

BY THE COMPTROLLER GENERAL
Report To The Chairman,
Committee On Government Operations,
House Of Representatives
OF THE UNITED STATES

Better Care And Disposal Of Seized Cars,
Boats, And Planes Should Save Money
And Benefit Law Enforcement

The Customs Service, Immigration and Naturalization Service, and Drug Enforcement Administration seize cars, boats, and planes used to transport illegal aliens, narcotics, and various other forms of contraband. These seized conveyances often devalue rapidly after seizure, primarily because of the lengthy forfeiture process and inadequate storage, maintenance, and protection. When the forfeited conveyances are acquired for use by law enforcement agencies, the conveyances often have high startup and continual repair costs. Also, a lack of storage space has caused the Immigration and Naturalization Service to periodically stop seizure operations.

GAO recommends that the Congress enact legislation to

expedite the forfeiture process,

provide an improved funding mechanism for preservation costs and for the acquisition of needed conveyances, and

provide more oversight over the use by Federal agencies of seized conveyances.

The report makes several recommendations to the Departments of Justice and the Treasury to improve seized conveyance management and to shorten the time required for the forfeiture process.

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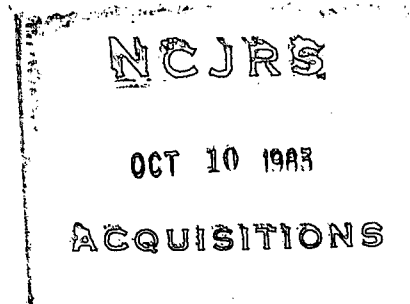
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COMPTROLLER GENERAL OF THE UNITED STATES
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The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

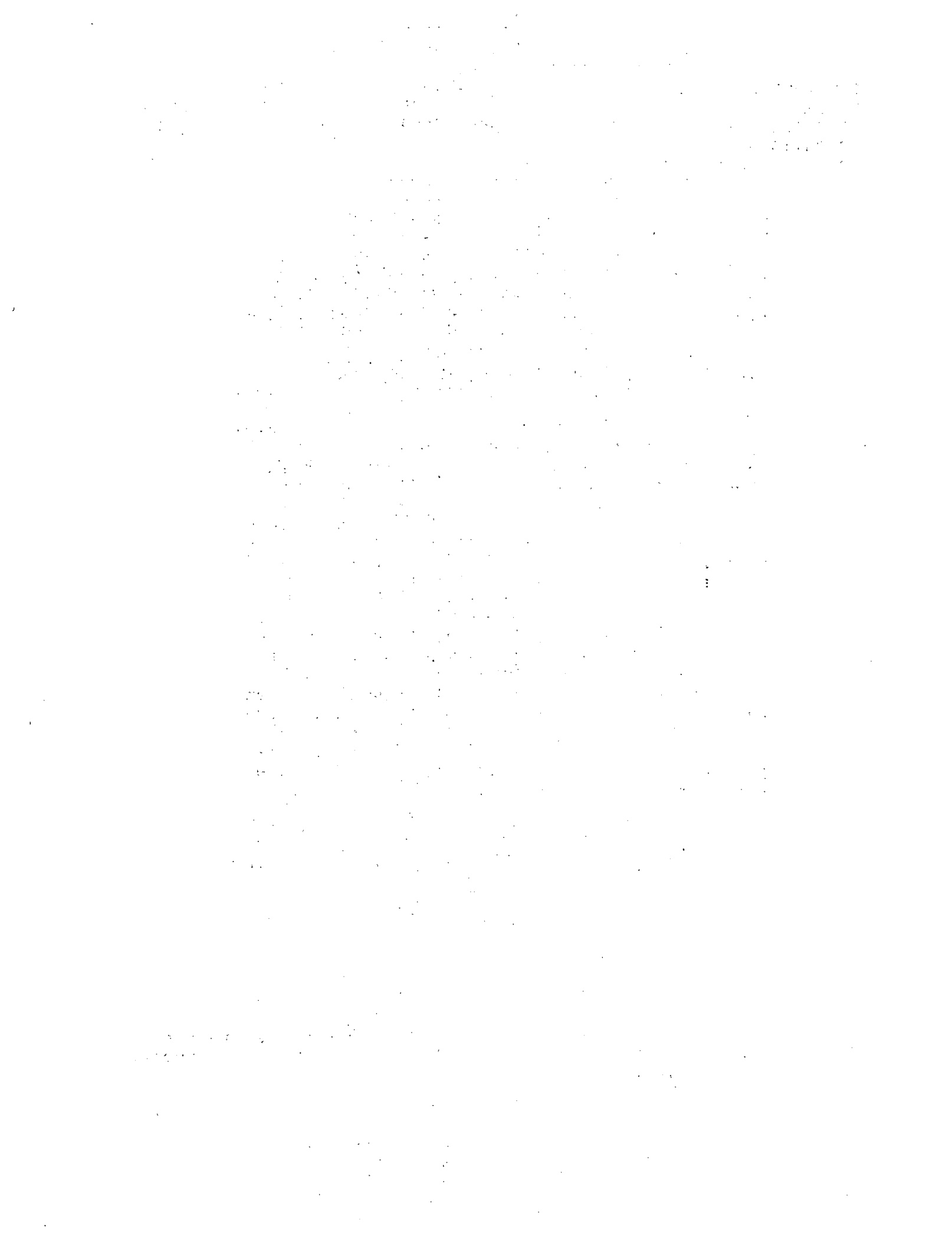
This report discusses the Government's storage, care, and use of vehicles, vessels, and aircraft that are seized and forfeited for transporting controlled substances and illegal aliens.

This review was initiated on February 9, 1982, by the Chairman, Subcommittee on Government Activities and Transportation, House Committee on Government Operations. We are sending this report to you because of his retirement in December 1982 and because of your interest in these issues.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Acting Comptroller General
of the United States



D I G E S T

Federal law enforcement agencies have increased their seizures of cars, boats, and planes as a means to fight the importation and transportation of illegal aliens, narcotics, and various other forms of contraband. The Customs Service, Immigration and Naturalization Service (INS), and Drug Enforcement Administration (DEA) increased seizures from 4,256 conveyances in fiscal year 1979 to 9,035 conveyances in fiscal year 1981. GAO identified 4,518 conveyances, valued at \$82.1 million when seized, that were held by seven law enforcement agencies as of April 1982. This included 3,665 vehicles, 692 vessels, and 161 aircraft. The House Committee on Government Operations asked GAO to evaluate the Government's storage, preservation, security, utilization, and disposal of these conveyances.

GAO found that seized conveyances are normally held by the law enforcement agencies for prolonged periods awaiting forfeiture ^{1/} to the Government, during which time they receive little care, maintenance, or protection. When the conveyances are sold, they often sell for only a fraction of their appraised value at seizure, largely because of their poor condition and ineffective sales practices. If the agencies acquire the forfeited conveyances for their official use, they usually have high startup and continual repair costs. In addition, storage problems and the infrequency of sales to dispose of the conveyances have caused INS to periodically stop seizing conveyances.

^{1/}Forfeiture is the legal process by which an owner's right to property is transferred to the Government because the property has been used in violation of law.

Despite widespread congressional and executive branch interest in the problems with seized property, little management data is centrally available to measure the extent of the problems or to monitor progress. These problems, if not resolved, will likely become more extensive as the use of seizure as a means of fighting crime increases.

CONVEYANCES DEVALUE
DURING THE FORFEITURE PROCESS

Seized conveyances devalue from aging, lack of care, inadequate storage, and other factors while awaiting forfeiture. They often deteriorate--engines freeze, batteries die, seals shrink and leak oil, boats sink, salt air and water corrode metal surfaces, barnacles accumulate on boat hulls, and windows crack from heat. On occasion, vandals steal or seriously damage conveyances. Also, poor sales practices reduce sales proceeds.

The average difference between seizure value and sales price for conveyances sold in fiscal year 1981 for the four regions that GAO reviewed (see ch. 8) was \$800 for vehicles, \$37,900 for boats, and \$42,700 for aircraft. Vehicles sold for only 58 percent of their seizure value, boats for 43 percent, and aircraft for 35 percent. While the differences between the seizure value and the sales price may be partly attributable to other factors, such as changing market conditions, GAO believes the poor condition of these conveyances at the time of sale compared to their condition at seizure and ineffective sales practices are major contributors to this large disparity. The net proceeds received for these assets was further diminished because the Government had to pay storage costs for long periods.

Shortening the time required to forfeit conveyances and improving the funding mechanism for the care and protection of seized conveyances would place the law enforcement agencies in a better position to reduce the conveyance depreciation, deterioration, and vandalism. (See ch. 3.)

Reducing the time to
process forfeiture cases

Currently, the courts must forfeit (judicial forfeiture) all the conveyances valued over \$10,000, while some law enforcement agencies can forfeit administratively conveyances valued at \$10,000 or less. Almost half of the forfeiture cases involving conveyances valued over \$10,000 are not contested by the owners in court. The judicial process for uncontested forfeitures averages 18 months compared to an average of 8 months for administrative forfeitures. Raising or removing the \$10,000 administrative forfeiture limit so that agencies could forfeit seized conveyances in a more expeditious manner could result in less depreciation and reduced storage costs, while easing the workload of the courts and U.S. attorneys.

Justice and Treasury officials believe, and GAO agrees, that the current \$10,000 administrative forfeiture limit can be increased or removed without harming the owners' rights, as long as the owners have relatively easy access to the courts. The only barrier to contesting a forfeiture in court is a \$250 bond, which must be waived for individuals who cannot afford it. The bond is intended to protect the Government's financial interests if it prevails in the judicial proceeding and the sales proceeds do not cover the court's expenses. Court cases also indicate that the bond should discourage frivolous claims. As long as a reasonable bond is set, the owners' rights to contest the forfeiture and obtain judicial review are protected. Uncontested cases, on the other hand, could be handled administratively by the law enforcement agencies. (See ch. 3.)

Improving the funding process
for better care and protection

Seized property should be properly preserved not only to return the highest value to the Government for forfeited conveyances, but to preserve the conveyances in case they are returned to the owners (e.g., a seized conveyance might have been stolen or loaned to another party without the owner's knowledge that it would be used to transport contraband). Yet the funding process for the care and protection

of seized conveyances is difficult to administer and encourages agency personnel to spend the least amount possible even though better care is often cost-effective.

Ideally, under current procedures, each forfeited conveyance covers its own costs on an item-by-item basis at the time it is sold, with excess amounts transferred to the Treasury of the United States. However, a cash flow problem exists for the agencies when they must pay for conveyance storage and maintenance with appropriated funds in advance of receiving reimbursement from sales proceeds. Further, this problem is exacerbated when forfeiture proceeds do not cover costs. When expenses cover more than one fiscal year, only the expenses for the fiscal year in which the conveyance is sold will be reimbursed, with the remaining sales proceeds sent to the Treasury. Since each item can only cover its own expenses, the "profits" from conveyances whose sales revenues exceed their expenses cannot cover the "losses" from conveyances whose eventual revenues do not cover their expenses.

Projecting appropriations for this process is difficult. The agencies must predict storage and maintenance costs for future seizures. They also must estimate the revenue that will be received from the sale of conveyances, some of which have not yet been seized, in order to project the amount of appropriated funds needed to cover storage and maintenance costs. In addition, this funding process encourages agency personnel to spend the least amount possible for maintenance and storage so that appropriated funds are not diverted from law enforcement activities, even at the expense of cost effectiveness.

If the Congress changed the current "item-by-item" funding mechanism to a "group" basis by creating a special fund, or funds, from the sales proceeds of all forfeited conveyances to cover the costs of all seized conveyances, the current funding process should be improved. Such funds would simplify the appropriations process since the agencies would not have to estimate the annual differential between expenditures for seizures and reimbursements from sales proceeds. Rather, the funds could

create a pool of money for the care and protection of seized conveyances and agencies would not have to divert resources from law enforcement activities for these purposes.

Once the funding mechanism is improved, the agencies must correct the problems with the storage, maintenance, and protection of seized conveyances. To increase their sales proceeds, agencies need to better prepare the property for sale through cleaning, minor repairs, and better advertising. (See ch. 3.) Better management information is also necessary to define the extent of the problems and to monitor progress. (See ch. 2.)

AGENCIES USE
FORFEITED CONVEYANCES

In fiscal year 1981, Federal agencies acquired 473 forfeited conveyances, valued at \$6.2 million, for their own use. These assets are attractive to the agencies because they can acquire the conveyances by paying only for storage and maintenance costs--a fraction of the conveyances' value. However, the use of forfeited assets is often costly because they require high startup and continual repair costs.

To acquire new conveyances actually needed rather than "forcefit" forfeited conveyances into its fleet, the Customs Service uses the exchange/sale program. Under this program, Customs trades forfeited conveyances for new conveyances or buys new conveyances from the sales proceeds of forfeited conveyances. However, the program is often difficult to administer because of its many restrictions. It generally requires one-for-one replacements of similar types of assets; and some types of assets, like aircraft, are excluded from the program. In addition, the Congress has little control over agencies' use of forfeited conveyances or new acquisitions through the program because they are outside the congressional appropriations process and are not subject to congressional ceilings on the purchase or transfer (acquisition from another agency) of vehicles and aircraft.

GAO believes the use of the proposed special fund, or funds, to purchase conveyances,

subject to congressional approval, would be one way of dealing with the shortfalls of the present process. The fund, or funds, would enable agencies to acquire the conveyances they actually need rather than use conveyances they happen to forfeit or those they can acquire through the restrictive exchange/sale mechanism. In addition, the Congress would have control over the number and types of conveyances purchased through the fund. (See ch. 4.)

STORAGE PROBLEMS CAN HARM LAW ENFORCEMENT

Storage problems with seized property have periodically hindered law enforcement efforts. INS has stopped seizing conveyances at times in California, Texas, and Florida because it lacked storage space to hold seized property as a result of either a lack of funding for storage or a backlog of conveyances from slow sales by the General Services Administration (GSA). Law enforcement officers also have been diverted from their customary duties and used as property managers because of the volume of seizures. The use of the special fund, or funds, to contract for additional disposal services should help relieve the problems of storage, expedite sales, and relieve law enforcement personnel from managing the property. (See ch. 5.)

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress enact legislation to:

- Raise or remove the administrative forfeiture limit for conveyances transporting illegal narcotics, other forms of prohibited merchandise, and illegal aliens. ^{2/}

^{2/}If there had been no forfeiture limit for drug-related seizures and the limit had been \$100,000 for non-drug-related seizures (as proposed in the Comprehensive Crime Control Act of 1983, the Comprehensive Forfeiture Act of 1983, and the National Security and Violent Crime Control Act of 1983), 98 percent of a random sample of seized conveyances disposed of in fiscal year 1981 would have been eligible for administrative forfeiture.

- Establish a special fund, or funds, from the sales proceeds from forfeited conveyances to store, protect, and maintain seized conveyances and to purchase conveyances and equipment suitable for agency use.
- Require agencies to report to the Congress the number and value of forfeited conveyances that are retained for official use or that are exchanged or sold for new conveyances so they can be easily monitored. Agencies should be authorized to expend monies from the funds to the extent provided by the Congress in appropriations acts. (See ch. 6.)

RECOMMENDATIONS TO LAW ENFORCEMENT AGENCIES

GAO makes several recommendations to the Departments of the Treasury and Justice to improve seized conveyance management and to shorten the time required for the forfeiture process. (See ch. 6.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Department of the Treasury, Department of Justice, and GSA provided GAO with comments on this report. (See apps. IV, V, and VI.) The Departments of the Treasury and Justice generally agreed with the report's recommendations.

Treasury wants a separate fund to manage Customs' forfeitures and Justice wants one fund to cover all Justice agencies. While GAO believes that Customs and all the Justice agencies should have the benefits of special funds, GAO does not recommend a specific number of funds.

GSA basically agreed with the report's recommendations and provided comments on the impact on its property utilization and sales programs. (See ch. 7.)

C o n t e n t s

DIGEST

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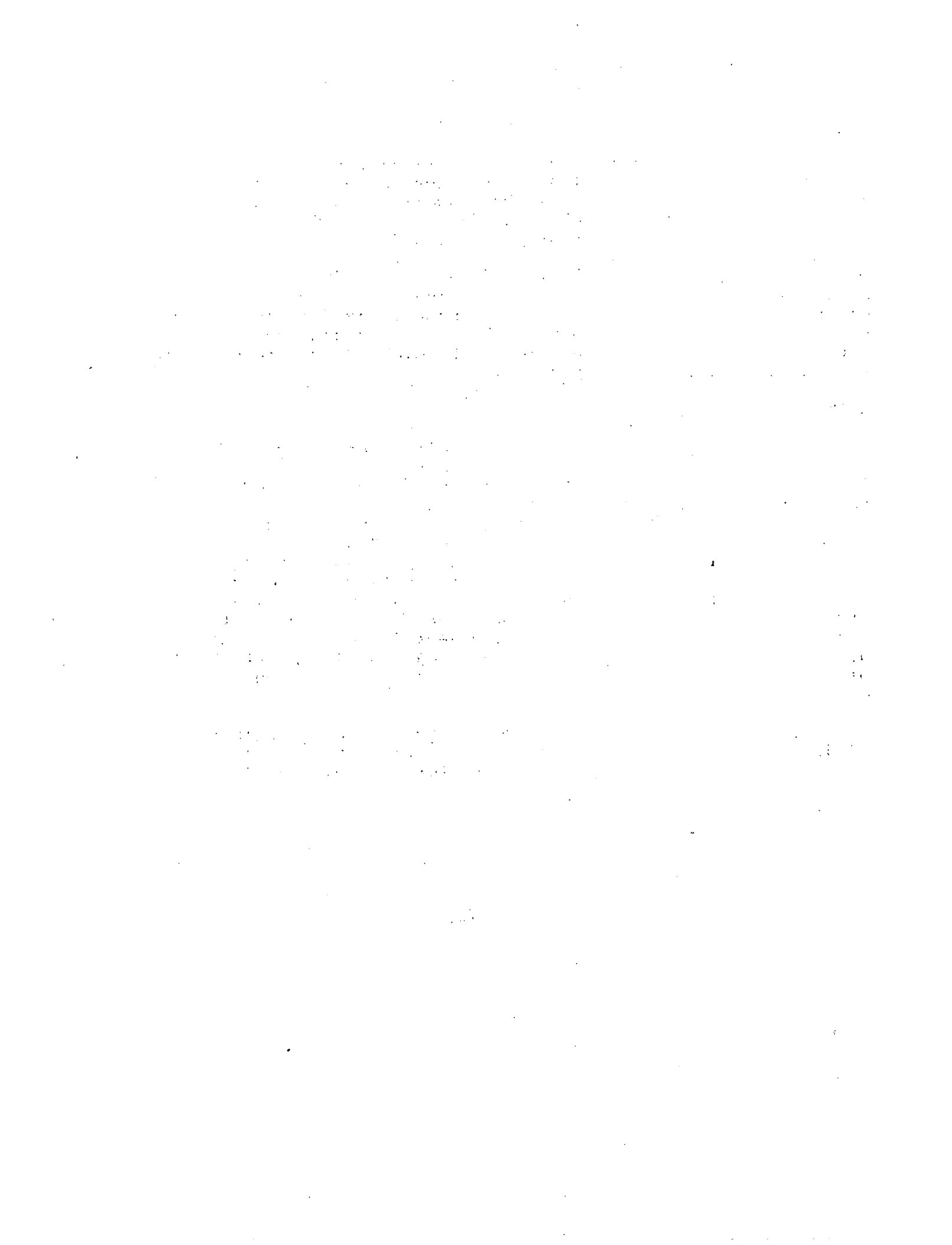
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ABBREVIATIONS

ATF	Bureau of Alcohol, Tobacco, and Firearms
DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
FPMR	Federal Property Management Regulations
GAO	General Accounting Office
GSA	General Services Administration
INS	Immigration and Naturalization Service
IRS	Internal Revenue Service





CHAPTER 1

INTRODUCTION

The Government seizes conveyances--cars, boats, and planes--that transport illegal narcotics, aliens, and various forms of contraband to discourage smuggling and to take the profit out of crime. When a conveyance is used in such illegal activities and seized, the property is subject to forfeiture, ^{1/} a procedure in which its owner loses all rights and title to the property. However, to forfeit the conveyance, the Government must institute a civil proceeding ^{2/} against the conveyance which is separate from any criminal proceedings against the owners or operators. A conveyance used to transport contraband is legally forfeitable to the Government, even though the owner may not be found guilty of any crime.

HISTORICAL USE OF SEIZURES

The practice of seizing and forfeiting property used in the commission of a crime is not a new concept. It originated in Biblical and pre-Judeo-Christian law, which attached guilt to the instrument of the crime, independent of its owner. If, for example, an ox gored a person and the person died, the ox was considered guilty and was sacrificed to God in atonement for the crime. This concept was later incorporated into English common law which provided that an object involved in the accidental death of a king's subject should be sold and the money should be given to the king to conduct a Mass for the deceased or to be used for charitable purposes. An object forfeited for this purpose was called a deodand. ^{3/} Under English law, property could be forfeited for many crimes, from murder to violations of the customs and revenue laws.

Although the use of deodands was abolished in England in 1846, the law continued to provide that property used in the commission of a crime was subject to forfeiture. The lawmakers

^{1/}Forfeiture is the legal process by which an owner's right to property is transferred to the Government because the property has been used in violation of law.

^{2/}Property can also be forfeited through a criminal proceeding against the owner. However, this report does not discuss this process because conveyances are rarely forfeited by this method.

^{3/}Deodand is derived from the Latin word deodandum, meaning "to be given to God."

reasoned that if the owner of the property was found guilty of the crime, forfeiture would serve as a deterrent to any further criminal acts. If owners were innocent of crimes, the forfeiture was regarded as a penalty for carelessness in permitting their property to be used for illegal purposes.

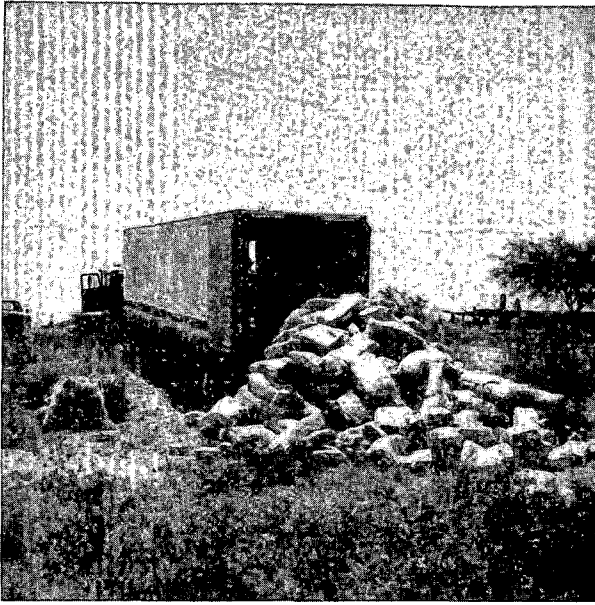
From early colonial days through the period of Confederation, common law courts in America enforced both English and local statutes that provided for the forfeiture of property used in violating the customs and revenue laws. In America, as in England, forfeiture was not dependent upon the owner of the property being found guilty of a criminal offense. On July 31, 1789, shortly after the ratification of the Constitution, the Congress passed a Federal forfeiture law, authorizing customs officers to seize and forfeit through judicial proceedings all vessels and cargoes used to violate U.S. customs and revenue laws.

Since that time the Congress and many State legislatures have passed forfeiture laws to combat a variety of illegal activities. The Congress intended that forfeitures would punish the offender and halt the illegal activity by depriving the offender of the use of the property. As the Congress did not intend these laws to deprive innocent owners of their property, the Government adopted the policy of returning property to owners if they had no involvement with the property's illegal use.

CURRENT FEDERAL USE OF SEIZURES

The practice of seizing and forfeiting property has been a law enforcement tool available to the Government for many years. However, the scope of its application and the crimes and property involved have changed. Whereas piracy was a problem during the 19th century, major problems today are trafficking of illegal drugs and narcotics, estimated to be an \$80-billion-a-year business in the United States, and the illegal migration of aliens from poorer nations into this country. The Customs Service and the Drug Enforcement Administration (DEA) have primary responsibility for drug interdiction, while the Immigration and Naturalization Service (INS) is responsible for curbing the flow of illegal aliens into this country.

Most of the illegal drugs consumed in this country are smuggled from other countries. The Customs Service has authority to seize conveyances used to import contraband, including illegal drugs and narcotics. The statutes that provide this authority include the Tariff Act of 1930 (19 U.S.C. 1301-1677); the Anti-Smuggling Act (19 U.S.C. 1701-1711); the Controlled Substances Act, as amended (21 U.S.C. 801-966); Public Law 76-618, as amended (49 U.S.C. 781-9); and the Currency and Foreign Transactions Reporting Act (31 U.S.C. 5301-22).



The Government can seize and forfeit conveyances used to transport illegal narcotics and aliens.

Created in 1973, DEA is charged with preventing or halting the growing, manufacture, and distribution of controlled substances. Acting under the provisions of the Controlled Substances Act, DEA seizes conveyances and other property used, or intended to be used, to transport or to facilitate the transportation, sale, or concealment of controlled drugs.

The Customs Service has the authority (19 U.S.C. 1581(e)) to seize conveyances used to bring illegal aliens into the United States. However, more than 92 percent of the conveyances used to smuggle aliens are seized by INS. INS gained seizure authority on November 2, 1978, with the passage of Public Law 95-582 (8 U.S.C. 1324).

While the Customs Service, DEA, and INS are the primary law enforcement agencies that seize contraband and other property, the Federal Bureau of Investigation (FBI); Internal Revenue Service (IRS); Bureau of Alcohol, Tobacco, and Firearms (ATF); and the Secret Service also have seizure authority.

In addition to seizing conveyances, Federal law enforcement agencies can use forfeited conveyances to fight crime. The Congress granted Customs the right to use forfeited conveyances for official use in 1925 and expanded this right to other law enforcement agencies in 1935. Under the exchange/sale program,

agencies can also trade forfeited conveyances for new conveyances or use the sales proceeds from forfeited conveyances to purchase new conveyances.

PRIOR GAO REPORT
ON SEIZURES AND FORFEITURES

In May 1977, we reported ^{4/} that Federal law enforcement agencies were holding large quantities of seized property either as evidence or pending the forfeiture determination. Because the property was being held for long periods of time, it was subject to deterioration, depreciation, and vandalism. In addition, accountability for the property was not always adequate, particularly for controlled substances. Lastly, storage facilities were inadequate in some instances.

Subsequent to our report, the Congress passed legislation raising the administrative forfeiture limit ^{5/} from \$2,500 to \$10,000 to expedite the forfeiture process. The Department of Justice agreed to transfer all forfeited conveyances to the General Services Administration (GSA) for disposal and to strengthen their controls over the handling and storing of and accounting for seized property. Improvements in storage facilities were planned and ongoing at the time our report was issued.

RECENT CONGRESSIONAL ACTION

The 97th Congress passed the Violent Crime and Drug Enforcement Improvements Act of 1982 (H.R. 3963) in December 1982. This legislation contained several provisions designed to enhance the use of forfeiture and to facilitate the maintenance and disposition of seized property. Although the President stated that he agreed with these provisions, he vetoed the bill on January 14, 1983, because he disagreed with other provisions of the act, including the creation of a new bureaucracy to direct Federal drug efforts and a restraint upon Federal prosecutions by State or local prosecutors in certain cases. This legislation would have removed the administrative forfeiture limit for conveyances used to transport illegal narcotics and would have increased the limit to \$100,000 for conveyances used to transport

^{4/}"Drugs, Firearms, Currency, and Other Property Seized by Law Enforcement Agencies: Too Much Held Too Long" (GGD-76-105, May 31, 1977.)

^{5/}This limit is the maximum value of an item of seized property that can be forfeited to the Government by administrative action of the seizing agency, rather than by judicial forfeiture ordered by a court.

other forms of contraband. In addition, the act would have established special funds for, among other things, the care and maintenance of seized conveyances. One special fund was to be available to the Customs Service and the other was to be available to the Attorney General. Similar forfeiture proposals have been introduced in the 98th Congress and are contained in Section 411 of Title IV of the Comprehensive Crime Control Act of 1983 (S. 829), Section 11 of the Comprehensive Forfeiture Act of 1983 (S. 948), and Section 331 of the National Security and Violent Crime Control Act of 1983 (S. 830).

This report's objectives, scope, and methodology are discussed in chapter 8.

CHAPTER 2

LAW ENFORCEMENT AGENCIES INCREASINGLY

USE SEIZURES TO FIGHT CRIME

Conveyance seizures have increased dramatically during the past several years. Between fiscal years 1979 and 1981, law enforcement agencies more than doubled the number of conveyance seizures. As of April 1982, the Government had more than \$82 million ^{1/} worth of seized conveyances in storage, including 3,665 vehicles, 692 vessels, and 161 aircraft.

Because of the increasing number of seized conveyances, as well as the problems associated with their care, security, and storage costs (discussed later in this report), the Congress and the executive branch have shown increased interest in their management. However, little meaningful information is available centrally to determine the volume and value of seized assets, the costs incurred in managing and disposing of them, the manner in which they are disposed of, or the proceeds derived from their sale. Without such information, law enforcement agencies and the Congress are not able to assess the effectiveness with which agencies are managing their seizure programs.

AGENCIES SEIZE AND STORE MORE CONVEYANCES EACH YEAR

Law enforcement agencies have increasingly used seizure as a means of discouraging the importation and transportation of illegal narcotics, aliens, and various forms of contraband. In a period of just 3 years, the three predominant seizing agencies--Customs, DEA, and INS--increased seizures from 4,256 conveyances valued at \$109 million in 1979, to 9,035 conveyances valued at \$111 million in 1981, as the following schedule shows.

^{1/}The seizing agencies are required by law to appraise the property at seizure.

Conveyances Seized by Customs, DEA,
and INS in Fiscal Years 1979 through 1981

Type	1979		1980		1981	
	No.	Value	No.	Value	No.	Value
Vehicles	3,832	\$ 13,269,198	6,396	\$ 22,353,413	8,160	\$ 28,676,219
Vessels	282	75,431,770	a/1,494	98,506,594	578	47,647,647
Aircraft	142	20,580,729	212	18,345,386	297	34,847,568
Total	4,256	\$109,281,697	8,102	\$139,205,393	9,035	b/\$111,171,434
	=====	=====	=====	=====	=====	=====

a/The large number of vessels seized in 1980 includes a significant number made by Customs and INS during the Cuban "boatlift."

b/Agencies, required by law to appraise the property at the time of seizure, use a variety of methods including blue books and private appraisers.

A large part of this dramatic increase is attributable to INS' obtaining seizure authority in November 1978, with implementing regulations effective in May 1979. During the last 4 months of fiscal year 1979, INS began seizing conveyances used to bring illegal aliens into the United States. In fiscal year 1979, INS seized only 193 conveyances. By fiscal year 1981, it increased its seizures to 2,831 conveyances. This dramatic increase continued in fiscal year 1982. In the first 10 months of fiscal year 1982, INS seized 4,277 conveyances (4,262 vehicles, 12 aircraft, and 3 vessels). This is an increase of 51 percent over the number of conveyances seized in all of fiscal year 1981.

Although the number of conveyances seized by DEA has not increased as rapidly as in INS, the number did increase 39 percent between fiscal years 1980 and 1981. In fiscal year 1981, DEA seized 1,365 conveyances valued at more than \$10.5 million that had been used to transport or facilitate the sale of illegal drugs in the United States. Vehicles generally account for at least 95 percent of DEA conveyance seizures.

