The Department of Justice proposed similar legislation in April 1975. It indicated that raising the administrative forfeiture limit would substantially reduce the volume of judicial forfeiture cases. It stated that in the past few years the value of vehicles has substantially increased resulting in an increased number of seized vehicles requiring judicial forfeiture.

The Department indicated that some delays of 2 or 3 years have been experienced in certain large cities. In some cases, vehicles which were suitable for official use when seized deteriorated to the point where they were unusable.

VEHICLE SALES SHOULD BE CENTRALIZED

A forfeited vehicle may be retained for Government use or sold. If the vehicle is in good condition and desirable for official use, the seizing agency will usually put it into

service. A vehicle less than 4 years old, not wanted by the seizing agency, must be reported to GSA as available to other Federal agencies. If no other agency wants the vehicle it is sold.

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et. seq.) made GSA responsible for disposing of property in excess of the Government's needs. However, as permitted under 41 C.F.R. 101-45.404, some law enforcement agencies sell forfeited vehicles not put into service. Most Government agencies turn over unwanted vehicles to GSA for sale. Even law enforcement agencies transfer used vehicles to GSA for sale, whether or not they were originally obtained through forfeiture.

Customs sells forfeited vehicles not placed in service through public auction. The U.S. Marshals Service conducts sales by court order to a number of bidders. ATF sells vehicles through mailed bids. Customs, ATF, and U.S. Marshals Service vehicle sales are conducted or supervised by law enforcement officers.

DEA transfers its seized vehicles to GSA for sale, citing manpower savings on the part of administrative and enforcement personnel in performing sales functions. These functions include maintaining bidders lists, preparing bid forms, and receiving and evaluating bids.

During fiscal year 1975 DEA transferred 342 forfeited vehicles to GSA for sale. ATF and Customs sold 162 and 900 forfeited vehicles, respectively, including 8 aircraft in fiscal year 1975. Total vehicles sold by the U.S. marshals was not available.

Customs sales have given the agency some expertise in auctioning vehicles but resulted in customs law enforcement personnel performing some of the sales functions. ATF special agents also perform the sales function in their regions. This practice takes Treasury law enforcement personnel away from their primary enforcement responsibilities.

We believe that the Treasury agencies should consider transferring forfeited vehicles not placed in service to GSA for sale. By doing so, ATF and Customs agents would not be taken away from law enforcement duties. Also, the vehicle selling function would be centralized in the agency established by the Congress to perform the sales function for Government agencies.

While Customs and ATF officials voiced no objection to transferring the sale of forfeited vehicles to GSA, ATF officials indicated that there may be legal problems associated with such a transfer. ATF officials told us that the Department of the Treasury in the past has not considered forfeited vehicles not placed into service to be surplus property as defined by law, and therefore they cannot be transferred to GSA for disposition. Treasury officials are also concerned that such a procedure would violate 19 U.S.C. 1600 et. seq. which requires that property seized by Customs be sold in the judicial district where seized. If there are such problems, Treasury and GSA should jointly recommend the legislation needed to allow the transfer.

GSA officials agreed that it should have responsibility for selling vehicles which are not needed by the seizing agencies. They cited their capabilities for conducting more efficient sales because of their comprehensive bidding lists and expert sales personnel.

During fiscal year 1975 GSA sold about 17,000 vehicles, about 7,700 of which were owned by other agencies. The Treasury agencies sold about 1,060 vehicles including 8 aircraft.

CONCLUSIONS

Federal agencies need to improve their practices related to the forfeiture, custody, and disposition of seized vehicles. Existing practices have resulted in forfeiture delays causing depreciation, deterioration, and vandalism to the vehicles.

GSA normally has responsibility for disposing of surplus Government vehicles. We believe the Treasury agencies should consider transferring forfeited vehicles not placed in service to GSA for disposal. The agencies would still process the forfeiture paperwork, but would be relieved of the actual selling process. This would reduce the time demands on law enforcement personnel.

We also believe that, in certain cases, forfeiture process time would be shortened through an increase in the dollar limitation for administrative forfeiture. An additional benefit would be the reduced workload of U.S. attorneys and Federal courts.

CHAPTER 5

SEIZURE AND CUSTODY PROBLEMS

FOR FIREARMS AND EXPLOSIVES

ATF, Customs, DEA, the U.S. Marshals Service, and other Federal agencies seize firearms and explosives in carrying out their law enforcement responsibilities. Although many firearms are taken for evidence or safekeeping in narcotics or customs violations, primary authority for enforcing Federal firearms laws has been given to ATF. Because of various agencies' failure to handle seized firearms in compliance with laws and regulations and other administrative problems, firearms

--have been accumulating in agency vaults and

--are being destroyed or acquired by an agency not having forfeiture authority.

Also, ATF seizes large amounts of dangerous explosives that could be destroyed earlier if proposed legislation were passed.

ACCUMULATION OF FIREARMS

In April 1975 the U.S. marshal in Los Angeles had 61 seized firearms in his custody. Of these, 17 were seized at airports during a 2-1/2-year period, from 1970 to 1973, when the U.S. marshals were directly responsible for enforcing the Federal anti-air piracy laws. Although many cases had been closed, the U.S. attorney had not notified the marshal that he could turn over the weapons to ATF for disposition. The marshal can only dispose of firearms by court order.

After we brought the matter to his attention, the U.S. marshal in Los Angeles contacted both the U.S. attorney and the FBI to request the status of cases involving seized firearms. He concluded that more than half of the 61 firearms seized in connection with criminal cases could be disposed of. Arrangements were made so that ATF could acquire, forfeit, and destroy the guns.

Customs has the authority to seize firearms that (1) are not properly registered (19 U.S.C. 1490, 1491), (2) are illegally entering the United States under ATF statutes,

(18 U.S.C. 921, 924(d), and 26 U.S.C. 5801-5872), or (3) violate neutrality laws (22 U.S.C. 401, 1934). Customs attempts to turn over to ATF seized guns involving ATF statutes; however, Customs forfeits these weapons even if ATF does not accept a case for forfeiture and prosecution. Customs also forfeits weapons seized for neutrality law violations. Firearms seized for lack of proper registration are considered general-order merchandise holdings and must be held for 1 year to allow the owner to comply with the law.

At the Customs New York office, 346 firearm seizure cases were in active files. Although most cases involved 1 gun, 1 case involved almost 10,000 starter and tear gas pistols. Our review of 57 of the 346 cases showed that most of the weapons had been forfeited to the Government. They have been accumulating, however, since 1972 when disposal by dumping at sea was banned. Customs officials said they are considering smelting as the destruction method for seized firearms. GSA regulations (41 C.F.R. 101-45.403) prohibit Government agencies from selling abandoned and forfeited firearms except those seized as general-order merchandise. These weapons are sold as required by customs law. In fiscal year 1975, Customs sold 190 handguns, rifles, and shotguns and destroyed over 2,500 weapons.

