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Asset Forfeiture Funds: Changes Needed to Enhance Congressional Oversight

Statement of
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Subcommittee on Federal Spending,
Budget and Accounting, U.S. Senate

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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity today to discuss our review of Forfeiture Funds operated by the Department of Justice and the U.S. Customs Service, which was undertaken at the Chairman's request. You expressed concern about the control over fund expenditures in view of the internal control and management problems we had identified in the agencies' management of seized and forfeited cash.

On March 13, 1987, in testimony before this Subcommittee, we identified deficiencies which resulted in millions of dollars not being deposited promptly into designated U.S. Treasury accounts. Since then, the agencies have taken actions to correct these deficiencies, and we have included a brief description of the corrective actions for the Subcommittee's information in Appendix I to this statement.

OBJECTIVE, SCOPE AND METHODOLOGY

Our objective in examining the operation of the Forfeiture Funds was to obtain an understanding of how receipts and expenses are accounted for. We reviewed available information on Justice and Customs Fund expenditures and interviewed agency officials. As agreed to by the Subcommittee, we did not make detailed examinations of Fund transactions or verify the reasonableness of Fund expenditures so that we could present our observations at this time.

We conducted our work primarily at Customs and U.S. Marshals Service headquarters and the Department of Justice in Washington, D.C. We also visited Customs, U.S. Marshals Service, Drug Enforcement Administration, and Federal Bureau of Investigation field offices in southern California. We did our work from April 1987 to September 1987, in accordance with generally accepted government auditing standards.

SUMMARY RESULTS

In the Justice Fund, rapidly increasing revenues are accumulating to be spent with little congressional oversight. Unlike Customs, which must transfer surplus funds at year-end to the U.S. Treasury, all year-end funds remain in Justice's Fund to be used at the Department's discretion in the upcoming years. Despite significant increases in expenditures, the amount of funds in Justice's Fund continues to grow and, as of August 31, 1987, there was an $88 million balance in the Fund. This contrasts with the $5 million balance which Justice was allowed to retain at the end of fiscal year 1986.

With respect to Customs, three specific areas must be improved if adequate control and oversight is to be exercised over Customs' asset seizure and forfeiture program. First, congressionally-imposed spending limitations have prevented Customs from recording, as Justice does, all receipts and expenses into its Fund because the limits have been substantially

lower than needed to properly manage Customs' seized assets. To comply with the established limits, Customs uses an administratively cumbersome procedure of offsetting an asset's expenses against its sales proceeds before recording and depositing the balance into the Fund. However, Customs' "netting" practice does not provide a thorough record of the Fund's operations or comply with the Comptroller General's accounting and reporting standards[1], as required by the Federal Managers' Financial Integrity Act. Second, Customs' reports to Congress need to be improved; the fiscal year 1985 and 1986 reports were incomplete. Third, substantive improvements are needed in Customs' accounting system to improve the reliability of the receipts and expenses being charged against the Fund.

Today, I would first like to provide some background on the Funds, and then discuss the detailed results of our review.

FORFEITURE FUNDS ESTABLISHED IN 1984

Forfeiture law allows the government to take property that has been illegally used or acquired without paying the owner. Before 1984, expenses related to the seizure and forfeiture of property were paid out of general salaries and expense appropriations. Numerous problems were identified with the

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[1]GAO Policy and Procedures Manual For Guidance of Federal Agencies, Title 2 - Accounting and Other Related Comptroller General's Requirements.

Customs' and Justice's management of seized and forfeited assets, however, that were due, in large part, to insufficient funds under this arrangement. Consequently, the Customs and Justice Funds were established to finance the management and disposal of seized and forfeited assets.

The Comprehensive Crime Control Act of 1984 (P.L. 98-473) established a Justice Assets Forfeiture Fund and a Customs Forfeiture Fund. The Trade and Tariff Act of 1984 (P.L. 98-573) also created a Customs Fund and Customs chose to operate its Fund under the provisions of the Trade and Tariff Act.

Confusing legislation enacted in 1986 repealed both of the Customs Funds established by the two 1984 acts. On the advice of its Acting Chief Counsel, Customs continued to operate its Fund in the belief that Congress intended for one Customs Fund to exist. This situation was clarified on July 11, 1987, when Customs' supplemental appropriation re-established the Customs Fund authorized by the Trade and Tariff Act. Appendix II describes the sequence of events which led to the current situation.