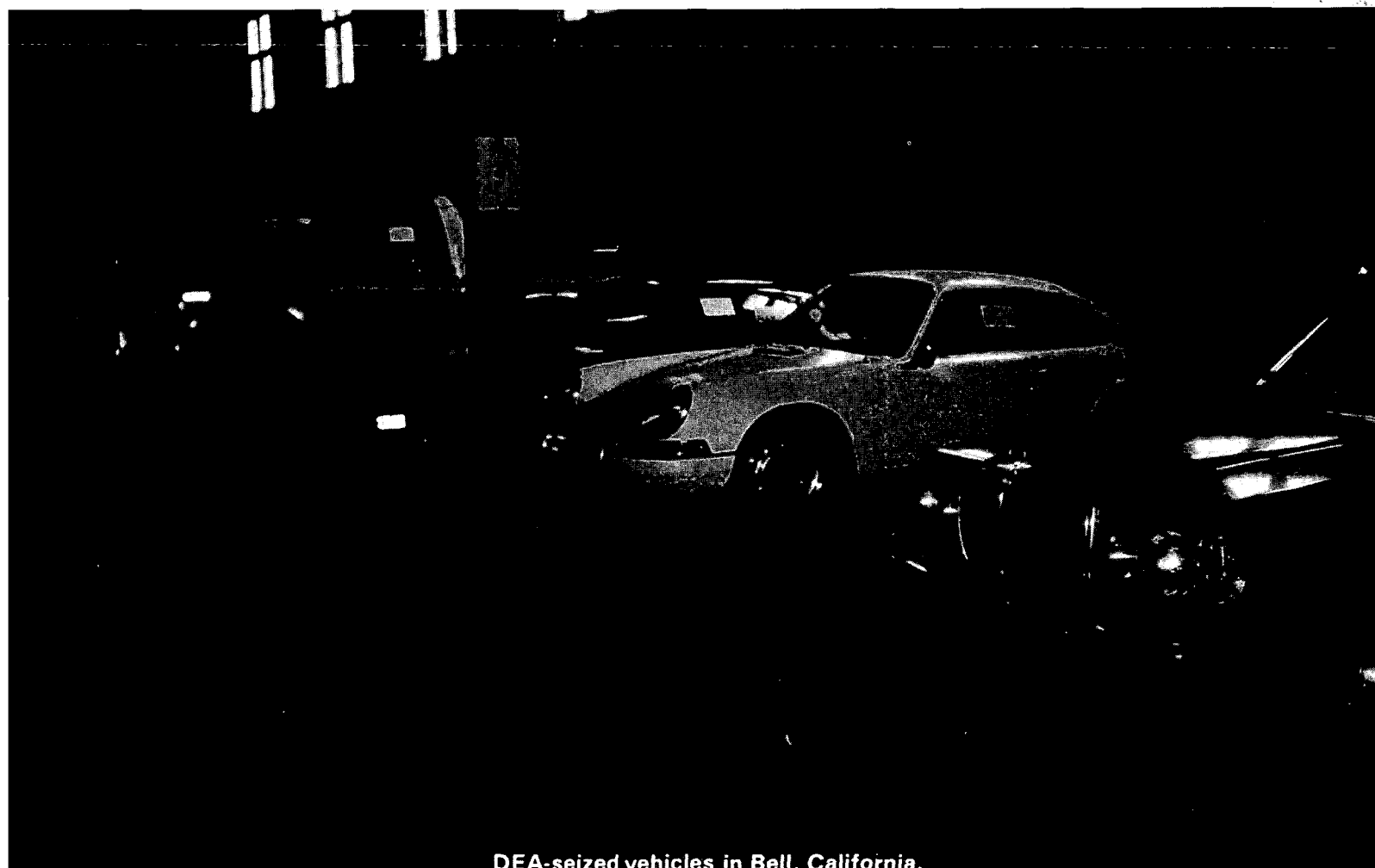
The Customs Service seizes more conveyances than any other Federal agency. In fact, in fiscal years 1979, 1980, and 1981, Customs seized more conveyances than DEA and INS combined. Customs seizes conveyances used to bring illegal drugs, aliens, and various forms of contraband into the United States. Although the majority of its conveyance seizures are vehicles, Customs seizes more vessels and aircraft than does any other agency. Between fiscal years 1979 and 1981, it had seized more than 600 aircraft and 2,100 vessels valued at more than \$276 million.

The condition of the seized conveyances ranges from old, rusted vehicles, which are barely operational, to brand new luxury conveyances. Some of the vehicles seized are in such poor condition that they are eventually sold as scrap. However, it is not uncommon to find relatively new Rolls Royce and Mercedes-Benz automobiles among the seized vehicles. Many of the seized aircraft are small two-engine planes in average or better condition. Yet recent seizures also included a new \$3 million Lear Jet and a Boeing 707. Among Customs' recent seizures was a \$900,000 yacht. In contrast, Customs also seized a small boat valued at only several hundred dollars.

Although the range in the value and condition of seized conveyances varies widely, they are generally typical "used" conveyances. The average seizure value for conveyances sold by Government agencies in fiscal year 1981 was \$1,900 for vehicles, \$65,800 for aircraft, and \$66,200 for vessels.

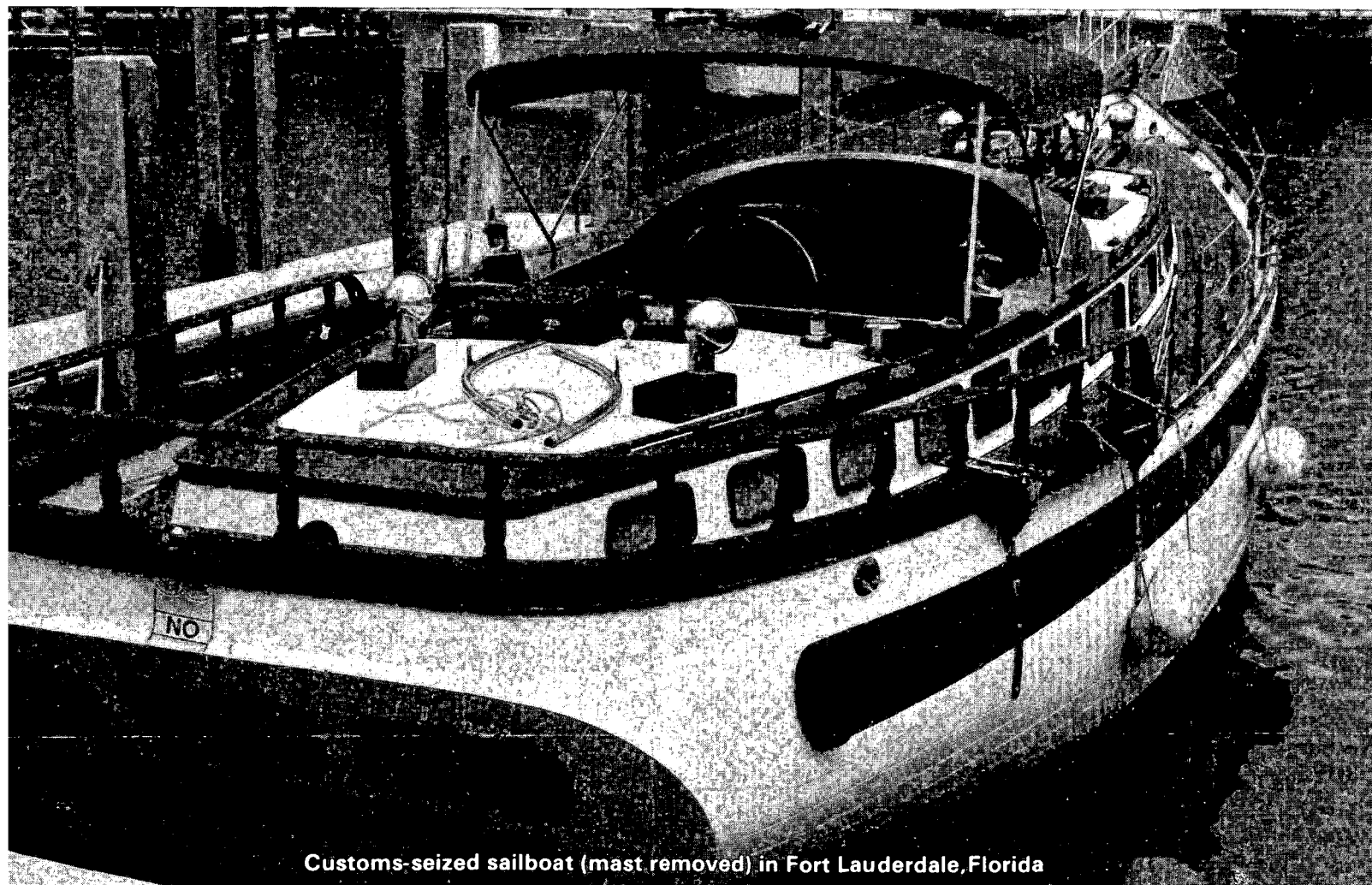
Law enforcement agencies are responsible for storing and preserving seized conveyances until they are disposed of. Therefore, they should provide reasonable security from vandalism and adequate care to prevent deterioration. However, as discussed in chapter 3, agencies often have not performed these tasks effectively. Most vehicles are held at Government-owned facilities; when the Government facilities are full, private garages and storage lots are used. Conversely, 62 percent of the aircraft and 67 percent of the vessels are stored under contract in private facilities.

The following table illustrates that INS held the largest number of conveyances (2,448, or 54 percent of the total) as of April 1982; those held by Customs had a much higher total value--over \$57 million. INS held most of the vehicles and Customs held most of the aircraft and vessels.





Customs-seized vessels in Fort Lauderdale, Florida.



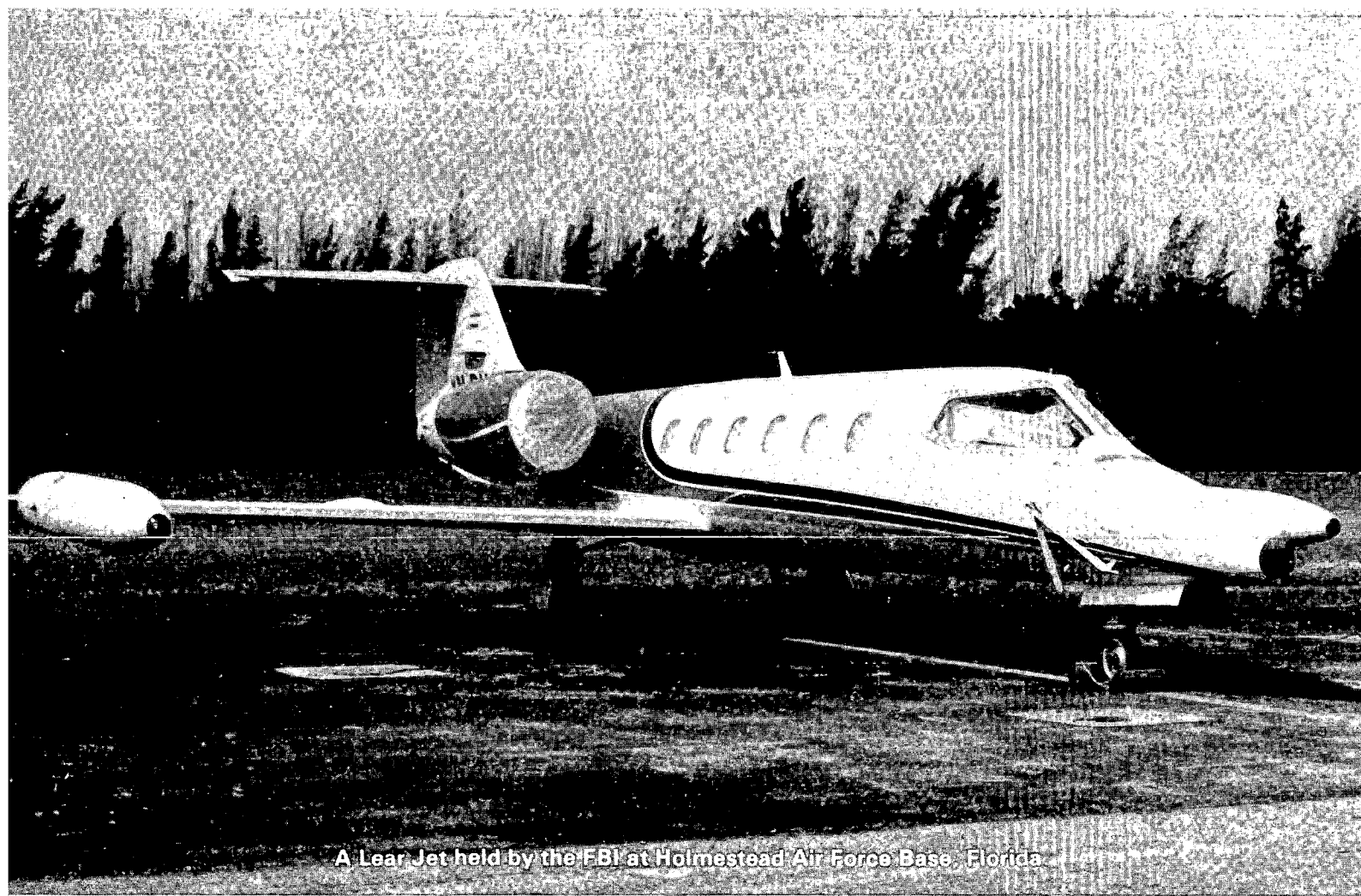
Customs-seized sailboat (mast removed) in Fort Lauderdale, Florida



Over 40 seized aircraft are held in Holmestead, Florida, by Customs and DEA.



A seized helicopter held in Holmestead, Florida



A Lear Jet held by the FBI at Holmestead Air Force Base, Florida.



Customs holds 12 seized aircraft, including this Boeing 707, at Davis-Monthan Air Force Base.

Amount of Seized Property Held by Various
Law Enforcement Agencies (note a)

Agency	Vehicles		Vessels		Aircraft		Total	
	No.	Appraised value	No.	Appraised value	No.	Appraised value	No.	Appraised value (note b)
Customs Service	438	\$2,058,000	536	\$36,807,000	125	\$18,449,000	1,099	\$57,314,000
DEA	858	5,099,000	19	1,710,000	29	3,325,000	906	10,134,000
INS	2,314	4,613,000	133	4,743,000	1	20,000	2,448	9,376,000
Other seizing agencies (note c)	55	339,000	4	1,130,000	6	3,785,000	65	5,254,000
Total	3,665	\$12,109,000	692	\$44,390,000	161	\$25,579,000	4,518	\$82,078,000
	=====	=====	=====	=====	=====	=====	=====	=====

a/Limited to conveyances located in the Atlanta, Chicago, Dallas, and Los Angeles GAO regions. This represents the vast majority of seized conveyances.

b/Agencies, required by law to appraise the property at the time of seizure, use a variety of methods including blue books and private appraisers.

c/Includes the Federal Bureau of Investigation; Bureau of Alcohol, Tobacco, and Firearms; Internal Revenue Service; and Secret Service.

Most seized conveyances are stored in the South and Southwest because most of the seizures take place in these areas. For example, 83 aircraft, 612 vessels, and 210 vehicles, valued at \$48 million, were being held in Florida. More conveyances--1,559 vehicles, 10 aircraft, and 17 vessels--but with a smaller total value, \$6.8 million, were stored in California. And 974 vehicles, 18 aircraft, and 6 vessels valued at \$11.6 million were located in Texas. As the figures indicate, most vessels and aircraft are held in Florida, while vehicles are concentrated in California and Texas.

BETTER INFORMATION IS NEEDED
TO IMPROVE MANAGEMENT AND OVERSIGHT
OF EXPANDING SEIZURE PROGRAMS

Numerous executive branch task forces and agencies have studied Federal seizure operations and the related care, storage, and preservation of seized property. In addition, at least eight bills were introduced during the 97th Congress relating to the management, care, and storage of seized property.

Despite this high level of interest, the existing management information systems relating to seized conveyances are not adequate to assure effective management and oversight of seizure programs.

In the fall of 1981, the Justice Management Division of the Department of Justice began studying the problems involved in managing property from the time of seizure through the disposal process. In March 1982 another Justice task force was established to examine seizures specifically related to drug law violations. Then, in July 1982, another Justice task force was established to prepare a report providing an overview of seizure and forfeiture issues and problems. In addition, during our review, DEA established a task force to review, among other issues, the internal control of and accountability for seized property. All of these efforts were in addition to reviews undertaken by internal audit groups in DEA and Customs on various aspects of seizures and the management of seized property.

In 1982 an interagency task force was established under the leadership of the Vice President to unify Government efforts to combat increased drug trafficking, particularly in southern Florida. This task force included officials from DEA, Customs, the U.S. Coast Guard, and the Department of Defense. Also, the President recently organized a group, comprised of non-Government members, to study ways of increasing the economy and efficiency of various Government programs, including the management of seized property.

Our discussions with members of these various task forces and other groups disclosed that they encountered one common problem. They were not able, using existing agency management information systems, to accurately quantify and analyze important aspects of the Government's seizure operations. They could not readily obtain data on such things as the number, value, and location of seized assets; the costs of managing, storing, and disposing of the property; the manner in which the property was disposed of; the incidence of theft, vandalism, or deterioration of stored property; or the amount of proceeds realized from the sale of the property. The lack of such information prevented them from making the in-depth analyses or comparisons necessary to assess the effectiveness with which seized property was being managed.

Because most agencies maintain seizure files only in the region or district field office where a seizure occurs, no one knows the total number of conveyances seized and stored, aggregate storage costs, number of conveyances disposed of each year, amount of sales proceeds, or extent to which property devalues

while in storage. INS was the only agency having a computerized inventory system for seized property; however, even its system did not have all the needed information. The other seizing agencies relied on manual records of the thousands of conveyances they seized and did not have the capability to consolidate the data from these records.

In 1981 the House Committee on Ways and Means recognized the need to raise the administrative forfeiture limit. Using the best information available, the Committee suggested raising the forfeiture limit from \$10,000 to \$15,000, acknowledging in its report that the increase would have minimal affect in expediting the forfeiture process for aircraft and vessels. Our audit data is consistent with this conclusion. As of April 1982, the average value was \$158,900 for seized aircraft and \$64,100 for seized vessels. We believe the lack of meaningful, comprehensive information on Federal seizure operations made it difficult for the Congress to devise effective solutions to problems.

As explained in chapter 8, we also encountered this lack of readily available data and, therefore, constructed a data base for our evaluation.

CHAPTER 3

PROPERTY DEVALUATION

AND POOR SALES PRACTICES ARE COMMON

PROBLEMS WITH SEIZED CONVEYANCES

Depreciation, deterioration, and devaluation are problems common to seized conveyances largely as a result of the lengthy forfeiture process and inadequate storage, maintenance, and security. The lengthy forfeiture process also increases the storage and maintenance costs and exposes the seized conveyances to possible vandalism and theft. In addition, poor sales practices reduce the Government's financial return.

Sales prices were significantly below the property's appraised value at the time of seizure as a result of economic depreciation, deterioration, vandalism, and poor sales practices. Based on a random sample of 380 forfeited conveyances sold in fiscal year 1981, we found that the amount by which the appraised value at the time of seizure exceeded final sales price averaged \$800 for vehicles, \$37,900 for vessels, and \$42,700 for aircraft. ^{1/} The following table gives a more detailed breakdown for the sample of forfeited conveyances.

^{1/}While these differences may be partly attributable to other factors, such as differing market conditions at the time of seizure and at the time of the sale, we believe the poor condition of these conveyances at the time of sale and the ineffective sales practices are major contributors to this large disparity.

Type of conveyance	Number (note a)	Average appraised value at seizure	Average sales price	Percent of appraised value returned	Average difference	Average months held
Vehicles	315	\$ 1,900	\$ 1,100	57.9	\$ 800	9
Vessels	49	66,200	28,300	42.7	37,900	20
Aircraft	16	65,800	23,100	35.1	42,700	17

a/The analysis reflects the results of cases where forfeited conveyances were sold and all necessary data elements were available. At our selected locations (see ch. 8), we reviewed all forfeiture files for aircraft and vessels disposed of in fiscal year 1981; therefore, the aircraft and vessels figures do not have a sampling error. We reviewed a sample of 528 out of 3,991 disposed vehicles with the sampling error at the 95 percent level of confidence as follows:

Average appraised value	Average sales price	Percent of appraised value returned	Average difference	Average months held
\$600	\$500	2.8	\$110	.5

This means, for example, that we are 95 percent confident that the average appraised value for all disposed vehicles that were sold is between \$1,300 and \$2,500 (\$1,900 + or - \$600). Similarly, the sampling error should be taken into account when other statistics for the sample of disposed vehicles are inferred for all disposed vehicles elsewhere in the report.

As the table notes, vehicles retained the highest value, selling at 57.9 percent of their appraised seizure value, followed by vessels at 42.7 percent and aircraft at 35.1 percent. This is at least partially attributable to the quicker forfeiture process for vehicles compared to other conveyances since agencies can generally forfeit vehicles administratively, but must go to court to forfeit the more expensive vessels and aircraft. A quicker forfeiture process will likely reduce property devaluation. However, conveyances must be adequately stored, maintained, and secured to minimize loss of value.

SEIZED CONVEYANCES IN STORAGE DEVALUE FROM AGING, LACK OF CARE, AND INADEQUATE SECURITY

Seized conveyances devalue from economic depreciation over the lengthy forfeiture process, from deterioration because of insufficient care and maintenance while in storage, and from vandalism and theft as a result of inadequate security.

Lengthy forfeiture processes increase depreciation, storage costs, and exposure to damage

The time required for judicial forfeiture, as well as Customs' administrative forfeitures, results in increased property depreciation, additional storage costs, and greater opportunities for vandalism and theft. During these proceedings, the seized conveyances decrease in value due to lack of maintenance and security and passage of time. As a result, the conveyances eventually forfeited are often of little use to the Government or bring minimal proceeds from public sale.

Permitting more administrative forfeitures

Certain law enforcement agencies can administratively forfeit seized conveyances (administrative forfeiture) valued at \$10,000 or less at the time of seizure, while only courts can order the forfeiture (judicial forfeiture) of property valued above \$10,000. An owner of seized property valued at \$10,000 or less can obtain a judicial hearing on the forfeiture issue by posting a \$250 bond and thereby stop the administrative forfeiture.

Judicial forfeitures normally require much more time than administrative forfeitures. We found that the average time was 18 months for judicial forfeitures and 8 months for administrative forfeitures. In addition, the large number of judicial forfeitures unnecessarily burdened the courts and U.S. attorneys because 44 percent were not contested by the owners. ^{2/} Even these uncontested judicial cases averaged 18 months compared to 8 months for uncontested administrative forfeitures.

In our 1977 report ^{3/} on seized property, we recommended raising the administrative forfeiture limit from \$2,500 to \$10,000, which the Congress did in 1978. Raising the limit relieved the courts and U.S. attorneys of processing at least 751 cases in fiscal year 1981. During that year, owners contested only 8.5 percent of the administrative forfeitures in court for seized conveyances valued between \$2,500 and \$10,000.

^{2/}Two assistant U.S. attorneys said that many cases are uncontested because the owners prefer to write off the property as a cost of doing business since contesting the cases judicially would subject the owners to detailed questioning under oath.

^{3/}"Drugs, Firearms, Currency, and Other Property Seized by Law Enforcement Agencies: Too Much Held Too Long" (GGD-76-105, May 31, 1977).

Raising the administrative forfeiture limit to \$10,000 shortened the forfeiture process for vessels from an average 23 to 14 months and for vehicles from 20 to 9 months. Conveyances valued between \$2,500 and \$10,000, which were forfeited through the shorter administrative forfeiture process, averaged 26 percent less devaluation than conveyances forfeited through judicial procedures. If administratively forfeited conveyances, valued between \$2,500 and \$10,000, were held for the additional average time that judicially forfeited conveyances were held, the projected additional storage costs would have been at least \$90,000 for conveyances forfeited in fiscal year 1981.

While raising the administrative forfeiture limit to \$10,000 reduced the time needed to obtain forfeitures, it did not affect aircraft cases or a significant number of vessel forfeiture cases since these conveyances normally have values above that amount. This was unfortunate since aircraft and vessels normally tend to devalue more than vehicles and generally have higher storage and maintenance costs. As previously shown, the difference between seizure value and sales price for vehicles is only \$800, while the difference is \$37,900 for vessels and \$42,700 for aircraft. The average cost to store vehicles forfeited in 1981 was only \$45 because most could be stored in Government facilities; however, the average cost of storage was \$3,000 for vessels and \$4,200 for aircraft.

Our review showed that raising or removing the \$10,000 administrative forfeiture limit for seized conveyances could reduce the forfeiture time and ease the workload on the courts and U.S. attorneys where the owners do not seek judicial review. In 44 percent of the cases, owners of seized conveyances valued over \$10,000 did not contest the forfeiture actions in court. Reducing the forfeiture time would also mean less depreciation and reduced storage costs.

Legislation passed between 1844 and 1978 provides ample precedent for reviewing and amending the administrative forfeiture limit. The Congress initially established the administrative forfeiture limit for Customs at \$100 in the Act of April 2, 1844. Prior to this act, only courts could order the forfeiture of property. The 1844 act was designed to prevent the expense and delay that resulted from the courts' involvement in condemning goods of small value.

Since 1844 the Congress has periodically increased the administrative forfeiture limit through various laws. The Congress raised the limit to

--\$500 in the Act of February 28, 1865,

--\$1,000 in the Tariff Act of 1922 (the Tariff Act of 1930 kept the \$1,000 limit),

--\$2,500 in Public Law 83-768 in 1954, and

--\$10,000 in Public Law 95-410 in 1978.

Although the legislative history is silent concerning the reasons for raising the limit, congressional hearings indicate that the 1978 increase to \$10,000 would greatly enhance the ability of Customs to dispose of forfeited property without having to pursue the more time-consuming and costly judicial forfeiture process. For example, nearly all the 300 vehicles forfeited in fiscal year 1976 would have fallen under the \$10,000 limit. The hearings also identified other benefits from reduced storage costs and less depreciation:

"Summary [administrative] forfeiture up to \$10,000 in addition to reducing time and paper-work associated with judicial forfeiture, will also result in decreased storage costs in the estimated amount of \$100,000 per year on 300 vehicles. In addition, the speedier procedure will lead to less depreciation of seized vehicles while in Customs custody. If an average depreciation savings of \$500 per vehicle were to be assumed, an additional saving of \$150,000 annually would accrue to the Government in the form of increased sales receipts."

In December 1982 the Congress seems to have acknowledged the benefits accruing to an increased forfeiture limit when it passed the Violent Crime and Drug Enforcement Improvements Act of 1982, which the President later vetoed in disagreement with other unrelated provisions of the act.. According to congressional staff and agency officials who helped prepare the legislation, the primary reasons for the increase were to process most of the conveyances administratively, save storage costs, and reduce depreciation. Enactment of this legislation would have met these goals. Nearly all conveyances (98 percent) disposed of in fiscal year 1981, which had to be judicially forfeited would have been eligible for administrative forfeiture and storage costs and depreciation could have been reduced.

Similar forfeiture proposals have been introduced in the 98th Congress and are contained in Section 411 of Title IV of the Comprehensive Crime Control Act of 1983 (S. 829), Section 11 of the Comprehensive Forfeiture Act of 1983 (S. 948), and Section 331 of the National Security and Violent Crime Control Act of 1983 (S. 830).

We believe another factor the Congress should consider in raising or removing the administrative forfeiture limit is the large proportion of judicial forfeitures that are uncontested by owners, as illustrated in the following table.

Percent of Conveyances Disposed of in Fiscal Year 1981
That Were Not Contested by Owners

Reason for seizure	Value of the conveyance			
	<u>\$10,000 or less</u>			
	<u>Not contested in the agency</u>	<u>Not taken to court</u>	<u>\$10,001 to \$100,000</u>	<u>Over \$100,000</u>
Illegal drugs	49.2	90.1	48.9	39.5
Illegal aliens	60.5	95.7	46.2	not applicable (note a)
Others	48.3	84.2	28.6	0.0

a/No conveyances were disposed of in fiscal year 1981 that were valued over \$100,000.

The Violent Crime and Drug Enforcement Improvements Act of 1982 would have stopped uncontested forfeitures from automatically going to court where the conveyance is over \$10,000 in value and used to transport illegal drugs. For conveyances used to transport other forms of prohibited merchandise, Customs would have been able to administratively forfeit conveyances valued up to \$100,000, which would have removed all the uncontested cases in fiscal year 1981.

Justice and Treasury officials believe, and we agree, that the administrative forfeiture limit can be removed for drug-related forfeitures and increased to \$100,000 for non-drug-related forfeitures without harming the rights of owners of seized property as long as the owners have relatively easy access to the courts. These officials believe the only barrier to contesting a forfeiture in court is the amount of the required bond. The current bond of \$250 was established in the 1844 act. The Violent Crime and Drug Enforcement Improvements Act of 1982 would have changed the bond requirement to \$2,500 or 10 percent of the conveyance value (with a minimum of \$250), whichever was less. The bond is intended to protect the Government's financial interest if it prevails in the judicial proceeding and the sales proceeds do not cover the court's expenses. Court cases also indicate that the bond should discourage frivolous claims that cause senseless expenditures of time and money. However, seizing agencies or the courts must waive the bond requirement for those who cannot afford it.

As long as a reasonable bond requirement is set, Justice and Treasury officials believe that increasing or removing the administrative forfeiture limit for seized conveyances would significantly ease the work of the courts and U.S. attorneys while protecting the owners' right to judicial review. It would also reduce the average forfeiture time and thus reduce storage and maintenance costs and property devaluation.

Reducing Customs' forfeiture times

Customs' forfeiture procedures cause it to take considerably more time than either DEA or INS, even though they process similar cases. Each of the three agencies' average forfeiture

<u>Agency</u>	<u>Average administrative forfeiture time (days)</u>	<u>Average judicial forfeiture time (days)</u>
Customs	207	410
DEA	124	396
INS	72	270

The major differences in procedures among the three agencies involve notification to the owner of seizure of the property, agency investigation of owner petitions for the property's return, and decision to mitigate (return the conveyance to the owner on payment of a fine) or remit (return the conveyance without a fine) the forfeiture. These procedural differences result in Customs' lengthier forfeiture process.

Customs normally allows owners 60 days after notification of seizure to file a petition for return of property while DEA and INS allow only 30 days. Also, Customs officials explained that bottlenecks occur during their investigation of petitions and the decisions to mitigate or remit forfeiture.

In addition, officials of the three agencies noted two basic differences in petition investigation procedures that cause Customs' to be lengthier. First, DEA and INS require petition investigations to be conducted by seizing agents, whereas Customs refers the investigations to investigators who are unfamiliar with the seizures. Second, DEA and INS require the owners/claimants to provide documentary evidence to support their claims of ownership or interest and to state, with support, the basis on which they are submitting their claims. Customs assumes the task of obtaining such documents.

Customs officials said Customs investigators give these investigations a low priority because they are "boring" and often needless. Typically, investigators interview the seizing

agent and petitioner and gather documentation such as conveyance titles, mortgage notes, etc. from lienholders. Investigators often wait months for some petitioners to respond to requests for additional information. Since Customs does not close the case until the petitioner responds to the request, a simple lack of response delays the process. According to agency officials, a shortage of personnel also slows investigations. For example, an El Paso, Texas, agent investigating a petition on a 1982 Mercedes-Benz was detailed to Florida and the investigation will remain incomplete until the agent returns.

Customs officials believe the following requirements, which are part of DEA and INS procedures, would improve the timeliness of Customs investigations:

- Require the petitioner to provide proof of statements made. Instructions should be sent with the "notification of seizure" to forward such documents as titles, loan contracts, etc. with the petition.
- Place a time limit on the petitioner's response. If the petitioner fails to comply, the conveyance should automatically be forfeited.

They added that, although petition investigations would probably always have low priority, streamlining or redirecting investigative requirements would reduce administrative forfeiture time.

Decisions to mitigate, remit, or deny a petition on Customs seizures require action by Customs headquarters when the property is valued between \$25,000 and \$100,000 or by Treasury officials when the value is higher than \$100,000. These higher level reviews often prolong the time taken to conclude the forfeiture process. According to a Customs regional attorney, turnaround time for these decisions above the district level can take as long as 2 years. In contrast, such decisions are made at the field office level in INS and only at the headquarters level in DEA.

Customs officials and attorneys viewed the \$25,000 limit on district action and the \$100,000 limit on Customs headquarters action as arbitrary. They questioned the need for these tiers in the process because (1) the district level does all the work to determine innocence, (2) headquarters or Treasury personnel merely review the district work; make the decision to mitigate, remit, or deny the owner's petition; and return the petition to the district, and (3) if the owner's petition is denied, the district refers it to the U.S. attorney who also investigates the case, but this time, to determine whether a judicial forfeiture proceeding should be initiated.