The Customs office in Nogales, Arizona, was holding 35 firearms involved in 21 cases at the time of our visit. A check with the U.S. attorney in Tucson showed that 12 of the 21 cases had been closed. The closed cases involved 23 firearms which could have been destroyed or put to official use. Needless accumulation of firearms appeared to result from a lack of communication between Customs and the U.S. attorney.

FIREARMS DISPOSAL

DEA currently has no legal authority to forfeit firearms but it, along with other Federal law enforcement agencies, can declare seized weapons abandoned. In this procedure, however, as in administrative forfeiture procedures, the agency is obliged to notify the legal owner. Intent to abandon would only be inferred where Federal agencies could show that notice of possible weapon destruction was given to the owners and the owners did not respond within a reasonable period of time.

The DEA offices in Los Angeles and Nogales do not notify the owners before destroying or acquiring the weapons, and the New York office has been accumulating firearms for several years without notifying the owners or destroying the weapons. The DEA firearms log in New York showed 325 seized firearms in custody in July 1975.

From June 1969 to 1975, the DEA Los Angeles regional office received and later destroyed or put to official use at least 96 firearms seized in drug-related cases. ATF often will not accept DEA seized firearms because they do not meet their forfeiture criteria or information to sustain a forfeiture has not been obtained. To dispose of the guns on its own, the DEA Los Angeles regional office considers them abandoned after 6 months. No effort was made to notify the legal owners that they could reclaim the guns.

Proposed DEA regulations specify that the personal property owner will be notified by certified mail at his address of record so that the described property may be claimed by him or his designee. Such a regulation, while meeting legal guidelines for abandonment, could permit firearms to be returned to criminals or their associates.

It appears DEA must find another solution to its seized firearm accumulation problem. An alternative might be to turn over to ATF all firearms seized as evidence, but not used as such. Under Federal firearms laws ATF might forfeit them by its own procedures. Additional work would be required by DEA to document the facts of the seizure. ATF officials told us they will not accept a seized firearm without a complete report describing the nature of the seizure and outlining sufficient criteria for forfeiture.

SEIZED EXPLOSIVE MATERIALS

Under the National Firearms Act (26 U.S.C. 5845) and 18 U.S.C. 844, ATF is authorized to seize and forfeit unregistered "gangster" style weapons such as sawed-off shotguns and destructive devices such as bombs and explosives.

In fiscal year 1975 ATF seized 2,180 pounds of high-grade explosives, 1,256 pounds of low-grade explosives, and 58,275 pounds of blasting agents. The ATF Director told us that explosives seized for forfeiture by ATF or held as evidence for court proceedings are difficult to maintain and store and have created hazardous conditions. Some of

the seized explosives are too dangerous to move to safe storage facilities and in some cases are too dangerous to store.

According to ATF, because of time-consuming forfeiture procedures and court proceedings and appeals, these materials are sometimes held for a long time. The longer the time, the greater the potential for abuse or accident.

Currently, ATF must store the seized weapons and explosives until the completion of forfeiture proceedings and/or their evidentiary use is over. ATF believes that the physical presence of all of the seized explosive material is not necessary for judicial court proceedings and that small safe samples of bulk seizures or identifying serial numbers, eyewitness testimony, or photographs should be adequate as admissible evidence. Consequently, explosive material could be promptly destroyed. This would preclude the prolonged storing of dangerous explosive materials and minimize the danger involved in handling explosives.

ATF also believes explosive materials and the gangster-style weapons should not and need not go through the forfeiture process. It believes illegal materials that cannot be moved or stored safely and are illegal for individuals to possess should be destroyed. This would eliminate the danger of handling explosive materials and reduce the chance of injury to individuals and property.

Whether the forfeiture proceedings are judicial or administrative, they can be very time consuming and costly. Such expenditures of time and money do not serve any useful purpose when an unregistered firearm or bomb is seized. These weapons cannot be returned to the person they were seized from. An analogous procedure to one provided in the Controlled Substances Act (21 U.S.C. 881) could be applied to these items. Controlled substances having no accepted medical use and having a high potential for abuse do not go through a forfeiture process. Such controlled substances cannot be legally possessed; therefore, no formal forfeiture procedure is necessary. However, seized drugs are often held for long periods of time as evidence, as described in chapter 2.

ATF has supported two bills intended to facilitate the early destruction of unsafe explosive materials. A bill (H.R. 10392, 94th Cong.) was introduced to amend section

884, title 18 of the U.S.C. and authorize the destruction of seized and forfeited explosive materials when it is impractical or unsafe to move or store the materials. The bill was not reported out of committee. ATF also supported an administration bill that would have amended the National Firearms Act (26 U.S.C. 5872) by eliminating the need for judicial and administrative forfeitures in cases involving unregistered weapons and explosives.

CONCLUSIONS

Law enforcement agencies are accumulating seized firearms because of difficulties in determining a disposal method, procedural difficulties with ATF, and lack of communication with U.S. attorneys on the status of cases. Law enforcement agencies need to more timely dispose of weapons. Some possible approaches that could be considered are forfeiture by ATF, abandonment, or return to the owner. We also believe that the U.S. attorneys' offices and law enforcement agencies need to establish a system to communicate the status of criminal cases so that firearms involved in closed cases can be scheduled for forfeiture or disposition.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Federal law enforcement agencies seize large quantities of property in carrying out their duties. This property is often held for long periods of time either as evidence or awaiting a forfeiture determination. Problems--loss of illicit drugs, loss of interest on currency, loss of vehicles' value due to deterioration, and the accumulation of firearms (some of which are being held improperly)--seem to have a common cause: too much is held for too long.

Opportunities exist for reducing the amount of seized property. Samples of seized illicit drugs could be retained for evidence and the bulk of the material could be destroyed. Certified lists of serial numbers and photocopies of seized money could be used for evidence, permitting the money to be returned to the rightful owners immediately or deposited in interest-bearing accounts until the rightful owner is determined. A defendant's attorney would need to be afforded the opportunity to examine the entire seizure. These procedures would require the concurrence of the courts and U.S. attorneys.

Effective controls are needed by Federal agencies to safeguard seized drugs from loss. DEA and Customs need to strengthen their practices to reduce the possibility of drugs being diverted into illicit channels.

Delays in the disposition of seized vehicles have resulted in deterioration, depreciation, and vandalism. Federal agencies need to improve their procedures for storing the vehicles and more promptly determining their disposition. The Treasury Department should consider transferring forfeited vehicles to GSA for sale. Existing legislation requires that a Federal court determine the disposition of vehicles valued at more than \$2,500. Legislation has been proposed to raise the amount to \$10,000 to increase the number of vehicles that could be forfeited administratively.