The Funds began operations in fiscal year 1985 but their durations differ. Justice's Fund is currently authorized through 1988 and the Customs Fund through 1991.

From inception of the Funds through June 30, 1987, Justice and Customs had deposited a combined total of $347.5 million into their funds and spent $112.8 million. The Justice Fund accounts for 73 percent of these deposits and 85 percent of the expenditures. Justice seizes more assets and also records all receipts and expenses into its Fund whereas Customs records only net receipts and net expenses into its Fund. Tables 1 and 2 show the Fund revenues and expenses for the agencies through June 30, 1987.

TABLE 1

JUSTICE FUND REVENUES AND EXPENSES

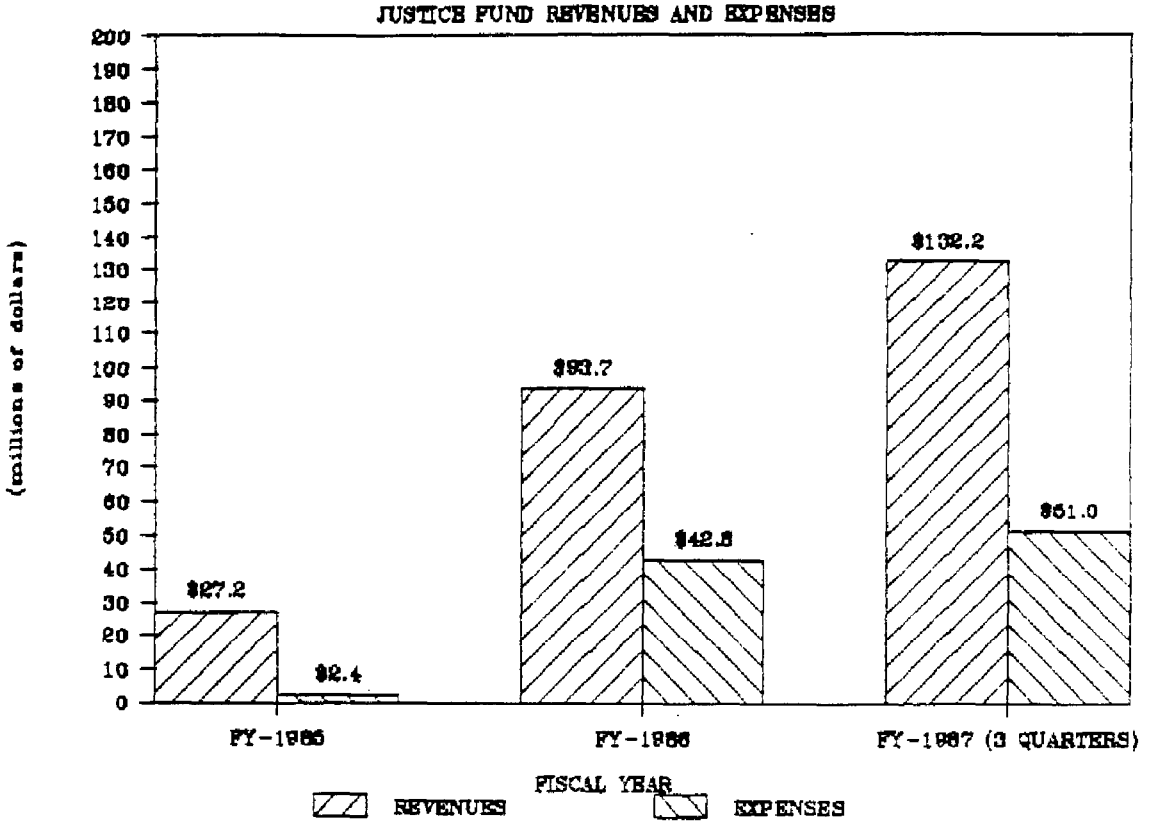
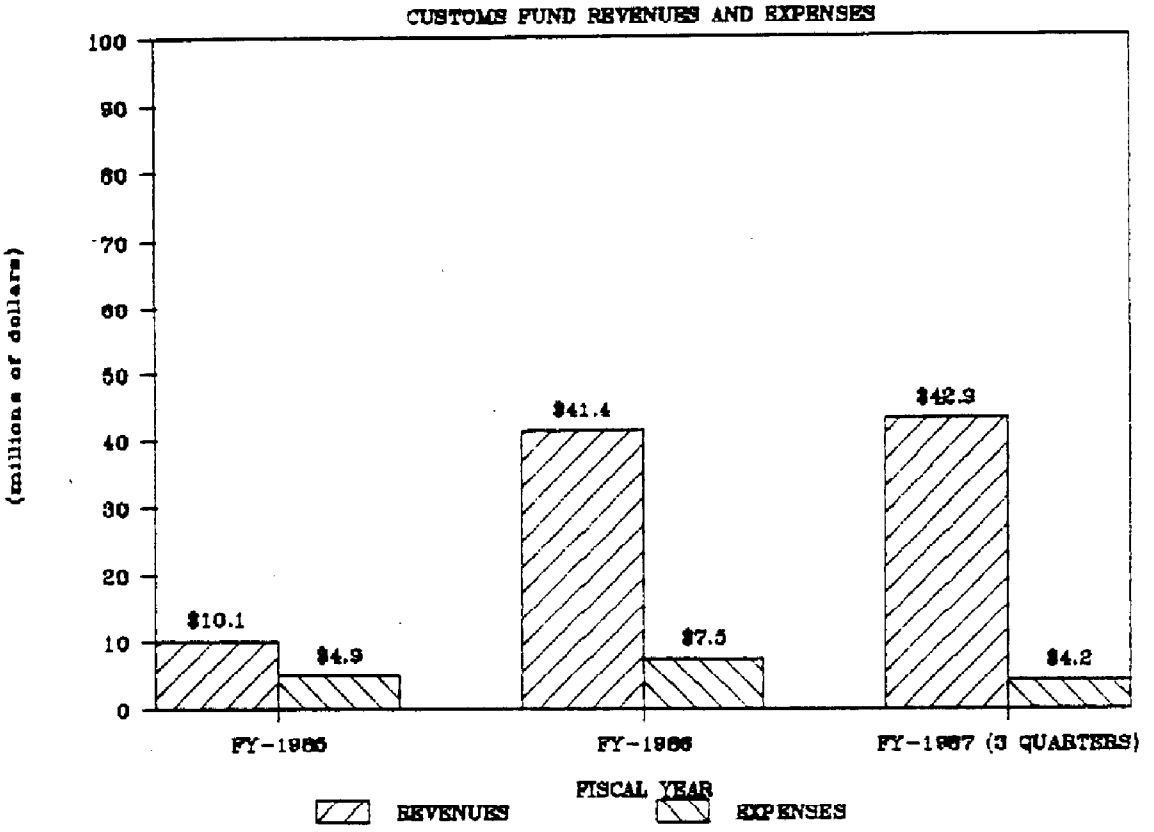


