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THE U. S. CUSTOMS SERVICE:
HISTORY, REORGANIZATION,
AND CONGRESSIONAL
JURISDICTION

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FREDERICK M. KAISER
Analyst in American National
Government
Government Division

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THE U.S. CUSTOMS SERVICE: HISTORY,
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THE U.S. CUSTOMS SERVICE: HISTORY,
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Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

U.S. Constitution, Article 1, Section 8

The constitutional power of the National Government—to lay and collect taxes, duties, and impost—provides the rationale for the existence of a Federal customs service, situated since 1789 in the Department of the Treasury. This report examines that institutionalization through the present U.S. Customs Service, including some of the major reorganizations, actual and proposed, affecting it. In addition, other sections detail Customs post-World War II growth in terms of personnel and budget authorization; the congressional committees with legislative and oversight jurisdiction over the Service; and a selective bibliography for further examination.

I. Historical Development of the U.S. Customs Service

Despite the lengthy and important heritage of customs service for the United States, there is no current authoritative history of the U.S. Customs Service or, incidentally, for the parent Department of the Treasury. Two, now-dated, works, however, deserve special mention for their coverage of the early development of the Customs Service and the primary duty of customs collection: i.e., Laurence Schmeckebier's 1924 study of the history and organization of the

Service 1/ and the Bureau of Customs 150th anniversary (1939) summary history of tariff legislation and customs collection. 2/

This section of the report has two main subdivisions: the inception and original rationale of the customs service in 1789 and major organizational developments during its history.

A. Inception and Original Rationale of the Customs Service, 1789

The constitutional authorization of a congressional power to lay and collect customs duties had a two-fold significance: philosophical and pragmatic. The power in Article I, Section 8 of the Constitution reflected a new principle in the governance of the United States: the establishment of certain exclusive powers held by the national government and the related dramatic transformation of Federal-State relations. In a more pragmatic vein, the customs power was a virtual necessity to ensure the financial solvency of the National Government and to stabilize the domestic economy.

Customs duties and the concomitant collection responsibility, in this regard, was designed to serve two interrelated purposes: (1) to provide revenues for the Federal Treasury, since under the previous Articles of Confederation, the several States failed to fund adequately

1/ Laurence F. Schmeckebier. *The Customs Service: Its History, Activities and Organization*. Baltimore, Johns Hopkins Press, 1924. This volume was one of a series of monographs on the United States Government prepared under direction of the Institute for Government Research (Brookings Institution).

2/ U.S. Treasury Department. Bureau of Customs. *Collecting the Customs: Summary History of the Development of the Tariff in the United States and Its Administration*. Washington, U.S. Treasury Department, 1939.

the operations of the National Government; and (2) to assist in improving domestic commerce and commercial arrangements, both by establishing tariff duties on foreign imports and by eliminating the destructive effects of the multiple, competitive and non-uniform duties erected by the various States against foreign and other-State importation.

The initial tariff act—An Act for Laying a Duty on Goods, Wares and Merchandises imported into the United States (1 Stat. 24)— was symbolically approved on July 4, 1789 and proclaimed by the press at the time as a "second Declaration of Independence." ^{3/} Its importance is underscored by noting that it was the second act passed by the new Congress operating under the 1789 Constitution.

The initial tariff act was implemented within a month through the creation of machinery for such tariff duties collections. An act of July 31, 1789 (1 Stat. 29-49) provided for the establishment of customs districts and ports of entry, the appointment of customs officers and the method of collecting the duties.

The constitutional foundation of these establishments and subsequent tariff acts is found in Congress' powers in Article I:

To levy and collect taxes, duties, imposts, and excises;

To regulate commerce with foreign nations, and among the several States; and

^{3/} Cited by Vernon D. Acree. Customs Service, United States. Dictionary of American History. New York, Charles Scribner's Sons, 1976, Vol. II, p. 275.

To provide for the general welfare. 4/

These provisions, especially the first clause, found extensive and explicit defense in the Federalist papers authored by James Madison and Alexander Hamilton. The latter, in Federalist No. 12, "Union and the National Revenue," cites the need for standardizing commerce through import duties, which would also provide the principal revenue source of the national treasury:

...far the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description. In America, it is evident that we must a long time depend for the means of revenue chiefly on such duties.

Madison, in Federalist No. 44, commenting upon the "Restrictions on Powers of the States," recognized that even under the Articles of Confederation, the Congress had some authority over and could benefit from State action in this area. The appropriate Article read:

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States...

Moreover, both constitutional defenders interpreted a related, but by no means incidental, benefit from Federal power over importation and the imposition of customs duties. Madison raised the controversial issue of slavery, and its "discouragement," in explicating

4/ Schmeckebier, op. cit., p. 3, points out that the third clause -- to provide for the general welfare -- provides the authority for purely protective tariffs.

the "Powers Delegated to the General Government" (Federalist No. 42).

Such powers would incorporate the authority:

...to regulate foreign commerce, including a power to prohibit, after the year 1808, the importation of slaves, and to lay an intermediate duty of ten dollars per head, as a discouragement to such importations.

Pragmatically, Hamilton, continuing the arguments in Federalist No. 12, perceived additional advantages of a nationally centralized customs-importation administration that would also protect against smuggling, a continuing disruption to licit trade and commerce:

A few armed vessels, judiciously stationed at the entrance of our ports, might at a small expense be made useful sentinels of the laws...

By advancing this idea, Hamilton acted as harbinger for the Revenue Cutter Service, originally under the direction of the Customs Service and the forerunner of the Coast Guard.

The actual establishment of a customs service, via the act of July 31, 1789 (1 Stat. 29-49), in fact antedated the creation of the "parent" cabinet department, the "Department of Treasury," as originally titled. Under the Department's establishing authority, an act of September 2, 1789 (1 Stat. 65), the Secretary of the Treasury:

was to superintend the collection of the revenue, [and] the Customs Service automatically became a part of the Treasury Department, as section 9 of the act of July 31, creating collection districts, provided that customs officers should keep their accounts in such manner as "may be directed by the proper department, or officer appointed by law to superintend the revenue of the United States." 5/

5/ Ibid., p. 7.

By establishing the Customs Service, Congress provided for some of the first Government investigators under the new Constitution, 6/ since customs agents in the performance of their myriad duties developed an investigative capacity. Moreover, Customs provided some of the initial field services of the Federal Government through the collection districts and ports of entry, each staffed by three customs officers, a collector, naval officer, and surveyor. 7/ The original and expansive duties of this combination of personnel were "specified in considerable detail ..." 8/ by the establishing legislation:

the collector assessed customs and tonnage dues and employed "proper persons" as weighers, gaugers, measurers, and inspectors, as well as seamen to man boats in the revenue service; the naval officer countersigned all orders of the collector, received copies of manifests, and in general acted as a check upon the collector; the surveyor, who superintended the weighers and measurers, was under the joint control of the collector and naval officer. The customs service, which also became responsible by delegation for the lighthouses, immediately took its place as the most important field organization of the time. 9/

In 1790, Congress appropriated \$10,000 to build ten cutters for the improved protection of the customs and placed them under the direction of the customs collectors. This establishment of a Revenue Cutter

6/ U.S. Treasury Department. Task Force Report of a Study of the Customs Agency Service, Bureau of Customs. Washington [Treasury Department] 1963. p. 1.

7/ Leonard D. White. The Federalists: A Study in Administrative History. New York, The Macmillan Co., 1948, p. 199.

8/ Ibid., p. 200.

9/ Ibid.

Service was a logical successor of the original customs service administrative authorization (1 Stat. 37) that included a surveyor at each port, whose duties included "the employment of the boats which may be provided for securing the collection of revenue." The statutory provision for cutters was also a necessary successor as the July 31, 1789 act failed to provide for the vessels themselves. Since there was no navy at the time, "the Treasury Department was the logical, indeed the only, place for the Revenue Cutter Service ...[which was, in effect] a floating police force..." 10/

B. Major Organizational Developments Affecting the Customs Service

The Customs Service has remained within the Department of the Treasury since its establishment in 1789. Despite this element of organizational stability, Customs has been affected by numerous major administrative changes and reorganizations throughout its history. This is in part due to the original assignment of multiple and highly specialized duties, transcending several policy jurisdictions, the transformation of which might necessitate organizational modifications.

Illustrative of such a change is the Revenue Cutter Service, established in 1790 under the supervision of the Customs Service. The Revenue Cutter Service eventually was transferred to the Coast Guard, a governmental entity that has itself been legislatively stationed in two Departments -- the Treasury Department (1915) and

10/ Arthur Millsbaugh. Crime Control by the National Government. Washington, Brookings, 1937, p. 65.

the Transportation Department (1967) — as well as being a branch of the U.S. Armed Forces, operating as a part of the Navy.

Customs diverse original duties served as forerunners to several of those undertaken by other Federal establishments. Among those duties were serving as pension agents for military personnel, presently an assignment of the Veterans' Administration; gathering and recording statistical information, a service of the Census Bureau, and providing statistical information on immigrants, a duty residing with the Immigration and Naturalization Service; collecting hospital dues for disabled seamen, a precursor to the Public Health Service; and developing a uniform system of standard weights and measures for all Customs houses, presaging the Bureau of Standards. 11/

Some of the major organizational developments affecting the Customs Service are highlighted below.

1. Customs Agency Service: In the 1789 Act creating the Department of the Treasury, the Secretary was empowered "to superintend the collection of revenue" and to employ "special agents" for that purpose. Such special agents were organized in 1869 into a Special Agency Service, following recommendations advanced by then-Secretary of the Treasury George S. Boutwell. 12/ A year later, Congress provided for the for the statutory appointment of 53 special agents (16 Stat. 122-123):

11/ U.S. Treasury Department. Customs Service. U.S. Customs Service: Protectors of Independence Since 1789. Washington, U.S. Govt. Print. Off. [1976], p. 5.

12/ U.S. Treasury Department. Task Force Report of a Study of the Customs Agency Service, p. 1.

...for the purpose of making the examination of books, papers, and accounts of collectors and other officers of the customs... and to be employed generally, under the direction of the Secretary, in the prevention and detection of frauds on the customs revenue.

According to a Treasury Department task force report on the Customs Agency Service:

The Special Agency Service retained its name and independent character until 1915 when Secretary W.G. McAdoo transferred it to the Division of Customs of his office. The Special Agency Service remained under the Division of Customs until 1922 when Secretary Andrew W. Mellon restored it to its former independent status under a chief, Special Agency Service.

