

United States General Accounting Office

Report to Congress on

ASSET FORFEITURE

Not a Property
Should Be
Seized Under
the War Assets Service



151588

U.S. Department of Justice
National Institute of Justice

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General Government Division

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June 28, 1991

The Honorable John Glenn
Chairman, Committee on Governmental
Affairs
United States Senate

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate

The Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate

The Honorable John Conyers, Jr.
Chairman, Committee on Government
Operations
House of Representatives

The Honorable Jack Brooks
Chairman, Committee on the Judiciary
House of Representatives

The Honorable Dan Rostenkowski
Chairman, Committee on Ways and Means
House of Representatives

The Honorable Charles E. Schumer
Chairman, Subcommittee on Crime and
Criminal Justice
Committee on the Judiciary
House of Representatives

The Honorable William J. Hughes
Chairman, Subcommittee on Intellectual
Property and Judicial Administration
Committee on the Judiciary
House of Representatives

The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

The Honorable Dick Schulze
Ranking Minority Member
Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

This report is one in a series addressing various aspects of the asset forfeiture programs in the Departments of Justice and Treasury. Both programs deal with hundreds of millions of dollars worth of seized property annually and have been identified by their agencies and the Office of Management and Budget as having internal control problems. The Comptroller General has also designated these programs as high-risk areas warranting special audit effort.

Our first report, entitled Asset Forfeiture: Legislation Needed to Improve Cash Processing and Financial Reporting (GAO/GGD-90-94, June 19, 1990), addressed a need for faster processing of uncontested cash seizures and improved financial controls and reporting requirements. In August 1990, legislation was enacted speeding up the processing of seized cash by allowing the seizing agencies to administratively forfeit all uncontested seizures and requiring Customs to produce annually audited forfeiture fund financial statements. Similar legislation requiring Justice to produce annually audited forfeiture fund financial statements was enacted in November 1990.

This report discusses (1) Justice's and Treasury's compliance with the requirement in the Anti-Drug Abuse Act of 1988 (P.L. 100-690, 21 U.S.C. 887) that they develop and maintain a joint plan to coordinate and consolidate the post-seizure administration of properties seized for drug-related violations and (2) the potential cost savings that could be realized if all drug- and nondrug-related seizures were included in a consolidated program. The principal agencies involved in the management and disposal of seized assets are the U.S. Marshals Service and the U.S. Customs Service in the Departments of Justice and Treasury, respectively. Specific details on our scope and methodology are included in appendix I.

Results in Brief

Although mandated by Congress in 1988 to do so, Justice and Customs have made no significant progress toward developing a joint plan for consolidating the post-seizure administration of properties seized for drug-related violations. Both agencies have initiated proposals that the other has rejected. As of November 1990, no other formal proposals were under consideration by either agency, creating a stalemate that still existed in May 1991. Because neither agency is designated as the leader, it seems unlikely, absent direct congressional action, that any future progress toward consolidation will be made.

As a result of this inaction, duplication of effort continues and potential cost savings remain unrealized. As of May 1991, the Marshals Service and Customs still independently managed and disposed of their seized assets even though both had similar types of properties located in the same geographic areas. About 55 percent of Justice's and 60 percent of Customs' noncash seized assets, by dollar value, were located in 10 geographic areas as of June 30, 1990. In some cases, both agencies used the same property custodians.

As anticipated by Congress, consolidating the management and disposal activities in one agency would save money. We estimate about \$2.5 million annually could be saved in administrative costs if all of Justice's and Customs' seized properties—drug- and nondrug-related—were consolidated in one agency. Additional savings should also accrue from lower vendor costs. For example, at the six locations where we obtained vendor prices for specific vehicle management services we found no case where Customs and the Marshals Service were paying the same rates for the same services. In most cases the rate differences were attributable to the economies of scale associated with managing a large number of vehicles. Under a consolidated program, the government should be able to negotiate for prices lower than those obtained through separate contracts.

Given the savings that could result from consolidating all seizures, we believe Congress should amend the law to require that Justice and Customs consolidate post-seizure administration of all drug- and nondrug-related seized properties in one agency. We believe Justice should be designated the leader in the consolidation effort and the Marshals Service should be designated property custodian because (1) Justice's non-cash property inventory is three times the size of the Customs' inventory; (2) the Marshals Service has a staff of over 200 persons in place and is experienced in managing property seized by other agencies; and (3) the Marshals Service has a regional infrastructure dedicated to

performing program oversight and providing technical assistance to its 94 district offices.

Background

Civil forfeitures—actions against the property itself—have become increasingly popular in recent years, particularly in the war on drugs. Annually, Justice and Treasury seize hundreds of millions of dollars in assets as a result of their law enforcement activities. The key seizing agencies are the Drug Enforcement Administration; the Federal Bureau of Investigation; the Immigration and Naturalization Service in the Department of Justice; and the Customs Service within the Department of Treasury. In fiscal year 1989, as a result of Justice and Treasury activities, the government received about \$602 million in forfeited cash and \$73 million in proceeds from the sale of forfeited property.

At one time, each of the seizing agencies within Justice and Treasury managed and disposed of seized assets on its own. In 1984, however, the Justice agencies consolidated their post-seizure activities into one program administered by the Marshals Service. As a Treasury bureau, however, Customs was not a part of that consolidation.

Subsequently, in 1988, the Anti-Drug Abuse Act required the Attorney General and the Secretary of the Treasury to jointly develop and maintain a plan for consolidating post-seizure administration of properties seized for drug-related violations. As of May 1991, however, no such plan existed. At that time, separate and distinct programs for managing and disposing of seized property were administered by the Marshals Service and Customs. The two programs are very similar except in the methods used in managing their seized property inventories. Customs has a nationwide contractor that provides custodial services either directly or through subcontracts with other vendors. The Marshals Service, on the other hand, contracts directly with vendors providing the service. The same types of assets are seized under both programs and similar forfeiture procedures are used.