Law enforcement agencies should give more attention to the large quantities of firearms they are accumulating. Reasons for failure to dispose of firearms include (1) difficulty in determining a disposal method, (2) procedural difficulties between ATF and other agencies, and (3) lack of

communication between the U.S. attorneys and enforcement agencies as to the status of cases.

RECOMMENDATIONS

To dispose of large quantities of seized property more promptly we recommend that the Attorney General:

- Direct the U.S. attorneys and cognizant law enforcement agencies to use as evidence a sample of seized narcotics and dangerous drugs with a certified laboratory report and the expert testimony of a DEA chemist attesting to the contents of the entire seizure where permitted by the U.S. court. The bulk of the seizure should be destroyed after the defendant's counsel has had the opportunity to examine the seizure.
- Establish procedures to use certified lists of serial numbers and photocopies of seized money for evidence where permitted by the U.S. court.
- Along with the Secretary of the Treasury direct DEA and Customs, respectively, to improve the administration of seized weapons to allow for the more timely disposition of the weapons. Some possible approaches that could be considered are forfeiture by ATF, abandonment, or quicker return to the rightful owner.
- Direct the U.S. attorneys to promptly advise law enforcement agencies when cases are closed so that seized property can be disposed of.

To better control drugs being held, we recommend that the Attorney General and the Secretary of the Treasury direct DEA and Customs, respectively, to strengthen their drug and narcotics evidence handling, storing, and accounting practices by:

- Taking periodic independent accountability inventories to verify the existence of drugs and narcotics evidence in vaults.
- Using adequate storage facilities that meet required security standards.
- Using a proper followup system to determine the status of cases for the purpose of destroying evidence related to closed cases.

--Monitoring regional offices for compliance with evidence procedures.

To lessen seized vehicle value losses, we recommend that the Attorney General and the Secretary of the Treasury direct their agencies to institute the necessary administrative policies and practices to safeguard and prevent the unnecessary depreciation of seized vehicles.

We also recommend that the Secretary of the Treasury and the Administrator of GSA consider transferring all forfeited vehicles not placed into service to GSA for disposition.

RECOMMENDATION TO THE CONGRESS

The Congress should enact legislation similar to section 503 of the President's April 27, 1976, proposed anti-drug legislation entitled "The Narcotic Sentencing and Seizure Act of 1976" (H.R. 13577 and S. 3411). Section 503 would have raised the \$2,500 limit for administrative forfeiture to \$10,000. Such legislation would increase the number of seized vehicles that could be forfeited administratively and possibly shorten the time from seizure to forfeiture. Anyone wishing to judicially contest a forfeiture could still transfer the proceeding to the Federal District Court by filing the required claim and bond.

AGENCY COMMENTS AND OUR RESPONSE

The Departments of Justice and the Treasury and GSA provided comments on our report. Justice generally agreed with the need for corrective actions on the problems associated with the handling, storage, custody, and forfeiture of property seized by Federal law enforcement agencies. Although Justice foresees some difficulties in implementing some of the recommendations in our report, it expressed a willingness to work toward improvements in these areas. (See app. I.) Treasury agreed with some of the recommendations, but questioned the legality and/or need for others. (See app. II.) GSA agreed with our recommendation on those operations in which it would be directly involved. (See app. III.)

The comments of the various agencies, discussed in greater detail, follow.

Drugs

Justice generally supported our recommendation that samples of drugs and other appropriate substitutes be used for evidentiary purposes rather than holding the entire seizure. Justice stated that evidence sampling should be adopted only with the clear understanding and concurrence of the courts and that the procedure must be flexible enough to allow the U.S. attorney to introduce into evidence entire seizures of drugs if tactical considerations require this approach.

We agree with Justice's comment that any sampling procedure would require the concurrence of the courts and have included such a provision in our recommendation.

Treasury did not specifically comment on the use of drug samples; however, its comments pertaining to evidence samples are discussed on page 39.

With regard to our recommendation that drug evidence handling, storing, and accounting practices be strengthened, both agencies outlined actions already taken or planned in this area. Treasury said that Customs would reassess the adequacy of existing storage facilities and consider instituting semiannual physical inventories. Justice noted that an internal audit had concluded that DEA's procedures for controlling evidence were adequate and effective but that some improvements were needed for documenting evidence handling and recording other acquisitions. Justice also noted DEA's physical security problems in storing evidence. According to Justice, improvements in drug storage facilities are being made, but not as fast as DEA would like.

Currency

Justice stated that its position on using photocopies and serial numbers instead of seized currency is identical to that on seized drug samples. Namely, it has no objection to our recommended procedures upon submission of a full and unequivocal stipulation by a defendant's attorney that the substituted evidence accurately represented the entire seizure and with the clear understanding and concurrence of the courts.

Justice pointed out that acceptance of our suggestion would require authorization from Treasury to photocopy

currency. Justice stated that the FBI had worked out such procedures under certain situations.

We agree with Justice's comments that a proper legal foundation must be laid before currency samples and photocopies could be used as evidence. There does not appear to be any legal prohibition against the Secretary of the Treasury authorizing Federal prosecutors to photograph money for evidentiary purposes in criminal prosecution as evidenced by the arrangement Treasury has with the FBI.

Treasury stated that our recommendations on evidence substitution raise substantial constitutional questions bearing on the rights of defendants in criminal cases. Treasury also questions whether the benefits expected to be derived from evidence substitution procedures would be worth the loss in psychological effect experienced in showing the jury real evidence.

We believe that our recommendations on evidence substitution will not violate a defendant's rights if the defense attorney is given the opportunity to examine the entire seizure, and if he and the court concur that all of the actual drugs or money seized in a criminal case need not be introduced as evidence. Samples of large marihuana seizures and currency serial numbers already have been used in some court cases. (See pp. 9 and 20.)

We believe the benefits from greater use of evidence samples and substitutions in court cases are worthwhile. In addition to the monetary benefits that could be obtained by using evidence substitution, this practice would also lessen the problems associated with holding large quantities of seized property for long periods of time. Although it is impossible to measure the possible psychological effect of showing a jury all of the original seizure, none of the prosecuting attorneys we spoke with stated that they knew of any cases which were lost as a result of using samples. Also, a policy calling for increased use of such practices should allow for exceptions where the U.S. attorney believes it necessary to introduce entire seizures into evidence. Such exceptions, however, should be monitored by the Department of Justice to make certain they are needed. If the courts and attorneys do not make greater use of evidence samples, Justice should consider proposing legislation, such as it has favored in the past, to require the prompt destruction of contraband and the use of evidence samples. The use of evidence samples has precedence in existing ATF law (26 U.S.C. 5609). (See p. 11.)

Vehicles

Justice generally agreed with all of our recommendations regarding seized vehicles. Justice:

- Supports our recommendation that Congress favorably consider legislation that would raise the jurisdictional limit for administrative forfeitures of seized vehicles.
- Agrees that improvement could be made in the administrative forfeiture process to reduce processing time.
- Said that DEA is already following our recommendation that forfeited vehicles not placed into service be transferred to GSA for disposal.

