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# COLLECTION OF FEES FOR SERVICES UNDER NAVIGATION LAWS

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## HEARING

BEFORE THE

### SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES

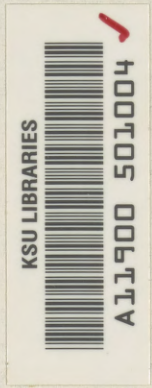
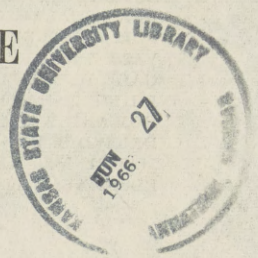
OF THE

### COMMITTEE ON COMMERCE UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

## S. 1875



TO REPEAL AND AMEND CERTAIN STATUTES FIXING OR PROHIBITING THE COLLECTION OF FEES FOR CERTAIN SERVICES UNDER THE NAVIGATION LAWS

AUGUST 11, 1965

Serial No. 89-51



Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1966



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COLLECT FEE FOR SERVICE UNDER NAVIGATION LAWS

## COLLECTION OF FEES FOR SERVICES UNDER NAVIGATION LAWS

WEDNESDAY, AUGUST 11, 1965

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES,  
Washington, D.C.

The subcommittee met at 10:05 a.m., in room 5110, New Senate Office Building, Hon. E. L. Bartlett presiding.

Senator BARTLETT. The subcommittee will be in order.

The purpose of the hearing this morning is to consider S. 1875, a bill to repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws. This bill was to come on for hearing last Friday, August 6, but was postponed until today so other members of the committee and witnesses could have an opportunity to appear and participate in the hearings. (The bill follows:)

[S. 1875, 89th Cong., 1st sess.]

A BILL To repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following provisions of law are hereby repealed:

- (a) Section 2654 of the Revised Statutes (U.S.C., 1958 edition, title 19, sec. 58).
- (b) Section 4381 of the Revised Statutes, as amended (U.S.C., 1958 edition, title 46, sec. 329).
- (c) Section 4382 of the Revised Statutes, as amended (U.S.C., 1958 edition, title 46, sec. 330).
- (d) Section 4383 of the Revised Statutes (U.S.C., 1958 edition, title 46, sec. 333).
- (e) Section of the Act of February 19, 1920, c. 83, 41 Stat. 436, 437 (U.S.C., 1958 edition, title 46, sec. 53).

SEC. 2. Section 2792 of the Revised Statutes, as amended (U.S.C., 1958 edition, title 19, sec. 289, title 46, secs. 110, 112, and 124), is further amended to read as follows:

SEC. 2792. Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from tonnage tax while such service triweekly or oftener is maintained."

SEC. 3. Section 4221 of the Revised Statutes (U.S.C., 1958 edition, title 46, secs. 113 and 125) is amended to read as follows:

"SEC. 4221. In cases of vessels making regular daily trips between any port of the United States and any port in the Dominion of Canada, wholly upon interior waters not navigable to the ocean, no tonnage fees shall be charged against such vessels by the officers of the United States, except upon the first clearing of such vessel in each year."

SEC. 4. Section 2793 of the Revised Statutes, as amended (U.S.C., 1958 edition, title 19, sec 288 title 46, secs. 111 and 123), is further amended to read as follows:

"SEC. 2793. Enrolled or licensed vessels engaged in the foreign and coasting

Staff counsel assigned to this hearing: William C. Foster.

trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of tonnage tax; but such vessels shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of the Treasury may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel."

Sec. 5. Section 1 of the Act of June 19, 1886 (ch. 421, 24 Stat. 79), as amended (U.S.C., 1958 edition, title 46, sec. 331), is further amended: (a) by deleting from the first sentence the phrases (1) "collectors or other officers of customs or by"; (2) "Measurement of tonnage and certifying the same except that the compensation and necessary travel and subsistence expenses of the officers so measuring or certifying such vessels at the request of the owners thereof at a place other than a port of entry or a customs station shall be paid by such owners; issuing of license or granting of certificate of registry, record, or enrollment including all indorsements on the same and bond and oath; indorsement of change of master; certifying and receiving manifest, including master's oath, and permit; granting permit to vessels licensed for the fisheries to touch and trade; granting certificate of payment of tonnage dues; recording bill of sale, mortgage hypothecation, or conveyance, or the discharge of such mortgage or hypothecation; furnishing certificate of title, furnishing the crewlist, including bond; certificate of protection to seamen; bill of health;" and (3) "apprenticing boys to the merchant service;"; and (b) by deleting from the second sentence "Collectors or other officers of Customs," and by capitalizing the word "Inspector" at the beginning of the sentence.

Sec. 6. Subsection I of section 30 of the Act of June 5, 1920 (ch. 250, 41 Stat. 988, 1002 (U.S.C., 1958 edition, title 46, sec. 927)), is amended by deleting the last two sentences.

Sec. 7. Nothing contained in this Act shall be construed to prohibit the fixing of fees, charges, or prices under the authority of title V of the Act of August 31, 1951 (ch. 376, 65 Stat. 268, 290 (U.S.C., 1958 edition, title 5, sec. 140)).

(The agency comments follow:)

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., May 25, 1965.

B-135384.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of May 6, 1965, transmitted copies of S. 1875, S. 1889, and S.1890 and requested our comments thereon.

S. 1875 is identical with S. 2365, 88th Congress, the subject of our letter to you dated January 2, 1964, B-135384. The bill would repeal or amend certain existing statutes which establish the amount, or prohibit the collection, of fees for various services furnished under the navigation and vessel inspection laws and would enable the Secretary of the Treasury, by regulations issued under authority of the act of August 31, 1951 (5 U.S.C. 140), to establish fees for such services commensurate with their cost to the Government.

In our audit report to the Congress on the Bureau of Customs for the period January 1, 1952, through June 30, 1954 (pp. 63-65) we called attention to the costs incurred by the Bureau in the performance of admeasurement and documentation services and recommended prompt repeal of the statutory prohibition (46 U.S.C. 331) against the charging of fees for such services. This recommendation was based upon the policy expressed by the Congress in the act of August 31, 1951, that the cost to Federal agencies of performing services of value to special beneficiaries should be recovered.

We are therefore in agreement with the general purposes of S. 1875 and recommend its enactment.

Attention is invited to the word "triweekly" in lines 9 and 12, page 2, of the bill. We understand this word is intended to describe service three times a week. However, in view of the fact that the word is also used to describe an

occurrence every 3 weeks, you may wish to consider amendatory language to clarify the intended meaning.

Also, it is noted that section 3 of S. 1875, which proposes to amend section 4221 of the Revised Statutes (46 U.S.C. 113 and 125), refers to vessels making trips between ports in the United States and ports in Canada "wholly upon interior waters not navigable to the ocean \* \* \*." This wording, which also appears in the present statute, probably is intended to refer to the Great Lakes, since those bodies of water are the principal "interior waters" upon which a vessel could travel between the United States and Canada. However, since the opening of the St. Lawrence Seaway, the entire Great Lakes-St. Lawrence system is now navigable in fact to the ocean. Hence it may be that the Great Lakes must now be deemed in law as being "navigable to the ocean." See *United States v. Appalachian Electric Power Co.* (311 U.S. 377). If such be the case, vessels operating between the United States and Canada on the Great Lakes would no longer be within the exemption granted by section 4221 of the Revised Statutes, regardless of whether this bill is enacted into law. The committee may desire to consider whether the cited language should be changed in order to insure that vessels operating on the Great Lakes are still covered by section 4221. This could be accomplished by deleting the words "not navigable to the ocean."

The remaining bills, S. 1889 and S. 1890, are the subjects of separate communications.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

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GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
*Washington, D.C., May 19, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in further reply to your request for the views of this Department with respect to S. 1875, a bill to repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws.

The Department has no objection to favorable consideration of the bill.

S. 1875 was introduced at the request of the Treasury Department, and would amend or repeal various statutes relating to the charging or collection of fees for certain services performed with respect to vessels by the Bureau of Customs.

Among the services involved are admeasurement of vessels, registry of vessels, issuance of enrollments and licenses or licenses, renewals of licenses, issuance of special certificates to vessels, authorization for changes of names of vessels, furnishing and recording abstracts of title of vessels, recording of evidence of title to, and encumbrances upon, vessels and the discharge of the latter, entry and clearance of vessels, furnishing certificates of ownership of vessels, furnishing copies of documents, records, or other papers filed in offices of collectors of customs or in the Bureau of Customs, and certifying such copies.

The bill would permit the Secretary of the Treasury, under authority of title 5, United States Code section 140, to prescribe such fees for these services as he determines to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts. The bill is in accordance with national policy with respect to user charges.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES, *General Counsel.*

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FEDERAL MARITIME COMMISSION,  
*Washington, D.C., May 14, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of May 6, 1965, for the views of the Federal Maritime Commission with respect to S. 1875, a bill to

repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws, and S. 1889, a bill to require the inspection of certain towing vessels.

Inasmuch as the bills do not affect the responsibilities or jurisdiction of the Commission, we express no views as to their enactment.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the administration's program.

Sincerely yours,

JOHN HARLLEE,  
*Rear Admiral, U.S. Navy (retired), Chairman.*

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U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., June 18, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1875, a bill to repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,  
*Deputy Attorney General.*

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DEPARTMENT OF STATE,  
*Washington, June 9, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce, U.S. Senate.*

DEAR MR. CHAIRMAN: Thank you for your letter of May 6, 1965, requesting the views of the Department of State on S. 1875, a bill to repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws.

The specific provisions of the bill are matters within the competence of the Secretary of the Treasury. The Department of State, therefore, while perceiving no objections from a foreign policy standpoint, offers no comment as such to such specific provisions, and defers to the views of the Secretary of the Treasury.

The Bureau of the Budget advises that, from the stand point of the administration's program, there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS MACARTHUR II,  
*Assistant Secretary for Congressional Relations  
(For the Secretary of State).*

Senator BARTLETT. When testimony on this bill has been taken, the subcommittee will proceed to consider the bill S. 2217. And then we will hear witnesses on recent reports of the plan of the Government to construct fishing vessels in Poland.

We are glad to have Senator Dominick present at the hearing.

The first witness, on the bill S. 1875, is Mr. Robert V. McIntyre, Deputy Commissioner, Office of Regulations and Rulings, Bureau of Customs.

We welcome you back, Mr. McIntyre.

**STATEMENT OF ROBERT V. McINTYRE, DEPUTY COMMISSIONER,  
OFFICE OF REGULATIONS AND RULINGS, BUREAU OF CUSTOMS,  
TREASURY DEPARTMENT; ACCOMPANIED BY G. R. DICKERSON,  
ASSISTANT DEPUTY COMMISSIONER, OFFICE OF COLLECTORS  
OPERATIONS, BUREAU OF CUSTOMS, TREASURY DEPARTMENT,  
WASHINGTON, D.C.**

Mr. McINTYRE. Thank you, Mr. Chairman.