As of June 30, 1990, the two agencies were procuring custodial services for noncash seized assets having an estimated value of \$1.02 billion—\$843 million in Justice and \$177 million in Customs. Table 1 shows the volume and estimated value of both agencies' inventories by the category of property.

Table 1: Volume and Estimated Value of Noncash Property as of June 30, 1990

Dollars in millions

	Justice		Customs	
	Number of assets	Value	Number of assets	Value
Vehicles	12,381	\$80.2	1,700	\$18.6
Real property	3,505	550.1	37	4.7
Vessels	251	16.0	189	11.1
Aircraft	101	12.0	141	20.9
General property	5,028	184.4	5,494	121.4
Total	21,266	\$842.7	7,561	\$176.7

According to Justice and Customs seized property officials, about 55 and 30 percent, respectively, of their seized property inventories (by dollar value) are from drug-related seizures. The nondrug-related seizures are not covered by the consolidation requirement. Examples of nondrug-related seizures include vehicle seizures made by the Immigration and Naturalization Service for transporting illegal aliens and seizures made by Customs for import restrictions and trademark violations. Within each agency, however, drug- and nondrug-related seizures are commingled for management and disposal purposes, and the forfeiture actions are processed in essentially the same manner. Justice officials said that, for practical purposes, all seizures under the control of the Marshals Service would be included in any consolidated program with Customs.

In addition to the noncash property shown in table 1, Justice and Customs had cash seizures of \$324 million and \$212 million respectively as of June 30, 1990. Upon seizure, cash is either held in vaults as evidence or deposited into special accounts and does not require custodial management and disposal. Because there are no contract services associated with cash, we did not include cash seizures as part of this review.

Justice and Treasury Had Not Agreed on a Consolidation Plan

Justice and Treasury had made little progress in developing a plan to consolidate their post-seizure activities for properties seized for drug violations despite the legislative requirement to do so. While both the Marshals Service and Customs had made unilateral proposals for consolidation, each agency's plan was rejected by the other. As of May 1991, no formal plans were under consideration.

On April 6, 1989, Customs proposed a 6-month pilot program under which Customs, through its national contractor, would have assumed

management of Marshals Service seized vehicles in four judicial districts in Washington, Idaho, and Oregon and all vessels in the three Florida judicial districts. At the same time, the Marshals Service would have assumed management of all Customs real property seizures nationwide and all vehicles in the three Florida districts. The results of the 6-month test would have been used to develop procedures, processes, and policies to implement a 1-year national pilot program.

The Marshals Service rejected the Customs proposal because it would have required them to use the Customs national contractor, which was under investigation by a U.S. Attorney. Marshals Service officials also believed the pilot program would have resulted in additional costs because they would have had to pay a middleman for what the agency felt were unnecessary services.

On April 18, 1989, the Marshals Service made its own proposal whereby it would assume custody and management of all Customs real property seizures. Customs rejected the Marshals Service proposal because that proposal called for Customs to relinquish all disposition determinations and sales proceeds. In February 1990, Customs amended its original proposal to include its own contractor-operated facilities in El Paso, Texas, and Nogales, Arizona. The Marshals Service rejected that proposal for the same reasons they had objected to the original proposal. No other formal consolidation proposals were under consideration by either the Marshals Service or Customs as of November 1990.

Although Justice and Customs have not agreed on a consolidation plan, the two agencies have shown they can work together in managing seized property. In November 1990, the two agencies developed procedures for managing and disposing of property seized by Customs agents when the sole available basis for seizure is Justice's drug statutes in title 21 of the U.S. Code. According to Customs officials, the procedures are expected to affect only a small percentage of Customs' seizures, since most seizures are made for other or multiple violations of law. The joint procedures addressed issues relating to costs, custody, and distribution of sales proceeds—some of the same issues that would need to be addressed in developing a plan covering post-seizure administration of all seized property.

In our opinion, the fact that the two agencies were able to reach an agreement on these procedures shows us that a consolidation plan is achievable. However, it has been almost a year since the last formal consolidation plan was under consideration, and in our opinion a stalemate

has emerged. Consequently, absent congressional action designating a leader in the consolidation effort and requiring development of specific implementation timetables, we believe it is unlikely that substantive progress will be made toward consolidation in the foreseeable future.

Consolidation Would Reduce Overall Federal Costs

As anticipated by Congress, the overall costs to the government to manage and dispose of seized assets would be less under a consolidated program. We analyzed potential cost savings that could be realized by combining all of Justice's and Customs' seized properties into one program for post-seizure administration. We found that savings should accrue from less duplication of effort, a more streamlined operation, and lower vendor costs.

Savings From Reduced Duplication of Effort and More Streamlined Operations

An estimated \$2.5 million in program administration costs could be saved annually from less duplication of effort and more streamlined operations if all of Justice's and Customs' seized properties were combined into one program for post-seizure administration. This estimate excludes any savings from lower vendor costs that might accrue from volume discounts. As of May 1991, the Marshals Service and Customs, through its national contractor, separately maintained sizable staffs providing essentially the same services of contracting with vendors, monitoring vendor performance, and performing overall program oversight.

According to the Marshals Service, its seized assets inventory was managed by 240 Marshals Service employees and six full-time equivalent contractor employees during fiscal year 1989 at a cost of about \$13.3 million. According to Customs, its seized assets inventory was managed by 12 Customs employees and 191 national contractor employees (the equivalent of 203 full-time positions) at a cost of about \$8.6 million. Major cost components included salaries/benefits, nonasset-specific contract services, travel, rent/utilities, and equipment/supplies.