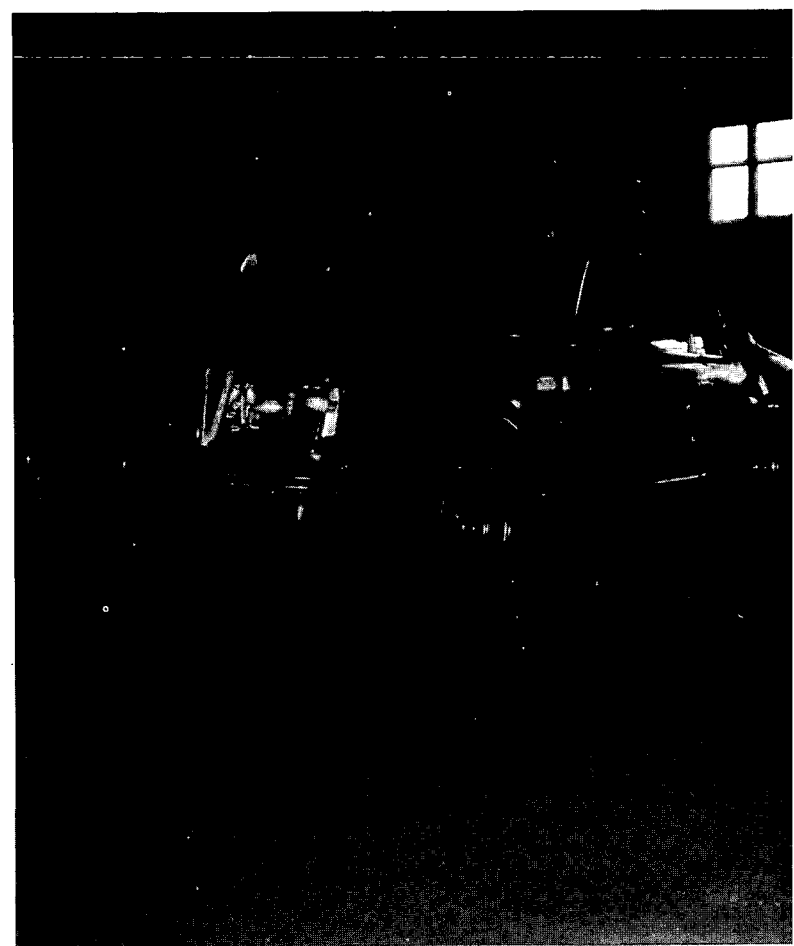
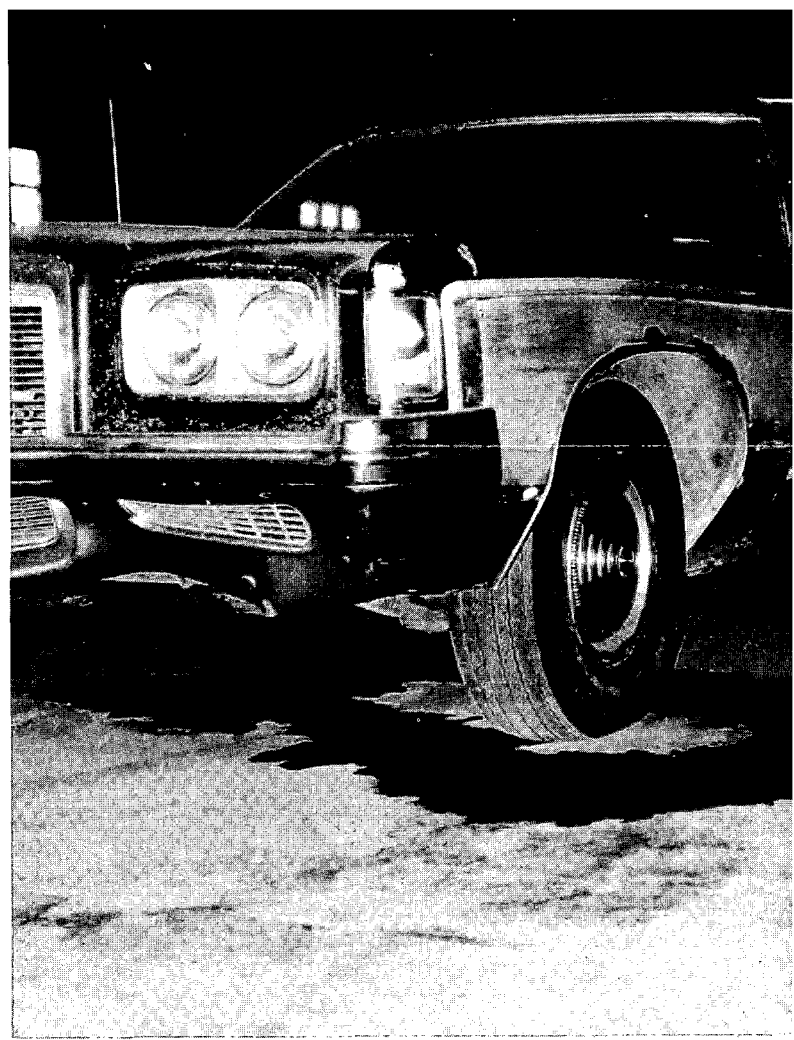
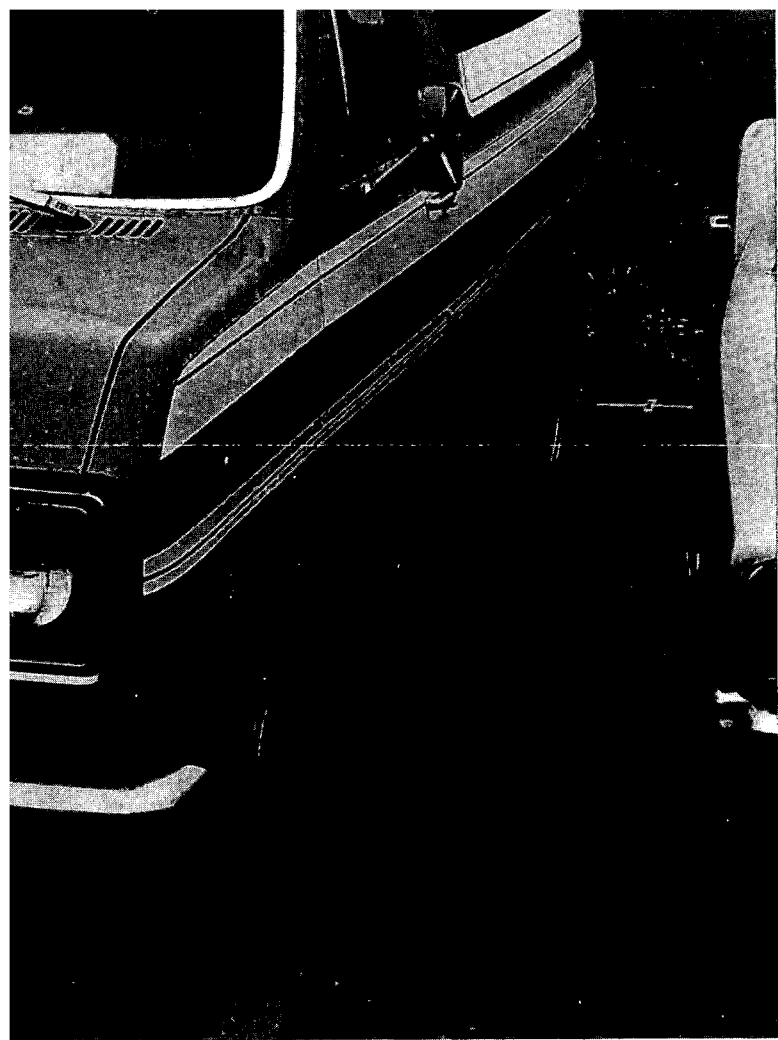
Changes are needed in Customs procedures to encourage a more timely forfeiture process. A shorter process would result in less property devaluation and in lower storage and maintenance costs. For example, Customs' return on sales for administrative forfeitures compared to the appraised value at the time of seizure was 40.9 percent compared to 72.6 percent for DEA and 46.9 percent for INS. Although other factors may contribute to these differences, we believe the longer process for Customs is a major contributor to this disparity.

Lack of care and maintenance
for seized property

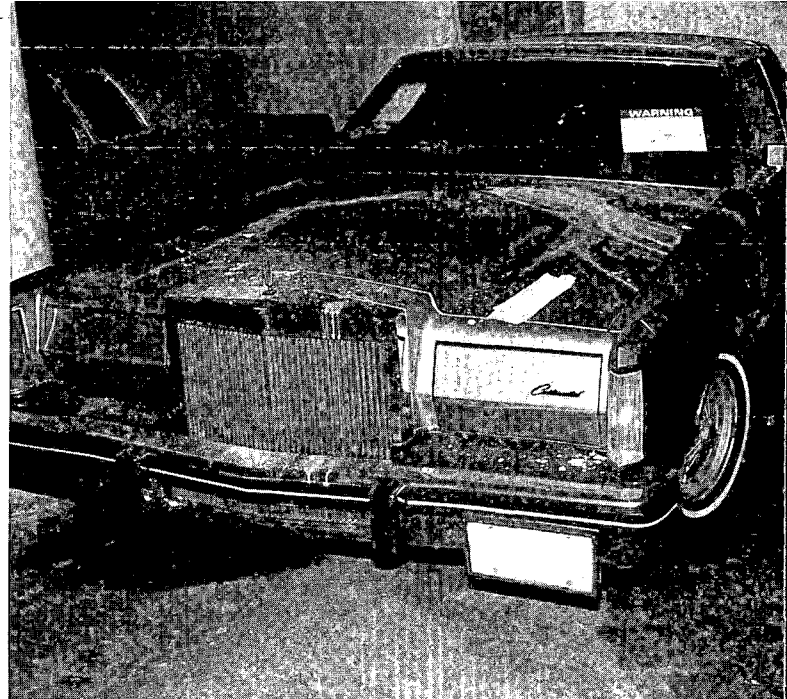
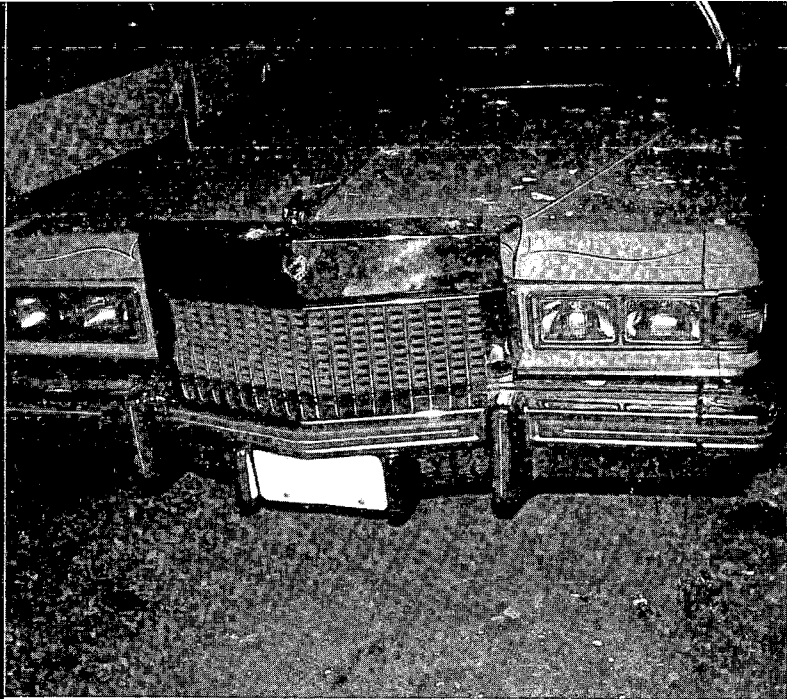
Although the problem was identified in a 1977 GAO audit report and a 1979 Customs audit report, law enforcement agencies generally still provide little care and maintenance to preserve seized property and, as a result, the property often significantly deteriorates. Our random sample of the 4,244 conveyances disposed of in fiscal year 1981 showed that Customs, DEA, and INS spent money to maintain less than 5 percent of the conveyances. Funds were expended for maintenance of only 16 percent of the aircraft, 33 percent of the vessels, and 2 percent of the vehicles.

This lack of expenditures for maintenance was confirmed during our field visits to 44 randomly selected storage sites in California, Arizona, Texas, Louisiana, Mississippi, Florida, Georgia, Illinois, and Minnesota. These locations collectively stored 305 vessels, 89 aircraft, and 1,580 vehicles, valued at \$38 million. At 8 of the 44 storage sites, the only regular care provided was occasionally starting the engines. At 34 storage sites, the engines were not even started. Engines were preserved for prolonged storage at only 2 of the 14 sites that held aircraft and at none of the 20 sites that held vessels. At 35 of the 44 sites, the conveyances were left outside during storage.

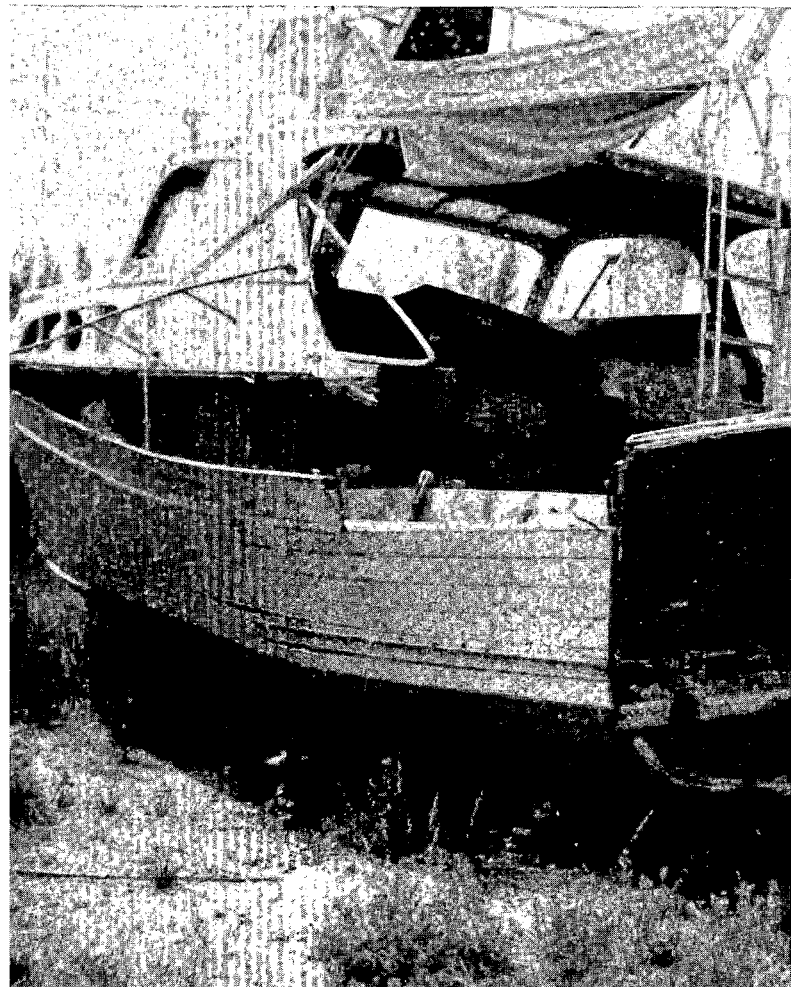
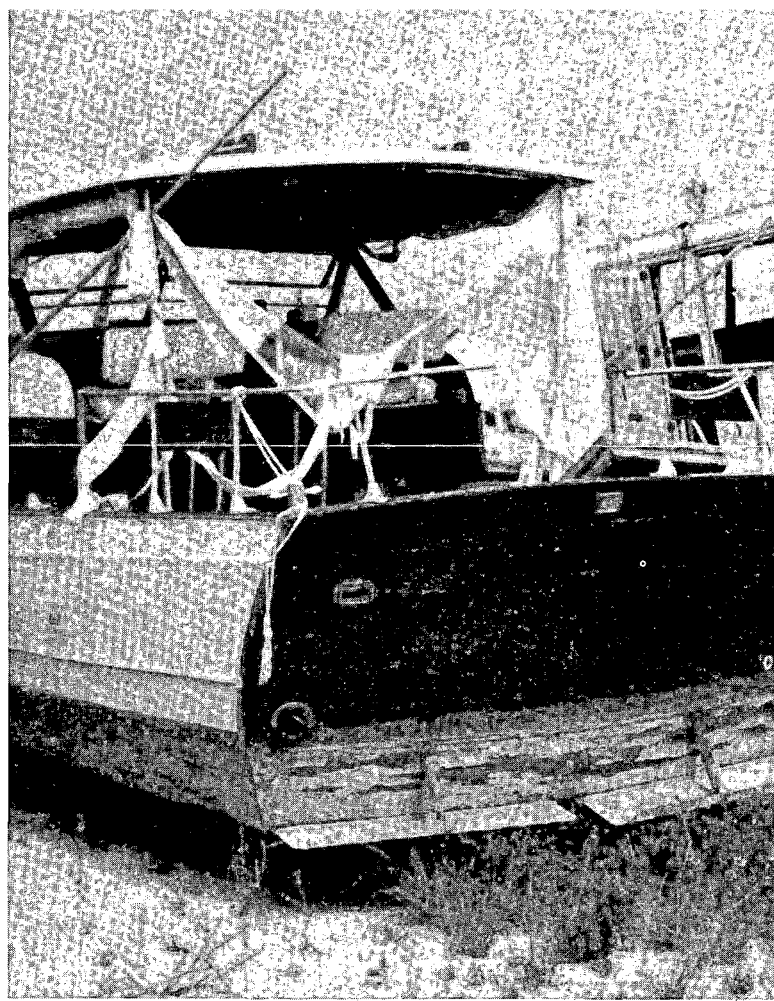
Seized conveyances often deteriorate--batteries die, engines freeze, seals shrink and leak oil, salt air and water corrode metal surfaces, barnacles accumulate on hulls, small animals and birds build nests in aircraft wings, unvented windows crack from heat--as a result of prolonged storage with minimal care and from a lack of use, since seized property cannot be used until forfeited to the Government. Of the 1,974 conveyances valued at \$38 million and held at the 44 storage sites, 358 conveyances valued at \$6.5 million had readily identifiable problems as a result of a lack of care and maintenance. However, this figure probably understates the problem since we generally did not attempt to start engines, launch boats, drive vehicles, or fly the aircraft. The following examples illustrate the types of problems we observed.



During prolonged storage, batteries run down, transmission seals crack and fluids leak, and tires deflate.

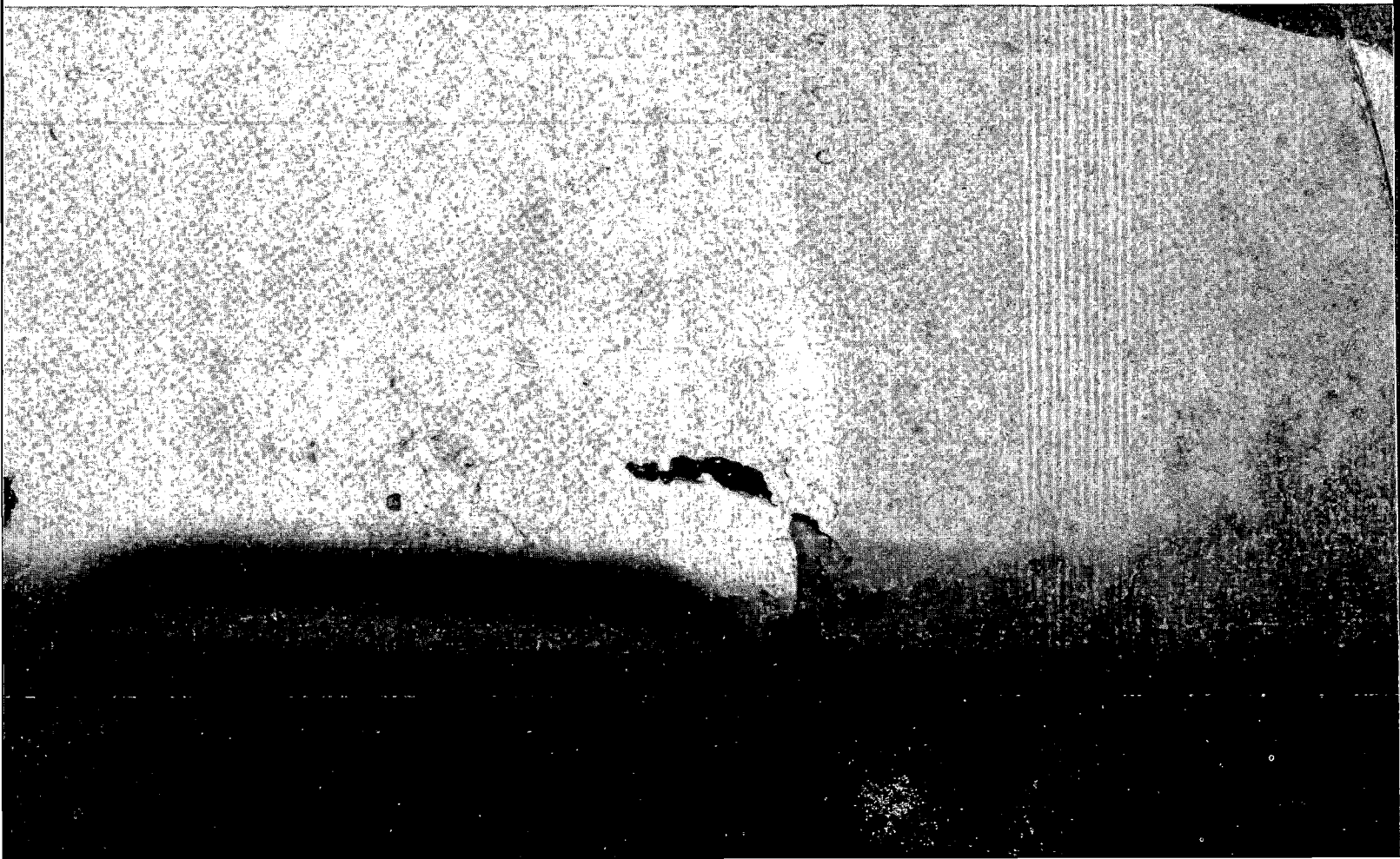
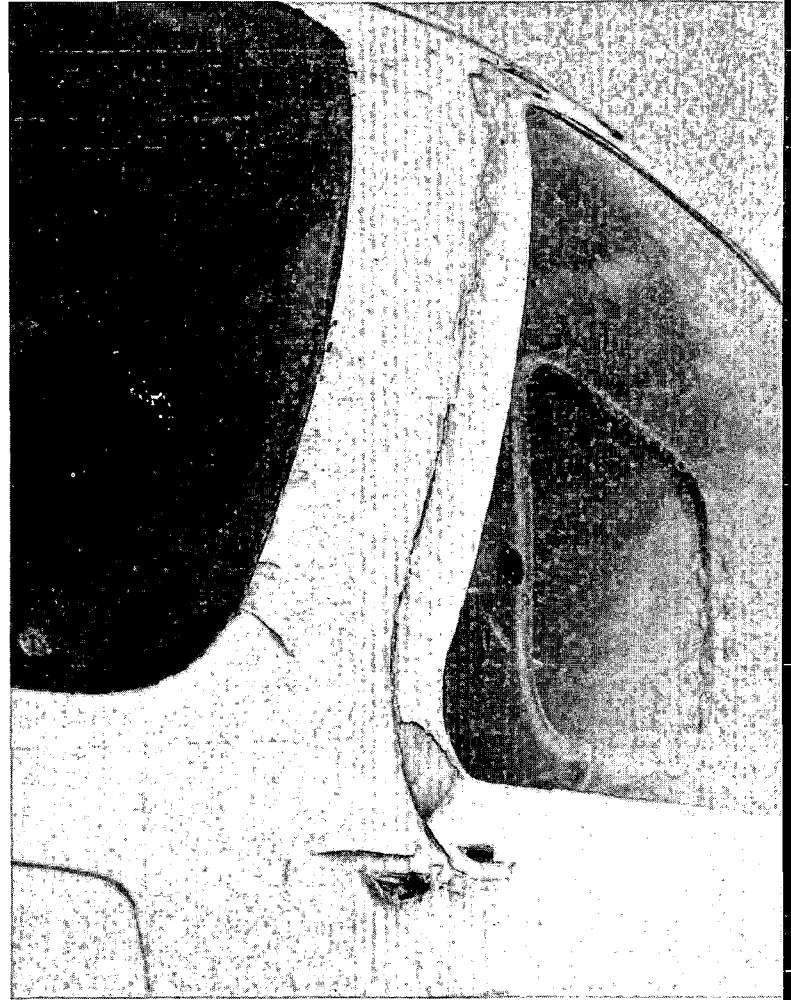


Water drainage problems in this underground garage in Chicago caused stained exteriors and mildewed interiors with these DEA-seized vehicles.



Many of these wooden-hull boats seized by INS were unsuitable for use after 2 years of storage on a beach in Florida.

Aircraft stored in southern Florida often deteriorate from the salt air which slowly rusts the surface of aircraft bodies.



- A 1967 40-foot pleasure craft, valued at \$78,000 by a professional marine surveyor at the time it was seized by Customs for transporting marijuana, significantly deteriorated while in storage in a Houston, Texas, marina. The vessel was left in the water with only minimal care during the 15-month period between seizure and forfeiture. As a result, barnacles accumulated on the hull, engine seals cracked, and the chrome corroded. When the vessel was reappraised at the end of the forfeiture process, the professional marine appraiser estimated its value had decreased by \$26,000. The owner of the marina believed that for \$300 a month, or a total of about \$4,500, much of the deterioration could have been prevented by dry docking the vessel, polishing the chrome, and periodically operating the engines.
- Vessels seized by INS during the Cuban "boatlift" in 1980 were placed on the beach at the naval station in Key West, Florida, without any care until most were sold in September 1982. This prolonged exposure to the weather left many of the vessels unsuitable for use without major repairs.
- Aircraft also received only minimal care during storage. Normally, the only maintenance was an occasional engine start. However, aircraft engines should be run at cruise speed at least once every week to prevent deterioration or the engines should be "pickled" (coating with special preservatives) for prolonged storage. Running the engines at cruise speed, which requires flying the aircraft, or "pickling" the engines normally was not possible because agencies lack sufficient funds, pilots, and mechanics. As a result, engine pistons significantly deteriorate from sitting idle for long periods.
- Aircraft stored in southern Florida often deteriorate from the salt air corrosion which slowly rusts the surface of aircraft bodies. In recognizing this problem, Customs recommended flying the aircraft to a dry-air storage facility at Davis-Monthan Air Force Base, Arizona. Customs and the Air Force subsequently signed an agreement that allows Customs to store aircraft at Davis-Monthan, but a lack of resources has prevented Customs from flying them there.
- Vehicles generally received little care because of the magnitude of seizures and because the agencies relied on law enforcement personnel for this purpose. As a result, batteries ran down, transmission seals cracked and leaked fluid, tires deflated, and the intense sunlight in the southern United States caused some unvented

windows to break, paint to fade, and upholstery to crack. As the number of vehicles stored at a particular location increases, the amount of preventive maintenance decreases correspondingly. For example, the 23 INS-seized cars stored at a GSA-owned facility in Fort Worth, Texas, were started once a month by INS agents. In Hebbronville, Texas, where INS has 192 vehicles stored, starting the engines was considered impractical. As pointed out by the supervisory INS patrol agent there, it would take one agent almost an entire week just to run each car for only 10 minutes. They did try to routinely inflate flat tires at Hebbronville. In Laredo, Texas, where INS had 360 vehicles, agents were unable to even inflate flat tires. Additional resources would be necessary to adequately maintain seized vehicles.

--DEA in Chicago, Illinois, stored seized vehicles in a commercial underground garage that had major water drainage problems. At the time we visited the garage, vehicles were parked in water which had drained through the ceiling from ground level. The paint on 11 cars was rusted and stained from mineral deposits in the water that leaked onto the cars. The high humidity and open windows caused the car interiors to mold and mildew. When we brought the problems to the attention of the DEA official in charge of the Chicago office, DEA promptly removed the vehicles to another location.

Preservation would better protect owners and increase sales returns

Seized property should be properly preserved not only to return the highest value to the Government for forfeited conveyances, but also to preserve the conveyances as much as possible in case they are returned to the owners (e.g., seized conveyances may have been stolen or loaned to other parties without the owners' knowledge that they would be used to transport contraband). Providing such care would require additional expenditures, but these expenditures would probably be more than offset by higher sales returns. Improving the appearance and condition of vehicles just prior to their sale, as discussed later, would likely produce an even greater increase in revenues. These revenue-enhancing measures require either providing additional funding or diverting limited funds from law enforcement efforts.

Under the current funding process, each forfeited conveyance is supposed to pay for its storage and maintenance from its sales proceeds. This process creates a cash flow problem for the law enforcement agencies since the agencies must pay for the

storage and maintenance from appropriated funds until the forfeited conveyance is sold and the appropriated funds are reimbursed if there are sufficient sales proceeds. When costs transcend fiscal years, the agencies do not receive full reimbursement for their maintenance and storage costs because reimbursements to appropriated funds from fiscal years other than the current fiscal year are remitted to the Treasury.

The costs and reimbursements are accounted for on an "item-by-item" basis, which means that the sales proceeds from each forfeited conveyance can only cover its own expenses. Sales revenues from conveyances that more than cover their expenses cannot pay for the expenses of conveyances whose eventual sales revenues do not cover their expenses.

This funding process encourages agency personnel to spend the least amount possible for maintenance and storage so that appropriated funds are not diverted from law enforcement activities. The current process also is cumbersome since general expenses common to all seized conveyances must be allocated and reimbursed on an item-by-item basis. For example, the expenses of a warehouse that holds many conveyances must be allocated to each item and reimbursed from each item when sold.

To alleviate these problems and create a more orderly process, the Congress proposed creating "special funds" to pay for storage and maintenance in the Violent Crime and Drug Enforcement Improvements Act of 1982. (See p. 4.) This measure would have created two special funds--the Customs Forfeiture Fund for the Customs Service and the Drug Enforcement Fund for Justice. The special funds would have changed the funding from an item-by-item basis to a group basis; that is, all forfeited conveyances would have paid for all storage expenses of seized conveyances. The sales proceeds from forfeited conveyances would have been deposited into these funds and storage and maintenance expenses would have been paid from these funds. Thus, appropriated funds would not have to be used or reimbursed and agencies would have had the funds necessary to adequately care for seized conveyances without diverting appropriated funds from law enforcement programs.

Another alternative funding mechanism would be to remit all sales proceeds from forfeited conveyances to the Treasury and to seek appropriations to cover the storage and maintenance expenses. The primary problem with this approach is making accurate projections of the future number of seizures, the variety of costs associated with the storage and maintenance of different types of conveyances located in various parts of the country, and the sales proceeds from forfeited conveyances. The proposed special funds would have provided a funding mechanism only incrementally different than the historic method of each item individually paying for itself.

Diversion of agency resources from law enforcement efforts could be avoided through the creation of special funds from the sales proceeds of forfeited conveyances. In amounts specified in annual appropriations acts, these special funds could be used to, among other things, defray the costs of storing, maintaining, and protecting seized assets--costs that rise or fall as the volume of seizures increases or decreases. Since the volume of conveyances being sold will also expand or contract based on changes in the number of recent seizures, the rate at which money flows into the special funds will, over time, correspond to the agencies' expenditure needs to care for seized conveyances.

Because expenditures for storage and maintenance of seized conveyances are more than offset by sales proceeds increases, these special funds, once established and operating, could provide sufficient resources to store and maintain seized conveyances. For example, our statistical sample showed that vehicles without any storage or maintenance expenditures sold for 40 percent of their appraised seizure value compared to 55 percent for vehicles with some expenditures for storage or maintenance. The expenditures averaged \$269, but the average sales return was \$485 more--a return of almost \$2 for each \$1 spent.