My name is Robert V. McIntyre, Deputy Commissioner, Office of Regulations and Rulings, Bureau of Customs, Treasury Department. I have with me this morning Mr. G. R. Dickerson, Assistant Deputy Commissioner, Office of Collectors Operations in the Bureau of Customs.

Senator BARTLETT. Mr. McIntyre, I think I put this question the other day.

Mr. McINTYRE. I appreciate this opportunity to appear before your committee to express the views of the Treasury Department on S. 1875, to repeal and amend certain statutes fixing or prohibiting the collection of fees for certain services under the navigation laws. The bill incorporates draft legislation submitted to the President of the Senate by Secretary of the Treasury Dillon on March 26, 1965.

S. 1875 concerns only those services performed by officers and employees of the Bureau of Customs under the navigation laws in connection with the admeasurement, documentation, and entry and clearance of vessels at ports of the United States.

We believe that the purpose of this bill is in accord with the sense of the Congress as expressed in the act of August 31, 1951 (65 Stat. 290; 5 U.S.C. 140), that—

any work, service publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency \* \* \* to or for any person \* \* \* shall be self-sustaining to the full extent possible.

Because that statute provides that nothing therein shall repeal or modify existing statutes prohibiting the collection of, or the fixing of the amount of, any fee, and because existing statutes establish fees for certain services performed under the navigation laws and prohibit the collection of fees for others, the Treasury Department presently lacks authority to establish a realistic schedule of fees for such services. The bill which you are considering would, by repealing or amending those statutes, enable the Secretary of the Treasury to establish a schedule of fees which would reimburse the Government for the reasonable value of certain services performed under the navigation laws primarily for private interests, in harmony with the expressed sense of the Congress. We believe that instead of listing the services and establishing the fees in a statute, the Congress should vest in the Secretary the authority to determine those services which shall be subject to fees, and the amount of such fees, thus providing a flexibility necessary to make periodic adjustments as experience and need dictate.

If S. 1875 is enacted, it is the Department's intention to give notice of proposed rulemaking pursuant to the provisions of the Administrative Procedure Act, in order that the suggestions of all

interested parties may be received and considered, and then to establish a schedule of fees which, insofar as practicable and taken as a group, will enable certain services performed under the navigation laws to be self-sustaining. A schedule of such services and of the proposed fees was submitted with the draft legislation. It should be emphasized that the Department does not view this bill as a revenue-raising measure but that, nevertheless, its enactment, as indicated in that schedule, would reimburse the Government almost \$2 million annually for services performed.

In these circumstances, the Treasury Department recommends enactment of S. 1875.

Thank you, Mr. Chairman, for this opportunity to present the opinions of the Treasury Department.

(Attachment to the statement follows:)

PROPOSED FEES AND ESTIMATED REVENUES FROM DOCUMENTATION AND MARINE FEES

Service	Number of transactions, fiscal year 1964	Present fee	Estimated time (hours)	Proposed fee	Estimated revenue
1. Documentation, redocumentation, etc.	14,984	None	1¼	\$8	\$119,872
2. Change of trade, original document lost.	14,000	do	¾	5	20,000
3. Renewal of license	132,324	do	½	3	96,972
4. Change of master	122,000	do	½	2	44,000
5. Recording	16,503				
(a) Bill of sale	13,000	20 cents a folio; estimated to be 50 cents a page.		3	39,000
(b) Mortgages	1,703			4	6,812
(c) Preferred mortgages	1,800			6	10,800
6. Certificate of ownership abstract of title.	7,311	\$1	1	6	43,866
7. Abstracts of title, additional pages	13,000	20 cents per folio.	¾	5	15,000
8. Change of name of vessel	1,515	\$10 to \$100	(2)	10-100	20,000
9. (a) Entry of vessel	48,651			6	291,906
(b) Clearance of vessel	47,386			6	284,316
(c) Issuing permit to proceed	40,091			6	240,546
(d) Receiving permit to proceed	40,172	10 cents to \$2.50.	1	6	241,032
10. Preliminary entry of vessel	45,651	None	1	6	283,906
11. Cruising licenses	1,600	do	1	6	3,600
12. Certificate of record	1,000	do	1	6	6,000
13. Certificate of protection	500	do	½	3	1,500
14. Permit to touch and trade	(3)	do	½	3	
Total					1,969,128

PROPOSED ADMEASUREMENT FEES AND ESTIMATED REVENUES

1. Admeasurement of vessels		Travel and per diem in certain instances.		(5)	\$290,000
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<sup>1</sup> Estimated.

<sup>2</sup> Present statutory fee.

<sup>3</sup> No figures available.

<sup>4</sup> Plus.

<sup>5</sup> \$6.25 per hour plus cost of transportation and per diem where applicable. Travel and per diem, \$44,000.

Senator BARTLETT. This sheet appended to your testimony, Mr. McIntyre, is the equivalent to your statement that a schedule of such services and of the proposed fees was submitted with the draft legislation.

Mr. McINTYRE. That is right, Senator. It is headed "Proposed Fees and Estimated Revenues From Documentation and Marine Fees." It consists of two pages. I will say, however, that these fees have been simply drawn up to give the members of the committee an opportunity in the Senate to see roughly what might be proposed. They are not in any sense intended to be final decisions as to the fees that would be charged in any specific instance, and as I mentioned in my statement, of course, we would propose to issue notice of proposed rulemaking and give everyone an opportunity to explain the problems that might arise as a result of any fees that are proposed here.

Senator BARTLETT. All fees now being collected are established by law?

Mr. McINTYRE. No, Senator. There are some fees that we collect now that are not specifically provided for or prohibited in law, but many of the marine fees, as you are certainly well aware, are marine legislation, generally speaking, that was enacted many, many years ago, at which time the Congress specified each jot and tittle and every fee, and in some cases prohibited certain fees.

Now some of the statutes that we are proposing to amend to provide a specific fee, and in one case at least, the fee is as low as 10 cents for services rendered, and that is provided in the statute, Mr. Chairman.

Senator BARTLETT. Are all of the fees set forth in this schedule that you submitted fixed in law or is this a dual situation also?

Mr. McINTYRE. Some of the fees that we have set forth in this list are fixed in law. I mentioned particularly the fee for change of name of a vessel which is item No. 8. That is a fee that is prescribed in law. I bring your attention to item No. 5 on recording. If you will refer to the third column of our listing, it gives you the status of fees presently provided in law. For some of those that are labeled "none" under the heading of present fee, and certainly the first four, are labeled "none," there are prohibitions against charging a fee.

Senator BARTLETT. The big increase in revenues under this proposed bill would come, as I infer, from fees to be established in connection with entry of vessels, clearance of vessels, and issuing permits to proceed; is that right?

Mr. McINTYRE. That is right, Mr. Chairman.

Senator BARTLETT. Amounting in the first case to \$291,000, in the second, \$284,000, and in the third, \$240,000, and in the fourth, \$241,000.

Mr. McINTYRE. If I may, Mr. Chairman, I would like to point out that there are fees charged for entering and clearance at the present time in many cases, and they go from 10 cents up to \$2.50. The usual fee on the seaboard for clearance, from Atlantic or Pacific and gulf coast ports, is \$2.50 and we receive certain revenue from that at the present time. The total revenue that we receive in a year from marine fee collections is \$500,000. But I don't have the specific background as to how much we collect for any particular entry or clearance.

Senator BARTLETT. Let me understand this. Under the heading 9(d), which is explained as "Receiving permit to proceed" there is listed as the present fee a scheduled rating ranging from 10 cents to \$2.50. Do you follow me?

Mr. McINTYRE. I do.

Senator BARTLETT. But no fee at all has been named for the three previous entries; namely (a), (b), and (c). Are you telling us that this 10-cent fee at a minimum and \$2.50 at a maximum does apply to these other categories as well?

Mr. McINTYRE. I think, Mr. Chairman, you have put your finger on a very good point. I think this tabulation is not entirely clear. I would say that the amount 10 cents to \$2.50 is intended to apply equally to all four lines, (a), (b), (c), and (d). The fees vary and we did not in this tabulation set out the exact fee.

Senator BARTLETT. From those fees, the Department now collects about half a million dollars. You get half a million dollars from those services now; that is right?

Mr. McINTYRE. Senator, we collect annually about half a million dollars from all fees at the present time, not only from entrance and clearance.

Senator BARTLETT. I understand, but in response to a previous question, didn't you tell me you collect half a million dollars from these categories?

Mr. McINTYRE. Half a million dollars from all marine fees, not from this particular—

Senator BARTLETT. All what fees?

Mr. McINTYRE. All marine fees today, yes.

Senator BARTLETT. Under the proposal that you submit, you would collect how much?

Mr. McINTYRE. About \$2 million. That would come not only from changes in existing fees, but would also come from revenues received from items for which we are prohibited from charging or recovering costs today.

Senator BARTLETT. Name some of those.

Mr. McINTYRE. Well, for instance, the costs for documenting a vessel. We are prohibited from making a charge for documenting a vessel. We are prohibited now by statute from making any charge for the measurement of the vessel except in circumstances in which we send a man outside the port of entry to measure the vessel, in which case we are allowed to charge travel, subsistence, and wages. But for measuring the vessel today, if the vessel is in a port of the United States, where there are customs officers, there is no charge even though it requires considerable time and is a service of benefit to the particular vessel which is being measured.

Senator BARTLETT. What is a certificate of protection?

Mr. McINTYRE. A certificate of protection is a certificate issued—it is a document that is not exactly a regular vessel document. It is a document which identifies a vessel as belonging to a citizen of the United States. It is an ancient and rather anachronistic form of paper and, in fact, there are very few issued today.

Senator BARTLETT. You mean an ordinary owner doesn't bother to get one?

Mr. McINTYRE. He doesn't, because he has the better document available to him, a certificate of registry.

Senator BARTLETT. What will you tell us about the permit to touch and trade?

Mr. McINTYRE. A permit to touch and trade, Senator, is one which is issued primarily to fishing vessels, vessels which go out on fishing voyages from ports in the United States and expect, although they are not certain, that they may wish to go into a foreign port and sell

their catch of fish or take supplies or even perhaps engage in other business.

If they obtain a permit to touch and trade before they leave port, they are permitted to do this. Otherwise, they are required to clear before they leave port for a specific foreign port, with a permit to touch and trade. However, they can make up their minds after they are at sea.

Senator BARTLETT. Do all fishing vessels engaged in that type of activity secure these permits now?

Mr. McINTYRE. Not all of them, Senator, but it is a regular practice in the gulf area for vessels which are going down into Mexican waters to take a permit to touch and trade. I don't have certain information about this, but I believe that they may do it partly because of Mexican requirements.

Senator BARTLETT. How about the tuna fleet going out of California ports down to ports farther south than those in Mexico?