An act of March 4, 1923, created a director to head the Bureau of Customs and another to supervise the Special Agency Service, both organizations retaining their separate status under the Treasury Department.^{13/}

The separate and independent status of the Special Agency Service was maintained until the entire customs structure was reorganized by an act of March 3, 1927 (44 Stat. 1381), which established the Bureau of Customs and incorporated within it the Special Agency Service. Two years later (May 1, 1929), the Agency was retitled the Customs Agency Service and its agents renamed Customs Agents.

The Customs Agency Service assumed other elements, integrating on May 2, 1960, the entire Customs Enforcement Officer force, transferred from the Collectors of Customs to serve:

^{13/} Ibid. The Secretary of the Treasury issued an order (T.D. 38982), dated Jan. 23, 1922 and effective Feb. 1, 1922, establishing the Special Agency Service as a separate unit to coordinate with the Division of Customs. See also Schmeckebier, op. cit., p. 28 and 95-96.

in a balanced program utilizing uniformed, fixed post, and mobile patrol functions, plainclothes operations, and vessel searching in coordination with the intelligence gathering and investigative functions of the Customs Agency Service.^{14/}

In 1960, the Washington headquarters office was renamed the Division of Investigation and Enforcement, later becoming the Office of Investigations, headed by an assistant commissioner.

2. Customs Patrol: Even before the adoption of this guard force, the Customs Agency Service had acquired Customs Patrol inspectors. In 1936, that unit was transferred from the collectors of customs to whose districts they had been assigned; and their control was centralized in the Enforcement Unit of the Customs Agency Service. ^{15/} The Customs Patrol originated in calendar year 1853, as "mounted inspectors" assigned to patrol the Mexican border to prevent the smuggling of dutiable or illicit goods. ^{16/}

^{14/} U.S. Treasury. Task Force Report of a Study of the Customs Agency Service, p. 2. The Customs Enforcement Officer force, then numbering 550, was the successor to the Customs Guard and Customs Port Patrolman, having been part of the staff in the districts of the Collectors of Customs.

^{15/} Millsbaugh, op. cit., p. 68.

^{16/} 16 "mounted inspectors" were first recorded in the annual report of the Secretary of the Treasury for fiscal year 1854 (July 1, 1853-June 30, 1854), assigned throughout the year to the customs district at Brazos de Santiago, Texas, where the Rio Grande joins the Gulf of Mexico. U.S. Treasury Department. Report of the Secretary of the Treasury, on the State of Finances, for the Year Ending June 30, 1854. Washington, A.O.P. Nicholson, Printer, 1854, p. 445. Establishment of a customs district at Brazos de Santiago followed admission of Texas into the Union (Dec. 29, 1845) and included the disputed boundary between the United States and Mexico subsequent to the Mexican War (1846-1848). It is of interest to note that the 16 mounted inspectors in that district composed the largest single category of occupation among the 35 employees, and that their annual compensation of \$610.25 was lower than other inspectors.

A uniformed force of Customs patrol officers was discontinued after 1948, but was reinstated in 1973 in order to "shore up depleted resources for interdicting contraband (including drugs)," 17/ after the loss of drug investigative activities and personnel to the newly-established Drug Enforcement Administration (DEA). DEA was created by Reorganization Plan No. 2 of 1973 and acquired approximately 700 former Customs personnel. 18/

Beginning in October 1973, Customs patrol operations, transferred from the Office of Investigations, and the air and marine support functions were consolidated into one uniformed enforcement force within the Office of Operations. 19/ In April of 1974, an Office of Enforcement Support was established with the mission of supporting all Customs enforcement programs, including border patrol operations. 20/

3. Bureau of Customs: As indicated above, a separate Bureau of Customs did not exist within the Treasury Department until the act of March 3, 1927 (44 Stat. 1381) created such an entity, headed by a commissioner appointed by the Secretary of the Treasury. That act also incorporated the Special Agency Service, later retitled the Customs Agency Service.

17/ U.S. Congress. House. Committee on Government Operations. Law Enforcement on the Southwest Border. Washington, U.S. Govt. Print. Off., 1974. (93d Congress, 2d session. House. Report no. 93-1630). p. 2.

18/ Ibid. 500 investigators and 200 support personnel.

19/ U.S. Treasury Department. Annual report of the Secretary of the Treasury on the State of the Finances, for fiscal year ended June 30, 1974. Washington, U.S. Govt. Print. Off., 1974, p. 166.

20/ Ibid.

4. Reorganization Plan No. 1 of 1965: The most impressive recent organization development affecting Customs has been Reorganization Plan No. 1 of 1965. The Plan brought about a major realignment that decentralized much of the organizational structure. The new field organization consisted of nine regional offices and more than forty districts with supervision over nearly 300 ports of entry. Once Presidentially-appointed positions of collectors and comptrollers of customs were eliminated and replaced by Civil Service selection offices, the district directors who combined the duties of collectors and appraisers. 21/ (This reorganization is reviewed more extensively in part II.)

5. U.S. Customs Service: The present, official designation of the U.S. Customs Service was directed by Treasury Department Order 165-23 of April 4, 1973, effective Aug. 1, 1973. The current duties of the Service, along with operating the U.S. Customs Service Academy in Washington, D.C., are still broadly those assigned to its predecessor by the 1930 Tariff Act (46 Stat. 590 et seq.). 22/ Those traditional responsibilities are:

- 1) to assess and collect customs duties on imported merchandise;
- 2) to prevent fraud and smuggling; and

21/ For a detailed description, see U.S. Treasury Department. Customs Service. The Reorganization and After: A Progress Report. Washington [Treasury Department] May 1967.

22/ The 1930 tariff, commonly referred to as the Smoot-Hawley Tariff, is the most detailed of such legislation, extending for 173 pages of the Statutes at Large (46 Stat. 590-763). It was passed as Public Law 361 of the 71st Congress, 2d session on June 17, 1930.

- 3) to control carriers, persons and articles entering and departing the United States.

Customs Service duties presently extend to assisting in the administration and enforcement of more than 400 statutory or regulatory requirements related to international trade, implemented by seven offices within Customs:

- (1) Administration: responsibility for basic management and administrative functions, including logistics, personnel, public affairs, and automatic data processing (ADP);
- (2) Operations: jurisdiction over inspection and control, international operations, border patrol, regulatory audit, duty assessment, and AMPS program, among others;
- (3) Investigations: special, general and fraud investigations as well as Customs attaches and senior customs representatives;
- (4) Regulations and Rulings: resolution and legal determination for classification and value of importations, entry procedures and penalties, regulations and legal publications of Customs, and carriers and bonds;
- (5) Internal Affairs: composed of the internal audit and internal security capability;
- (6) Enforcement Support: elements of technical support, communications management, information management, and law enforcement systems; and
- (7) Chief Counsel: supervised generally by the General Counsel of the Treasury Department, this Office is responsible for providing formal and informal legal advice and support to the Commissioner and officials on his staff in matters relating to the activities of the Customs Service, for preparing formal legal opinions, for reviewing proposed actions where necessary to insure compliance with legal requirements, and for preparing or reviewing responses in all court actions involving the Customs Service.

6. Summary: Two basic themes are evident regarding Customs organizational developments. The first is that the assumption of early Customs Service duties and activities by other Federal agencies--e.g., INS, DEA, Coast Guard--upon their establishment had occurred in areas where Federal responsibilities were expanding or substantially transformed and where there was evident jurisdictional overlap--e.g., illicit drug trafficking, coastal management and safety.

The second theme is that the Customs Service has acquired certain functional areas, such as law enforcement, as auxiliary to its primary function of revenue collection and importation inspection.

Arthur Millspaugh, in the 1937 seminal examination of Federal crime control, has noted the common legacy of several major law enforcement units, each having adopted, evolved, or extended law enforcement as an ancillary or supportive activity:

The influence of the requirements of auxiliary law enforcements is seen in such agencies as the Intelligence Unit of the Bureau of Internal Revenue, the Customs Agency Service of the Bureau of Customs, the Immigration Border Patrol, the Post Office Inspection Service, and, in the beginning, the Bureau of Investigation. Special social objectives, as well as the demands of auxiliary enforcement, largely account for the policing activities of the Bureau of Narcotics. In the Alcohol Tax Unit and its predecessors, the Coast Guard, and the Customs Patrol, one can see, not only the development of auxiliary enforcement, but also the administrative effects of changing public attitudes toward alcoholic beverages. 23/

II. Actual and Proposed Reorganizations, 1927-1977

Throughout its history, the Customs Service has been subject to numerous actual and proposed reorganizations. Those recommendations have emanated from varied sources, including internal Treasury Department and Customs Service task forces, Executive Office of the President units (e.g., Office of Management and Budget, Office of Drug Abuse

23/ Millspaugh, op. cit., pp. 85-86. Millspaugh had examined Federal efforts during the era of Prohibition and found that "the enforcement of prohibition involved the Customs Service and the Coast Guard quite as much as the Bureau of Internal Revenue. To check smuggling of liquors into the country, the Coast Guard and the Customs Border Patrol were expanded; and in 1927 a law was enacted creating in the Treasury Department a Bureau of Prohibition co-ordinate with Customs and Internal Revenue..." Ibid. p. 71.

Policy), congressional committees, the General Accounting Office, and individual political analysts. This section of the report concentrates upon only some of the more important reorganizations that (would) have effected major changes or otherwise focused on Customs Service relationships with various Federal agencies, the more representative in terms of reflecting varied sources, and the more recent (viz., the immediate past fifty years (1927-77) of the 189-year history of a customs service). 24/ The major reorganizations and recommendations are arranged chronologically.

A. 1927 Reorganization

The fifty-year period under study commences with the reorganization of 1927 and the creation of an official Bureau of Customs within the Treasury Department by an act of March 3, 1927 (44 Stat. 1381). Previously, the Division of Customs Service existed within the Department but did not retain a separate bureau status, as had other units, such as the Bureau of Printing and Engraving, the Bureau of Public Health Service, or the Coast Guard.

The 1927 reorganization act also incorporated the Special (Customs) Agency Service, formerly under the direction of the Secretary of the Treasury, into the Bureau of Customs, thereby, substantially augmenting the investigative capacity of Customs. 25/ The Special

24/ Prior to 1927 and the establishment of a Bureau of Customs, the Customs Service lacked an independent bureau status within the Treasury Department.