Justice's seized asset inventory was about three times larger than Customs', but the number of staff devoted to the programs in fiscal year 1989 was not proportionately different. According to Marshals Service officials, the Service was understaffed but had received approval to increase its seized property staff by 132 beginning in fiscal year 1991. Also, at the time of our review, the number of contract employees had

grown to about 40 full-time equivalents. With those increases, the Marshals Service will have a staff of 412 devoted to its seized property program, which as of June 30, 1990, consisted of 21,266 noncash seized assets. This means, on average, each employee was responsible for about 52 properties. Given this staff-to-seized asset ratio, Justice should be able to assume management and disposal activities for Customs' 7,561 assets with an increase in staff of about 145. This would be 58 positions fewer than what Customs used to independently manage its seized property inventory.

We estimate about \$2.5 million annually could be saved in administrative costs if all of Justice's and Customs' seized properties were consolidated in the Marshals Service. This estimate is based on that portion of Customs' \$8.6 million fiscal year 1989 administrative costs that would no longer be needed to manage its seized property inventory under a consolidated program. (That is, 58 fewer positions divided by 203 full-time equivalent positions times \$8.6 million equals about \$2.5 million.)

Given the makeup of Customs' and the Marshal Service's respective seized property inventories, we believe our savings estimate is conservative. The Marshals Service's inventory contained many relatively difficult to manage real properties, whereas Customs' inventory does not. A considerable amount of the Marshals Service's staff time is spent managing its real property inventory, which often includes ongoing multi-million-dollar commercial enterprises. These properties require much more monitoring than the properties normally seized by Customs. As of June 30, 1990, Customs had only 37 real properties under seizure, compared with 3,505 in the Marshals Service. Most of Customs' seizures were properties that could be easily combined with other Marshals Service properties, e.g., vehicles, vessels, and general property such as jewelry, electronics, and art work.

Savings Should Accrue From Lower Vendor Costs

Most of the Marshals Service and Customs noncash seized property inventories were located in the same geographic areas. However, these inventories were managed and disposed of independently. Our analysis of one high-volume activity, the management of seized vehicles, showed that the Marshals Service and Customs were paying different prices for the same services. Differences in the volume of activity was cited as one key reason for these price differences.

During fiscal year 1989, the Marshals Service and Customs, through its national contractor, paid vendors \$22.7 and \$10.8 million, respectively,

for services associated with managing and disposing of their drug- and nondrug-related seized asset inventories.

Seized property operations in the 94 Marshals Service and 45 Customs districts overlap. Generally, the two agencies experienced similar work loads within a given locality, i.e., a high-volume location for one agency was also generally a high-volume location for the other. Also, as shown in figure 1, most of the property was concentrated in 10 locations. In total, about 55 percent of Justice's and 60 percent of Customs' noncash seized assets, by dollar value, were located in these 10 locations as of June 30, 1990.

Figure 1: Major Seized Property Locations as of June 30, 1990



Independently operating in the same areas may result in higher prices paid for services than under a consolidated program, which may be able to obtain lower vendor prices because of a higher volume of activity. We found this to be true in the sample of vehicle operations that we reviewed in six locations (San Diego and Calexico/El Centro, California;

Yuma, Arizona; and McAllen, Laredo, and El Paso, Texas). These locations accounted for 7,676 vehicles—about 49 percent—of all vehicles in the Marshals Service's and Customs' custody as of May 1990.

Generally, we found the Marshals Service and Customs paid substantially different rates for similar services within a given locality. To quantify these price differences we reviewed the acceptance,¹ towing, and storage rates for vehicles at the six locations we reviewed. We also considered prices paid for routine maintenance at those locations where both agencies contracted for such services. In no case did we find the Marshals Service and Customs paying the same rate for the same services, even in cases where the same vendor was used by both agencies. The price differences varied from one location where the Marshals Service was paying 61.6 percent more than Customs, to another location where Customs was paying 154.6 percent more than the Marshals Service. On average, the Marshals Service was paying 30 percent more than Customs at two locations that accounted for 6 percent of the vehicles reviewed, and Customs was paying, on average, 52.6 percent more than the Marshals Service at the other four locations, which accounted for the other 94 percent of the vehicles reviewed.

The following examples demonstrate the differences being paid by the Marshals Service and Customs at the time of our review:

- In McAllen, the Marshals Service was paying \$9.50 for towing a vehicle up to 30 miles, including acceptance activities, while Customs was paying the same vendor \$27.30 for any tow up to 30 miles plus \$6.80 for acceptance. For outside storage the Marshals Service was paying \$0.45 per day per vehicle while Customs was paying \$1.10 per day. These rates resulted in Customs' paying \$273.90 per average vehicle stay at this location. For the same services the Marshals Service was paying \$107.60. As of May 1990, the Marshals Service was storing 973 vehicles at this location, compared with Customs' 81.
- In Laredo, the Marshals Service was paying \$10.00 for towing any vehicle up to 30 miles, including acceptance activities, while Customs was paying another vendor \$40.95 for any tow up to 10 miles, an additional \$1.10 for each mile over 10, and \$9.80 for acceptance activities. For outside storage, the Marshals Service was paying \$0.95 per day per vehicle while Customs was paying \$1.30. These rates resulted in Customs' paying \$334.15 per average vehicle stay at this location. The Marshals Service was paying \$217.10 for the same services. As of May 1990,

¹Acceptance includes inspecting the property, recording its condition, and taking inventory.

the Marshals Service was storing 500 vehicles at this location, compared with Customs' 61.