Mr. McINTYRE. My understanding is that they do not take permits to touch and trade as a general rule. Those vessels generally have a long range. They are bent on a specific mission, to get tuna and bring it back to the United States and ordinarily, I understand, they do not take it. However, of course, they could apply for it and receive a permit to touch and trade.

Senator BARTLETT. Quite frequently they touch at foreign ports against their will—a hundred miles or so out at sea—and the Navy in one of the Latin American countries appears on the scene and takes them to port. This isn't especially apropos of what we are talking about now, I guess.

How much do you calculate the Treasury is out of pocket per annum for performing these various services at this time?

Mr. McINTYRE. Well, I would say that we have attempted at least to make an accurate estimate of what these services cost us and the proposed fees are set up on the basis of our general understanding of the costs to us. Therefore I would say, since we anticipate collections under this bill might amount to as much as \$2 million a year, since our collections now are approximately \$500,000, I would say we are probably out of pocket about \$1,500,000.

However, that is a very rough estimate, Senator, because we haven't—

Senator BARTLETT. You are not trying to set up a schedule of fees that will return a profit to the Treasury Department?

Mr. McINTYRE. No, Mr. Chairman, and that certainly is not the sense of 5 U.S.C. 140, but simply that the service should be self-sustaining. As I said in my statement, the Treasury Department does not regard this as a revenue-raising bill, but rather a cost-returning bill.

Senator BARTLETT. I believe Senator Dominick has a question or two he would like to ask.

Senator DOMINICK. Thank you, Mr. Chairman.

Could I ask whether this bill was originated by the customs department or the Treasury Department?

Mr. McINTYRE. Senator, the Bureau of Customs is an agency of the Treasury Department. The legislation was in fact submitted by the Secretary of the Treasury. It is a Treasury bill.

Senator DOMINICK. Was it discussed with the Maritime Administration first?

Mr. McINTYRE. With the Maritime Administration?

Senator DOMINICK. Yes.

Senator McINTYRE. Yes, they were informed of it, certainly.

Senator DOMINICK. Was any question raised by the Maritime Administration with regard to permitting of fees?

Mr. McINTYRE. There was no question that I know of before the legislation went forward.

Senator DOMINICK. Mr. McIntyre, perhaps I can get your viewpoint or the Treasury viewpoint on how many of these services which you have listed in your schedule are governmental services.

Mr. McINTYRE. Senator, of course, all of the services are performed by customs officers today, all of them listed here, are services available to the public, some at a charge, and some free. They are all governmental services, but we feel that they are all for the benefit of a specific individual or a specific ship and following the sense of the Congress in 5 U.S.C. 140—

Senator DOMINICK. That is the answer I wanted you to give me, that you think they are all for the benefit of a particular ship, because I want to go into that just a little. Suppose you got the job of clearing an entry of a vessel, this is for the benefit of the Government as a whole, is it not, to insure that no smuggling or violation of Treasury regulations is going on?

Mr. McINTYRE. It is, Senator, but I draw your attention to the fact that there is a clearance fee and an entrance fee provided in the law right now, granting clearance of a specific vessel, and it usually runs \$2.50 for each entry.

Senator DOMINICK. That is the 10 cents to \$2.50 that you have in your third column there, is that right?

Mr. McINTYRE. However, I should make it clear, Senator, that the \$2.50 applies on the Atlantic, gulf, and Pacific coast to every entrance and clearance.

Senator DOMINICK. So, \$2.50 fee is the general fee?

Mr. McINTYRE. That is the general fee on the coasts.

Senator DOMINICK. This is to take care of what, the paperwork?

Mr. McINTYRE. It was enacted many years ago and designed to cover the costs at that time, as I believe.

Senator DOMINICK. These fees then would be an increase in general to vessel owners of about \$1.5 million over what they now have to pay on a yearly basis, is that right?

Mr. McINTYRE. Overall, yes. In some respects, Senator, I would think that the fees might well be reduced in certain items, rather than increased. However, that would not be the general situation.

Senator DOMINICK. But your estimate is that it will be another \$1.5 million per year that they would have to pay out?

Mr. McINTYRE. Quite right.

Senator DOMINICK. One of the problems that we face here in the committee is trying to do something to encourage further maritime commerce in American ships as much as we can. Certainly this isn't going to help that, I don't think, since it would be kind of going against some of our other policies which are subsidy policies to stimulate the shipping. What would you say about that?

Mr. McINTYRE. Senator, I would say that these fees are not all directed to the types of vessels that you are necessarily trying to encourage. Some of these fees would be charged against very small

vessels, some of them even against pleasure vessels. So it would not be all visited upon vessels which are subsidized construction or on operational subsidies.

Senator DOMINICK. It is also a fact, is it not, Mr. McIntyre, that these fees are over and beyond what a private person may have to pay to a customs officer for clearance if they should come in after 5 o'clock or on weekends or anything of that kind?

Mr. McINTYRE. Yes, Senator. This bill does not affect any charge that may be made for special service out of hours. This is simply the routine regular fees and it has simply been drafted in the light of 5 U.S.C. 140, in an effort to follow the express sense of the Congress.

Senator DOMINICK. Are these correlated to that particular policy; namely, if you come in after 5 o'clock, or on weekends, that you have to pay a higher fee? Are you proposing that?

Mr. McINTYRE. The fees provided in this bill would remain static and be exactly the same whether they were for services rendered at night, on Saturday or Sunday, or in regular work hours.

Senator DOMINICK. So this bill is not then an effort to try and get rid of these for various documentary and other types of work, but an effort to increase them? I have been led to understand that part of this was to get rid of unnecessary charges.

Mr. McINTYRE. I think that some of our effort has been to repeal the existing charges that may be of little or no value today. In the statute there is some effort to get rid of anachronistic provisions.

Senator DOMINICK. Let me ask you a question here. I don't see in any one of the ones where you have listed where you are getting rid of anything. You are adding on to all of them.

Mr. McINTYRE. There are such fees, however, that are being repealed, Senator. The only one that comes to my mind at the moment is a fee for—

Senator DOMINICK. I can't hear you.

Mr. McINTYRE. There are certain fees that are being repealed under the bill. The one that comes to mind, because it is most unusual in its terminology, is a fee in connection with apprenticing.

Senator DOMINICK. I didn't get that last phrase.

Mr. McINTYRE. There was an old fee in apprenticing boys to the trade which was charged in law, apprenticing boys to the merchant service. It is a portion of 46 U.S.C. 331, and that fee is being repealed by this bill. And I think there are other fees also.

Senator DOMINICK. How much does that come to?

Mr. McINTYRE. That is not very much, Senator. That is not very much. I couldn't tell you exactly. That is a fee that is collected by the Coast Guard, but I don't think they actually apprentice any boys to the merchant service. I think those days have probably gone.

Senator DOMINICK. Mr. McIntyre, I didn't mean to try and embarrass you on this, but the fact of the matter is, if the fees that are being repealed are nominal, if in existence at all, really what you are doing is increasing the fees, isn't that a fact?

Mr. McINTYRE. Well, Senator, the fees that are being repealed are nominal, and certainly practically nothing is being collected on them. But, this is not an effort to increase fees. It is simply an effort to provide by legislation for the fixing of fees at the cost to the Government and recovering the costs. It is neither intended to raise fees as such, or lower fees as such, but simply to clear the decks so that we can

recover costs for services performed and, as I mentioned a while ago, some of these fees may go down, and substantially.

Senator DOMINICK. Most of the fees seem to be based on an average of \$6 an hour, is that correct?

Mr. McINTYRE. That is correct.

Senator DOMINICK. In the preparation of your legislation, did you review all these particular 14 or 15 services that you have listed here and decide that every one of them was necessary, so that a vessel could engage in commerce and do it legally?

Mr. McINTYRE. Yes, we did.

Senator DOMINICK. You figure that every one of them is necessary?

Mr. McINTYRE. Well, I think that they are. Of course, now—let me see, the cruising licenses, for instance, is a license which would permit foreign yachts to come into the United States and to cruise without entering or clearing from port to port in the United States once they have come in. That, of course, is not a necessary fee, because a foreign yacht could enter and clear every port and make the entrance and clearance.

Senator DOMINICK. Let me ask you this: The purpose of a cruising license is to try and expedite the ability of foreign yachts to come in here and use our ports with one license, right?

Mr. McINTYRE. Right; to move around between ports, yes.

Senator DOMINICK. What is the necessity for having a preliminary entry of a vessel and then an entry of a vessel?

Mr. McINTYRE. Well, it is not necessary to have a preliminary entry and an entry, but the preliminary entry is provided as a means of convenience for the ship. The actual situation is this, that when a vessel comes in to port, it is boarded by a customs officer, and the master, by law, is required to have a manifest of all of the cargo on board and present it to the customs officer.

If he would like to start unloading his ship immediately, he asks the customs officer to give him preliminary entry, which the customs officer does, by receiving and stamping the manifest, and that constitutes a permit for unloading of a ship.

Now, if the master does not want to unload the ship immediately, he doesn't have to ask for or receive preliminary entry. He may wait and, within 48 hours, he may go to the customhouse, as he is required by law to do, or send his agent, and make formal entry.

But, until he does that, he could not unload the ship, because—

Senator DOMINICK. Let me ask you this. Perhaps I misunderstand. If you have a preliminary entry, do you then have to also pay for an entry?

Mr. McINTYRE. Yes, you do, Senator.

Senator DOMINICK. Why?

Mr. McINTYRE. Because there are certain procedures that could not be taken care of at the ship itself. There are certain charges against the vessel that must be paid, and certainly it is not either convenient or practical to collect those charges on board the ship at the time of first arrival at the time of preliminary entry. That is done at the customhouse.

Senator DOMINICK. This is part of the thing, Mr. Chairman, if I may say, I think perhaps we are all bogged down in paperwork from time to time. I just wonder if we can't review some of these things to see whether all of this stuff is necessary for the protection of the Government and for the safe operation of the ship.

This is primarily what we have them for, is it not, for the protection of the public at large, and for the safe operation of a ship? Isn't that the purpose of it?

Mr. McINTYRE. Well, it is for the protection of the revenue. I couldn't say that most of this that we are dealing with here has to do with the safety of the ship, but it is for the protection of the revenue, for the orderly handling of cargoes arriving in our port, for accounting for cargoes from a revenue standpoint, and for identifying vessels and such other things, for recording for instance bills of sale and that is of advantage to the owner in connection with title to his vessel.

Senator DOMINICK. Mr. McIntyre, I am not trying to be critical of this thing, I am trying to see whether we can't streamline things along here.

For example, you have (c) and (d) under No. 9. You have "Issuing of permit to proceed" and then you have "Receiving of permit to proceed." Why do you need both of those?

Mr. McINTYRE. Well, for instance, let's take a Liberian tanker—no, that is not a good choice, Mr. Chairman. Let me take another example.