25/ By an Act of Congress, March 4, 1923 (42 Stat. 1453), the Special Agency Service was granted statutory recognition. See Schmeckebier, op. cit., pp. 30-31.

Agency Service, later retitled as the Customs Agency Service, possessed important internal protective duties that were transferred to the Customs Bureau. Arthur Millspaugh places this development in the perspective of the first quarter of the twentieth century:

From day to day, however, smuggling and other more subtle forms of fraud and evasion are attempted, for the most part at and through the ports. To protect the customs revenues, as well as to maintain respect for laws generally, attempts to cheat the government must be investigated, violators apprehended, goods seized, fines and penalties collected, and criminal cases prepared for prosecution. Moreover, up to the World War, one-half of our national revenues was collected in customs offices. The Customs Service resembles the Post Office Department, in that both are great fiscal and technical organizations, maintaining many field stations and requiring carefully devised protective procedures. In both, criminal acts or collusion in such acts may occur inside the organization. Accordingly, in both, the personnel must be under rigorous inspection and the procedure subject to continual and expert scrutiny. An act of 1799 authorized the Secretary of the Treasury to have examinations made of the books of customs collectors. 26/

This lengthy heritage connotes an investigative force of "special agents" under the direct supervision of the Secretary of the Treasury or, at least, independent of the main entity -- i.e., Customs -- the activities and operations of which were to be investigated. That status changed with the 1927 reorganization and consolidation.

B. 1934 Treasury Department Coordination

The Department of the Treasury has been the site of multi-functional agencies besides the Customs Service. In such a case,

26/ Millspaugh, op. cit., p. 67.

a multi-functional agency "will inevitably be attached to, rather than merged in, the department to which it is allocated," as Millspaugh phrases the quasi-independent nature of such entities. 27/

In 1934, the Secretary of the Treasury embarked on a concerted effort to improve the coordination among various internal Treasury bureaus, with a focus on the Coast Guard and its law enforcement activities, invariably intertwined with the Customs Bureau. Some time before, Customs harbor patrol boats and certain coastal vessels were transferred to the Coast Guard. Via an internal order, issued on March 9, 1934, the Secretary of the Treasury also instructed that:

.... all flying activities under the jurisdiction of the Treasury Department be consolidated with and placed under the jurisdiction of the Coast Guard; and the Commissioner of Customs was directed to turn over to the Coast Guard all airplanes and aviation equipment operated by or in possession of the Bureau of Customs.... 28/

Other changes ensued, including the directive that the Coast Guard provide instruction in the use of small arms weapons to all Treasury Department personnel whose official duties included use of firearms (e.g., custom-house employees and Customs Border Patrol qualified).

Another 1934 attempt to improve intra-Departmental coordination and eliminate duplication included the determination that the Coast Guard would supervise "all activities of the Treasury Department

27/ Ibid., p. 171. Emphasis in original.

28/ Ibid., pp. 171-172.

having to do with the prevention and detection of the smuggling of liquor and narcotics on the seacoast between ports of entry." 29/ Thus, the resources of the Customs Service, along with other appropriate Treasury units, would be under the direction of the Coast Guard Division Commanders in this pursuit. As directed by the Secretary, such Division Commanders were instructed to convene a conference of other Treasury unit officials to formulate programs of coordinated action, to prepare a progress report (with appropriate recommendations) for the Secretary, and to designate field coordinators in this area, usually a Coast Guard officer. 30/

C. 1937 Reorganization Studies

In 1937, Arthur Millspaugh of the Brookings Institution examined two areas of Federal law enforcement -- border patrols and alcohol and narcotics control -- that are subject presently to some of the same criticisms of that earlier era: overlap, duplication, inefficiency, ineffectiveness, and absence of coordination. 31/

1. Border Patrols: At the time of the 1937 analysis, border patrolling was the responsibility of three units: (1) Customs Patrol, under the direction of the Customs Agency Service of the Bureau of Customs/Treasury; (2) Coast Guard, then also a separate

29/ Ibid., p. 172.

30/ Ibid., p. 173.

31/ Ibid., pp. 177-235.

bureau within Treasury; and (3) the Immigration Border Patrol of INS, then in the Labor Department. Millspaugh examined questions of duplication, overlap, and coordination among the agencies involved; organization and practices of the patrolling units; training, equipment, and personnel requirements; and previous attempts to consolidate border patrols.

One nearly-successful unification of these three border patrol units, under the Coast Guard jurisdiction, was advanced in 1930. The proposed unification, incorporated in H.R. 11204, was sanctioned by the Hoover Administration and the Treasury Department; reported by the House Committee on Interstate and Foreign Commerce (House Report 1828, 71st Congress, 2d session); and passed the House, although it failed to pass the Senate.^{32/} According to Millspaugh, the primary goal of the bill was to make "prohibition enforcement more effective,"^{33/} an intention that some legislators perceived as potentially open to abuse; and hearings conducted by the House Interstate and Foreign Commerce Committee reflected on the different and possibly incompatible missions of the agencies involved.^{34/} Then-Under Secretary of the Treasury Ogden L. Mills commented on this theme:

^{32/} House action on H.R. 11204 in Congressional Record, v. 72, July 1, 1930: 12217-12237. Two years later, on Dec. 9, 1932, President Hoover, under the reorganization authority of P.L. 72-212, approved June 30, 1932 (47 Stat. 413), proposed a similar unified border patrol under the Coast Guard to which would be transferred the Immigration Patrol/Labor and the Customs Patrol/Treasury. The required Executive Order, one of eleven affecting 58 Government agencies, had the stated purpose of being to "simplify the procedure in handling violations of the law and... (to) work toward a more effective enforcement." Congressional Record, v. 76, Dec. 9, 1932: 251. A resolution of disapproval (H. Res. 334) was agreed to by the House on Jan. 19, 1933, following the recommendation of the Committee on Expenditures in the Executive Departments (House Report 1833, 72d Congress, 2d session), and, thereby, rejecting the multiple reorganizations proposed in the final months of the Hoover Administration. Congressional Record, v. 76, Jan. 19, 1933: 2110-2126.

^{33/} Millspaugh, op.cit., p. 194.

^{34/} U.S. Congress. House. Committee on Interstate and Foreign Commerce. Border Patrol. Hearings, 71st Congress, 2d session. April 24 and 25, 1930. Washington, U.S. Govt. Print. Off., 1930.

The Coast Guard has other duties more important than the prevention of smuggling on our land borders....Patrolling our land borders is essentially a police function. The Coast Guard proper is a naval organization charged with the duty of protecting life at sea and enforcing on our ocean boundaries the laws of the United States. We do not propose to make policemen of our sailors. But we do want to avail ourselves of their central organization.^{35/}

Millspaugh elaborated on this theme, adding that the training, equipping, service traditions, and personnel orientations of the Coast Guard were not analogous to other (Customs and INS) services' patrols.^{36/} Moreover, the location of the suspect criminal activity that each was charged with preventing differed. INS Border Patrol operated predominantly on land; the Coast Guard on coastal waters; and the Customs Patrol, in both areas.

Even consolidating the land patrols under either Customs or INS encountered difficulties for Millspaugh despite ending the "appearance of duplication."^{37/} Millspaugh contended that:

Each patrol is a means to an end. Neither can act as an independent agency. Both are established for auxiliary law enforcement work. Co-ordination is of course necessary between them; but it is even more necessary that co-ordination should be achieved between the Customs Patrol and the other branches of the Customs Service and between the Immigration Border Patrol and other branches of the Immigration and Naturalization Service.^{38/}

^{35/} Ibid., p. 5-6. Ogden L. Mills, in 1930, was Undersecretary in General Charge, Department of Treasury, and later (1932-33) became Secretary of the Treasury.

^{36/} Millspaugh, op. cit., p. 197.

^{37/} Ibid., p. 199. Emphasis added.

^{38/} Ibid., pp. 200-201.

Millspaugh continues: "It would seem that, inevitably, considerable damage would be done to the continuity and unity of operations within the Immigration Service..." and the Bureau of Customs in the event of border patrol consolidation.^{39/}

For the same reasons, Millspaugh dismisses the proposal that border patrolling should be consolidated within the (Federal) Bureau of Investigation, "the general crime-control agency of the federal government."^{40/}

2. Alcohol and Narcotics Control: The Bureau of Customs was charged in 1937 with cooperating in the enforcement of alcohol and narcotics importation restrictions, although the primary control functions were distributed to other units within Treasury: i.e., the Federal Alcohol Administration and the Alcohol Tax Unit of the Bureau of Internal Revenue and the Bureau of Narcotics. Yet Customs' already-established network of field operatives and organizational structure made it "an essential link in the chain of enforcement."^{41/} Millspaugh, however, emphasizes differences among enforcement in each area, the intimate involvement of State and local law enforcement in the control efforts in these areas of concurrent jurisdiction, the "morality" and societal aspects ^{42/} of attempting to control the illicit trafficking in each, and the international dimensions.

^{39/} Ibid., p. 201.

^{40/} Ibid., p. 201-202.

^{41/} Ibid., p. 218.

^{42/} Ibid., pp. 205-234.

The crucial factor is his perception that narcotics and alcohol abuse, the ultimate cause of the illicit trafficking, is a "vice, as distinguished from crime, [and] should not be put within the jurisdiction of a regular police department [the Bureau of Investigation]."43/ Again, his finding, as it relates to law enforcement reorganization, is favorable, for the most part, to maintaining the status quo.

D. 1949 Hoover Commission Study and Recommendations

The Commission on the Organization of the Executive Branch of the Government (1947-49), popularly referred to as the first Hoover Commission, released its reports and recommendations in 1949. A summary report identified the main theme of those reorganization recommendations: "...we must reorganize the Executive Branch to give it simplicity of structure, the unity of purpose, and the clear line of executive authority that was originally intended under the Constitution."44/

The Treasury Department, as one of the largest and most internally diversified departments within the Executive Branch, engendered a concluding report 45/ and preliminary task force study.46/ With regard to the Bureau

43/ Ibid., p. 233

44/ U.S. Commission on the Executive Branch of the Government. General Management of the Executive Branch. Washington, U.S. Govt. Print. Off., 1949, p. viii.

45/ Ibid. Treasury Department: A Report to the Congress. Washington, U.S. Govt. Print. Off., 1949.

