

**ALLEGED IMPROPER PRACTICES IN CUSTOMS HOUSE
AT DENVER, COLO.**

HEARINGS
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
FIRST SESSION

OCTOBER 23, 1975, AND DECEMBER 8, 1975

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ALLEGED IMPROPER PRACTICES IN CUSTOMS HOUSE AT DENVER, COLO.

MONDAY, DECEMBER 8, 1975

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE,
Denver, Colo.

The subcommittee met, pursuant to notice, at 9:10 a.m., December 8, 1975, in the Post Office Auditorium, U.S. Post Office, Denver, Colo., before the Honorable Floyd K. Haskell, U.S. Senator.

Senator HASKELL. The hearing of the Subcommittee on International Trade of the Senate Finance Committee will continue the oversight hearings that were commenced in Washington some weeks ago.

As those of you who are present are probably aware, the hearings were occasioned by an internal report of the Customs Service itself criticizing certain personnel, the revelation of a considerable amount of overtime being paid further occasioned by complaints of the Customs Service customers which happens to be the general public.

Since it is obviously most important that the Customs Service work thoroughly and impartially, these hearings are continued to determine what the situation is; for example, what happened to the personnel who were chastised internally by the Inspector General Department of Customs Service.

We are going to take this in areas of concern.

For that reason, certain individuals will be called as witnesses on a given subject and then will be recalled possibly at some later time during the day.

[The Committee on Finance press release announcing this hearing follows:]

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE CONTINUES HEARINGS ON ALLEGED IMPROPER PRACTICES IN CUSTOMS HOUSE AT DENVER, COLO.

Senator Abe Ribicoff (D., Conn.), Chairman, and Senator Floyd Haskell (D., Colo.) of the Subcommittee on International Trade of the Senate Committee on Finance, today announced that the Subcommittee will continue public hearings on certain practices which have allegedly taken place within the Customs House of Denver, Colorado. An initial day of hearings was held in Washington, D.C. on October 23.

The hearings will be held at 9:00 a.m. on Monday, December 8, 1975, in the Post Office auditorium at 1823 Stout Street, Denver, Colorado.

These hearings are concerned with certain practices which have allegedly taken place within the Denver Customs House throughout the last five years including: (1) general improprieties of Customs employees affecting the importing public, (2) the use of overtime by Customs employees in this Port, and (3) certain directives regarding the entry of persons and products from Chile during the period of office of former President Allende.

The following witnesses have been scheduled to testify before the Subcommittee on Monday, December 8, 1975.

CUSTOMS OFFICIALS

Cleburne M. Maier, Regional Commissioner, of Customs for Houston.
 William Hughes, District Director at El Paso.
 Harry Kelly, of the Houston Port.
 John A. McDermott, Chief Inspector at Houston Port.
 Albert Ehret.
 Jack Rowe, of the Customs House of Denver.
 Charles Miller, Chief Inspector at Denver Port.
 Tim Angelo, Inspector at Denver Port.

PRIVATE INDIVIDUALS

Vincent Connery, National President of National Treasury Employees Union.
 Keith Pettiman, Inspector for U.S. Immigration and Naturalization Service in Denver.

The Chairman stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the Record. Statements submitted for inclusion in the Record should be typewritten, not more than 25 double spaced pages in length, and mailed with (5) copies by December 19, 1975 to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

Senator HASKELL. Without further adieu, I would like Mr. Keith Periman, inspector, Immigration Department, to come forward.

In view of the fact this is an oversight hearing, I am going to swear in witnesses.

Mr. Periman, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PERIMAN. Yes, sir.

Senator HASKELL. I think perhaps you might describe to me the practices in the Immigration Department on overtime, comparing the overtime situation of Immigration with Customs.

Mr. PERIMAN. Sir, I can give you all the information on Immigration policies.

I'm not familiar—

Senator HASKELL. In fairness that would be all I would expect you to be able to do.

Suppose you start in your own way and describe that.

I may have some questions as we go along.

Mr. PERIMAN. Very well, Senator.

We are operating on the overtime.

I believe it is the act of March 2, 1931, which provides for double time pay.

The officers are assigned on Sunday and holidays.

Senator HASKELL. This is the 1931 act, not the 1911 act?

Mr. PERIMAN. No, sir, it is a different statute.

Senator HASKELL. Right.

Mr. PERIMAN. Now, we have three offices we are participating in overtime.

We normally have two men assigned on Sunday and holidays, so basically we work two out of three Sundays.

Senator HASKELL. Now when you assign officers on either Saturday or a Sunday, is this on a routine duty rostrum basis?

Mr. PERIMAN. We rotate the assignments.

Senator HASKELL. That's what I mean.

Mr. PERIMAN. Yes, sir.

Senator HASKELL. And then is the individual who is—who draws that particular Sunday, does that individual spend the entire day there?

Mr. PERIMAN. Yes, sir, he does.

We were not inspecting air—we have other work which we are assigned to do.

Senator HASKELL. And how many personnel—just so I get a background feel—do you have in the Inspector's Department of the Denver Port?

I think you told me, but I forgot.

Mr. PERIMAN. Sir, there is only one Immigration inspector.

Senator HASKELL. But other people who are rotated?

Mr. PERIMAN. Yes, sir, we have a deportation officer who works overtime.

We have an examiner who works overtime.

Senator HASKELL. Not all three of you will be working on the same Sunday, I take it?

Mr. PERIMAN. No, sir.

Senator HASKELL. It would be rotated between the three of you?

Mr. PERIMAN. Yes, sir.

Senator HASKELL. Now, as a matter of policy in the Immigration Department, if you work on a given Sunday, do you get the following Monday off or the Tuesday or something like that in compensation?

Mr. PERIMAN. No, sir.

That is considered as an overtime. Now, the other officers—deportation officers and examiners who work downtown have a Saturday assigned off duty.

I have Monday assigned off duty.

Senator HASKELL. When you work on a Sunday, would you compare the basic salary maybe in your case—basic salary, and then the amount you received in overtime; so, I can get—

Mr. PERIMAN. Yes, sir, I would—I was thinking about it last night.

Considering there are 52 Sundays, and I believe 9 holidays, I would work two-thirds of those Sundays and holidays.

I'm off duty Monday.

When I am assigned off duty on a holiday, I would have the following day as a holiday on duty.

So, basically it would figure out to where I would say at least about a third of my basic salary would be added as overtime.

Senator HASKELL. I see.

OK, and would this be true of the other two people who also work Sundays?

Mr. PERIMAN. Yes, sir, it would.

Senator HASKELL. Has this practice continued over a number of years?

Mr. PERIMAN. I have been here for 3 years, sir. I came here in 1972.

It is the way it is working at the present time.

Senator HASKELL. Do you happen to know, Mr. Periman, whether this is what has happened to other ports, that is this rotation of overtime duty?

Mr. PERIMAN. Yes, sir.

Senator HASKELL. And I presume pursuant to a directive of the Washington office?

Mr. PERIMAN. Well, I would assume, yes.

Senator HASKELL. Well, sir, I think for the time being, this is all that I would like to ask you.

If you don't mind staying in the hearing room, there might be something further.

Mr. PERIMAN. Very well, sir, but for the record, my name is Periman.

Senator HASKELL. Periman?

Mr. PERIMAN. Yes, sir.

Senator HASKELL. OK. Fine. Mr. Periman, thank you very much.

Our next witness will be Mr. William F. Hughes, district director, El Paso, Tex.

Mr. Hughes, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUGHES. Yes, sir.

Senator HASKELL. Mr. Hughes, you are the district director in El Paso?

Mr. HUGHES. Yes, sir.

Senator HASKELL. I am informed that you oversee the Denver Port, among other ports?

Mr. HUGHES. Yes, Senator. Denver is a port in the 24th district—24th Customs District.

Senator HASKELL. And how many ports are there in the 24th Customs District?

Mr. HUGHES. There are six ports, sir.

Senator HASKELL. Now, could you describe for me how the overtime law in Customs works, particularly with specificity in Denver?

Mr. HUGHES. No; I don't believe I can, Senator.

The overtime law frankly in Customs has always been a great mystery to me.

Perhaps it would be helpful if I filled you in a little bit on my background.

Most of my years in Customs have been as a criminal investigator. It has only been——

Senator HASKELL. Been as a what?

Mr. HUGHES. Criminal investigator, special agent of Customs.

The special agents in Customs do not come under the type of overtime that the inspectional apparatus comes under.

They are on call 24 hours a day, 365 days a year.

We had the type of overtime that the FBI is covered by, the Secret Service and other criminal investigators, a premium pay type thing based on 25 percent of grade 10.

The overtime situation that I believe you are interested in, which covers the inspection apparatus is an entirely different type of overtime.

It is based on several laws, one of which you mentioned earlier, the 1911 statute, and so forth.

I am not technically familiar, and I'm afraid that I really can't expand on this.

Senator HASKELL. Now, what are your duties in overseeing the Denver Port?

Mr. HUGHES. My duties as district director for this district are to coordinate the Customs functions and activities throughout the 24th district and to the extent that we provide technical support and in areas of personnel management and—

Senator HASKELL. Let me stop you. In personnel management, doesn't the operation of overtime come under your jurisdiction?

Mr. HUGHES. The operation of the overtime?

Senator HASKELL. Yes.

Mr. HUGHES. It does to the extent that the line officers who are subordinate to me—the line supervisors and the port directors are required to make up the schedules for overtime. I, myself, do not, sir.

Senator HASKELL. Do you see those schedules that are made up?

Mr. HUGHES. No, I don't see them personally, sir.

Senator HASKELL. Who does see them?

Mr. HUGHES. There is an overview of the schedules by my director for inspection and control.

Senator HASKELL. Who is your director for inspection and control?

Mr. HUGHES. A man by the name of Lee Chapuis.

Senator HASKELL. Have you ever made a comparison of overtime at the Denver Port with overtime in any of the other ports?

Mr. HUGHES. No, sir, I have not. I have just been transferred into El Paso a very short time ago.

Senator HASKELL. Prior to that time, I gather you were district director of Laredo?

Mr. HUGHES. That's correct.

Senator HASKELL. Tell me how the overtime worked in Laredo?

Mr. HUGHES. Well, the overtime is assigned with regard to functions that have to be performed outside the regular duty hours. The supervisory inspectors see to it that it is equally distributed or as nearly equally distributed across the working force as possible.

Senator HASKELL. Is there any reluctance on the part of any employees to be promoted beyond the level at which they would be eligible for overtime?

Mr. HUGHES. I don't know of my own personal knowledge of such a situation, but it has been talked about that in recent years the younger men are less interested in overtime than the inspectors were years ago.

They are more interested in their free time than taking too many overtime assignments. This is a phenomenon that's apparently occurred in relatively recent years.

Senator HASKELL. In Laredo, Mr. Hughes, what would be, to the best of your recollection, the greatest amount of overtime that any one individual received?

Mr. HUGHES. Sir, I don't know.

Senator HASKELL. I tell you what I might do, Mr. Hughes, you told me that schedules on overtime from all the ports within district 24 are sent into you.

Is that correct?

Mr. HUGHES. They are reviewed by the division director for I and C. They are not sent in, to my knowledge, for approval by the division.

Senator HASKELL. Are physical copies transmitted to the district director's office from the ports under its jurisdiction?

Mr. HUGHES. I believe they are, sir.

Senator HASKELL. Then, I will ask you, Mr. Hughes, to submit for the record the 1974 and 1975 schedules of overtime submitted pursuant to the formal course of business to the district office.

That would be the 24th district, and I would like to have, for the record, copies of these schedules submitted by each of those ports to your office.

Mr. HUGHES. Very well, sir.

[The following material was subsequently submitted by Mr. Hughes:]

Port	1974 ¹		1975 ²	
	Employees participating in overtime	Total overtime pay	Employees participating in overtime	Total overtime pay
El Paso, Tex.....	111	\$420,785.22	125	\$422,704.00
Presidio, Tex.....	8	41,384.92	10	37,355.48
Fabens, Tex.....	10	42,208.40	8	40,462.40
Denver, Colo.....	18	89,472.20	16	100,965.11
Columbus, N. Mex.....	6	24,376.60	10	29,755.68
Albuquerque, N. Mex.....	(³)	(³)	4	5,086.00

¹ As of Dec. 21, 1974.

² As of Nov. 22, 1975.

³ No information furnished.

Port	1974		1975 ¹	
	Employees participating in overtime	Total overtime pay	Employees participating in overtime	Total overtime pay
Houston, Tex.....	91	\$739,713.23	92	\$686,607.23
Dallas, Tex.....	6	815.96	(²)	(²)
Oklahoma, City, Okla.....	6	3,619.76	6	3,352.00
Tulsa, Okla.....	4	8,753.16	4	5,651.92
Dallas/Fort Worth, Tex.....	27	224,607.75	31	195,732.06
Amarillo, Tex.....	(²)	(²)	1	2,122.56
Lubbock, Tex.....	(²)	(²)	2	5,458.24

¹ As of December 21, 1974.

² As of December 6, 1975.

³ No information furnished.

Senator HASKELL. While we are talking about this matter, if you will stay right where you are, I'll ask Mr. Kelly to come forward, and we will discuss some of these matters with Mr. Kelly.

Mr. Kelly, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUGHES. Senator, may I interrupt, sir?

Perhaps you are aware of it already, but we have some of our Washington people present here today.

Some of those men may be able to answer some of the questions that you may need or at least be helpful to you.

Senator HASKELL. Would you let me know the names of those people from Washington you have present?

Mr. HUGHES. Yes, sir. Mr. Rojek, our Assistant Chief Counsel; Mr. Abba from our Personnel Division at Washington; Mr. Vernon Hann, who is the Deputy Assistant Commissioner for Operations; Mr. Magee, I believe you met Mr. Magee for Internal Affairs.

Senator HASKELL. Right.

Mr. HUGHES. Mr. Ehret, I believe who is with the Information Office, I believe, sir.

Senator HASKELL. If they can add something at a later time, I will call them.

Mr. Kelly, you have been in the Government service for some time as the memorandum here shows.

How long have you been—

Mr. KELLY. Twenty-six years, sir.

Senator HASKELL. Could you describe the various positions you held in employment with the U.S. Government?

Mr. KELLY. I went to prelaw and law school while working for the FBI.

I spent 4 years as an FBI security patrol officer, which is a clerical function.

I spent 3 years in the Army during the Korean thing as a counter-intelligence agent.

I then came back to the FBI.

Senator HASKELL. Since we are having trouble hearing you in the back, I believe that microphone there, Mr. Hughes, might work.

Mr. KELLY. Should I start over?

Senator HASKELL. No, just continue from where you are.

Mr. KELLY. I came back from counterintelligence in 1956, and I entered the customs service in New Orleans in 1957.

I spent 5½ years in New Orleans as customs examiner.

I went to Washington in 1962, where I spent 6 months as tariff liaison officer with the Foreign Trade Division, Bureau of Census. I then returned to the Customs Service in Washington, D.C., in 1968 as customs appraiser—liaison officer.

I spent 2½ years in customs headquarters, and went to the Laredo district as the appraiser of merchandise in 1965.

With customs reorganization in 1966, I became District Director of Customs in the Houston Customs District.

That position I still hold.

Senator HASKELL. Now, is the Houston customs separate and distinct from the El Paso district?

