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Oversight Hearings
on Asset Forfeiture Programs

Statement of
J. William Gadsby
Director, Federal Management Issues
General Government Division

Before the
Committee on Governmental Affairs



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OVERSIGHT HEARINGS ON THE DEPARTMENT OF JUSTICE'S
AND CUSTOMS SERVICE'S "HIGH-RISK" ASSET FORFEITURE PROGRAMS

SUMMARY OF STATEMENT BY
J. WILLIAM GADSBY
DIRECTOR, FEDERAL MANAGEMENT ISSUES
GENERAL GOVERNMENT DIVISION

GAO is testifying on the need to enact a series of legislative and administrative changes to strengthen the operations of the Department of Justice's and the Customs Service's billion dollar asset forfeiture programs. Specifically, GAO recommends legislation designed to

- allow millions of dollars in uncontested seized cash to be put to use sooner by utilizing administrative forfeiture,
- strengthen the internal controls and financial reporting by requiring audited financial statements consistent with Comptroller General standards, and
- accelerate the sale of forfeited real property by guaranteeing (warranting) purchasers against title defects resulting from the forfeiture proceedings.

GAO also recommends that Justice and Customs strengthen the monitoring of existing policies to ensure prompt deposit of nonevidentiary cash. They also need to work aggressively toward resolution of management information system deficiencies.

Finally, oversight involving Congress, GAO, Justice, and Treasury would help ensure that the asset forfeiture programs operate effectively.

Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss the asset forfeiture programs of the Department of Justice and the Customs Service. As you know, these programs have been identified by the Comptroller General as a high-risk area warranting special audit effort. Today I will highlight why we identified the asset forfeiture programs as high-risk, address the status of efforts to fix the problems confronting them, and discuss program oversight.

In the Comptroller General's January 1990 letter to the Chairman, he identified seized and forfeited assets as a "high-risk" area because it had been characterized by mismanagement and internal control weaknesses. More specifically, the programs had:

- experienced enormous growth in seized asset inventories as reported by Justice and Customs (from \$33 million in 1979 to \$1.4 billion in 1989);
- a history of debilitating internal control problems leading to mismanagement of seized cash; inaccurate reporting on the financial results of program operations; and an inability to maximize revenues on hundreds of millions of dollars' worth of seized cars, boats, airplanes, and real estate; and
- a lack of staff with property management expertise.

We also noted that these programs had been the subject of considerable press attention, due primarily to their link with the highly visible war on drugs.

PRIOR PROBLEMS CONTINUE

TO NEED ATTENTION

Over the past 9 years, GAO has identified numerous problems in Justice's and Customs' asset forfeiture programs.¹ While a number of improvements have been initiated, several areas warrant further attention. They are (1) cash management, (2) management information that includes the preparation of financial statements, (3) staffing, and (4) real property title insurance.

Cash Management Problems Continue

We first reported on serious cash management problems in 1987. Subsequently, Justice and Customs both took actions to address many of these problems. But, as we recently reported to this Committee, the process used to forfeit uncontested cash seizures of over \$100,000 remains unnecessarily cumbersome and untimely, and both agencies continue to unnecessarily hold seized cash for evidence.

¹See appendix for complete listing of GAO reports and testimonies on the asset forfeiture programs.

Current law allows the seizing agencies to administratively forfeit cases, including cash, of \$100,000 or less. Generally, this type of proceeding is used on most smaller cases, such as cars, boats, and planes. For amounts above \$100,000 and for all real property, the cases are handled judicially by U.S. Attorney offices and the courts.

Historically, 73 percent of all seized cash has been forfeited judicially even though the forfeiture was uncontested--that is, no one came forward to claim the money. Judicial forfeiture is more cumbersome than the administrative process, requires more staff time, and takes longer--about 7 months longer at Customs and 4 months longer at Justice. We asked attorneys at Justice and Customs, as well as judges who preside over judicial forfeitures, what they thought of widening the use of administrative forfeiture. They agreed it would be a much better use of resources with no adverse impact on individual due process rights.

Justice and Customs, as of December 1989, had about \$557 million in seized cash undergoing forfeiture. By changing the law to permit administrative forfeiture of all uncontested cash seizures, an estimated \$406 million could be forfeited months earlier and put to use quicker.

We first recommended in April 1989 that the law be changed to

permit the administrative forfeiture of all uncontested cash seizures. We continue to believe this recommendation needs to be implemented. H.R. 1594, currently pending before Congress, contains such a provision.

Another nagging cash management issue is the problem of agencies unnecessarily holding seized cash for evidence purposes. We have reported on this issue several times since March 1987. Both agencies have established policies to minimize holding cash unnecessarily, but, while the situation has improved, problems remain.

Basically, each agency's policy says that within 60 days of seizure, cash will be deposited into the agency's holding account unless the specific currency seized is needed as evidence, for example, because it has defendant fingerprints on it. Decisions to hold cash for evidence rest with the seizing agencies and U.S. Attorney offices. Department of Justice headquarters approval is required to hold seizures of \$5,000 or more.