Say any vessel under the flag of the United Kingdom comes into port of Charleston, S.C., with a cargo on board destined for Charleston, destined for Norfolk, and destined for Baltimore. Now, that ship wishes to proceed after coming in and entering regularly, and paying presently his \$2.50 fee for entering. After entering and finishing his discharging at Charleston, he wishes to go to Norfolk. So he goes to the collector and he receives a permit to proceed to the port of Norfolk. When he arrives at Norfolk, he delivers the permit to proceed given to him at Charleston, as evidence of his right to do that to the collector of customs at Norfolk. And so on up the coast, as he goes, he receives the permits to proceed from one port to another. They are not issued and received at the same port. They are issued at one port and received at the next port.

Senator DOMINICK. It sounds to me like getting a new ticket at every railroad stop on a new train. If you have a permit to go from these ports, why can't you just show it to him and go?

Mr. McINTYRE. That could be done, Senator, but, of course, you would need a manifest of the cargo on board from the master of the ship as to what it intended to do at the particular port and account for the cargo that is on board, so that the revenue that is provided in law can be collected.

Senator DOMINICK. And the purpose of this, all the way through, is to make sure that no one smuggles things in which are under tariff acts; right?

Mr. McINTYRE. That is one of the purposes, also accounting for the cargo, even though there is no intention of smuggling at all.

Senator DOMINICK. And each one of these places, you have your customs bureau set up already?

Mr. McINTYRE. We have a collector of customs at each one of these ports or customs officer.

Senator DOMINICK. Why should you have to pay customs officers for something they are under obligation to do when they go into service?

Mr. McINTYRE. Well, I can only say that this is a fee which again is presently provided in law and the Congress for many, many years

has thought it a valuable service. We are not changing or proposing to make any change in that, other than to permit us to collect the amount that it costs us to provide the service.

Senator DOMINICK. It is true, is it not, that if a vessel should be delayed by a storm and should come in after 5 o'clock to a customs office, they have to pay overtime fees to the customs for taking care of the necessary paperwork?

Mr. McINTYRE. Well, Senator, if a vessel comes in at night, for instance, there is never a requirement that they enter at night at all. They can wait until the next morning to enter, because in the first place existing statute, and we propose no change in it, allows a vessel 24 hours in which to report arrival to customs. Then they are allowed another 24 hours in which to enter customs, so that a ship arriving in port has 48 hours before it is required to comply with any specific provision of law relating to entry.

Now if, however, they wish to start ship operations for their own purposes at night, then the requirements become immediately effective and they must receive permission to do so at night.

Senator DOMINICK. To be practical on this, Mr. McIntyre, if you are a passenger ship coming in, and you have a whole bunch of passengers on and it has been delayed after 5 o'clock, you are going to play the devil in trying to convince those passengers that the passenger ship ought to lay over all night long so that it wouldn't get charged extra customs fees.

Mr. McINTYRE. I think that is true, Senator. However, of course, I am not a master seaman, but I think the ships have a way of arriving at times that suit their convenience, and the convenience of the passengers without simply pulling into port and dropping anchor and then holding them prisoner, which of course they can't do.

Senator DOMINICK. Have you made any effort in the Customs Bureau to set up a standard pattern of overtime charges for the services of customs officers after 5 o'clock or during weekends?

Mr. McINTYRE. Senator, this is a question I would like, if I may, to call upon Mr. Dickerson to answer.

Mr. DICKERSON. I'm sorry, Senator, I don't quite understand that. A pattern for performing a specific service?

Senator DOMINICK. Yes. I have a number of documents in my file indicating that sometimes people who come in get charged as much as 2 days for 1 hour's work.

Mr. DICKERSON. Yes, sir; this would be possible under our overtime law. Any service performed by a customs officer, he is entitled to be paid 2 days pay for this work, even though it might only be for 1 hour.

Senator DOMINICK. This is creating quite a stir, not only in the maritime field but in the aviation field and a lot of others, as you probably know.

Mr. DICKERSON. Yes, sir.

Senator DOMINICK. And I am hopeful that we can get some action on this, Mr. Chairman. I don't know that this is the particular time to go into all of these facets, but it does seem to me the problems we have are pretty well exemplified just right here in the paperwork that is listed on these 15 items that are on the schedule. Here we have, I am sure, an opportunity for this committee or for the administration itself to try and streamline some of this. I am surprised, frankly, Mr. McIntyre, that efforts haven't been made to recommend to

Congress, if it is necessary or by Executive order, to try and streamline some of this paperwork.

Mr. McINTYRE. Senator, these services which are furnished now are all provided for in law, and they in fact are necessary to the orderly movement of ships in and out of our ports as a general proposition. Of course, I do not say that we couldn't make improvements in them. Naturally, anything can be improved and perhaps certainly these can be improved. These requirements are provided in laws which are very old. They were established many years ago, most of them have proved to be wisely established, but I certainly can't deny that there are some provisions that could be improved.

As you may know, Senator, the chairman of this committee, Senator Magnuson, has asked for recodification of title 46, and we are working in connection with that on modernizing our laws. The first step, as outlined by the Senator, is recodification of 46, and then we intend to go into revision of 46 and intend to bring these statutes up to date and make them fully streamlined and helpful to the shipping industry. That is our purpose and our intention. The counsel, Mr. Foster, for this committee, has been very active in helping us in this work, and I think that we can get somewhere. But we do have many old anachronistic statutes to deal with. There are many important things involved and it isn't a matter of doing it overnight, sir. We are giving the matter attention, I assure you.

Senator DOMINICK. Off the record, Mr. Chairman.

(Discussion off the record.)

Senator DOMINICK. On the record.

It just seems to me that your statement here that you have already made, that preliminary entry doesn't give you an entry, and you have to pay for both, when you are in a hurry, doesn't stimulate shipping and doesn't stimulate the quick movement of commerce, either passengers or cargo.

Mr. McINTYRE. May I answer that, Senator?

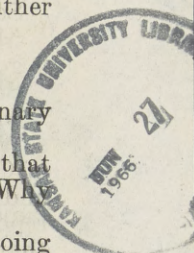
Senator DOMINICK. Yes.

Mr. McINTYRE. To the best of my ability at least. Preliminary entry is provided simply for the convenience of the ship.

Senator DOMINICK. I understand that. If he is going to do it that way and it is convenient, why doesn't that constitute an entry? Why pay for two?

Mr. McINTYRE. I don't say there aren't better ways of doing things than we are doing them now, but one of the reasons we don't give them complete entry at the time of preliminary entry is that preliminary entry is given on the arrival of a ship, may be given the instant it arrives. It certainly is given a very few minutes after the vessel arrives, given on board the ship, given in conditions which are not conducive to taking care of what is absolutely necessary paperwork. I don't say paperwork, I know that word is anathema, but there is a certain amount of paperwork that is necessary in all of these movements of ships, Senator, and it is for the benefit of the ship in many instances. But preliminary entry is given down on the ship itself, it permits the ship to go immediately to work.

Senator DOMINICK. Looking at these two figures in column 2, you have almost as many preliminary entries as you do have entries, so there must be an awful lot of people who think this is pretty valuable to them.



Mr. McINTYRE. That is correct, but no one has to ask for preliminary entry if he doesn't want. That is for the convenience of the ship. It allows him to unload immediately without going to the customs.

Senator DOMINICK. You don't have any fee for preliminary entry now which I suspect is one reason why you have so many asked for?

Mr. McINTYRE. It is prohibited in law now to charge any fee for preliminary entry. However—

Senator DOMINICK. So you are going to add just for the preliminary entry alone, in round figures, \$284,000 a year, if you get that many requests, and then you are going to add on the entry itself. In other words, you are going to put quite burden on any ship to come in to this country for clearance purposes.

Mr. McINTYRE. Mr. Chairman, anyone who doesn't want preliminary entry doesn't have to apply for it. This is simply, if you will, Senator, for the ship to immediately unload without any formality. And preliminary entry is never required by us. It is not required in law, not required by us, and simply at the option of the ship itself.

Senator DOMINICK. That has been made crystal clear; I understand that.

If this bill were enacted, it will have no effect one way or another, as I understand it, if it is enacted in its present form at least, on the problem involved with overtime customs charges.

Mr. McINTYRE. It does not affect overtime customs charges at all.

Senator DOMINICK. Is the Maritime Administration going into the problem of overtime customs charges in any way whatsoever at the present moment?

Mr. McINTYRE. The Maritime Administration, did you say, Senator?

Senator DOMINICK. Yes.

Mr. McINTYRE. I don't know whether Maritime Administration is going to have overtime charges or not.

Senator DOMINICK. Is the Treasury Department?

Mr. DICKERSON. Senator, the Treasury Department recently had a fairly comprehensive survey, management survey of the Bureau of Customs operations. It is commonly known as the Stover report and we are undergoing reorganization now as a result of that. This report contains some 230 recommendations, I know. Included in that is the recommendation that the Treasury review its overtime policies.

Senator DOMINICK. When was this completed?

Mr. DICKERSON. The report was published last October 1, I believe. The particular overtime provisions have not been reviewed by either Treasury or Customs. In other words, no decision has been made as to what action will be taken.

Senator DOMINICK. You might be aware of the instance where a private plane brought in a guy who was dying just the other day in Miami and came in after 5 o'clock, and took him to the hospital with a liver infection, finally got him there, and the overtime customs charge was something like 50 bucks for this guy trying to do a service to save a life. It seems to me this is pretty rugged.

Mr. DICKERSON. I am not aware of that situation.

Senator DOMINICK. It happened about 3 days ago. This is just one more to add to a long list.

Thank you, Mr. Chairman.

Senator BARTLETT. Off the record.

(Discussion off the record.)

Senator BARTLETT. Senator Dominick has some further questions, Mr. McIntyre.

Senator DOMINICK. Mr. McIntyre, I just want for the record to go over some of these proposed papers which you are going to charge for, and get your opinion on what purpose they serve.

You have both documentation and redocumentation and you are charging the same fee for both. I absolutely am positive that there is a need for some documentation and by that I mean that you need to know, I am sure, who owns the boat, and the fact that it is seaworthy and all this kind of thing. What is redocumentation for?

Mr. McINTYRE. Senator, a vessel is documented when it is built. Let's say we have a vessel built in a U.S. yard for a citizen owner. He applies for documentation and he receives it from us. For instance, if he later decides that he wishes to sell the boat to another, then he gives a bill of sale, which is subject to recording, and the new owner then applies for redocumentation of the vessel in his name. And we issue him another document exactly the same as the first. This is provided for in law, Mr. Chairman. It is provided in law, and not a creature of our own.

Senator DOMINICK. Wouldn't it be just as easy to have the regular documentation with a copy of the bill of sale attached to it? The ship hasn't changed any. All that has happened is the ownership?

Mr. McINTYRE. I only use the change in ownership as an illustration. You are quite right. There are other ways of doing it, and there are other ways that we are considering in connection with the legislation that we are drafting, which we expect to present to the Congress, we hope, for consideration by the end of this year.