TABLE 2


CUSTOMS FUND REVENUES AND EXPENSES
(millions of dollars)
100
90
80
70
60
50
40
30
20
10
0
$10.1
$4.9
$41.4
$7.5
$42.3
$4.2
FY-1985
FY-1986
FY-1987 (3 QUARTERS)
FISCAL YEAR
REVENUES
EXPENSES

Legislation in effect before fiscal year 1987 required Justice and Customs to transfer any funds in excess of $5 million and $10 million respectively, at year-end to the Treasury General Fund. For fiscal years 1985 and 1986, Justice transferred $19.8 million, and $50.9 million, respectively, to the Treasury General Fund. Customs transferred no funds for fiscal year 1985 and $27.9 million following fiscal year 1986. The Anti-Drug Abuse Act of 1986 (P.L. 99-570) eliminated the transfer requirement from the Justice Fund.

Essentially, the acts authorize the Justice and Customs Funds to finance the same type of expenses, such as those related to the care, custody, and disposal of seized and forfeited assets, payments of liens and mortgages, and purchases of evidence or awards for information which are related to asset seizure. There are, however, certain differences. The act authorizes Justice to use its Fund to pay for leasing or buying computer equipment for use in administering the asset seizure and forfeiture program and to contract for seizure processing and accounting services whereas the legislation for the Customs Fund does not specifically identify such uses. Although not specifically identified in its act, Customs has determined that it can use its Fund to pay for salaries and fringe benefits of certain personnel such as Inspectors, Cashiers and Property Custodians that are involved in processing the sale of forfeited property. Attorney General guidelines prohibit Justice personnel

from recovering such costs from the Justice Fund. Expenses authorized under both Funds are shown in Appendix III.

Both Justice and Customs are required to provide a detailed report to Congress annually on the status of their Funds.

