

Testimony

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Asset Forfeiture: An Update

Statement of Gene L. Dodaro General Management Issues General Government Division

Before the Subcommittee on Crime, Committee on the Judiciary House of Representatives



SUMMARY OF STATEMENT

The House Subcommittee on Crime asked GAO to identify opportunities to save time and money in the forfeiture and disposal process for assets seized from criminals. Forfeited cash and the proceeds from sales of forfeited property are used to help finance Justice's and Customs' seizure programs and provide additional funds to combat the drug problem and meet other federal needs.

GAO identified several areas where action should be taken:

- -- Time could be saved if all uncontested cash seizures were forfeited administratively. At the end of 1988 about \$400 million was undergoing forfeiture proceedings. Cash seizures over \$100,000 must be forfeited judicially. However, in 89 percent of such forfeitures, no one claimed ownership of the money. Changing the law, along with implementation of our other recommendations, could shorten processing time from an average of 13 months to 4 months. Due process rights are not affected because contested seizures would continue to be resolved judicially.
- -- Forfeited cash was not always promptly transferred from the holding accounts to the Asset Forfeiture Funds, where it can be spent. Of the \$120.9 million in closed cases reviewed, \$83 million (69 percent) was not transferred within 30 days of forfeiture. We judgementally used 30 days because it is a more than reasonable period to make a cash transfer between two Treasury accounts. The Attorney General and the Secretary of the Treasury should ensure that all cash is transferred to an Asset Forfeiture Fund within 30 days of a forfeiture order and within 7 days if the amount is above \$100,000 because large amounts deserve priority. Agency officials agree these are desirable timeframes.
- -- Disposal of forfeited real estate continues to be timeconsuming and often unprofitable for the agencies. For example, twelve properties in Florida with an initial value of \$33.4 million realized \$2.5 million, or 7 cents on the dollar. Justice personnel were not complying with agency pre-seizure planning requirements to find out through a title search how much equity the defendant had in the property and through appraisal how much the property was worth. Also, the title industry is reluctant to insure these properties. result, seized real properties are held for long periods of time. Where the defendant has low or nonexistent forfeitable interest in a property, Justice should establish a quick release policy to return the property to innocent co-owners or lienholders. Finally, the law should be changed to assure the title industry that the government guarantees clear title for these properties.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our review of Custom Service's and the Department of Justice's processing of seized assets, which was undertaken at the Subcommittee's request. The Subcommittee asked us to determine if forfeitures could be processed faster without adversely affecting individuals' due process rights.

ASSET FORFEITURE: A BILLION DOLLAR PROGRAM

Forfeiture law allows the government to take property, including cash, that has been illegally used or acquired without compensating the owner. In cases of \$100,000 or less, forfeiture can be handled administratively by the seizing agencies such as the Drug Enforcement Administration and Customs Service.

Generally, this proceeding is used on smaller cases involving cars, boats, planes, and other types of property such as jewelry and artwork. For amounts above \$100,000 and for all real property, the cases are handled judicially by U.S. Attorney offices and the courts. Also, cases under \$100,000 are handled judicially when the defendant or other involved parties request it.

Identifying, seizing, and forfeiting assets of drug traffickers and organized crime figures has become a key part of federal efforts to curb such crime. The Comprehensive Crime Control Act of 1984 expanded the government's seizure authority

and established Asset Forfeiture Funds to finance the management and disposal of seized and forfeited assets.

The volume of seized assets, including cash, real estate, cars, boats, and airplanes has increased sharply, heightening the importance of good internal controls and oversight in properly managing and disposing of seized and forfeited assets. Today, the program is a \$1.1 billion dollar operation -- an increase of 3,200 percent since 1979 when on-hand inventories were \$33 million.

Both the Customs and Justice Asset Forfeiture Funds are used to finance program expenses such as those incurred in the care, custody and disposal of seized and forfeited assets, payments of liens and mortgages and purchases of evidence/awards for information related to asset seizure. Forfeiture proceeds are also shared with state and local law enforcement agencies that participated in the seizures.

Funds not used for program operations are used to finance various federal programs such as drug enforcement. Justice, with congressional approval, used part of its Fund profits to finance prison construction and for additional U.S. Attorney resources — using criminals' money to finance the prosecution of additional forfeitures. Customs is required by law to transfer unobligated funds in excess of \$15 million at year-end into the

U.S. Treasury General Fund, where the money can be used for other federal programs.