Mr. KELLY. Yes, each is a customs district among the five districts in region VI.

Senator HASKELL. And who would be the head of region VI?

Mr. KELLY. Mr. Cleburne Maier.

Senator HASKELL. And are you at all familiar with the use of overtime in any of the ports under your jurisdiction?

Mr. KELLY. Yes, sir, I am.

Senator HASKELL. Can you tell me whether there is any uniform directive sent out for the use of overtime by personnel?

Mr. KELLY. I believe a directive was sent out—probably as an operational thing, not as a personnel directive.

Senator HASKELL. What do you mean by an operational thing?

Mr. KELLY. I don't think the writer of the directive is in our personnel division of headquarters, or in the region.

I believe it is probably an operational directive written by another office, another division in Customs.

Senator HASKELL. And who would be the head of that office and what is the name of that office?

Mr. KELLY. It would be the Office of Operation; Mr. Roland Raymond is the present head of that office, as Assistant Commissioner.

The document that I have in mind is dated in 1968. Mr. Raymond was not the incumbent at the time of that writing.

Senator HASKELL. And this directive of 1968 sets forth how overtime should be applied and used. Is that correct?

Mr. KELLY. Yes, sir.

Senator HASKELL. Do you have a copy of that directive with you?

Mr. KELLY. Yes, sir, I have.

Senator HASKELL. Would you please read that and submit it for the hearing record?

Mr. KELLY. Yes.

Senator HASKELL. In the ports within your jurisdiction, are you familiar with the practices of the use of overtime?

Mr. KELLY. Yes, sir, I believe I am.

Senator HASKELL. Do the practices vary from port to port?

Mr. KELLY. Yes, sir, by the varying nature of the business that the ports do, and by the varying volume of business. This requires customs services outside of a normal 8-to-5, Monday-through-Friday work-week.

Senator HASKELL. You heard the gentleman from Immigration testify as to the way Immigration handled it by the rotating duty roster.

Is that practice employed within any of the ports you are familiar with?

Mr. KELLY. I'm not certain that I am knowledgeable of precisely how Immigration assigns its overtime.

I can tell you how it is assigned in my district.

Senator HASKELL. Yes; would you do that?

Mr. KELLY. We keep a running total for the people who participate in the overtime.

We try to assign the low man—the person who has earned the least money during that calendar year.

The low man is the first man out. Certainly, there are reasons why—this man might be ill or family emergency or other things, that might mean that he would get still further behind.

The routine way of assigning is to the man who is low—the low man.

Senator HASKELL. Apparently there are some ports in the Customs Service that have established shifts. I don't know how to describe that to you.

To your knowledge, within any of the ports within your jurisdiction, are there shifts assigned?

That is maybe an 8 to 5 or 5 to 12 and rotating through the weekend. Are you aware of any such practice?

Mr. KELLY. Our chief inspector who is here can give you a greater specificity.

We at Houston Intercontinental Airport have such a shift.

We aren't staffed to cover all of the duties after perhaps 10 p.m., but we do have persons assigned to handle a portion of the duties as a regular assignment.

Senator HASKELL. On sort of—on a second shift basis. In other words—

Mr. KELLY. Yes; but that is something we have to adjust to the flow of trade.

If we have no business, if airline flights are discontinued, we don't send a man out to do nothing.

We have had the shifts—we discontinued them when business changed.

We presently have resumed them during the time when the volume justifies putting a man out to handle arriving aircraft.

Senator HASKELL. Do you pay a shift differential? In industry it is common practice, as you know, to pay a shift differential.

Do you pay a shift differential?

Mr. KELLY. I believe between 6 p.m. and 6 a.m. there is a 10-percent differential.

Senator HASKELL. So, if you have a shift situation going that is during the week, it is not necessary obviously to assign people for overtime?

Mr. KELLY. No, sir. That's not what I said.

I said they take over a part of the staffing requirements. If we have a large aircraft with a large passenger load, we have to assign additional people.

The additional people are paid under the 1911 act.

Senator HASKELL. To the extent, however, you have a regular employee assigned to a given shift, a later shift, then it would not be necessary to duplicate what he is doing by overtime under the 1911 law?

Would I be correct in that

Mr. KELLY. That's correct, sir.

Senator HASKELL. Do you know whether Houston is the only port that employs this shift practice within your district?

Mr. KELLY. The Dallas-Fort Worth airport has some people that are regularly assigned with the day shift, but from 9:30 a.m. to 6 p.m. and from 10:30 a.m. to 7 p.m.

Senator HASKELL. Mr. Hughes, within your district, do any ports adopt this shift practice?

Mr. HUGHES. I don't know, sir.

Senator HASKELL. Will you find out? I assume this is within your jurisdiction?

Mr. HUGHES. Within my jurisdiction to find out?

Senator HASKELL. Yes.

Mr. HUGHES. Yes.

Senator HASKELL. Can you find out and let us know while we stay open for 2 weeks? Set it forth in writing?

Mr. HUGHES. Yes; I will.

[The following information was subsequently supplied by Mr. Hughes:]

(Memorandum)

DECEMBER 18, 1975.

To: Regional Commissioner of Customs Region VI, Houston, Tx.

From: District Director, El Paso, Tx.

Subject: Ports in El Paso District Requiring Shift Work.

The following ports in the El Paso District are required to have shifts in order to man the ports the number of hours they are open:

1. El Paso, Texas—24 hr. port.*
2. Fabens, Texas—15 hr. port.*
3. Ft. Hancock, Texas—15 hr. port.*
4. Presidio, Texas—16 to 24 hr. port.*
5. Columbus, New Mexico—24 hr. port.*

The following ports do not require shift work:

1. Denver, Colo.—8 hr. port.
2. Albuquerque, New Mexico—8 hr. port.

I. L. CHAPUIS,
Acting District Director.

*These ports encompass land border crossing stations where there is a regularly recurring need for Customs services beyond the normally prescribed hours of business of 8:30 a.m. to 5:00 p.m.

Senator HASKELL. Now, on weekends, do any ports, Mr. Kelly, within your jurisdiction, rotate personnel?

In other words, do you have a number of inspectors, is there a duty roster, and a rotation of those inspectors to work on Saturdays or Sundays?

Mr. KELLY. Saturday is so handled. It is not a regular 8 to 5 assignment, and only limited service is afforded.

A Saturday is not a 1911 act proposition.

It is handled by a roster with rotation of employees.

Sundays are handled by the low man as the first man out, as I have previously described.

Senator HASKELL. As I understand it—and see if I am correct, Mr. Kelly—there are certain people who are not regularly on the Customs Service payroll who nevertheless are qualified and are called in from time to time to perform inspection services.

Am I correct in that?

Mr. KELLY. Yes, sir, you are.

Senator HASKELL. Are those people ever employed at any time within your district?

Mr. KELLY. Yes, sir, I regularly employ those people.

Senator HASKELL. Are those people at any time employed on Sundays?

Mr. KELLY. Only under an emergency situation. This is consistent with the national policy which I am—

Senator HASKELL. The national policy will speak for itself, if it is in this document.

For my information, does the national policy not recommend employing these people on Sundays?

Mr. KELLY. The directive is that they would be employed only under emergency situations, not as a regular thing.

Senator HASKELL. And is this the directive that came out in 1968?

Mr. KELLY. Yes, sir.

Senator HASKELL. And who signed the directive?

Mr. KELLY. I'll have to look.

Senator HASKELL. OK.

Mr. KELLY. Lester Johnson, Commissioner of Customs.

Senator HASKELL. Now, Mr. Hughes, again going to these people who are not regularly on the Customs Service regular payroll but are called in from time to time, do you employ them in your district?

Mr. HUGHES. Yes, sir.

Senator HASKELL. The so-called WAE—when actually employed?

Mr. HUGHES. Yes, sir.

Senator HASKELL. Do you ever employ these individuals on Sundays?

Mr. HUGHES. Of my own personal knowledge, I don't know, sir.

I would imagine that our district is following the same directive.

They would be employed only on emergency situations.

Senator HASKELL. Mr. Kelly, when these people are employed on Sundays and an emergency situation, are they paid double time?

Mr. KELLY. They are paid under the 1911 Act.

Senator HASKELL. So these so-called WAE's when actually employed—that's what WAE stands for—if they work on a Monday, they get one rate.

If they work on a Sunday, they get another rate.

Is that correct?

Mr. KELLY. Yes, sir, that's true.

Senator HASKELL. As working during a Monday assuming it is not a holiday?

Mr. KELLY. Yes, sir.

They would draw straight time. If they worked on a Sunday, it would be double time.

Senator HASKELL. Perhaps you could both submit for the record a schedule of employment of these individuals who do not work regularly for the Service and a schedule showing what days they were employed by individual and what they received.

Could you do that for your respective district?

Mr. KELLY. Yes.

Mr. HUGHES. What time frame are you talking about?

Senator HASKELL. I'm talking about a time frame of 1974 and 1975.

Mr. KELLY. It is not a regular thing. I think by definition, these people work a nonscheduled—

Senator HASKELL. I understand that, but I am talking about for each week during 1974, each week to date in 1975, what individuals were employed in this category of WAE's? Do I make myself clear?

Mr. KELLY. I think so.

Mr. HUGHES. Yes, sir.

[The following information was subsequently supplied by Mr. Hughes:]

WAE SCHEDULES

Port	Number of WAE employees	
	1974	1975
Houston.....	11	18
Dallas.....	14	0
Tulsa.....	2	

Senator HASKELL. Now I might ask Mr. Maier if he would come forward.

Mr. Maier, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUGHES. Are you done with us, Senator?

Senator HASKELL. I think maybe if all three of you could sit there, it might be helpful.

Mr. Maier, as I understand it, you are the Commissioner of region VI. Is that correct?

Mr. MAIER. Yes, sir.

Senator HASKELL. And as Commissioner of region VI, both Mr. Hughes and Mr. Kelly are your immediate subordinates?

Mr. MAIER. Yes, sir.

Senator HASKELL. Are you familiar with this directive that Mr. Kelly has spoken about, the 1968 directive?

Mr. MAIER. Yes, I am, sir.

Senator HASKELL. What is your authority? Could you, if you wanted to, set up a duty roster so that overtime would be rotated?

Mr. MAIER. Overtime would be rotated. That is our policy, yes.

Senator HASKELL. The policy is that each person gets roughly equivalent amounts of overtime.

Is that correct?

Mr. MAIER. Due to the regular—yes, sir.

Senator HASKELL. Have you ever questioned the policy of not employing these WAE's on Sundays? Have you ever raised that question?

Mr. MAIER. It has been discussed, sir.

Senator HASKELL. Who did you discuss it with?

Mr. MAIER. Since 1968, it has been discussed at various times. We have discussed it with headquarters personnel, with union representatives and with my own staff.

Senator HASKELL. Have you ever considered within your region setting up regular shifts at ports the way, for example, I gather one is set up in Houston?

Mr. MAIER. Yes, indeed. We have done so, and we try to do that when the people's time would be utilized. It is not always the second shift successive.

In other words, it might not be 16 hours. We have people reporting to duty at different hours so that coverage can be given.

When carriers come in on a regular basis and—yes, those are considered regular.

Senator HASKELL. How many ports within your region do you operate on shifts?

Mr. MAIER. It varies as Mr. Kelly said according to the amount of traffic. I think we must divide in our—

Senator HASKELL. Let me ask you, how many ports as of the moment do you have regular shifts?

Mr. MAIER. I think it deserves a word of explanation, if I might.

Senator HASKELL. You may.

Mr. MAIER. There is separation in what we do as shift work at borderland crossings. The need is different, and so most of the borderland crossing areas do have shifts. Those are not reimbursable under 1911, except on Sundays and holidays.

At inland ports such as Denver, San Antonio and Dallas, we have shifts at those places where we have regularly scheduled airlines.

We have San Antonio, Dallas, Houston. We have met the criteria there which has been established for establishing shifts.

At the moment, I cannot tell you exactly what those shifts are, but they do vary with traffic.

At the borderland crossings, we do have shifts in most of the places, and the law is different.

Senator HASKELL. In what regard?

Mr. MAIER. In that we can have—we can work people at night in places where highways, bridges and tunnels on a shift basis, and are not subject to the 1911 act.

Senator HASKELL. Now, in Houston apparently there is a shift. Does that come under the former category?

Mr. MAIER. No. When there is enough work to justify a shift, it can be done at the airports. I believe that is addressed in that circular which we will leave with you, sir.

Senator HASKELL. Have you ever made an analysis of airports to see where it would be cheaper to operate on shifts as opposed to 1911 overtime?

Mr. MAIER. We have made constant analyses as we get permission to do this, yes, sir.

Senator HASKELL. Are those in writing?

Mr. MAIER. They would have been. I don't know if I could produce one right on my fingertips.

Senator HASKELL. I am not asking you to do that. I am asking are those analyses made in writing?

Mr. MAIER. Yes, they are.

Senator HASKELL. To your knowledge, when was the latest analysis made?

Mr. MAIER. Within the last year, we have done Houston. We keep—

Senator HASKELL. I asked you whether you made analysis throughout your region of whether it would be profitable?

Mr. MAIER. I think I would have to have a definition of profitable. I think we made one everytime we come to a place on the shifts.

As we make a complete study, that's one of the things included in our studies or one that was recently made in Denver.

Senator HASKELL. What study was made in Denver?

Mr. MAIER. A total study of allocation of people to overtime and flight numbers.

Senator HASKELL. Perhaps you better start all over, Mr. Maier. There are certain times obviously when it would be better and more economic to operate on a shift as opposed to an overtime basis. Would I be correct in that?

Mr. MAIER. Be more economic to carriers.

Senator HASKELL. That's correct.

Mr. MAIER. To the carriers, yes.

Senator HASKELL. Now is an analysis made of ports to determine when such a situation might exist?

Mr. MAIER. Yes.

Senator HASKELL. And are those analyses made in writing?

Mr. MAIER. Yes, sir.

Senator HASKELL. And when was the latest analysis made?

Mr. MAIER. The latest one in Denver was within the last 90 days, I believe.

Senator HASKELL. And how frequently are such analyses made?

Mr. MAIER. Well, a total analysis would be made——

Senator HASKELL. Just what I am talking about.

Mr. MAIER. Analysis is made every time a plane gets permission to land. Basically, we are involved in scheduled aircraft, which makes the difference.

Senator HASKELL. Mr. Maier, we are talking about when it is cheaper from a carrier's viewpoint or importer's viewpoint to have people on a shift as opposed to calling in overtime personnel.

Now, you have told me—unless you want to change your testimony—you have told me that such analyses are made.

Mr. MAIER. Yes.

Senator HASKELL. Now, on what periodic basis are they made, a year, 6 months——

Mr. MAIER. They are made when the schedules change and makes some difference in the time when the carriers are arriving.

Senator HASKELL. And are these analyses made in writing?

Mr. MAIER. Yes.

Senator HASKELL. And would you submit for the record copies of all such analyses made in the last 12 months?

Mr. MAIER. Yes, sir.

[The information requested was made a part of the official files of the subcommittee. Examples of the shift studies for one port follow:]

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Manpower Committee

FROM : Director, Inspection & Control Division
Region VI

SUBJECT: Staffing at the Port of Denver

DATE: SEP 26 1974
FILE: MAN-8-05-0:1
xPER-9-01

The attached correspondence pertains to a request from the Port Director, Denver, Colorado, for additional Customs Inspector positions.