SUBSTANTIAL REVENUES ACCUMULATING IN JUSTICE'S FUND

The elimination of the requirement to transfer surplus funds out of Justice's Forfeiture Fund will result in a substantially increasing balance in Justice's Fund. Justice is now allowed to keep the entire year-end balance which, as of August 31, 1987, was $88 million as compared to the $5 million it was previously allowed to carryover to the next year. Justice's spending authority is limited only by Fund receipts.

In fiscal year 1986, Justice's spending was limited to $10 million for program-related expenses such as purchase of evidence, payment of awards, and payments to equip forfeited conveyances retained for law enforcement use. Appropriated funds were also used to finance program-related expenses. There were no limitations on expenses incurred in seizing, storing, maintaining and disposing of seized and forfeited assets (called management expenses), payments to lienholders, and amounts shared with state and local law enforcement agencies that had participated in the investigation and seizure of the assets

(called contingent expenses). Justice's continuing appropriation for 1987 removed the $10 million limitation (P.L. 99-591).

The Anti-Drug Abuse Act of 1986 removed the requirement to transfer any funds in excess of $5 million to the Treasury General Fund. Subsequently, Justice budgeted $44.5 million of Fund revenues for program-related expenses in fiscal year 1987. For example, Justice authorized $18.9 million in fiscal year 1987 for equipping forfeited conveyances retained for official use, as compared to $110,725 of Fund revenues spent for that purpose in 1986. Officials from the Federal Bureau of Investigation and the Drug Enforcement Administration told us that the Fund was being used to make up for appropriation shortfalls in some of their program-related operations. The following table contrasts the fiscal year 1987 budget with fiscal year 1986 expenses.

Table 3

Justice Assets Forfeiture Fund

FY 1987 Budget vs FY 1986 Actual

	FY 1987 Budget	FY 1986 Actual
ASSET SPECIFIC EXPENSES		
Asset Management/Disposal	$30,326,000	$12,741,028
Contingent Liabilities (including asset sharing with state/local agencies)	51,800,000	21,819,288
Evidence Destruction/Storage	3,000,000	-
Travel/Case Related Expenses	1,000,000	-
Contracting Out	730,000	-
Total Asset Specific	$86,856,000	$34,560,316
PROGRAM-RELATED EXPENSES		
Automated Data Processing	5,134,000	-
Awards for Evidence/Assistance	8,350,000	25,000
Evidence Purchase	11,000,000	8,135,498
Retrofitting	18,945,000	110,725
Training (+ Printing)	1,065,000	-
Total Program Related:	$44,494,000	$ 8,271,223
Total Expenses	$131,350,000	$42,831,539

The Justice Fund's year-end balance has also been increasing each fiscal year, from $24.8 million in 1985 to $55.9 million in 1986. Because Justice was allowed to retain $5 million in the Fund as a beginning balance for the upcoming year's operations, Justice transferred $19.8 million and $50.9 million to Treasury for fiscal years 1985 and 1986, respectively. However, with the elimination of the fund transfer requirement, Justice can carry forward to fiscal year 1988 the entire year-end balance.

As of August 31, 1987, the Fund balance totaled $88 million, and millions of additional dollars are awaiting transfer to the Fund once forfeiture action is complete. For example, the Seized Assets Deposit Account, used by Justice to hold cash that is pending forfeiture, contained approximately $122.6 million as of June 30, 1987. Upon forfeiture, such funds will be available, along with the 1987 Fund carryover, to be spent on the various authorized law enforcement activities with little congressional oversight of such expenditures.

We discussed the increasing Fund balance with the Deputy Associate Attorney General. He agreed that there is no need for Justice to carryover large sums of money from year to year. He noted that enough funds to cover Fund expenditures for at least one month would be sufficient as a beginning balance. He further agreed that even though the fund transfer requirement has been eliminated, one option worth consideration is for Justice to

transfer some of the fiscal year 1987 ending balance to the Treasury. He said another option is to request a legislative change authorizing expenditures for prison construction.

The Deputy Associate Attorney General also said that Justice does not need more than $50 million per year for the authorized program-related expenses. He agreed that either Congress should be notified when such an amount is exceeded or a $50 million limitation set by the Congress would be reasonable.

CUSTOMS FUND CARRYOVER MAY BE TOO HIGH

The amount of funds Customs is allowed to carryover to fiscal year 1988 and thereafter appears to be unnecessarily high. Customs is authorized to carryover $20 million in fiscal years 1988 through 1991. These amounts approximate the gross expenses for an entire year. A carryover of $5 million would appear to be sufficient as a beginning balance because the millions of dollars being deposited into the Customs Fund throughout the year are available to pay all anticipated expenses.