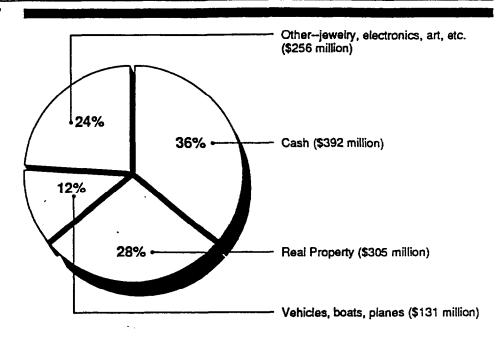
Additional revenue and expenditure information for the Funds is included in appendix I.

OBJECTIVE, SCOPE, AND METHODOLOGY

By letter dated April 11, 1988, the Subcommittee requested that GAO determine if seized assets could be forfeited faster. The benefits of faster forfeitures are that (1) funds could be made available faster to fight the drug problem at federal, state, and local levels, (2) funds could be made available for other federal programs through transfers to Treasury's General Fund Account, and (3) case processing backlogs could be reduced in processing growing seizure volumes.

We concentrated our work on cash and real property because, as shown on the following chart, they account for the largest segments of the seized asset inventory. Cash and real property, combined, represented 64 percent of the \$1.1 billion inventory as of December 1988.

Composition of Justice's and Customs' Seized Asset Inventory as of December 1988: \$1.1 Billion



We also focused our review on judicial forfeitures because they take longer than administrative forfeitures and they represent larger value cases. Our work was done in the five judicial districts with the highest dollar value in total open cases, in either seized cash and/or real property. These districts were: the Northern and Southern Districts of Texas, the Middle and Southern Districts of Florida, and the Central District of California.

Our review included agencies principally involved in seizing and forfeiting assets: U.S. Customs Service (Department of the Treasury) and the Department of Justice's (1) U.S. Marshals Service, (2) Drug Enforcement Administration, (3) Criminal Division, and (4) Executive Office of U.S. Attorneys. We also interviewed four judges with experience in forfeiture cases.

We used both property management and forfeiture case records to identify all asset seizures pending as of December 15, 1988, and cases closed during the period October 1, 1985, through December 15, 1988. For detailed analysis of large real property and cash seizures undergoing judicial forfeiture in the five districts, we used uniform data collection instruments. We extracted information such as dates when key processing steps were done and type and amount of forfeiture. We selected the largest cases by dollar value and included both open and closed cases. See appendix II for cases reviewed.

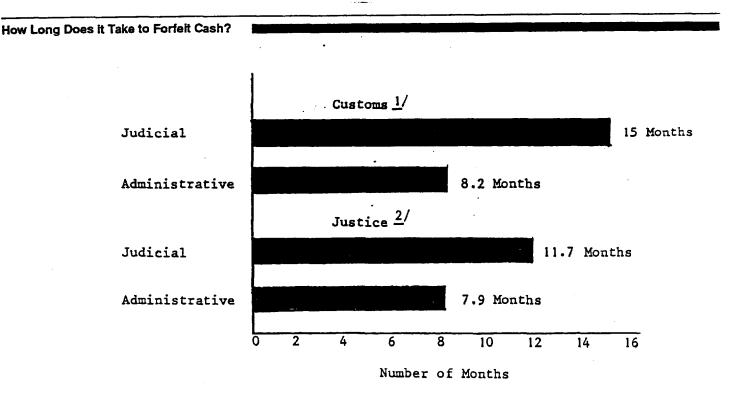
MOST CASH CAN BE FORFEITED FASTER

As of December 1988, \$362 million of seized cash was in a Justice or Customs holding account undergoing forfeiture. Until the money is forfeited and transferred to one of the Forfeiture Funds, it is essentially "frozen" -- that is, it cannot be used to finance federal, state, and local programs.

¹Another \$30 million was either (1) in interest-bearing accounts in financial institutions, (2) held as evidence for a criminal proceeding, or (3) a recent seizure in agency vaults awaiting a determination as to evidentiary need in a criminal proceeding.