Treasury (1) agreed with our recommendation concerning the need to raise the monetary limitation on administrative forfeitures, (2) did not comment specifically on the need to institute measures insuring a more expeditious forfeiture of seized vehicles, and (3) questioned the legality of transferring forfeited vehicles not placed in service to GSA for disposition. Treasury stated that GSA sells surplus vehicles and under the law (40 U.S.C. 304(a)) a forfeited vehicle cannot be defined as surplus unless it is first acquired for official use, used, and later declared "no longer needed" by the seizing agency. Also, Treasury said the law (19 U.S.C. 1600 et. seq.) requires Customs to sell forfeited merchandise in the judicial district where it was seized.

As stated in chapter 4, we believe Treasury and GSA should jointly pursue legislative changes if they believe existing law(s) precludes transfer of forfeited vehicles not placed into service to GSA for disposition. Concerning Treasury's interpretation of the law, GSA told us that it has acquiesced to prior Treasury decisions on this matter and that it appears legislation would be required. (See app. III.) GSA also told us it would not need any additional resources to handle such vehicles and agreed that it would be in the best interest of the Government for it to handle the sale of seized and forfeited vehicles.

Weapons

Justice stated that there are difficulties in following some of our suggestions for improving the administration of seized weapons. It said that to declare firearms abandoned is replete with legal and administrative problems. Problems also exist in turning over all firearms to ATF because seized firearms do not always meet ATF's forfeiture criteria. Justice did not comment on our suggestion that firearms be returned to their rightful owner. It did state, however, that every effort would be made to improve procedures for more timely disposal of seized weapons.

Treasury commented that Customs is empowered by statute to seize, forfeit, and dispose of firearms and that this function cannot be delegated to ATF without legislation. However, it was not the intent of our recommendation that Customs delegate these functions to ATF. Our intent was to highlight the overall need for improved administration of seized weapons. We mentioned three possible approaches that could be used selectively by the agencies to speed the disposition of these weapons. We included forfeiture through ATF since DEA does not have authority to forfeit weapons. The wording of our recommendation has been clarified.

Status of court cases involving seizures

Treasury and Justice agreed with our recommendation designed to improve communications between the U.S. attorneys and law enforcement agencies so that evidence related to closed cases could be timely destroyed. Justice stated that the U.S. Marshals Service has agreed to establish follow-up procedures with the U.S. attorney handling open cases to determine the status of the cases. Treasury stated that it had informed ATF and Customs to implement procedures providing for the destruction of stored firearms as soon as related judicial proceedings have been completed and that Customs will review the feasibility of establishing procedures to insure that current court docket information is available on drugs held in custody.



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

February 8, 1977

Mr. Victor L. Lowe
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This letter is in response to your request for comments on the draft report titled "Law Enforcement Agencies Need to Improve Handling of Drugs, Firearms, Currency and Other Seized Property."

We believe that GAO has done a commendable job in pointing out the problems associated with the handling, storage, custody, and forfeiture of property seized by Federal law enforcement agencies. While we agree in general with the concepts of GAO's recommendations regarding evidence substitutions and sample quantities, we believe difficulties will oftentimes be encountered in obtaining the complete concurrence of the U.S. Attorney, the Courts and the defendant's attorney because of tactical or other considerations. Some of our comments will focus on these issues.

The draft report recommends that samples of drugs, including as appropriate, photographs, laboratory reports, and expert testimony be used for evidentiary purposes rather than offering entire seizures into evidence. In general, we support this recommendation. In fact, the Drug Enforcement Administration (DEA) initiated efforts in 1973 to establish procedures for disposing of bulk narcotic and dangerous drug seizures and purchases and for using relatively small samples from these seizures and purchases for evidentiary use. However, DEA did not wish to see any changes adopted that might impact unfavorably upon prosecutive intentions, either in the instant case or on potential future conspiracy prosecutions developed as a result of the instant case.



From a practical standpoint, U.S. Attorneys have no objection to using sample quantities of seized drugs upon the submission of a full and unequivocal stipulation by a defendant's attorney that the substituted evidence accurately represented the entire seizure. However, we are mindful of GAO's statement in the report that judges interviewed on this subject indicated they were not in favor of the adoption of such practices on a routine basis. For this reason, we believe evidence sampling should be adopted only with the clear understanding and concurrence of the Courts.

The admissibility of evidence is governed generally by the Federal Rules of Evidence. However, individual judges often have particular preferences which U.S. Attorneys must be free to meet. Additionally, there are times when the U.S. Attorney may deem it advisable or necessary, as a tactical consideration, to introduce into evidence entire seizures of drugs. The ability of the U.S. Attorney to control, in large measure, the progress of each criminal case and the introduction of evidence must remain as unfettered as possible.

The report recommends that the Attorney General, with the concurrence of the U.S. Courts, establish procedures to provide for the use of certified lists of serial numbers and photocopies of seized money for evidence rather than introducing the actual currency. The handling of seized currency and its admissibility in the prosecution of a case is of express interest and concern to the Federal Bureau of Investigation (FBI). It has been the practice of the FBI in the recent past to place money seized through the execution of Federal search warrants in gambling cases in a safe-deposit box in a reputable bank. The safe-deposit box is under the control of the Special Agent in Charge and/or the Assistant Special Agent in Charge. This procedure is followed after consultation with the appropriate U.S. Attorney or Strike Force representative and the local United States Marshal's Office. The primary reason for following this procedure is due to the fact that the money seized is considered fruits of the crime and/or contraband and in most cases will be introduced by the agent who seized same at a trial in Federal court. By placing the money in a safe-deposit box, the evidence is thus under the direct control of the FBI, more readily available when it is needed, and the chain of custody is more directly established. It should be noted, however, that the FBI's Manual of Rules and Regulations does not stipulate, and necessarily so, as to when the FBI should furnish currency seized during investigations to the United States Marshal's Office. [See GAO note 2, p. 47.]

The FBI Manual of Rules and Regulations states as follows:

"In some cases it will not be possible or desirable to turn money and other valuables over to the marshal. It is preferable such items be stored in a safe-deposit box of a reputable bank and compelling reasons must be present before considering the alternative method of storing these items in a safe or security-type fireproof file cabinet in the field office."

[See GAO note 2, p. 47.]

On page 31 of the GAO report, the statement is made: "A review of court cases relating to the admission of money as evidence suggests that the actual money involved in a criminal transaction need not itself be introduced as evidence." Elsewhere in the report, on pages 26 through 32, similar statements are made to the effect that lists of serial numbers and/or photocopies of the money would constitute admissible evidence in lieu of the original money.

[See GAO note 2, p. 47.]