46/ Ibid. Task Force Report on Fiscal, Budgeting, and Accounting Activities [Appendix F]. Washington, U.S. Govt. Print. Off., 1949.

of Customs, the Task Force made two recommendations: (1) the merger of the Bureau of Internal Revenue and the Bureau of Customs into a single unit, with the objective that "(m)ore efficient and economical operation should result from the union of the two bureaus;"^{47/} and (2) the transfer of "marine activities recently assigned to the Bureau of Customs should go along with the Coast Guard,"^{48/} as two nonfiscal elements, to a proposed Department of Transportation. Those two recommendations were accepted with slight modification by a majority of the Hoover Commission and reflected in:

Recommendation No. 2 b. Transferral of the United States Coast Guard, and probably certain of the marine functions of the Bureau of Customs, to the Department of Commerce.^{49/}

Recommendation No. 4. As part of a functional regrouping within Treasury, establishment of a consolidated revenue service, including the Bureau of Customs.^{50/}

The recommendation of a consolidated revenue service was not accepted by Congress.

The transferral of certain Customs marine activities was not effected at the time of the Hoover Commission recommendations (1949), but, interestingly, was nearly 20 years later. In 1967, some Customs marine activities were consolidated within the Treasury Department in the Coast Guard, which,

^{47/} Ibid., p. 4.

^{48/} Ibid., p. 17.

^{49/} Ibid. Treasury Department: A Report of the Congress, p. 6. The Department of Commerce was to be the recipient rather than the proposed Department of Transportation as the Task Force advised.

^{50/} Ibid., p. 15.

in turn, was transferred to the newly-established Department of Transportation.^{51/}

Originally, the "marine activities" noted in the Hoover Commission Task Force study referred to those acquired from the Commerce Department in 1946-47 by the Treasury Department and distributed to the Coast Guard and the Customs Bureau. The 1949 Hoover Commission Task Force prescient recommendation, even citing a proposed Transportation Department as the eventual recipient, included only those marine activities acquired from Commerce, not Customs' other (limited) marine activities directly associated with customs enforcement, which remain housed in the Customs Service.

E. 1965 Reorganization

Reorganization Plan No. 1 of 1965 (79 Stat. 1317) brought about an extensive internal reorganization of the Bureau of Customs and eliminated the positions of collectors and comptrollers of customs as Presidential appointments, transforming the new offices of district directors into Civil Service selections.^{52/} The Reorganization Plan was transmitted March 25, 1965, and became effective May 25, 1965.

^{51/} The Department of Transportation was established by an act of October 15, 1966 (80 Stat. 931) and became operational in April, 1967. During the interim, the Customs marine activities/Coast Guard transferral was effected.

^{52/} See U.S. Treasury Department. Customs Service. The Reorganization and After..., op. cit., for a detailed account of appropriate developments.

President Johnson, upon submission of the Plan to the Congress, emphasized the themes he had developed in his state of the Union message: "to 'reshape and reorganize' the executive branch... 'to meet more effectively the tasks of today' ... [to initiate] 'new economies.'"^{53/} The specific objectives included tightened management controls via a reorganization that would establish six regional and 25 district offices to supervise all Customs field activities, then conducted by "113 independent field offices, each reporting directly to Customs headquarters in Washington, D.C."^{54/} The abolition of the Presidentially-nominated and Senatorially-confirmed positions would produce an organization in which "all officials and employees of the Bureau of Customs will be appointed under civil service laws."^{55/}

^{53/} President Lyndon Johnson. Reorganization Plan No. 1 of 1965: Message to the Congress. House Doc. no. 125, 89th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1965.

^{54/} Ibid.

^{55/} Ibid.

When President Lyndon Johnson terminated the remaining "patronage" positions in Customs in 1965, he ended the Federal Government positions long identified with the "spoils system" and notorious for its abuses. Leonard D. White's authoritative treatment of this phenomenon describes the "politics of the Customs Service" in the early- to mid-1800s:

There had been signs of party interference in the subordinate staffs of the customs houses in Baltimore, Philadelphia, and New York during the administration of John Quincy Adams.... The trend was accelerated when Jackson became President and within a decade the customhouse staffs became deeply involved in Whig and Democratic politics....(A)s the years went by the pressure for political appointments became nearly irresistible. The demand was greatest in the big cities, where the voting power of the new mass electorate was concentrated....The sinister consequences of the political character of the collectorship were pointedly revealed in private letters of William L. Marcy at the moment when Polk had to determine who would be collector in New York...56/

It was, in fact, William L. Marcy, who as U.S. Senator from New York in 1832 (later Secretary of War under President Polk and Secretary of State under President Pierce), coined the legendary phrase —"to the victor belong the spoils of the enemy"—as applied to Federal Government employment:

It may be, sir, that the politicians are not so fastidious as some gentlemen are, as to disclosing the principles on which they act. They boldly preach what they practice. When they are contending for victory, they avow their intention

56/ Leonard D. White. *The Jacksonians: A Study in Administrative History, 1829-1861.* New York, The Macmillan Co., 1954, pp. 174-176.

of enjoying the fruits of it. If they are defeated, they expect to retire from office. If they are successful, they claim, as a matter of right, the advantages of success. They see nothing wrong in the rule, that to the victor belong the spoils of the enemy.^{57/}

A final element in this reorganization affected the headquarters level, where the seven existing divisions were consolidated into four offices (investigation, administration, operations, and regulations and rulings). Moreover, a new position of special assistant to the Commissioner was established with responsibility for "insuring that all Customs employees conduct themselves in strict compliance with all applicable laws and regulations. Up to now this function has been one of a number lodged with an existing division."^{58/}

F. 1968 Bureau of the Budget Report

In May of 1968, the Bureau of the Budget (BOB) released an interagency report on inspections at ports of entry, the shared jurisdiction of five principal agencies: Customs/Treasury, Immigration and Naturalization Service/Justice, Plant Quarantine Division/Agriculture, Animal Health Division/Agriculture, and Public Health Service/Health, Education and Welfare (HEW).^{59/}

^{57/} Register of Debates, 22d Congress, 1st session. Jan. 24, 1832. p. 1325.

^{58/} President Lyndon Johnson, op. cit.

^{59/} Executive Office of the President. Bureau of the Budget. Interagency Report on Inspection at Ports of Entry. [Washington. Executive Office of the President] 1968.

At one time, both the Immigration and Naturalization Service (INS) and the Public Health Service were located in the Treasury Department, along with Customs.^{60/}

The BOB report focused exclusively on passenger and baggage inspection activities, not cargo inspection or support activities. Within this narrow realm of activities, the interagency report concluded that "major changes were necessary,"^{61/} and listed more than forty specific recommendations, including those associated with improvement of interagency cooperation, strengthening of program coordination and direction, and consideration of a single agency inspection service.^{62/}

Those affecting the Customs Bureau and focusing on interagency cooperation included:

Passengers and crew on cargo vessels with up to 12 passengers should be inspected by a minimum number of cross-designated inspectors designated to act for all four agencies.

Yachts should be inspected by one inspector acting for all four agencies.

^{60/} Originally and before the establishment of HEW, the Public Health Service was charged with preventing the introduction of endemic diseases and with making physical examinations of aliens, performing these duties at seaports and ports of entry. INS, charged with immigrant inspection, was made a part of the Treasury Department in 1882; and in 1891, a Bureau of Immigration was established within the Department. In 1903 this Bureau and its functions were transferred to the Department of Commerce and Labor. When a separate Department of Labor was created in 1913, it retained immigration and naturalization duties, separating them between two appropriate bureaus. In 1933 the two bureaus were re-united as the Immigration and Naturalization Service by Executive Order 6166. INS was transferred to the Justice Department in 1940, where it remains.

^{61/} Executive Office of the President, op. cit., p. 1.

^{62/} Ibid., pp. iii-v, for summary recommendations.

Inspection agencies should extend the multiagency staffing concept used for primary inspection at land borders to the primary inspection phase of the one-stop system at airports and seaports.

Inspection agencies should cooperate further in training, management information, and public information efforts.

As an interim action pending completion of the testing of one-stop inspection, Immigration and Public Health should combine their inspections at all airports and seaports where feasible.^{63/}

With regard to expediting its own services, the Customs Bureau was advised to "facilitate pre-baggage inspection payment of duty and continue efforts to obtain flat rate duty legislation."^{64/}

Program coordination and direction elicited two summary recommendations:

Administrative "managers" for multiagency activities should be established on the Mexican border on a shift or work area basis.

Uniform hours of service for adjacent ports on each side of the border should be established everywhere possible.^{65/}

These were elaborated within the body of the report and related recommendations appeared elsewhere. For instance, the recommendation dealing with training of personnel advocated the establishment of a "nationally directed, cross-training program..."^{66/}

^{63/} Ibid., p. iv.

^{64/} Ibid., p. v.

^{65/} Ibid.

^{66/} Ibid., p. 47.

The concept of a single agency with consolidated port-of-entry inspection jurisdiction and authority is explicated in the final section of the report, recalling previous similar suggestions from another BOB study: a 1948 BOB-directed task force concluded that new screening procedures "would undoubtedly operate more satisfactorily under a single administrator ...achieving a unity of control or single administration of border inspectional personnel...[as] the next step--but a step for the future."^{67/} The 1968 BOB interagency study recommendation followed suit with the concluding proposal:

At an appropriate future time, consider the feasibility of assigning the complete responsibility for the inspection of passengers and baggage to one of the four agencies now performing those activities.^{68/}

G. 1973 General Accounting Office Report

In 1973 the General Accounting Office (GAO), evidently assuming the time was, in fact, appropriate, recommended that:

the Director, Office of Management and Budget, in cooperation with the Attorney General and Secretaries of Health, Education and Welfare; Agriculture; and the Treasury implement single-agency management of port-of-entry inspections.^{69/}

This recommendation resulted from the examination of the four agencies responsible for inspecting persons entering the United States--the Public Health Service/HEW, the Immigration and Naturalization Service/Justice,

^{67/} Ibid., p. 55.

^{68/} Ibid., p. 56.