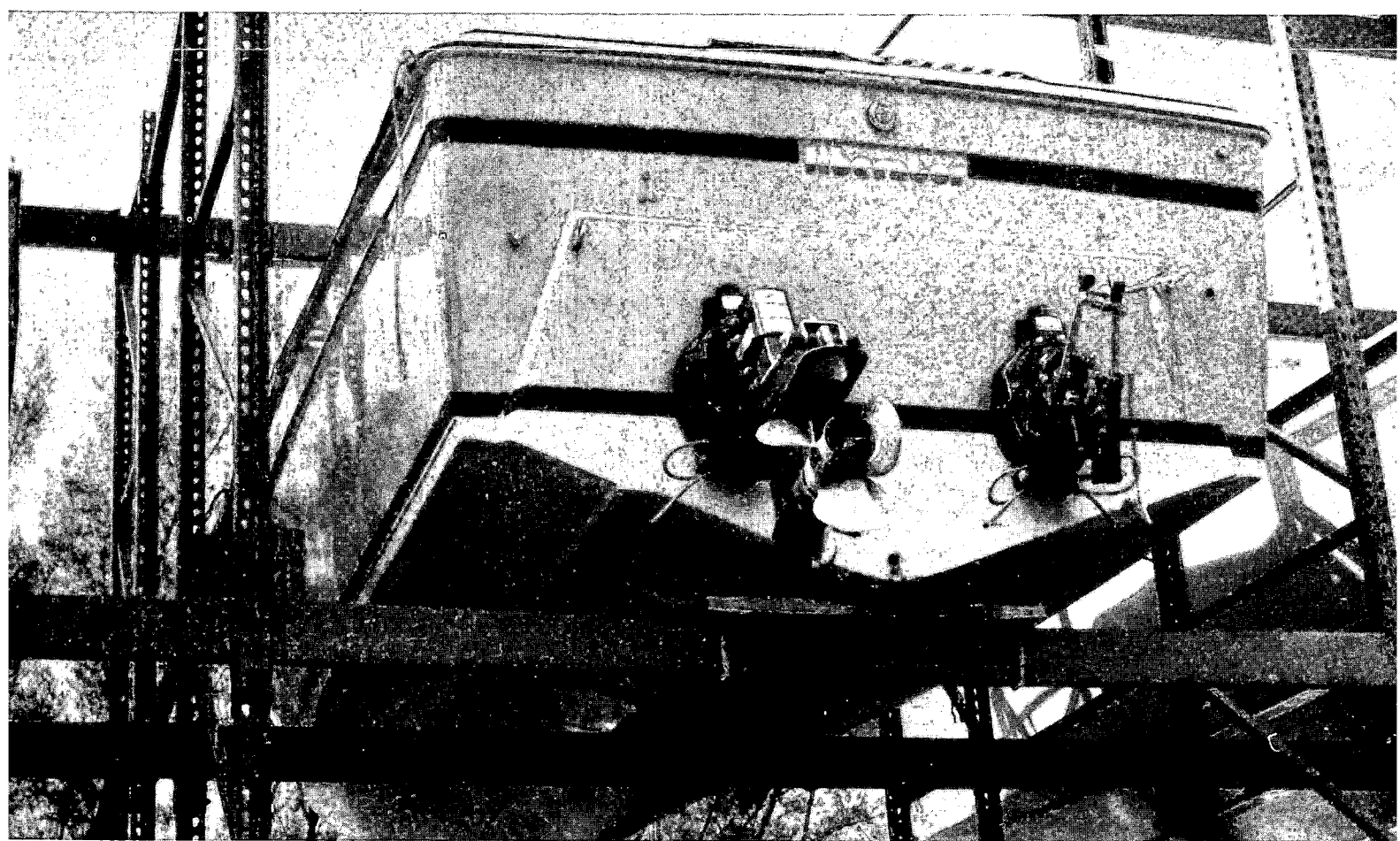
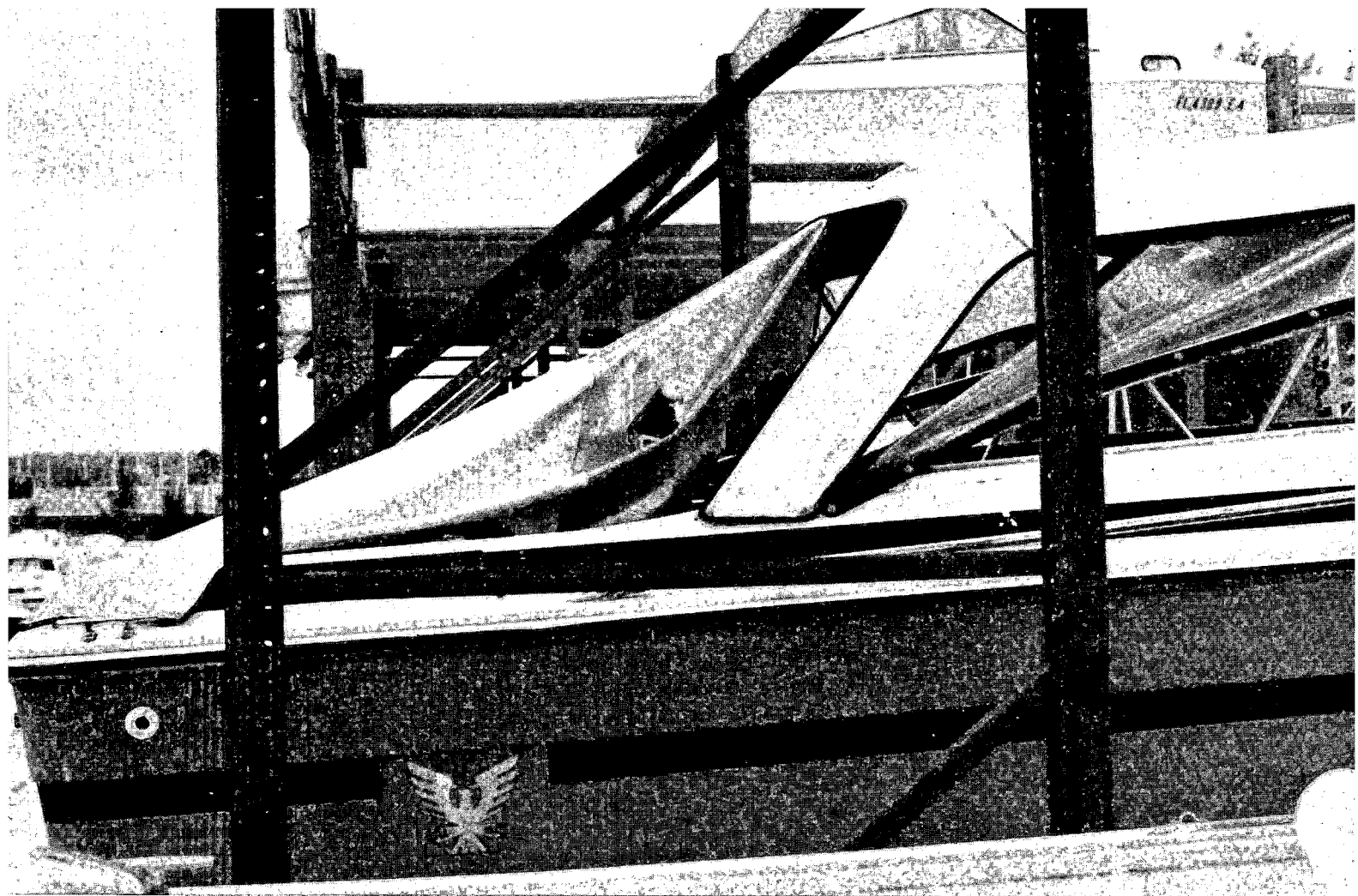
Theft and vandalism
result from inadequate
security

Theft and vandalism occurred for 2.7 percent of the conveyances stored at the 44 randomly selected sites. The conveyances subjected to theft and vandalism included 2 vessels, 8 aircraft, and 44 vehicles. Although vandalism and theft occur relatively infrequently at storage sites, they can significantly affect the value of the property, as illustrated below.

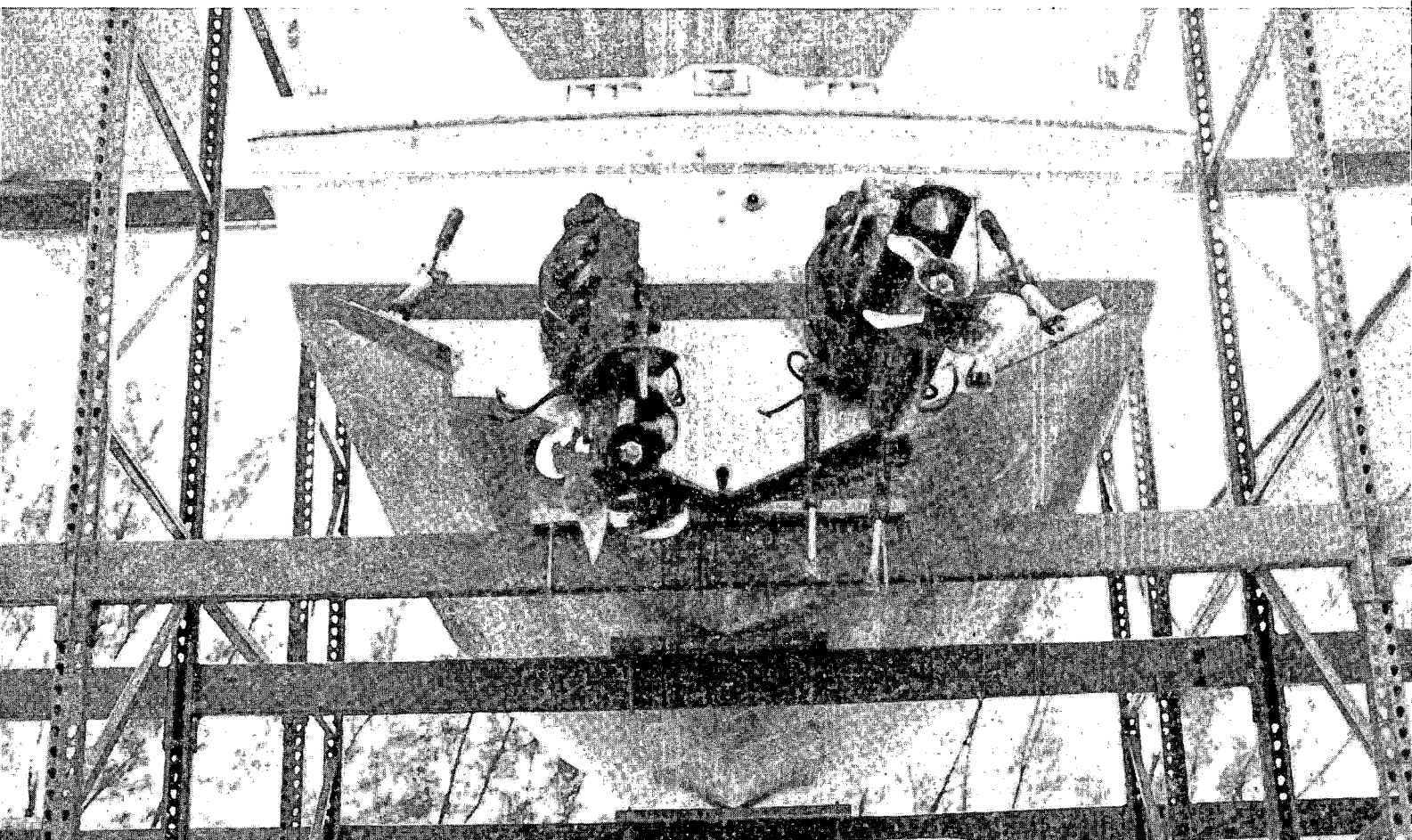
--A 28-foot racing boat, seized in Miami, Florida, for smuggling marijuana was totally vandalized by an intruder with an ax. Although the vessel was initially valued at \$30,000 at the time of seizure, Customs officials estimated the current value to be no more than \$5,000.

--Cars seized by INS from persons smuggling illegal aliens into southern California were often damaged by vandals breaking windows to steal radios, tape decks, and speakers, even though the cars were stored on a military installation.

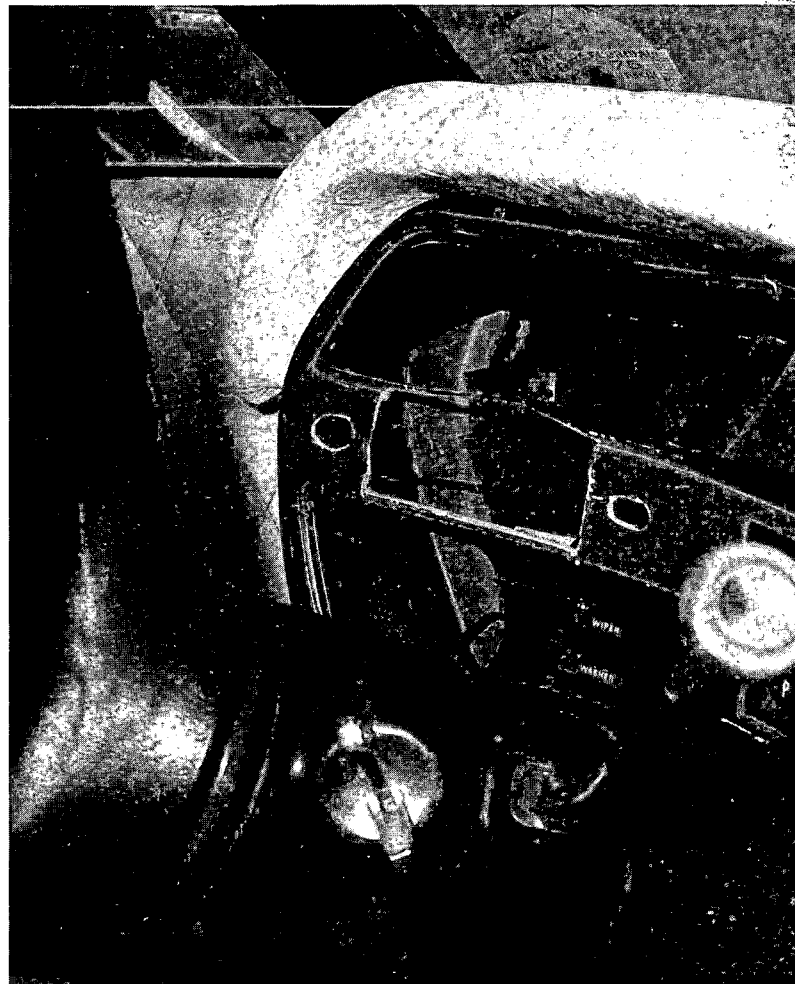
--Thieves broke a window and stole seats, instruments, and controls from an aircraft seized by the Customs Service in connection with smuggling narcotics into southern Florida.



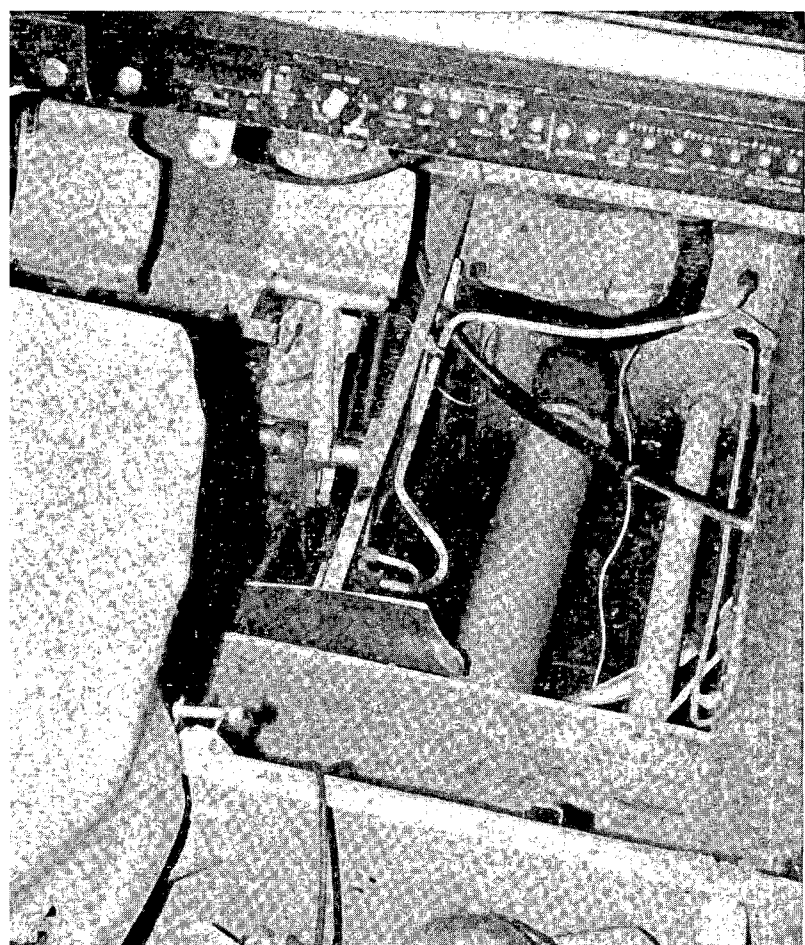
Vandals tore the boat cover (top) and stole an outdrive (bottom) from this Customs-seized boat in Miami.



An intruder with an ax totally vandalized this 28-foot racing boat which was initially valued at \$30,000.



INS-seized cars in southern California are often damaged by vandals breaking windows to steal radios, tape decks, and speakers.



Thieves broke into this Customs-seized aircraft (top left and right), stole aviation equipment (bottom left) and vandalized the aircraft (bottom right).

--DEA correspondence reported that vandalism was "staggering" at an open, unguarded storage location in San Diego, California. Another memo stated that the increased costs of \$4,500 per year for a more secure site would be more than offset by reduced damage losses caused by thefts. In addition to losses in potential sales revenues, DEA also experienced costly claims against the Government for loss, theft, damage, and destruction of property returned to owners and lienholders because of vandalism at this location.

--A thief stole a seized single-engine aircraft that was stored in an open, unsecured airfield in southern Florida. However, on take-off, the aircraft struck a fence post and then landed in a nearby field. The aircraft was returned to the airfield.

Upgrading security of seized conveyances would better protect conveyances returned to owners, prevent unnecessary and costly claims against the Government, and bring better returns from the sales of forfeited conveyances. All the vandalized and stolen property that we observed was stored in unlighted, open storage areas without 24-hour security. Agency officials say the problem is attributable to a lack of available funding to adequately protect the property. As mentioned earlier, creation of special funds from the sales proceeds of forfeited conveyances would enable law enforcement agencies to provide better protection for the property.

POOR SALES PRACTICES
BRING LOWER RETURNS

Conveyances are often sold by the Government with little advertising and without cleaning or minor repairs that could increase their sales value. In addition, the courts often require U.S. marshals, who have little sales expertise, to sell forfeited property, and the Marshals Service's sales returns are substantially less than GSA's returns.

More cleaning, minor repairs,
and better advertising would
increase sales revenues

GSA and industry statistics indicate that cleaning and minor repairs (sales preparations) for vehicles will increase sales revenues by three times the expenditures required and will enhance sales revenues by an average of \$200 to \$300. However, seized conveyances are often sold in filthy condition, with flat tires and dead batteries. In many cases the prospective bidders

cannot even start the engines to determine their condition, so it is likely that the bidders discount their price to cover possible unknown problems with the engines. In addition, GSA often fails to advertise in local papers and relies on use of its mailing lists to contact potential customers because, according to GSA officials, GSA lacks adequate funding.

It is difficult to determine how much of the problem with poor sales returns for forfeited property is the result of devaluation of the property from aging, inadequate care, and other factors and how much is the result of poor sales practices. Most law enforcement agencies do nothing to enhance the property before making it available for sale by GSA. However, the DEA office in El Paso, Texas, cleans forfeited vehicles, inflates tires, and charges batteries before GSA sells them and allows bidders to start the cars during the sale. In a letter of appreciation to DEA, GSA indicated that this preparation led to a "very successful bid" that returned 40 percent above the average price for DEA vehicles at other sales. Also, the DEA El Paso office returns 82 percent of seizure value compared to only 65 percent for the INS El Paso office and 50 percent for the INS office in Laredo, Texas.

Agency officials generally agree that cleaning and repairing forfeited conveyances would raise sales values higher than their costs. However, the officials also note that their agencies lack sufficient funds and personnel. For example, an INS official in Laredo said the office would have to dedicate two or three agents for a week just to wash their 552 cars. DEA's success in El Paso may be partly attributable to its smaller seizure operation, since it only sold 32 vehicles in the last 2 years. INS officials also believe that there are few incentives to encourage fixing up property for sale since maintenance diverts funds from law enforcement activities while sales proceeds are remitted to the U.S. Treasury.

The local police in Fort Lauderdale, Florida, who can also seize and forfeit conveyances, use revolving funds created through the sale of forfeited conveyances to clean and repair vessels and vehicles prior to sale. City officials estimate that they get back an additional \$3 for every dollar spent, which is consistent with a GSA estimate. These officials noted that they get back about 75 percent of the seizure value for vessels, which is considerably higher than Customs' 40 percent return for vessels.

The City of Fort Lauderdale, Florida, also advertises in national and regional boating magazines to attract prospective buyers. City officials attribute their higher return partially to this specialized advertising. Six private auctioneers informed us that specialized and local newspaper advertising were normal practices for auctioneers to attract the most prospective

buyers. However, neither the Federal law enforcement agencies nor GSA follow such practices because of a shortage of funds.

Special funds, such as the one discussed above, would allow the use of previous sales proceeds to clean up and repair forfeited conveyances and properly advertise them. These funds should also provide an incentive to the agencies to properly market the conveyances, since the increased revenues return money to the fund that can be used to purchase needed law enforcement equipment as approved by the Congress.

Sale of forfeited conveyances
by U.S. marshals causes
lower revenues and higher costs

U.S. marshals sometimes sell forfeited property. The marshals incur unnecessary costs when they "hold" the property. In addition, the Marshals Service's sales return far less money than do GSA's because the marshals often lack sales experience and poorly advertise forfeited property.

For example, the U.S. marshal in Houston, Texas, placed a 1-day notice for the sale of a forfeited 1961 Beechcraft Queen Air aircraft. Four days later the marshal sold the plane for \$4,000 to one of a limited group of prospective buyers who expressed interest. The plane was initially valued at \$50,000 when seized.

This type of insufficient notice was particularly disconcerting to a private marina owner in Freeport, Texas, who stored a vessel after its seizure in April 1981. During the holding period, the owner received offers to buy the vessel--one was for \$24,000 and two were as high as \$40,000. The owner was personally willing to bid \$30,000. Although he requested the marshal to notify him of the sale, the marshal did not and sold the vessel and its equipment for \$13,000. At the time of seizure, the equipment had been appraised at \$10,000 and the vessel had been appraised at \$140,000.

Selling practices often differ, depending on which marshal sells the property. The deputy U.S. marshal in Galveston, Texas, tries to get at least one-half of the property's fair market value by placing a "start bid" or requiring a deposit for the winning bid. However, in Corpus Christi, Texas, the marshal sells the property to the highest bidder, regardless of the amount offered. These procedures, even though well intended, have contributed to low returns from forfeited property. For example, one vessel having a seizure value of \$250,000 sold for \$115,000. Another vessel, a 66-foot fishing vessel, also valued at \$250,000, sold for only \$70,000. Although some of the difference is probably attributable to property devaluation, we believe these selling practices have exacerbated the poor sales returns.

According to the New Orleans, Louisiana, U.S. attorney, the practice of the marshals selling forfeited property stems from the Admiralty laws. Under these laws, the marshals are the only ones who can sell property as a result of court judgments involving private parties, and judges have often carried this practice over to Government forfeitures. As discussed in chapter 4, we believe in eliminating the involvement of the marshals in the sale of forfeited property for the Customs Service.

For forfeited conveyances sold in fiscal year 1981, the Marshals Service received an average of 41 percent of the seizure value, compared to 55 percent by GSA. Therefore, the Marshals Service returned only 74 percent of the GSA average. This is the result of the marshals advertising only in the legal section of local newspapers for a limited time and not having sales training. The Marshals Service views its primary responsibilities as court security, witness and prosecutor protection, and prisoner movement. Sales are only a peripheral duty that strains the Service's ability to carry out its primary responsibilities.

In addition to sales responsibility, the Marshals Service is currently responsible for the custody of seized property during the judicial process in many areas of the country. Marshals "arrest" the property by placing a service notice on the conveyance; in some cases, they move the property to another holding area or engage in other practices that incur additional costs, as illustrated in the following examples.

--In San Diego, California, the marshal incurred additional costs to the Government by using a towing service to move "arrested" conveyances to another location. In Bell, California, the marshal had his staff move the property to other locations, incurring additional manpower costs. In Miami, Florida, the marshal used seized vessels, which is not appropriate until they are forfeited, to move other seized vessels to a new holding area.

--In Houston, Texas, the marshal requires the seizing agencies to leave all equipment on the vessel or aircraft, which subjects it to environmental deterioration, vandalism, and theft. On a 112-1/2 foot supply vessel, valued at \$900,000 with its equipment, Customs spent \$1,497 to remove and secure the equipment. The arresting marshal required Customs to reinstall the equipment in working order, which Customs did for \$576. Despite the fact that this equipment provided a valuable target for potential thieves, the Marshals Service did not post guards on the vessel because it had neither

money nor staff. Subsequently, all the reinstalled equipment was stolen.

The Marshals Service believes that it does not have adequate resources to properly secure, store, and maintain arrested property. Consequently, several courts now issue arrest orders that make the holding agency the substitute custodian in place of the Marshals Service. This practice prevents the needless movement of seized property and fixes property accountability (care, maintenance, security) on one manager--the holding agency.

CHAPTER 4

FORFEITED CONVEYANCES OFTEN PROVE

TO BE COSTLY ACQUISITIONS FOR

GOVERNMENT SERVICE

Federal law enforcement agencies often use forfeited vehicles, boats, and planes to conduct surveillance and related enforcement activities in lieu of Government-purchased conveyances. However, since forfeited conveyances come in all shapes and sizes, many unsuitable conveyances must be "forcefitted" into agency service; that is, they are used even though they do not precisely meet agency needs. Also, the deterioration experienced during the forfeiture process, as discussed in chapter 3, requires the restoration of many conveyances before use and their continual repair during use. As a result, forfeited conveyances often experience little use because they are inoperable or undergoing repair.

To avoid continued use of less suitable forfeited conveyances and to reduce high operating costs, Customs recently began using the exchange/sale program ^{1/} as a tool to obtain quality conveyances. Through this program, Customs can exchange (trade) or sell forfeited conveyances to obtain suitable conveyances.

Most law enforcement officials, including those of Customs, DEA, and INS, view forfeited conveyances as "free assets"; that is, acquisition occurs without using appropriated monies. Thus, the forfeited conveyances become "windfall assets" that enhance agency capability without congressional oversight. As a result, agencies have increased their fleets and have forcefitted forfeited conveyances into their fleets when different and often less expensive conveyances would have better met their needs.

We believe agencies should be able to more efficiently use forfeited assets, which are not acquired through expenditure of appropriated funds, to more effectively conduct law enforcement activities. Moreover, the 473 forfeited conveyances valued at \$6.2 million acquired for use by Federal agencies in fiscal year 1981 deserve the same visibility that the Congress requires for agency conveyance acquisition and operation, which are funded through the appropriations process.

^{1/}This program is authorized by Section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)).

LITTLE CONTROL OR OVERSIGHT OF FORFEITURE ACQUISITION

Since 1949, GSA has been charged with establishing and maintaining an economical and efficient management system for Government property and records. The system includes the distribution, utilization, and disposal of forfeited personal property. To minimize expenditures and ensure maximum use of personal property owned by the Government, GSA operates a property utilization program. Excess personal property of Federal agencies, including forfeited property, is made available and transferred to other Federal agencies for official use. Accordingly, agencies such as Customs, INS, and DEA report seized property directly to GSA's National Capital Region which screens the property for potential use Governmentwide.

The seizing agency has priority in acquiring forfeited conveyances needed for official use. As a result, GSA approval of seizing agency requests is generally a formality. Agency officials merely check the appropriate block on the seized property report to indicate its need for official use. According to GSA officials, they do not review or evaluate the propriety of seizing agency acquisition and utilization practices. These officials handle only the disposition of forfeited property. Thus, proper and reasonable forfeited asset acquisition and use is dependent solely on internal controls within the agencies acquiring the property.

Increasing agency fleet size with forfeited conveyances

Agencies are increasing their fleets with forfeited conveyances. These acquisitions are generally occurring outside the appropriations process. This means that agencies acquire forfeited cars, boats, and planes without the close congressional scrutiny and justification normally associated with acquisitions approved through the appropriations process. In addition, an important congressional control over the acquisition of Government passenger motor vehicles and aircraft has not prevented agencies from increasing their fleet size by using forfeited conveyances. Section 1343 of Title 31 of the U.S. Code provides that appropriated funds may be used to acquire (including transfers between agencies) vehicles and aircraft only as specifically provided by law. Agency appropriations acts frequently contain limitations on the number of conveyances that may be acquired or maintained with appropriated funds. We are unaware of any judicial decision or formal executive branch ruling addressing whether the limitations contained in section 1343 apply to conveyances acquired by forfeiture and not by appropriated funds. We are of the opinion, however, that section 1343 does not apply to conveyances obtained through the forfeiture process.

In our view, oversight of conveyance acquisitions used and retained by the agencies could be facilitated by the agencies annually disclosing to the Congress the number and type of conveyances acquired through forfeiture or from the exchange/sale program. This will give the Congress the opportunity to address the relationship between the number and type of forfeited conveyances acquired for use and any ceiling it may wish to impose.

According to agency field officials, upon identifying a special need for a particular forfeited conveyance, they request authority from their headquarters to obtain it. Typically, the only written justification includes a statement similar to that shown in a request from Customs' New Orleans, Louisiana, office for a 1969 Aero Commander, which stated:

"* * * This aircraft is a turbo-prop and is in very good condition. The aircraft would be extremely useful to the New Orleans Air Support Branch in our interdiction efforts and our vessel support missions."

On the basis of this type of explanation, headquarters officials decide upon acquisition.

Our review of conveyance acquisition files disclosed that forfeited conveyances sometimes increased fleets, as illustrated by the following examples.

- Dallas, Texas, INS officials acquired a 1980 Chevrolet that was supposed to replace a 1977 Plymouth sedan. INS, instead of declaring the sedan excess to agency needs, retained it at its Del Rio, Texas, office.
- Houston, Texas, Customs officials recently acquired two pleasure craft that originally were requested to replace a 57-foot yacht and a 40-foot speedboat. However, the yacht was replaced with another vessel. Instead of acquiring only one of the forfeited vessels to replace the speedboat, Customs kept both vessels.
- New Orleans, Louisiana, Customs officials acquired a forfeited tugboat, as discussed later in this chapter, in order to sell it and raise money to buy a crewboat. Three months after the tug was sold, Customs acquired a forfeited crewboat which, according to regional officials, replaced the tug. However, regional officials still plan to purchase another crewboat and two pursuit vessels with the \$150,000 sales proceeds from the first tug.

We also found that Customs logistics personnel failed to maintain accurate records on their current inventory, as the following examples show.

--New Orleans, Louisiana, property records listed only five aircraft assigned to the New Orleans Air Support Branch. However, the Branch had two aircraft and one helicopter, in addition to those shown on the property records.

--Houston, Texas, vessel inventory records could not be reconciled with the vessels actually assigned. These records used vessel identification numbers that differed from those used by the patrol districts.

Less-than-appropriate use
of forfeited conveyances

Customs, DEA, and INS officials generally view forfeited conveyances as "free assets" because acquisition occurs without expenditure of their appropriations. Agency officials suggested that since sales proceeds are turned over to the Treasury and not to the agency, they lose the opportunity cost, or value, of the conveyances. As a result, forfeited conveyances are sometimes acquired even though less expensive conveyances would suffice or a specific need for the conveyance has not been identified.

Luxury cars for
administrative staff

Even though less expensive "Government-type" cars would suffice, DEA Special Agents in Charge (SAICs) in all five of the district offices we visited acquired luxury forfeited vehicles for use, including home-to-work transportation, ^{2/} in their essentially administrative positions. For example, two district offices had one SAIC each who used a Mercedes-Benz--one valued

^{2/}When approved by the head of an agency, 31 U.S.C. 1344 exempts Federal officers and employees from the general prohibition on home-to-work transportation when the officers and employees are performing field work that requires such transportation. Under delegated authority from the Attorney General, DEA policy authorizes employees home-to-work transportation when it is likely that an employee may be summoned back to duty after normal hours or it is in the best interest of DEA that an employee have ready access to a Government vehicle. We did not determine whether the use of Government vehicles by SAICs in the manner discussed above is consistent with the field work exemption in 31 U.S.C. 1344, or whether it may otherwise be justified under that law.

at \$40,000 when seized and one valued at over \$26,000 when seized.

While SAICs are rarely involved in undercover operations, some said that their luxury cars provide the DEA offices with extra cars that can be used for special operations, if needed. But use of these cars for special operations or undercover work seldom occurs, according to DEA officials in Houston, New Orleans, and San Diego.

Moreover, SAICs use the luxury cars to commute to and from work and to keep the cars at home overnight. According to FBI officials, DEA's frequent use of the luxury cars could compromise their usefulness in enforcement work. Thus, DEA is acquiring luxury vehicles for a need which may not occur. Where a need for the luxury vehicles may exist, DEA is allowing them to be used in a way that could impair their ability to meet that need.