However, in accordance with the decision which has been made by the chairman of the Committee on Commerce, the first step will be a recodification of existing statutes and after that we expect to go into revision of existing statutes.

These matters to which you refer will certainly be given very thorough consideration and I hope a very fair consideration in connection with that, and I believe that they will.

Senator DOMINICK. The change of trade, I suppose—you have a vessel licensed for carrying passengers, and all of a sudden it is going to carry fish; is this the idea?

Mr. McINTYRE. Not so much that, Senator. In existing law, if a vessel engages in foreign trade, it is required to do so under a register, but it has the privilege, when it returns to the United States, and then wishes to engage in some other trade, that is the coastal trade, it has the privilege of applying for and receiving a document to engage in coastal trade. That is a change of trade. It is not required; it may retain its register as far as we are concerned and as far as the law is concerned, but if they would like a coastal document to engage in coastal trade, they can come in and apply.

Your question probably—your next question would probably be what are the advantages then of applying for another document?

Well, for one thing, vessels which are under enrollment and are not subject to requirements for taking pilots at various ports along the coast. Vessels under register are subject to those requirements.

Senator DOMINICK. What is the purpose of the change of master?

Mr. McINTYRE. Whenever a master whose name is endorsed,

Senator, is required by law to be endorsed in the document to show who is in charge of the ship and responsible and answering for penalties provided under law.

When the master is changed, the new master is required to come forward and take an oath and have his name endorsed on the document. This is what we mean by change of master.

Senator DOMINICK. No fee is charged for any of the first four items?

Mr. McINTYRE. Under present law, you are quite right; they are prohibited.

Senator DOMINICK. Instead of going through all of this, Mr. Chairman, let me just say that I am perplexed, to say the least. Here we are trying to stimulate the industry, instead of which we are piling on an additional million and a half on a lot of stuff which doesn't seem to be necessary in many instances, and which certainly ought to be streamlined to try and stimulate the commerce of this country.

It seems to me the Customs Bureau and Maritime Administration could get together and see what is needed and what isn't from a point of view of public interest and from the point of view of stimulating commerce and then give us some recommendations on that instead of just saying we are going to raise fees. I would hope that this committee at some point would so request.

Those are all the questions I have.

Senator BARTLETT. Mr. McIntyre, when a fee is charged, is payment generally by check or by cash, or may it be either?

Mr. DICKERSON. Senator, it may be either. There are certain conditions for payment by check requiring certified check to safeguard the Government, but it could be made in cash, and in certain instances made by check.

Senator BARTLETT. Well now, let's assume, for the purposes of assumption, that the master of a vessel or his agent pays 10 cents for receiving a permit to proceed, and if he paid that by check, which I suppose he could do, he would make that check out to the Treasury of the United States?

Mr. DICKERSON. He would make the check out to the collector of customs, and it would be deposited to the Treasury receipts; yes, sir.

Senator BARTLETT. I wouldn't ask this question if you were from the Maritime Administration, but you are from the Treasury, so it is a proper question, I guess. How much will it cost to process that check, a 10-cent check?

Mr. DICKERSON. We have never made an item-by-item study, but I believe we have estimated someplace between \$2 and \$3 probably.

Senator BARTLETT. Going back to the incident which Senator Dominick mentioned and of which you haven't heard quite understandably, about overtime charges made against the pilot of a private plane down in Miami, who receives that overtime payment?

Mr. DICKERSON. The payment is made to the customs department and deposited in Treasury receipts, but the employee who performs the services receives the compensation equal to the amount that we receive.

Senator BARTLETT. He is paid by the Treasury Department?

Mr. DICKERSON. Yes, sir.

Senator BARTLETT. So if there is a \$50 fee for overtime services performed, he gets that in addition to his regular salary?

Mr. DICKERSON. Yes, sir; that is right.

Senator BARTLETT. Some of these stations must be pretty lucrative then?

Mr. DICKERSON. Yes, sir; I would say that some of our stations, the position of inspector does earn quite a bit more money over and above his regular salary; yes, sir.

Senator BARTLETT. Just as a matter of curiosity, do you know what these top-flight inspectors make during any average year, top flight in the respect of income?

Mr. DICKERSON. I believe, sir, in one study that was made of it, it was estimated that most inspectors earn, countrywide, an average of around \$3,000 over and above their regular salaries.

Senator BARTLETT. But I mean those who are in the places where there is more of this sort of business.

Senator DOMINICK. Havre, Mont., for example.

Mr. DICKERSON. I can't name a specific place, but I have heard of instances of inspectors earning \$6,000 a year, possibly higher.

Senator BARTLETT. I wonder if you would submit a statement for the record giving an explanation of this in more detail, what they actually do receive at some of these border points.

I remember I used to get a flood of letters, and I am not lacking them yet, from private pilots who come into Fairbanks, Alaska, in the evening or on Sundays, and some of them submitted that they were about to auction off their planes in order to make the payments.

If you would do that, I think it would be helpful to the committee.

Mr. DICKERSON. Yes, sir; Senator, we will be very happy to.

I might mention that the Treasury Department has recommended legislation which would help this situation somewhat. We have prepared a so-called flat-fee bill, which would make the charges for overtime against private fliers and private vessel operators much more equitable.

The bad situation now is that a pilot can come in where he is the only one, and encounter 2 days' pay, which could run \$55 or \$60. The legislation we propose would equalize this on a countrywide basis.

We would establish a flat fee at a reasonable amount, we hope, which would recover the entire cost to the Government and permit us to make our charges.

Senator BARTLETT. Now, if the SS *United States* enters New York harbor, it pays \$2.50?

Mr. McINTYRE. Yes, Mr. Chairman, that is correct.

Senator BARTLETT. And if you are right behind the *United States* in your 40-foot pleasure cruiser, you pay \$2.50?

Mr. McINTYRE. Coming from a foreign port today, in an American vessel, you would be exempt from entrance and clearance so you pay nothing.

Senator BARTLETT. That would apply to the SS *United States*? She would pay nothing?

Mr. McINTYRE. The SS *United States* would pay the entrance fee of \$2.50. But American vessels, American yachts, are exempted from the requirements for entry and clearance. They must report arrival, but that is all they have to do and no fee for reporting arrival.

Senator BARTLETT. Mr. Foster?

Mr. FOSTER. No questions.

Senator BARTLETT. Thank you, gentlemen, thank you very much.

Mr. McINTYRE. Thank you, Mr. Chairman.

Senator BARTLETT. Also to be heard on this bill is Mr. Ralph B. Dewey, president, Pacific American Steamship Association, with headquarters in San Francisco.

Mr. Dewey.

Mr. DEWEY. Mr. Chairman, I have left copies of my statement with the committee.

Senator BARTLETT. The committee has those copies.

**STATEMENT OF RALPH B. DEWEY, PRESIDENT, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, SAN FRANCISCO, CALIF.**

Mr. DEWEY. My name is Ralph B. Dewey, president of American Steamship Association. I am here on behalf of my own organization and a group of other maritime trade associations concerned with the question at issue in S. 1875, and likewise concerned with certain amendments that we intend to discuss in our testimony.

These associations that I represent, which are sponsors of this statement, are opposed to the levying of user charges or fees which relate to governmental activities which are not in some fairly direct way beneficial to the user or the recipient. We do, however, favor a policy of administrative rather than legislative determination of what services should be charged for and what the level of a fee or charge should be and are willing, at least in regard to customs fees and charges, to take our chances in the administrative arena. Therefore, we appear today in support of S. 1875, provided that certain amendments—in the nature of omissions from the bill as introduced—are included. We also will ask that certain important understandings be written into the committee report on this bill.

S. 1875 according to its sponsor is based upon the congressional directive in the act of August 31, 1951 (5 U.S.C. 140), which directs all agencies to levy such fees or charges for Government services as are justified, according to the value to the recipient. S. 1875, we feel, conforms generally to this 1951 congressional intent by (1) removing from the statutes prohibitions against the levying of charges for certain stipulated services in the navigation laws, (2) removing from the statutes existing fees or set charges or formulas for certain services, and (3) substituting for all of this a general authority in the Treasury Department—pursuant to title 5, United States Code, section 140—to establish fair and reasonable charges or no charges at all, depending upon a determination of the value of the service to the recipient.

Presumably, if S. 1875 is passed, any user fee which is in controversy will be the subject of hearings under the Administrative Procedure Act. In this way, the user is protected from abuses.

I would insert at this point, Mr. Chairman, that it must not be construed that our industry or any other industry which has had reason to apply the criteria of the 1951 statute concerning user charges are giving that statute carte blanche support or our carte blanche acceptance of the criteria. As a matter of fact, we, ourselves, in rereading S. 1875 feel that it is completely unnecessary that section 7 of S. 1875 be included in the bill because it is redundant and because it would, in an extraneous way, use the vehicle of this legislation to sanctify a statute which is under controversy and which actually is under review by another committee of the Congress. And another way of saying it, Mr. Chairman, section 7 of this bill is redundant

since that statute, such as it is, already applies once the prohibitions and fees are removed from the statute.

In proposing this legislation to the Congress, the Treasury Department in our view made an important oversight when it failed to include the repeal, along with the repeal of other statutorily fixed charges, of the rates and formulas for customs inspections during overtime hours now reimbursable by carriers pursuant to the 1911 Overtime Act, as amended (19 U.S.C. 267). In the original 1911 Overtime Act, authority was vested in the Secretary of the Treasury to "establish reasonable rates of extra compensation for night services of inspectors, \* \* \* in connection with the lading or unloading of cargo at night \* \* \* but such rate of compensation allowed to each such officer or employee shall not exceed an amount equal to double the rate of compensation allowed to each such officer or employee for like services rendered by day \* \* \*." Under this statute, the vessel owner was required to reimburse the Treasury Department for overtime costs. In 1911, very little discharging and loading of foreign cargo was done at night or on Sundays and holidays.

I would insert parenthetically that the waterfronts of this modern country of ours were not well enough lit, they were not safe enough at night, and in 1911 or even in 1920, when these overtime statutes were passed, to be used extensively at night, plus the fact that at that time the crew of American vessels earned approximately a tenth of what the crew of an American vessel earns now. A seaman was paid about \$40 a month in 1920 and at the present time, with his overtime allowances, he is well over \$550, so that the economic atmosphere in which the statute was passed was an atmosphere when only occasional overtime work was performed on the waterfronts.

The 1920 amendment to the 1911 act, which contains the formula under which overtime is currently paid by the carriers, removed the double-time provision and substituted a very complex formula resulting in inspectors in certain cases receiving as much as 2 days' pay for as little as 3 hours' work.

Senator Dominick mentioned he gets as much as 2 days' pay for 1 hour's work, and I would certainly accept that that does happen on Sundays or holidays, Senator. I was referring to nighttime when I said as little as 3 hours' work.