^{69/} U.S. General Accounting Office. A Single Agency Needed to Manage Port-of-entry Inspections--Particularly at U.S. Airports. Washington, May 30, 1973 (B-114898), p. 21.

the Bureau of Customs/Treasury, and the Animal and Plant Health Inspection Service/Agriculture. The recommendation of consolidation was based on the findings of inefficient use of scarce resources, fragmented approach to inspections, and increasing workload which aggravated the problems of fragmentation.^{70/} The anticipated benefits of a single-agency management system of inspection included:

- Development of a single inspection system.
- Uniform administrative policies and procedures.
- Improved scheduling, planning, and coordination.
- Elimination of duplication.
- Reductions in space and staff requirements and inspection time.^{71/}

The Customs Bureau, along with the other affected agencies, responded with detailed comments, including recognition of its own independent study and a Treasury Department recommendation that a "single agency management system be adopted..."^{72/} The question that Customs had in its comments was the location of such a single-agency management system:

The Bureau of Customs and the Treasury Department concur in the recommendation to implement Single Agency Management of primary port-of-entry inspections; however, the draft report does not indicate which agency should be made responsible for inspections under the single agency management concept. The President, on March 28, 1973, announced Reorganization Plan No. 2 of 1972 (sic), which proposes the designation of the Bureau of Customs as the Single Agency Manager of ports-of-entry inspections.^{73/}

^{70/} Ibid.

^{71/} Ibid.

^{72/} Ibid., p. 27.

^{73/} Ibid., p. 26.

The Bureau of Customs offered three broad reasons in favor of designating Customs as the single agency manager of ports-of-entry inspections: (1) Customs provided the major manpower resources for ports-of-entry inspections; (2) the Customs Automated Data Processing Intelligence Network is superior to the Immigration Service counterpart in quickly identifying suspects at the primary inspection point; and (3) Customs had already conducted a study of recent associated problems and Treasury had recommended, to the Office of Management and Budget, a single agency management system "beginning with primary inspections at land border crossings; primary inspections of ferries arriving from contiguous countries; and inspections of all private yachts and private aircraft."74/

H. 1973 Reorganization and Establishment of the Drug Enforcement Administration

Reorganization Plan No. 2 of 1973 (87 Stat. 1091), referred to by the Customs Bureau above, developed simultaneously with the General Accounting Office study. President Nixon submitted Reorganization Plan No. 2 on March 28, 1973, and it became effective on July 1, 1973, creating a Drug Enforcement Administration (DEA) within the Justice Department and including several major changes regarding the Customs Service. Among those, as described in the President's message to Congress, were:

—DEA would perform anti-drug functions and would absorb the associated manpower and budgets of those functions of the Bureau of Customs pertaining to drug investigation and intelligence (to be transferred from the Treasury Department to the Attorney General);

74/ Ibid., p. 27.

--The major responsibilities of DEA would include development of overall Federal drug law enforcement strategy, programs, planning and evaluation; full investigation and preparation for prosecution of suspects connected with illicit drugs seized at U.S. ports-of-entry and international borders; and, among others, conduct of all relations with drug law enforcement officials of foreign governments, under the policy guidance of the Cabinet Committee on International Narcotics Control...75/

The basic rationale of the reorganization plan in creating a consolidated drug enforcement administration within the Justice Department was to provide a unified command, erasing the "distinct handicap...of a loosely confederated alliance... in half a dozen...fragmented forces," including the Bureau of Customs.76/ One of the immediate and principal objectives was to improve port-of-entry inspections and thus curtail illegal importation of narcotics.

The Bureau of Customs, therefore, was the projected recipient of additional authority and resources to counter illicit drug trafficking through this channel. Section 2 of Reorganization Plan No. 2 of 1973, which would have transferred appropriate functions to the Secretary of the Treasury, is elaborated in the President's message as follows:

...the reorganization plan which I am proposing today would transfer to the Secretary of the Treasury all functions currently vested in Justice Department officials to inspect persons, or the documents of persons.

When the plan takes effect, it is my intention to direct the Secretary of the Treasury to use the resources

75/ President Richard Nixon. Reorganization Plan No. 2 of 1973 (re a Drug Enforcement Administration): Message to the Congress. House Doc. No. 93-69. 93d Congress, 1st session, 1973.

76/ Ibid.

so transferred—including some 1,000 employees of the Immigration and Naturalization Service—to augment the staff and budget of the Bureau of Customs. The Bureau's primary responsibilities would then include:

- inspection of all persons and goods entering the United States;
- valuation of goods being imported, and assessment of appropriate tariff duties;
- interception of contraband being smuggled into the United States;
- enforcement of U.S. laws governing the international movement of goods, except the investigation of contraband drugs and narcotics; and
- turning over the investigation responsibility for all drug law enforcement cases to the Department of Justice.

The reorganization would thus group most port-of-entry inspection functions in a single Cabinet department. It would reduce the need for much day-to-day interdepartmental coordination, allow more efficient staffing at some field locations, and remove the basis for damaging inter-agency rivalries. It would also give the Secretary of the Treasury the authority and flexibility to meet changing requirements in inspecting the international flow of people and goods. An important by-product of the change would be more convenient service for travellers entering and leaving the country.

For these reasons, I am convinced that inspection activities at U.S. ports-of-entry can more effectively support our drug law enforcement efforts if concentrated in a single agency. The processing of persons at ports-of-entry is too closely interrelated with the inspection of goods to remain organizationally separated from it any longer. Both types of inspections have numerous objectives besides drug law enforcement, so it is logical to vest them in the Treasury Department, which has long had the principal responsibility for port-of-entry inspection of goods, including goods being transported in connection with persons. As long as the inspections are conducted with full awareness of related drug concerns, it is neither necessary nor desirable that they be made a responsibility of the primary drug enforcement organization.^{77/}

However, Section 2 and the consolidations into Customs met with strong opposition in Congress. Although Reorganization Plan No. 2 of 1973 was approved by Congress, it was accepted by the House with the understanding that

^{77/} Ibid.

the second part would be repealed by separate legislation.^{78/} Subsequently, section 2 was repealed by Public Law 93-253 (88 Stat. 50), approved March 16, 1974. That opposition focused on the perceived adverse affects of the consolidation on the Immigration and Naturalization Service.

A later House Government Operations Committee study summarized these concerns, other weaknesses of the Reorganization Plan, and, given the retention of Section 1 (but not Section 2), the consequences for Customs drug law enforcement:

...The OMB had proposed a partial arrangement of this nature in section 2 of Reorganization Plan No. 2 of 1973. That part sought the integration of inspection activities, concerning both goods and people, at ports-of-entry, and would have involved the transfer of approximately 900 agents from INS to the Customs Service.

When Reorganization Plan No. 2 of 1973 was before the subcommittee and full committee for consideration, there was considerable opposition to section 2 by union representatives of the INS employees. Their concern, shared by many Members of Congress, was that removal of so large a complement of INS employees would adversely affect morale and make even more difficult the efforts of that under-staffed agency to cope with illegal alien traffic....

The problem started with Reorganization Plan No. 2 of 1973. In many ways it was ill-starred. A majority of the committee, in reporting on the plan, observed that it was hastily formed, without adequate preparation. The employee organizations involved were not fully consulted; and in consequence, awkward arrangements had to be made for concessions and compromises after the plan was submitted, including the enactment of legislation to repeal an important part of the plan....

In this respect, the Customs Service suffered rather heavily. Under section 1 of the plan, it lost to the Department of Justice, for delegation to the DEA, its intelligence and investigative functions relating to the suppression of illicit traffic in narcotics, dangerous drugs, or marihuana. Along with this transfer of functions went 509 customs agents, about 200 support personnel, and an assortment of equipment, including aircraft, helicopters, boats, office furniture and supplies, vehicles, firearms, tape recorders, radios, cameras, and binoculars.

^{78/} See Congressional Record (daily ed.), June 7, 1973. pp. H4435, H4457.

The transfer of drug intelligence and investigative functions to DEA was a heavy blow to Customs, particularly because of the public prominence and congressional support given to drug abuse control efforts; but the transfer did not mean that Customs thereafter would be completely out of the drug law enforcement business.^{79/}

^{79/} U.S. Congress. House. Committee on Government Operations. Law Enforcement on the Southwest Border (Problems of Coordination between Immigration and Naturalization Service and Customs Service); Report. Washington, U.S. Govt. Print. Off., 1974. (93d Congress, 2d Session. House. Report No. 93-1630). pp. 4 and 19-20.

I. 1974 House Government Operations Committee Study

The U.S. Customs Service and its relationship with the Immigration and Naturalization Service were the immediate interests of a 1974 report from the House Committee on Government Operations, based on hearings conducted by the Subcommittee on Legislation and Military Operations.^{80/} The impetus of the congressional examination was Customs' reactivation of the border patrol force along the Mexican border:

In regrouping its forces after the loss of investigative personnel caused by the reorganization plan, the Customs Service decided to deploy a uniformed force of customs patrol officers (CPO's) along the Mexican border. The rationale for this deployment as explained to an Appropriations subcommittee in November 1973, was to shore up depleted resources for interdicting contraband (including drugs).

During several periods in the past, the Customs Service had a uniformed patrol force along the Mexican border but had discontinued it in 1948. Its reappearance in 1973 caused much consternation and concern in the area. There were reports of controversy and friction between customs patrol officers and other Federal, State, and local law enforcement agencies. Several Members of Congress requested the Office of Management and Budget (OMB) to study and assess the situation in the interest of eliminating unnecessary duplication and effecting better coordination.^{81/}

The OMB analysis, requested by Congress, proceeded for six months. OMB concluded that a "long-term solution is needed to resolve the problems of enforcement duplication and competition along the Mexican border... [and OMB proposed] the single-agency...management strategy..."^{82/}

^{80/} Ibid.

^{81/} Ibid., p. 2.

^{82/} Ibid., p. 3.

As an interim solution, however, Customs would be given "lead agency" duties with regard to border air interdiction and routine air enforcement and would "'implement a test of single-agency management of Mexican border ports.'" 83/ However, the Immigration and Naturalization Service was contemplated as the "'single agency for routine patrol of the land border between ports'" 84/ with Customs confined to the aforementioned jurisdictions as "lead agency" or only as a "test" of single-agency management.

Opposition to the OMB plan arose, focusing upon the legality and propriety of a test program, in light of the legislative repeal of section 2 of the 1973 Reorganization Plan and other existing shared functions and responsibilities of the several agencies. As indicated by the Government Operations Committee:

Although the Congress, in effecting the partial repeal, was more concerned with preventing the transfer of 900 persons from INS to Customs than with the efficacy of single management of inspection activities at ports of entry, nevertheless the OMB plan did not seem to comport with the spirit of the repeal action. 85/

A series of differences -- over OMB's legal authority to erect such a test case in light of repeal of Section 2, the President's role, and the transfer of functions -- were reviewed in the Government Operations report.

83/ Ibid., p. 4.