This matter was referred to Management Analysis Division for their review and comments. The following is an answer to those questions raised by the Management Analysis Division:

1. Are we to continue the current ratio of inspectors to passengers on incoming foreign flights in view of our selective screening program?

Yes, the selective screening program was not established for the purpose of reducing the number of inspectors needed to handle passengers. The Miami program, now called CAPIS, indicates they increased the number of inspectors working a belt because of the TECS operation. This system was not designed to speed the passengers through Customs, but to improve security and enforcement by concentrating on the high risk passengers. To accomplish this you would need at least the same ratio currently being used.

2. Are premise examinations being effected with an eye toward optimum use of Manpower?

The Work Measurement System was established to answer this question objectively. We should apply the system and not revert to subjectivity.

3. Should the inspectional force be officed at the Customhouse or airport, or should the force be split?

Either way, someone would have to perform premise exams.

4. Are current scheduled flights arriving at hours of the day which makes it unfeasible for inspectors on premise examination assignments to return to the airport?

The current flight schedule indicates arrivals at 10:20 a.m., 2:40 p.m., and 3:50 P.M. This is the crux of the problem. Consequently, WAES were hired to eliminate the need for inspectors on premise exams to return to the airport.



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

In summary, we feel that the WAE operation at Denver is unacceptable. When we have to rely on WAEs on a full-time basis, it appears time to consider full-time employment. We invest time and money sending regular inspectors to schools, impress upon them the need for enforcement, etc., etc.; then we hire WAEs, give them a "quick" course on Customs (the operation) and turn them loose. When two or three out of the four inspectors assigned to process passengers are WAEs, I would say it is time to review the situation. It would be interesting to see the number of enforcement actions generated by WAEs, if any. It could help prove the point.

I feel this matter should be referred to MAD for application of the Work Measurement System. Attached is a breakdown of costs under the present WAE staffing situation as compared to the cost of two regular full-time inspector positions.

E. J. Gonsoulin

Attachment

<u>CURRENT STAFF (9-26-74)</u>		<u>PROPOSED STAFF</u>
1 SCI		1 SCI
7 CI		9 CI
9 WAE		2 WAE (WHSE ONLY)
AVERAGE WAE HOURS PER WEEK FOR WAREHOUSE AND OTHER DUTIES	=	144.2 HRS/WK
AVERAGE WAE HOURS PER WEEK FOR WAREHOUSE	=	<u>-31.8</u> HRS/WK
AVERAGE WAE HOURS PER WEEK FOR OTHER DUTIES	=	112.4 HRS/WK
DENVER WAE AVERAGE HOURLY RATE	x	<u>\$4.49</u>
WEEKLY WAE COST FOR OTHER THAN WHSE DUTIES		\$502.88
WEEKLY SALARY FOR 2 PROPOSED REGULAR FULL-TIME CI'S (GS9-2)	=	<u>483.20</u>

WE REALIZE THAT IT COSTS SLIGHTLY MORE FOR A FULL-TIME EMPLOYEE THAN A WAE WHEN YOU TAKE INTO CONSIDERATION THE BENEFITS WHICH HAVE TO BE PAID. HOWEVER, WHEN THE COSTS GET THIS CLOSE TOGETHER WE SHOULD ANALYZE THESE SO CALLED "SAVINGS TO THE GOVERNMENT BY USING WAE'S."

MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Assistant Regional Commissioner (Operations)
Region VI, Houston, Texas

May 24, 1974

DATE:

MAN-8-05-E:DD

xPER-9-01

FROM : District Director
El Paso, Texas

SUBJECT: Staffing at Port of Denver, Colorado

On your most recent visit to El Paso, I again requested two additional Customs Inspector positions in Denver in lieu of the many WAE's employed. This request was based on our need to do a better job on direct foreign arrivals at the airport and to improve our services and effectiveness in the areas of commercial imports.

In accordance with the above-referenced discussion, I have had Port Director J. W. Bruton prepare a submission of specific justifications for our request. Attached is his report, which I think is excellent in content and provides the type of information which is needed by decision makers concerned with the proper allocation of manpower resources.

Your assistance in this matter will be greatly appreciated.



ROBERT N. BATTARD

Attachment



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Robert N. Battard, District Director
El Paso, Texas

FROM : Jay W. Bruton, Port Director
Denver, Colorado

SUBJECT: Request for Additional Inspector Positions

DATE: May 22, 1974

MAN-8-05-E:D
XPER-9-01

References: Regional Circulars MAN-8-PER, September 19, 1972 and
MAN-13-A:M, November 13, 1973

In accordance with your instructions and the above referenced Regional Circulars, it is requested that the Port of Denver be authorized two (2) additional full time Customs Inspector positions, for a total of nine (9) inspector positions.

This Port has over the past year utilized to a great extent WAE's to process arriving passengers/baggage. As of March there was a total of ten (10) WAE's on our rolls. One of these WAE's was used almost exclusively as a Warehouse officer. I propose that we continue to utilize two such WAE's as Warehouse officers.

Records indicate that 700 hours of WAE warehouse time was used in the period 9-28-73 and 3-4-74, a little over five (5) months. This figure does not include performance of duties by full time inspectors. This warehouse time requirement has not diminished. During March 1974, 152 hours of warehouse and manipulation reimburseable time was performed by full time inspectors for a six month total of approximately 852 hours. The records indicate that this six month level of warehousing performance is to continue. In this connection reference is made to the provisions of section 19.5 Customs Regulations wherein the net number of working hours per 52 forty-hour weeks is only 1696 hours. This proposed action will be in the best interest of the Service in that inspectors perform duties at a higher grade level and it will afford the importer/warehouseman with lowest cost. One could even say that this management technique might be considered a reportable item for the quarterly IMAGE report.

The work measurement system report, VI-RC-3A (Amended) for the past three quarters has consistently reflected ten man-quarters in the IAP and ERC functional areas. In reviewing the past reports, I feel that 1/2 of one man-quarter in the supervision of unloading of cargo should have been reported. This is an indication of a continuing activity and therefore a major factor that should be considered in justification of this request.



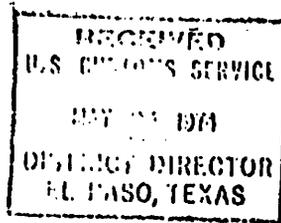
Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

There are seven full time inspectors and one supervisory inspector, all male, currently assigned in Denver. It is proposed that two of nine inspectors would be assigned to Saturdays to increase of regular Saturday force by 100%. A continuing FEPA overtime requirement would be generated by these actions. When this additional inspectional staffing is authorized it is suggested that we attempt to fill at least one of the positions by active female recruitment.

WAE inspector time for the six month period July 1, 1973 to January 1, 1974 averaged 144.2 hours per week. A WAE warehouse officer accounted for some of this time. The utilization of WAE inspectors in the area of passenger baggage processing to the extent that has been the practice in Denver could well be a critical factor in our enforcement effort. In addition, when a continuing manpower need exists and is largely staffed by temporary employees, I feel it is incumbent that management make concerted efforts to convert these to permanent full time positions. This action may even be mandatory under the existing Civil Service regulations regarding use of temporary positions.

Your assistance in this matter is urgently requested.


Jay W. Bruton



BACKGROUND INFORMATION

10-6-75

Port of Denver, Colorado

Denver is a geographically isolated inland Port. It lies over 500 miles north of El Paso and over 800 northwest of Houston. Its principle cargo activity is and has been the clearance of in-bond shipments of merchandise delivered by air, rail, and motor carriers.

In addition, the workload includes the clearance of passengers from three scheduled aircraft arrivals, numerous charters, and private aircraft arrivals. The scheduled airlines involved are Western and Mexicana.

Port staffing consists of the following positions:

Port Director - GS-13
 3 - Senior Import Specialists - GS-12
 1 - Import Specialist - GS-9
 1 - Supervisory Inspector - GS-11
 1 - Non-Supervisory Inspector - GS-11
 6 - Customs Inspectors - GS-9
 1 - Import Compliance Officer - GS-9
 5 - Clerical Type Positions - GS-9
 7 - WAE Inspector - GS-5/7
 1 - Temporary Warehouse Officer - GS-5

There was a total of 194 seizures for FY 1975 of which 16 were drug seizures.

There are six Customhouse brokers, the largest of which is the Charles M. Schayer and Company.

Number of formal entries filed at the Port of Denver:	1965	1975
	2,591	8,353
The total collection for the Port of Denver:	\$3,121,493	\$12,191,988
Total full time employees:	12	19
Aircraft arrivals	1970 358	1975 1,340
Passengers cleared	27,207	97,392

The air flights which are regularly scheduled to land and be processed are as follows:

<u>AIRLINE</u>	<u>FLIGHT NO.</u>	<u>TIME OF ARRIVAL</u>	<u>FREQUENCY</u>
Western	485	10:55 AM	Daily
Mexicana	918	11:45 AM	Mon-Wed-Sat
Mexicana	916	1:40 PM	Daily
Western	481	3:55 PM	Daily

The average passenger load for each Western flight is 100 persons, while Mexicana is 45 persons. The normal processing time for each Western flight is 40 minutes while Mexicana is 45 minute. Tourist purchases and agriculture problems with the Mexicana passengers, as opposed to business travelers on Western, constitute the reason it takes approximately the same amount of time to process less than 50% of the number of passengers processed from Western.

During the winter, Air Canada and Nordair run several ski charters to Denver mostly on the weekend. The Ports of Call Travel Club runs an average of one charter each weekend. All charter flights average 100-175 passengers.

Occasionally, due to the unscheduled charter flights, as many as eight flights are processed in a single day.

Generally, brokers and air cargo release handlers do not work on Saturday. Therefore, we do not anticipate any significant cargo activity on that day.

Staffing is based strictly on the number of flight arrivals. If Saturday were made a regular workday, no Federal Employees Pay Act (FEPA) overtime would be paid.

no overtime. no Fed. employees.

Senator HASKELL. I think on that particular subject, that's all that's necessary.

Therefore, if you would please stick around, because there will be other subjects. Mr. Kelly, if you would remain while we discuss this next subject.

Mr. KELLY. Yes, sir.

Senator HASKELL. I might ask at the same time if Mr. McDermott and Mr. Angelo and Mr. Miller and Mr. Ehret would come forward.

Mr. Kelly, if you would stay.

Mr. McDermott, Mr. Angelo, Mr. Miller, Mr. Ehret, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. McDERMOTT. Yes, sir.

Mr. ANGELO. Yes, sir.

Mr. MILLER. Yes, sir.

Mr. EHRET. Yes, sir.

Senator HASKELL. For the reporter, if you could identify yourselves.

Mr. McDERMOTT. My name is John McDermott, Chief Inspector from Houston.

Mr. MILLER. Charles Miller.

Mr. ANGELLO. Tim Angelo.

Mr. EHRET. Albert Ehret.

Mr. TOBIAS. Robert Tobias, representing Mr. Ehret and Mr. Angelo at this hearing.

Senator HASKELL. Then, you can sit down quietly by the side. I won't be asking you any questions.

Now, Mr. Kelly, I will ask you first, we have been informed that there was in 1971 a directive to harass Chilean citizens and goods coming in from the country of Chile.

Do you recall such a directive?

Mr. KELLY. Yes, sir, I do.

Senator HASKELL. Do you recall whether it was in writing?

Mr. KELLY. I can find no writing. I'm sorry. I must assume it was verbal.

Senator HASKELL. Can you tell me who gave this verbal directive?

Mr. KELLY. No, sir, I cannot.

Senator HASKELL. How do you know that such a directive was given?

Mr. KELLY. I received telephonic instructions.

Senator HASKELL. And who did you receive telephonic instructions from?

Mr. KELLY. As I said, I don't recall the identity of the person who gave me those instructions.

Senator HASKELL. Did the person say where he or she was calling from?

Mr. KELLY. He was calling either from Houston or from Washington. It was a person that I knew at the time. I recognized him by name and, you know, from the call.

Senator HASKELL. But at this moment, you are unable to recall his name?

Mr. KELLY. No, sir, I am not.

Senator HASKELL. Did you pass this directive on to your subordinates?

Mr. KELLY. Yes, sir, I did.

Senator HASKELL. And did you do that—in what time frame after receiving the directive on the phone did you do that?

How long did it take you to do that?

Mr. KELLY. The same day, I'm certain.

Senator HASKELL. Did you do it in writing?

Mr. KELLY. I did not.

Senator HASKELL. Then obviously you did it verbally?

Mr. KELLY. Yes, sir.

Senator HASKELL. Did you call your subordinates together, give it to them verbally, or did you do it individually?

Mr. KELLY. My best recollection is that my classification and value staff, the senior import specialists (GS-12's), were assembled in the Customhouse in Houston.

The others were apprised through their supervisors at the outports.

Senator HASKELL. Did this individual who called you to give you this directive tell you why the harassment should take place?

Mr. KELLY. If he did, I do not recall it.

Senator HASKELL. Did it surprise you in any way that such a directive should be given?

Mr. KELLY. It was inconsistent with the long-time practices of this old Government agency.

Senator HASKELL. In other words, would I be correct in saying that it was unique in your experience?

Mr. KELLY. Yes, sir, it was.

Senator HASKELL. Did the directive say in what way Chilean citizens and goods imported from Chile should be harassed?

Mr. KELLY. My recollection is that delays were discussed.

Senator HASKELL. Was the methodology of the delays discussed?

Mr. KELLY. Possibly it was. I do not recall now, sir.

Senator HASKELL. Can you give me the names of some of your subordinates to whom you passed on this directive?

Mr. KELLY. No, sir. Perhaps my chief inspector here can enlighten you. I presently have no recollection of who received my instructions.

I would suppose the senior people in the station would receive it.

Senator HASKELL. Did the directive at any time mention that diplomats should come within this category of harassment?

Mr. KELLY. My recollection is that I asked did the delay of persons include diplomats, and the answer was in the affirmative.

Senator HASKELL. In fact, did any diplomats come through your port while this directive was in effect?

Mr. KELLY. No, sir. This is the reason I smiled when I got the instructions, because really we don't have—traffic is so infrequent in Chilean persons or things through my district, that it was rather a moot thing.

Senator HASKELL. When you say that no reason was given—did you say—

Mr. KELLY. No, sir. I said I didn't recall receiving a reason.

Senator HASKELL. You had an opportunity when you were asked to come to this hearing to sort of scratch your head and try and refresh your recollection, I assume?

Mr. KELLY. Yes, sir.

Senator HASKELL. Mr. McDermott, you are the chief inspector in the Houston district. Am I correct?

Mr. McDERMOTT. Port of Houston.

Senator HASKELL. The Port of Houston. And how long have you occupied that position?

Mr. McDERMOTT. One year.

Senator HASKELL. What was your occupation in 1971?

Mr. McDERMOTT. I would have been the assistant chief inspector.

Senator HASKELL. You were assistant chief inspector in 1971 at the Houston port.

Is that correct?

Mr. McDERMOTT. Yes, sir.

Senator HASKELL. Did you receive any direction from anybody to harass Chilean goods and citizens?

Mr. McDERMOTT. Senator, I have scratched my head also.

I did receive verbal instructions. I really don't remember the terminology "harassment" used.