The amounts of cash undergoing forfeiture proceedings have increased dramatically. In October 1986, \$49 million was being held; in July 1987, the amount had increased to \$129 million; and by December, 1988, it had reached \$362 million, for a total growth of about 600 percent in the last 2 years.

Our review of 1,125 closed Customs and Justice cases showed that judicial forfeiture takes longer than administrative forfeiture—about 7 months longer at Customs and 4 months longer at Justice. Customs and Justice judicial forfeitures average 15 and 12 months respectively while administrative forfeitures average about 8 months at both agencies.



- 1/ Fiscal years 1981 through 1988
- 2/ Fiscal years 1986 through 1988

Our review shows that most of the cash pending forfeiture will be forfeited judicially even though no one comes forward to contest the forfeiture. For example, our analysis of 1,125

Justice and Customs closed cases totaling \$123.9 million

disclosed that most of the cash had been forfeited judicially.

About 82 percent (\$101.6 million) went through a judicial proceeding and 18 percent (\$22.3 million) through an administrative proceeding. The bulk of the money was forfeited judicially because of the legal requirement that cash over \$100,000 must go through a judicial proceeding.

As shown in the following chart, 89 percent of the judicially forfeited cash resulted in a default judgement by the court. That is, the forfeiture was not contested by anyone.

Uncontested

Contested Amount (\$11.2 million)

11%

Uncontested Amount (\$90.4 million)

Because judicial forfeitures take an average of 13 months compared to 8 months for administrative forfeitures, we believe the law should be changed to allow uncontested cash seizures of any amount to be forfeited administratively. In addition to quicker forfeitures of most cash seizures, the change would eliminate uncontested cash seizures from district courts' and U.S. Attorney Offices' workload.

We discussed our proposal with four judges who handle judicial forfeitures and Justice/Customs attorneys--all of whom agreed with it. Due process rights of individuals are not affected by the change in law because contested cases would continue to be resolved judicially. Furthermore, agency officials said uncontested cash seizures of \$100,000 or more should be processed to deposit into the Forfeiture Fund within 120 days of seizure and they would take steps needed to achieve that goal.

GAO RECOMMENDATIONS

We recommend that Congress revise existing law to allow Customs and Justice to administratively forfeit uncontested cash seizures. Specific language needed is:

- -- For Customs, revise 19 U.S.C. 1607(a) by adding "such seized merchandise is monetary instruments".
- -- For Justice, revise 28 U.S.C. 524(c) by adding similar language.

To ensure that large uncontested cash seizures are processed in a timely manner and adequately monitored, we recommend that Congress amend P.L. 100-690, Sections 6072 and 7364 to require that annual forfeiture fund reports to Congress include data on uncontested cash seizures over \$100,000 which are not transferred to the forfeiture fund within 120 days of seizure.

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

- -- Ensure that, upon enactment of appropriate legislation, cash cases over \$100,000 which have not had complaints for forfeiture filed with the court are reviewed for conversion to administrative forfeiture.
- -- Establish priority processing of uncontested administrative cash seizures over \$100,000.

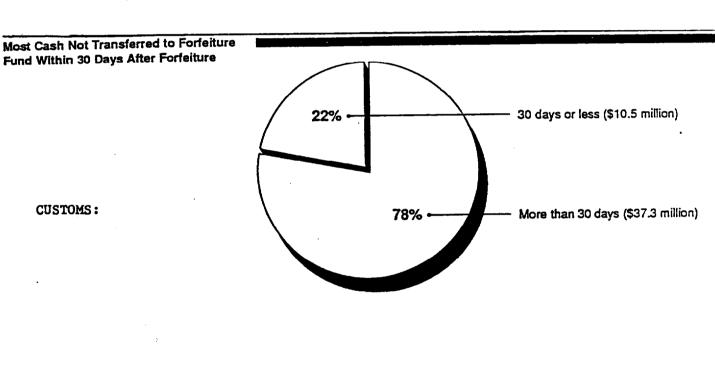
FORFEITED CASH SHOULD BE TRANSFERRED FASTER

After forfeiture, cash should be promptly transferred from the holding accounts to the Forfeiture Funds because only then is it available for sharing with state/local law enforcement agencies and federal spending. Justice and Customs policies are silent on how long such transfers should take.