Although a comprehensive review of the case law surrounding this question was not possible due to the short time available for response, a review of several recognized authorities on the law of evidence and the cases cited therein indicates that GAO's conclusions are somewhat simplistic in that it is not a simple matter to put their recommendation into practice. Nonetheless, the introduction of testimony together with lists of particular currency and a representative sample of the currency seized is being utilized as evidence in a number of prosecutions throughout the country. However, the personal preferences of the particular United States District Court judge before whom the U.S. Attorney presents his case must be taken into account. Also, the U.S. Attorney must have discretion to introduce the entire seizure if required by the judge or if deemed advisable by him in the exercise of his professional judgment. Many United States District Court judges require the introduction of entire seizures of currency unless a stipulation is obtained from the defense counsel. As pointed out by GAO, discussions with four judges in various Circuit Courts of Appeal revealed that none favors the use of serial numbers and photocopies on a routine basis. Our position on seized currency is identical to that on seized drugs. We have no objection to GAO's recommended procedures upon submission of a full and unequivocal stipulation by a defendant's attorney that the substituted evidence accurately represented the entire seizure and with the clear understanding and concurrence of the courts.

With respect to the legal difficulties involved in photocopying United States currency, it is noted that although Title 18, United States Code, Section 474, appears to prohibit such reproduction, the FBI has worked out certain procedures, primarily in kidnapping or extortion situations, which allow such copying. United States Attorneys' Bulletin, Volume 22, Number 24, dated November 29, 1974, captioned "Reproduction of Obligations of the United States to Facilitate Law Enforcement Policy" points out to U.S. Attorneys the fact that procedures have been worked out which would allow such copying in limited situations with prior or contemporaneous notification to the United States Secret Service. This is apparently recognized as proper under Title 18, United States Code, Section 504. However, our current understanding with the Department of the Treasury is not sufficiently broad to allow the xeroxing or other copying of currency for reasons suggested by GAO. Acceptance of GAO's suggestion will require the Department to seek authorization for such reproduction. It is not known whether the Department of the Treasury will be receptive to this proposal.

The report recommends that DEA improve its administration of seized weapons to allow for the more timely disposition of the weapons either by forfeiture through the Bureau of Alcohol, Tobacco, and Firearms (ATF), abandonment, or return to the rightful owner. DEA has been aware of the need to more expeditiously dispose of seized firearms for some time. However, DEA has no legal authority to forfeit firearms and the requirements for declaring seized firearms abandoned are replete with legal and administrative difficulties. A third alternative identified by GAO--turning over to ATF all firearms seized but not used as evidence--also presents problems. As the draft report points out "ATF often will not accept DEA seized firearms because they do not meet ATF forfeiture criteria or information to sustain a forfeiture has not been obtained." The crux of the problem stems from the fact that much of the information which ATF requires is not available to DEA. While we do not see any quick and easy solution to the problem, we will make every effort to improve procedures for more timely disposal of seized weapons.

The report also recommends that the U.S. Attorneys promptly advise law enforcement agencies when cases are closed so that seized property relating to the cases can be disposed of. Most U.S. Attorneys' offices are not administratively set up to routinely notify investigative agencies that seized property may be appropriately disposed of. This is left in large measure to the Assistant U.S. Attorney who prosecuted the particular case and the needs of the investigative agency. Most investigative agents, however, do follow the progress of "their" cases.

We agree that attorneys and their staffs need to be periodically reminded that seized evidence and other property--which may or may not have been admitted into evidence in a particular case--should be considered for disposal as soon as possible after the case is closed. As the result of an audit completed by the Departmental Internal Audit Staff in July 1976 relating to seized and evidentiary property in the custody of the U.S. Marshals Service (USMS), the recommendation was made that the USMS establish follow-up procedures with the U.S. Attorney handling open cases to determine the status of the cases. The USMS concurred with the recommendation and agreed to establish such procedures. We believe this corrective action meets the intended objective of GAO's recommendation.

The report further recommends that DEA strengthen its drug and narcotic evidence handling, storing and accounting practices. In April 1976, which was subsequent to GAO's visits to DEA field offices, the Justice Internal Audit Staff completed a DEA review covering (1) the controls exercised over acquired drugs, other legal evidence, and other property; and (2) the adequacy of chains and records of custody to preserve and safeguard acquired evidence and property. In general, the report concluded that procedures for controlling drug evidence were adequate and effective and that drug evidence was safeguarded, documented, and forwarded to laboratories in a timely manner. However, the report did point out improvements that were needed for documenting evidence handling and recording other acquisitions. We believe the actions taken by DEA over a period of time to improve these areas have generally improved the overall quality of its evidence handling and accounting practices. DEA has identified certain physical security problems with regard to evidence storage which will require inordinately long periods of time to resolve. This difficulty results from DEA's inability to unilaterally initiate corrective changes on leased or temporary space and the requirement to deal through another government agency. Corrections are being made, but not as expeditiously as DEA would like.

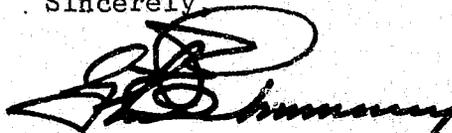
The report also proposes recommendations regarding seized vehicle forfeitures and disposition practices. We support GAO's recommendation to the Congress for passage of proposed legislation which would raise the jurisdictional limit for administrative forfeiture of seized vehicles from \$2,500 to \$10,000. As GAO indicates, this would ease the caseload of the Courts and the U.S. Attorneys, reduce the delay in disposition caused by judicial forfeiture proceedings, and reduce security, storage, maintenance, and depreciation costs of the vehicles. We should point out,

however, that the increased jurisdictional limit for administrative forfeiture will increase the number of administrative forfeitures required to be processed by the seizing agency. In this regard, GAO has pointed out the need for DEA to improve its administrative forfeiture process to reduce unnecessary delays in disposition. We agree that improvements can be made and DEA will evaluate its administrative forfeiture process in an effort to reduce processing time. At present, DEA's major problem is that all automobile petitions handled by them are investigated by their special agents, and the amount of resources that can be devoted to these petitions must be balanced against other priorities. Regarding GAO's recommendation that forfeited vehicles not placed into service be transferred to GSA for disposal, DEA is currently following this practice.

[See GAO note 2.]

We appreciate the opportunity given us to comment on the draft report. Should you have any further questions, please free to contact us.

Sincerely,



Glen E. Pommerening
Assistant Attorney General
for Administration

- GAO notes: 1. Page numbers cited in this appendix may not correspond to page numbers in the final report.
2. Deleted comments relate to suggested changes that have been made in this report.



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

January 24, 1977

Dear Mr. Lowe:

This is in response to your August 4, 1976 letter with enclosure soliciting the Department's comments and suggestions on the contents of a Draft Report entitled, "Law Enforcement Agencies Need to Improve Handling of Drugs, Firearms, Currency and Other Seized Property."