- In Yuma, the Marshals Service was paying \$88.00 for towing any vehicle up to 50 miles, including acceptance activities, while Customs was paying \$38.20 plus \$1.65 per mile. For outside storage and routine maintenance the Marshals Service was paying \$2.81 per day, while Customs paid the same vendor \$1.53 per day for the same services. These rates resulted in Customs' paying \$384.85 per average vehicle stay at this location. The Marshals Service was paying \$621.90 for the same services. As of May 1990, the Marshals Service was storing 177 vehicles at this location, compared with Customs' 22.
- In San Diego, the Marshals Service was paying \$30 for any tow up to 70 miles, including acceptance activities, while Customs was paying on the average about \$32 for these services. For outside storage, the Marshals Service was paying on average \$0.61 per day per vehicle while Customs was paying \$1.10 per day. These rates resulted in Customs' paying about \$155.00 per average vehicle stay at this location. The Marshals Service was paying \$98.32 for the same services. As of May 1990, the Marshals Service was storing 4,800 vehicles at this location and Customs was storing 163.

Appendix II provides additional details on the rates paid by the Marshals Service and Customs at the six locations reviewed. In McAllen, where both agencies used the same vendor, vendor representatives said the higher rates charged to Customs were due to the lower volume of Customs vehicles, greater paperwork requirements for Customs vehicles, and the allocation of a larger portion of insurance costs to each Customs vehicle based on the lower volume. Moreover, they said the Marshals Service sometimes seizes more than one vehicle at a time, resulting in lower towing fees.

In Yuma, the other location where both agencies used the same vendor, the vendor said that Customs' lower storage rate was not based on volume and does not necessarily reflect the current market rate. That contract was awarded in 1986, while the Marshals Service contract was awarded in 1989. When the vendor initially submitted his proposal to Customs' national contractor, he projected his contract fees for 5 years using 1985 market prices. He said that, even though the storage rate had increased twice, the increase had not kept up with the escalating insurance costs. If the vendor's contract is renewed, he said he intends to increase Customs' storage rates. According to Customs officials, this contract was renegotiated in January 1991, and the daily outside

storage rate was increased from \$1.10 per day to \$2.00 per day per vehicle.

Our discussions with vendors indicated that volume was a key ingredient in any price determination, which suggests that further savings may be possible by combining the inventories and aggressively seeking out the best available rates for vendor services.

Further Congressional Action Seems Necessary to Effect Consolidation

Both Justice and Customs expressed concerns about consolidating the management and disposal activities associated with their seized property programs. However, neither agency offered good justification for not doing so, given the congressional mandate to consolidate their drug-related seizures and the potential cost savings that could be realized from combining all noncash seized properties into one program for post-seizure administration. While both agencies said they planned to pursue efforts to effect consolidation, neither agency has made any noticeable strides forward. We believe a stalemate has emerged. Absent congressional action designating one agency as the leader, we believe it is unlikely any significant progress will be made in the foreseeable future.

Justice's Concerns With Consolidation

Justice officials agreed with the merits of consolidation and were receptive to the Marshals Service accepting custody of Customs' seized vehicles, vessels, aircraft, and real property. They were less receptive to accepting custody of Customs' general property, which is a major portion of Customs' seized property inventory. Justice officials believed that Customs' general property inventory is of low value and could not be easily absorbed given Justice's existing vendor structure.

We recognize that to absorb Customs' property some adjustments to the existing vendor structure may be necessary in order to streamline operations and maximize the available costs savings. While we agree that some of Customs' general property is of low value, on average, such seizures were valued at more than \$22,000, for a total of \$121 million as of June 30, 1990. In addition, other general property custody arrangements could be employed if needed, including using the General Services Administration.

Other concerns at Justice were the need for additional staff to oversee an increase in the seized property inventory and the time needed to address some of the current deficiencies existing within the Justice program. Justice officials were unable to estimate how many additional

staff might be required but said the increase would be significantly less than the number currently working for Customs and its national contractor. We agree that some increase in staff would be necessary to effectively absorb Customs' seized property inventory.

To address existing program deficiencies, a dedicated regional infrastructure was put in place to provide technical assistance to the 94 Marshals Service district offices and perform program oversight. To further address program deficiencies, the Attorney General created the Executive Office for Asset Forfeiture in October 1989. That office is committed to establishing a single departmentwide forfeiture information system and is actively working to address program deficiencies noted in its internal control assessment of the program and audits done by the Office of Inspector General, an independent CPA firm, and GAO.

In a companion assignment,² GAO reviewed Justice's management of its real property seizures and found areas needing improvement. However, the impact on consolidation from these problems should be minimal since 99 percent of Justice's and Customs' combined real property seizures were within Justice. Moreover, resolution of any program problems should not delay consolidation, but rather be addressed within the context of a consolidation plan.

Customs' Concerns With Consolidation

Customs officials were less receptive to consolidating noncash seized property in the Marshals Service. Customs officials said they believe such consolidation would hurt their relationships with state and local law enforcement groups. They feared that, after consolidation, state and local officials would see all seized properties and asset-sharing decisions as being controlled by Justice and would direct their attention and staffs to working only with Justice agencies. Customs believed it would not be able to get the participation from state and local law enforcement groups that it has enjoyed in the past.

While this issue would need to be addressed in any consolidation plan, we do not believe that consolidating seized property in the Marshals Service would necessarily affect Customs' relationships with state and local law enforcement groups. Even under a consolidated program, provisions should be made for Customs to retain responsibility for processing the

²Asset Forfeiture: Need for Stronger Marshals Service Oversight of Commercial Real Property (GAO/ GGD-91-82, May 31, 1991).

forfeiture action and making asset-sharing decisions and property transfers to state and local law enforcement officials. Additionally, 95 percent of Customs transfers to state and local law enforcement groups during fiscal year 1989 were in cash, and we are proposing no changes with that aspect of the program.