At the port of Houston at the time I received the instructions I, like Mr. Kelly, I smiled because very few people come into the port of Houston from Chile. We don't have much traffic from Chile.

I don't know who called me or if I got the call third-hand, second-hand, or even fourth-hand.

Senator HASKELL. Do you recall any directive in 1971, concerning Chilean citizens and goods?

Mr. McDERMOTT. Yes, I said I recall receiving instructions.

As I recall the incident, it was a slow down of the examination of baggage and cargo.

Senator HASKELL. You do not recall from whom you received that directive?

Mr. McDERMOTT. No, sir.

Senator HASKELL. All right. Do you recall whether any reason was given for doing this?

Mr. McDERMOTT. No, sir.

Senator HASKELL. Was this a usual type thing that occurs in the Customs Service, to pick out one country and decide—

Mr. McDERMOTT. No, sir.

Senator HASKELL. Are you aware of it ever happening before?

Mr. McDERMOTT. No, sir.

Senator HASKELL. I may have asked this once before: Was any reason given?

Mr. McDERMOTT. No, sir. Again, I am going by memory.

Senator HASKELL. Mr. Ehret, as I understand it you are an import specialist in Denver.

Is that correct?

Mr. EHRET. That's correct.

Senator HASKELL. Were you an import specialist in 1971?

Mr. EHRET. Yes.

Senator HASKELL. Do you recall receiving any directive vis-a-vis Chilean citizens or goods in 1971?

Mr. EHRET. No, I do not recall having received such directives.

Senator HASKELL. If such a directive had been given, would it be likely that you would recall it?

Mr. EHRET. I would think so, yes.

Senator HASKELL. Have you ever received a directive to harass or slow down any goods from any country other than Chile?

Mr. EHRET. I do not recall having received any instructions to harass or slow down any goods from any countries other than Chile.

Senator HASKELL. Do you know of any import specialists in the Denver port who have told you that such a directive was given?

Mr. EHRET. Have told me? No.

Senator HASKELL. I couldn't hear you.

Mr. EHRET. No.

Senator HASKELL. Mr. Miller, what was your position at the Denver Port in 1973?

Mr. MILLER. I was a senior inspector.

Senator HASKELL. And would you mind describing your duties as senior inspector?

Mr. MILLER. Examination of merchandise and passengers' baggage as it came in.

Senator HASKELL. Did you have people working under you?

Mr. MILLER. No, sir.

A senior inspector is a technical position. It is not a supervisory position.

Senator HASKELL. What is your present position in Denver?

Mr. MILLER. Supervisor inspector.

Senator HASKELL. As such, do you have anybody working under you?

Mr. MILLER. Yes, sir.

Senator HASKELL. And would you name those people?

Mr. MILLER. I have Mr. Angelo, Mr. Lockhart, Mr. Anderson, Mr. Ratliffe, Mr. Lobato, and Mr. Knox.

Senator HASKELL. Does Mr. Ehret work under you in Denver?

Mr. MILLER. No, sir.

Senator HASKELL. Who does he work under?

Mr. MILLER. He works under the port director.

Senator HASKELL. Who is the port director in Denver?

Mr. MILLER. Mr. Bruton.

Senator HASKELL. Do you recall, Mr. Miller, any directive in 1971 vis-a-vis Chilean goods or citizens?

Mr. MILLER. No, sir, I don't.

Senator HASKELL. At our Washington hearing, and I believe under oath, Mr. Bruce Brower—are you familiar with Mr. Bruce Brower—

Mr. MILLER. Yes.

Senator HASKELL [continuing]. Stated that a directive was received to harass Chilean goods and citizens.

This was given under oath.

Have you ever discussed with Mr. Brower this entire matter?

Mr. MILLER. No, sir.

Senator HASKELL. If Mr. Brower had received such a directive, would it be likely that he would have passed it on to you?

Mr. MILLER. I don't know, sir.

Senator HASKELL. Was he your superior at the time?

Do you know, sir, and who was your immediate superior at the time?

Mr. MILLER. In 1971, I believe it was Mr. Kelly Tipps, or Mr. Chapuis.

Senator HASKELL. Mr. who?

Mr. MILLER. Mr. Kelly Tipps or Mr. Chapuis.

Senator HASKELL. Well, I think—and I state this merely for the record—when the whole matter of the harassment of Chilean citizens and goods came up in Washington, an explanation at that time was given by personnel of the national office that it probably was related to drugs coming in from Chile.

Testimony was also given that such directives were given in writing and sent out to the local offices.

I asked at that time as did Senator Ribicoff that the Customs Service provide the written directive.

None has been provided to date.

We also asked for information which would have indicated that Chile was regularly active in the drug situation; information on a Chilean drug ring was supplied, but it was for the wrong year.

We asked for the period 1965 to 1975 information on how drugs from any part of the world were to be handled in the Customs Department.

No information has been supplied to date.

These hearings occurred on October 23, 1975.

I think, gentlemen, on this particular issue, that's all the questions that I have at the moment.

Mr. KELLY. Senator, if I might, I would like to say something for the record.

Senator HASKELL. I would appreciate it if you would.

Mr. KELLY. I do not know when this order was received, because I have no record and no recollection.

The order was rescinded within 2 days or within the week. My colleagues say it was rescinded within 2 days.

I know of no subsequent order ever coming out of the U.S. Customs Service.

I know of no one who was ever harassed pursuant to the 2-day, or the 1-week, duration of the order.

I think that should be on the record, because someone either made a mistake, someone had second thoughts, and I don't think the record should suggest that this is our mode of operating or that it is consistent with an operation of an old and—

Senator HASKELL. I think, sure it is very inconsistent with the operation of the Customs Service which has an old and very well respected image, and rightfully so in this country.

I bring this matter up because it is an aberration and is an aberration that will destroy the very fine reputation of the U.S. Customs Service.

Now, let me ask you this, sir:

Who rescinded the order?

Mr. KELLY. I believe the same person that issued it.

Senator HASKELL. And you do not remember the person's name?

Mr. KELLY. No, sir, I do not.

Senator HASKELL. Gentlemen, that's all on this particular subject.

We'll take a recess of 10 minutes.

[Recess.]

Senator HASKELL. Since this originally came to the subcommittee's attention and since our hearing in Washington, additional matters pertaining to the Customs Service have come to the committee's attention, from various and sundry sources.

Does the name Connie Barrera mean anything to you?

Mr. KELLY. She's an import specialist in the Laredo customs district. I probably have met her on the occasion of some sort of a seminar.

Senator HASKELL. Did she recently desire to take an examination for promotion within the service?

Mr. KELLY. I don't know, sir.

She has never worked for me.

Senator HASKELL. Have you ever heard whether or not she was given a copy of an examination she was meant to take?

Has anybody ever told you or referred that to you?

Mr. KELLY. No, sir.

Senator HASKELL. If such was the case, whose responsibility would it be to investigate the matter?

Mr. KELLY. Well, I would think her immediate supervisor initially, and perhaps her district director in—depending on—

Senator HASKELL. Now, let's see—you are her district director, aren't you?

Mr. KELLY. No, sir, I said I am not.

She has never worked for me.

Senator HASKELL. She is not in the Houston district, then?

Mr. KELLY. No, sir, I am director of the Houston district. She is in the Laredo district.

Senator HASKELL. Well then, what I will do is I will ask you to step down, and I'll ask Mr. Hughes to come forward.

Now, Mr. Hughes, you heard the questions I asked Mr. Kelly.

Have you ever heard of a Connie Barerra?

Mr. HUGHES. Yes, sir, I have.

Senator HASKELL. Are you aware as to whether or not she recently applied or did take an examination for promotion within the Customs Service?

Mr. HUGHES. Yes, I am, sir.

Senator HASKELL. Are you aware of any allegation that she has been given the answers to the examination questions?

Mr. HUGHES. Not that specific allegation, sir.

If I might, in order to clarify—

Senator HASKELL. Just tell me what—you say not that specific allegation, but before I forget about it, what did you hear?

Mr. HUGHES. Well, sir, if I may, and I want to be responsive to your questions, but I must explain my position along these lines.

The matter concerning Miss Barerra is presently being considered at our Washington level, I believe. It may very well—the answers to your questions may very well prejudice the outcome of any action that my superiors might wish to take.

Senator HASKELL. Well, it is hard for me to see how it is going to prejudice.

If you will merely tell me the truth, what you know, it is rather difficult for me to see how it will prejudice any action.

All I am asking you is what you have heard about the matter.

Mr. HUGHES. I would be glad to answer any of your questions, Senator.

However, the minutes of this meeting may very well be used as a record against any corrective type action the Customs Service may wish to take in the matter.

Perhaps if I could have the advice of our personnel man and our legal counsel.

Senator HASKELL. I think it might be well to just take 5 minutes off and go get your advice.

Mr. HUGHES. Yes.

Senator HASKELL. Go take 5 minutes off then.

Mr. HUGHES. Thank you very much, sir.

[Recess.]

Mr. ROJEK. Senator Haskell, my name is Mr. Thaddeus Rojek. I am Deputy Chief Counsel for the U.S. Customs Service.

I am here to provide legal support and advice to the various management officials who have been called to testify, as well as to provide whatever technical support and legal assistance I can to yourself in connection with these hearings.

I have just been fully advised of the facts concerning the matter raised when we recessed.

There has been an investigation relative to some alleged misconduct involving the lady whose name has already been entered on the record.

There are two other individuals involved in that same investigation.

The investigation has gone forth to the stage where there have been some proposed charges filed.

There has been an informal hearing held at which an oral reply was presented.

At this time, there has not been a final decision by management as to whether or not to take further action.

With the case in that posture, I would submit, Senator Haskell, that it would be improper to inquire publicly into the substantive matters involved or to put the names of the other individuals on the record.

If this were to proceed further and they were entitled to appeal whatever action may be taken against them, they as employees of the Customs Service would be entitled to a hearing held in private, if they so chose, in accordance with governing laws and regulations.

Respecting their rights, I would submit, Senator Haskell, it may be improper to proceed further, at this time, with an inquiry into the substantive matters.

Senator HASKELL. I would concur with your recommendation.

I would merely request that the subcommittee be given a transcript and final decision of the U.S. Customs Service on these matters when they are completed.

Mr. ROJEK. At that point in time when we can release that, having due cognizance of whatever rights of privacy the employees have, we will do that, sir.

Senator HASKELL. Now, you can submit them to the subcommittee with the request that the privacy be maintained if you so desire.

What I want is the subcommittee to get a copy of the transcripts and the internal administrative decision.

Mr. ROJEK. You are interested in the final outcome?

Senator HASKELL. That's correct.

Mr. ROJEK. We will do our best to keep you fully apprised.

Senator HASKELL. Mr. Hughes, I just have a couple of other questions for you.

Mr. Hughes, it has come to my attention and other members of the committee that there may be some smuggling of drugs within your district.

Are you aware of any such problems?

Mr. HUGHES. There are plenty of drug smuggling problems within my district.

Senator HASKELL. And do any of these problems involve personnel with the Service?

Mr. HUGHES. You mean customs personnel engaged in smuggling?

Senator HASKELL. That's right.

Mr. HUGHES. Not to my knowledge, sir.

Senator HASKELL. And you would know?

Mr. HUGHES. I had better know.

Senator HASKELL. All right. OK.

That's all the questions that I have of you, then.

Mr. HUGHES. Thank you, sir.

Senator HASKELL. Mr. Kelly, would you come forth?

Mr. Kelly, as I understand it, there was a reorganization of the Customs Service in 1965 and 1966.

Can you describe that reorganization to me?

Mr. KELLY. There are others here, sir, that know more about it than I.

I would tell you what I know about it.

Senator HASKELL. I appreciate it.

Mr. KELLY. Until the time of the reorganization, the Customs Service had Customs districts much as they do today.

The principal field officers in those districts reported directly to the Commissioner of Customs or his representatives.

Today, the Customs Service follows the regionalization concept, that I think other agencies have entertained, and has interposed a regional representative of Customs to various geographical locations of the United States.

So, the result of our reorganization was nine regional headquarters, nine regional commissioners who report to the Commissioner.

Those regions are headquartered in Boston, New York, Baltimore, Miami, New Orleans, Houston, Los Angeles, San Francisco, and Chicago.

The districts under those regions report to their immediate line supervisor, the regional commissioner.

Senator HASKELL. What is the extent of the authority of the regional commissioner?

Mr. KELLY. He is responsible—again, I would repeat that others are better qualified than I to answer that—he is responsible for carry-

ing out the Customs mission, enforcing the Tariff Act and related laws within his geographical area.

Senator HASKELL. I will ask, of course, Mr. Maier these same questions since he is regional commissioner.

As I asked Mr. Hughes, information had come to the subcommittee involving drug problems with allegations involving the Customs Service, and these allegations are allegations that have no further credence than the fact that somebody said so.

Also, have guns been confiscated and then not accounted for?

Are you aware of any such problems within your district?

Mr. KELLY. No, sir, I am not.

Senator HASKELL. And you would, I assume, as district director; or as Mr. Hughes said, you darn well better be aware?

Mr. KELLY. He expressed it better than I could.

Senator HASKELL. That's all the questions I have of you at this time, Mr. Kelly.

Mr. KELLY. Thank you.

Senator HASKELL. Mr. Maier, would you come forward again, sir?

Mr. Maier, as regional commissioner, can you describe the scope of your authority?

Mr. MAIER. I'm responsible for total Customs mission as it involves a regular routine business in an area of the five States to which comprise my region.

I am not responsible for the internal security.

I am not responsible for the investigative—criminal investigative apparatus.

Senator HASKELL. So, you would not be responsible if some allegation were made that charged a Customs person of wrongdoing.

You would not be responsible for the investigation of that particular matter. Is that correct?

Mr. MAIER. I would be responsible for the action. I would not be supervisor of the person doing the investigation.

I certainly would be responsible to report it to him and get the investigation accomplished, if it were a criminal case.

If it were an administrative case, I would be responsible to see that that was brought to its legal conclusion.

Senator HASKELL. And would you be responsible for recommending that the case be pursued or not be pursued?

Mr. MAIER. In some instances, I would be, and some, not.

Senator HASKELL. Describe to me the ones that you would be?

Mr. MAIER. If—that has differed somewhat through the years for some of the cases that we have, and some you are familiar with.

The responsibility was different then than it is now.

As it stands now, a district director or the equivalent person on my staff would make a proposed action.

If it was something on which I could rule, I would make the determination of what happened.

Prior to this time, I was involved in making proposals.

In any case, I would be supported in my judgment by staff people who are expert in personnel matters since they are very complicated and require constant working with them.

Whatever judgment is given, even of the district director or by myself, it's supported by staff people who are familiar with the laws and rules.

I reserve the judgment, and I am responsible for the judgment based on recommendations.

Senator HASKELL. Of your own staff?

Mr. MAIER. Sometimes they are staff people who are not my staff.

They are outsiders sometimes.

Senator HASKELL. And where are they located?

Mr. MAIER. A selection is made at different times.

Sometimes, someone from various departments—Treasury Department, another part of Treasury, sometimes from another portion of Customs—and these vary—sometimes an attorney for the person who is being accused will ask that we have somebody other than Customs.

It depends on the case.

Judgment is made there.

The first decision I would make would be who would be the hearing officer.