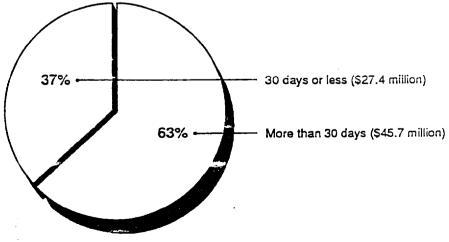
As shown in the following charts, our examination of 1,125 closed administrative and judicial cases revealed that 78 percent of the Customs money and 63 percent of the Justice money was

switched from holding accounts into Fund accounts more than 30 days after forfeiture.

Lengthy transfer periods occurred in both agencies and in administrative and judicial forfeitures. Customs cases took an average of 102 days, and Justice cases an average of 80 days. For Customs, the range was from the day of forfeiture to over 4 years after forfeiture; for Justice the range was from 1 day to 1,015 days, or 2.8 years after forfeiture.



JUSTICE:



We believe that cash should be transferred promptly after forfeiture but recognize that agency personnel have other work responsibilities. We judgementally used 7 days for cases \$100,000 or more and 30 days for cases under \$100,000 as reasonable timeframes to transfer cash between two Treasury accounts. Agency officials responsible for transferring cash agreed these were reasonable timeframes.

GAO RECOMMENDATION

To ensure that cash is transferred timely and large cash forfeitures receive priority, we recommend that the Attorney .:

General and the Secretary of the Treasury transfer

- -- forfeited cash of \$100,000 or more from the holding account to the Asset Forfeiture Funds within 7 days of forfeiture.
- -- all other forfeited cash from the holding account to the Asset Forfeiture Funds within 30 days of forfeiture.

PROCESSING OF REAL ESTATE SEIZURES NEED TO BE IMPROVED

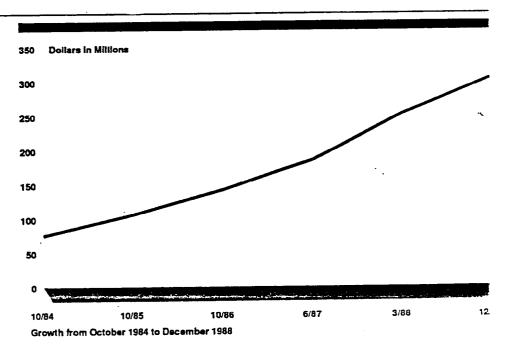
Real estate seizures involving diverse properties such as residences, marinas, farms, and time-share condominiums are more complex and require more staff time than do cash seizures.

Third-party interests (lienholders and co-owners) have to be resolved, and real properties must be maintained and then sold under varying state laws regarding real property title transfer.

Real Estate Inventory Has Increased Substantially

As with cash seizures, the number of real estate seizures has grown dramatically in recent years. This, coupled with the complex nature of real estate seizures, has contributed to backlogs. The number of on-hand real properties undergoing processing has grown from 209 in October 1984 to 1,883 in December 1988—an 800 percent increase. The value of these properties also has grown from \$76 million to \$305 million — a 300 percent increase. Virtually all of the seizures are in Justice's custody. However, a Customs official advised that they expect their on-hand inventory to double in fiscal year 1989.





Justice \$296.5 as of December 1988

Customs \$8.2 million as of December 1988

<u>Problems Identified In Prior</u> GAO Reviews and Actions Taken

In earlier testimonies² we noted two problem areas impeding the program's profitability.

First, Justice was not always promptly identifying and monitoring the amount of equity the defendant had in the property, that is, the forfeitable interest. Properties were frequently held, often for longer than 1 year, before being returned to the defendant or released to lienholders.

Additionally, unprofitable properties were forfeited.

Second, the title industry was reluctant to insure forfeited property. The industry wanted Justice to warrant clear title, that is, to guarantee reimbursement for any title defects arising from its processing of the forfeiture. Because buyers normally need title insurance to obtain a mortgage, 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.