When we asked how much seized cash was being held as evidence in February 1990, we found that Customs was holding about \$36 million nationwide. And of this amount, about \$31 million involved seizures of \$5,000 or more that had been on hand for more than 60 days. About \$19 million of the \$31 million was in Miami, New York, and Los Angeles. Further inquiries in these

locations showed that about half of this money was not needed for evidence and should have been deposited. Deposits totaling about \$10 million were made following our inquiries at these locations. At the time of our inquiries at Customs, Justice did a similar follow-up with its agencies that resulted in the identification and deposit of another \$16 million.

Justice has reminded its employees of its policy on holding cash as evidence. Customs revised its seized cash directive in June 1990 requiring more communication between its offices and U.S. Attorney offices. But, because these problems have been recurring, we recommended in our June report that Justice and Customs routinely monitor the holding of seized cash for evidentiary purposes.

Management Information Deficiencies

Inadequate management information has also been a long-standing problem in the seized assets programs. For example, in March 1986 we reported that the internal controls over millions of dollars' worth of seized assets was deficient because Justice's accounting system did not provide accurate and timely data. In September 1987, we reported (1) inventory data on real property were inaccurate and incomplete, (2) legal and other file documentation on properties were missing, and (3) internal controls over properties' expenses were inadequate. We pointed

out that these inadequacies hampered informed decision-making and were contributing factors in the seizing of properties with low equity and delays in disposing of property. We recommended that the Attorney General improve the adequacy and accuracy of the data. Additionally, Marshals Service audit reports covering 1985 to 1989 reveal consistent problems with inaccurate and incomplete inventories, records, and case-file documentation.

A 1989 assessment of the current asset forfeiture case tracking system done by Justice showed that program data continued to be inadequate. The review identified three problem areas:

(1) important data were not captured, (2) data validity was erratic, and (3) data were not timely. An April 1990 report by Justice's Office of Inspector General noted similar deficiencies. Thus, program managers continue to manage hundreds of millions of dollars' worth of seized property with inaccurate and incomplete information.

Some of the information deficiencies we observed at Justice are also present at Customs. For example, in October 1989, we reported that because of information deficiencies, it was impossible to accurately determine how much money Customs was making or losing from the sale of forfeited noncash assets.

Both agencies have actions underway to correct these problems, but resolution is still several years away, particularly at

Justice. The Attorney General is conducting a requirements analysis and feasibility study to build a new system. Customs is in the process of integrating and modifying its current information systems.

In addition to systems improvement, both agencies have also initiated, with our assistance, efforts to prepare financial statements for their forfeiture programs that would be capable of withstanding independent audit. These statements can help to

- more accurately report forfeiture program results;
- more accurately determine program cost effectiveness; and
- limit the exposure to fraud, waste, and mismanagement.

While current Justice and Customs officials seem committed to preparing these statements, fixing their current financial reporting systems will take time. Therefore, to ensure continuity, we recommended in June 1990 that Congress enact a statutory requirement for Justice and Customs to produce a set of annually audited financial statements. H.R. 1594 contains such a provision for Customs, but similar legislation has not yet been introduced for Justice.

As part of the effort to produce annual financial statements, the agencies need to establish data systems capable of providing complete, timely, and accurate program information.

Lack of Adequate Staff

In March 1986, we reported that the Marshals Service was having difficulty accepting custodial responsibilities for seized property because of inadequate staffing. The Marshals Service has custodial responsibility for virtually all Justice seizures. In September 1987, we said that the Marshals Service may not have had adequate staff to effectively manage the program.

Over the last 5 years, the staff resources the Marshals Service has devoted to its seized property program has remained constant at 240 full-time equivalent positions. At the same time, the number of property seizures has increased from 3,664 in 1985 to 27,530 as of December 1989. During the same period, the value of the on-hand property went from \$300 million to nearly \$1.1 billion. Justice expects its volume of seizures to continue to grow.

The President's fiscal year 1991 budget proposes an additional 134 positions to support the Marshals Service seizure program. The Marshals Service intends to use almost all of these positions in the field to hire procurement clerks, property management specialists, and Deputy Marshals. Given the program's growth, we do not question the need for additional resources.

Title Insurance Problems

Inhibit Disposal

In September 1987, we reported that the Marshals Service was experiencing real property disposal delays because of difficulties in obtaining title insurance. At that time, we recommended that Justice consider alternative measures for resolving title insurance companies' reluctance to insure forfeited real properties. The title insurance industry wanted the government to guarantee the purchaser reimbursement for any title defects arising from the processing of the forfeiture.

In April 1989, we again reported that the Marshals Service was experiencing title-related delays and recommended that legislation be enacted guaranteeing clear title to individuals who acquire civilly forfeited real properties. We noted then that the concerns of the title industry, at best, lengthened processing time by requiring more documentation, and, at worst, lowered the market value of the property if it was sold without title insurance.