Customs officials were also concerned that Justice's information system may be incapable of accurately tracking Customs' seized property and associated property-specific income and expenses. As noted in a recent report by Justice's Office of Inspector General, Justice's current information systems are incapable of tracking such income and expenses. However, that capability is being built into the new system. Until the new system is in place, we believe Justice and Customs should agree on a method to allocate income and expenses.

Customs officials also fear that their property might not receive the same attention as that seized by Justice. We can see no reason why this would happen, since presumably the individual properties would be commingled. Also, maintenance provisions could be incorporated into the consolidation plan. All agency concerns should be raised and addressed in developing a consolidation plan. Establishing a joint task force or detailing a Customs official to Justice to help develop the plan could facilitate the process.

At the end of our work, a Customs official stated that, as a result of our review, Justice and Customs have scheduled a meeting to discuss consolidation. The Customs official noted that vehicle seizure volumes have recently decreased to the point where they now have near-empty lots in several locations where Justice operates separate vehicle storage facilities.

Conclusions

Little progress has been made by Justice and Customs in developing a joint plan for consolidating the post-seizure administration of properties seized by the two agencies for drug-related violations, despite a legislative requirement to do so. We believe that legislative requirement was well-founded, but for accountability purposes one agency needs to be designated the leader in the consolidation effort. Furthermore, in order to maximize the benefits from consolidation, the legislative requirement should be expanded to cover both drug- and nondrug-related seizures.

Between the Marshals Service and Customs, we believe the Marshals Service is better equipped to manage a consolidated program. The Marshals Service already manages a program three times the size of the Customs program and has a staff of over 200 persons in place. Moreover, the Marshals Service already has considerable experience in managing seizures by other agencies, since it has managed the program for the other Justice agencies since 1984. Also, the Marshals Service has a regional infrastructure in place dedicated to performing program oversight and providing technical assistance to its 94 district offices.

While the Marshals Service should be responsible for managing and disposing of the property, we also believe Customs should maintain responsibility for processing the actual forfeiture action. After disposing of the property, the Marshals Service should deduct its costs, including those for personnel and other related costs, and remit any excess sales proceeds to Customs. This would provide Customs with an incentive to keep the forfeiture action moving as quickly as possible, since excess sales proceeds would be directly affected by how long the property was stored. Establishing a joint task force or detailing a Customs official to Justice to help develop the consolidation plan could also facilitate the process.

Recommendation to Congress

We recommend that Congress amend the consolidation requirement in 21 U.S.C. 887 to also include all noncash properties seized by Justice and Customs for nondrug-related violations. We also recommend that Congress (1) designate the Department of Justice as the lead agency in developing the consolidation plan, (2) designate the U.S. Marshals Service as the custodian of the consolidated properties, (3) require the plan be developed within 6 months of passage of such legislation, and (4) require that the plan include specific implementation timetables and specific actions to effectively address existing Justice program deficiencies.

Agency Comments and Our Evaluation

The Departments of Justice and Treasury were asked to comment on a draft of this report. Their comments are in appendixes III and IV, respectively. In addition, Treasury transmitted detailed comments prepared by the U.S. Customs Service. The transmittal letters and executive summary for those comments are in appendix V. All comments were considered in finalizing the report.

The Department of Justice supports consolidating the post-seizure management and disposal of forfeited property in the Marshals Service. However, Justice stated the report did not flow to its own logical conclusion since the proposed consolidation framework excluded cash. Justice believes the custodian agency for noncash assets should also be the custodian for cash. Justice said the inclusion of cash in a consolidated program would enhance congressional oversight because all properties would then be consolidated in one agency, and the cash was needed to defray expenses associated with managing and disposing of the noncash properties.

Our work focused on noncash assets because of the custodial management costs involved and the opportunities for savings under a consolidated program. Since seized cash was either stored in a vault or deposited in special accounts, custodial costs were minimal and, therefore, offered little opportunity for savings. Further, we do not believe that the cash seized by Customs will be needed to defray the Justice Department's expenses associated with managing and disposing of the noncash properties seized by the Customs Service. Preliminary 1990 financial data on the management and disposal expenses related to noncash properties indicated the proceeds at sale were more than sufficient to offset the expenses incurred in managing and disposing of those properties. We have no reason to believe this positive cash flow will change when the Justice Department begins managing noncash properties for the Customs Service.

The Department of Treasury said that, in theory, consolidation of asset management could save administrative effort and money, and the U.S. Customs Service said there is merit in combining seized assets under one agency. Neither Treasury nor Customs, however, agreed that our proposed framework for consolidation should be adopted without further study. Our evaluation of specific comments follows.

Treasury said our audit did not look with enough specificity and detail at the different kinds of properties managed by Customs and the Marshals Service and the attendant care each requires. It also stated that to transfer Customs properties to the Marshals Service, which does not have experience handling such a myriad of properties, would not be good government.

We believe there are no real differences between the vehicles, vessels, aircraft, and real properties seized by Justice and Customs. The issue of

dissimilar properties relates to the general property category. Both Justice and Customs make unusual seizures. As an example of an unusual seizure, the Director of Customs Seizures and Penalties Division in testimony before the Senate Committee on Governmental Affairs on April 25, 1991, described a seizure of 39,000 pounds of frozen Finnish pork heads. Seizures of foodstuffs are not unique to Customs. At the end of December 1990, the Marshals Service was managing 62 such seizures valued at about \$550,000.

Generally, similar items can be found in both agencies' seized property inventory. But, more important, both agencies contract out the custodial functions associated with these properties. Therefore, the expertise needed, from the federal perspective, lies in the ability to effectively procure the services necessary to care for the seizures.

Treasury also expressed concern that the Marshals Service does not have an automated information system capable of tracking seized properties under its control.