Since our last testimony, Congress enacted the 1988 Omnibus

Drug Initiative Act (Public Law 100-690). This law strengthens

congressional oversight of high value property (\$1 million or

²Statements of Gene L. Dodaro on June 23, 1988; March 4, 1988; and September 25, 1987. See appendix III for full reference.

more) by requiring the reporting of defendant equity in the annual congressional reports on Justice's and Customs' forfeiture programs. An additional \$30 million in personnel resources paid for with forfeiture profits is being provided to U.S. Attorneys to help process these cases. Also, Justice, in acting on one of our earlier recommendations, now allows contracting for legal services for the title searches and examinations.

Finally, Justice is drafting legislation which would allow the Attorney General to warrant clear title to purchasers of forfeited real property. This change is designed to alleviate the title industry's concerns and permit Justice to sell property quickly at its fair market value and thus maximize forfeiture revenues.

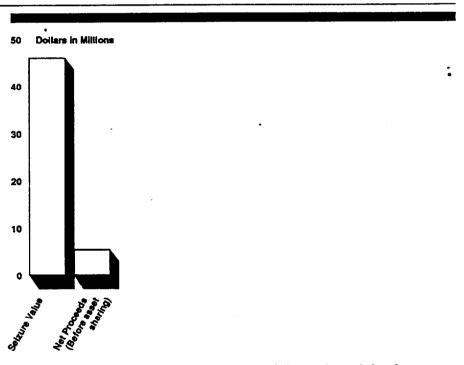
Real Estate Problems Continue

We have updated our earlier work and found that real property seizures, unlike cash, continue to contribute little to the Asset Forfeiture Funds. Our earlier work had disclosed that most seizures were unprofitable because (1) the case was closed without forfeiture or (2) net proceeds from forfeited properties were low or non-existent.

Our current work has disclosed that the situation remains essentially the same. We examined 69 closed cases, with an

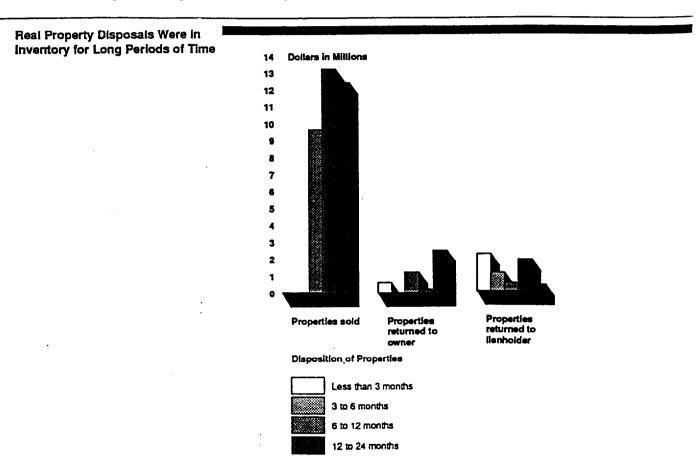
initial inventory value of \$45.8 million. These 69 cases represent all closed cases in Texas in the districts we reviewed as well as all large cases in Florida (each initially valued at \$1 million or more). Net proceeds for these properties were \$5.4 million, or 12 cents on the dollar. However, 2 of the 69 properties accounted for 80 percent of all net proceeds realized. The remaining 67 properties averaged 4 cents on the dollar—exclusive of indirect costs.

Real Property Disposals Have Contributed Little to the Asset Forfeiture Funds



Does not include indirect costs borne by agency appropriations such as salaries of attorneys, Marshals, agents, etc. or present value of government financed sales.

Many of the properties remain in inventory for long periods even when net proceeds are low. This is true for both forfeited properties that the government eventually sells as well as properties which are released—either to an owner or lienholder. The amount of time and effort required on real property seizures can be reduced by minimizing the number of unprofitable seizures entering the system through better pre-seizure planning.



For example, a Tarpon Springs, Florida property valued at \$5 million when seized in May 1988 had no defendant equity because of high liens and overstated value. After seizure, it

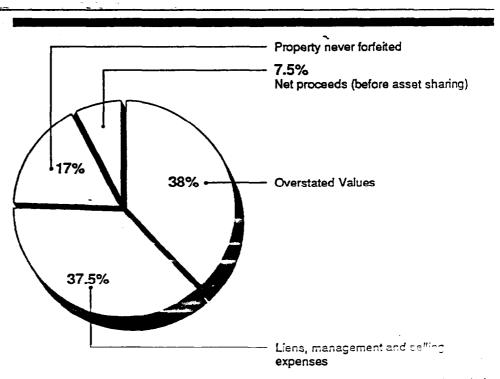
more than 24 months

was discovered that state bankruptcy proceedings had been initiated by the principal lienholder in February 1988--months before seizure. As of March 1989, management costs totaled about \$200,000 and the property was still in inventory.