Senator HASKELL. After you have appointed a hearing officer and the matter is heard, the hearing officer makes a recommendation. Then, I presume, you exercise your judgment either to follow his recommendation or for some reasons decline to follow it.

Would that be correct?

Mr. MAIER. Yes. In matters with which I was going to rule, that would be true.

Senator HASKELL. You say there are certain matters, involving disciplinary matters, I gather, you don't have any authority over.

What are those?

Mr. MAIER. Something that would be discovered at the national level or something that would involve national policies, procedures, or some discovery that was made of something that happened outside of my region.

Senator HASKELL. If individuals within your region had been investigated by the national office and a report had been made, would it be your duty to see that the matter was pursued; that is the hearing officer was appointed and a hearing held and recommendations made?

Mr. MAIER. Sometimes, and sometimes not.

Senator HASKELL. When would it not be?

Mr. MAIER. If, as I say, the discovery was made of some wrongdoing, if discovery was made at the national level or if the accusation—accusation could be against regional commissioners.

In that case, certainly I would not participate.

Senator HASKELL. Again, obviously not if they were against yourself, but what are the other situations where you wouldn't have authority to exercise judgment?

Mr. MAIER. What I am told by Washington not to, there are cases, as I say, when the infraction was discovered in Washington or when it would involve a criminal activity involving more than my region.

For instance, if some of the activity took place other than my region, I might not be involved.

Senator HASKELL. Let me ask you specifically, and we discussed this matter in Washington, Mr. Miller here in the Denver office has been subject to investigation on a couple of occasions.

I asked you to provide certain information.

Now, in 1974, there were a series of allegations against Mr. Miller involving various and sundry things which are a matter of public record now.

So, I will not go through them. However, there appear to be at least 15 different allegations.

A grievance file was prepared and a letter of admonition was given and put in his file. However, Mr. Rice, who was the grievance examiner, found that there might be certain procedural difficulties.

He therefore says at the end of his letter to you dated June 16, 1975: "I therefore recommend that this case be referred back to the District Director to hear the informal grievance and that the informal stage of this grievance be reopened."

Then on July 1 of 1975, you address a letter to Mr. Miller that says:

Dear Mr. Miller, this will refer to your grievance concerning memorandum of admonition, et cetera.

Although I have previously notified that your case would be referred to a grievance examiner, I have now determined that such action is not necessary.

By this letter, I will provide you with my decision.

It is my decision that copies of the letter of admonishment issued to you by the District Director in El Paso will be destroyed as you requested.

In addition, I am requesting the Director of Internal Affairs to destroy the investigative file.

This action is not to be construed that I expect anything less than performance of the highest caliber.

Now, your letter follows Mr. Rice, the grievance examiner's letter by approximately 15 days.

His recommendation to you was that the case be referred back to a district director to hear the informal grievance and that the informal stage of this grievance be reopened.

Now, you chose, I gather, not to follow that recommendation.

I would like to know why?

Mr. MAIER. I would have to give you the dates.

Senator HASKELL. I'll be very pleased to give you the dates.

Just a minute. Mr. Rice was the grievance examiner.

He sent it back on a procedural matter. The date of his letter to you is June 16 of this year.

He recommends that the case be referred to the district director for further hearing.

Your letter to Mr. Miller was dated July 1 of this year in which you—I have read the letter.

Now, you apparently chose not to follow Mr. Rice's recommendation. I would like to know why.

Mr. MAIER. On advice of my personnel officer, who told me that because of many other considerations I don't recall whether Mr. Battard, then district director, now incapacitated due to cancer, or was assigned to Washington. That would be very illogical for us to try to start the procedures in his request. It would be advisable since nothing

more involved in it than a letter of admonition that we should cancel the letter rather than try to go through the procedure.

I was advised at that time by my personnel office.

Senator HASKELL. Now, the allegations here were—this is contained in volume II of personnel conduct investigations.

Allegations were of harassment and rudeness, attempt to seize merchandise from another U.S. agency, refusal of a granting of a broker's license because of a letter to The Rocky Mountain News about Kent State, holding of guns of hunters returning from safari and recommending they all go to one gun employer in Brighton, Colo., to determine value, changing procedures without notification.

Then—I'm just reading a few of these—six individuals employed by REA Express and airlines apparently left their jobs rather than to deal with Mr. Miller because of misconduct.

These are not what I would call insubstantial allegations.

I am not saying whether they are true or false, but your own investigation found substance to them and the file was sent back to you because of procedural difficulty and a recommendation of the further hearing being made.

Yet, you apparently chose not to have a further hearing.

I don't understand this.

Mr. MAIER. As I say, I will repeat.

I was given that advice by my personnel officer who believed that the—that it was not warranted to continue with that—

Senator HASKELL. Is that advice in writing?

Mr. MAIER. I really don't know. I would have to look and see.

Senator HASKELL. Who is the personnel officer?

Mr. MAIER. Mr. Biondi.

Senator HASKELL. Where is he located?

Mr. MAIER. Who?

I'll look and see if it is in writing, sir.

Senator HASKELL. Now, in 1971, the Inspection Division of the U.S. Customs Office made an examination against Mr. Miller.

The findings were among the following:

One, accepted gratuities, namely liquors, from brokers and liquor warehouses, found in volume II, exhibit A 2-B FIL, ordering other inspectors to delay clearing shipments until after 5 p.m. when they could have been prepared prior to 5 p.m., charging a broker overtime for inspecting shipments before 5 p.m.

These are the Bureau of Customs Service, Inspection Department's own findings.

Now, I believe that in Washington, in fact, I know in Washington, I questioned you about this. You said that Mr. Miller had been cleared by some independent examiner.

This is December 8. I asked you to supply a copy of it, and this is December 8.

The hearing was October 23, and I do not have any evidence yet of your statement supportive of the examiner's report.

Mr. MAIER. Thank you. It has just been located, Senator.

I will be able to forward it to your committee immediately when I get back to the region.

[The following information was subsequently supplied by Mr. Maier.]

[Memorandum]

AUGUST 17, 1972.

To: Mr. John Biondi, Jr., Director, Personnel Management Division.
 From: Regional Commissioner.
 Subject: Oral Reply to Notice of Proposed Demotion and Reassignment of Charles L. Miller.

On July 18, 1972, Mr. Charles L. Miller, Customs Inspector, GS-11, Port of Denver, Colorado, was given written notice of a proposal to demote and reassign him based on charges and specifications contained in the notice. In the advance notice to Mr. Miller he was advised of his right to reply both personally and/or in writing to Mr. Cleburne Maier, Regional Commissioner of Customs or his designated representative.

A written reply to the notice of proposed action, undated, has been received from Mr. Fredrick M. Kal, Attorney at Law, Mr. Miller's representative. In his written reply Mr. Kal also requested an opportunity for an oral reply in Denver, Colorado. Arrangements have been made to receive Mr. Miller's oral reply, along with his representative, in the Custom house, Denver, Colorado, at 10:00 a.m. August 22, 1972.

In accordance with paragraph 2-5b, Chapter 752, Federal Personnel Manual, you are hereby designated to receive Mr. Miller's oral reply, provide a written summary of his presentations for the record, and recommendations you may have as to the final decision to be rendered based on representations made in the oral reply.

A copy of the notice of proposed demotion and reassignment and the written reply from Mr. Kal are furnished for your review prior to receiving the oral reply.

Enclosure.

[Memorandum]

SEPTEMBER 18, 1972.

To: Mr. Kenneth W. Wisecarver, Acting Regional Commissioner, Region VI, Houston, Tex. 77002.
 From: Director, Personnel Management Division, Region VI, Houston, Tex. 77002.
 Subject: Proposed Adverse Action--Mr. Charles L. Miller.

On August 17, 1972, the Regional Commissioner appointed me to receive an oral reply from Mr. Charles L. Miller who he had proposed to demote and transfer in his letter of July 19, 1972. The charges against Mr. Miller were predicated upon information supplied by the Office of Security & Audit.

I have carefully reviewed Security & Audit reports, letters of adverse action, and the evidence submitted by Mr. Miller and his attorney. It is my finding that the evidence successfully refutes the charges contained in the letter of adverse action. So much doubt is cast upon the validity of the information on which we relied, that it would be unwise to proceed against Mr. Miller. I therefore, recommend that the proposed action to demote and transfer Mr. Miller be withdrawn.

There is, however, information which indicates that Mr. Miller's conduct has in fact, been questionable and unacceptable. Accordingly, I would recommend that he be admonished for past actions and cautioned that future unacceptable conduct or actions would result in disciplinary or adverse action. The admonishment could be contained in the decision letter addressed to Mr. Miller. There would be no appeal from an admonishment.

Should you have any other questions or wish to discuss this case further, please do not hesitate to call on me.

JOHN BIONDI, JR.

JULY 1, 1975.

MR. CHARLES L. MILLER,
 o/o Port Director of Customs, Denver, Colo.

DEAR MR. MILLER: This will refer to your grievance concerning a Memorandum of Admonishment issued by the District Director of El Paso and subsequent actions taken to resolve the matter.

Although I have previously notified you that your case would be referred to a grievance examiner, I have now determined that such action is not necessary and by this letter I will provide you with my decision.

It is my decision that copies of the letter of Admonishment issued to you by the District Director in El Paso will be destroyed as you requested. In addition, I am requesting the Director, Internal Affairs to destroy the investigative file. This action is not to be construed that I expect anything less than performance of the highest caliber by employees of Region VI of the U.S. Customs Service.

This letter closes action on this matter.

Sincerely yours,

Regional Commissioner.

[Memorandum]

DECEMBER 17, 1975.

To: Regional Commissioner of Customs, Region VI.
From: Director, Personnel Management Division, Region VI.
Subject: Admonishment of Mr. Charles Miller.

Today you asked me for a statement concerning the subject admonishment. It is my understanding that this matter came up in the Denver hearing. To the best of my recollection, the following sequence occurred.

As I recall, Mr. Battard issued a letter of admonishment based on the Internal Affairs Report of Investigation. Mr. Miller objected to the letter of admonishment and the contents therein and requested that he be allowed to file a grievance. He, Miller, filed an informal grievance with Mr. Battard. Mr. Battard reviewed the situation. However, he did not talk to Mr. Miller because at that time he was scheduled to go to Washington and did not have the opportunity to go to Denver or have Mr. Miller come to El Paso. Therefore, Mr. Battard asked Port Director Jay Bruton to hear Mr. Miller's grievance, review the entire case, and whatever he came up with would be Mr. Battard's decision. Mr. Bruton did this and issued a final decision to Mr. Miller. I think he got verbal concurrence from Acting District Director Chapuis before issuing the decision. Mr. Miller then filed a formal grievance with the Regional Commissioner requesting two corrective actions:

- (1) That the admonishment be withdrawn and all copies destroyed, and
- (2) That the investigative file be destroyed.

A grievance examiner was requested from Headquarters, and Mr. Price D. Rice, Personnel Officer San Francisco, was appointed grievance examiner. The case file was sent to him and upon review of the case he noted that Mr. Bruton had made, or signed, the decision at the informal level of the grievance. I explained to him in a conversation that this was done by Mr. Bruton on the authority of Mr. Battard. However, Mr. Rice indicated that he felt that even though Mr. Battard had authorized Mr. Bruton to act in this capacity, that he, Bruton, would be in no position to reverse a decision of a District Director, even if he thought it should be. Mr. Rice felt that this was a procedural defect and returned the file, along with his recommendation that the investigation of the grievance revert back to the informal stage and be processed again from that point.

To the best of my recollection, after you had reviewed the file you called me into your office. In view of Mr. Rice's findings you asked me if there would be any great harm in cancelling the letter as Mr. Miller had requested. At that time, in view of the particular circumstances, I did not see that cancelling the admonishment would be wrong because the alternative was to begin the grievance process over again by requiring Mr. Battard to review the case at the informal grievance level. Therefore, I agreed that the letter of admonishment could be withdrawn and the copies destroyed fulfilling one part of the relief sought in Mr. Miller's grievance.

JOHN BIONDI, Jr.

DEPARTMENT OF THE TREASURY,
BUREAU OF CUSTOMS,
Houston, Tex., December 19, 1975.

Mr. THADDEUS ROJEK,
Deputy Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue NW.,
Washington, D.O.

DEAR MR. ROJEK: I am enclosing a copy of the letter to Mr. Miller in Denver, Colorado, dated July 1, 1975, including my decision to destroy the letter of

admonishment. This letter was prepared by a member of the staff in Personnel and came to me by way of approval from Mr. Biondi, the head of Personnel.

I am also enclosing a memorandum dated December 17 from Mr. Biondi which is self explanatory but does not have any more detail than we have already furnished you.

I would like to reiterate that during the time of the '75 Miller appeals that Mr. Battard was in Washington, in surgery or taking treatments which would not allow him to leave El Paso and that accounts for our reluctance to get him further involved in a personnel matter. At the same time we believed that as soon as his health permitted, Mr. Battard would be leaving El Paso, and as you know, that was the case.

Sincerely yours,

CLEBURNE MAIER,
Regional Commissioner.

Senator HASKELL. I think that should be.

I believe that's all for the time being, sir.

Mr. MAIER. Thank you.

Senator HASKELL. I wonder if—is Cindy Rozinski and Dan Lacy of the Combs-Gates Aircraft Co. here?

If so, would you come forward?

Miss Rozinski, Mr. Lacy, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Miss ROZINSKI. Yes, sir.

Mr. LACY. Yes, sir.

Senator HASKELL. There was an instance that has come to my attention at the Denver Customs Port involving a Canadian hockey team.

I wonder if one of you could describe that situation?

Miss ROZINSKI. Well, on Monday, prior to coming in, we knew they were coming in.

Our base in Indianapolis had called and let us know that they were coming in at 4 o'clock in the morning and would we please get some charts for him.

I said fine, we would have them and expect them Thursday morning at 4 o'clock.

Wednesday evening, I had another airplane also coming in from Canada. He called to change his arrival times. So, I called customs, changed the amount of time for the other airplane.

I said, by the way, you know, you have a Canadian hockey team coming in.

They said, no. I said, well, it is coming in at 4 in the morning, and Mr. Labato then said, I need 2 hours notice.

I said, it is only 8 in the evening. Maybe they have not filed their flight plan yet.

He said, OK. About an hour later, he called back and said he wanted 48 hours written notice or will not let them into the country.

I proceeded to call Spurs manager and see what I could do.

A lady from the Spurs did call me back and said she would have to get union people from Western Airlines out there to unload the airplane and customs.

That was the end of our conversation.

Senator HASKELL. Who was the gentleman who told you he needed 2 hours notice?

Miss ROZINSKI. Mr. Lobato.

Senator HASKELL. And then later on, he told you he needed 48 hours notice?

Miss ROZINSKI. Written notice.

Senator HASKELL. Written notice?

Miss ROZINSKI. Yes.

Senator HASKELL. Which would, of course, make it impossible for the plane to land?

Miss ROZINSKI. Yes.

Senator HASKELL. I'll ask some of the customs people about the regulations.

Are either one of you familiar with regulations of customs at all? Do you know of your own knowledge whether 48 hours written notice is required for a plane coming in?

Mr. LACY. I don't believe it is.

Senator HASKELL. Have you had experience in clearing other planes coming in?

Mr. LACY. Yes.

Senator HASKELL. And is your experience with those planes 2 hours notice adequate?

