



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

June 16, 1980

B-191891

[Request for Relief From Liability for DEA Officer]

Mr. Peter B. Bensinger  
Administrator, Drug Enforcement  
Administration  
Department of Justice  
Washington, D.C. 20537

AGC 55210

Dear Mr. Bensinger:

This refers to your request that our Office relieve all accountable officers at the Southeastern Regional Office of the Drug Enforcement Administration (DEA) from liability for the loss of \$1,500. Upon review of the record, we concur that relief should be granted. In order to restore the account, the shortage may not be charged against the 1976 appropriation as you propose, however, but should be charged against DEA appropriations currently available for the expense of the accountable function. DLBOM

The record indicates that between May 12 and June 11, 1976, 15 one hundred dollar bills, out of 650 such bills in a "flash roll" made up from Imprest Fund money, were replaced by 15 counterfeit one hundred dollar bills. The loss was discovered when Ms. Barbara Woodard, the Imprest Fund Cashier, was counting the money as part of a procedure for returning it to the Imprest Fund after its use in an investigation.

The controlling statutory authority for cases involving physical losses by officers accountable for Government funds is 31 U.S.C. § 82a-1. Basically, the statute allows an accountable officer to be relieved from liability for the loss if our Office concurs in a finding by the head of the department or establishment involved that the accountable officer was acting in his official capacity when the loss occurred and was not negligent.

In addition to the cashier, Ms. Woodard, the various DEA investigators who signed for the money for use as a flash roll were also, as you acknowledge, accountable officers with respect to the money while it was in their custody. You have made the required findings with respect to Ms. Woodard and all other accountable officers.

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There is a well-documented chain of custody of the money. In each instance, when the money was used for investigations, the transactions-- the transfer from the cashier to the investigators, the return of the funds to the cashier, or the transfer between different groups of investigators--were recorded on receipts and the money was counted.

Ordinarily, in the case of a physical loss of funds which have passed through a series of hands, the last person to give a receipt for the full amount before the loss was discovered would be deemed liable for the loss. However, this treatment is predicated upon the circumstances of a typical physical loss, when the shortage would necessarily be revealed by an accurate count. Here, because of the substitution of counterfeit for genuine bills, a count of the money before giving a receipt for it, however accurate, would not have revealed the shortage unless the counterfeits were recognized.

The \$65,000 was "serialized"; that is, the serial numbers of the \$100 bills making it up were recorded on May 11 and 12. The \$1,500 loss was of serialized bills, thus establishing that the substitution of counterfeit for genuine bills took place after May 12. However, it cannot be established when, during period from May 12 to June 11, the loss took place.

Under the circumstances, there is no basis for holding liable any one of the agents through whose hands the money passed. The substitution of the counterfeit bills, and hence the loss, could have taken place while the money was in the custody of any of them, although not discovered until later. Without some way to establish to whom the loss should be attributed, no one can be held liable.

If the counterfeit bills were readily identifiable by someone counting the money, then there could be a basis for inferring that the loss took place while the money was in the custody of the agent who was returning it when the substitution was discovered on June 11. That is, if the counterfeits should have been detected in the exercise of ordinary care, then it would be reasonable to conclude that the substitution had not yet taken place at the time the agent received and receipted for the money; if it had, he would presumably have noticed the counterfeit bills. We would then have to review his handling of the funds to determine whether he had been negligent in some manner which facilitated the substitution.

However, while the evidence is incomplete as to the quality of the counterfeit bills, it tends to indicate that a routine count with ordinary care to verify the amount in the flash roll would not have disclosed the substitution.

The cashier's testimony suggests in this regard that the counterfeit bills were not obvious. She implies that someone who had no reason to suspect the presence of counterfeit bills and who was not particularly

experienced in counting cash would not, in the exercise of ordinary care, have recognized the counterfeit bills. This may be particularly true in this case, where the agents had to count 650 bills, of which 15, located at random throughout the flash roll, were not genuine. Moreover, the agents were not on notice that a substitution might have taken place and therefore had no reason to inspect each bill individually with any more care than would be required simply to count them and to verify that each was in the correct denomination.

In any event, the evidence suggests that the loss did not take place while the funds were in the hands of the various DEA agents who, from time to time between May 12 and June 11, 1976, used the flash roll for investigative purposes. On May 28, after the \$65,000 had been used as a flash roll by various agents on a number of different occasions, a monthly imprest fund audit was performed by the cashier and her supervisor. The audit included a physical count during which the supervisor did not notice any counterfeit bills although, as the report points out, the supervisor evidently examined the bills closely enough to notice silver certificates and old issue notes. Similarly, the cashier, who also counted the money on May 28, did not find the counterfeits. She believes that, if they had been there she would have noticed them, as in fact she did ultimately on June 11 during a similar physical count. Thus, it is unlikely that the substitution took place before May 28.

The money was divided into six ten-thousand dollar stacks and one five-thousand dollar stack of \$100 bills. The 15 counterfeits were placed in 4 of the stacks; 3 counterfeit bills in each of 2 stacks, 4 in another, and 5 in the fourth. As the report indicates, the manner in which the bills were placed suggests that the person who made the substitution had several minutes or more to do so. This makes it unlikely that the substitution could have taken place during any of the times when the bills were being used as a flash roll, whether before or after May 28, since the record indicates that the money was continuously under observation by agents during those times. (As the investigative report observes, the testimony by DEA agents on which this conclusion is based may be self-serving, in that they could be "covering up for a laxity in the safeguarding of the flash roll when it was being counted by a defendant or informant." However, this is conjecture only and there is no reason in the record to doubt the agents.)

During the entire period from May 12 to June 11, the record indicates that, while the money was handled in a somewhat casual fashion at times, it was always under the control or observation of one or more law enforcement officers, or was kept within a safe. In one or more instances, several people had the combination to a safe (not the cashier's) in which the money was kept and the combination was on a card in a drawer in another safe to which unauthorized persons may have had access. It is not unlikely that

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the substitution took place during one of these times. The agency investigation supports this inference.

However, while the security of the safe in these circumstances was inadequate, it was apparently in accordance with agency procedures for the agents to use that safe for temporary storage of the money, particularly when the cashier was not on duty and the money could not be stored in her safe. The agents used the most secure facility available in the circumstances. Thus, while we are unable to determine who was accountable for the money when the loss occurred, the evidence is persuasive that all individuals who were accountable for the flash roll during the time when the substitution took place were free from the kind of negligence which we would view as the proximate cause of the loss.

Accordingly, relief is granted as requested.

Sincerely yours,

*Harry R. Van Clave*

for Milton J. Socolar  
General Counsel