According to the Marshals Service, its Seized Asset Management System became operational in all 94 districts on March 1, 1991. That system tracks all seized assets from the time the property is turned over to the Marshals Service through disposition. Justice is continuing the process of developing and implementing an integrated departmentwide asset forfeiture information system. That system, when in place, will tie together the agencies and components comprising the Justice forfeiture program. According to Justice officials, the system will track assets from seizure through disposition, including asset-specific revenues and expenses. Justice estimates that the system will be fully operational by the middle of fiscal year 1993.

Customs, in its detailed comments, raised concerns that we may have undercounted the number of employees managing the Marshals Service's seized property inventory. After following up with the Marshals Service, we determined that 6 full-time equivalent contractor employees in fiscal year 1989 and 40 in fiscal year 1990 should be included in our cost comparison. These employees were used for data input into the Marshals Services's seized property information system. The report has been changed to reflect those contractor employees.

Also, in its detailed comments, Customs raised concerns about whether and how some services currently provided by its national contractor

would be continued under consolidation. The services included maintenance and input of information into its seized property data base, the generation of seizure numbers to track all property, and the preparation of management reports for agency use. We agree these are valid concerns that should be addressed in the consolidation effort. Provisions should be made for providing the information necessary to effectively manage and oversee program operations.

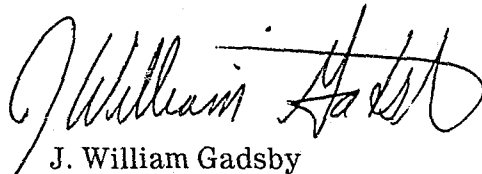
Treasury and Customs also stated our report is based on out-of-date contractor information. They supported a partial consolidation, but said more up-to-date information was needed before moving forward with a full consolidation. They suggested studying the issue further. Customs did, however, state it would agree to the prompt transfer of its real property seizures to the Marshals Service.

The issue is not who the contractor is, or whether work is done in-house or contracted out, but rather the inefficiencies created by allowing two agencies to separately manage and dispose of their seized property inventories. Under current arrangements, Justice and Customs separately contract with vendors, monitor vendor performance, and perform overall program oversight. This duplication of effort wastes taxpayer resources.

We believe our work adequately demonstrates there are economies and efficiencies to be gained from consolidating the custodial management of noncash properties in one agency. We have no objections to the agencies pilot-testing consolidation to work through the mechanics of consolidating the properties. However, that test should involve a significant number of properties and have pre-established timetables and funding arrangements. We believe it should involve more than Customs transferring its real property seizures to the Marshals Service, because, for all practical purposes, real property seizures are already consolidated in Justice. As of June 30, 1990, Customs had only 37 such seizures, compared with Justice's 3,505. Both Justice and Treasury, in testimony before the Senate Committee on Governmental Affairs on April 25, 1991, said they were working with the Office of Management and Budget and would present a plan for moving forward with consolidation by July 1, 1991.

We are sending copies of this report to the Attorney General; Secretary, Department of the Treasury; Director, Executive Office for Asset Forfeiture, Department of Justice; Director, U.S. Marshals Service; and Commissioner, U.S. Customs Service. We will provide copies to other parties upon request.

Major contributors to this report are listed in appendix VI. If you have questions about this report, please call me on 275-8387.

A handwritten signature in cursive script, appearing to read "J. William Gadsby".

J. William Gadsby
Director, Federal
Management Issues

Scope and Methodology

The Anti-Drug Abuse Act of 1988 requires Justice and Treasury to develop and maintain a joint plan to coordinate and consolidate the post-seizure administration of properties seized for drug-related violations. We therefore focused on (1) the progress made by these two agencies in fulfilling that legislative requirement and (2) the potential cost savings that could be realized if all drug- and nondrug-related seizures were included in a consolidated program for post-seizure administration.

We reviewed the Marshals Service's and Customs' proposed consolidation plans and discussed those plans and consolidation efforts in general with Justice Executive Office of Asset Forfeiture officials and Marshals Service and Customs seized property headquarters officials. We also discussed consolidation with officials in two Marshals Service regional offices, five Marshals Service district offices, and five Customs district offices. These Marshals Service districts had 41 percent of the Justice noncash seized property on hand as of June 30, 1990, and the Customs districts had 35 percent.

To determine the benefits of consolidation, we focused on potential savings related to seized vehicles. We chose vehicles because they are the largest single type of asset by volume, the same vendors are used by the Marshals Service and Customs in some locations, and vehicles require essentially the same types of custodial services nationwide. Moreover, on the basis of our discussions with government officials and vendor representatives, as well as our previous work in the seized property area, we believed the basic principles of economies of scale apply to other types of property as they apply to vehicles.

In comparing custodial activities on seized vehicles, we concentrated on three areas at each location reviewed. These were acceptance, towing, and storage. We chose these because they were included in each Customs and Marshals Service vehicle contract and provided a common basis for comparison. A separate acceptance charge was included in each Customs contract but was included as part of the towing charge in Marshals Service contracts. We combined the Customs acceptance and towing charges and compared these with the Marshals Service towing charges. In addition, a separate maintenance charge was included in each Customs contract and was included as part of the storage charge in some Marshals Service contracts. In those cases, we combined Customs maintenance and storage charges and compared these with the Marshals Service storage charges. In those locations where the Marshals Service contracts did not include charges for maintenance, we did not include Customs maintenance charges in our rate comparison.

Our analysis included 49 percent of the vehicles in the Marshals Service's and Customs' custody as of May 1990. From a list of all existing vehicle contractors provided by the Marshals Service and Customs, we identified (1) two locations where the Marshals Service and Customs, through its national contractor, used the same vendor and (2) locations where the Marshals Service and Customs had the highest volume of stored vehicles as of May 1990.