Forfeited conveyances
acquired but not used
by Government agencies

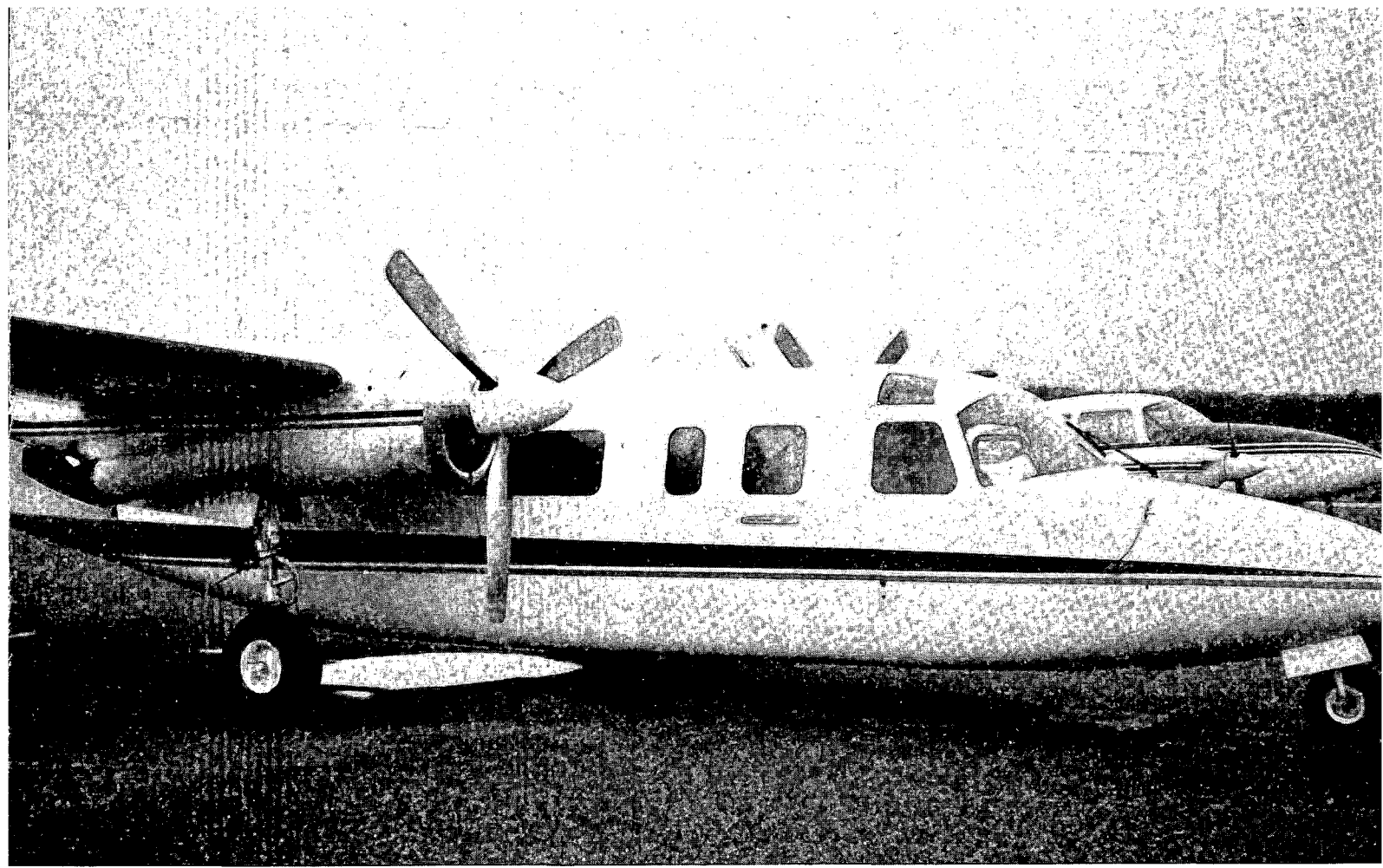
Since it costs agencies little, if anything, to acquire forfeited conveyances, they have acquired valuable assets without a clear, specific need for them. For example:

--In 1981, the Army acquired a forfeited 1976 Rolls Royce, valued at \$35,000, that DEA had seized. The Army could not provide a specific planned use for the car, and it had not been used since its acquisition.

--In 1981, the Federal Aviation Administration (FAA) acquired title to a forfeited 1965 Beechcraft Queen Air seized by Customs. Six months later, FAA still had not moved the aircraft from the Customs storage location to put it in service. At that time, FAA decided it could not afford the aircraft's storage expenses and refused to accept the aircraft. Subsequently, the aircraft was acquired by the Army, which paid for its storage.

HIGH STARTUP AND
CONTINUAL REPAIR COSTS

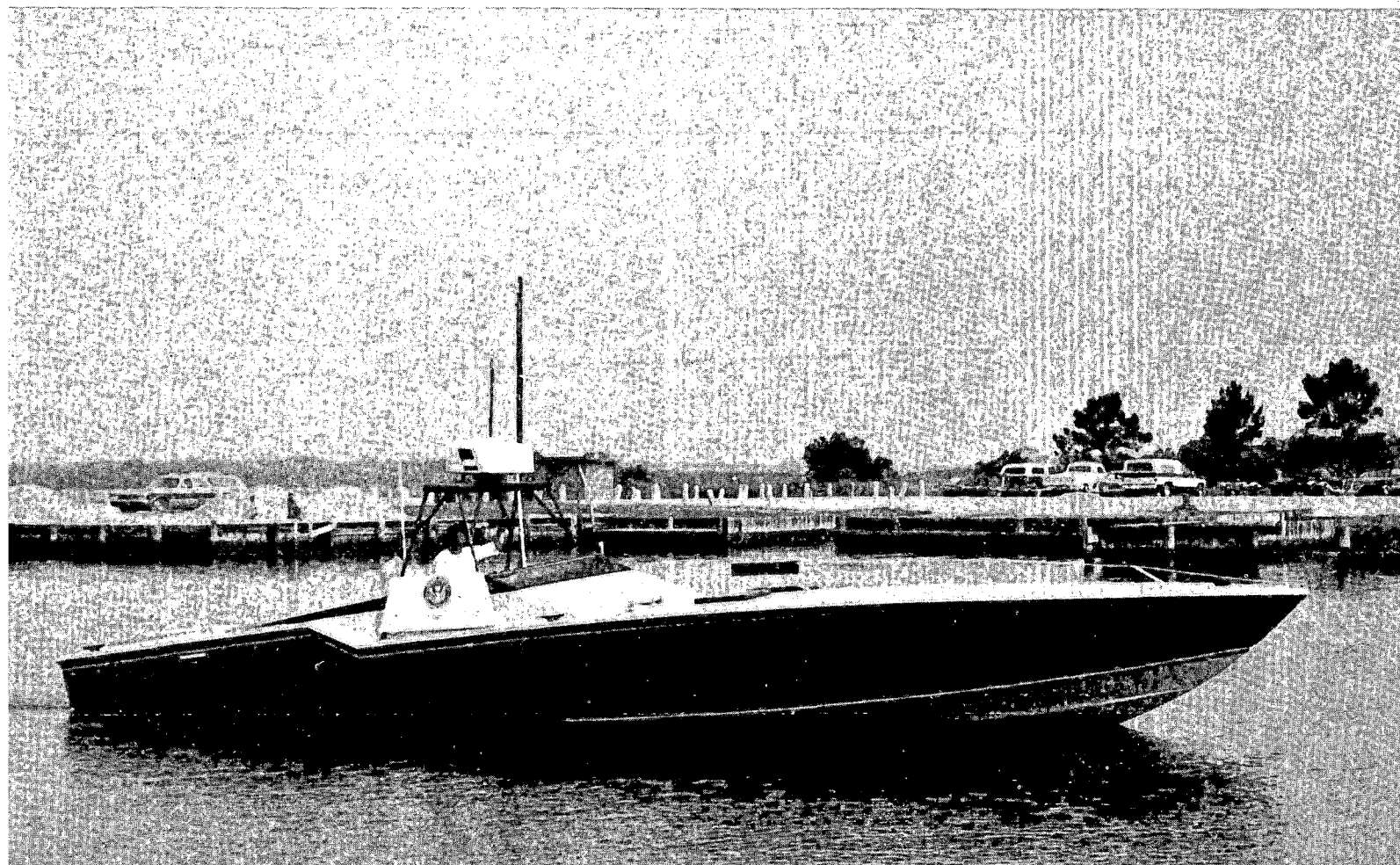
The use of forfeited conveyances is often inefficient and ineffective because they require high startup and continual repair costs. However, because of numerous limitations placed on conveyance acquisition through the appropriations process, law enforcement agencies, such as Customs, DEA, and INS, believe it is necessary to sometimes use old forfeited vehicles, planes, and boats. Additionally, annual budget constraints leave many



Law enforcement agencies often acquire forfeited conveyances, such as those shown above, for official use.



Customs traded two forfeited 42-foot fishing boats for two new racing boats similar to the one shown below.



agencies with old conveyances that need to be replaced. Therefore, while retention of forfeited conveyances has enabled agencies to meet their conveyance needs, high restoration and continual repair costs, which are financed by annual appropriations, have been reflected in infrequent and ineffective use of many forfeited conveyances.

Forfeited vehicles:
typical "used cars"

Federal agencies acquired at least 431 forfeited vehicles, valued at \$2.5 million, in fiscal year 1981. Often, these "used" vehicles were in marginal condition, having high mileage and minor damage. Although the vehicles were acquired to conduct surveillance, undercover activities, or to replace vehicles in the agencies' fleets, agents found many of the vehicles to be in need of frequent repair and were not able to rely upon them to perform.

According to DEA officials, the marginal condition of forfeited vehicles is exemplified by the following acquisitions.

- In New Orleans, an official cited a 1976 Cadillac Seville, obtained with an odometer reading of 27,047 miles. A complete engine overhaul was required before agency use.
- In Houston, a DEA official cited two forfeited 1977 Ford pickup trucks. One truck, with a mileage reading of 55,591 had been used only 6 months when the transmission went out. The other truck was used for only 1,409 miles because the agency could not afford the 75 cents-a-mile operating cost. Both vehicles had been out of service since March 1982.
- In Los Angeles, a DEA official explained that the district's forfeited 1976 Cadillac was in relatively good condition when DEA seized the car; however, later DEA spent 26 percent of its acquisition value to replace parts and perform body work. According to DEA's administrative policy manual, fleet vehicles should be replaced if estimated one-time repair costs exceed 5 percent of the vehicle acquisition cost. Thus, this car was more qualified for replacement than acquisition.

Despite similar problems, INS officials explained that retention of forfeited vehicles is the only way to effectively conduct surveillance. INS officials in Dallas said that one of their district's two forfeited vehicles is a 1980 Chevrolet pickup truck that came equipped with oversize tires, decals, and fancy chrome, typical of trucks in the area where it is used. As explained by an INS agent in Laredo, Texas, a Government-type

truck can be used in setting up monitors--electronic equipment strategically placed to track aliens--in rural areas around town but not within the city limits. According to the agent, a flashier forfeited pickup truck is used in town because it blends into the usual city traffic and does not draw attention to agent activities.

DEA officials in Los Angeles complained that they tried to purchase vehicles suitable for surveillance through GSA. They submitted a list of required specifications and standards that included such items as AM/FM radios, whitewall tires, and interior/exterior trim packages. However, all of the items were deleted from the vehicles purchased because GSA purchase contracts did not allow such "extras." Therefore, agency officials believed forfeited vehicles are the only alternative.

Customs and DEA officials also have acquired forfeited conveyances to replace worn out agency vehicles. The El Paso Customs district obtained a 1978 Thunderbird simply because the office needed a car that ran. According to a DEA official in Houston, the 17 purchased vehicles expected this year will fall short of those vehicles that need to be replaced. In Miami, DEA has not been authorized to purchase vehicles for the past 2 years. As a result, 80 percent of DEA's Miami fleet consists of forfeited vehicles.

Forfeited aircraft:
unforeseen problems
reduce agency use

In fiscal year 1981, Federal agencies acquired at least six forfeited aircraft ranging from 4 to 16 years old. While these represented an acquisition value of over \$800,000, the sometimes fruitless efforts to repair and maintain these aircraft have been costly. According to Customs officials, though, the agency must depend upon forfeited aircraft because authorizations for new aircraft purchases are rare.

The major problem with forfeited aircraft is determining past mechanical problems and estimating current and future repair needs. Potential problems cannot always be detected during initial inspections. For example, Customs in New Orleans acquired a forfeited 1969 Aero Commander and spent only \$8,671 to place it in service. However, after only 50 hours flying time, the aircraft blew both engines. Estimates for repair range from \$150,000 to \$274,000. Due to this high repair cost, the plane was to be declared excess.

Customs Air Support Branch mechanics explained that detecting possible aircraft engine or structural problems often depends on sometimes inaccurate or missing maintenance

logbooks. Without these records, it would be too dangerous to use an aircraft because structural defects may go unnoticed. A reexamination of the engine and fuselage to gain knowledge needed to reconstruct the logbooks would be extremely time consuming and costly. For example, the maintenance supervisor at the Customs Air Support Branch in El Paso said he spent 80 hours attempting to reconstruct the maintenance logbooks on a forfeited 1965 Commanche aircraft.

Because most of the forfeited aircraft are old, many of their spare parts are no longer produced. For example, in 1979, Customs in Miami acquired a forfeited 1956 Rockwell Aero Commander. Since the aircraft is no longer in production, parts are difficult to obtain. Even a 1974 Cessna, acquired through forfeiture in 1980, has gone out of production. These planes, therefore, often remain idle until new parts can be located. This "downtime" is best exemplified by the New Orleans Air Support Branch acquisition of a 1969 Cessna in July 1981. After acquisition, it remained grounded for 10 months awaiting parts. At the time of our review, the aircraft had been flown for only 55 hours and \$61,665 had been spent for parts alone, almost as much as its estimated seizure value of \$63,000.

Customs Air Support Branch officials in New Orleans said their eight-aircraft fleet could be reduced by 50 percent if new aircraft were purchased because about one-half of the fleet is under repair most of the time. In Miami, purchase of new aircraft could reduce maintenance costs as well as increase flight crew and mechanic proficiency. Miami now has nine different types of forfeited aircraft that require various stockpiles of parts and extensively varied mechanic and pilot training.

According to Customs officials in Houston, forfeited aircraft are usable, but rarely are the planes ideally suited for Customs' mission. For example, Houston spent about \$60,000 to replace both engines on an 18-year-old Aero Commander and plans to spend an additional \$60,000 for electronics and component repairs. Yet, even after this work, the plane will still be slower, have less sophisticated sensory equipment, and be restricted to lower altitudes than aircraft commonly used by smugglers.

Forfeited vessels:
too expensive to
restore and operate

In fiscal year 1981, Federal agencies acquired at least 36 forfeited vessels, valued at \$2.8 million. The Customs Service acquired 19, or more than half, of these vessels. Customs has relied heavily on forfeitures as a source of vessels. For example, almost 90 percent of the vessels in its Miami fleet

were obtained as a result of forfeiture. Forfeited vessels often require major modifications or restoration to meet Customs' needs. Many were relegated to infrequent use because of insufficient operating funds to pay for repairs and crew.

Customs officials explained they are often forced to acquire less suitable vessels for their enforcement activities simply because forfeitures are available at the time a need exists. Sometimes modifications have to be made. Officials cited the following examples.

--Customs officials in Miami obtained a 25-foot speedboat that was built specifically for smuggling. Since the boat was the best available, they modified it as best they could, spending about \$4,500 to install conventional fuel tanks and to make repairs. However, since the vessel was designed to maneuver safely only if loaded with bales of marijuana, it only partially meets Customs' needs.

--Patrol officers in New Orleans made major modifications in a recently acquired forfeited 47-foot crewboat. This vessel was suitable for the intended surveillance activity but it could not sustain a crew for the required 1- to 2-week missions. Therefore, Customs allocated \$12,000 to pay a \$4,800 lien and to construct crew quarters. This allocation, however, fell short of the total cost to do the work. As a result, two patrol officers had to spend an estimated 600 staff hours to get the vessel into service.

Vessels in particular suffer from the long storage periods discussed in chapter 3. Despite reasonable efforts to preserve engines, outdrive, and other control systems, corrosion causes mechanical problems. As a result, forfeited vessels must be restored to usable condition. For example:

--In Savannah, Georgia, Customs officials acquired a forfeited 47-foot pleasure craft valued at \$73,600. During test runs, the engines overheated because water had accumulated in the oil. Customs spent about \$25,000 to completely overhaul the starboard engine and to make other repairs before the vessel could be used.

--In Miami, Customs placed a forfeited 36-foot speedboat into service after spending \$3,000 on initial repairs. The agents considered this a modest investment for a vessel ideally suited to Customs' mission. However, shortly afterwards, both engines and power trains had to be replaced. Apparently, poor maintenance by the previous owners had caused internal deterioration.

Even after being modified and restored, many of the forfeited vessels are used infrequently because of continuing repairs and insufficient operating funds. Customs officials in Galveston, Texas, provided the following examples.

--According to Customs district patrol officers, their least cost-effective forfeiture was a 40-foot speedboat obtained from a Miami, Florida, forfeiture in April 1978. After its deployment in Galveston, it had to be overhauled several times and additional repairs, estimated to cost \$15,000, were still needed. As a result, it was not used at all in fiscal years 1981 and 1982. It was finally excessed and sold in July 1982.

--Another expensive vessel to operate was a 47-foot pleasure craft obtained from a Miami, Florida, district forfeiture. It was placed into service in Miami at a cost of \$8,404. Subsequently, the vessel was transferred to Corpus Christi, Texas, where it has since accumulated operation and repair costs of \$17,153. The vessel was used 213 hours in fiscal year 1981 and only 57 hours in fiscal year 1982. Major contributors to its downtime were the need for repairs and insufficient crew. According to the regional patrol director, the vessel's use was also limited because it lacked the necessary navigational equipment. Customs officials, though, recently acquired the necessary radar equipment from forfeiture. They told us that this procedure was the only way they could obtain the equipment.

Customs officials also complained that many forfeited conveyances were often incompatible with the number of available staff and available funds. For example, in fiscal year 1981, 16 vessels assigned to the Houston Customs region were not used 24 percent of the time strictly because of insufficient staff to operate them. Even when vessels were not used, dockage fees continued to drain operating funds. For example, the Houston district had a 57-foot yacht that was not used at all in fiscal year 1981 but still incurred berthing fees of \$2,220.

Because of the problems experienced in trying to use forfeited vessels, Customs officials have begun acquiring such vessels solely for the purpose of exchanging or selling them to acquire new vessels designed to meet their needs and reduce operating costs.

OVERCOMING PROBLEMS THROUGH EXCHANGE/SALE

When enacting the Federal Property and Administrative Services Act of 1949, the Congress intended the act to provide the Government with an economical and efficient system

for the use of available property. As part of this "economical and efficient system," the act provided that any executive agency under applicable GSA regulations could exchange or sell certain items of equipment needing to be replaced. Sales under the exchange/sale procedures require that GSA conduct the sale, unless an agency, such as Customs, has its own statutory sales authority. The exchange allowance or proceeds of the sale could then be used to pay for the replacement items.

The idea of having Customs exchange or sell forfeited vessels is a relatively new one resulting from a Miami, Florida, district employee's suggestion in 1980. A subsequent Customs regional counsel's interpretation of applicable exchange/sale laws and regulations resulted in approval by the Department of the Treasury. GSA approval followed in June 1982. Thus, Customs is able to use the exchange/sale procurement techniques as a tool in acquiring quality vessels.

Reverting to the barter system

Under Customs' interpretation of the exchange/sale procedures, and as approved by GSA, agency officials can "trade" used forfeited property to suppliers for new items without expending appropriated funds and without GSA procuring the new items. Agencies must, however, follow GSA regulations. Use of the exchange/sale procedures for forfeited conveyances has the effect of supplementing Customs appropriations. To date, only Customs regional officials in Miami and Houston have traded forfeited vessels for new vessels.

The Miami regional patrol requested a forfeited, 58-foot pleasure craft for Customs' use. However, since it was suitable for Customs' use but also had high trade potential, the agency planned to use it only as a trade for a new, more suitable 40-foot craft.

In Houston, Customs patrol officials exchanged a forfeited 57-foot vessel for a new, smaller pleasure craft to be used for covert intelligence gathering operations. The forfeited vessel was acquired in March 1979 and incurred more than \$43,000 for maintenance and repair costs through June 1981. Customs seldom had the necessary large crew, so the vessel was rarely used. In November 1981, the forfeited vessel, valued at \$25,000 to \$28,000, was traded for a new boat and trailer valued at \$25,257.

Turning forfeited vessels into cash

To date, only Customs officials in New Orleans have had a "sales" transaction under the exchange/sale authority for

property originally obtained through forfeiture. According to these officials, a tug boat was brought into Customs service from forfeiture in December 1981 to be reoutfitted for special operations. They later decided, though, that their patrol needed a smaller, more versatile vessel. While these officials contend there was thorough justification for originally acquiring the tug, an internal memo from the regional counsel stated that the vessel was never intended for official use and suggested that it was acquired solely for "trade bait."

The following appeared in the request to sell the vessel pursuant to the exchange/sale regulations.

"The purpose of the sale * * * is to obtain a vessel which is both better suited to current enforcement needs and is also of a design which would allow greater flexibility in future operations.

"The crewboat intended to be obtained would blend with the normal traffic in the surrounding Gulf areas better than the tug does. * * * The tug is a rarer type of boat and its presence would be more conspicuous than the crewboat * * *"
(underscore added)

GSA officials sold the tug through sealed bids on April 1, 1982, for \$150,000. At the time of our review, no purchase had been made. According to regional officials, three new boats--one crewboat and two speedboats--will be bought to replace the forfeited tugboat.

Using the exchange/sale program
to acquire needed conveyances

By using the exchange/sale program, Customs may be able to acquire the type of vessels needed to meet operational requirements and to rid itself of less suitable, high cost maintenance vessels. The draft of the New Orleans vessel exchange/sale procedures shows Customs plans to take advantage of that opportunity. The plan reads, in part, as follows:

"Problem Statement: Current vessels in this Region are inadequate to perform enforcement functions because of high maintenance costs and are not appropriate types of vessels. Replacement of these vessels is not possible through converting existing seized vessels to government use or through the purchase of new vessels because of lack of funds.

"Objective: Utilize exchange/sale procurement program for replacement and upgrading of the Region V Marine Program.

"Program Description: Review current marine fleet, develop list of vessels to be replaced, develop list of replacement vessels.

"Resource Requirements: One staff in Patrol for 4 months to establish and monitor program. One staff member in LMD for two staff months to implement the exchange/sale program. One staff member in regional counsel for one staff month to implement and advise the program."

In Houston, Customs' plan is not as formal; however, officials there are acquiring forfeited vessels one-by-one for exchange/sale. Their latest acquisition is a forfeited 40-foot pleasure craft, which was acquired for "official use" in June 1982. This acquisition technique has the potential for use by Customs nationwide.

Additionally, GSA granted Customs a limited waiver for the exchange/sale of aircraft. Normally, aircraft are excluded from exchange/sale eligibility; if no longer needed, they must be reported to GSA as excess property, and if eventually sold by GSA, their sales proceeds go to the Treasury. For a period of 3 years, GSA has authorized Customs to use the exchange/sale procedures to acquire up to four aircraft a year.

DEA and INS officials also expressed an interest in using the exchange/sale program to acquire new conveyances. They too want to reduce forfeited conveyance operational costs. Thus, all of the seizing agencies could take advantage of forfeited resources, which are not acquired through expenditure of appropriated funds, to independently acquire property through the trade or sale of forfeited property obtained for "official use."

SPECIAL FUNDS WOULD BETTER SERVE AGENCY
NEEDS AND PROVIDE NEEDED ACCOUNTABILITY
AND OVERSIGHT

As of April 1982, the Government had an untapped pool of resources, amounting to about \$82.1 million--in the form of seized vehicles, boats, and planes. In 1980, Customs officials recognized the potential benefits to be derived from these resources and began taking greater advantage of them. As discussed previously, instead of continuing to incur high operating costs by trying to use often unsuitable forfeited conveyances (including the equipment on board) and holding them until a need occurred, Customs began using the exchange/sale program to convert these assets into more suitable forms--new assets or cash for new assets. At present, nothing prevents other seizing agencies from engaging in similar practices.

However, the exchange/sale program has limitations that prevent seizing agencies from realizing the maximum benefits from this pool of resources in their law enforcement activities. More importantly though, Customs', or any other agency's, use of the exchange/sale program results in obtaining new conveyances without congressional oversight.

Officials of Customs, DEA, and INS recognized that establishment of special funds from forfeited property sales proceeds, which could then be used to buy needed conveyances and equipment, would increase flexibility and effectiveness.

Limitations on the use
of the exchange/sale program

The Federal Property and Administrative Services Act of 1949 (Section 201 (c); 40 U.S.C. 481 (c)) and the implementing Federal Property Management Regulations (FPMR; 41 C.F.R. 101-46) have a major objective of encouraging the efficient and economical use of Government property. For example, they authorize Federal agencies to acquire and use forfeited property. They also authorize Federal agencies to take advantage of the residual value of certain items that are no longer needed by disposing of them through the exchange/sale program.

As discussed previously, Customs officials used these two authorities (i.e., retention of forfeited property for official use (40 U.S.C. 304h; 304i) and the exchange/sale program) to institute a program to acquire additional needed assets to carry out their law enforcement activities. They began retaining forfeited assets not ideally suited to their needs and converting them under the exchange/sale program to more suitable assets. The Customs' Chief Counsel reviewed the practice and believed that it was legally acceptable. Subsequently, the GSA General Counsel determined this practice was authorized.

While the program has increased Customs ability to acquire needed assets, the program's effectiveness has been limited by various FPMR restrictions applicable to the exchange/sale program. For example:

- Assets generally must be disposed of and acquired through the exchange/sale program on a one-for-one basis--for example, one boat must be replaced by one boat. Although exceptions to this general rule are allowable, according to Customs officials, this requirement prevents effective use of forfeited assets whose individual values are far greater or less than the assets they need to acquire. Often the exchange or sales value of two or three forfeited assets would be needed to acquire a replacement asset.

- The forfeited asset to be exchanged or sold must be "similar" to the asset being acquired--that is, boats for boats, cars for cars, etc. This often poses serious problems at locations where the types of assets needed are not the same as those forfeited. For example, in Corpus Christi, Customs had forfeited vessels but needed cars.
- Replacement of aircraft through the exchange/sale program is prohibited unless the prohibition is waived by GSA. While GSA has granted Customs the required waivers in the past, there is no assurance that it will continue to do so.
- Replacement of equipment used on board vessels or aircraft is prohibited under the exchange/sale program. Therefore, the benefit realized by Customs from the forfeiture of such equipment has been limited to those relatively few instances when the forfeited equipment itself can be used.

To administer the program and comply with FPMR exchange/sale restrictions, Customs diverts law enforcement personnel from their normal duties. Customs patrol officers must, for example, document the justification for "replacing" forfeited assets, hire appraisers to establish exchange or sales value of forfeited property, contact and coordinate with potential buyers when forfeited assets are to be sold, and negotiate and compare various trade options offered by suppliers when the forfeited assets are to be exchanged for others. In New Orleans, alone, Customs planned to devote one patrol officer full-time for 4 months just to organize and initiate the program.

Advantages of special funds

The exchange/sale restrictions discussed earlier create an "item-by-item" funding mechanism for the purchase of new conveyances. That is, each forfeited conveyance can generally only pay for one new acquisition. We believe the exchange/sale program improves the utilization of forfeited conveyances by allowing the agencies to convert these conveyances to the types of conveyances needed rather than forcefitting the forfeited conveyances into service. However, the exchange/sale program is cumbersome because of the restrictions discussed earlier. In addition, these acquisitions are not subject to congressional approval as are conveyances purchased through the appropriations process.

A better way for the agencies to utilize the value of forfeited conveyances to fight crime would be to deposit the sales proceeds from these conveyances into special funds, such

as those discussed in chapter 3, and then seek congressional appropriations to use the funds to purchase needed conveyances. The proposed funds would also create a more efficient mechanism to utilize the value of forfeited assets to acquire exactly what is needed while establishing congressional control over the acquisitions from the funds.

Law enforcement officials believe that the establishment of special funds from the sales proceeds of forfeited assets would provide them with significant flexibility and would benefit them in acquiring conveyances and equipment needed for law enforcement. In their view, such funds would enable them to (1) acquire more conveyances and equipment, (2) ensure that such assets are truly suitable for their needs, and (3) avoid the adverse effects and difficulties experienced by Customs because of the FPMR exchange/sale program restrictions.

Officials pointed out that use of special funds would enable them to acquire types of conveyances that are not available through forfeiture. For example, one Customs official saw such funds as a way to alleviate the shortage of four-wheel drive vehicles needed to patrol the rough terrain along the Mexican border. Such vehicles are seldom available from forfeiture. Another official indicated that the funds would enable the agency to acquire such things as aircraft and vessel equipment that cannot be obtained through the exchange/sale program without a GSA waiver.

Other officials pointed out that the funds would provide them with flexibility, which would actually allow them to save money in acquiring assets. A DEA official in Houston pointed out that such funds would allow the agency to avoid acquiring costly, luxurious vehicles, such as Cadillacs, and instead lease them for the relatively short periods they are needed for undercover operations. A Customs official in Houston indicated that the funds would permit agencies to pay off liens on forfeited conveyances that are suitable for acquisition and use. In the past such assets often could not be acquired because sufficient appropriated funds were not available to pay off the liens.

A Customs official in Miami suggested a fund be established similar to the Law Enforcement Trust Fund set up by the City of Fort Lauderdale. The city established a special fund in which the proceeds from sales of property forfeited to the city are deposited. According to the Florida Contraband Forfeiture Act, the fund can only be used for law enforcement purposes, in addition to the city's regular law enforcement budget, and is not to be considered a source of revenue to meet normal operating needs of the city. For example, the city has used the fund to construct a new \$3 million jail facility and to provide a lawyer specifically for forfeiture cases.

Many agency officials believed their headquarters offices should receive the proceeds directly and decide how their fund should operate. These officials want the authority to use the proceeds from forfeited conveyances to purchase high-dollar items, such as vessels and aircraft. District level officials, especially, want the decisions on which conveyances to purchase to begin at the "operating level," similar to the Customs exchange/sale program. Also, they still want access to forfeited conveyances, when suitable and cost-effective.

Because of the many benefits discussed previously that would result from the agencies' use of the special funds, as provided by the Congress, to purchase conveyances and equipment, we believe the agencies will be less likely to use the more difficult and less efficient exchange/sale technique to the extent that appropriations are available from the funds to purchase conveyances. Although that technique has some benefits for the agencies, acquisition of conveyances through the special funds will provide greater congressional oversight of these acquisitions. To ensure that the Congress has complete knowledge of these agencies' conveyance acquisitions, we believe the agencies should disclose to the Congress the number and value of forfeited "windfall" (free) assets that are retained for official use or used in the exchange/sale program.

CHAPTER 5

DISPOSAL PROBLEMS

CAN HINDER LAW ENFORCEMENT EFFORTS

Law enforcement efforts of INS, Customs, DEA, and the Marshals Service have occasionally been interrupted or otherwise adversely affected by problems with disposal of forfeited property. Periodically, INS has not seized conveyances used to smuggle illegal aliens into the United States because of a lack of storage space. In addition, Customs, DEA, and INS use law enforcement agents as property managers, taking them away from their primary responsibilities. Further, the Marshals Service's primary duties have been strained by its having to hold and dispose of seized property, which duplicates seizing agency functions in many cases.

INS HAS STOPPED SEIZURES INTERMITTENTLY

At INS, seizures were stopped intermittently in California and Texas because of a lack of GSA sales support and INS storage space. Further, in Florida, INS released a large vessel involved in alien smuggling because anticipated storage costs would have been an unacceptable drain on appropriations.

INS stops seizures in California

In fiscal years 1981 and 1982, INS stopped seizing vehicles involved in alien smuggling in southern California due to inadequate GSA sales support and a lack of INS storage space. The INS Western Region, encompassing California, Arizona, Nevada, and Hawaii, began seizing conveyances near the end of fiscal year 1979. Seizure data below shows a decline in the number of conveyances seized in fiscal year 1981, which INS officials attribute to a lack of storage space.

INS Western Region Conveyance Seizures (fiscal years 1980-1982)

<u>Fiscal year</u>	<u>Number of conveyances seized</u>	<u>Estimated value</u>
1980	2,280	\$4,678,049
1981	2,089	4,606,342
1982	3,199	6,214,370

According to INS Western Region officials, seizures were stopped several times during the estimated 6-month period from March through August 1981 because GSA did not sell INS forfeited vehicles fast enough, causing a lack of storage space for additional vehicles. For example, INS Border Patrol Sector and Port

of Entry District in San Ysidro, California, seized an average of 69 and 48 vehicles a month, respectively, from October 1980 through February 1981. However, from March through August 1981, the Border Patrol and Port of Entry seized an average of only 11 and 33 vehicles a month, respectively. During the 3-month period, from April through June 1981, the Port of Entry seized an average of only seven vehicles a month.

Officials at GSA's Region 9 in San Francisco, California, who were responsible for sale of INS vehicles in California, agreed that inadequate sales support hindered the INS seizure program in 1981. They stated that a number of factors were involved, including a small INS sales site, more INS seizures than expected, and a limited number of GSA people and insufficient money to conduct sales.

In a February 1981 letter to the INS Western Region, GSA Region 9 explained the problems with the sales site. GSA stated that, since the INS San Ysidro, California, sales site could display no more than 60 vehicles for sale at any one time, it would take 5 GSA sales and approximately 6 months to sell the backlog of 275 vehicles. GSA also stated that it had a sales site in Bell, California, that could accommodate the INS vehicles, but that INS must pay for moving the vehicles. The Bell site is approximately 220 miles from San Ysidro. Furthermore, GSA stated that it did not have other sites available in southern California and asked INS to withhold future sales requests until the backlog was overcome.

In June 1981, GSA Region 9 officials informed their central office in Washington, D.C., that INS had requested more help from GSA in selling more vehicles in less time because of the accelerated seizure of vehicles in southern California. However, these officials stated that this increase in their sales workload from INS had coincided with a decrease in GSA people and money to conduct sales.

To solve the immediate storage problem, INS obtained storage space from the Navy at Ream Field in the San Diego area. This site is close to the INS Border Patrol and Port of Entry seizure areas. The storage area has the capacity for approximately 800 vehicles at two separate locations on the Naval base. One of the locations has the capacity to display a large number of vehicles for sale. In June 1981, GSA sold 262 vehicles for INS which helped relieve the backlog.