In the study, certain practices employed by the Customs Service and the Bureau of Alcohol, Tobacco and Firearms (ATF) with respect to handling and disposition of drugs, money, vehicles and firearms are criticized and recommendations made for their improvement. These recommendations range from suggestions to the Secretary and the Attorney General which would impact the disposition of evidence held in custody by ATF, the Customs Service and other law enforcement agencies, to proposals to Congress for legislation affecting administrative forfeiture proceedings.

With respect to the disposition of evidence held in custody by ATF and the Customs Service in pending criminal cases, the Draft Report recommends that in those cases where there are large quantities of seized drugs involved, a uniform policy should be developed which would permit the destruction of the bulk of such contraband after its inspection by the accused and his counsel. Samples would be used at trial.

The GAO reviewers also believe that a certified list of serial numbers, photocopies and samples of currency which may have been seized as the fruit of a crime, or "buy money," used for the detection of a crime would suffice as evidence in a criminal proceeding without resort to the actual currency. The GAO staff discussed this recommendation with four Federal Circuit Court Judges, who unanimously rejected it. The Judges advised the staff that substitution of currency could be effected only in those cases where counsel agreed by stipulation.

We agree with the Judges and also feel that the GAO recommendations raise substantial constitutional questions bearing on the Fifth and Sixth Amendment rights of defendants in criminal cases. Further, in light of recent changes to the Federal Rules of Criminal Procedure which have expanded the rights of defendants in criminal cases, particularly with respect to pretrial discovery and other evidentiary matters, it is not believed that the recommendations are legally sound.

Even apart from the legal question of the sufficiency of evidence, and the real possibility that a defendant could successfully complain that by destroying evidence his rights had been prejudiced, there is the practical question of whether the benefits expected to be derived from the recommended procedures would be worth the loss in psychological effect normally experienced in showing the jury real evidence. In any event, this is a matter which must be left to the discretion of the prosecutor in each individual case.

In addition to the foregoing, the GAO reviewers requested the Secretary to accomplish the following:

1. Improve Customs Service handling, storage and accounting practices with respect to seized drugs.
2. Improve Customs Service and Bureau of Alcohol, Tobacco and Firearms procedures with respect to expediting the forfeiture and final disposition of seized vehicles. (The report suggests that jurisdiction for the forfeiture and disposition be transferred to GSA).
3. Establish procedures whereby all weapons seized by any federal law enforcement agency, either for criminal or civil purposes, are transferred to the Bureau of Alcohol, Tobacco and Firearms for forfeiture and destruction.

With respect to the foregoing, the following comments are submitted:

DRUGS

Since July 1, 1973 when jurisdiction for the storage of drugs seized by the Customs Service was transferred to the Drug Enforcement Administration (DEA), the potential for accountable drug losses from Customs facilities has been significantly diminished. Parenthetically, the last

significant drug loss from a Custom's facility occurred in 1973. Currently, the only drugs stored in Customs facilities are those few pre-July 1, 1973 seizures where judicial disposition has not been finalized, and those where minute quantities have been retained for future chemical analysis. However, to insure the integrity of the present drug storage and accountability procedures, the Commissioner of the Customs Service has been requested to reassess the adequacy of existing storage facilities with a view to providing further reasonable safeguards.

Concomitantly, the Commissioner will review the feasibility of instituting semi-annual physical inventories of all drugs stored in Customs facilities by disinterested Headquarters personnel, and establishing procedures at each facility which will insure that current court docket information is available on drugs held in custody. It is believed that this latter procedure may obviate future situations of the type which your staff encountered where drugs were held in custody despite the fact that related judicial proceedings had been finalized, or otherwise terminated.

VEHICLES

On pages 41a and 42 of the Draft Report, Treasury agencies are requested to institute measures insuring a more expeditious forfeiture of seized vehicles. Also, they are requested to seek the assistance of GSA in storing seized vehicles, and to consider the possibility of having GSA sell forfeited vehicles. Finally, Congress is requested to consider an amendment to 41 U.S.C. 7325, which would raise the monetary limitation on administrative forfeitures from \$2,500 to \$10,000. The GAO staff believes that such an amendment will expedite the final disposition of seized vehicles.

The Draft Report asserts on page 38, that ATF pays GSA for the rental of storage space in a Brooklyn, New York warehouse, where seized vehicles are stored. We have been advised by ATF that although there is a rental arrangement between ATF and GSA involving a Brooklyn warehouse, the space is used to store Bureau-owned property, not seized vehicles.

[See GAO note 1, p. 52.]

On page 42 of the Draft Report, the reviewers suggest that title to, and possession of, all forfeited vehicles not acquired for official Government use by the seizing agency, should be transferred to GSA as surplus property for sale. This recommendation is predicated on the belief that such a procedure would be authorized by law, and would be beneficial to the Government since it would centralize

all vehicle sales in one agency which purportedly has a particular expertise in the area. We believe that a substantial question exists as to the legality of this recommendation, particularly as it relates to vehicles seized by the Customs Service under the provisions of 19 U.S.C. 1600 et seq. These provisions, which pertain to the sale of forfeited merchandise seized by the Customs Service, including vehicles, state that the sale must be made in the judicial district where seized, under the supervision of the Regional Commissioner.

We agree that 40 U.S.C. 484(c), empowers the Administrator, GSA to sell vehicles defined as surplus under the provisions of 40 U.S.C. 472(g). However, 40 U.S.C. 304(a) provides that a forfeited vehicle cannot be defined as surplus unless it is first acquired for official use, used, and later declared "no longer needed," by the seizing agency. Thus, any transfer of a forfeited vehicle to GSA for sale without following this procedure appears to be without legal sanction. For your information, there are enclosed two legal memoranda, dated November 20, 1964 and February 7, 1968, respectively, prepared by former Directors of the Alcohol and Tobacco Tax Legal Division, Internal Revenue Service which specifically address the legal impediments inherent in this GSA recommendation.

We concur in the recommended amendment to 41 U.S.C. 7325, raising the monetary limitations of administrative forfeitures from \$2,500 to \$10,000, since this might serve as a device for expediting final disposition of seized vehicles.

FIREARMS

[See GAO note 1, p. 52.]

It is further recommended that ATF and the Customs Service develop, in conjunction with U.S. Attorneys, a system to communicate the status of criminal cases.

[See GAO note 2, p. 52.]

The Customs Service is empowered by statute to seize, forfeit, and dispose of firearms seized under the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1600 et seq.) and the Arms Export Control Act (22 U.S.C. 2778). Further, the provisions of 19 U.S.C. 1607 and 1611, indicate that the forfeiture and destruction of firearms seized by the Customs Service in its enforcement of either law, cannot be delegated to ATF.