In Tomball, Texas, only \$1.4 million of \$4.5 million in liens was identified before seizure of 315 acres of land. The property, which was appraised at \$2.2 million, remained in the inventory as of December 1988--28 months after seizure.

There are several reasons for the low return on real property seizures. In Florida, we reviewed all 12 seizures each initially valued at \$1 million or more which were closed as of December 1988. The following chart illustrates the results of our analysis. Net proceeds represents 7.5 cents on the dollar.

Why Low Net Proceeds Were Realized (Analysis of Florida properties)



Indirect costs and present value of government financed sales were not considered in this analysis.

In Texas, net proceeds relative to initial values also were generally low. We reviewed all 57 closed cases in the Houston and Dallas Districts. Net proceeds of \$2.9 million were realized on property initially valued at \$12.5 million, or 23 cents on the dollar. However, one property accounted for \$2.6 million of the net proceeds—90 percent. The remaining 56 properties netted \$323,000, or 5 cents on the dollar. Forty—four of the properties, or 77 percent, were released to owners or lienholders and did not generate any revenue to the Forfeiture Fund. Factors contributing to the low return were the same as in Florida but were compounded by a soft real estate market due to economic conditions in Texas.

Improvements Needed

The filing of the civil forfeiture complaint with the court initiates the forfeiture proceeding. In most cases, the real property is taken into custody (seized) at that time. According to U.S. Attorney Office policies, before the complaint is filed (or before seizure), the Assistant U.S. Attorney should (1) review agent investigative reports to ascertain the legal merits of forfeiture, (2) obtain professional appraisals of the property's value, and (3) obtain estimates of the wrongdoers interest, using such informational sources as recorded mortgage liens and state/local tax records. U.S. Marshals Service as well as agency policies state that the forfeitable interest should be determined before seizure. Agency officials also advised this

information should be obtained not later than 60 days after seizure.

Despite common agreement on its necessity and importance, this was not done before seizure in the properties we reviewed worth \$1 million or more. The established pre-seizure policies are good but they must be complied with by the Assistant U.S. Attorneys to be effective. This could help preempt the seizure of worthless properties which incur costs and aggravate the case processing backlogs unless a conscious decision is made to seize. the property for law enforcement purposes (e.g, a "crack" house or a plant manufacturing illegal drugs, etc.).

Some properties may be seized before an equity determination because a thorough analysis of the forfeitable interest could jeopardize the investigation. We believe Justice should establish a "quick release" policy so that, when appropriate, properties could be quick released to innocent third parties, such as lienholders, when the forfeitable interest is subsequently determined to be low or non-existent.

GAO RECOMMENDATIONS

We recommend that Congress

-- enact legislation to amend civil forfeiture law stating that the U.S. Government guarantees clear title upon completion of the civil forfeiture process.

We recommend the Attorney General

- -- Ensure that professional appraisals and title searches be normally obtained <u>before</u> a complaint for forfeiture is filed. In those situations where a thorough analysis of defendant equity/forfeitable interest before seizure would jeopardize an investigation, professional appraisals and title searches should be done within 60 days of seizure.
- -- Consider including the estimated forfeitable interest in civil complaints for forfeiture so that the financial merits of the case will be known before the judicial proceedings begin.
- -- Establish a quick release policy whereby heavily encumbered properties (low or non-existent forfeitable interest) could be timely released to innocent co-owners or lienholders so those parties can pursue recovery of their vested interests.
- -- Ensure that specific language regarding clear title is provided to key congressional committees.

AGENCY COMMENTS ON OUR RECOMMENDATIONS

Justice headquarters officials acknowledge that title searches and professional appraisals normally need to be done before seizure. Also, both the Miami and Tampa U.S. Attorney Offices agreed with our recommendations.