Mr. LACY. I don't know if two hours notice is adequate. I know we have—other problems.

Senator HASKELL. Would you explain some of your other problems with the U.S. Customs Service, that is, the problems of the Combs-Gates Aircraft?

Mr. LACY. I know most of our problems have been delays, people coming into the customs gate and waiting for customs to come by to clear their aircraft.

Senator HASKELL. Do you know whether or not there were customs people available at the time to clear the aircraft?

Mr. LACY. I am sure they were available. If they were in town, I think they were available.

Senator HASKELL. Had your company let the customs service know ahead of time?

Mr. LACY. Yes; we did.

Senator HASKELL. Do you have any idea why these delays occurred?

Mr. LACY. I have no idea whatsoever.

Senator HASKELL. Did anybody ever explain to you ahead of time that there might be a delay on the airplane?

Miss ROZINSKI. I have. When planes do call in and say they are going to customs, I usually call.

An instance, I called Immigration, and he said there would be a short delay, clear through Western Airlines.

I said, fine, I would inform the pilot.

Senator HASKELL. That's immigration.

You also call the customs department?

Miss ROZINSKI. Yes.

Senator HASKELL. And what kind of time lead do you normally give the customs department?

How many hours ahead of the time when the plane is arriving?

Miss ROZINSKI. They file it on a flight plan, but when we are coming in range of Denver, they call us on our radio and tell us, which is usually 20 minutes.

Senator HASKELL. Do you have any idea why in this particular instance Mr. Lobato seemed to change the rules and say he had to have 48 hours notice.

Miss ROZINSKI. No, sir.

Senator HASKELL. Did he give you any reason?

Miss ROZINSKI. No, sir.

Senator HASKELL. Now are there any other specific instances of delays or out of the ordinary activity by the customs department that either of you are aware of other than this one?

Mr. LACY. Other than this one incident about the hockey team?

Senator HASKELL. Yes.

Mr. LACY. I have had one other that we have had a Lear jet from Canada come in before the customs clearing area at Gate Charlie 1 on the concourse.

It was over next to the United Airlines baggage. I sat with the Lear jet, and there was one passenger and they said over 15 crew members.

We sat for 2 hours while we were waiting for customs or immigration to show up and clear the aircraft.

Senator HASKELL. Had they let you know ahead of time there would be a delay?

Mr. LACY. No. I was told that. I was told that if the plane wasn't there right at the time that he was supposed to be there, that there would be quite a bit of delay before they could get there.

Senator HASKELL. Have you found the customs people in Denver by and large polite and courteous?

Mr. LACY. Customs people?

Senator HASKELL. Yes.

Mr. LACY. I'll have to say no to that.

Senator HASKELL. How about you?

Miss ROZINSKI. Immigrations are very helpful to us. I would have to say that.

Senator HASKELL. Immigration Service. How about the Customs Service.

Miss ROZINSKI. No.

Senator HASKELL. Can you characterize at all their attitude?

Miss ROZINSKI. Well, sometimes when the planes call in, we do notify customs.

We get asked a lot of questions that personally I don't know, and it is on the flight plan, the crew members' names.

Sometimes, I don't know that unless it is a customer that is based with us. You know, I just don't know the crew members' names.

They ask us that, and it is already on the flight plan.

Senator HASKELL. And the customs have a copy of the flight plan as a rule?

Miss ROZINSKI. They are supposed to get one.

Senator HASKELL. Thank you very much. I appreciate your coming forward. I know it is difficult for you, and I thank you very much indeed.

Is there a Mr. Gene Cooper in the room?

[Pause.]

Senator HASKELL. We'll take a recess for 15 minutes.

[Whereupon, a recess was taken.]

Senator HASKELL. The hearing will recommence.

I would like to ask Dr. Jorgensen to come forward, if he would.

Dr. Jorgensen, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Dr. JORGENSEN. I do. I will mention I am Dr. Irvin Jorgensen. I have an import business in Loveland.

I moved from Minnesota in 1970. I have been importing for 12 years and 7 years in Minnesota.

I had completed formal as well as informal entries for 7 years, while in Minnesota.

During these 12 years, I have received packages not only through St. Paul, Minn., but through practically every port in the United States, shipments of veterinary instruments.

I had not experienced any trouble in making any entries during the years I was in Minnesota. When we moved to Colorado in 1970, I immediately visited the Denver Customs Office and asked to discuss what papers and any information necessary or any difference in filing entries in Denver compared to Minneapolis.

I was given the customs forms, and I proceeded to file entries. It wasn't very long before I was requested to come to Denver and I was then given a referendum telling which tariff schedule item should be rated at. This was written by the import specialist.

Unfortunately as soon as I started classifying according to this referendum, my entries were rejected as being incorrect. The customs officers said one thing and the import specialist another.

To mention some of the recent happenings, I am wondering about a new charge by Denver customs I have not experienced at any other port. This is listed as a manipulation charge.

This is an extra charge on parcel post packages. Shipments under \$250 do not require a formal entry to be filed. These packages can be cleared by the customs officer and forwarded for collection of duty when delivered by the post office.

In some of these cases I am charged an extra fee for manipulation. This is shown on a customs statement.

Senator HASKELL. Charged for what, doctor?

I didn't quite catch you.

Dr. JORGENSEN. The wording they use on the statement is manipulation.

Senator HASKELL. What does that mean?

Dr. JORGENSEN. I now employ a broker because of our many problems. I interpret this from his billing as Customs overtime pay.

He writes it down as Customs overtime.

Senator HASKELL. Now tell me again how this came about.

Would you mind repeating yourself? You were in Minnesota and you had no problems in Minnesota.

You came to Colorado. You went out to the Customs Service to discuss importing the type of thing you import, which I gather is veterinarian medical instruments.

Dr. JORGENSEN. Right.

Senator HASKELL. And then when did this—when did this manipulation word first come up?

Dr. JORGENSEN. It first came up during the past year.

Senator HASKELL. This past year?

Dr. JORGENSEN. Yes; but I jumped to 1975 from 1970, and maybe I should go back and start at 1970.

Senator HASKELL. I think you should.

Dr. JORGENSEN. In June of 1970, I was given a referendum classifying the different instruments as to tariff schedule, by the import specialist.

However, there seemed to be some impediment with each entry right along. I incurred some added costs, even from having my mail sent postage due, up to a fine of \$25 for not filing formal entry forms within 10 days after receiving a shipment on an immediate delivery permit.

I had filed within 3 days, but my payment and entry papers had been rejected. Due to this I was fined a little over \$2,400 by district office in El Paso.

As I could prove I had made payment within the correct time the penalty was finally reduced to \$25, which I paid under protest.

My applications or my entries were being rejected consistently for some little technicality.

Senator HASKELL. These are the things that you were importing which were being rejected for some—

Dr. JORGENSEN. My formal entries or papers which I filed with the Denver Customs Office were always being rejected.

Senator HASKELL. I see; these were being rejected for some small technicality?

Dr. JORGENSEN. Right. Finally I wrote a letter to the El Paso Customs Office regarding these problems. I received a letter from Mr. Raymond. We were having quite a controversy about identifying one parcel. Mr. Mendoza, I believe also from El Paso, came to Denver and called me on the phone.

I explained the problem to him, and I received the parcel the next day.

Now, thinking to find a remedy to some of the delays, I wrote to the director in El Paso and explained my problems with parcels shipments. I felt that shipments were being unduly delayed in Denver and I wanted to know what the problems could be.

A few days later, I was to receive a shipment at the Denver airport. I drove to Denver to pick up the package, and filed what is called an-immediate delivery request. This should be for immediate release of the shipment.

I waited for about 2 hours and finally the customs officers went to check my shipment. The package contained only six instruments. Instead of finishing the papers and releasing the package, they both went to lunch.

So, the whole procedure, which took I don't know how many hours, I think I was there 4 hours. So, I asked the freight manager what the problem was in obtaining the instruments. He said, well there could be a lot of problems with customs in Denver.

Senator HASKELL. Freight manager of what company?

Dr. JORGENSEN. I don't recollect which airline company because sometimes a shipment arrived by United Airlines and other times it came by TWA.

Senator HASKELL. I see. The airline—

Dr. JORGENSEN. When the customs officers came back from lunch I thought it would be better to have a heart-to-heart talk with them. I asked what the problem was, as I did not seem to be able to get my shipments released in Denver.

I was then informed by one of the gentlemen, and I quote, "You have sent a letter of complaint to El Paso. We, of course, received a copy of this complaint.

"Everytime you complain, it is just going to be a little more difficult for you to clear anything through Customs."

Senator HASKELL. Who told you this, Doctor?

Dr. JORGENSEN. That was a customs officer by the name of Mr. Angelo.

Senator HASKELL. And approximately when—

Dr. JORGENSEN. I can check back and find when the shipment arrived. It was I believe, in August of 1970.

Senator HASKELL. Thank you, sir. How have things been going since then?

Dr. JORGENSEN. After about a year of trying to file our own entries, I gave up. I turned everything over to a customs broker. The thing that amazes me is now I see errors being committed but which pass alright as long as I don't file the entry. These small technicalities that I had my papers rejected on, seem to be all right when someone else makes out the forms. I still have another problem with all mail entries under \$250 that arrive in Denver. These do not require a formal entry.

I receive numerous parcels which clear in New York, Los Angeles and many other ports of entry.

I have no control over what port these shipments are cleared through. I have not experienced at any port in the United States, except Denver, where custom officer refuses to take the invoice from a parcel or at least be willing to identify the parcel, so that I can supply the invoice.

I am consistently asked for invoices from the Port of Denver even though there is an invoice in each of the parcels.

I have letters showing that I have written and asked to have the parcel identified, having numerous parcels coming in from Switzerland, Germany, Denmark, it is quite impossible for me to know which invoice is needed unless I know which parcel is at the Post Office in Denver.

I asked to have the parcel identified and I once received three letters in answer stating that there wasn't time to make this identification or take out the invoice from the parcel.

The parcels are identified on the outside by a parcel number. I found in the third letter a suggestion that I come to Denver to identify the parcel. As I live 120 miles round trip, and it would take several hours to drive to Denver, I requested my broker to go over and identify the parcel so I could submit the correct invoice.

Senator HASKELL. This you have worked with other ports other than the Denver Port, and this is unique, this experience with the Denver Port; am I correct? I don't want to put words in your mouth.

Dr. JORGENSEN. This is correct.

I have consistently received packages from other ports, and I have never been refused identification of a parcel.

Senator HASKELL. But when you hire a broker, things seem to clear up. Is that correct?

Dr. JORGENSEN. I must pay a broker to go over to the post office to identify the parcel. Then I can send the required invoice.

Senator HASKELL. Let's go back to this manipulation.

When did that word first arise in your experience, and how did you find out what it meant?

Dr. JORGENSEN. I received an extra invoice from my customs broker, who had made the original entry, asking for \$7.62 this shipment for manipulation for customs, plus an extra brokerage charge for collecting this extra money.

I noted on their original invoice that an extra charge was going to follow for customs overtime. I received a copy of a résumé from U.S. Customs on manipulation charges—I don't know which port it was from—but it was from the Treasury Department.

The form stated all these different overtime charges, not only for my company, but for several importers. My overtime charge was underlined.

Senator HASKELL. Now, had you received this type of information in other ports that you do business with?

Dr. JORGENSEN. I never have.

Senator HASKELL. And certainly there is nothing, I presume, emergency about these items; not like perishable goods where you have to inspect them in the middle of the night.

I presume these would be routinely processed normally after the shipment comes in. Is that what happens?

Dr. JORGENSEN. These parcels quite often are in the post office for a couple weeks.

Senator HASKELL. In the post office?

Dr. JORGENSEN. Yes.

Senator HASKELL. And yet for parcels lying in the post office, you get an invoice for overtime for the Customs Service. Do I understand that correctly?

Dr. JORGENSEN. Yes.

Senator HASKELL. Thank you, sir.

When did they get started?

Dr. JORGENSEN. I can go through my files and find some. This one is dated March 11, 1975.

[The following material was subsequently submitted by Dr. Jorgensen:]

CHARLES M. SCHAYER & CO.

BENHAM BUILDING, 1812 CALIFORNIA STREET
PHONE 303/623-3127

Starflow Co.
2206 Estrella
Loveland, Colo.

DENVER, COLO. 80202

FOREIGN FREIGHT FORWARDING

- IMPORTS AND EXPORTS
- CUSTOMS BONDING

1/15/75

OUR INVOICE IS RETURNED TO:
TERMS: Payable upon presentation
RESPONSES CONCERNING CARRIER SERVICES
FOR YOUR ACCOUNT. PLEASE REFER TO
TARIFF

NEW ADDRESS:

SUITE 307 BLDG.
DENVER, COLO. 80202
SHIPPER INV.
YOUR REF.

IMPORT INVOICE
Sub Trade

EXPORT INVOICE

SHIPMENT OF: _____
VESSEL: _____
SAILING: _____

OCEAN FREIGHT _____
 INLAND FREIGHT _____
 CONSUL FEES _____
 CHAMBER OF COMMERCE FEES _____
 EXPORT CRATING _____
 MARINE INSURANCE _____
 RATE _____
 OUTPORT FEES _____
 PETTIES _____

EXPORT LICENSE APPLICATION _____
 PREPARING AND FILING - _____
 CERTIFICATE OF ORIGIN _____
 PREP. AND HANDLING OF - _____
 CONSULAR INVOICE _____
 PREP. AND FILING EXPORT DOC. _____
 SHIPPING, HANDLING, FORWARDING _____
 SPECIAL SERVICES (EXPLAIN) _____

TOTAL _____

Customs also manipulation charges on 5 other equip.

Ca 5955

CUSTOMS DUTY _____
 INTERNAL REVENUE TAX _____
 FORWARDING CHARGES _____
 CUSTOMS OVERTIME Manipulation _____
 PERMIT TO TRANSFER _____
 MAKING / MARKING SERVICE _____
 S/S REPORT _____
 BOND / EX VALUE _____
 ENTRY FEE _____
 ADD. INVOICE _____
 PETTIES, TELEPHONE, CABLES _____
 OUTSIDE EXAMINATION _____
 MESSENGER FEE _____
 CMS OVERTIME _____
 MISSING DOCUMENT _____
 OTHER _____

TOTAL

10.1

(1) CUSTOMS DUTY - THIS IS A EXPORT ONLY INVOICE TO CLARIFY ON INFORMATION OF THE SHIPPER BASED UPON THE U.S. CUSTOMS APPOINTMENT BOOK
 (2) REPORT FOR MISSING DOCUMENT _____
 SEPARABLE IF PRODUCED WITHIN _____

THANK YOU - CHARLES M. SCHAYER

Senator HASKELL. OK. Well, Dr. Jorgensen, I want to thank you very much for coming forward.

I think you should know that I particularly appreciate it, because a great many members of the importing public have made private complaints to my office, but due to fear have refused to come forward and testify.

It is quite obvious to me that this entire matter deserves further investigation either by this committee and/or by other agencies.

I want to personally congratulate you for your courage in coming forward.

Thank you, sir.

Dr. JORGENSEN. Thank you, sir.

Senator HASKELL. Mr. Miller, would you come forward?

Do you recall you are under oath?

Mr. MILLER. Yes, sir.