The Marshals Service and Customs used the same vendors in McAllen, Texas, and Yuma, Arizona, and we compared the costs at those sites. Other than these two sites, the Marshals Service stored the most vehicles in the San Diego, California area; Tucson, Arizona; and Laredo, Del Rio, and El Paso, Texas. Customs stored the most vehicles in El Paso; San Diego and Los Angeles; Nogales, Arizona; and Laredo. We compared the costs in San Diego, El Paso, and Laredo plus the costs in Calexico and El Centro, California. We compared the latter because they are in the San Diego districts for both the Marshals Service and Customs. Since they are about 10 miles apart, we considered them to be in the same location. We did not compare the costs in Nogales and Tucson because they are 65 miles apart and we considered them too geographically dispersed for comparison.

We visited the Marshals Service and Customs offices and their vehicle storage facilities in Laredo, McAllen, and San Diego. We discussed the management of seized property with officials in those offices, with representatives of Customs' national contractor in Laredo and San Diego, and with the Marshals Service and Customs contractor in Yuma.

We did our review between June and November 1990 in accordance with generally accepted government auditing standards. The Departments of Justice and Treasury and the U.S. Customs Service provided written comments on a draft of this report, which were considered in the final report.

Comparison of Rates Paid by the Marshals Service and Customs for Accepting, Towing, and Storing Seized Vehicles

Location/Agency	Number of vehicles as of May 1990	Acceptance/towing rates paid ^a	Average daily rate paid for outside storage ^b	Average cost per vehicle for acceptance/towing/ storage ^c	Difference in rates paid by Customs compared to Marshals Service
San Diego, Cal.^d					
Customs					
Vendor A	58	\$32.65	\$1.10	\$155.85	\$57.53 more
Vendor B	105	31.40	1.10	154.60	56.28 more
Marshals Service	4800	30.00	0.61	98.32	
Calexico/EI Centro, Cal.^d					
Customs	58	48.10	3.75	468.10	19.14 less
Marshals Service	177	65.00	3.77	487.24	
Yuma, Ariz.^e					
Customs	22	94.15	1.53	384.85	237.05 less ^f
Marshals Service	177	88.00	2.81	621.90	
McAllen, Tex.^e					
Customs	81	34.10	1.10	273.90	166.30 more
Marshals Service	973	9.50	0.45	107.60	
Laredo, Tex.^d					
Customs	61	50.75	1.30	334.15	117.05 more
Marshals Service	500	10.00	0.95	217.10	
El Paso, Tex.^d					
Customs	361	9	2.83	551.85	113.10 more
Marshals Service	303	9	2.25	438.75	

^aBased on average number of miles Customs' vehicles are towed.

^bRates shown also include periodic maintenance for vehicles in Calexico/EI Centro, Yuma, and El Paso.

^cRates shown are based on average number of miles Customs' vehicles are towed and average length of time in storage (San Diego and Calexico/EI Centro, 112 days; Yuma, 190 days; McAllen and Laredo, 218 days; and El Paso, 195 days).

^dCustoms and Marshals Service did not use same vendor.

^eCustoms and Marshals Service used same vendor.

^fAccording to Customs officials, this contract was renegotiated in January 1991. Under the new contract the average daily rate for outside storage and maintenance increased to \$2.45 per day making the average cost per vehicle stay about \$560.

^gUnable to compare because Customs' rates are based on number of hours and Marshals Service's on number of miles.

Comments From the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

MAR 22 1991

Honorable Richard L. Fogel
Assistant Comptroller General
United States General Accounting
Office
Washington, D.C. 20548

Dear Mr. Fogel:

We have reviewed your draft report entitled Asset Forfeiture: Management of Noncash Property Should be Consolidated Under the Marshals Service. As noted in the Report, the Department of Justice supports consolidation of post-seizure management and disposal of forfeited property. We are committed to making forfeiture a model law enforcement program and we share your confidence that the Marshals can meet the challenge of consolidation.

Consistent with our desire to employ forfeiture as a law enforcement weapon, we are most comfortable with the management and disposal of property seized for violations of Titles 18 and 21, United States Code. We have no experience, however, with the category of seizures Customs describes as "general property." Thus, we strongly support the Report's recommendation that other general property arrangements be explored including using the General Services Administration or leaving these functions with Customs.

The Report acknowledges that an increase in staff will be necessary to effectively absorb the Customs seized property inventory. We simply take this opportunity to underscore the importance of this portion of the Report. The Department of Justice has taken a number of steps to improve its forfeiture program, not the least of which is the devotion of additional administrative positions to the property management function of the Marshals. The people are becoming part of an already rapidly changing program. It is critical that additional personnel necessitated by the consolidation arrive before the onslaught of additional responsibilities.


Finally, and probably most importantly, we are concerned that the Report does not flow to its own logical conclusion. There is no reason to leave cash management with Customs and there are at

- 2 -

least three good reasons to transfer that function to the Marshals. First, management and disposal of non-cash assets are expensive. In order to assure the Department of Justice Assets Forfeiture Fund can sustain these expenses, it should be the depository for forfeited cash. Second, while the savings are probably not as significant as those provided by consolidation of non-cash management and disposal, the Marshals will not require additional resources to handle additional deposits. Whatever resources Customs currently devotes to this task would be a net savings. Third, Congress would be able to more efficiently and effectively evaluate the federal management of property seized by law enforcement if it had only to look to one agency.

We appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,


Harry H. Flickinger
Assistant Attorney General
for Administration

Comments From the Department of the Treasury



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON

17 APR 1991

Mr. Richard L. Fogel
Assistant Comptroller General
United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

Reference is made to your letter dated February 11, 1991. Thank you for meeting with us, and for giving Treasury the opportunity to comment on the GAO draft Asset Forfeiture report.

The Department of the Treasury agrees that, in theory, consolidation of asset management could save administrative effort and money. However, we have very serious concerns that are yet to be resolved.