A sample of fees paid in just one port—Seattle—for a short period of 3 months during 1965 is attached. It will be noted that a number of inspectors were paid by shipowners as much as \$70 or more for only 3 hours' work, and that it is commonplace for a vessel owner to pay two inspectors 2 days' pay each for a night assignment.

The irony of all this is that the customs inspector at any time, day or night, is on the pier during discharge of cargo solely "to protect the revenue" of the U.S. Treasury, and he is not there for any tangible benefit to the shipowner. If he is required to be there during loading, it is for export control purposes and thus serves a public—not a private—purpose. The nighttime inspector does not normally physically check cargo as it is being discharged; he does not normally certify cargo for delivery at night or Sundays and holidays to consignees, since no delivery is taking place at piers at night, Sundays, and holidays.

Parenthetically, not only is the clerk not there to deliver the cargo to consignee, but the door is locked and the Pinkerton guards are

there. Because the shipowner or terminal operator has a tremendous degree of interest in not having anything leave that pier when the clerks aren't there to check it out, so that the protection of U.S. revenue, which is in the nature of a duty on the cargo, is already protected by the private owner of the ship who has, first of all, a metal door shut down on the pier.

Secondly, he has Pinkertons standing there, and thirdly, the clerk isn't there, he is home asleep, he couldn't deliver the cargo if his life depended on it.

The inspector is there solely because the law says he must be there. Occasionally, it is hard to locate the inspectors since they do not seem to have any fixed post on the pier or on the ship—at least, during overtime periods, when cargo is not being delivered to consignees.

It was an unexpected interpretation of the Federal Employees' Pay Act of 1945 which raised the customs overtime rate nearly 40 percent when "day's pay" was interpreted to be one two hundred and sixtieths of a year's pay instead of one three hundred and sixty-fifths of a year's pay as previously. The shipowner, of course, picked up the tab for most of this although the Government itself does pay some of the annual overtime bill.

The cost at present totals \$8.3 million annually and parenthetically, my source is the Stover report referred to by the earlier witness published December of 1964 by the Treasury Department and distributed to the public on March 21 of 1965. At least that is the date I received my copy.

Now the cost at present totals \$8.3 million annually, of which about \$5 million is applicable to inspection of merchant vessels during night hours and on Sundays and holidays; about \$1.9 million is paid by the Government itself at border points and elsewhere and about \$1.5 million is paid at airports and other places.

I am advised by my colleagues in the airports field, both private pilot group and the commercial airline group, that the figure of \$1.5 million seems to be entirely too low as a figure they pay during a year's time. The only figure I quoted is the \$5 million from our own figure and \$8.3 million from the Stover report. The \$1.9 million paid by the Government is also in the Stover report, that leaves a residue then of \$1.5 million for the aircraft and other types of conveyance on which merchandises might be brought into the country.

Senator DOMINICK. If you will yield at that point, Mr. Dewey.

Mr. DEWEY. Yes, sir.

Senator DOMINICK. The commercial air transporters have indicated to me they pay between \$4 and \$5 million a year in overtime charges. Now this does not include the amounts that are paid in by private pilots.

Mr. DEWEY. There is need then for perhaps a rehearsal of these figures or reappraisal of these figures. All I know is that the steamship industry pays between \$4.5 million in overtime charges for unloading and discharging and entering and clearing.

To proceed with my question, one questionable interpretation of present law appears in the customs regulations (19 CFR 24.16) and provides that if the employee reports after the first 4 hours and before the last 2 hours of a night shift, he is entitled to 4 hours pay at double time—that is, he has earned a day's pay before he even reports for duty—in addition to the double time pay for the time actually worked, in increments of 2 hours or fraction thereof.

Just to clarify that remark, if you will turn to the appendix, toward the back of the appendix, there is the text of the governing statutes, and I will read from that governing statute why it is that this kind of situation obtains. And I am reading now from paragraph 267 of the United States Code title 19 and reads as follows—

Senator BARTLETT. How is that numbered in the appendix, page number?

Mr. DEWEY. It is the appendix titled "Statutes Applicable to the Payment of Customs Overtime Charges on a Reimbursable Basis," and it is about seven pages from the end, Mr. Chairman.

In 267, rather than read the whole thing, although at your pleasure I would, because it is the keystone of all we are talking about, but for the moment I am concerning my testimony with the formula, because I think that is the crucial question this morning, that is the formula by which this overtime is paid and it says that the rate to be paid to these customs inspectors is to be affected on the basis of one-half days' additional pay for each 2 hours or fraction thereof of at least 1 hour that the overtime extends beyond 5 p.m. but not to exceed 2½ days' pay for the full period from 5 p.m. to 8 a.m., and 2 additional day's pay for Sunday or holiday duty.

Let me repeat again that the interpretation which appears in the Code of Federal Regulations has granted to these customs inspectors, in addition to all that is written into the statute, a 4-hour, call-out time at double pay.

Now the typical example I have already referred to would be a vessel is discharging dutiable merchandise on a night shift. Inspector A goes on duty from 5 p.m. to 12 midnight and earns one-half day's pay for 7 hours work—or about \$66. Now, some would get \$86. Inspector B goes on duty at 12 midnight and goes off duty with the longshoremen at 3 a.m. He earns 4 hours' pay at double time for simply reporting for duty and another 4 hours at double time from 12 to 3 a.m., or one-half day's pay for each 2-hour increment or fraction thereof, which equals \$66 for 3 hours work. Total: \$132 up to \$155 depending on seniority for 11 hours of customs surveillance—or \$16.50—\$19.37 per hour for the 8 hours the vessel actually is working. Many other examples could be cited.

The Treasury Department itself has questioned whether inspection is a legitimate charge against carriers. They have even questioned whether it is essential to have continuous surveillance over discharging of cargo when even pier doors are locked, goods are under custody of guards and no clerks are present and no delivery is taking place. Certainly, if the mere legalistic presence of an inspector is required "to protect the revenue" of cargo which is already under guard, the costs should be borne by the Treasury Department except where the service is required at remote places and odd times at variance with normal port hours or work patterns.

In light of the above considerations, we propose an amendment to the customs statutes which would place in the Secretary's hands the administrative discretion for setting overtime rates. To do so would be consistent with the Treasury Department's own purpose, stated in their letter asking for S. 1875, to wit: "To abolish certain fees in order that the Secretary of the Treasury may in his discretion set fees under the provisions of the act of August 31, 1951, (5 U.S.C. 140)." It is also consistent with the Treasury Department's own report published in December 1964, and released to the public in

March 1965. Known as the Stover report, this management survey dwells at length on internal problems and inconsistencies in the customs inspections overtime scale as per the 1911 statute. We have attached as an appendix hereto, pertinent excerpts from the Stover report and summarize them briefly as follows:

1. The Overtime Act provides 30 percent of customs personnel—about 2,650 people—with \$8,362,400 of annual overtime. Of this, \$6,986,700 is reimbursed by ship, rail, and aircraft operators. Ship-owners reimburse about \$5 million of the reimbursable total. About \$3,150 per man—per year—is the average paid to each inspector. These figures are 3 to 4 years old. Ship inspectors average over \$4,000 per year. Reimbursed overtime equals about one-eighth of customs total income. It represents an equivalent of 1,105 employees at straight salary.

2. Because of overtime payments, inspectional personnel have no incentive to move into other jobs in the customs service. Similarly, good personnel in other divisions often leave promising careers to become inspectors because they want the overtime. Also, the reduction in income upon retirement is so great that most inspectors cannot afford to retire (p. V-22; p. V-36). I refer to the statement that some 14 percent are over retirement age. They just can't afford to leave.

3. (There) is a basic question as to whether the Government should require reimbursement for services which are for the purpose of protecting the public or producing (Federal) revenue (p. V-25).

4. Treatment is inequitable between types of carriers. Trucks pay no charges at bridges but railroads do so. Commercial aircraft usually pay overtime only after midnight, at least at large airports. Private aircraft and yachts pay according to how many other planes or yachts enter customs jurisdiction during that particular overtime period. (P. V-25; p. V-36.)

5. Adequate tours of duty (should be) provided in lieu of reimbursable assignments where this is justified (p. V-84, recommendation V-8).

6. Whenever public servants perform services which are reimbursable from private interests, there is a chance of undue influence being exerted either by those performing or those receiving the service. (P. V-35.) Rather sharp indictment for a Government report.

7. There are substantial and confusing differences among the four inspectional services—Immigration, Public Health Service, Agriculture, and Customs—as to (1) overtime hours and (2) charges to the user. (P. V-025 and chart on pp. V-26, V-27, and V-28.)

8. The Treasury Department should seek legislation which would clearly set a uniform Government-wide policy on reimbursement for inspection services (recommendation V-10, p. V-85).

9. Serious controversies (re overtime earned) have arisen between employees and management, resulting in long and costly litigation (p. V-33).

10. A review should be made of present administrative policies to determine if further reduction in reimbursable overtime can be accomplished within the framework of present legislation (recommendation V-9, p. V-84).

In our amendment which we would propose appears next in our statement and this would be an amendment which would substitute for section 7.

May I insert for the benefit of the record that I previously testified that it would be our recommendation that the existing section 7 be removed from the legislation as being redundant, and therefore such amendments as appear in my statement as a basis of all my proposed amendments would be new section 7?

My first amendment, there are various ways to accomplish the purpose we have in mind, and that would be simply to remove the formula from the statute and as we testified already, it is completely consistent with the motives of this bill coming to the Congress.

It would be in two phases, first overtime formula and the other would be the time, definition of what night hours are. That should also be administrative discretion.

So our amendment A would accomplish that purpose.

Our amendment B would accomplish the same purpose but in a different way. Amendment B would take the precedent of the U.S. Department of Agriculture inspection statutes, which appear in title 5 of U.S. Code, paragraph 576, and taking that language as a precedent and being the most recent congressional expression on the subject of inspectional overtime, take that and you would then come up with an amendment much like I proposed as amendment B, which would simply read as follows:

The Secretary of the Treasury is authorized to pay employees of the Bureau of Customs performing inspection services relating to imports into and exports from the United States for all overtime, night or holiday work performed by them at any place where such inspection services are performed, at such rates as he may determine and to accept from persons for whom such work is performed reimbursement for any sums paid out by him for such work. In those ports where customary working hours are other than those established by the Secretary herein, the Collector of Customs is authorized and directed to regulate the hours of customs employees so as to agree with prevailing working hours in said ports.

Amendment C, Mr. Chairman, would not disturb the present overtime formula, but would go to another question that is always raised in this; and that would be to remove the requirement for any carrier to pay any reimbursement for any overtime work performed. That is what amendment C would do. As we have pointed out, let me sum up the three amendments as follows: The industry preference is mixed as to how best to correct the present discriminatory situation. The ones most nearly consistent with the Treasury Department's letter accompanying their request for this bill are amendments A or B. Amendment C tends to ignore the fact that there are some conditions under which a carrier probably should pay for the overtime inspection; for example, to accomplish some unusual private advantage or convenience.