Further, in February 1989, the Miami U.S. Attorney Office (which has the most real estate cases nationwide) advised the Drug Enforcement Administration, Federal Bureau of Investigation, Customs Service and the U.S. Marshals Service that a report as to all possible interested parties should be provided before seizure unless a delay in seizure could adversely affect the civil forfeiture proceeding. In that event, the report should be provided not later than 30 days after seizure.

Justice officials also said they will propose a technical amendment to specifically state Justice's authority to warrant clear title to subsequent purchasers of forfeited property. It is our understanding they will propose amending 28 U.S.C. 524 (C) (1)—the legislation creating the Justice Assets Forfeiture Fund.

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This completes my prepared statement. I would be pleased to respond to any questions.

Appendix I Appendix I

Key Financial Data On Asset Forfeiture Program

	Justice (millions)	Customs a (millions)
Receipts:	((1111110110)
Fiscal Year 1985 Fiscal Year 1986 Fiscal Year 1987 Fiscal Year 1988	\$27.2 93.7 177.6 207.3	\$10.1 41.4 49.8 35.9
Fiscal Year 1989 (est.)	\$222.4	\$35.0
Program Related Disburser	ments	
Fiscal Year 1985 Fiscal Year 1986 Fiscal Year 1987 Fiscal Year 1988	\$ 2.4 42.8 114.4 160.6	\$4.9 7.5 17.5 8.2
Fiscal Year 1989 (est.)	\$198.4	\$10.0
Transfers for other Exper U.S. Treasury General Fund (FY 1985-1988) Prison Construction U.S. Attorneys	\$95.4 \$30.0	\$82.2
Holding Account Balances as of 12/31/88	-	\$107.0
Amounts shared with state/local law enforcement agencies		
Fiscal Year 1986 Fiscal Year 1987 Fiscal Year 1988	\$17.1 46.8 76.7	\$4.9 6.2 11.2

<u>a/Receipts</u> and disbursements are understated because Customs offsets expenses against proceeds before making deposits to the Forfeiture Fund.

b/After FY87, Justice was no longer required to transfer surpluses to Treasury's General Fund.

c/Includes \$10 million already transferred during fiscal year 1989 plus another \$20 million anticipated during fiscal year 1989.

Appendix II Appendix II

Scope of GAO Asset Forfeiture Review Department of Justice and Customs Service

CASH						
	Justice		Customs		Total	
	# Cases	Value (millions)	# Cases	Value (millions)	# Cases	Value (<u>millions</u>)
DCIa/ Indepthb/	985 <u>26</u>	\$86.5 21.4	333 <u>36</u>	\$41.7 39.9	1318 <u>62</u>	\$128.2 61.3
Totals	1011	\$ <u>107.9</u>	<u>369</u>	<u>81.6</u>	1380	\$ <u>189.5</u>
REAL PROPER	TY					
DCIª/ Indepth <mark>b</mark> /	216 <u>35</u>	\$ 18.8 102.0	3	\$ <u>5.2</u>	216 	\$ 18.8 107.2
Totals	<u>251</u>	\$ <u>120.8</u>	3	\$ <u>5.2</u>	<u>254</u>	126.0

 $[\]underline{a}$ /Reviewed files to extract dates when key processing steps were done and other data, such as type and amount of forfeiture.

b/Reviewed all documents in case file, discussions with agency personnel on facts of case, etc.

APPENDIX III APPENDIX III

GAO REPORTS AND TESTIMONIES ON ASSET SEIZURES AND FORFEITURE

ASSET SEIZURES AND FORFEITURE						
1.	Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, Asset Forfeiture Programs: Progress and Problems	GAO/T-GGD-88-41 June 23, 1988				
2.	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				
3.	Seized Conveyances: Justice and Customs Correction of Previous Conveyance Management Problems	GAO/GGD-88-30 February 3, 1988				
4.	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				
5.	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				
6.	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				
7.	Drug Enforcement Administration's Use of Forfeited Personal Property	GAO/GGD-87-20 December 10, 1986				
8.	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				
9.	Improved Management Processes Would Enhance Justice's Operations	GAO/GGD-86-12 March 14, 1986				
10.	Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement	GAO/PLRD-83-94 July 15, 1983				

GAO/GGD-81-51 April 10, 1981

11. Asset Forfeiture - A Seldom Used Tool in Combatting Drug Trafficking