84/ Ibid.

85/ Ibid., p. 5-6.

Among the various concerns were the following critical ones for Customs, interagency relations, and relevant reorganizations:

- The question of legal authority for the OMB plan finally hinges on whether or not it involves a transfer of functions from one department or agency to another, or an abolition of functions of an agency. It is generally understood that neither the President nor the OMB, nor departments individually or in concert, could order such action administratively. Action by Congress would be required....
- The Comptroller General...wrestled with the question of "transfer of functions" and was unable to make a clear-cut finding because of the tangled legal and factual issues involved....
- The Comptroller General was troubled also by that aspect of the "single agency" assignment to the INS border patrol which entailed, under the OMB plan, reliance upon the cross-designation of border patrolmen as customs officers....
- In the Comptroller General's view, however, the exercise of Customs' authority by INS agents must be considered as limited to actions incident to their own primary mission of dealing with illegal alien traffic....
- The Comptroller General also thought that cross-designation of INS agents as customs officers "necessarily requires that Customs retain some responsibility for, and control of, their activities"....
- The Committee is inclined to agree...that the OMB plan "presents a strong potential that it is a transfer of functions beyond the permissible scope of administrative action," and that the cross-designation authority was a questionable basis for accomplishment of the OMB plan....
- The Customs Service recognizes that it has extraordinary powers of border search and seizure, and it is particularly sensitive to the use of such authority by officers of other agencies who may not be sufficiently trained or versed in Customs' practices and traditions.... [Where cross-designation does occur] the standard form

now used by Customs Service... carries the legend: "In performing the duties of a customs officer, you will be subject to all guidelines, directives and instructions of the U.S. Customs Service." 86/

The Government Operations Committee concluded that Customs "major initiative" in redeploying uniform personnel along the Mexican border was done "without the full knowledge, understanding, and approval of the Office of Management and Budget;" that the OMB plan of a "test program" of single-agency management of designated inspection functions "was not well-advised;" and that "in view of the controversies and ill feelings that have been engendered by the OMB plan...a sounder basis for agreement is required between the participating agencies." 87/

Seven major recommendations ensued:

- (1) that OMB withdraw its plan to reassign responsibilities between Customs and INS;
- (2) that the President direct the Secretary of the Treasury and Attorney General to draw up a mutually acceptable plan for coordinated conduct of their operations at and between border ports of entry, recognizing, among other items, other Federal agency responsibilities, their own statutory responsibilities, and that single centers of responsibility should be established to the greatest practicable extent;
- (3) that employee organizations in the affected Services be consulted and afforded opportunities to comment;
- (4) that unjustified disparities between the two Services in terms of job classification, compensation, and perquisites and privileges of persons performing essentially similar duties be eliminated;

86/ Ibid., pp. 14-16.

87/ Ibid., pp. 28-29.

- (5) that Congress and its interested committees be consulted and kept fully informed of the arrangements prior to their implementation; if transfers of functions, or consolidation of agencies are desired, legislation is required;
- (6) that the President and the Congress give favorable consideration to Justice's pending request for the increase in INS personnel; and
- (7) that the Judiciary Committee consider developing legislation to require annual or other periodic authorizations for the programs of INS. 88/

J. 1977 General Accounting Office Report on Defense/Civilian Cooperation in Law Enforcement

In 1977, the General Accounting Office (GAO) released its report on coordination of civil and defense agencies involved in search/rescue and coastal law enforcement. 89/ Customs is only peripherally involved in this report, which concentrates on the efforts of the Coast Guard and relevant military units.

Nonetheless, one section has significance for Customs and law enforcement: i.e., military assistance to civil law enforcement agencies. 90/ The Posse Comitatus Act (18 U.S.C. 1385) has been presented as a limiting factor in the use of military personnel and

88/ Ibid., pp. 29-30.

89/ U.S. General Accounting Office. If Defense and Civil Agencies Work More Closely Together, More Efficient Search/Rescue and Coastal Law Enforcement Could Follow. Washington. 1977. (LCD-76-456, May 26, 1977).

90/ Ibid., p. 47.

equipment by Federal law enforcement agencies and considerable uncertainty exists concerning the amount of assistance the military can provide. The Act states:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both. 91/

Although direct enforcement of the laws would appear to be clearly prohibited to the military, certain support activities and types of assistance to civilian law enforcement organizations are often legally obscure under the Posse Comitatus Act. GAO cited the legal uncertainty involved in a case in which an Air Force pilot, in an Air Force plane, would transport a Customs' agent on a contraband patrol or interdiction mission. 92/

GAO concluded that opportunities for increased cooperation among various civil agencies of the Federal Government exist and that the "military services have assets that we believe could be made available to civil agencies on a loan basis." 93/ The report then recommended that:

Congress enact legislation expressly authorizing the Secretary of Defense to loan available personnel and equipment to Federal civil law enforcement agencies for the purpose of transporting them on law enforcement missions. 94/

91/ Although the Act only expressly identifies the Army and Air Force, the Navy and Marine Corps closely follow it. Ibid.

92/ Ibid., p. 48.

93/ Ibid., p. 50.

94/ Ibid., p. 52.

K. 1977 Office of Drug Abuse Policy Review

On September 7, 1977, the Office of Drug Abuse Policy (ODAP) in the Executive Office of the President released a study on border management and interdiction. 95/ The study, conducted by an interagency review team under the direction of ODAP, emphasized two principal functions of border control: inspection of persons and goods at ports of entry and patrolling between ports to prevent surreptitious entry.96/ In turn, two major issues were identified: "overall lack of coordinated border management, and the overlap and duplication of effort in the principal border control functions."97/

The U.S. Customs Service and Immigration and Naturalization Service (INS) were, necessarily, the main foci of the study, although other agencies were involved and included: Public Health Service, Animal and Plant Health Inspection Service, Drug Enforcement Administration, U.S. Coast Guard, and Fish and Wildlife Service, each of which was able to append comments to the report. By way of summary, seven independent agencies, representing six Federal Departments, participate in border management, control, and law enforcement.

The basic issues of border management and overlap and duplication were examined and related problems identified: duplication of

95/ Executive Office of the President. Office of Drug Abuse Policy. Border Management and Interdiction -- An Interagency Review. [Washington] 1977.

96/ Ibid., p. ii.

97/ Ibid.

effort, lack of cooperation and coordination, inadequacy of border management resources, and inadequacy of intelligence, among others.^{98/} Although the perceived issues and associated problems are not novel with this study, the ODAP report did provide an unusual service: development of a series of four options, ranging from maintenance of the status quo to creation of an expanded multi-purpose border agency, composed of INS, Customs, and Coast Guard.^{99/} The advantages and disadvantages of each were provided, as determined by the analysts.

The review team concluded that major reorganizations are required, as the "current organizational structure was determined to be the underlying cause of the majority of current operational problems."^{100/} In consequence, the team recommended that "a multi-purpose border management agency should be created by consolidating INS and Customs in a new agency,"^{101/} thus, leaving Coast Guard independent of the structure but not precluding its assumption into the same department. The merger of the two units emphasized that this would be a new agency, rather than the incorporation of one into the other.

However, one of the difficult questions associated with the ODAP proposal was not answered: which current "parent" Department, Justice or

^{98/} Ibid., p. 37.

^{99/} Ibid., pp. 46-59.

^{100/} Ibid., p. 58.

^{101/} Ibid., p. 59.

Treasury, would inherit the new agency? The ODAP report, cognizant of the question, suggested that the principal considerations of such a determination should be "the size and nature of the border presence, the relative strength of each agency's ties to its current department, the relative contribution to control over entry and the potential impact on the revenue function."102/

The Customs Service, along with the other affected units, responded to the ODAP report. Customs "favor(ed) the approach in option three [Customs/INS consolidation] as we believe it could be implemented within a relatively short timeframe, with a minimum of opposition and organizational disruption[and] concur(red) with the study team's criteria for the selection of the cabinet level department to host the new agency."103/ Furthermore...

In our view, the Department of Treasury most nearly meets these criteria and that, further, in Customs, Treasury has a multipurpose agency that already manages and meets the enforcement requirements of a number of other federal agencies. Border law enforcement is inextricably tied to collection of revenue (\$5 billion in 1976). The problems and administrative structures associated with this inter-mixture have been dealt with in Treasury for many years, not only in Customs but in the Internal Revenue Service and the Bureau of Alcohol, Tobacco and Firearms. We, therefore, suggest that Treasury is the most appropriate department to assume these functions.104/

102/ Ibid., p. 53.

103/ Ibid., Appendix 0-1.

104/ Ibid., Appendix 0-2.

L. 1977 President's Reorganization Project Draft Report

Overlapping with the ODAP report was another 1977 report prepared by a unit in the Executive Office of the President: the President's Reorganization Project (PRP) draft report on reorganization options related to border management.^{105/} It must be remembered that, as of this writing, the PRP report is a draft and not an official release. Nonetheless, it provides some important material regarding the U.S. Customs Service and prospective reorganizations that should be considered.

The corporate authorship — i.e., the President's Reorganization Project — requires explanation. Upon assuming the Office of President, Jimmy Carter emphasized Executive Branch reorganization efforts would be a high priority and Federal law enforcement was designated as a prime candidate for comprehensive review and study. President Carter's memorandum of June 29, 1977, addressed the problems and major objectives as follows:

Today there is considerable jurisdictional ambiguity, overlap, and possible duplication among Federal organizations performing police or investigative activities. There are at least 75 different Federal agencies and 164,000 [sic] Federal employees involved in police or investigative work. Our goal is to make these functions more responsive to both individual rights and Federal law enforcement priorities. This effort will help us determine how best to structure these agencies to do so.

^{105/} U.S. Executive Office of the President. Office of Management and Budget. President's Reorganization Project. Reorganization Options Related to Border Management (draft report). Washington, Dec. 14, 1977. As of this writing, the draft report and subsequent recommendations are circulating for comment among executive agencies and the report remains a draft and not an official release.

A major objective will be to re-examine the Federal role in law enforcement in light of the responsibilities and capabilities of State and local agencies. The Federal Government ought not to duplicate or overlap State and local enforcement functions unnecessarily.106/

Subsequently, a PRP Law Enforcement Study Team was established, composed of Office of Management and Budget and Justice Department personnel, for the most part, assisted by aides from various agencies possessing a law enforcement capability. An overall survey conducted by the PRP team revealed the extensiveness of Federal law enforcement efforts: 112 units among more than 30 departments and agencies, with an estimated 200,000 personnel and a combined annual budget of \$4.2 billion in fiscal year 1977.107/

It is out of this comprehensive examination, apparently the first of such magnitude undertaken by the Executive in the area of law enforcement,108/ that the draft report on border management emerged. The fact that the first PRP law enforcement report, although still a draft, is on border management reorganization suggests a high or, at least, immediate priority for this jurisdictional area.