At any rate, S. 1875 should not go forward unless one or the others of these, or some equivalent amendment, is included. The time has come to remove or, at least, adjust this discriminatory tax upon ocean carriers as well as upon air and rail carriers.

Earlier we said we would also ask for certain clarifications in the report on this bill. Specifically, these are two in number.

First: We hope it can be stated by this committee in approving the bill that it is not approving or giving any sanction to the levying of user charges or to the level of any specific rates or charges which the Treasury Department might like to establish. In its letter to Congress and in its testimony this morning, Treasury furnished a table showing current rates and proposed future rates for filing a

variety of documents at the customhouse. One group of rates, presently \$2.50 per filing having to do with entry and clearance are, if customs has its way, to be jumped to \$6 per filing. We intend to challenge not only the preposterous proposal for \$6 per filing but indeed the charging of anything at all. We do not know if we will win our argument but, at least, we do not want to have our case prejudiced. So a statement on this point would be in order.

Second thing we most respectfully ask for, we ask that the committee take particular note of the recommendation of the Stover report dealing with the need for establishing overtime tours of duty and to offer the Senate's blessing to collectors of customs to use their authority, and seek funds for overtime periods. Several earlier reports also recommended that tours of duty be established and here I refer to the "Interdepartmental Committee on Overtime Pay of Certain Inspectional Personnel, 1949," and "Premium Pay for Certain Federal Inspectional Personnel"—a report prepared by the Interagency Committee on Overtime Pay for Certain Inspectors, October 1955, sometimes referred to as the Millkey report.

It is important to note that events have greatly changed since 1911 and now vessels must, for economy reasons, load and discharge 20 hours of every day, as well as on Saturday, Sunday, and occasionally on holidays. Some 45.1 percent of the hours worked on the west coast waterfronts are done during the 5 p.m. to 8 a.m. and on Sundays and holidays, the so-called customs overtime periods. It can now hardly be said that ships load only occasionally at night and Sundays. Actually, they work almost around the clock and the Government should start recognizing that the workday on most waterfronts runs from 8 a.m. to 3 or 4 a.m. next day and that customs supervision at private expense is no longer justified.

Customs supervision of passengers, baggage, and cargo at airports now is paid by the U.S. Government not only from 8 a.m. to 5 p.m. daily, but also during overtime hours from 5 p.m. to midnight.

I would like to amend that to read at many airports. I might also state that at two airports, Miami and New York, the overtime at Government expense extends 24 hours a day, with the exception that, wherever there is a very large number of aircraft arriving in a certain period in the night hours, they might require extra inspectors, in which case the cost of those extra inspectors would be split among the arriving carriers, but there is a tour of duty 24 hours, at least at those two airports, to cover normal traffic patterns at those airports.

As members are aware, bills have been introduced for many years to correct the overtime problem for ships, for private aircraft, and for commercial airlines, but for reasons unknown they have not been brought to hearing. It is timely that the matter is now being brought to light by the Committee on Commerce, particularly since, in April 1965, this country signed in London an international agreement under the auspices of the International Maritime Consultative Organization to reduce costly redtape, and fees related to vessel entry and clearance. A member of this committee, Senator Hartke, was present on that occasion as were several industry representatives. It might also be mentioned that costs like this we are talking about must be passed on to U.S. exporters and importers in the form of higher freight rates.

Unnecessarily high charges levied by customs at rates set by Congress are therefore a negative factor in trade expansion and affects our balance of payments.

We agree with Senator Monroney when he introduced his own version of the antiovertime legislation earlier this year (S. 1596). At that time he said:

Our existing laws on inspection services are archaic, inconsistent, and detrimental to the movement of people and property into and out of the United States. Since these services are for the benefit of the public as a whole, I do not believe that overtime fees should be imposed on any individual or group.

We urge enactment of S. 1875, if amended and interpreted as per our above proposals.

May I please, as I complete my statement, identify the appendixes, so that everybody may know what is in them?

Senator BARTLETT. Certainly.

(Attachment to the prepared text follows:)

[Excerpts from the Stover Report of the Treasury Department released to the public in March 1965]

#### REIMBURSABLE CUSTOMS INSPECTION OVERTIME CHARGES

##### IMPACT OF CUSTOMS OVERTIME PAYMENTS

(Including a historic summary of statutes and court decisions, impact upon carriers, costs of present overtime services, etc.)

g. The 1911 Overtime Act militates against career development, manpower utilization, and mobility on the part of employees. It also tends to prevent employees from retiring.

#### *B. Impact of customs overtime payments on personnel management*

1. *Background.*—Provisions for overtime payments for night service by customs inspectors date back to the act of March 3, 1873. The act of February 13, 1911, is the basic statute in existence today which makes general provisions for extra pay for customs inspectional services at night, on Sunday, or on holidays, and provides for reimbursement at the expense of private interests seeking special services.

The act of February 7, 1920, amended the act of 1911, to designate the hours 5 p.m. to 8 a.m. as constituting the night, extended coverage to the examination of baggage, and established the basis for rates of overtime, Sunday, and holiday pay. Section 451 of the Tariff Act of 1930 extended the coverage of the premium pay provisions to inspectors performing services at most border crossings, without reimbursement to the Government. (For further details of this history see app. A V-13-15.) All of the basic statutes based overtime rates in terms of a day's pay or a portion of a day's pay. Thus, prior to 1945, rates were computed on a day's pay which was then one three-hundred-and-sixtieth of annual salary. The Federal Employees Pay Act of 1945 changed this method of computing pay. "Quite inadvertently," according to a Civil Service Commission Interagency Committee Report on Overtime Pay for Certain Inspectors, "it had the effect of increasing overtime pay under customs-type statutes." A day's pay thus became one two-hundred-and-sixtieth of an employee's annual salary rather than one three-hundred-and-sixtieth that it formerly was. Overtime rates were thereby increased by almost 40 percent.

Throughout the years since enactment, these overtime statutes have been the subject of numerous problems and litigation. The decision of the U.S. Supreme Court in 1944, in the case of *United States v. Howard C. Myers*, upheld the argument of customs employees that they were entitled to extra pay under the law when serving at international bridges, tunnels, and ferries, on regular tours of duty on Sundays or holidays regardless of the fact that they had received another day off in lieu of the Sunday or holiday worked. Then in 1947, the Court of Claims held, in the case of *O'Rourke v. United States*, that customs employees

performing services at free international highway crossing facilities were entitled to extra pay for services performed on regular tours of duty on Sundays or holidays.

At the present, the administrative regulations prescribed by the Secretary of the Treasury define overtime services under the laws, rates of overtime compensation, and when such compensation is reimbursable to the Government by a party or parties in interest. These overtime services are categorized as night, Sunday, and holiday overtime.

Night overtime is defined as: Work after a regular tour of duty and performed between the hours of 5 p.m. and 8 a.m., and after 8 hours on a Sunday or holiday, payable at double time rates, but not to exceed 2½ days' pay for the full period from 5 p.m. to 8 a.m. The minimum payment is for 2 hours' pay at the double time rate. If the employee reports after the first 4 hours and before the last 2 hours of the night, he is entitled to 4 hours' pay at double time rate in addition to the double time pay for the time actually worked.

Sunday and holiday pay for nonovertime duty is at the rate of 2 days' additional pay for 8 hours of duty or any portion thereof. Work in excess of 8 hours is compensated for at the night overtime rates.

Policy in administering the customs overtime laws is defined in Bureau Circular INS-2-F1 of July 15, 1953 (X-27), and amendments thereto. These directives have established basic assignment policy to insure equalization of earnings and assignment desirability within the various participating groups.

Overtime pay in the Customs Service consists, mainly, of two categories: Reimbursable and nonreimbursable. Carriers are required to reimburse the Government for overtime services performed at seaports, railroad ports of entry, and international airports. On the other hand, the Government, in general, bears the cost of customs inspection at all border crossings on Sundays and holidays.

2. *Overtime costs.*—During fiscal year 1963, reimbursable overtime payments amounted to \$6,986,700, while nonreimbursable overtime paid amounted to \$1,375,700 or a total of \$8,362,400. This figure equals approximately one-eighth of the customs appropriation for the fiscal year.

The total of over \$1,375,000 spent on nonreimbursable overtime during 1963, when compared with the salary of a GS-9 inspector at step 5 of \$7,575, shows that customs is paying for the full-time services of about 180 customs inspectors in overtime payments at our border crossings, but is only receiving man-hours worked equal to 100 full-time inspectors, at the most.

Reimbursable overtime presents more problems than the nonreimbursable. These can be roughly categorized as follows:

- (a) The concept of reimbursement;
- (b) Charges to the user and administrative costs; and
- (c) Utilization of funds and manpower.

One of the basic problems in dealing with reimbursable overtime compensation is the concept of reimbursement. House Report 1214, 71st Congress, which dealt with the 1931 act authorizing charges for immigration inspections states:

"The principle of overtime compensation for Government employees at the expense of private interests seeking special services has been recognized by Congress many times, the most notable and pertinent to our present consideration of H.R. 3309 being the act of February 7, 1920, providing overtime compensation for customs inspectors and other customs employees, \* \* \*"<sup>1</sup>

Senate Report 1720, 71st Congress, on the same bill went on to state:

"It is the opinion of the committee that the bill is justified by the principle that transportation companies should reimburse the Government for special services at unusual hours that advance their own interests."<sup>2</sup>

A basic question is whether the Government should require reimbursement for work which is for the purpose of protecting the general public or producing revenue rather than providing a service for the person or firm making the reimbursement. A second question is, "What are special services and unusual hours?" As illustrated in the following paragraphs, there are differences among agencies on: (1) overtime hours; and (2) charges to the user (i.e., special services).

<sup>1</sup> H. Rept. 1214, 71st Cong., 2d sess., to accompany H.R. 3309, overtime compensation for immigration employees, dated Apr. 18, 1930, pp. 3-4.

<sup>2</sup> Sen. Rept. 1720, 71st Cong., 3d sess., to accompany H.R. 3309, overtime compensation for immigration employees, dated Feb. 17, 1931, pp. 1-2.

There are four Federal activities having inspectional personnel who work side by side and frequently perform each others work. They are Agriculture, Public Health Service, Immigration and Naturalization Service, and the Bureau of Customs. As chart V-9 partially indicates, there are differences in definitions of overtime periods and on scheduling and pay for Sundays.

The second problem is charges to the user, which are a source of constant complaint and adversely affect the public image of customs and the customs employees. There are inconsistencies in the application of the customs overtime laws to various means of transportation. The Customs Regulations (sec. 1.8(f)) provide for the establishment of tours of duty outside the regular hours of service where there is a regular recurring need for such services. Following this practice, tours of duty have been established at most major international airports to provide service without charge for scheduled aircraft arrivals (except on Sundays and holidays). However, individual vessel arrivals cannot usually be scheduled in advance or on a regular recurring basis, and, therefore, services provided outside of regular hours are on an overtime basis. On the border, arrivals at highways and international bridges are inspected without charge, but private aircraft arriving outside of regular hours of service often encounter overtime charges.