For example, Customs Fund "net" receipts totaled $41.4 million in fiscal year 1986 and $42.9 million through June 30, 1987. Reducing the carryover to $5 million would result in Customs transferring an additional $13 million to Treasury at the end of this year above what will be transferred and an additional

$15 million each year through 1991. We discussed this with Customs officials who agreed that a $5 million carryover would be sufficient.

There are several bills being considered which address the Customs and Justice Fund carryovers. For example, Section 8 of Bill S.789, introduced in the Senate on March 17, 1987, would establish a $10 million carryover for Justice's and Customs' Asset Forfeiture Fund. Any funds in excess of $10 million would be deposited into a newly established Special Forfeiture Fund in the U.S. Treasury. This Special Forfeiture Fund would be available for financing various federal, state, and local drug control activities in such amounts as may be specified in appropriations acts.

JUSTICE'S ACCOUNTING SYSTEM NEEDS TO BE IMPROVED

Justice's systems to account for and manage seized and forfeited assets, are inadequate, and agency efforts are underway to resolve long-standing problems with the systems.

Internal and external audits and evaluations conducted by Justice, GAO, and others in 1982 and 1983, identified the need for department-wide inventory and related information on seized and forfeited property. Again, in March 1986, we reported that the U.S. Marshals Service's national inventory system was

incapable of supporting management's needs. The Marshals are responsible for managing seized assets.

In complying with the Federal Managers' Financial Integrity Act, the Attorney General reported to the President and the Congress on December 31, 1986, that the lack of a complete accounting system for seized and forfeited assets, coupled with program problems, required him to report the Asset Seizure and Forfeiture Program as a material weakness. The Attorney General reported that, although the Marshals Service maintains an automated management system, proper accountability of seized and forfeited property had not been fully established within the Department's accounting system.

As of August 1987, the Marshals Service was evaluating contractor proposals for a system to resolve its management information problems. These problems include slow processing of reported data, poorly defined data elements, and the lack of system linkages with the other Justice agencies involved in the asset seizure program. The Marshals Service anticipates that the new system cannot be fully operational before October 1989.

CUSTOMS' FUND ACCOUNTING AND REPORTING MUST BE IMPROVED TO PROVIDE ADEQUATE BASIS FOR CONGRESSIONAL OVERSIGHT

Customs' accounting practices provide inadequate control over forfeiture program and Fund operations. Also, Customs' annual reports to Congress on the Fund contained insufficient information to provide a reader with a reasonable basis for assessing program performance or determining the Fund's compliance with governing legislation.

The Customs Fund is subject to congressionally-imposed spending limitations. The limitations for fiscal years 1985 and 1986 were $6 million and $7.5 million, respectively. The fiscal year 1987 limitation is $18 million. For fiscal years 1988 through 1991 the authorized limitation is $20 million but the appropriations limitation, when enacted, may be less.

The fiscal year 1985 and 1986 spending limitations had little relevance to the actual expenses needed to properly manage the large volume of assets Customs seizes. Customs estimated that expenses in fiscal year 1986 totaled $17.8 million as compared to the $7.5 million limitation. To comply with the congressionally imposed spending limitations for the Fund, Customs used the following "netting" procedure.

The expenses incurred in managing a seized and forfeited asset are paid out of the Salaries and Expense appropriation. When the asset is disposed of, the asset's sales proceeds are used to reimburse the salaries and expense appropriation account for the incurred expenses. If the asset's sales proceeds exceed its expenses, the gain is deposited into the Customs Forfeiture Fund as a receipt. If the expenses exceed the sales proceeds, money needed to reimburse the salaries and expense appropriation account for the remaining expenses is withdrawn from the Fund. The amount withdrawn is recorded as a net expense.

Customs officials informed us that the netting of receipts and expenses is administratively more cumbersome than recording all receipts and expenses into the Fund. Furthermore, Customs' "netting" practice does not comply with the Federal Managers' Financial Integrity Act of 1982 which requires agencies' financial accounting and reporting to comply with the Comptroller General's Accounting Principles, Standards, and Related Requirements. The requirements specify that related sources of revenues and expenses shall not be netted.