106/ 42 Federal Register 33911 (1977).

107/ For the review of these PRP efforts, since no official report has yet been released, see U.S. Library of Congress. Congressional Research Service. Law Enforcement Reorganization at the Federal Level. Issue brief 77094 (by) Frederick Kaiser (updated continuously).

108/ It should be recalled that the earlier Hoover Commission report of 1949, identified above, examined functional organization of the Executive but did not include law enforcement as a functional concept. The only other approximation to this effort is Arthur Millspaugh's 1937 Brookings study, identified above.

The PRP report listed five basic tentative findings:

- (1) U.S. borders are under increasing pressure from a flow of illegal narcotics and drugs, undocumented aliens, and contraband....
- (2) Serious problems of overlap, duplication of effort, and lack of coordination exist between the two principal agencies involved at the land borders, Customs and INS. These problems significantly hamper effective border control....
- (3) In concentrating on its border enforcement responsibilities to prevent illegal entries, INS has been unable to devote sufficient resources to its important nonborder administrative law function....
- (4) Any effort to make land border enforcement effective without enforcement of the air and sea borders simply invites an increase of smuggling by air and sea.... An air and marine interdiction capability is an important factor in any overall border management concept. At present this capability appears insufficient, with Customs attempting to obtain the resources to carry out effective border interdiction at sea and in the air. The U.S. Coast Guard, as the civilian maritime agency with general law enforcement responsibility, is empowered both with the legal authority and operating capabilities to assume a preeminent enforcement role in the waters and related air space adjacent to our borders....
- (5) There is substantial duplication and inconsistency in the visa application and approval activities of the State Department and the INS border admission process.109/

Based on these findings, four questions were raised which, in turn, provided the organization of the draft report:

- (1) What organizational arrangement is most appropriate for border management activities?
- (2) If a border Management Agency is established, what departmental location is most suitable--Treasury or Justice?

109/ U.S. Executive Office of the President. Office of Management and Budget. President's Reorganization Project, op. cit., pp. 4-7.

- (3) What actions should be taken to ensure that border management is supported by necessary air and marine interdiction capabilities?
- (4) What actions should be taken to ensure that the visa issuance and border admission functions are consistently and effectively carried out?^{110/}

Following a discussion of each of these four organizational issues, the PRP report developed several alternative solutions and brief outlines of their apparent advantages and disadvantages. Except for question (4), which pertains to the State Department and INS exclusively, the questions affect the U.S. Customs Service and should be highlighted.

(1) The appropriate organizational arrangement -- single, consolidated or dispersed among several units -- is considered in light of the ODAP recommendation favoring a single agency and a 1977 General Accounting Office (GAO) report, "Illegal Entry at the United States-Mexican Border--Multi-Agency Enforcement Efforts Have Not Been Effective in Stemming the Flow of Drugs and People," manifesting similar findings.^{111/}

The first alternative in this area simply advances additional resources for the existing agencies and does not advocate reorganization. Alternative 2 proposes to "combine and unify the patrol functions of Customs and INS in one department (Justice or Treasury); and the inspection functions of Customs and INS in the other Department (Treasury or

^{110/} Ibid., pp. 7-8.

^{111/} Ibid., p. 11. This GAO report is reviewed below.

Justice).^{112/} Alternative 3 establishes a Border Management Agency in Treasury or Justice, containing Customs and INS patrol functions and the inspection functions of both into one unit, along with the remaining functions and support activities of the agency already within the Department. The remaining agency, no longer possessing inspection or patrol responsibilities, would retain its organizational identity in its present department.^{113/} A fourth alternative would combine the entirety of Customs and INS in a Border Management Agency in either Justice or Treasury.^{114/}

(2) Issue two examines which department, Justice (Alternative 1) or Treasury (Alternative 2), would be the most appropriate location of any prospective border management agency. Both Departments, according to the report, contend they have sufficient personnel, organizational framework, and management capability to assume any additional border enforcement responsibilities.^{115/} The PRP report noted that:

The Treasury Department [Customs] devotes approximately three times more resources to inspection than the Department of Justice. The Treasury inspection function involves the inspection of all persons without regard to citizenship and applies also to general merchandise and carriers at the point of entry.^{116/}

^{112/} Ibid., p. 13.

^{113/} Ibid., p. 15.

^{114/} Ibid., p. 17.

^{115/} Ibid., p. 19.

^{116/} Ibid., p. 20.

(3) Issue three examines the possibility of ensuring that border management is supported by necessary air and marine interdiction capabilities, largely the prospective responsibility of the Coast Guard as the only civilian law enforcement agency. The PRP report notes, however, that "in recent years, the Coast Guard has gradually deemphasized its law enforcement role..."^{117/}

Alternative 1 advances the concept of increasing the resources of Customs or a new Border Management Agency, rather than changing the present Coast Guard structure or emphasis. Alternative 2 would redefine the Coast Guard primary occupational role to provide a high priority for close support to Customs or a Border Management Agency, but leave the Coast Guard within the Department of Transportation. Alternative 3 would transfer the Coast Guard intact to the same cabinet department in which a prospective Border Management Agency would be located.^{118/}

The PRP draft report on border management does not advocate a particular alternative in any of the areas but serves as an organizing analysis of the basic issues and options confronting the Federal Government.

M. 1977 General Accounting Office Report on Illegal Entry at the U.S. - Mexican Border

The final 1977 report affecting the U.S. Customs Service and possible reorganizations is one prepared by the General Accounting Office (GAO) on

^{117/} Ibid., p. 25.

^{118/} Ibid., pp. 27-30.

illegal entry at the U.S.-Mexican border.^{119/} The principal agencies-- Customs Service, Immigration and Naturalization Service (INS), and Drug Enforcement Administration (DEA)-- are supplemented, in terms of interest in controlling illicit drug trafficking and illegal aliens, by the Federal Bureau of Investigation (FBI); Bureau of Alcohol, Tobacco and Firearms; Department of Defense entities; Federal Aviation Administration; U.S. Coast Guard; Department of Agriculture units; and Public Health Service.^{120/}

The basic finding of GAO is that the substantial influx of illegal aliens and illicit drugs continues, in large part because the responsible Federal agencies operate almost independently "with limited consideration for the activity of the others. This produces separate but similar lines of effort that dilute border coverage and control, with little consideration given to overall border security."^{121/} The report continues:

Since the Federal Government has not developed an integrated strategy or an overall border control plan to determine what it intends to accomplish with its various agency law enforcement resources:

--Costly overlapping and poorly coordinated enforcement continues to exist....

--Border forces do not intercept significant quantities of heroin and cocaine. The Customs Service and the Immigration and Naturalization Service seize only about 2 percent of the heroin estimated to come from Mexico....

^{119/} U.S. General Accounting Office. *Illegal Entry at United States-Mexican Border--Multi-agency Enforcement Efforts Have Not Been Effective in Stemming the Flow of Drugs and People.* Washington, 1977. (GCD-78-17, Dec. 2, 1977)

^{120/} *Ibid.*, p. 1.

^{121/} *Ibid.*

--Too little is known about how most drugs enter the country to make decisions on how to respond. Available intelligence suggests that heroin, cocaine, and dangerous drugs are being smuggled through the ports-of-entry. However, inspector staff-power at major United States-Mexico ports has remained about the same or decreased, while patrol forces away from the ports have increased.... 122/

The extensive GAO report examines a number of factors, including budget and fund allocation of the principal agencies, modes of interception and interdiction, intelligence capabilities and cooperation, and problems and issues associated with port-of-entry vis-a-vis non-port-of-entry detection, inspection, and investigation. Highlighted among improvements is the El Paso Intelligence Center (EPIC), originally staffed by only DEA and INS personnel, but more recently "other Federal agencies have begun to support EPIC...Customs, AFT, Coast Guard, and FAA, with increased DEA and INS commitment."123/ EPIC, however, is a modest, single instance of improving intelligence and interagency cooperative efforts. Moreover, Customs, unlike the other affected agencies, was "critical of EPIC because it feels that to a great extent EPIC duplicates the Treasury Enforcement Communication Systems (TECS), and TECS fulfills Customs' needs."124/

Operations and attendant problems appear dependent upon a number of factors, including jurisdiction--i.e., port-of-entry or other territorial location--and mode of detection--i.e., land patrols, air surveillance, and

122/ Ibid., p. 11.

123/ Ibid., p. 20.

124/ Ibid., p. 21.

marine search—and the agency and history of cooperative activities. In terms of joint agency cooperation, GAO noted a 1975 Domestic Council "White Paper on Drug Abuse" which recommended improved coordination among the principal agencies and establishment of joint task forces. This admonition, however, according to the succeeding GAO report, resulted in only three intensified interdiction operations along the U.S.-Mexican border in the interim and there "was nominal or no coordination among the enforcement agencies."125/

GAO recommended an "integrated strategy and comprehensive operational plan for border control...[to be developed by] OMB, ODAP, together with the Attorney General, Secretary of the Treasury, and other Department Heads having responsibility for border law enforcement."126/ GAO also noted that further congressional oversight and guidance was necessary because of the competing interests and needs of the agencies: separate statutory responsibilities, establishing authority, and missions; competition for limited resources; and involvement in complex, long-term national problems of drug abuse and illegal immigration.127/

The Treasury Department (U.S. Customs Service) comments on the GAO report indicated consensus with the basic findings of limited inter-agency coordination and absence of an integrated strategy or overall border control

125/ Ibid., pp. 46-47.

126/ Ibid., pp. 51-52.