The U.S. Customs Service has followed the instructions from several Congressional Committees and GAO and has tailored an Asset Management Program to fit its unique enforcement needs. To make changes now to the U.S. Marshals Service, which does not have experience handling such a myriad of properties, would not be "good government."

The referenced GAO report does not reflect current information on what the U.S. Customs Service is doing regarding the management of its Non-cash Asset Forfeiture Program. The report is based on out of date contractor information. We would need up-to-date information on Customs and the Marshals Service to enable us to make a comparison before we could determine if it would be prudent to go forward with a full consolidation.

It is also important to note that the Customs Service has in-house, an automated nationwide seized property management system which affords Customs the ability to track all seized property from point of seizure through disposition. This system is not in place at the Marshals Service and is not projected to be in place until 1993.

I am also concerned that the GAO audit did not look with enough specificity and detail at the different kinds of properties managed by Customs and the Marshals Service and the attendant care each requires. The Customs Service, by law, must seize and maintain a myriad of properties, many of which are not revenue producing.


- 2 -

Further, there must be clear and proper agency assignment for forfeited property up front, so as to eliminate confusion at the end regarding allocation. One major area of confusion continues to be drug related seizures and forfeitures under 21 U.S.C. 881.

Treasury believes that if asset management is consolidated under the Justice Department, Treasury must play a more substantial role than merely being consulted by the Attorney General.

Again, given the unresolved issues and the tremendous improvement in the Customs Asset Forfeiture Program, I must state that Treasury has not concluded that consolidated asset management under DOJ is the only way.

Sincerely,


Peter K. Nunez
Assistant Secretary
(Enforcement)

Comments From the Customs Service



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON

24 APR 1991

Mr. Richard L. Fogel
Assistant Comptroller General
General Accounting Office
441 G Street, NW.
Washington, D.C. 20548

Dear Mr. Fogel:

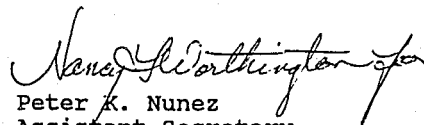
The enclosed document has been prepared in response to the draft GAO report entitled: Asset Forfeiture: Management of Noncash Property Should Be Consolidated Under the U.S. Marshals Service.

We strongly support a position that retains seized property management with the Customs Service and its national contractor for a period of not less than one year while careful evaluations are conducted of the true cost, effect and benefits of a one agency consolidation.

We recommend a partial consolidation of selected properties. This will enable the agencies, GAO and Congress to make an informed decision as to the best future course of action. This position will result in a consolidation of functions effectively utilizing the experience and resources of both agencies while allowing the Marshals Service to develop their seized property management data base scheduled for completion in 1993.

The Department of the Treasury supports the initiation of program procedures that will enhance seized property management.

Sincerely,


Peter K. Nunez
Assistant Secretary
(Enforcement)

Enclosure



THE COMMISSIONER OF CUSTOMS

March 27, 1991

WASHINGTON, D.C.
ENF 8-CO:T:S: RVM

MEMORANDUM FOR: Peter K. Nunez
Assistant Secretary
(Enforcement)

FROM: Commissioner of Customs *Carol Zallott*

SUBJECT: GAO Draft Report Entitled: Asset
Forfeiture: Management of Noncash
Property Should Be Consolidated Under
the U.S. Marshals Service

The attached document has been prepared in response to the subject draft GAO report concerning the consolidation of the U.S. Customs Service seized property program with the U.S. Marshals Service.

We strongly support a position that retains seized property management with the Customs Service and its national contractor for a period of at least one additional year while careful studies are made of the true cost, effect and benefits of a one agency consolidation. We do agree to the prompt transfer of real property to the U.S. Marshals Service.

This position will result in a consolidation of functions that effectively utilizes the experience and resources of both agencies. The U.S. Customs Service looks forward to initiating new program procedures that will further enhance seized property management.

Attachment

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EXECUTIVE SUMMARY

The GAO Draft Proposal has merit in the combining of seized assets under one agency. The U.S. Customs Service does not believe that the consolidation proposed is appropriate at this time. We believe further study, review and evaluation is necessary before any action involving the wholesale consolidation of seized assets is begun.

The U. S. Customs Service is very proud of the improvements made to the management of its seized property program. These improvements were made with the assistance and guidance of Congress and GAO. Customs is dedicated to the cost effective management of seized property and is therefore concerned that the draft GAO report did not address all the pertinent issues regarding consolidation.

We note for the record that if consolidation under the Marshals Service takes place, new legislation should be enacted to require the Marshals Service to receive and maintain all U. S. Customs Service seized property without exception. This would include narcotics, evidence, low value merchandise, conveyances, real property, merchandise subject to Agriculture, EPA, DOT and FDA laws and regulations to name just some of the property types this agency seizes. The Marshals Service currently does not provide these all encompassing services. In order to adequately perform the Customs Mission, all property must be transferred to the Marshals Service without exception and the Marshals Service must maintain the Customs Services' automated Seized Property Management System (SPMS) to facilitate the Customs Service's enforcement and compliance missions.

In addition, the Customs Service must maintain property disposition and asset forfeiture authority over Customs seized property. The Customs Service also concurs with the GAO draft report that it retain management of seized monetary instruments.

Customs is dedicated to working with the Marshals Service to accomplish congressional goals. While we believe it is premature to execute a full consolidation at this time, we believe a partial consolidation of seized property is a viable alternative. The partial consolidation will allow the Customs Service, the Marshals Service, OMB, GAO and congress to fully analyze and evaluate all aspects and requirements of such a consolidated program.

Thank you for the opportunity to review and comment on the GAO draft report.

Major Contributors to This Report

General Government
Division, Washington,
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John Stahl, Assistant Director, Federal Management Issues
Roger Lively, Assignment Manager
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