These requirements also specify that, to properly assess program performance and government stewardship of public funds, a full set of financial statements be prepared including statements of (1) Financial Position (Balance Sheet) (2) Operations, (3) Changes in Financial Position, and (4) Reconciliation to Budget

Reports. For example, the Statement of Operations should identify expenses, losses, transfers out, and all significant sources and uses of resources. However, Customs' reporting on Fund operations did not comply with these requirements.

Customs' fiscal year 1985 and 1986 reports to Congress, which were prepared on a netted basis, provide little basis for assessing program performance or compliance with applicable legislation. For example, during our review, we noted that Customs had not transferred $27.6 million in surplus funds to the Treasury General Fund at the end of fiscal year 1986 as required. Customs' failure to make the transfer was not apparent from the 1986 report because neither the Fund's year-end balance nor the amount the law allows to be carried over to the next year were shown. The transfer was not made until June 2, 1987, after we brought the failure to transfer funds to Customs' attention. Customs' invested the surplus funds in U.S. securities for part of the period and earned $301,370 which was also transferred to Treasury.

Customs fiscal year 1985 and 1986 reports to Congress did not identify basic information such as

-- the Fund's beginning balance,

-- sources of receipts (seized cash, conveyances, etc.),

-- liens and mortgages paid and amount of money shared with state and local law enforcement agencies,

-- net amount realized from the year's operations,

-- amount of money legally allowed to be carried over to the next year, and

-- year-end Fund balance.

In addition, only $7,942 in salaries and fringe benefits was reported in fiscal year 1985 as being charged against the Fund or sales proceeds and no salaries expenses were reported in fiscal year 1986. The amount of salaries charged against sales proceeds and/or the Fund is not readily determinable, but Customs' auditors estimated it to be about $1 million per year.

In other examples, Customs' fiscal year 1985 report showed "net" Fund receipts of about $10 million, but Customs' National Finance Center reported to us a figure of approximately $9.3 million for the same year. The fiscal year 1986 report did not mention the amount of forfeited assets shared with state and local law enforcement agencies. Our review showed that approximately $3 million in assets was shared in fiscal year 1986.

Forfeiture Fund receipts and expenses are also of questionable accuracy because Customs' accounting system has numerous, substantive instances of non-conformance with the Comptroller General's Accounting Principles, Standards, and Related Requirements. For example, following its review of the

accounting system for fiscal year 1986, a certified public accounting firm reported that general ledger accounts for seized property are neither adequate nor being currently maintained and that contingent liabilities are not consistently recorded in the general ledger.

Also, District Incurred Cost Worksheets -- the source documents for recording cost data to be charged against seized asset sales proceeds and/or the Fund -- are inaccurate. For example, a firm retained by Customs to evaluate the seized property program, reported on May 23, 1987, that most of the districts were seriously backlogged on submission of the forms and that the Seized Property Division estimated that only 30 to 40 percent of Customs costs are now being recorded. Customs informed us that a new property information management system, currently in the design stage, is scheduled to be implemented in fiscal year 1989.

GAO RECOMMENDATIONS

To assure adequate control and oversight of the increasing millions of dollars in receipts and expenses being realized by Customs' and Justice's asset seizure/forfeiture activities, we recommend that Congress enact the following legislation:

-- re-establish a limit on the amount of funds that can be carried forward from one year to the next in Justice's Fund, preferably in the $10 to $20 million range, and the

requirement to transfer surplus funds in the Fund at year-end to the Treasury General Fund or to some other congressionally acceptable fund such as proposed in Bill S.789;

-- eliminate the annual authorization and appropriation limitations for the Customs Fund and establish a carryover provision, preferably at $5 million; and

-- require an annual financial audit of the Customs and Justice Funds according to generally accepted government auditing standards, including the preparation of a full set of financial statements and report to the Congress consistent with the Comptroller General's requirements.

We also recommend that the Secretary of the Treasury require the Customs Commissioner to:

-- record and report all authorized Fund receipts and expenses consistent with the Comptroller General's Accounting Principles, Standards, and Related Requirements;

-- take actions necessary to bring Customs accounting system into conformance with the Comptroller General's requirements; and

-- report the seized property accounting system weaknesses under the Integrity Act until they are substantially corrected.

CORRECTIVE ACTIONS TAKEN ON SEIZED CASH MANAGEMENT DEFICIENCIES

Since the Subcommittee hearing on March 13, 1987, both Justice and Customs have acted to improve their seized cash management. New policies have been implemented and agency officials are making reviews to ensure that cash is deposited in a timely manner.