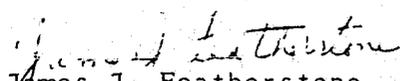
Also, it must be pointed out that although ATF has primary jurisdiction for the Gun Control Act of 1968, as amended, and forfeiture of firearms seized thereunder, it must rely on a delegation from the GSA Administrator for authority to destroy the seized firearms. 26 U.S.C. 5872.

[See GAO note 1.]

An additional recommendation in the Draft Report is that Treasury should direct the Customs Service, and ATF to maintain closer coordination with U.S. Attorneys on the status of criminal cases in order to reduce the unnecessary accumulation of firearms held in custody. We agree with this recommendation and have advised ATF and the Customs Service to implement procedures providing for the destruction of stored firearms as soon as related judicial proceedings have been completed.

If I can be of further assistance in this matter, please contact me.

Sincerely yours,


James J. Featherstone
Deputy Assistant Secretary
(Enforcement)

Mr. Victor L. Lowe
Director
General Government Division
United States General
Accounting Office
Washington, D. C. 20548

Enclosures

- GAO notes:
1. Deleted comments relate to material not included in the final report.
 2. Deleted comments relate to suggested changes that have been made in this report.
 3. Page numbers cited in this appendix may not correspond to page numbers in the final report.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20548



October 28, 1976

The Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, DC 20548

Dear Mr. Staats:

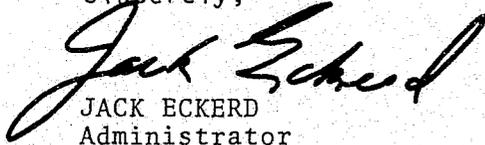
Thank you for the opportunity to review and comment on your draft report to the Congress entitled "Law Enforcement Agencies Need to Improve Handling of Drugs, Firearms, Currency, and Other Seized Property" transmitted by your letter of August 4, 1976.

We agree that it would be in the best interest of the Government for the General Services Administration (GSA) to handle the sale of seized and forfeited vehicles. During the initial stage of the review, we believed we needed additional resources to perform this service. However, a reassessment of our capabilities now indicates that we can handle these sales within our existing resources. We will be pleased to meet with Department of Treasury officials to discuss this matter.

[See GAO note, p. 54.]

We will be pleased to discuss these comments further with your staff, if you so desire.

Sincerely,


JACK ECKERD
Administrator

Enclosure

GSA comments to GAO draft report entitled "Law Enforcement Agencies Need to Improve Handling of Drugs, Firearms, Currency, and Other Seized Property"

[See GAO note.]

In 1964, the Office of the General Counsel, Department of the Treasury, issued an opinion adopting the view that its laws did not permit a sale by GSA of vehicles forfeited under Treasury jurisdiction (which includes the U.S. Customs Service). The Treasury General Counsel, in a separate opinion, further adopted the position that the Secretary of the Treasury had no authority to delegate the responsibility for sale of forfeited vehicles outside the Department. In view of the Treasury position and GSA's acquiescence therein, it appears that legislation would be required in order to authorize the Administrator of General Services to sell vehicles forfeited under the laws of the Department of the Treasury.

GAO note: Deleted comments relate to suggested changes that have been made in this report.

PRINCIPAL OFFICIALS RESPONSIBLE
FOR ADMINISTERING ACTIVITIES
DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<u>DEPARTMENT OF JUSTICE</u>		
ATTORNEY GENERAL OF THE UNITED STATES:		
Griffin B. Bell	Jan. 1977	Present
Richard L. Thornburgh (acting)	Jan. 1977	Jan. 1977
Edward H. Levi	Feb. 1975	Jan. 1977
William B. Saxbe	Jan. 1974	Feb. 1975
Robert H. Bork, Jr. (acting)	Oct. 1973	Jan. 1974
Elliot L. Richardson	May 1973	Oct. 1973
Richard G. Kleindienst	June 1972	Apr. 1973
Richard G. Kleindienst (acting)	Feb. 1972	June 1972
John N. Mitchell	Jan. 1969	Feb. 1972
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION:		
Peter B. Bensinger	Feb. 1975	Present
Peter B. Bensinger (acting)	Jan. 1975	Feb. 1975
Henry S. Dogin (acting)	June 1975	Jan. 1975
John R. Bartels, Jr.	Oct. 1973	May 1975
John R. Bartels, Jr. (acting)	July 1973	Oct. 1973
DIRECTOR, UNITED STATES MARSHALS SERVICE:		
William E. Hall	May 1976	Present
Wayne B. Colburn	Jan. 1970	May 1976
<u>DEPARTMENT OF THE TREASURY</u>		
SECRETARY OF THE TREASURY:		
W. Michael Blumenthal	Jan. 1977	Present
William E. Simon	May 1974	Jan. 1977
George P. Shultz	June 1972	May 1974
John B. Connally, Jr.	Feb. 1971	June 1972
David M. Kennedy	Jan. 1969	Feb. 1971
COMMISSIONER, U.S. CUSTOMS SERVICE:		
G. R. Dickerson (acting)	May 1977	Present
Vernon D. Acree	May 1972	Apr. 1977
Edwin F. Rains (acting)	Feb. 1972	May 1972
Myles J. Ambrose	Aug. 1969	Feb. 1972

<u>Tenure of office</u>	
<u>From</u>	<u>To</u>

ADMINISTRATOR, BUREAU OF ALCOHOL,
TOBACCO AND FIREARMS:

Rex D. Davis

Sept. 1972

Present

GENERAL SERVICES ADMINISTRATION

ADMINISTRATOR, GENERAL SERVICES
ADMINISTRATION:

Joel W. Solomon

May 1977

Present

Robert T. Griffin (acting)

Feb. 1977

Apr. 1977

Jack Eckerd

Nov. 1975

Feb. 1977

Dwight A. Ink (acting)

Oct. 1975

Nov. 1975

Arthur F. Sampson

June 1972

Oct. 1975

Rod Kreiger (acting)