INS and GSA officials generally agreed that the sales and storage problems in California have improved since June 1981, although they have recurred. According to INS officials, seizures were temporarily stopped again in January 1982. However, two sales by GSA during February relieved the problem.

In April 1982, GSA and INS officials discussed the seizure program and the sale and storage problems in southern California. GSA agreed to hold two sales a month whenever requested by INS. Further, GSA stated that it was in the process of obtaining an additional 9-acre lot in the San Diego area to provide more storage space. However, INS officials do not believe this site is as convenient as its current site and may be less secure and more susceptible to vandalism.

Prior to GSA's agreement to provide INS with two sales a month, INS had requested GSA approval to have the Defense Property Disposal Office at Ream Field sell its forfeited vehicles. Although the disposal office expressed a willingness and had the capability to handle INS sales, GSA rejected the proposal.

At the completion of our review, the INS Western Region Commissioner stated that GSA was providing outstanding service and cooperation in selling vehicles seized in the region. However, a similar problem with GSA sales support had surfaced in INS's Southern Region.

INS stops seizures in Texas

In Texas, the INS Border Patrol stopped seizing vehicles because of a lack of storage space and GSA sales support. During September and October 1982, INS stopped seizure operations in one of the largest stations in Texas--Hebbronville--because the GSA sale planned for this location was postponed and the storage facility was filled to capacity with 264 vehicles. An INS official estimated that the agency could have seized as many as 65 to 100 additional vehicles during this period. In October 1982, GSA sold 136 forfeited vehicles in Hebbronville and INS resumed seizure activities. However, INS officials believe that they may have to curtail seizure operations in the future if GSA does not schedule sales more frequently. GSA officials say that reductions in their resources have made it difficult to meet the need for additional INS sales.

INS returns a large seizure in Miami because of storage costs

In 1982, INS in Miami released a 90-foot, 80-ton cargo vessel to its owner, after it had been seized for smuggling illegal aliens. Anticipated storage costs for the vessel would have exhausted the entire year's allocation of funds for storage and maintenance of seized property. After the vessel's release, the U.S. Coast Guard reported the vessel was again being used to transport illegal aliens into the country.

Special funds would
relieve sales and storage problems

Sales and storage problems, such as those experienced by INS in California and Texas, could be avoided through creation of special funds from the sales proceeds of forfeited conveyances. Agencies like INS could use the special funds to pay private auctioneers to sell forfeited conveyances rather than stop seizure operations because of infrequent GSA sales. If INS, DEA, and Customs are to continue increasing the use of seizures to fight crime, additional sales will be necessary and GSA's sales staff may be strained in the future to meet those additional sales requirements. The use of the special funds to pay private auctioneers would meet this need for increased sales in a timely fashion.

Diversion of agency resources from law enforcement efforts could be avoided through the creation of special funds from the sales proceeds of forfeited conveyances. In amounts specified in annual appropriations acts, the special funds could be used to, among other things, defray the costs of storing, maintaining, and protecting seized assets--costs which rise or fall as the volume of seizures increases or decreases. Since the volume of conveyances being sold will also expand or contract based on changes in the number of recent seizures, the rate at which money flows into the special fund will likely, over time, correspond to the agencies expenditure needs to care for seized conveyances. The funds would allow agencies to cover high storage costs for large conveyances, rather than return the property as INS did in the case of the 90-foot cargo vessel discussed above.

LAW ENFORCEMENT OFFICERS
ARE USED AS PROPERTY
MANAGERS

Customs and INS law enforcement officers are taken away from their primary responsibilities when used, on occasion, as property managers. Because administrative personnel are not available, these officers are used to conduct inventories, guard premises, drive and help sell cars, and process paperwork.

In Customs' Southeastern Region, a patrol officer was detailed to a full-time survey of seized property in the Miami district for a 4-month period. Because this district had more than 400 vessels scattered over 33 storage sites, the patrol officer had to survey each site to determine the condition of the vessels. This kept the officer from his full-time law enforcement duties as a boat captain. Customs' Western Region uses inspectors as auctioneers and security guards at forfeited vehicle auctions, taking them away from their law enforcement responsibilities.

At INS, many law enforcement officers perform property management duties that should be done by full-time administrative personnel. For example, Border Patrol Sector and Port of Entry agents in San Diego must drive seized cars from the sector and district, where the cars are seized, to the storage location at Ream Field; move cars to the selling lot for inspection the day before the sale; and assist GSA with the sale.

INS Border Patrol officials in Laredo, Texas, believe that the disposal of forfeited conveyances hinders their law enforcement efforts. One supervisor and two patrol agents work full time in the role of property managers. For example, the agents process the seizure paperwork, contact owners and lienholders, advertise the seizure, and move the vehicles to the storage site. They also show the vehicles to prospective bidders and release each vehicle after its sale. These agents should be in the field detecting and arresting smugglers while administrative personnel perform the property management functions.

INS's office in Miami assigned a Border Patrol special agent, normally employed in the antismuggling unit, as a part-time seized property officer. The officer estimated that about 85 percent of his time is spent on seized property. This reduced the officer's antismuggling caseload to about a quarter of what it was prior to being assigned as a seized property officer.

Law enforcement officers are used as property managers because there are insufficient administrative positions and personnel. However, hiring the needed people or contracting out administrative work, such as conducting inventories, guarding buildings, driving and selling cars, and processing paperwork, are feasible options with the establishment of special funds. The proceeds from the sales of forfeited conveyances could be used to pay for these services.

U.S. MARSHALS' RESOURCES
ARE NEEDLESSLY STRAINED BY SEIZED
PROPERTY FUNCTIONS

Use of the Marshals Service to store, maintain, move, and sell seized Government property infringes on its ability to carry out its main duties for the Federal judiciary and the Department of Justice. Such involvement of the Marshals Service is duplicative and unnecessary because the marshals only redo what the agencies have already done. That is, they tow or drive conveyances from the seizing agency's locations to their own storage location. While the courts have relieved the Marshals Service of this responsibility in some cases, additional relief is possible.

The Judiciary Act of 1789 established the U.S. marshal as the first Federal law enforcement position. The act directed marshals to attend Federal court sessions and execute all processes and orders directed to them by the courts. Execution of these processes involves such things as notifying a party that an action against it has been commenced, compelling the appearance of an individual, or forcing compliance with a judicial order. Since 1789, the Congress has assigned such a wide variety of assignments to the marshals that they have become, in effect, administration "handymen." For example, from time to time they have been directed to do such tasks as take the census, supervise jails for Federal prisoners, and assume custody of all vessels seized by revenue officers.

In 1969, the Attorney General established the Marshals Service as a bureau within the Department of Justice. As officers of the Department of Justice, marshals are supervised and directed by the Attorney General through the Director of the Marshals Service and are assigned responsibility for various law enforcement program areas. These primarily include courtroom security, witness and prosecutor protection, movement of prisoners, and apprehension of Federal prison escapees and other fugitives from justice. Although marshals are officers of the Department of Justice, they are also officers of the Federal courts. As such, they assist court operations, by transporting and producing prisoners as needed, serving processes, executing various commands of the court, and providing security to the court.

The involvement of the marshals with seized conveyances stems from their duties in serving processes. When directed by the courts, they are responsible for posting arrest notices on seized property, publicizing these arrests in local newspapers, and assuming custody of property. The courts can also direct the marshals to sell the property. The Marshals Service is a relatively small agency with about 2,200 personnel and its officials believe that their limited resources have been needlessly strained by the recent increases in seizures. The following examples illustrate the problem that the marshals face.

--The U.S. marshal in Corpus Christi said that having to arrest and assume custody of seized conveyances has limited his ability to perform other responsibilities such as transporting prisoners and participating in the witness security program. Further, the marshal noted that with a staff of only six deputies to cover a 10-county jurisdiction, one deputy can spend an entire day driving to post an arrest notice on a seized conveyance. According to the marshal, he is not equipped for or adequately funded to assume custody. He, therefore, routinely requests the court to appoint substitute custodians. However, he still must spend time posting

arrest notices to conveyances, which takes time away from his other duties.

--The chief deputy U.S. marshal in Houston stated that his office's involvement in the forfeiture of seized conveyances limits his ability to perform other duties. He stated that the Marshals Service personnel in the Southern Judicial District of Texas spend about one-fourth of their time on handling seized property. According to the chief deputy, about 7 staff-days are spent on private seizures each month and about 2 days are spent on Government agency seizures. He also stated that seizures are considered less than a primary responsibility to the Marshals Service since it is not provided appropriated funds for seizure activities. The involvement with Government seizures extends from other Federal court-related responsibilities and is, therefore, not directly funded.

Because of this lack of funding, the Marshals Service actually halted accepting seizures in the district with court approval, according to the chief deputy. He stated that the court had ordered the marshals to arrest a shrimp boat seized by DEA. Since the marshals took custody of the boat they were responsible for its storage cost. The marshals sold the vessel on order of the court, but the \$9,000 obtained at the sale did not cover the \$22,000 storage cost. DEA, the seizing agency, refused to reimburse the Marshals Service for this cost and the Marshals Service, with the agreement of the court, refused to take custody of any further DEA seizures. Subsequently, DEA reimbursed the Marshals Service. Currently, according to the chief deputy, district judges within the Southern District of Texas routinely appoint seizing agencies as substitute custodians to assume storage expenses after the marshals arrest the property.

--The U.S. marshals in Los Angeles and San Diego stated that in the California Central and Southern judicial districts, the courts have established procedures requiring that the seizing agency, rather than the Marshals Service, maintain custody of the property for the court. The reason for initiating these procedures, according to the marshals, was to conserve the Marshals Service's manpower and budget resources and to avoid unnecessary duplication and expenditure of funds.

--The deputy marshal in charge of seizures in Dallas also commented on the strain placed on other other U.S. marshal duties. The deputy marshal viewed the major cost of the marshals involvement with seized Government conveyances as staff time that is lost driving to the seized

conveyances and performing clerical duties. He said the time could be spent more productively executing other warrants, which in his view is the marshals' primary job.

The agencies' growing seizure programs have placed an additional burden on the marshals and have in some cases affected their other duties, even though their involvement is not routinely required. In some judicial districts the courts have appointed the seizing agencies as substitute custodians. If the courts routinely appointed the seizing agencies as substitute custodians in all districts, the marshals could be relieved of a duplicative and unnecessary duty since the seizing agencies have already stored and secured the conveyances.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

As a result of significantly increased use of seizure and forfeiture authority to fight crime, Federal agencies are taking possession of several thousand cars, boats, and planes each year. The Government must store, preserve, secure, and dispose of these conveyances. Law enforcement agencies have placed great emphasis on seizure efforts as a means of taking profits out of crime, but have devoted insufficient efforts to the management of the seized and forfeited conveyances. As a result, much of the property has significantly deteriorated.

Although many--congressional committees, the Department of Justice Task Force on Forfeited Property, the President's Private Sector Survey, and Customs and DEA internal auditors--are aware of the property deterioration, little management data is available to define the parameters of the problem or to monitor progress toward its resolution. As a result, problems identified in a 1977 GAO audit report and a 1979 Customs audit report still exist.

A substantial number of conveyances cannot be forfeited without court proceedings because their value exceeds the \$10,000 administrative forfeiture limit. Since administrative forfeiture is generally much quicker than judicial forfeiture, conveyances that are administratively forfeited must be stored for shorter periods and incur less devaluation from aging, deterioration, vandalism, and theft, as well as less storage costs. Raising the administrative forfeiture limit, to permit increased use of administrative forfeiture, would reduce this devaluation and also reduce the workload of the courts and U.S. attorneys.

Justice and Treasury officials believe, and we agree, that the administrative forfeiture limit can be removed entirely for drug-related forfeitures and increased to \$100,000 for other types of forfeitures as long as any owners, who wish to contest the forfeiture in court, have relatively easy access to this forum. The only legal barrier to contesting a forfeiture in court is the required \$250 bond, which the agencies or the courts can waive for those who cannot afford it. As long as the Congress maintains a reasonable bond requirement, the owner's right to judicial review is protected. In addition, procedural changes can shorten Customs' administrative forfeiture process, which takes considerably more time than the processes of INS and DEA. The shortening of this process will further decrease property devaluation and storage costs.

Better management information and shortening of the forfeiture process will not altogether solve the problems with seized conveyances, because they must still be adequately protected and maintained while in storage awaiting forfeiture. The property

should be adequately preserved, not only to return the highest value to the Government, but because some of the property is returned to the owners. To return the most money from sale, the property must also be prepared for sale through cleaning, minor repairs, and better advertising.

The creation of special funds, such as those proposed by the Congress in the Violent Crime and Drug Enforcement Improvements Act of 1982, ^{1/} could alleviate many of the current problems associated with storing and maintaining seized conveyances. Under the present process, the sales proceeds from each forfeited conveyance must cover the storage and maintenance expenses of that particular item or the agency must use appropriated funds. This process causes a cash flow problem for the agencies holding the conveyances when they must expend appropriated funds to pay for storage and maintenance until they receive reimbursements from sales proceeds. This problem is exacerbated when forfeiture proceeds do not cover costs. If the storage period covers 2 or more fiscal years they are not reimbursed because reimbursements for costs incurred in prior fiscal years must be remitted to the Treasury. Also, since the costs are incurred and reimbursements can only be made on an item-by-item basis, the proceeds from the sales cannot be used to pay for the "losses" on conveyances whose storage and maintenance costs are greater than their eventual sales revenues.

The present funding mechanism encourages agencies to spend the least amount possible for the maintenance and storage of seized conveyances, so that appropriated funds are not "lost" from law enforcement activities. Conveyances are often stored with little maintenance, preservation, or security even though increased maintenance would be cost-effective.

Use of general appropriations to pay seized conveyance storage and maintenance costs causes the law enforcement agencies difficulty in accurately estimating and budgeting the net amount necessary to be appropriated in any fiscal year for this purpose. Determination of this net amount requires estimates of

--the gross amounts to be expended for different types of conveyances to be seized in the future and stored in a variety of locations and

--the amounts of the reimbursements that might be received from the sales proceeds of forfeited conveyances during a particular fiscal year.

^{1/}The Congress passed this legislation in December 1982; however, the President vetoed it for reasons unrelated to the creation of the funds.

Accurate estimation of both of these amounts is very difficult. Creation of the proposed special funds would eliminate the need to estimate the reimbursements in any given year and protect the Government from the negative effects of making these estimates inaccurately.

The special funds (the Customs Forfeiture Fund for the Customs Service and the Drug Forfeiture Fund for Justice) proposed by the Congress in 1982 would have changed the "item-by-item" funding mechanism for conveyances to a "group" funding method. The sales proceeds of all forfeited conveyances would have paid for the expenses of all conveyances in storage. Since current sales proceeds, on an overall basis, exceed expenses by a ratio of more than \$3 to \$1, existence of such funds should relieve law enforcement agencies' uncertainty of their ability to pay for storing and maintaining seized conveyances without drawing resources from other law enforcement functions.

Although we believe the primary purpose of the special funds should be to store, protect, and maintain seized conveyances, the funds also offer the opportunity to more efficiently use the value of forfeited conveyances to fight crime. The current process allows the agencies to utilize forfeited conveyances or to obtain new conveyances on an "item-by-item" basis through the exchange/sale program. The exchange/sale program authorizes agencies to acquire new conveyances that are actually needed rather than requiring them to "forfeit" forfeited conveyances into service; however, it is a cumbersome process, as discussed in chapter 4. Additionally, retention of forfeited conveyances and acquisition of new conveyances through the exchange/sale program are not subject to congressional oversight as are conveyances purchased through the appropriations process.

When specifically authorized by the Congress, the use of special funds to purchase conveyances would better utilize the value of forfeited conveyances to fight crime, since acquisition of needed items would not be complicated by the many restrictions of the exchange/sale program. For example, the funds could purchase a variety of conveyances while the exchange/sale program generally requires a one-for-one acquisition of the same kind of property. If the agencies were authorized to use the funds to purchase conveyances, we believe the Congress would gain additional oversight because the agencies will be more likely to seek approval for the use of the funds to acquire conveyances they need to carry out their law enforcement mission. To the extent that the use of the funds enables the agencies to acquire the conveyances they need, we believe they will be less likely to use the more difficult and less efficient exchange/sale program. The Congress could control, in a manner similar to the regular appropriations process, the number and types of conveyances purchased through the funds. In addition, the Congress could judge and evaluate the extent to which agencies

acquire conveyances outside the appropriations process if the agencies were required to report such acquisitions annually.

The utilization of forfeited conveyances by Federal law enforcement agencies to fight crime has a long historical basis, and the agencies have used the exchange/sale program to fight crime by acquiring needed assets. However, these agencies do not systematically inform the Congress of the number and value of forfeited conveyances placed in their fleets and those used for exchange/sale, as we believe they should.

Expenditures from the proposed special funds should be subject to congressional oversight and control. To accomplish this, we believe that legislation should be enacted which will provide that, in amounts specified in annual appropriations acts, monies may be expended from the special funds to properly store, secure, maintain, and sell the property. In addition, this legislation also should provide that monies may be expended from the funds to purchase conveyances in the amounts and in the manner specifically provided for in annual appropriations acts. The funds should also have 5-year sunset provisions so that the agencies must justify the funds continued need and effectiveness so the Congress can specifically authorize their continued existence if it chooses to do so. We do not believe that the size of the funds should be limited to specific amounts at any given time, since this may act as an incentive for the agencies to incur excessive expenditures to get down to the limit. However, we believe the Congress should consider requiring the transfer of unneeded monies from the funds to the Treasury at such times as it deems appropriate.

We did not attempt a detailed analysis of whether one, or more than one, special fund would be most beneficial to the Government. Since Customs, DEA, and INS held over 98 percent of the seized conveyances that were being stored at the time of our review, with over 93 percent of the value, we believe that the funding problem for storage and maintenance is most severe for these agencies and that they would benefit most from the creation of special funds. Since the FBI plans to increase seizure operations in August 1983, we believe the FBI should also have the benefits of a special fund. For illustrative purposes, our draft legislation (see app. I) includes FBI expenses for seized conveyances and sales revenues from forfeited conveyances in the Drug Forfeiture Fund.

Separate funds would require each agency to carefully balance the advantages of utilizing forfeited conveyances against the loss of revenue such utilization would cause to its fund. Conversely, a single fund, managed by a central agency such as GSA, would require the central agency to determine the allocation of forfeited conveyances to various law enforcement agencies so the special fund would have adequate funding for

storage and maintenance. Otherwise, the seizing agency could acquire forfeited conveyances without regard to the loss of revenue to a fund managed by another agency. While a central system would be possible, we believe it would be difficult to balance the needs of various agencies located in different departments against their "fair share" of forfeited conveyances. However, we believe a centralized system within a single department, such as Justice, would more likely be able to allocate resources among its various components in a more equitable way since each department often makes resource allocations among its operating units.

We believe the funding problems of INS should be corrected along with those of DEA and the FBI. To date, none of the proposed legislation has attempted to alleviate INS's funding problem. This could be accomplished by either creating a separate special fund for INS or by including INS-related forfeitures in a centrally managed fund. For illustrative purposes, our draft legislation includes a separate INS fund.

Finally, the U.S. marshals often take possession of and assume the custodial duties of moving, storing, and maintaining conveyances originally seized by Customs. By seeking and receiving judicial orders appointing Customs as a substitute custodian for these conveyances, the Marshals Service could be relieved of these duplicative functions, which currently divert resources from its other law enforcement duties.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress enact legislation to:

--Raise or remove the administrative forfeiture limit for conveyances transporting illegal narcotics, other forms of prohibited merchandise, and illegal aliens. Such legislation would increase the number of seized conveyances that could be forfeited administratively ^{2/} and considerably shorten the time from seizure to forfeiture. Anyone wishing to judicially contest a seizure in Federal

^{2/}If there had been no forfeiture limit for drug-related seizures and the limit had been \$100,000 for non-drug-related seizures, 98 percent of a random sample of seized conveyances disposed of in fiscal year 1981, which had to be judicially forfeited, would have been eligible for administrative forfeiture. Section 411 of Title IV of the Comprehensive Crime Control Act of 1983 (S. 829 and H.R. 2151), Section 11 of the Comprehensive Forfeiture Act of 1983 (S. 948), Section 331 of the National Security and Violent Crime Control Act of 1983 (S. 830), and Section 201 of H.R. 3299 would change the limits to these amounts.

court could still do so by filing the required claim and bond.

--Establish special funds from the proceeds of forfeited conveyances seized by Customs, DEA, and INS to enable these agencies, in such amounts as provided in annual congressional appropriations acts, to adequately inventory, store, protect, and maintain seized property and to properly clean, repair, and advertise the property for increased sales revenue. Proceeds from the sales of conveyances should be assigned to the fund of the agency that was primarily responsible for storing and maintaining the conveyances. The funds should also be available, in amounts and in the manner specifically provided for in annual appropriations acts for:

- (1) acquisition by lease or purchase of conveyances, including those which are not normally obtainable through GSA procurement, suitable for agency covert surveillance, or related law enforcement activities and
- (2) procurement of specialized equipment necessary to enhance otherwise ineffective law enforcement-related conveyances.

--Require agencies to report to the Congress the number and value of conveyances that are retained for use or that are exchanged or sold to obtain new conveyances so they can be easily monitored.

Appendices I, II, and III describe our proposed statutory amendments, an analysis of the amendments, and changes to existing laws resulting from the proposed amendments.

RECOMMENDATIONS TO FEDERAL AGENCIES

We recommend that the Secretary of the Treasury and the Attorney General

- establish information systems to measure the effectiveness of their agencies' management of seized property, including forfeiture time frames, conveyance values at seizure, appraisal source, sales return, sales return as a percent of seizure valuation, storage and maintenance costs, and incidents of deterioration, vandalism, and theft, and
- institute policies that require property managers to consider the costs of property devaluation and lower sales returns in addition to the direct costs for security, storage, and maintenance, when determining the extent and quality of care to be provided for seized property.

To reduce Customs' lengthy forfeiture process, we recommend that the Secretary of the Treasury

--adopt procedures for notifying owners that their property has been seized which request that titles and contracts be submitted with the petitions for return of the property,

--require petitioners seeking return of seized property to state the basis on which such claims are made, provide available evidence to support such claims, and provide proof of ownership or interest, to assist the agency in conducting its investigations,

--reduce the time frames for petitioners to post claims and for Customs to investigate petitions, and

--reduce the review levels for property valued over \$25,000.

We recommend that the U.S. Marshals Service continue to seek court procedure changes that will appoint the Customs Service as the substitute custodian for the property it seizes to reduce staff time and unnecessary expenditures and to increase sales proceeds.

CHAPTER 7

AGENCY COMMENTS AND OUR EVALUATION

The Department of the Treasury, Department of Justice, and GSA provided comments on this report. (See apps. IV, V, and VI.)

TREASURY COMMENTS

The Department of the Treasury agreed with the report's recommendations to raise the administrative forfeiture limit and to establish special funds. However, Treasury questioned whether the special funds recommended by our legislative proposals would overcome the express provisions of 31 U.S.C. 1343 that preclude the purchase of conveyances without specific congressional authorization. We believe that the purchase of conveyances from the proposed special funds should be subject to the same type of congressional oversight and control contemplated by section 1343. Application of this restriction to the special funds would continue the long-standing congressional oversight for the acquisition of these types of conveyances. Expenditures from the funds for the purchase or lease of conveyances should be authorized only in the amounts and in the manner the Congress specifies in annual appropriations acts. We also believe that our proposal provides the specific congressional authorization for agencies to acquire vehicles and aircraft as required by 31 U.S.C. 1343.

Treasury agreed that the administrative forfeiture process can be streamlined, but it does not believe the 60-day petition period should be shortened because it is appropriate in many situations (e.g., documents needed from overseas). However, we believe a shorter petition period is possible. For example, INS, which processes similar cases, must also gather documentation from overseas and it has a 30-day requirement. Treasury further agreed that the automatic referral of cases for headquarters review also prolongs the petition process.

Treasury regulations require that evidence of ownership accompany the owner's petition. Treasury noted that the Miami Customs office has a form letter to accomplish this; however, the Houston and New Orleans offices do not automatically seek this documentation. We believe there should be a uniform standard. Treasury is considering various proposals to reduce headquarters involvement. Treasury also agreed to actively consider our recommendations which it is not presently studying.

Treasury also agreed that Customs needs better and more current management information on seized property and is now developing an automated system to control and monitor seized conveyances. Treasury will begin testing the system later this year. Treasury agreed that the Marshals Service should not be involved in day-to-day seizure and forfeiture operations.

Treasury agrees that the large number of uncontested forfeitures supports raising the administrative forfeiture limit, but also believes that the number of successfully contested forfeitures should also be considered since there are few successful challenges. We believe that regardless of the success rate that Customs has had in court, many owners will (and should have the right to) take their cases to court. Since we believe the owners should have relatively easy access to the courts, most contested cases whose conveyance value exceeds \$10,000 will continue to be contested in court even if the administrative limit is raised. The only cases that will be removed from the courts if the administrative limit is increased are those that are not contested under the present process.

Treasury also made various comments on specific statements in the draft report. To the extent that we agreed with Treasury's comments, we deleted or modified wording in the draft. However, we do not agree with the following comments:

- Treasury questioned data in the report showing the average differences between the appraised values of conveyances at the time of seizure and the proceeds received at the time of sale. Treasury thought that in computing these differences we compared seized conveyances currently being held by the agencies to property sold in fiscal year 1981. However, we only compared seizure values with sales returns for conveyances actually sold in fiscal year 1981. Therefore, the comparison shown in the report is appropriate.
- Treasury also believes that the use of average values for conveyances held in storage may overstate the magnitude of the necessary storage and maintenance because some of these conveyances may be returned to the owners. However, the seizing agency must store and maintain the conveyances even if they are eventually returned to the owners. Therefore, use of averages is appropriate to describe the amount of property requiring storage and maintenance.
- Treasury questions whether poor sales practices are the only reasons for reduced financial returns since these sales are "forced," that is, it must sell the items at a time when market conditions have been depressed due to the overall economic situation. Since our report also addresses depreciation, deterioration, vandalism, and theft, we agree that poor sales practices alone do not account for the reduced financial returns. We do not believe the report implies that poor sales practices are the sole cause of reduced financial returns.
- Treasury believes increased maintenance is not always cost-effective because of the lengthy judicial forfeiture

process and a shorter administrative forfeiture should reduce storage time and make maintenance more desirable. Maintenance can be cost-effective. For example, almost \$2 were returned in additional sales revenue for every \$1 spent for vehicles with storage and maintenance expenditures compared to vehicles without such expenditures for a random sample of vehicles sold in fiscal year 1981. We expect that agency officials would exercise sound judgment in spending maintenance funds. We believe that a shorter storage period will help prevent deterioration and vandalism.

--Treasury questions the significance of a 2-week difference in judicial forfeiture time between Customs and DEA. We included these figures to give the full range of differences between agencies. Although this particular difference is not large, Customs, on the average, takes 83 days more than DEA and 135 days more than INS to process administrative forfeitures. Moreover, Customs takes 140 days more than INS to process judicial forfeitures. Treasury has agreed to actively study its forfeiture processing.

--Treasury thought we proposed creating only one special fund from the sale of forfeited conveyances to care for seized conveyances and wanted a separate fund for each agency. While the draft report proposed three separate funds for (1) Customs, (2) DEA, and (3) INS, we have changed our recommendation so as not to specify the number of funds to be created. We believe this is a congressional policy judgment.

JUSTICE COMMENTS

The Department of Justice agreed with the recommendations to increase the administrative forfeiture limit and to establish a centralized information system on seized conveyances. Justice wants to create a centralized forfeiture organization in the Marshals Service and fund its operations through appropriations, one source of which would be monies in its proposed Drug Assets Forfeiture Fund (see S. 829). Although not explicitly stated in their formal comments, Justice officials have confirmed that the centralized organization and fund would not be involved in managing or disposing of property seized by INS.

Justice believes that only one departmental fund, as proposed in Senate bill 829, should be established. However, the proposed fund makes no provision for INS-related forfeitures. As stated above, Justice also wants additional funding to establish a specialized organization within the Marshals Service to centrally handle forfeiture of what it regards as "almost all property seized by Departmental components."

We do not know the basis for Justice's claim that the centralized organization will handle "almost all" of the property seized by the Department. As discussed later, Justice's approach will not be limited to conveyances but will also cover other types of seized property. Since our review was limited to conveyances, we did not attempt to gather data on other types of seized property.

We believe Justice's approach is incomplete because it largely ignores the problems associated with seized conveyances held by INS, even though INS holds about 73 percent of Justice's seized conveyances. Senate bill 829 only proposes one fund for the Department, which does not include INS-related forfeitures. While this approach should alleviate many of the funding problems associated with conveyances seized for drug-related activities, it will not help solve similar problems at INS. The Justice approach requires that INS continue to store, maintain, and preserve seized conveyances on a conveyance-by-conveyance funding basis, which means that sales proceeds of each forfeited conveyance must cover its expenses (including prorated overhead costs). If expenses transcend fiscal years, reimbursements from sales proceeds for prior fiscal years are remitted to the Treasury. This funding approach encourages agency personnel to spend the least amount possible so that agency appropriations are conserved; yet, this lack of proper storage and maintenance is largely responsible for the deterioration and devaluation of seized conveyances. While we do not object to one fund for DEA and FBI seizures, we believe that INS should also have the benefits of special funds to eliminate the conveyance-by-conveyance funding basis. This should encourage better preservation of seized conveyances held by INS.

Justice is also seeking additional funding to establish a specialized organization within the Marshals Service because Justice believes that the Marshals Service presently

- lacks expertise to handle the wide range of assets seized, which includes real estate, businesses, and farms, as well as conveyances;
- duplicates property management functions within the Department; and
- may not have sufficient resources from the proposed special funds to cover all costs (including new personnel) associated with the preservation of seized property.

To accomplish this goal, the Marshals Service will no longer seek court orders appointing the seizing agencies as substitute custodians within Justice. (However, the Marshals Service will continue to seek substitute custodian orders for Customs.) Instead, Justice is requesting a \$3.1 million fiscal

year 1983 supplemental appropriation to fund a Marshals Service 13-city pilot project to care for all DEA- and FBI-seized property at those locations. INS is not included in the pilot project because the Marshals Service and INS are reluctant to effect the transfer of the large number of conveyances that INS holds to the Marshals Service. As of April 1982, INS held 2,448 conveyances, 72.7 percent of the Justice total.

Justice also believes that a recent Comptroller General decision (B-207318) contradicts our recommendation to expand the use of substitute custodians. The decision held that the Marshals Service was responsible for the payment of storage costs when property was seized pursuant to the execution of a warrant in rem (a court order authorizing the seizure of property) unless another funding source was provided by law for this purpose. The special funds contained in our recommendation would be such a funding source and, therefore, would eliminate the need for Marshals Service appropriations to be used to cover these costs.

We modified our recommendation to the Marshals Service so that the marshals will only seek substitute custodians for the Customs Service, because the pilot project may eliminate many of the problems we found in Justice. We now recommend that the Marshals Service continue to seek substitute custodian orders for Customs, which Customs wants and the Marshals Service has agreed to. Our concern with the Marshals Service was that it

- lacked expertise in property management,

- was not involved with most seized conveyances because most were administratively forfeited (if the administrative forfeiture limit was increased, the marshals would be involved in fewer cases), and

- often moved seized conveyances from a seizing agency's storage location to its own location, causing additional transfer (e.g., towing) and storage expenses. (Seizing agencies normally pay storage on a monthly basis so transfers could cause storage expenses for unused portions of the month while the Marshals Service incurred new storage expenses at another location.)

While the pilot project may give the Marshals Service additional resources and expertise, we believe Justice should consider

- transferring resources from the seizing agencies to the Marshals Service since the marshals will assume many responsibilities currently performed by the seizing agencies and

- measuring the benefits of the new organization with the costs to ensure that its proposal is cost-effective.

The Justice plan to centralize the property management functions for seized conveyances within the Marshals Service is a significant departure from the current process. In a random sample of conveyances disposed of during fiscal year 1981 within Justice, 96 percent were administratively forfeited and, therefore, not handled by the Marshals Service. The remaining conveyances were judicially forfeited; consequently, the seizing agencies held them for almost 40 percent of the forfeiture period until the courts had the marshals "arrest" the property. Since the Marshals Service will be assuming responsibilities from the seizing agencies, it is reasonable that Justice should transfer resources from these agencies to the Marshals Service. Justice also believes that it has duplicate functions among its seizing agencies and that the new organization will minimize ^{1/} this duplication. Justice, however, has no plans to transfer resources to the Marshals Service.

We believe that Justice should consider measuring the costs of the proposed organization with its benefits to determine cost effectiveness. Justice has not attempted to estimate the costs or the ultimate size of the new organization within the Marshals Service, nor has Justice estimated the potential benefits from less property deterioration or better sales returns on forfeited conveyances. Such an analysis should prove useful to the Congress during appropriations hearings.