Senator HASKELL. You have heard the two people from the Combs-Gates Aircraft Co. describe the incident of the Canadian aircraft.

Would you have any idea how that came about?

Mr. MILLER. Yes, sir, I do.

The first I heard of this aircraft coming in was about 8 o'clock at night when Mr. Lobato called me and said this plane was coming in or wanted to come in.

Mr. Lobato had told me that he had told them that they needed 48 hours prior notification to grant landing rights here in Denver.

Senator HASKELL. Now, is that the normal routine customs?

Mr. MILLER. Yes, sir, on charters.

Senator HASKELL. On charters you need 48 hours advance notice?

Mr. MILLER. When they have over 15 passengers, yes, sir.

Senator HASKELL. Do you have a regulation that you can provide the committee to that effect?

Mr. MILLER. This is in letters from the U.S. Customs Headquarters. I believe they come from the region also.

Senator HASKELL. Mr. Maier, would you come forward, please?

You heard what Mr. Miller said. Do you confirm what he said?

Mr. MAIER. I would have to look at my file to see where the order originally—

Senator HASKELL. Is it usual to require 48 hours advance notice under the circumstances to which Mr. Miller has just testified?

Mr. MILLER. It is.

Senator HASKELL. And will you provide documentation for the record then?

Mr. MILLER. Yes.

[The following material was subsequently submitted by Mr. Miller:]

THE DEPARTMENT OF THE TREASURY,
BUREAU OF CUSTOMS,
Washington, D.C., May 13, 1974.

Circular: AIR-5-ICS

Subject: Air Commerce; Granting of Landing Rights to Scheduled and Supplemental Aircraft.

1. PURPOSE

To update instructions and assure a uniform policy for granting landing rights.

2. BACKGROUND

(a) Authority

Section 6.2(a) of the Customs Regulations defines the authority for the granting of landing rights. The Commissioner of Customs grants landing rights to regularly scheduled aircraft operated by scheduled airlines. District directors of Customs or Customs officers in charge are authorized to grant landing rights to charters and supplemental carriers. Landing rights are granted with the concurrence of other Federal inspectional agencies after it has been determined that adequate facilities and staffing are available.

(b) The Problem

Serious congestion problems have been developing principally at major gateway airports over the past several years and have now reached a crucial stage. Because of time factors abroad and for other reasons relating to their operations, the airlines schedule departures from foreign countries resulting in arrivals at United States airports during limited hours of the day causing peak periods of inspectional activity and serious problems of congestion. These problems are further magnified by the arrival of charter or supplemental flights during the same limited hours. Customs and other inspectional agencies find it more and more difficult to provide the manpower to meet their enforcement responsibilities and at the same time effectively serve the airlines and the public.

It has recently come to our attention that some charter airlines are entering at gateway airports without obtaining landing rights. Moreover, regularly scheduled carriers previously granted landing rights for scheduled arrivals are adding flights or entering charters without requesting landing rights for each flight. This may be the result of a misinterpretation of the regulations whereby the carriers have incorrectly assumed that landing rights are granted as blanket authority to land at an airport and once granted allows them to add flights or enter charters without requesting approval for each flight.

Landing rights are issued to air carriers for a specifically scheduled arrival and remain in effect indefinitely for that arrival if the flight continues to operate in accordance with the approved arrival schedule. Any changes in time or day of arrival, additions, or other changes require that a new request for landing rights be submitted to the appropriate Customs officer.

To correct any possible misunderstanding of the regulations, all current letters written at Bureau headquarters approving landing rights contain the following paragraph:

"The landing rights granted herein pertain only to those flights on the days and for the times of arrival listed in your letter. If any additional flights or charters are added or changes in scheduled arrival times are made in the future, a request for landing rights for each one will have to be made to the Commissioner of Customs in the case of regularly scheduled flights and to the appropriate district director of customs for supplemental flights."

3. ACTION

(a) Scheduled Aircraft

Local airline representatives should be informed when a new carrier plans to operate a new flight or an established carrier makes changes in its previously approved schedule, landing rights must be requested from the Commissioner of Customs. Additional arrivals during peak periods will not be approved if available inspectional manpower does not permit and the airlines may be required to adjust their schedules accordingly.

(b) Supplemental and Charter Aircraft

District directors are responsible for establishing the necessary communications channels that will insure advance consultation by air carriers with Customs regarding proposed flight schedules. When a supplemental carrier or charter operator intends to begin operating or to add flights, their local representatives should be informed that an application for landing rights must be made to the local Customs officer in charge. Except in the case of emergencies, all such requests must be lodged with Customs not less than 48 hours before the proposed time of arrival. If such request is oral, it shall be confirmed in writing prior to or at the actual time of arrival. Landing rights shall be denied when manpower is not available or facilities are overburdened, until necessary adjustments or rescheduling is accomplished.

District directors should immediately review the schedules which they have approved. To the extent that they believe that such schedules are seriously contributing to the peak period problem and that improvement is feasible by moving certain arrivals to other hours of the day, they should so advise the Bureau of Customs.

(c) Federal Inspection Facilities

A prerequisite for granting landing rights to any carrier is that adequate Federal inspection facilities are available at the port of arrival. The facilities must meet minimal standards of acceptability set by the Federal inspection agencies and must also provide adequate security to accomplish the Customs mission.

(d) Security

When landing rights are granted for supplemental or charter flights at an airport not staffed by the Customs Agency Service, the Special Agent in Charge at the office nearest the place of arrival shall be notified promptly of the anticipated time, date, point of arrival and expected passenger count. The district director or Customs officer in charge shall cooperate with Customs Agency Service personnel assigned to the arrival or, where necessary, at the request of the Special Agent in Charge, shall provide inspectional personnel for necessary security coverage, if special agents are unavailable for the assignment or to supplement the Customs Agency Service security coverage.

(e) Additional Requirements

Airlines should be advised to apply for landing rights sufficiently in advance to allow time for coordination with the other Federal inspection agencies and a timely reply. All requests for landing rights shall include a copy of the proposed schedule, flight number, type of aircraft, and passenger capacity.

(f) Landing Rights File

Copies of all Bureau letters granting landing rights will hereafter be sent to appropriate regional commissioners and district directors who shall notify Customs officers in charge at particular airports. The Customs officer in charge at each airport shall maintain a landing rights file to enable him to verify that advance approval has been given covering all arrivals at the airport. Regional commissioners will insure that all flights arriving at landing rights airports under their jurisdiction have been granted landing rights.

4. REPORTS

The contents of this Circular shall be made known to all carriers operating at landing rights airports within the jurisdiction of the several regions and Customs districts. Sixty days from the date of this Circular, a report shall be furnished the Bureau by regional commissioners of any carriers violating the provisions of section 6.2(a), Customs Regulations, in any respect covered above. In appropriate cases, penalty action under section 6.11, Customs Regulations, shall be instituted and a report forwarded to the Director, Division of Inspection and Control, Bureau headquarters.

File: IOS 233.11 R

MYLES J. AMBROSE,
Commissioner of Customs.

Senator HASKELL. That's all, Mr. Miller.

Mr. Angelo?

Mr. Angelo, you recall you are under oath?

Mr. ANGELO. Yes, sir.

Senator HASKELL. You heard Dr. Jorgensen say that you told him that the more he complained to El Paso, the more difficulty he would have.

Do you have any comment on that?

Mr. ANGELO. I do not recall that conversation with Dr. Jorgensen.

Senator HASKELL. And in other words, you deny you ever said any such thing?

Mr. ANGELO. Yes, sir.

Senator HASKELL. That's all, Mr. Angelo.

Thank you.

Now, it is a pleasure to call Sue Furniss, who is the Colorado representative of my friend and colleague, Mr. Gary Hart.

Ms. FURNISS. Thank you, Senator Haskell.

I would like to read a statement, please, from Senator Hart.

Senator HASKELL. Sure.

Ms. FURNISS. I am happy to have this opportunity to commend Senator Haskell for holding hearings on the activities of the U.S. Customs Service in Denver and region VI.

Since taking office, I have received numerous complaints from my constituents in two areas: Employment policies and the treatment accorded citizens going through customs.

My staff and I have appreciated the investigation Senator Haskell conducted so far and the expertise he has been able to provide us in responding to constituents.

I look forward to reading the testimony offered here today and hope that a copy of this committee's report can be forwarded to me when the work is completed.

Senator HASKELL. Thank you very much, Ms. Furniss.

The hearing record will stay open for 2 weeks.

I should ask one thing.

I know that the representatives of the employees did not have an opportunity to testify at the hearing in Washington, although they submitted some testimony at a later date.

I understand that Mr. Robert Tobias is here.

If he has anything that he would like to say, I would like to give him this opportunity.

Mr. TOBIAS. Thank you, Senator.

I just would like to make a couple of comments.

I think based on what was said this morning, especially with respect to the questions about the 1911 act and particularly with respect to your reference to the question—I can't remember who you asked—about the profitability of scheduling a particular shift, I think it is important to keep in mind that we must ask: Is it profitable to whom?

Is it profitable to the taxpayers or profitable to the people who use this particular service?

If a second or third shift is regularly scheduled, then the taxpayers pay for it.

That cost is passed on to the taxpayers in the form of appropriations to the U.S. Customs Service.

If it is a specialized service that's necessary to accomplish a particular task, like a charter flight that arrives at 4 a.m. in the morning, then that's something that people who used that service should pay for. Taxpayers should not be required to pay employees for eight hours when they work only a few minutes.

The fact that users pay for the service is really, I believe, the essence of the 1911 act and the essence of why it works as well as it does.

In considering the 1911 act, I think it is important that you focus on who is paying for those services: The taxpayers or the people who are in business to profit from its use?

I think another thing that has come out of your questioning of some of the management officials in region VI., is that perhaps they weren't as knowledgeable about what was going on in their own area as they should have been, and it is incredible to me that a district director doesn't know about the operation of the 1911 act.

Senator HASKELL. I find it difficult.

Mr. TOBIAS. On behalf of the employees in the Denver Port, I think that they have been subjected over a period of time to many changes in how they are to perform their jobs. After all, they perform their jobs pursuant to directives from that port director.

If the policy in the office is to require certain paperwork to clear a shipment or 48 hours notice to clear a plane, then that's what they do.

Now if that policy changes from 6 months to 6 months or year to year, that's not the responsibility of the customs inspector who is out there meeting the public.

That's the responsibility of the management official who is making that decision.

So, it seems to me that much of the problem that has been incurred in this Denver Port has been the result of management officials who have failed to have a consistent enforcement policy.

Importers, charter operators and brokers should know what it takes to get material cleared; what it takes to get a plane cleared at 4 a.m. in the morning or whether a customs inspector or the airline is required to supply the names of the individuals flying charter aircraft. The rules must be known in advance and consistently enforced.

The fact is, the customs inspectors don't have the names of people who fly the aircraft on a charter flight. So, they request the people who are responsible for the charter to supply it.

Now, that's the kind of thing it would seem to me the port director would communicate to the charter people and tell them, this is what we are going to require, so that everyone knows what the operating policy is.

That's not the responsibility of the customs inspector. That's not what he is paid to do.

He is paid to handle the rules and regulations as they are articulated by the regional director, not to make the policy, and I think that there are several Customs employees who have been the brunt of unjustified criticism and as a result of some very poor management practices.

Senator HASKELL. I don't know whether you are knowledgeable on the U.S. Bureau of Customs regulations themselves, but are you aware of this 48-hour regulation concerning the charter flight apparently having more than 15 people.

Mr. TOBIAS. I cannot provide you with a cite to that, Senator, but I am aware that in the kind of port that Denver is, there is that kind of requirement.

That is not a requirement amenable to the Denver Port.

Senator HASKELL. You are aware there is a 48-hour requirement?

Mr. TOBIAS. Yes, sir.

Senator HASKELL. OK. All right.

Thank you, sir, very much indeed.

I don't know whether the people from the Combs-Gates Aircraft Co. are still here or not.

They are. If so, would you mind coming forward again and let me talk to you a little bit more about this clearing of aircraft?

Really the only thing I wanted to ask you, you have trouble with this aircraft of the hockey team giving you what you thought was normal notice and then being told you have to have 48-hours' notice.

Then, you heard members of the customs say before you have a charter craft carrying more than 15 people, you need 48-hours' notice.

I just want to ask you as a matter of fact if you ever had a charter plan with 15 or more people in it cleared on less than 48-hours' notice?

Mr. LACY. To my knowledge, I don't know.

Do you know?

Miss ROZINSKI. I don't know either. We don't have that many charters with more than 15 people.

Would you mind—would it be too much to ask you to check your files for the last 12 months and see if there are in fact some charter flights with more than 15 people that have been cleared on less than 48-hours' notice?

I think we ought to have it for the hearing record one way or the other.

Mr. LACY. We'll try to find out if there was.

[Mr. Lacy subsequently communicated that he could locate no record of a flight cleared in less than 48 hours.]

Mr. ROJEK. On the basis of the information I learned during the recess, it seems to me this particular incident arose out of some confusion amongst the parties involved as to whether or not the aircraft that was coming in for that 4 a.m. clearance was a "private" aircraft, to which one set of rules will apply, or whether it was a "charter" aircraft, to which another set of rules would apply. It was that difference of opinion, an honest difference of opinion, and the confusion that grew out of it, that led to the misunderstanding at the time.

The aircraft was, in fact, serviced at 4 a.m. upon its arrival.

It wasn't delayed. It is our understanding that the Canadians who leased that aircraft are pursuing the matter further to determine, by way of a decision from customs headquarters, whether or not they as a club would qualify for clearance of their aircraft as a "private" aircraft.

Senator HASKELL. In other words, what you are saying, Mr. Rojek, is that your rules are different for charter and for private?

Mr. ROJEK. That is correct, sir. A private pilot bringing his own aircraft out of Canada does not have to give us the same amount of advance notice we need to clear a chartered aircraft, because normally one man can turn out and clear that private aircraft.

Say you have an individual and two persons onboard, it only takes one man to provide customs inspection and clearance.

On the other hand, if you have a charter with passengers in excess of 15, it is necessary to arrange for sufficient additional personnel to turn out to meet the plane and clear it.

Senator HASKELL. Suppose you have a private aircraft with personnel in excess of 15?

Mr. ROJEK. I don't know what the local rule is here. Obviously, there has to be some advance notice so that we can schedule a sufficient number of inspectors to clear the plane and passengers expeditiously.

Senator HASKELL. Forty-eight hours?

Mr. ROJEK. I would have to refer that to the local port director, but a requirement of 48-hours' advance notice would not be unreasonable in the light of national directives in this area.

Senator HASKELL. I will ask these ladies and gentlemen from Gates to check their files to see what time length they have been told was necessary for clearance for either private or charter flights with 15 or more people.

Thank you very much.

Now, as I said before, the hearing record will stay open for 2 weeks to receive the documentation that I requested plus any other documentation that may be desired to be submitted.

The hearing will be adjourned at the call of the Chair.

I would reiterate that I think there are certain other aspects of the situation that probably should be looked into either by this committee or by another organization.

I thank you very much for coming.

[At the request of the chairman the following communication was made part of the record:]

STATEMENT OF VINCENT L. CONNEBY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

My name is Vincent L. Conneby. I am President of the National Treasury Employees Union. Our Union has been elected the exclusive representative of nearly 80,000 employees of the U.S. Department of Treasury, which includes employees working in the Internal Revenue Service, the Bureau of Alcohol, Tobacco, and Firearms, and the U.S. Customs Service.