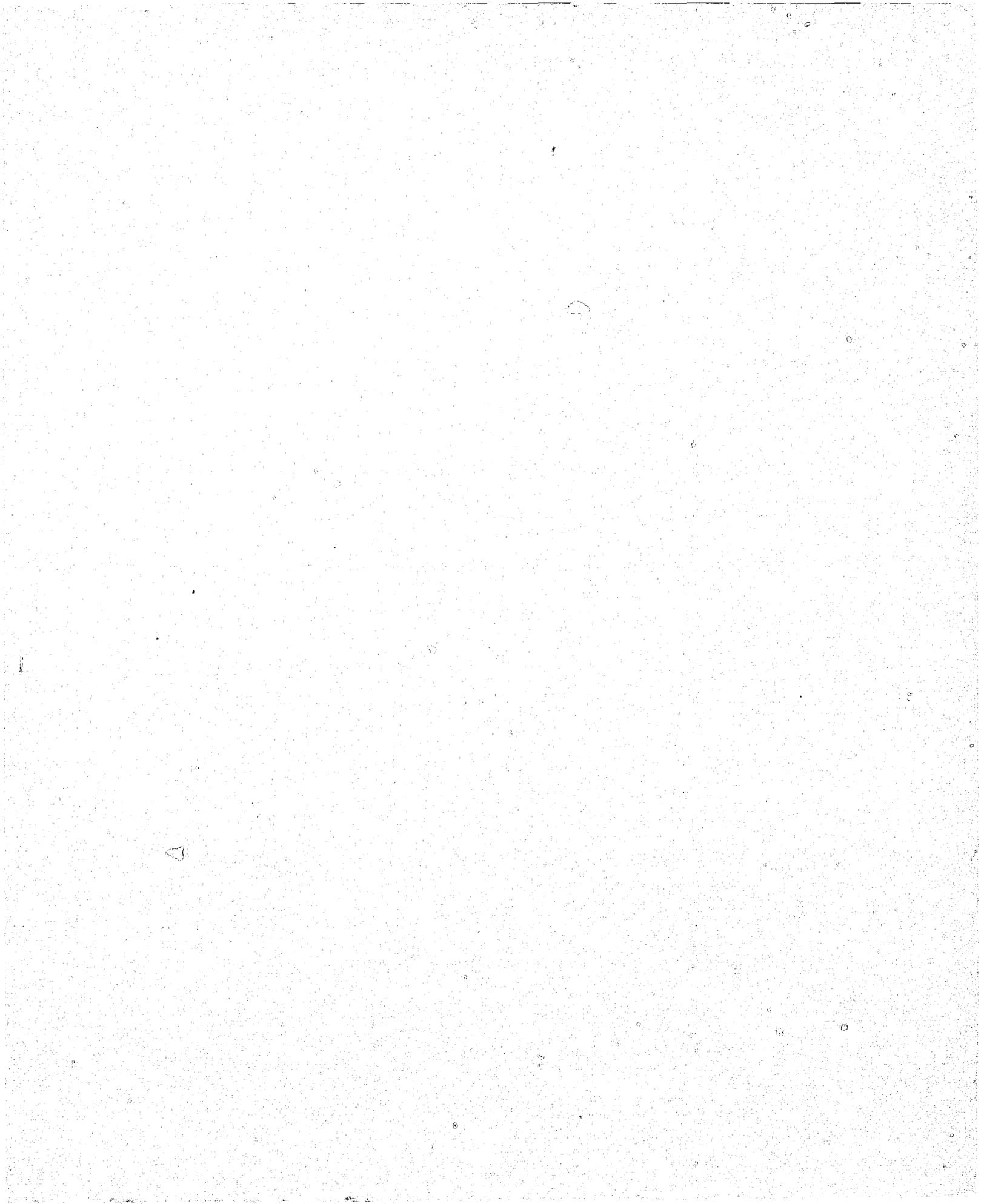
Jan. 1972

June 1972

Robert L. Kunzig

Mar. 1969

Jan. 1972



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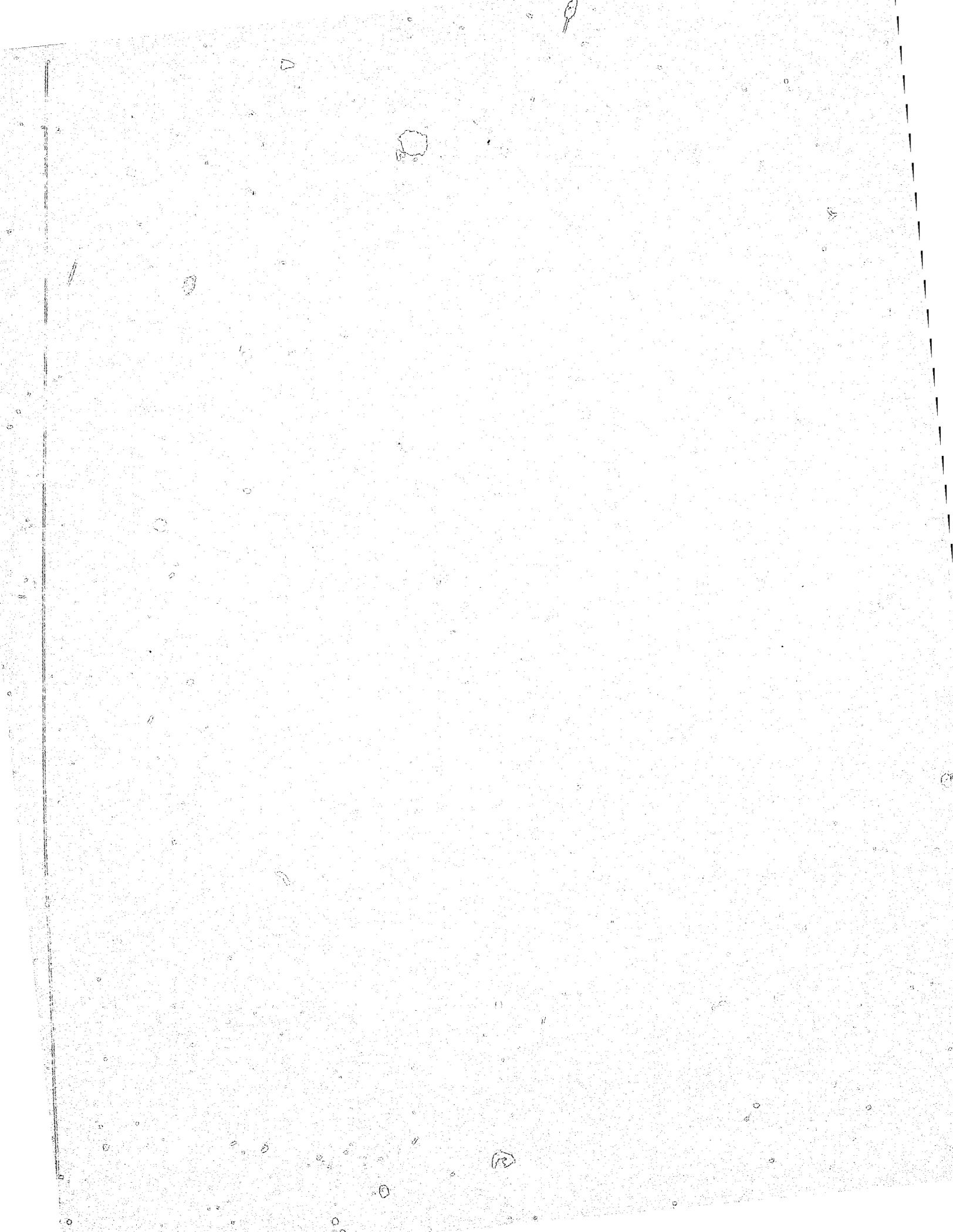
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