127/ Ibid., pp. 46-47.

plan.^{128/} The comments also referred to the then-developing ODAP study, noted above, as a source of possible recommendations for improvements, and a U.S.-Mexican agreement affecting customs services between the two nations, across the range of responsibilities to suppress the smuggling of contraband.^{129/} Another concern is implicit in the Treasury Department comments questioning certain GAO measures of effectiveness of Customs law enforcement: the limited heroin seizures via Customs Service Air program. Such measurements or indicators of effectiveness might be misleading or incomplete, according to Treasury's comments, in that they measure only partial aspects of a program designed to meet numerous objectives with heroin interdiction only one part of a more comprehensive anti-smuggling/customs inspection operation.^{130/}

N. Summary

This section on major actual and proposed reorganizations affecting the Customs Service during the 1927-77 fifty-year period has discussed numerous appropriate examples, produced by Executive Branch units, inter-agency task forces, governmental commissions, congressional committees, the General Accounting Office, and individual observers. Some of the resulting recommendations were initially dismissed but belatedly accepted, as with a 1949 Hoover Commission recommendation; some were rejected or

^{128/} Ibid., p. 71.

^{129/} Ibid.

^{130/} Ibid., p. 72.

seriously modified by subsequent congressional action, as witnessed by the aftermath of the President's Reorganization Plan No. 2 of 1973; and the remainder have yet to be acted upon, as in the case of the several 1977 studies.

Moreover, the scope of the recommendations vary dramatically, from relatively modest suggestions of increased inter-agency cooperation, involving Customs, to more comprehensive realignments and transferrals among agencies and departments, including creation of a new Border Management Agency. Along this same line, certain reorganization alternatives include some innovative, although possibly questionable, approaches, such as the OMB recommendation to establish "test" single-agency management systems and cross-designation of personnel, cited in the 1974 House Government Operations Committee report.

Depending upon the comprehensiveness and scope of the proposals, the mechanism for effecting each would differ. The more modest, intra-Customs and intra-Treasury Department developments would rely on internal departmental directives, while the more broadly encompassing ones would require statutory authorization or, in the least, submission of a Presidential reorganization plan to the Congress. There remains a gray area associated with certain types of reorganization among agencies from different Cabinet Departments. The authority of the President and OMB to transfer functional responsibility among such units, as noted in the 1974 House Government Operations Committee review of OMB action affecting Customs and INS, is subject to different interpretations.

Because of the Customs Service involvement in a number of distinct law enforcement areas, through its own broad duties and resources in the area of customs duties collection and anti-smuggling efforts, the Service is apparently a frequent candidate for reorganization, especially restructurings advancing increased inter-agency cooperation. It is evident from the trend in the various reorganization studies and recommendations that the recent focus has been on illicit drug trafficking and its curtailment, one of numerous Customs Service concerns and one shared by a number of other Federal agencies. The contemporary interest in this particular area as well as that of illegal immigration evokes a sense of deja vu, since these are the two prominent crime control reorganization proposals that Arthur Millspaugh's 1937 examination considered.^{131/}

Finally, the present emphases of the proposals are to merge or transfer certain agencies or their units, especially Customs and INS, and to improve cooperation among illicit drug enforcement and illegal-immigration enforcement units, activities now dispersed among a number of agencies in several Cabinet Departments. At one time, the principal agencies (or their predecessors) were located in the Treasury Department and/or were affiliated with Customs: Bureau of Immigration, Coast Guard, and Public Health Service date their establishment within the Treasury Department and Customs had original supervision over the Revenue Cutter Service, the forerunner of the Coast Guard. The units themselves, however, later adopted additional

^{131/} Millspaugh, op. cit., pp. 177-235.

duties and auxiliary functions, defined in their own separate missions, as the Federal Government incurred new responsibilities. The result is an organizational structure that has grown "like Topsy," that is without plan or design," according to Millspaugh,^{132/} with dispersed and fragmented jurisdiction. Nonetheless, Customs and other multi-functional agencies have indicated in their comments to the several reorganization studies that reorganizations that affect (and improve) one area of responsibility --e.g., border management, illicit drug trafficking--might jeopardize adequate enforcement in other areas that remain under their jurisdiction. Moreover, as the experience surrounding the 1973 Reorganization Plan and establishment of DEA reveals, the total costs and effects of reorganizations must be adequately considered in advance to avoid counter-productive developments, later corrective legislation, or diminution of remaining agency duties.

^{132/} Ibid., p. 60.

III. Budget and Personnel, 1945-1977

The following chart provides data for the U.S. Customs Service budget and personnel from 1945 through 1977. 1945-1975 statistics are in five year intervals and 1977 statistics, the most recent year for which actual (rather than estimated) data are available, is appended.

U.S. Customs Service Budget and Personnel, 1945-1977 133/

<u>Fiscal Year</u>	<u>Budget Authority (\$)</u>	<u>Personnel 134/</u>
1977	359,190,000	14,682 (13,826)
1975	292,400,000	14,268 (13,438)
1970	128,536,000	10,558
1965	78,821,000	8,221
1960	54,245,000	7,313
1955	42,628,030	7,982
1950	35,705,000	8,308
1945	26,350,000	9,327

133/ Source of the statistics is the Budget of the United States Government (and Appendix). Washington, D.C., U.S. Govt. Print. Off. The actual statistics for the appropriate fiscal year are provided in the budget two years after the desired year. Thus, fiscal year 1945 actual budget and personnel statistics are found in the FY 1947 Budget.

134/ Personnel statistics reflect the number of total permanent positions assigned to the U.S. Customs Service, including those under direct program authority and the reimburseable program authority. The former provides the overwhelming number of permanent positions, as indicated for FY 1977 and FY 1975 for which statistics are available. (These figures are included in parenthesis for those fiscal years.

According to these statistics, the fifteen-year period from 1945 through 1960 witnessed a gradual but perceptible decline in the number of permanent positions in the U.S. Customs Service, whereas the budget more than doubled (from nearly \$26.4 million to \$54 million). The contrast in these two indices of growth can be reconciled, in part, by noting increases in expenditures (and budget authority) due to inflation as well as improvements in facilities and non-manpower resources, especially advanced communications and surveillance equipment.

From 1960 through 1977, the number of permanent positions increased by a factor of two (from 7313 to 14,682), while the budget increased by a factor of 4.5 (from \$78.8 million to \$359 million).

IV. Congressional Legislative and Oversight Jurisdiction

The U.S. Customs Service and its activities are included in the jurisdiction of numerous congressional committees and subcommittees, although principally located in two committees in each Chamber: the Appropriations Committees and House Ways and Means and Senate Finance Committees.

The Appropriations Committees, of course, possess jurisdiction over appropriations to the Service and the Subcommittees on the Treasury, Postal Service, and General Government exercise primary responsibility.

The House Ways and Means and the Senate Finance Committees have identical authorization and legislative jurisdiction as it affects the Customs Service. Senate Rule 25.1i(2) and House Rule XI.(v)(1) incorporate the following language: "Customs, collection districts, and ports of entry and delivery."

A series of legislative mandates and related jurisdictional responsibilities permit other committees either to oversee or to authorize programs and reorganizations affecting the U.S. Customs Service and its activities. Relevant committees include: the Budget Committees of both Chambers, House Government Operations and Senate Governmental Affairs, House Post Office and Civil Service, House International Relations which has "special oversight," and the Select Committees on Intelligence.

Authorized by the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344; 88 Stat. 299), the Budget Committees have responsibility over budgetary matters affecting particular agencies and programs, including Customs. The newly established, permanent House and Senate Select Committees on Intelligence possess comprehensive oversight and authorization jurisdiction over intelligence operations and intelligence agencies. Since the U.S. Customs Service has a minor intelligence capability, it, consequently, would fall under the jurisdiction of each committee. 135/ The third type of com-

135/ The Senate Select Committee on Intelligence was created by S. Res. 400, May 19, 1976, and the House counterpart by H. Res. 658, July 14, 1977.

mittee with broad responsibilities that would incorporate Customs is that which has authority for presidential reorganization plans and a unique oversight mandate: the House Committee on Government Operations and the Senate Committee on Governmental Affairs. Under the present reorganization plan authority -- i.e., the Reorganization Act of 1977 (P.L. 95-17; 91 Stat. 29) -- a resolution with respect to a reorganization plan is to be referred to both committees for recommendation. In addition both Committees possess broadly-encompassing oversight authority regarding the overall economy and efficiency of Government operations and activities and over executive branch organization and reorganization. 136/

Other congressional committees hold specialized authority regarding Customs. The House Committee on Public Works and Transportation receives measures "relating to the purchase of sites and construction of ...customhouses..." (House Rule X1(p)(5)). The House Committee on International Relations received "special oversight" authority, via the 1974 House Committee Reform Amendments (H. Res. 988, Oct. 8, 1974), for "all laws, programs, and Government activities dealing with or involving customs administration ..." (House Rule X3(d)).

136/ House Rule X1(h) and Senate Rule 25.1(k). Two House documents are examples of such authority: U.S. Congress. House. Committee on Government Operations. Investigation of Mail Opening by the Customs Service: Fourteenth Report. Washington, U.S. Govt. Print. Off., 1977 (95th Congress, 1st session. House. Report no. 95-794); and _____. Subcommittee on Government Information and Individual Rights. Customs Service Mail Opening. Hearings, 95th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1977.

The congressional committees with jurisdiction over civil service matters — i.e., House Post Office and Civil Service and Senate Governmental Affairs — may examine relevant Customs Service programs and practices. 137/ Oversight investigations or examinations may be exercised regarding Customs Service practices and activities by committees (or, more likely, subcommittees) with a constitutional rights orientation 138/ and/or with a special oversight mandate that would include the agency activities, as does the House Select Committee on Narcotics Abuse and Control (H.R. 1350, approved July 29, 1976).

By way of summary, the committees with primary responsibility are the Appropriations Committees and House Ways and Means and Senate Finance Committees, the latter possessing authorization and legislative authority for Customs. Nonetheless, numerous committees

137/ See, for example, U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Retirement and Employee Benefits. Hazardous Duty Coverage for U.S. Customs and Immigration Inspectors. Hearings, 94th Congress, 1st session (on H.R. 4026 and H.R. 4986). March 17, 18, 1975. Washington, U.S. Govt. Print. Off., 1975.

138/ For instance, the House Judiciary Subcommittee on Civil and Constitutional Rights and the Senate Judiciary Subcommittee on Constitutional Rights. The latter included the Customs Service in its examination of Federal Government data banks: U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Rights. Federal Data Banks and Constitutional Rights: A Study of Data Systems on Individuals Maintained by Agencies of the United States Government. (Committee print). Washington, U.S. Govt. Print. Off., 1974. Vol. 5.

have exercised some oversight regarding the U.S. Customs Service and its activities, while still others, including House Post Office and Civil Service and the governmental affairs and budget committees in both Chambers, have some legislative or reorganization responsibility regarding Customs.

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