Our purpose in submitting this statement is to safeguard the rights of the 4,700 dedicated and conscientious Customs Inspectors around the nation. We are hopeful that the Subcommittee, during its investigation into alleged misconduct at the port of Denver, will share our concern that the vast majority of Customs Inspectors will not suffer because of charges made against a few.

We feel that if any charges are to be brought against Customs Inspectors in Denver they should be adjudicated in the proper forum with due regard for the employees' rights. We fail to see what good, if any, could be accomplished through legislation. Such action would only have an adverse effect on the Customs Service itself and the thousands of Inspectors who are innocent of any wrongdoing.

Our main concern with these proceedings is that the statutes regarding premium pay for Customs Inspectors remain intact. In 1911, the daily overtime premium, which was fixed by Customs Regulations as early as 1874, became authorized by law. In 1920, premium pay for inspectional overtime was extended by law to Sundays and holidays. The principle of premium pay at double time for inspectional services was re-affirmed in 1922 when the 1920 amendment was expressly applied to customs services performed at border ports, and again in 1931 when the premium rates available to Customs Inspectors were extended to comparable services performed by Immigration Inspectors.

Each time Congress has considered the overtime law it has determined that Customs Inspectors should be adequately compensated for the demands made upon them and has maintained the principle that the Government has no obligation to provide free, 24 hour customs service to the carriers. It must be emphasized that these laws save the taxpayer millions of dollars every year, because *the main cost of overtime is borne by the carriers, not by the Federal Government.*

We are concerned about the inordinate amount of attention given to certain extreme cases of overtime earnings as mentioned in the General Accounting Office Report, number GGD-74-91, Premium Pay for Federal Inspectors at U.S. Ports-of-Entry. The fact of the matter is that the average yearly overtime pay earned by a Customs Inspector is \$8,925. To concentrate on a few extreme examples as the GAO did in its report, is extremely unfair to all Customs Inspectors.

The grade level for Customs Inspectors is GS-9, which pay \$18,482 a year at step 1. A few are Senior Inspectors, who are paid at the GS-11 level or \$16,255 at step 1.

The average Customs Inspector, then, earns around \$20,000 a year. However, we are not discussing a position that entails spending forty hours a week at a desk. To earn such an amount an Inspector would have to work between fifty and sixty hours a week including many hours of night duty and weekend work.

Customs Inspectors are men and women whose job requires that they be alert, of high intelligence, and familiar with a multitude and variety of complex laws; men and women who are required to work long, irregular hours and continuously subject themselves to the possibility of personal harm. If an individual attempting to cross a border or a shipper is acting illegally, it is the Customs Inspector who must make the initial apprehension. The overtime law is one of the few elements of the job that has enabled the Government to attract and retain qualified men and women in the position of Customs Inspector.

It is grossly unfair to characterize these Inspectors' overtime as "gravy," as some elements of the press have done in referring to the GAO report. When a person is subject to call back any hour of the day or night in all kinds of weather, often under hazardous conditions to clear a flight or board a ship, it is not gravy.

Regarding the GAO report in general, we are disappointed at its lack of depth regarding the issues, and the shortsightedness of its recommendations. Of the hundreds of ports-of-entry in the United States, the GAO saw fit to survey only eight: 4 airports, 2 border crossings, and 2 seaports. We feel that any conclusions drawn from such a small sample of a much larger statistical universe must be suspect.

Concerning the actual amounts of overtime earned, the report has only three sparse tables. One of these contained the highest amounts of overtime earned by Inspectors at four locations. The other two dealt with average amounts of overtime earned and percentage of overtime earned on Sunday at each of the eight locations surveyed. Considering the complexity of the question at hand and the thoroughness with which GAO usually conducts an investigation, we can only conclude that this was not one of GAO's better efforts.

Where were the charts reflecting the full range of overtime earned by Customs Inspectors? Where were the statistics on the actual hours worked as related to overtime pay earned? Where was the data on the number of Inspectors who worked overtime compared to the number employed? Had these been included, perhaps GAO's conclusions would have been different.

What we read instead is a series of examples—reminiscent of grade school arithmetic—where we are given the provisions of the governing statute regarding overtime, the hours and times worked, and shown how pay was determined. This approach did little to represent a comprehensive and accurate reflection of the overall situation. Rather, it concentrated on isolated instances instead of valid statistical references.

Thus, it was not surprising to us to read the recommendations proposed by GAO. We feel they are the direct result of the deficiencies inherent in the report itself.

The recommendations of the report are twofold: 1) that Congress enact one premium pay law to apply to the four inspection agencies for services provided at ports-of-entry. The four inspection agencies involved are Custom Services, Immigration and Naturalization Services (INS), Animal and Plant Health Inspection Services (APHIS), and Public Health Service (PHS). To insure uniformity it is further recommended that the responsibility for issuing and implementing regulations be given to an agency such as the Civil Service Commission; 2) that Congress establish uniform policy on charges to be made to parties in interest (the carriers) at ports-of-entry and that Congress consider legislation requiring that there be specific times and days when the full cost of overtime be charged to the parties in interest.

Though the idea that premium pay statutes for Federal Inspectors be uniform does have a certain simplistic appeal, it is totally unrealistic. And the alternatives GAO proposes to implement this idea are regressive at best.

GAO proposes that the overtime rates of Federal Inspectors could be tied to those paid under the Federal Employees Pay Act. Basically, the FEPA provides for all overtime to be paid at one and one-half times the employee's basic hourly rate limited to the minimum overtime rate of a GS-10. Holiday work is compensated at the basic rate for hours worked plus regular pay.

What this proposal fails to consider is that the overtime rates for Customs Inspectors were in effect for almost 50 years before premium rates of any kind were provided federal employees as a whole. In enacting the FEPA, Congress specifically exempted the Customs overtime statutes.

GAO also fails to consider the unique nature of the Inspector's position. The Customs Inspector's services are required at times when most others are not. Other federal employees are not subject to the long hours, continuous on-call status and hazardous duty. The other inspectional services do not have the same demands placed upon them as Customs, and this is not to denigrate in any way the role of other inspection agencies. More Customs Inspectors are subject to overtime duty than any other Federal Inspectors. Customs has more laws to enforce requiring a greater work force. In addition, as you heard in previous testimony, Customs enforces 1400 laws for 40 other agencies.

Our union has consistently sought to obtain for federal employees a level of benefits that are truly comparable to those in private industry. In 1911, the Congress saw fit to compensate Customs Inspectors for the demands made upon them. Overtime rates for those private sector employees whose work is most akin to that of Customs took 40 years to catch up with the 1911 law. Now, however, these rates have become the norm in comparable private sector occupations, such as dock workers and air transport personnel.

The overtime compensation rates provided by the FEPA are the minimum premium rates in both industry and Government. Yet it is these the GAO recommends. To implement this recommendation, Congress would have to repeal or drastically modify a law which has served as a model for private industry for more than 64 years. To curtail one of the few areas in which benefits afforded Federal employees are truly comparable with those of private industry would be regressive, illogical and counterproductive.

The GAO also proposed to establish uniformity based on the rates paid Public Health Services Inspectors. PHS Inspectors are called in only for the arrival of chartered flights from countries with known health problems or if there is sickness aboard. In most of the examples cited in the report, there were no PHS Inspectors involved. PHS Inspectors work the fewest hours and receive the least generous overtime compensation of all Federal Inspectors. Yet these are the rates GAO suggests using as a model. This goes against all logic; it is absurd. If anything, other Federal Inspectors performing similar duties as Customs Inspectors should be brought into the oldest and most tested overtime statute, not the reverse.

Perhaps the most outrageous—and, to us, infuriating—statement contained in the GAO report is found on page 37, and I quote:

"In our opinion, the present system results in a vicious circle, which can be broken only with new legislation. The premium pay rates are now apparently so attractive that many inspectors willingly work the long and irregular hours required to earn the premium pay which greatly increases their gross annual pay. Only by making such work less attractive . . . will the employees willingly relinquish some of the long hours they now work."

To imply that Customs Inspectors choose to work such long and arduous hours or that their work is "attractive" is ridiculous. It is the hours of arrival set by carriers and shippers that dictate when Customs Inspectors are called to work, not administrative or personal decisions. There is nothing attractive about being called out of bed in the middle of the night in freezing temperatures to board a ship at a rat infested pier, and inspect the cargo. There is nothing attractive about being called back to work after your regular shift is over or on a day off to clear a shipment of explosives or radioactive material.

The Customs Service itself stated in the Appendix of the GAO report that some Inspectors have actually rebelled at excessive overtime assignments. To suggest that overtime compensation for Customs Inspectors should be made less "attractive" so that these employees will not want to work overtime exhibits a myopic disregard for the facts, hardly what one would expect from the investigative arm of Congress.

The alternatives GAO proposes to implement its second recommendation—regarding uniform conditions for reimbursement—are equally lacking in substance and logic.

The basic flaw in their recommendation is pointed out in the letter from the Customs Service contained in the appendix of the report and I quote:

"The nature of the Customs overtime statute, 19 U.S.C. 267, makes inseparable the overtime compensation paid the employee and cost recovery (reimbursement) from the requesting parties-in-interest. Despite the inseparable nature of the current law, the GAO report separates these two basic elements, compensations and reimbursement, and offers two separate sets of alternatives. The report, however, is silent with respect to the cost consequences of such an approach."

The key phrase is "cost consequence." The Customs Service foresees needed additional funding of at least \$28 million if the GAO's first alternative—no charge to parties-in-interest—were to be implemented. At a time when we are constantly reminded by the Administration and some members of Congress to "trim the fat," what would be the justification for this course of action? Congress would be placed in the absurd situation of transforming a money-saving operation into one more financial burden for the taxpayer simply to appease a group of carriers. Such action runs against all fairness and common sense.

Another alternative suggested by GAO is that the parties-in-interest pay the full cost of all inspection services. Besides being 180 degrees from the first proposal, their alternative does not clearly indicate whether inspections made during regular hours are included. Since the carriers oppose the present system, we can imagine what their reaction would be to this course of action.

The GAO also suggests that at each port of entry, there be established specific times when the full cost of inspections be charged to the party-in-interest. With minor exceptions, this seems to be the policy now in effect.

These alternatives again illustrate the overall shallowness of the report. GAO suggests every possible course of action, charge the carriers for all inspections, have the government pay for all inspections, and leave things the way they are. What they do not mention are any valid reasons or programs to implement their suggestions. These contradictory, poorly reasoned arguments are no basis for changing the 1911 law.

The arguments of the carriers themselves against reimbursement have also been historically fraught with contradiction. The testimony of the two carriers before this Subcommittee point out these inconsistencies.

The representative of the travel service who books chartered flights complained of the overtime charge and went on to suggest that Denver stay open from 1 p.m. to 9 p.m. seven days a week to eliminate overtime.

The second witness, representing a freight broker, complained of Inspector arrogance and the fact that after the investigation some Inspectors refused to handle overtime cases, making customers wait until the next day.

These conflicting arguments point out the basic paradox of the carrier's stated position. They want the convenience of having their flights cleared on overtime but do not want to pay for it. They're unhappy when a work force is assigned to clear their after hours flights, and unhappy when no work force is there.

What the travel agent in effect was saying is that the port of Denver's normal hours of operation should coincide with what would suit his needs. This seems to be a rather audacious statement to make before a Senate Subcommittee. He went on to solemnly declare that a law passed at a time when the Wright brothers were still conducting experiments has no relevance to today's world.

This argument is untenable. What relevance does the mode of transportation have on the issue? Whether cargo arrives by plane, train, or ship—in containers or otherwise—overtime work is demanded by the carriers so that their goods can be cleared with dispatch. For the Customs Service to schedule a shift at every port to cover every arrival would cost the government countless millions of tax dollars.

The adage that "time is money" is more true in today's complex, fast-moving society than in 1911. The cost to the carriers is paltry compared to what they would lose if their flights and shipments had to be delayed until clearance during normal working hours. The carriers want the convenience, and the economic benefits, of prompt Customs clearance, and they want the government to pick up the tab.

As the Customs Service stated in its letter to the GAO:

"The statement that aircraft and vessel operators arriving outside of regular hours of service cannot realistically detain their passengers is true. The statement that they have no option, in these circumstances, but to request overtime services is also true. What is not true is that they have no option as to their arrival time".

The letter also states that hours of service at international airports are scheduled by Customs to provide the greatest efficiency of service to the carriers based on their published schedules. The arrivals of charters and private aircraft are usually known in advance but are too unreliable to schedule tours of duty. Ships are even less reliable due to such factors as offshore fog and rough seas. Undoubtedly, carriers cannot be blamed for such factors as delay at points of takeoff or bad weather. What they can effect though are changes in scheduled arrivals. As long as the carriers continue to schedule arrivals; and demand customs clearance, during off hours, someone will have to pay the bill.

The 1911 law serves the interest of the United States and its citizens in yet another manner. The facts indicate that more foreign carriers are requiring overtime services than U.S. carriers. In the Philadelphia Port District, for example, 118 foreign steamship lines are served as opposed to only 18 U.S. lines. To modify the law would have the effect of asking the U.S. Government to subsidize the overtime costs incurred mainly by foreign carriers.

There is no reason or justification for the U.S. taxpayer to absorb the overtime charges incurred by foreign interests, whose profits in no way accrue to the benefit of U.S. taxpayers, but, on the contrary, benefit only the private ownership of these foreign companies.

The same is true of the scheduled overtime arrivals of the foreign air carriers. Many of these airlines and cargo ships are operated by their national governments and are in direct competition to our U.S. carriers. To provide free overtime services to them would reduce their operating costs, and give them an even more advantageous competitive posture than they already enjoy against U.S. carriers.

We feel that the 1911 law has served the United States Government and the American taxpayer well. There is absolutely no reason for the public to subsidize the operations of the carriers. The law has also protected Customs Inspectors and guaranteed their right to a fair and just wage. Neither the contradictory, self-serving arguments of the carriers nor the shallow, unsubstantiated recommendations of the GAO report are sufficient justification for Congress to tamper with the 1911 law.

In conclusion, let us repeat that we are not in any way trying to hinder the work of the Subcommittee or interfere with its investigatory power. Our concern is that the thousands of honest, diligent Customs Inspectors do not get caught in a backlash; that the vast majority not be penalized because of the unproven actions of the few. It is our position that there is no reason to in any way modify the law governing premium pay for Customs Inspectors. To do so would be a detriment to the efficiency of the Customs Service and an injustice to some of the most dedicated workers in the United States Government.

On behalf of the Union I represent, let me offer our sincere gratitude for the opportunity to present our views to the Subcommittee.

CERTIFICATION

STATE OF COLORADO
CITY AND COUNTY OF DENVER

I, Curtis J. Slettum, a Certified Shorthand Reporter of the State of Colorado, do hereby certify that the above and foregoing is a true and correct transcript of my shorthand notes taken at the time and place as set forth on page one thereof.

Dated at Denver, Colorado, this 15th day of December, 1975.

CURTIS J. SLETTUM,
Avery Reporting Service,
Certified Shorthand Reporter and Notary Public.

[Whereupon, proceedings concluded at 11:33 a.m.]