Justice questions whether the proposed funds will cover all costs associated with seized property. In our opinion, and that of Customs, the proposed funds should cover direct costs (including storage, maintenance, sales expenses, and liens) of forfeited conveyances. Based on a random sample of forfeited conveyances sold in fiscal year 1981, sales revenues were over three times their direct costs. The unanswered question is whether these funds could and should support the salaries of an organization whose size is still undetermined. While we never intended the special funds to cover the salaries of property managers, we believe that Justice should consider estimating these salaries as part of a cost/benefit study on the new organization. The funds we recommend are designed to simplify the funding mechanism from a conveyance-by-conveyance method to a fund where the sales from forfeited conveyances cover the costs of all seized items currently stored. This would

^{1/}Justice plans to retain some duplicative storage and maintenance functions to accommodate seizing agencies that want to acquire forfeited conveyances. For example, should the FBI want to acquire a seized conveyance, then the FBI will hold, store, maintain, and protect that conveyance through the forfeiture process.

- simplify the payment of overhead costs (e.g., the rental cost of an entire warehouse would not have to be allocated to each individual conveyance),
- encourage more maintenance and better storage since the funds would cover these costs and appropriated funds would not be "lost" because reimbursements from sales covered two fiscal years,
- pay "losses" from the sales of items that did not cover their costs from "profits" of items that did, and
- fund increased storage and maintenance expenses from the increased use of seizure.

While Justice also questioned whether our proposed funds could pay for new conveyances, we believe the three-to-one ratio of sales receipts to costs mentioned previously should create a surplus in the funds. Even under the Justice proposal, the drug forfeiture fund would forego additional sales revenues because Justice would allow the seizing agencies to acquire forfeited conveyances without reimbursement for the value of the conveyance. This loss of revenue to the fund could be substantial since DEA acquired 377 "free" forfeited conveyances in fiscal year 1982. Our proposal, which permits the fund to be used to purchase new conveyances, would discourage the continued use of less efficient and often luxurious conveyances in favor of the acquisition of needed and more efficient new conveyances. These acquisitions would occur under our proposal with Office of Management and Budget and congressional oversight.

While the congressional request that initiated this review was limited to seized conveyances, Justice believes that a study of the forfeiture process should include the full range of problems associated with a variety of seized property including cash, financial instruments, real estate, and on-going businesses. We made suggestions earlier in this section which Justice may want to consider as part of such a study. Justice's attempts to study these issues on three occasions since 1981 indicate the difficulty of such a wide ranging study. We think it is important to recognize, however, that Justice's comments indicate agreement on the need for three basic improvements to the current process:

- raising the administrative forfeiture limit,
- creating a centralized management information system, and
- improving the funding mechanism for storing, maintaining, and utilizing forfeited conveyances.

Justice also wanted us to include a recommendation, similar to the one proposed in the Comprehensive Crime Control Act of

1983 (S. 829), to raise the bond requirement equal to 10 percent of the value of seized property but not less than \$250 or more than \$5,000. We believe the forfeiture limit can be raised as long as owners have relatively easy access to the courts, which means the amount of the bond must be reasonable. Although the forfeiture limit has been changed four times, from \$100 in 1844 to \$10,000 in 1978, the bond requirement has not changed from its original amount of \$250, initially established in 1844. The exact amount of the bond requirement will have to be a congressional policy judgment that balances the right of access to the courts with the need to discourage frivolous cases before the courts.

GSA COMMENTS

Although the report made no recommendations to GSA, GSA did comment on property utilization and its sales program.

GSA agreed that establishing funds from the sale of forfeited conveyances would be beneficial to seizing agencies for the reasons cited in the report, but said that provisions should be made to allow reimbursement to GSA for its expenses in performing utilization and disposal functions. However, GSA later told us that this may be considered an augmentation of its appropriations and that we should not make a provision for reimbursement. Instead, GSA is proposing its own legislation for this purpose.

In commenting on our recommendation to authorize agencies to deposit the proceeds from the sale of forfeited vehicles in the funds, GSA expressed concern that current utilization procedures for transferring property to Federal agencies would not be available. GSA recommended that our proposal be modified to retain provisions for utilization transfer prior to sales action. This modification is not necessary because our proposed legislation does not preclude the affected agencies from transferring the forfeited property to GSA for disposition or to other agencies, nor does it repeal or amend existing laws concerning the transfer of property to other agencies.

CHAPTER 8

OBJECTIVES, SCOPE, AND METHODOLOGY

This review was designed to evaluate the effectiveness of the Government's storage, protection, care, and use of seized conveyances. In February 1982, the Chairman, Subcommittee on Government Activities and Transportation, House Committee on Government Operations, requested us to undertake this review because another GAO review had identified some problems with deteriorating conveyances held in Miami. When the Chairman of the Subcommittee retired, the Chairman, House Committee on Government Operations, requested that we continue our review. Our objectives were to

- determine how law enforcement agencies use seizure, including the applicable laws and recent trends, to discourage the illegal transportation of contraband;
- evaluate the problems with storing, protecting, and caring for seized conveyances for long periods of time and offer alternative methods for funding the costs of these activities;
- examine the forfeiture process to determine if it could be shortened to reduce property depreciation and the associated storage and maintenance costs;
- assess the Government's use of forfeited assets and determine if alternative methods could better meet the agencies' needs and provide more congressional oversight; and
- determine if disposal problems have hindered law enforcement efforts, either because of a lack of storage space or because law enforcement personnel are used as property managers.

From interviews with agency officials and from GSA records of seized property reported by law enforcement agencies for redistribution within the Government, we gathered information on seizure policies and the amount of property held by seven agencies--Customs Service, DEA, INS, FBI, IRS, ATF, and the Secret Service. With the exception of INS, none of the agencies could provide us with information on the total number and value of seized conveyances held. As a result, we gathered and aggregated this information from the agencies' files in the field offices reporting most of the seized conveyances to GSA.

From the GSA records and from discussions with officials in law enforcement agencies, we determined that most of the seized conveyances (69 percent of the vehicles, 92 percent of the vessels, and 94 percent of the aircraft) were held in the south and

southwest United States. To gather more complete data in these regions, our regional offices in Atlanta, Georgia; Dallas, Texas; and Los Angeles, California; gathered information in all the seven selected agencies located in their regions. In addition, our Chicago regional office gathered the same type of data from agencies in its region to determine if different problems with seized conveyances existed in an area not having a large number of stored conveyances. Our regional offices identified the following amount and value of property stored in their regions as of April 1982.

<u>Agency</u>	<u>Conveyances</u>	<u>Value at seizure</u>
Customs	1,099	\$57,314,000
DEA	906	10,134,000
INS	2,448	9,376,000
Other seizing agencies	<u>65</u>	<u>5,254,000</u>
Total	<u>4,518</u>	<u>\$82,078,000</u>

Since Customs, DEA, and INS held over 98 percent of the conveyances with over 93 percent of the value, we concentrated our detailed review of practices and procedures in these three agencies.

We interviewed agency officials, gathered seizure data, and studied seizure laws to determine how law enforcement agencies use seizure to fight crime.

To evaluate the problems with storing, protecting, and caring for property held for long periods of time, we observed the condition of property at 44 storage locations and reviewed the records of property disposed of in fiscal year 1981. The storage sites were randomly selected proportionate to the value of the property held in each site. The randomly selected sites held 1,974 conveyances, valued at \$38.0 million, including 89 aircraft, 305 vessels, and 1,580 vehicles.

We recorded our observations on the care and protection of the property on a data collection instrument for computer analysis. To measure the time frames for the forfeiture process, devaluation of the property, and costs for storage and maintenance, we reviewed the forfeiture files for all the aircraft (70) and vessels (161) and a sample of 528 out of 3,991 vehicles disposed of in fiscal year 1981. We selected the vehicle sample proportionate to the total number of seized vehicle records held at each office. We recorded the file information on data collection instruments for computer analysis. We discussed the

problems of confiscated property, including alternative funding methods, with agency officials at each field location visited as well as with headquarters staffs.

To determine if the forfeiture process could be shortened, we studied the legislative history of forfeiture in the United States back to its beginning in 1844, along with relevant court cases. We also discussed possible methods of shortening the process with agency attorneys and U.S. attorneys.

We assessed the agencies' use of forfeited conveyances by identifying all such property placed in use within the offices we visited, reviewing the maintenance and use records for selected conveyances, and discussing their actual use with agency officials. In addition, we reviewed the justification for the exchange/sale of forfeited assets with officials of the Customs Service, while our Office of General Counsel and GSA studied the legal implications.

We interviewed agency officials in each field office and in headquarters on what law enforcement problems the agencies face as a result of seizing and holding large numbers of conveyances. The subject of these discussions included using law enforcement personnel as property managers and stopping seizures because of a lack of storage space.

We also reviewed a Customs internal audit report on the problems with seized property. The other agencies had not conducted or completed internal audits on seized property at the time of our review.

We made our review in accordance with generally accepted Government auditing standards.

PROPOSED STATUTORY AMENDMENT 1/

Based on our recommendations to the Congress, the proposed legislation would read:

AN ACT

To establish special funds from the forfeiture of certain property, authorize the use of such funds, and provide for the increased use of administrative procedures to obtain forfeitures.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Property Seizure and Forfeiture Improvements Act of 1983."

TITLE I - CUSTOMS FORFEITURE FUND

SEC. 101. Section 607 of the Tariff

Act of 1930 (19 U.S.C. 1607) is amended to read as follows:

1/ This proposed legislation provides examples, for illustrative purposes only, of the bond amount, administrative forfeiture limit, and the number of special funds.

"SEC. 607. SEIZURE: VALUE \$100,000 OR
LESS, PROHIBITED MERCHAN-
DISE, TRANSPORTING CONVEY-
ANCES.

"If--

"(1) the value of such seized
vessel, vehicle, aircraft, merchandise,
or baggage ^{2/} does not exceed
\$100,000;

"(2) such seized merchandise is
merchandise the importation of which is
prohibited; or

"(3) such seized vessel, vehicle, or
aircraft was used to import, export,

^{2/} The scope of our review addressed the treatment of vessels, vehicles, and aircraft, but not merchandise and baggage. All previously introduced legislation and existing law have treated all of these articles together with respect to their seizure, forfeiture, and disposition. For these reasons, as well as the complexity of amending all the statutory provisions necessary to differentiate between transporting conveyances and merchandise or baggage, our proposed legislation retains the present classifications of property. However, with respect to the establishment of special funds, we have limited them to vessels, vehicles, and aircraft.

transport, or store any controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

SEC. 102. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the first sentence by inserting the word "aircraft" after "vehicle." The second sentence is amended by inserting after "penal sum of" the following: "\$2,500 or 10 percent of the property's appraised

value, whichever is lower, but not less than,". 3/

SEC. 103. Section 609 of the Tariff Act of 1930 (19 U.S.C. 1609) is amended in the first sentence by inserting the word "aircraft" after "vehicle." The last sentence is amended by adding after "the Treasury of the United States" the following: ": Provided, however, That such proceeds from the sale of any vessel, vehicle or aircraft shall be deposited in the Customs Forfeiture Fund."

SEC. 104. Section 610 of the Tariff Act of 1930 (19 U.S.C. 1610) is amended by striking out "If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than \$10,000." and inserting in lieu thereof "If any vessel, vehicle, aircraft, merchandise, or baggage is not

3/ The amount of the bond identified was that contained in section 202 of H.R. 3963 introduced in the 97th Congress, section 12 of S. 948 and section 331 of S. 830 both introduced in the 98th Congress. The purpose of including this amount is illustrative. In comparison, section 412 of S. 829, introduced on March 16, 1983, provides for a maximum of \$5,000 rather than \$2,500.

subject to section 607 of this Act,
(19 U.S.C. 1607)".

SEC. 105. Section 611 of the Tariff Act of 1930 (19 U.S.C. 1611) is amended by inserting "aircraft," after "vehicle," wherever it appears in the section.

SEC. 106. Section 612 of the Tariff Act of 1930 (19 U.S.C. 1612) is amended--

(1) by striking out "and the value of such vessel, vehicle, merchandise, or baggage as determined under section 1606 of this Act, does not exceed \$10,000," in the first sentence and inserting in lieu thereof "and the article is subject to section 607 of this Act (19 U.S.C. 1607)"; and

(2) by striking out "If such value of such vessel, vehicle, merchandise, or baggage exceeds \$10,000" in the second sentence and inserting in lieu thereof "If the article is not subject to section 607 of this Act,"; and

(1) by inserting "aircraft," after "vehicle," wherever it appears in the section.

SEC. 107. Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by--

(1) inserting "aircraft," immediately after "vehicle" in subsection (a); and

(2) adding in paragraph (3), after "fine" the following: ", except that the residue resulting from the sale of vessels, vehicles, and aircraft shall be deposited in the Customs Forfeiture Fund:"

SEC. 108. The Tariff Act of 1930 is amended by adding after section 613 (19 U.S.C. 1613) the following new section:

"SEC. 613A. CUSTOMS FORFEITURE FUND

"(a)(1) There is established in the Treasury of the United States a special fund for the United States Customs Service that shall be entitled the Customs Forfeiture Fund (hereinafter in this section referred to as the 'fund'). This fund shall be available to the United States Customs Service, in such amounts as may be provided for in annual appropriations acts, for the payment of all proper expenses of the seizure, detention, forfeiture or sale, not otherwise recovered under sections 609 and 613(a) of this Act, of forfeited vessels, vehicles, and aircraft for which the Customs Service is the agency primarily responsible for storage and maintenance. Such expenses shall include but not be limited to the expenses of inventory, storage, maintenance, security, liens, and repair of conveyances, and the remission or mitigation of such forfeitures.

"(2) Amounts in the fund which are not currently needed for the purposes of this section shall be kept on depo-

sit or invested in obligations of, or guaranteed by, the United States. Earnings on such amounts shall be retained in the fund and available for the same purposes as other moneys therein.

"(3) Nothing in this section affects the authority of the Customs Service to exchange or sell forfeited vessels, vehicles, or aircraft, as authorized by section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)), or any other laws governing the retention, use, or disposition of forfeited property.

"(b) To the extent and in the manner specified in an annual appropriation act, the fund may be used for the--

"(1) acquisition, by lease or purchase, of conveyances necessary for the Customs Service to carry out its law enforcement functions; and

"(2) purchase of equipment needed to equip or repair conveyances referred to in subparagraph (1).

"(c) Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year. Such report also shall include a valuation and a record of forfeited vessels, vehicles, and aircraft retained, used or disposed of by any means referred to in paragraph (a)(3) of this section.

"(d) This fund shall cease to exist on September 30, 1988 and any amount then remaining in the fund shall be deposited in the general fund of the United States' Treasury."

SEC. 109. Sections 614, 615, 618 and 619 of the Tariff Act of 1930 (19 U.S.C. 1614, 1615, 1618 and 1619) are amended by inserting "aircraft," immediately after "vehicle" wherever it appears.

TITLE II - DRUG ENFORCEMENT FORFEITURE FUND

SEC. 201. Section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by adding in the last sentence after "expenses" the following: ", except that such proceeds from the sale of any vessel, vehicle, or aircraft shall be deposited in the Drug Enforcement Fund."

SEC. 202. Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by adding at the end the following new subsection:

"(h)(1) There is established in the Treasury of the United States a special fund to be known as the Drug Enforcement Forfeiture Fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the Attorney General, for use by the

Federal Bureau of Investigation ^{3/} and the Drug Enforcement Administration in such amounts as may be provided for in annual appropriation acts. This fund shall be available for the payment of all proper expenses of the seizure, detention, forfeiture or sale, not otherwise recovered under subsection (c) of this section, of vessels, vehicles, and aircraft for which the Federal Bureau of Investigations, the Drug Enforcement Administration or the United States Marshals Service is the agency primarily responsible for storage and maintenance. Such expenses shall include but not be limited to the expenses of inventory, storage, maintenance, security, liens, and repair of conveyances, and the remission of mitigation of such forfeitures.

^{3/} The amount of the bond identified was that contained in section 202 of H.R. 3963 introduced in the 97th Congress, section 12 of S. 948 and section 331 of S. 830 both introduced in the 98th Congress. The purpose of including this amount is illustrative. In comparison, section 412 of S. 829, introduced on March 16, 1983, provides for a maximum of \$5,000 rather than \$2,500.

Marshals Service is the agency primarily responsible for storage and maintenance.

"(2) Amounts in the fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. Earnings on such amounts shall be retained in the fund and available for the same purposes as other moneys therein.

"(3) Nothing in this section affects the authority of the Federal Bureau of Investigations or the Drug Enforcement Administration to exchange or sell forfeited vessels, vehicles, or aircraft, as authorized by section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)), or any other laws governing the retention, use, or disposition of forfeited property.

"(b) To the extent and in the manner specified in an annual appropriation act, the fund may be used for the--

"(1) acquisition, by lease or purchase, of conveyances necessary for the Federal Bureau of Investigations and the Drug Enforcement Administration to carry out their law enforcement functions; and

"(2) purchase of equipment needed to equip or repair conveyances referred to in subparagraph (1).

"(c) Not later than four months after the end of the fiscal year, the Attorney General shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year. Such report also shall include a valuation and a record of forfeited vessels, vehicles, and aircraft retained, used or disposed of by any means referred to in paragraph (h)(3) of this section.

"(d) This fund shall cease to exist on September 30, 1988 and any amount then remaining in the fund shall be deposited in the general fund of the United States' Treasury."

TITLE III - INS FORFEITURE FUND

SEC. 301. Section 274(b)(3) of the Immigration and Naturalization Act (8 U.S.C. 1324(b)(3)) is amended by adding after "Attorney General" in the last sentence the following: ": Provided, however, That the proceeds from the sale of any vessel, vehicle or aircraft forfeited under this section, after the payment of expenses as provided in subsection (b)(4)(B) of this section, shall be deposited in the Immigration and Naturalization Forfeiture Fund."

SEC. 302. Section 274 of the Immigration and Naturalization Act (8 U.S.C. 1324 is amended--

(1) by redesignating existing subsection (c) as subsection (d); and

(2) by adding new subsection (c) as follows:

"(c)(1) There is established in the Treasury of the United States a special fund to be known as the Immigration and Naturalization Forfeiture Fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the Attorney General for use by the Immigration and Naturalization Service in such amounts as may be provided for in annual appropriations acts. This fund shall be available for the payment of all proper expenses of the seizure, detention, forfeiture or sale, not otherwise recovered under subsection (b)(4)(B) of this section of vessels, vehicles, and aircraft forfeited under this section for which the Immigration and Naturalization Service is the agency primarily responsible for storage and mainte-

nance. Such expenses shall include but not be limited to the expenses of inventory, storage, maintenance, security, liens and repair, of conveyances, and the remission or mitigation of such forfeitures;

"(2) Amounts in the fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. Earnings on such amounts shall be retained in the fund and available for the same purposes as other moneys therein.

"(3) Nothing in this section affects the authority of the Immigration and Naturalization Service to exchange or sell forfeited vessels, vehicles, or aircraft, as authorized by section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)), or any other laws

governing the retention, use, or disposition of forfeited property.

"(4) To the extent and in the manner specified in an annual appropriations act, the fund may be used for the--

"(A) acquisition, by lease or purchase, of conveyances necessary for the Immigration and Naturalization Service to carry out its law enforcement functions; and

"(B) purchase of equipment needed to equip or repair conveyances referred to in subparagraph (1).

"(5) Not later than four months after the end of the fiscal year, the Commissioner of Customs shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year.

Such report also shall include a valuation and a record of forfeited vessels, vehicles, and aircraft retained, used or disposed of by any means referred to in paragraph (c)(3) of this section.

"(6) This fund shall cease to exist on September 30, 1988 and any amount then remaining in the fund shall be deposited in the general fund of the United States' Treasury."

SECTION-BY-SECTION ANALYSISTITLE I: AMENDMENTS TO THE TARIFF ACT OF 1930
(19 U.S.C. 1301 ET SEQ.)SECTION 101

This section amends section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) by raising the value of property which can be administratively forfeited to \$100,000 except in the case of conveyances used to import, export, transport, or store controlled substances (as defined by section 102 of the Controlled Substances Act (21 U.S.C. 802), for which there would be no limit. Under present law, all property appraised over \$10,000 in value must be judicially forfeited. Generally, vessels and aircraft, as is increasingly the case with vehicles, are valued in excess of \$10,000.

The rights of claimants to oppose the administrative forfeiture and demand a judicial hearing continue to exist without charge. Claimants desiring to go to court to contest a forfeiture can still pursue such action by filing a claim and posting a cost bond. Under existing regulations (19

C.F.R. § 162) the rights of such persons are fully protected because they receive notice of the seizure and the Government's intention to forfeit the property. Consistent with the requirements of due process as held in Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950), and its progeny, this due process notice requirement is made explicit in the amendment.

This provision is not designed to impose on the agency an affirmative burden to identify every person or entity with an interest in the seized property. Rather, the agency is to notify those whose interests are apparent from information in the agency's possession or a matter of public record.

SECTION 102

This section amends section 608 of the Tariff Act of 1930 (19 U.S.C. 1608). It increases the bond required to be posted by claimants contesting an administrative forfeiture from \$250 to the lesser of \$2,500 or 10% of the property's appraised value. Prior to 1844 property could be forfeited, regardless of value, if and only if the Government initiated and prevailed in forfeiture proceedings in Federal court. In 1844, the predecessor to the Tariff Act of 1930 authorized administrative forfeiture (5 Stat. 653). The administrative forfeiture limit was set at \$100 and the bond was \$250. Although the administrative forfeiture limit has been

increased several times since 1844, the amount of the bond has remained unchanged.

Under current Customs regulations (19 C.F.R. 162.47(e)) upon satisfactory proof of financial inability to post bond, Customs will waive the bond requirement. This procedure is unaffected by this amendment.

SECTIONS 103 AND 107(2)

These sections amend sections 609 and 613(a) of the Tariff Act of 1930 (19 U.S.C. 1609 and 1613(a)) to indicate that proceeds (the amounts remaining after the payments of expenses specified in these sections) from the sale of a forfeited conveyance shall be deposited in a special fund, the Customs Forfeiture Fund, as opposed to the general fund of the Treasury. See section 108 regarding the purpose of this fund.

Titles II and III of this proposal establish two additional special funds to be available to the Attorney General for use by the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) jointly and the Immigration and Naturalization Service (INS). Like the Customs Service, these agencies have seizure and forfeiture authority under existing law. The proceeds from property forfeited to these agencies pursuant to their statutory authority shall be deposited in the respective fund provided that that agency is

also primarily responsible for the property's storage and maintenance.

SECTION 104

This section amends § 610 of the Tariff Act of 1930 (19 U.S.C. 1610) by deleting reference to the \$10,000 administrative forfeiture limit and incorporating reference to the amended § 607. The effect of this conforming amendment is to require that seized property, including aircraft, not covered by § 607, can only be forfeited by judicial order.

SECTIONS 105, 106(1), 107(1) AND 109

These sections amend § 611, § 612, § 613, § 614, § 615, § 618, and § 619 of the Tariff Act of 1930 (19 U.S.C. 1611, 1612, 1613, 1614, 1615, 1618, and 1619) by inserting "aircraft" after the word "vehicle" wherever it appears. These are conforming amendments.

SECTION 106(2) AND (3)

This section amends § 612 of the Tariff Act of 1930 (19 U.S.C. 1612) and is a conforming amendment.

SECTION 108

This section amends the Tariff Act of 1930 (19 U.S.C. 1613) by adding a new section section 613A (19 U.S.C. 1613A). This section creates a special fund to be known as the Customs Forfeiture Fund to be available to the United States Customs Service.

Under current law the costs associated with forfeited conveyances are deducted from the proceeds of the sale of that conveyance. The resulting "net proceeds" are then deposited in the Treasury. If the proceeds do not exceed the expenses, the agency must cover the deficiency with appropriated funds. In other words, the net proceeds from the sale of one forfeited conveyance cannot be used to offset the unrecouped costs of another sale. The fund would allow the Service to balance all proceeds against all expenses. This is accomplished by depositing into the fund the net proceeds of the sale of conveyances authorized by sections 609 and 613 of the Act (19 U.S.C. 1609 and 1613).

The expenses the fund is available to pay include all proper costs associated with the seizure, detention, forfeiture and sale of conveyances. Such costs include but are not limited to the expenses of inventory, storage, maintenance, security, liens, repair of conveyances for sale, and the

remission or mitigation of the forfeiture. These expenses also include payments by the agency for contract services to carry out any function relating to the seizure, detention, forfeiture, and sale of such property.

The Congress will maintain oversight and control over expenditures from the fund for the foregoing purposes. The fund will be available for these purposes only if the Congress, in annual appropriations acts authorizes a specific amount.

Generally, the Customs Service is responsible for storing and maintaining all property that it seizes. Section 613A(a)(1) indicates that where the Customs Service is the agency primarily responsible for the storage and maintenance of the conveyance, then the proceeds from the sale of forfeited conveyances should be deposited in the Customs Forfeiture Fund. However, in the exceptional situation where Customs does not actually seize the conveyance, for example when it conducts a joint operation with one or more Federal agencies, but it is responsible for the property's storage and maintenance, the sales proceeds would still be deposited into the Customs fund. On the other hand, where Customs seizes a conveyance but DEA, the FBI, or INS assumes responsibility for the costs associated with the particular conveyance, then the sales proceeds would be deposited in the respective funds established by title II or III of this proposal.

Section 613A(a)(2) indicates that appropriations from the fund for the purposes authorized by section 613A(a) and (b), if not needed for those purposes, may be kept on deposit in the fund or invested in obligations of, or guaranteed by the United States. Earnings on such amounts will be retained in the fund for use to meet expenses for which the fund is available.

Under current law property that has been forfeited to the Government may be retained for official use by the seizing agency. See 40 U.S.C. 304h and 304i. Property thus acquired loses its identity as forfeited property and therefore becomes eligible for disposal under the General Services Administration's exchange/sale program (40 U.S.C. 481(c)). Section 613A(a)(3) makes it clear that the establishment of the special fund does not affect use of the exchange/sale program or any other existing statutory authorities to retain, use, or exchange conveyances. However section 613A(c) requires that, in an annual report to the Congress on the receipts and disbursements of the fund, the Commissioner of Customs should include information concerning conveyances retained or used by the agency or disposed of under the exchange/sale program or any other existing statutory authority.

Section 613A(b) makes the fund available for the purchase or lease of conveyances, i.e., vehicles, aircraft and vessels, necessary for the agency to carry out its law enforcement

functions. Law enforcement functions, for which acquisition of conveyances is authorized, include the use of conveyances for agency undercover or surveillance activities. Oversight and control over expenditures from the fund for the acquisition of conveyances and equipment are provided for: expenditures from the fund for purchase or lease of conveyances, are authorized only in amounts and in the manner which the Congress specifies in annual appropriations acts. We expect the Congress will provide both the dollar amount available for this purpose and a numerical limit on the number of conveyances to be acquired.

Section 613A(d) provides a sunset provision that terminates the fund on September 30, 1988 and transfers any amounts then remaining on deposit to the Treasury.

TITLE II: AMENDMENTS TO SECTION 511
OF THE CONTROLLED SUBSTANCES ACT
(21 U.S.C. 881)

SECTION 201

This section amends section 511(e) of the controlled substances Act (21 U.S. 881(e)) to indicate that proceeds (the amounts remaining after the payments of expenses specified in this subsection) from the sale of forfeited conveyances shall be deposited in a special fund, the Drug Enforcement Forfeiture Fund, as opposed to the general fund of the Treasury. The proceeds of sales resulting from the sale of conveyances

forfeited for violation of titles II and III of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 through 966) and section 1963(3) of title 18 U.S.C. in any case in which the racketeering activity consists of a narcotic or other dangerous drug offense referred to in section 1961(1)(A) of such title shall be deposited in the Drug Enforcement Fund where DEA or the FBI is the agency primarily responsible for the storage and maintenance of the forfeited conveyance. See section 202 regarding the purpose of this fund.

SECTION 202

This section amends section 511 of the Controlled Substances Act (21 U.S.C. 881) by adding a new section 511(h) (21 U.S.C. 881(h)). This section creates a special fund to be known as the Drug Enforcement Forfeiture Fund available to the Attorney General for use by the Federal Bureau of Investigation and the Drug Enforcement Administration in such amounts as specified in annual appropriations acts. To a significant degree this section mirrors section 108 of title I of this proposal that establishes a special fund for the Customs Service. Reference to that section is made for a more complete section-by-section analysis.

TITLE III: AMENDMENTS TO SECTION 274
OF THE IMMIGRATION AND NATURAL-
IZATION ACT (8 U.S.C. 1324)

SECTION 301

This section amends section 274(b)(3) of the Immigration and Naturalization Act (8 U.S.C. 1324(b)(3)) to indicate that the proceeds from the sale of a conveyance forfeited under this section shall, after payment of the expenses specified in subsection (b)(4)(B) of title 8 shall be deposited in the Immigration and Naturalization Forfeiture Fund.

SECTION 302

This section amends section 274 of the Immigration and Naturalization Act (8 U.S.C. 274) by adding a new section 274(c) (8 U.S.C. 1324(c)). This section creates a special fund to be known as the Immigration and Naturalization Forfeiture Fund available to the Attorney General for use by the Immigration and Naturalization Service in such amounts as specified in annual appropriations acts. To a significant degree this section mirrors section 108 of title I of this proposal that establishes a special fund for the Customs Service. Reference to that section is made for a more complete section-by-section analysis.

CHANGES IN EXISTING LAW

Changes in existing law which would result from enactment of the proposed legislation are as follows (existing law proposed to be omitted is in brackets; new matter is underlined):

Title 19. Customs Duties

Chapter 4 - Tariff Act of 1930

* * * * *

Part V - Enforcement Provisions

§ 1607. SEIZURE: VALUE [\$10,000] \$100,000
OR LESS, PROHIBITED MERCHANDISE,
TRANSPORTING CONVEYANCES

If-- [such]

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed [\$10,000] \$100,000;

(2) such seized merchandise consists of articles the importation of which is prohibited; or

(3) such seized vessel, vehicle, aircraft was used to import, export, transport or store any controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. [For the purposes of this section and sections 610 and 612 of this

title merchandise the importation of which is prohibited shall be held not to exceed \$10,000 in value.] Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

§ 1608. Seizure; claims; judicial condemnation

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim and the giving of a bond to the United States in the penal sum of \$2,500 or 10 percent of the property's appraised value, whichever is lower, but not less than \$250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so

claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States Attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

§ 1609. Seizure; summary of forfeiture
and sale

If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold, or otherwise dispose of the same according to law and shall deposit the proceeds of sale, after deducting the actual expenses

of seizure, publication, and sale in the Treasury of the United States: Provided, however, That such proceeds from the sale of any vessel, vehicle or aircraft shall be deposited in the Customs Forfeiture Fund.

§ 1610. Seizure; [value more than \$10,000] judicial forfeiture referral

If [the value of] any vessel, vehicle, aircraft, merchandise, or baggage [so seized is greater than \$10,000] is not subject to section 607 of this Act (19 U.S.C. 1607), the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

§ 1611. Seizure; sale unlawful

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the

Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: Provided, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

§ 1612. Seizure; summary sale

Whenever it appears to the appropriate customs officer that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and the [value of such vessel, vehicle, merchandise, or baggage as determined under section 1606 of this

title, does not exceed \$10,000,] article is subject to the provisions of section 607 of this Act (19 U.S.C. 1607) and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, such officer shall proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If [such value of such vessel, vehicle, merchandise, or baggage exceeds \$10,000] the article is not subject to section 607 of this Act, such officer shall forthwith transmit the appraiser's return and his report of the seizure to the United States Attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of

parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

§ 1613. Disposition of proceeds of
forfeited property

(a) Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture,

and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the proceeds of sale shall be disposed of as follows:

- (1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district

court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which had been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine, except that the residue resulting from the sale of vessels, vehicles, and aircraft shall be deposited in the Customs Forfeiture Fund:

(b) If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section incurred in such sale shall be returned to the person against whom the penalty was assessed.

"SEC. 1613A. CUSTOMS FORFEITURE FUND

"(a)(1) There is established in the Treasury of the United States a special fund for the United States Customs Service to be known as the Customs Forfeiture Fund (hereinafter in this section referred to as the 'fund'). This fund shall be available to the United States Customs Service, in such amounts as may be provided for in annual appropriations Acts, for the payment of all proper expenses of the seizure, detention, forfeiture or sale, not otherwise recovered under sections 609 and 613(a) of this Act, of seized vessels, vehicles, and aircraft for which the Customs Service is the agency primarily responsible for storage and maintenance. Such expenses shall include but not be limited to the expenses of inventory, storage, maintenance, security, liens, and repair of conveyances, and the remission or mitigation of such forfeitures.

"(2) Amounts in the fund which are not currently needed for the purposes

of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. Earnings on such amounts shall be retained in the fund and available for the same purposes as other moneys therein.