In May 1987, Justice implemented a new policy requiring justification and approval for retaining seized cash more than 60 days after seizure. Justice headquarters officials who approve justifications for retaining cash of $10,000 or more advised that only a few retention requests have been approved during the period May 1, 1987 to September 1, 1987. Their discussions with U.S. Attorney offices generally resulted in decisions by those offices to deposit seized cash in designated U.S. Treasury accounts rather than to hold the cash as evidence.

In September 1987, a Drug Enforcement Administration official told us that cash held in vaults and safety deposit boxes is about 10 percent of the total of a year ago. In July 1987, the U.S. Marshals Service reported its analysis of deposits into the Seized Asset Deposit Account concluded that the Justice policy requiring deposit of seized cash was achieving results. The Marshals are continuing to monitor deposits.

On July 9, 1987, Customs issued a directive establishing a national seized cash inventory and reporting policy. The directive assigns responsibilities for seized cash management, creates a national inventory system, and requires prompt deposit of non-evidentiary cash. We believe it is an excellent directive.

Customs' officials also report that a Treasury deposit account is now being used as a repository for cash pending forfeiture. The balance in this account was $10.6 million on September 2, 1987. They further advise that commercial deposit accounts are being closed out and deposited in the recently established Treasury deposit account as we recommended.

During our March 1987 testimony, we made eight recommendations to the agencies to improve seized cash management. The Drug Enforcement Administration has implemented all three recommendations directed to it and Customs has implemented four of the five recommendations directed to it. However, Customs officials informed us that they believed it unnecessary to report seized property weaknesses under the Integrity Act because they are already including their accounting system weaknesses in Customs' Integrity Act report. We believe the seized property weaknesses are significant enough to be specifically identified in the report.

CONFUSING LEGISLATION AFFECTING CUSTOMS FORFEITURE FUND

In 1984, both the House of Representatives and the Senate passed very similar bills designed to improve the forfeitures of cash and disposition of property used to aid in violations of Customs laws. The House sponsored version was inserted in the Trade and Tariff Act of 1984 (P.L. 98-573), while the Senate version was part of the Comprehensive Crime Control Act of 1984 (P.L. 98-473). Both acts established a Customs Forfeiture Fund.

There were some minor differences in the uses of the Funds under both acts and the Trade and Tariff Act had a Fund termination date of September 30, 1987. In an effort to reduce the confusion created by the establishment of two Customs Funds with slightly different requirements, the Congress enacted additional legislation in 1986. Unfortunately, the legislation further confused the situation because both Customs Funds were eliminated. For simplicity, we refer to the Customs Fund which was established by the Comprehensive Crime Control Act as the "A Fund" and the Customs Fund established by the Trade and Tariff Act as the "B Fund".

On October 22, 1986, the Tax Reform Act of 1986 (P.L. 99-514, section 1888(7) repealed the A Fund. Five days later, however,

the Anti-Drug Abuse Act of 1986 (P.L. 99-570) was enacted and it (1) extended the B Fund's termination date from 1987 to 1991 (section 3142) (2) expanded the purposes for which the A Fund could be used (section 1152(b)(1)) and (3) repealed the B Fund (section 1152(b)(2)).

In the belief that Congress intended for at least one Customs Fund to exist, the Customs Service's Acting Chief Counsel advised the Commissioner on November 14, 1986, that the agency should operate on the basis that the B Fund exists, the Fund established by the Trade and Tariff Act of 1984. The situation was clarified in July 1987 when Customs' supplemental appropriations (P.L. 100-71, dated July 11, 1987) repealed section 1152 of the Anti-Drug Abuse Act.

EXPENDITURES AUTHORIZED BY THE LAWS

ASSET FORFEITURE FUNDS

	Expenses	Justice	Customs
1.	Care, custody, and disposal of seized assets	X	X
2.	Contracted services directly related to the care, custody, and disposal of seized assets	X	X
3.	Liens and mortgages	X	X
4.	Remissions and mitigations	X	X
5.	Conveyance modification	X	X
6.	Sharing assets with state and local law enforcement agencies	X	X
7.	Awards for information	X	X
8.	Purchases of evidence	X	X
9.	Computer leases or purchases	X	
10.	Contracted seizure processing and accounting services	X	
11.	Salaries and fringe benefits *	X	X

*While not stated in the laws, they are implicitly authorized.