Our work this year with title industry officials, Justice attorneys, and Marshals Service officials suggests that the situation is unchanged. For example:

-- The American Land Title Association told us that the general

counsels of the five largest title insurance companies have expressed reluctance to insure civilly forfeited property.

- In February 1990, the U.S. Attorney, Eastern District of Texas, reported that the title insurers were concerned about the finality of civil forfeiture and were reluctant to issue title insurance. As a result, properties are being sold at below fair market value.
- In Miami, a Marshals Service official said that a title guarantee would have helped to speed up the sale of 52 of the 88 properties disposed since October 1, 1989.
- In California, the U.S. Attorney office in San Diego reported that the sales of about 6 civilly forfeited properties were delayed during fiscal year 1990, and probably 25 to 30 other sales were delayed during the last 3 years, because of concerns about the forfeiture proceeding.

For other views concerning our recommendation, we asked Justice and title industry officials about the advisability of guaranteeing purchasers reimbursement for any title defects resulting from the forfeiture process. Both groups support the recommendation. Therefore, we continue to believe that legislation should be enacted giving the Attorney General discretion to warrant clear title to forfeited real property.

NEED FOR STRONG OVERSIGHT CONTINUES

As illustrated in the preceding sections, most of these problems have existed for several years. Solving them--particularly those related to information systems--will also take years. Now that the problems have been identified and corrective actions have been started, effective oversight is needed to see these problems through to resolution. Such oversight should involve Justice and Treasury Inspectors General (IG), Congress, and GAO.

We plan to continue our oversight through three reviews looking at (1) internal controls over sales of forfeited property to insure they are "arms-length" transactions, (2) the management of commercial real property seizures, and (3) a comparison of Justice's and Customs' cost of managing seized property.

In addition to our efforts, in June 1990, the Office of Management and Budget (OMB) issued a series of policies that addressed, among other things, linking the resolution of high-risk areas to the Financial Integrity Act process and calling for the IGs to play a role in validating corrective actions. We endorse the OMB policies. The IGs should also work closely with their respective agencies to strengthen financial reporting.

Finally, through passage of recommended legislative changes and

continued oversight hearings, Congress can help assure that the forfeiture programs operate effectively and that program profits are maximized.

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This concludes my prepared testimony, Mr. Chairman; I will be pleased to answer any questions that you or Members of the Committee may have.

GAO REPORTS AND TESTIMONIES ON
ASSET SEIZURES AND FORFEITURE

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| 1. <u>Asset Forfeiture: Legislation Needed To Improve Cash Processing and Financial Reporting</u> | GAO/GGD-90-94
June 19, 1990 |
| 2. <u>Asset Forfeiture: Helping Finance the War on Drugs (Video Report)</u> | GAO/GGD-90-01VR
October 1989 |
| 3. Statement of Richard L. Fogel Before the Subcommittee on Oversight, House of Representatives, on Profitability of Customs Forfeiture Program Can Be Enhanced | GAO/T-GGD-90-1
October 10, 1989 |
| 4. Statement of Gene L. Dodaro Before the Subcommittee on Crime, House of Representatives, on Asset Forfeiture: An Update | GAO/T-GGD-89-17
April 24, 1989 |
| 5. Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending Budget and Accounting, United States Senate, on Asset Forfeiture Programs: Progress and Problems | GAO/T-GGD-88-41
June 23, 1988 |
| 6. Statement of Gene L. Dodaro Before the Subcommittee on Crime, House of Representatives, on Asset Forfeiture Programs: Corrective Actions Underway But Additional Improvements Needed | GAO/T-GGD-88-16
March 4, 1988 |
| 7. <u>Seized Conveyances: Justice and Customs Correction of Previous Conveyance Management Problems</u> | GAO/GGD-88-30
February 3, 1988 |
| 8. Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, on Real Property Seizure and Disposal Program Improvements Needed | GAO/T-GGD-87-28
September 25, 1987 |
| 9. Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, on Asset Forfeiture Funds: Changes Needed to Enhance Congressional Oversight | GAO/T-GGD-87-27
September 25, 1987 |

APPENDIX

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| 10. Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, \$ Millions in Seized Cash Can Be Deposited Faster | GAO/T-GGD-87-7
March 13, 1987 |
| 11. <u>Drug Enforcement Administration's Use of Forfeited Personal Property</u> | GAO/GGD-87-20
December 10, 1986 |
| 12. Statement of Arnold P. Jones Before the Committee on the Budget, United States Senate, on Customs' Management of Seized and Forfeited Cars, Boats, and Planes | Statement
April 3, 1986 |
| 13. <u>Improved Management Processes Would Enhance Justice's Operations</u> | GAO/GGD-86-12
March 14, 1986 |
| 14. <u>Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement</u> | GAO/PLRD-83-94
July 15, 1983 |
| 15. <u>Asset Forfeiture -- A Seldom Used Tool in Combatting Drug Trafficking</u> | GAO/GGD-81-51
April 10, 1981 |