"(3) Nothing in this section affects the authority of the Customs Service to exchange or sell forfeited vessels, vehicles, or aircraft, as authorized by section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)), or any other laws governing the retention, use, or disposition of forfeited property.

"(b) To the extent and in the manner specified in an annual appropriations act, the fund may be used for the--

"(1) acquisition, by lease or purchase, of conveyances necessary for Customs to carry out its law enforcement functions; and

"(2) purchase of equipment needed to equip or repair conveyances referred to in subparagraph (1).

"(c) Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year. Such report also shall include a valuation and a record of forfeited vessels, vehicles, and aircraft retained, used or disposed of by any means referred to in paragraph (a)(3) of this section.

"(d) This fund shall cease to exist on September 30, 1988 and any amount then remaining in the fund shall be deposited in the general fund of the United States' Treasury."

§ 1614. RELEASE OF SEIZED PROPERTY

If any person claiming an interest in any vessel, vehicle, aircraft, merchan-

dise, or baggage seized under the provisions of this Act offers to pay the value of such vessel, vehicle, aircraft, merchandise, or baggage, as determined under section 1606 of this title, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws or under the navigation laws, accept such offer and release the vessel, vehicle, aircraft, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title.

§ 1615. BURDEN OF PROOF IN FORFEITURE PROCEEDINGS

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property

is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, aircraft, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: Provided, That probable cause shall be first shown for the institution of such suit or action, to be judged by the court, subject to the following rules of proof:

* * * * *

§ 1618. REMISSION OR MITIGATION OF
PENALTIES

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury under the customs laws or under the navigation laws, before the sale of such vessel, vehicle, air-

craft, merchandise, or baggage, a petition for the remission or mitigation of such fine penalty, or forfeiture, the Secretary of the Treasury, if he finds that such fine, penalty, or forfeiture was incurred without wilful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: Provided, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

§ 1619. AWARD OF COMPENSATION TO
INFORMERS

Any person not an officer of the United States who detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and who reports the same to an officer of the customs, or who furnishes to a district attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed \$50,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue customs. For the purposes of this

section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, air-craft, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed \$50,000 in any case.

Title 21 Food and Drugs

Chapter 13 - Drug Abuse Prevention and Control

* * * * *

Part E - Administrative and Enforcement Provisions

§ 881(e). Disposition of forfeited
property

Whenever property is forfeited under
this subchapter the Attorney General may--

(1) retain the property for official
use;

(2) sell any forfeited property
which is not required to be destroyed
by law and which is not harmful to the
public;

(3) require that the General Ser-
vices Administration take custody of
the property and remove it for disposi-
tion in accordance with law; or

(4) forward it to the Drug Enforce-
ment Administration for disposition
(including delivery for medical or
scientific use to any Federal or State

agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses, except that such proceeds from the sale of any vessel, vehicle or aircraft shall be deposited in the Drug Enforcement Fund.

§ 881(h)(1)

"There is established in the Treasury of the United States a special fund to be known as the Drug Enforcement Forfeiture Fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the

Attorney General, for use by the
Federal Bureau of Investigation and the
Drug Enforcement Administration in such
amounts as may be provided for in
annual appropriation acts. This fund
shall be available for the payment of
all proper expenses of the seizure,
detention, forfeiture or sale, not
otherwise recovered under subsection
(c) of this section, of seized vessels,
vehicles, and aircraft for which the
Federal Bureau of Investigation, the
Drug Enforcement Administration or the
United States Marshals Service is the
agency primarily responsible for
storage and maintenance. Such expenses
shall include but not be limited to the
expenses of inventory, storage, mainte-
nance, security, liens, and repair of
conveyances, and the remission or
mitigation of such forfeitures.

"(2) Amounts in the fund which are
not currently needed for the purposes
of this section shall be kept on
deposit or invested in obligations of,

or guaranteed by, the United States.
Earnings on such amounts shall be
retained in the fund and available for
the same purposes as other moneys
therein.

"(3) Nothing in this section
affects the authority of the Federal
Bureau of Investigation or the Drug
Enforcement Administration to exchange
or sell forfeited vessels, vehicles, or
aircraft, as authorized by section
201(c) of the Federal Property and
Administrative Services Act of 1949, as
amended (40 U.S.C. 481(c)), or any
other laws governing the retention, use
or disposition of forfeited property.

"(b) To the extent and in the manner
specified in an annual appropriations act,
the fund may be used for the--

"(1) acquisition, by lease or pur-
chase, of conveyances necessary for the
Federal Bureau of Investigations and
the Drug Enforcement Administration to

carry out their law enforcement
functions; and

"(2) purchase of equipment needed to
equip or repair conveyances referred to
in subparagraph (1).

"(c) Not later than four months after
the end of the fiscal year, the Attorney
General shall transmit to the Congress a
report on receipts and disbursement with
respect to the fund for such year. Such
report also shall include a valuation and
a record of forfeited vessels, vehicles,
and aircraft retained, used or disposed of
by any means referred to in paragraph
(h)(3) of this section.

"(d) This fund shall cease to exist on
September 30, 1988 and any amount then
remaining in the fund shall be deposited
in the United States' Treasury."

Title 8. Aliens and Nationality

Chapter 12 - Immigration and Nationality

* * * * *

Part VIII - General Penalty Provisions

§ 1324(b)(3)

All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on

customs officers or other persons regarding the seizure and forfeiture of conveyances under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General: Provided, however, That the proceeds from the sale of any vessel, vehicle or aircraft forfeited under this section, after the payment of expenses as provided in subsection (b)(4)(B) of this section, shall be deposited in the Immigration and Naturalization Forfeiture Fund.

§ 1324(c)(d). Authority to Arrest

No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

§ 1324(c). Immigration and Naturalization
Forfeiture Fund

"(1) There is established in the Treasury of the United States a special fund to be known as the Immigration and Naturalization Forfeiture Fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the Attorney General for use by the Immigration and Naturalization Service in such amounts as may be provided for in annual appropriations acts. This fund shall be available for the payment of all proper expenses of the seizure, detention, forfeiture or sale, not otherwise recovered under subsection (b)(4)(B) of this section, of seized vessels, vehicles, and aircraft forfeited under this section for which the Immigration and Naturalization Service is the agency primarily responsible for storage and maintenance. Such expenses shall include but not be limited to

the expenses of inventory, storage, maintenance, security, liens and repair, of conveyances, and the remission or mitigation of such forfeitures.

"(2) Amounts in the fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. Earnings on such amounts shall be retained in the Fund and available for the same purposes as other moneys therein.

"(3) Nothing in this section affects the authority of the Immigration and Naturalization Service to exchange or sell forfeited vessels, vehicles, or aircraft as authorized by section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)), or any

other laws governing the retention, use
or disposition of forfeited property.

"(4) To the extent specifically
provided for in an annual appropria-
tions act, the fund may be used for
the--

"(A) acquisition, by lease or
purchase, of conveyances necessary
for the Immigration and Naturaliza-
tion Service to carry out its law
enforcement functions; and

"(B) purchase of equipment needed
to equip or repair conveyances
referred to in subparagraph (1).

"(5) Not later than four months
after the end of the fiscal year, the
Commissioner of Customs shall transmit
to the Congress a report on receipts
and disbursements with respect to the
fund for such year. Such report also
shall include a valuation and a record
of forfeited vessels, vehicles, and

aircraft retained, used or disposed of
by any means referred to in paragraph
(c)(3) of this section.

"(6) This fund shall cease to exist
on September 30, 1988 and any amount
then remaining in the fund shall be
deposited in the general fund of the
United States' Treasury."



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

APR 19 1983

ASSISTANT SECRETARY

Dear Mr. Anderson:

The General Accounting Office draft report entitled, "Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement" has been reviewed by officials of the United States Customs Service and pertinent comments are presented below.

General Observations

The report is reasonably accurate in identifying the problems connected with the seizure, storage and forfeiture of conveyances. However, many of these problems are attributable to the present statutory framework which requires that each seizure be handled individually, thus discouraging agencies from developing innovative overall solutions to seized property management. For example, if a conveyance is ultimately sold for more than the costs of seizure and storage (as most are) the amounts over these costs ("profits") go into the General Fund of the Treasury. However, if a conveyance, for whatever reason (poor condition at time of seizure, depressed market, improper storage or maintenance) is sold for less than the total storage costs the "loss" is taken from the storing or seizing agency appropriations. This discourages increased maintenance because the costs are usually taken from local operating funds. When added to the judicial time delays of one to two years (after referral to a U.S. Attorney), it is easy to see why a custodian is reluctant to spend his funds for increased maintenance. It is ironic that when a law enforcement agency has a "good" year with many seizures, the increased costs associated with those seizures will actually reduce the appropriated funds available for continued primary enforcement activities. In addition, available appropriations may also be lessened because the increase in seizures results in delays in forfeiture (both administrative and judicial) which result in higher costs but no increase in custodial personnel.

In addition, although all storage expenses are reimbursable to the appropriation from which they were taken, they may not always be recovered during the same fiscal year and therefore the reimbursement may be illusory since it is unavailable for further expenditure.

While seizure costs may include salaries of personnel hired solely to safeguard or to maintain property, it is difficult for an agency to do so because such personnel would, under present law, have to come from the agency's personnel ceiling and there

Note: The page numbers have been changed to correspond to those in the final report.

are practical difficulties in prorating such costs to the various seizures. (Do you prorate by size, value, time expended or evenly regardless of actual costs?) In any event such personnel would only be cost effective in those districts having a large number of seized conveyances.

The proposed revolving fund would cure many of these problems. However, the GAO draft seems to be recommending a single fund to be utilized by all the seizing agencies. We believe that revolving funds should be established for each of the agencies concerned. Special funds for DEA and Customs have been proposed to cover expenses in S.829 and S.830 which were introduced in March 1983.

Some thought might be given to special personnel ceilings for seizure management. The salaries would be reimbursed from the funds but the ceilings would be separate from the agency ceilings. Only districts with a large volume of seizures would have such personnel.

Increasing the administrative forfeiture amount as is proposed should also greatly reduce costs by shortening the time it takes to forfeit property. However, some consideration might be given to increasing some court personnel to speed up those judicial forfeitures which might remain.

An internal audit by Customs identified many of the same problems identified in the GAO draft report. As a result Customs has sought in many areas to reduce storage costs by utilizing centralized storage facilities wherever feasible. For example, aircraft may be seized in one location and then (if capable of being flown) moved to one of our air support branches. Vessels seized in our South Central Region (New Orleans) may be stored in Mississippi, vessels seized in New Jersey may be moved to City Island, New York and our Southeastern Region (Miami) has been experimenting with moving small craft from Miami to the Jacksonville area which has lower dockage/storage costs and other advantages. These centralized storage locations should reduce costs in the long run.

The centralized storage was initially resisted by the U.S. Marshals and some Assistant U.S. Attorneys who mistakenly believed that (because of admiralty rules) storage had to be in the same judicial district as the seizure. In some cases Customs was actually required to bring the vessels back to the place of seizure (at high expense) so that the Marshal could serve the Warrant of Arrest-in-rem. This opposition was removed after representatives of Customs Chief Counsel met with Justice Admiralty and Shipping Attorneys and pointed out that 19 U.S.C.

1605 (which supersedes the Admiralty rules as to property seized for forfeiture--see 28 U.S.C. 2461(b), supp. Rule E, F.R.Civ.P.) specifically authorized Customs to retain custody and store seized property within or without the judicial district. (21 U.S.C. 881 extends these provisions to DEA and 8 U.S.C. 1324 extends them to INS seizures.)

Consideration might also be given to making surplus DOD bases or other real property available for storage and placing one agency (GSA?) in charge. Other agencies would then reimburse the custodian agency for security and maintenance. Obviously this would only be cost effective in geographical areas where there was a high volume of seizures and GSA (or other custodian agency) charged costs below the going commercial rate. At one time, the Coast Guard suggested the Key West Naval Base which had covered space for small craft on land and protected moorings for larger craft.

The report also makes reference to the fact that Customs needs better, more current management information to assist in the care and disposition of seized property. We agree. Customs is now developing an automated system that will provide certain basic information that can be used to control and monitor seized conveyances. Tests of this system are scheduled to begin later this year. A separate but similar system is already in use in Miami, where the largest number of conveyances are seized. However, problems currently exist as to how to assess individual seizures for the overhead costs of the system. Any revolving fund should provide for such assessments.

Finally, the draft report seems to equate seized property with forfeited property (pp. 6 and 10). However, many of the seized conveyances are never forfeited because they are administratively returned to the lien holder (upon payment of seizure and storage expenses and/or the amount by which the appraised value exceeds the property interest of the lien holder) or the true owner (upon payment of expenses or expenses plus a penalty) pursuant to the provisions of 19 U.S.C. 1618 after a petition for relief has been filed. This procedure does require petitions to be investigated after seizure but can save the Government large sums in the long run because property is returned upon payment of expenses without having to refer the matter to the Department of Justice. Unlike DEA, most Customs seizures occur because of the discovery of contraband at the border, or from Coast Guard seizures (see 19 U.S.C. 1401, 14 U.S.C. 143) without benefit of a criminal investigation which might reveal the true owner's involvement in the violation. Many of the seizures made by DEA occur at the end of, or during, a criminal investigation at a point when the true owner's

involvement is already known. Thus DEA's post seizure investigations may be more limited in scope.

Specific Comments

The following comments relate to specific statements and are referenced to the page in the draft report for your convenience.

Page 4 We are unaware of any agreement whereby the Customs Service agreed to transfer all forfeited conveyances to GSA for disposal. Rather, they agreed to have GSA store and dispose of such conveyances when the seizing agency did not require the article for official use and the GSA storage or disposal was cost effective. In fact, most forfeited property seized by Customs is sold by Customs when not retained by Customs or transferred to another Federal agency through GSA.

Page 8 The second paragraph notes the poor condition of many seized conveyances. In order to avoid the problems related to storage and disposal of such items, Customs, in 1978, introduced the option of using Mitigated Civil Administrative Penalties in lieu of seizure when small quantities of controlled substances were discovered.

The same paragraph makes conclusions as to the "general condition" and "average" value of seized conveyances. There are many reasons why it may be inappropriate to draw conclusions from these statistics. For example, the two 707 jet airliners under Customs seizure certainly raise the "average" value of seized planes. However, it is unlikely that at least one of these will ultimately be forfeited, thus the average value of sold property will be lower. The statement at the bottom of the page that "these are conveyances which would appeal to the average person interested in buying a used car, plane or boat," may be incorrect in view of the fact that many of the seized vessels are commercial fishing vessels or coastal freighters rather than pleasure craft.

Page 10 The type of information noted to be unavailable in the last paragraph is generally available in our Miami district. It is anticipated that such

information will eventually be part of the national automated fines and penalties system which is presently in the early developmental stages.

Page 10

See comment regarding page 2-4 and the utilization of average figures.

Page 12

We agree that the seizure process should be streamlined. We, however, are not certain that poor sales practices are the reason for the reduced financial return. These sales, as is true of sales of general order merchandise, are in the nature of distress sales, i.e., they are forced sales and we are trying to get the best price and cut losses related to storage and maintenance. In addition, we believe there was a depressed market for vessels and aircraft because of the overall economic picture.

Page 13

The last paragraph speaks of inadequate security. We believe this conclusion may have been based on a presumption stemming from theft or vandalism. We, however, have had theft and vandalism of property in fenced compounds, including guarded military bases. While we agree that better maintenance in many cases will increase sales proceeds, we are not certain that such increased maintenance is always cost effective because of the lengthy delays once a conveyance is referred for judicial forfeiture. The increased administrative forfeiture limits should reduce storage time and make such maintenance more desirable.

Page 16

The report suggests (in support of raising the administrative forfeiture amount) that Congress consider the number of uncontested judicial forfeitures. We agree, but we would also suggest that the number of successfully contested forfeitures also be considered. Since innocence of the owner is not a defense to forfeiture (except possibly when the conveyance was stolen) we doubt that there have been very many successful challenges to judicial forfeitures.

Page 18

We question the significance of Customs 410 day average vs. DEA's 396 days for judicial forfeitures since it is only a two week difference but agree

that administrative forfeitures by Customs take longer because of the need for investigation after seizure (see general comments, above).

Page 18

The statement is made that with respect to documentary proof of ownership and innocence "Customs assumes the task of obtaining such documents." Although this may be the case in some instances, it is our experience that usually evidence of ownership is either provided by the petitioner or found on the conveyance at the time of seizure.

It is customary to require such documentation and is, in fact, provided in our regulations (19 CFR 171.11(d) and 171.13(b)) that such documentation accompany petitions. The Miami district, for example, has a form letter that they send to petitioners with appropriate blocks marked to indicate the types of documentation needed in those instances in which it is not provided by the petitioner.

Customs investigators would have to search out relevant documentation only when the facts or inferences from facts in a particular case would require further investigation. It seems to us to be in the nature of the job rather than an error in procedure.

Page 19

The statement is made that "turnaround time for [cases that have to be referred to Headquarters for decision] can take as long as 2 years." Cases have also been turned around in a week. Customs places a priority on cases in which forfeiture is recommended, but tries to move all seizures cases within 90 days. Customs also has under consideration several proposals which would increase field jurisdiction in seizure cases.

Page 20 through 22

Although the care and maintenance of seized property may improve its marketability as implied in the first and subsequent paragraphs, we are not certain there is a direct correlation between the amount spent on care and maintenance and the price of seized merchandise which frequently is based on the distress nature of the sale. We, however,

agree that a more uniform level of maintenance, to the extent permitted by funding, might be desirable. This may result in a higher level of care and maintenance at some locations. We believe that the quicker disposal of seized merchandise such as would happen under the raised limit proposed for administrative forfeitures may produce a similar result.

Page 26 Customs has experimented with professional auctioneers with generally good results.

Page 31

This implies that the acquisition of all conveyances is subject to Congressional scrutiny. This implication is incorrect. There is no limitation on the acquisition of vessels whether by purchase or forfeiture. The retention of forfeited motor vehicles has never involved direct Congressional scrutiny (see 40 U.S.C. 304(h) and (i)) at the time of forfeiture and retention by Customs. Of course the possession of such property does become part of future budget considerations. Perhaps the writer was considering 31 U.S.C. (1982 rev.) 1343 which does require Congressional approval to purchase or lease a motor vehicle or to spend appropriated funds to transfer vehicles between agencies. Section 1343 also governs buying, maintaining or operating aircraft.

Page 31 We disagree with the concept expressed in the last paragraph that seized conveyances should replace conveyances currently in service. The current procedure permits us to acquire conveyances without utilizing funds which can be spent for other enforcement operations. Our objective in this area should be to supplement, not replace, normal acquisition methods.

It would seem that if Congress were to exercise the suggested level of scrutiny over those acquisitions as noted in the middle paragraph on page 30, it would effectively negate prior law, get Congress

involved in the day-to-day operations of agencies and so delay the process as to lower the value of the conveyance at time of agency acquisition.

We believe that Congress in approving the exchange/sale law and the law permitting an agency to convert seized property to the agency's use contemplated that this would be done using a lesser level of oversight.

- Page 33 The report states that Customs Headquarters logistics personnel had failed to maintain accurate records on their current inventory. The Customs property inventory system is decentralized to the regional level and requires regional personnel to input, update and maintain all records for property within the region.
- Page 43 The report states ". . . assets generally must be disposed of and acquired through the exchange/sale program on a one-for-one basis." We note that the exchange/sale procedures permit a lesser or greater number of items to be acquired when necessary to perform all or substantially all of the tasks in which the old items would otherwise be used.
- Page 47 In regard to stopping seizures because of the lack of storage space, please note our comment regarding page 8 and the establishment of a civil administrative penalty system to overcome the need to seize conveyances in poor condition and store them in overcrowded storage facilities.
- Page 50 We agree that a revolving fund could reduce sales and storage problems as well as being a source for funding the purchase of new conveyances. However, we believe a separate fund should be established for each agency and administered by that agency.
- Page 50 The utilization of law enforcement officers for non-enforcement duties, while undesirable, is needed because of the inability to obtain adequate resources to separately cover first and second priority needs.
- Page 61 We believe that this report focuses only on the conveyance seizure situations where a short

petition period may be appropriate. We, however, believe there are many other situations where the current petition period is appropriate, e.g. documents needed from overseas. There are also many situations where merchandise is not seized. We believe the petition procedure must be consistent regardless of whether a conveyance is involved and whether or not there is a seizure. We believe that the current petition period provides the consistency although post petition processing could be streamlined.

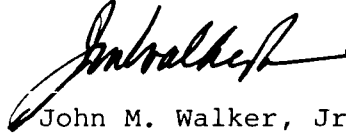
We agree that simple cases are referred to higher review levels simply because they exceed \$25,000. This not only prolongs the petition process but prevents high level professionals from devoting appropriate efforts to more complex matters. We are considering various proposals to reduce headquarters involvement in some of these cases.

Notwithstanding these points, we believe the report was well done and will prove very valuable to Customs management and in seeking Congressional support for streamlining the forfeiture laws.

We support the "Recommendations to the Congress" relating to raising the administrative forfeiture amount and the revolving fund. However we question whether general authority to utilize the fund to purchase conveyances suitable to agency covert operations is sufficient to overcome the specific authorization requirements of 31 U.S.C. (1982 rev.) 1343. We will actively consider those recommendations addressed to the Treasury Department which are not already under study. We believe existing law (19 U.S.C. 1605) already permits Customs and DEA to be the custodians of seized property but certainly agree with the recommendation on 61 that to the extent needed, the courts appoint the seizing agencies as custodians in lieu of the Marshals. We do not believe the Marshals Service has to be involved in day to day seizure and forfeiture operations since Customs and DEA officers are authorized by law to serve and execute all Federal court orders and to be property custodians.

We appreciate the opportunity to comment on the draft report and will continue to cooperate with the General Accounting Office in future efforts to improve our operations.

Sincerely,



John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

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



U.S. Department of Justice

Washington, D.C. 20530

May 6, 1983

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

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement."

GENERAL OBSERVATIONS

Based on our review of the draft report, we believe that the General Accounting Office (GAO) has done an admirable job of identifying and documenting a number of problems that continue to plague the Federal Government's efforts to seize and forfeit conveyances linked to the commission of crimes. These problems include: inadequate storage and maintenance of property awaiting forfeiture, an unacceptably long forfeiture process, poor recordkeeping and inventory control, and inadequate sales practices. These difficulties are partially representative of those encountered by the Department's organizations in the conduct of their forfeiture initiatives. However, they represent only a portion of the current and anticipated problems which extend beyond conveyances to include many other types of forfeitable property which the GAO study does not identify; e.g., cash, financial instruments, real estate, and ongoing businesses. To be effective, any actions by this Department or other Federal departments should be undertaken only after a thorough review of the full range of legal, investigative, and management problems affecting the forfeiture process. Such a review should consider an expanded definition of "property" to include all forfeitable assets, not just conveyances. It should factor in the problems affecting the quality and effectiveness of performance by field investigators and prosecutors, and it should address the problems created by the discontinuities, duplication, and unresponsiveness of current methods of operations in each of the seizing, prosecutorial, and support organizations. GAO's study makes a significant contribution by analyzing and documenting problems affecting one aspect of the forfeiture process. It is less successful, however, in formulating funding and organizational solutions which carry the potential for addressing the broader based, systemic problems the study was never designed to examine.

SPECIFIC COMMENTS

This section presents each of the principal recommendations of the GAO draft study and the Department's response thereto.

Recommendation: Congress enact forfeiture legislation to remove the administrative (\$10,000) forfeiture limit for drug-related conveyances, and increase the administrative forfeiture limit to \$100,000 for nondrug-related conveyances.

Response: We are in agreement with this recommendation as a means to reduce the number of judicial forfeitures, thereby decreasing the processing time of forfeiture cases and lowering the costs associated with managing and protecting seized property. The Administration supports this concept, as evidenced by statutory change provisions of the 1983 Comprehensive Crime Control Bill which was introduced in the U.S. Senate under S. 829. This legislation would also change the bond requirement for filing judicial forfeitures to an amount equal to 10 percent of the value of seized property but not less than \$250 or more than \$5,000. We suggest that the GAO study include a recommendation on the bond issue to conform to the Administration's proposal.

Recommendation: Establish separate revolving funds for the U.S. Customs Service, the Drug Enforcement Administration (DEA), and the Immigration and Naturalization Service (INS) with the proceeds from sales of forfeited conveyances. These proceeds would finance storage, maintenance, protection, and sales of forfeitable conveyances, and they would be used to purchase vehicles for use by agencies in undercover operations.

Response. GAO correctly recognizes the need for an independent funding mechanism to support the resource-starved forfeiture initiative. The Department's view is that the creation of separate funds* for each seizing agency will provide some resource assistance but will fail to resolve the following problems which the joint study identified within the Department of Justice:

- The Department has inadequate personnel resources and expertise to provide management and policy oversight and to monitor contracts with private sector appraisers, real estate managers, and storage and maintenance facilities. [GAO assumes heavy private sector involvement, as does the Department, but it makes no provision for personnel-related resources necessary to ensure the Government's effective performance as legal custodian and contract manager for seized property.]

*In addition to the funds proposed for Customs, DEA, and INS, the GAO recommendation would presumably be expanded to include the Federal Bureau of Investigation (FBI) which will assume drug-related seizure and custodial responsibilities in August of 1983.

- There is a duplication of functions among the Department's seizing and support organizations. [GAO would have each seizing agency conduct its own independent forfeiture management operations which would result in redundant maintenance, protection, storage, and contract administration functions throughout the Department.]
- Uncertainty of funding hinders effective planning and management. [GAO assumes that receipts from sales of forfeited property will adequately cover all storage, maintenance, and sales expenses with sufficient amounts remaining to pay lienholders and to purchase vehicles for undercover operations. While it is true that forfeitures of cash are more "profitable" than other asset forfeitures which require large custodial expenditures, e.g. conveyances, the Department has insufficient evidence to confirm that a revolving fund could be self-sustaining--particularly if, as proposed by GAO, the fund's receipts were limited to proceeds from the sale of conveyances to the exclusion of cash, real estate, and other kinds of forfeitable assets. GAO's additional proposal to use receipts to finance the purchase of undercover vehicles and other equipment would place the fund even further at risk while limiting its ability to meet what should be its primary objective: to provide an independent funding mechanism to ensure adequate coverage of costs associated with the management and protection of seized assets.]

For the above reasons, the Department has decided to seek broad-based financing through the appropriations process to provide the personnel and other resources needed to manage the property (conveyances and nonconveyances) for all types of forfeitures (criminal and civil) under the existing authorities of the FBI, DEA, and U.S. Marshals Service (USMS). Proceeds from the drug enforcement revolving fund, as envisioned by S. 829, would be authorized by Congress as only one source of funding for the proposed appropriation. The balance of funding might be made available from the proceeds of nondrug forfeitures or from general revenues. It is important to recognize that a single revolving fund of whatever description--drug-related, nondrug-related, conveyances, nonconveyances, or combinations thereof--would not be sufficient to meet the full forfeiture resource requirements, including salaries for asset management personnel. Nor would it be adequately accountable to the Office of Management and Budget (OMB) or the Congress under whose ultimate oversight and review the forfeiture initiatives fall.

Recommendation. Establish information systems to measure the effectiveness of agencies' management of seized property. These systems would enable managers to track forfeiture timeframes for various types of cases, record asset values at appraisal and at sale, and maintain data on storage, maintenance and protection costs.

Response. We are in agreement with this recommendation. It is our view, however, that systems development and systems monitoring will be strengthened if the overall responsibility for managing seized assets (administrative and judicial) is centralized under a single Departmental organization. (See response below.)

Recommendation. Relieve the USMS of its custodial duties of storing, maintaining, and moving seized conveyances through the appointment by judicial order of seizing agencies as "substitute custodians" for seized property.

Response. The Department welcomes the attention directed by GAO to the considerable range of management problems facing the seizing and support agencies. GAO's recommended solution is to take the USMS out of the business of managing seized property and to assign this responsibility to each of the seizing agencies under "substitute custodian" orders. This would be the wrong solution. It would create duplicative seizure management units throughout the Department, and it would require costly and redundant staffing to manage those efforts. Moreover, it would assign property management responsibilities to agencies whose primary functions are investigatory in nature and who, with the exception of INS, have expressed considerable unwillingness to assume custodial responsibilities. Finally, the GAO solution would continue the current system of fragmented, decentralized management which renders effective Department-level control and coordination almost impossible.

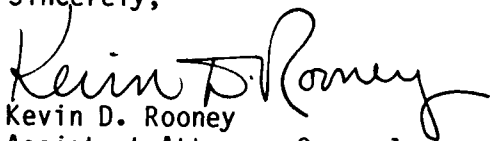
For these reasons, the Department has adopted a centralized approach with the USMS undertaking primary responsibility for almost all property seized by Departmental components. The USMS' longstanding custodial experience in handling seized property--including millions of dollars of assets in private litigant actions--is complemented by its established field presence and its expressed willingness to assume full management duties for all administrative and judicial forfeitures.

In this regard, OMB is currently reviewing a 1983 supplemental appropriation request from the Department to provide positions and dollars needed by the USMS to carry out its centralized property management responsibilities. These responsibilities appear to have been further confirmed by a recent Comptroller General's decision (B-207318). However, the decision seems to contradict the GAO study's suggestion that there be an expanded use of "substitute custodian" orders.

* * * * *

We appreciate the opportunity to review and comment on the draft report. Should you desire to discuss further any of the matters presented in our response, please feel free to contact me.

Sincerely,



Kevin D. Rooney
Assistant Attorney General
for Administration



General
Services
Administration

Washington, DC 20405

APR 20 1983

Honorable Charles A. Bowsher
Comptroller General of the United States
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Bowsher:

Thank you for the opportunity to comment on the GAO draft report entitled, "Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement" (943373-SMD-83-11).

Although the report makes no recommendations to GSA, we do have comments regarding the impact of the report on our utilization and sales programs. These comments are provided in the enclosed statement.

Sincerely,

Enclosure

GAO Note: The page numbers have been changed to correspond to those in the final report.

GSA Comments on GAO Draft Report
"Better Care and Disposal of Seized Cars,
Boats, and Planes Should Save Money and
Benefit Law Enforcement"

COMMENTS WITH RESPECT TO IMPACT ON THE UTILIZATION PROGRAM:

Recommendation 2 on page 60 affects current utilization procedures for processing seized and forfeited property. Under current regulations, seized property may be retained by the seizing agency for official use, transferred to another agency, or sold with proceeds deposited as miscellaneous receipts. Under recommendation 2, seized conveyances would be retained for official use or sold by the seizing agency, with accountability and proceeds credited to a revolving fund established for that agency. The fund would be used for maintenance and sales expenses for seized property, and for procurement of new conveyances or equipment by the seizing agency with the approval of Congress.

Substantial quantities of seized and forfeited property are transferred for further Federal use each year. These transfers reduce procurement expenditures by the receiving agencies. Recommendation 2 should be modified to retain provisions for utilization transfers to Federal agencies other than the seizing agency prior to sales action.

Enclosure

GSA Comments on GAO Draft Report
"Better Care and Disposal of Seized Cars,
Boats, and Planes Should Save Money and
Benefit Law Enforcement"

COMMENTS WITH RESPECT TO IMPACT ON THE SALES PROGRAM:

The audit report discusses disposal problems and the lack of expeditious sales support by GSA. GSA has responded with outstanding service since the matter was brought to the attention of its headquarters staff in May of 1981. It has sold, in a timely fashion, all vehicles reported for sale by the Immigration and Naturalization Service in both Southern California and Texas.

GSA serves most civil agencies of Government as a selling agent for surplus and exchange/sale personal property. In the case of seized vehicles and similar property, it sells but a portion of the total seized vehicles sold annually. Numerous other agencies, some of which are under Department of Justice (Drug Enforcement Administration, U.S. Marshal's Service, etc.) or Department of Treasury (e.g., U.S. Customs Service, etc.), conduct seized vehicle sales of their own. Efforts are in progress by GSA to become the Government's single manager for the sale of all forfeited property, especially vehicles.

GSA recently has undergone a major reorganization. There are now Sales Offices in each of the 11 regional office Customer Service Bureaus. In addition, major innovations to expedite sales have been introduced. These factors will significantly improve service and further shorten the disposal cycle.

We agree that the establishment of a revolving fund from the proceeds of sale of forfeited property would be beneficial to seizing agencies for the reasons cited in the report. Provision should be made whereby seizing agencies would be authorized to reimburse GSA for selling expenses. However, GSA is proposing legislation to amend the Federal Property and Administrative Services Act of 1949, as amended, which will authorize full cost pricing of supplies and services furnished by GSA to other agencies and the industrial funding of GSA activities engaged in such functions. Passage of this legislation would eliminate the need to establish provisions in the revolving fund for GSA's execution of its utilization and disposal functions.

Because of its experience and sales organization, GSA should be the Government's single manager for sales of all forfeited property which should continue to be sold by GSA personnel and/or through personnel of commercial auctioneering firms with whom GSA contracts.

(943373)



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