The growth of international travel by private aircraft in recent years has resulted in complaints of unreasonable overtime charges to the owners of such aircraft arriving at international airports during overtime periods or on Sundays and holidays. The overtime services of customs inspectors at these airports must be charged on a reimbursable prorated basis among the owners of the arriving aircraft. Thus, the amount charged for clearance of a private plane depends upon the number of planes arriving during an overtime period.

CHART V-9.—Premium pay provisions for inspectional personnel under existing statutes and agency regulations

Premium pay provisions	Department of Agriculture, Inspection and quarantine, import-export <sup>1</sup>	Department of Health, Education, and Welfare, Public Health Service <sup>2</sup>	Department of Justice, Immigration and Naturalization Service	Treasury Department, Bureau of Customs
<b>OVERTIME PAY</b>				
Definition of an overtime period.	Duty between 6 p.m. and 6 a.m. on weekdays, other than holidays, if such duty does not fall within a regular tour of duty of the employee. <sup>3</sup>	Duty between 6 p.m. and 6 a.m. on weekdays, other than holidays, if such duty does not fall within a regular tour of duty of the employee. <sup>3</sup>	Work between the hours of 5 p.m. and 8 a.m., not within hours of a regular tour of duty of the employee. Also, after 8 hours on a Sunday or holiday. <sup>3</sup>	Work between the hours of 5 p.m. and 8 a.m., not within the hours of a regular tour of duty of the employee. Also, after 8 hours on a Sunday or holiday. <sup>3</sup>
Overtime rate.	1½ times the employee's rate of basic compensation not to exceed the minimum scheduled rate of GS-9.	2 times the basic hourly rate.	Double time.	Double time.
Limitation on overtime pay.	Overtime plus base pay for any period not to exceed the maximum step of GS-15.	Maximum 12 hours at 2 times the basic hourly rate.	Overtime pay may not exceed 2½ days' pay during any period between 5 p.m. and 8 a.m.	Overtime pay may not exceed 2½ days' pay during any one night.
Callback assignments.	Minimum of 2 hours, including commuted travel time period for which the employee shall be paid at the overtime rate. <sup>5</sup>	Minimum of 1 hour's pay at double time rate. Maximum of 2 hours' pay at double time rate for period between 2 overtime assignments during a night.	Minimum of 2 hours' pay at double time rate. Maximum of 2 hours' pay at double time rate for period between 2 overtime assignments during a night.	Minimum 2 hours' pay at double time rate. If employee reports after 1st 4 hours and before last 2 hours of the night, he is entitled to 4 hours' pay at double time rate in addition to time actually worked. Waiting time between 2 overtime assignments during a night considered on duty if less than 2 hours intervene. If more than 2 hours intervene, service may be considered as continuous, or as 2 separate assignments. <sup>4</sup>
Compensatory time off.	Not allowed. Overtime must be paid.	No provision under special statute.	No provision under special statute.	No provision under special statute.
<b>HOLIDAY PAY</b>				
Holiday pay.	Holiday rate under FEPA as amended.	Holiday rate under FEPA, as amended.	2 days' additional pay for 8 hours of duty or less.	2 days' additional pay for 8 hours of duty or less.
Rate for overtime holiday duty.	1½ times the regular rate not to exceed the minimum scheduled rate of GS-9.	Actual time spent on inspection (or operating a vessel) and, in addition, up to 2 hours standby or waiting time, payable at overtime rates.	Same as for nonovertime holiday duty. Work in excess of 8 hours on a holiday compensated for at overtime rate.	Same as for nonovertime holiday duty. Work in excess of 8 hours on a holiday compensated for at overtime rate.
Callback assignments.	Minimum of 2 hours, including commuted travel time period for which the employee shall be paid at the overtime rate. <sup>5</sup>	Up to 2 hours, standby time, plus time actually worked.	Minimum 8 hours' pay at double-time rate.	Minimum 8 hours' pay at double-time rate.

SUNDAY PAY

<p>Premium rate for non-overtime Sunday duty. Rate for overtime Sunday duty.</p>	<p>Part of administrative workweek, no premium pay. 1½ times the regular rate, not to exceed the minimum rate of GS-9.</p>	<p>2 days' additional pay for 8 hours of duty or less.<sup>6</sup> Same as for nonovertime Sunday duty. Work in excess of 8 hours on Sunday compensated for at overtime rate. Minimum 8 hours' pay at double time rate.</p>
<p>Callback assignments.</p>	<p>Part of administrative workweek, no premium pay. Same as for holidays.</p>	<p>2 days' additional pay for 8 hours of duty or less.<sup>6</sup> Same as for nonovertime Sunday duty. Work in excess of 8 hours on Sunday compensated for at overtime rate. Minimum 8 hours' pay at double time rate.</p>

1 Department of Agriculture, inspection and quarantine services: Overtime payments are based on the F.E.P.A. and on the basic legislation contained in the act of Aug. 28, 1950 (64 Stat. 561, 5 U.S.C. 576) which reads as follows:

"That the Secretary of Agriculture is authorized to pay employees of the United States Department of Agriculture performing inspection and quarantine services relating to imports into and exports from the United States, for all overtime, night, or holiday work performed, at such rates as he may determine, and to accept from persons for whom such work is performed reimbursement for any sums paid out by him for such work."

<sup>2</sup> Public Health Service, quarantine inspection: Overtime payments are based on the F.E.P.A. and on the basic legislation contained in sec. 364 of the Public Health Service Act, as amended, by Public Law 85-58 and Public Law 85-580.

"(c) The Surgeon General shall fix a reasonable rate of extra compensation for overtime Services of employees of the United States Public Health Service, Foreign Quarantine Division, performing overtime duties including the operation of vessels, in connection with the inspection or quarantine treatment of persons (passengers and crews), conveyances, or goods arriving by land, water, or air in the United States or any place subject to the jurisdiction thereof, hereinafter referred to as 'employees of the Public Health Service', when required to be on duty between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian (or between the hours of 7 o'clock postmeridian and 7 o'clock antemeridian at stations which have a declared workday of from 7 o'clock antemeridian to 7 o'clock postmeridian), or on Sundays or holidays, such rate, in lieu of compensation under any other provision of law, to be fixed at two times the basic hourly rate for each hour that the overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian, and two times the basic hourly rate for each overtime hour worked on Sundays or holidays. As used in this subsection, the term 'basic hourly rate' shall mean the regular basic rate of pay which is applicable to such employees for work performed within their regular scheduled tour of duty.

"(d) (1) The said extra compensation shall be paid to the United States by the owner, agent, consignee, operator, or master or other person in charge of any conveyance, for whom, at his request, services as described in this subsection (hereinafter referred to as overtime service) are performed. If such employees have been ordered to report for duty and have so reported, and the requested services are not performed by reason of circumstances beyond the control of the employees concerned, such extra compensation shall be paid on the same basis as though the overtime services had actually been performed

during the period between the time the employees were ordered to report for duty and did so report and the time they were notified that their services could not be required, and in any case as though their services had continued for the full period. The Surgeon General with the approval of the Secretary of Health, Education, and Welfare may prescribe regulations requiring the owner, agent, consignee, operator, or master or other person for whom the overtime services are performed to file a bond in such amounts and containing such conditions and with such sureties or in lieu of a bond, to deposit money or obligations of the United States in such amount, as will assure the payment of charges under this subsection, which bond or deposit may cover one or more transactions or all transactions during a specified period: Provided, That no charges shall be made for services performed in connection with the inspection of (1) persons arriving by international highways, ferries, bridges, or tunnels, or the conveyances in which they arrive, or (2) persons arriving by aircraft or railroad trains, the operations of which are covered by published schedules, or the aircraft or trains in which they arrive, or (3) persons arriving by vessels operated between Canadian ports and ports on Puget Sound or operated on the Great Lakes and connecting waterways, the operations of which are covered by published schedules, or the vessels in which they arrive.

"(2) Moneys collected under this subsection shall be deposited in the Treasury of the United States to the credit of the appropriation charged with the expense of the services, and the appropriations so credited shall be available for the payment of such compensation to the said employees for services so rendered."

<sup>3</sup> Work between the corresponding hours at ports or stations where the regular hours of business have been established to agree with local prevailing working hours.

<sup>4</sup> If an employee reports for duty after the 1st 4 hours and before the last 2 hours of the night, and services are not performed by reason of circumstances beyond the control of the employee, he is entitled to 6 hours' pay at the double time rate.

<sup>5</sup> When travel is performed solely on account of overtime or holiday service, a limited travel time period shall be allowed which shall be paid for at the overtime rate, and shall be prescribed in administrative instructions issued by appropriate division directors for the ports, stations, and area in which the employees are located or the services performed. The period shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which employees perform such holiday or overtime service.

<sup>6</sup> It is a general practice in the agencies concerned to schedule Sunday as an overtime day, i.e., as a 6th or 7th day of work.

For example:

You arrive at Burlington (Vt.) Airport from a foreign country in your private plane on Sunday, or a holiday, and are the only plane arriving that day. You will be charged \$58.40 for the services of a GS-9 customs inspector (in step 5) to clear your plane.

If your plane is one of 10 arrivals, the charges will be prorated so that you will have to pay only \$5.84. However, as the customs inspector will have no advance knowledge of the number of arrivals, if you are the first arrival, you will be required to deposit the full amount of \$58.40 and later be refunded any excess deposited.

But:

If you travel by private automobile and arrive from a contiguous foreign country on Sunday or a holiday, you can be cleared by the same inspector of customs, without charge.

If you arrive at an airport where an immigration officer is acting as a customs officer, no charge is made since the Immigration and Naturalization Service has administratively determined not to charge for clearance of private aircraft.

Complaints of the steamship lines, airlines, and railroads, concerning reimbursable overtime charges seem to be caused usually by three provisos in the overtime regulations—namely: (1) the proviso which precludes assignment of inspectional manpower to tours of duty on Sundays even where there is a regular, recurring need or such assignments; (2) the proviso which provides for a charge or 2 days' pay for any time worked on a Sunday or holiday up to a maximum of 8 hours; and (3) the proviso which states: "\* \* \* The compensable time shall be the period between the time the employee is assigned and reports for duty and the conclusion of the services, plus 4 hours, if the time of the assignment is after the expiration of the first 4 and before the beginning of the last 2 hours of the night \* \* \*." (customs regulations, sec. 24.16(g)).

For example (using GS-9 inspector, in fifth step):

Proviso (1) above (Sunday overtime):

(a) Inspector called out to work a plane arriving on Sunday or a holiday. Total time worked—9 a.m. to 10 a.m., 1 hour. (No further work that day.) Total charge: 2 days or \$58.40. Charge per hour worked: \$58.40.

(b) Inspector called out to work a special train arriving on Sunday or a holiday. Total time worked 9 a.m. to 12 noon, 3 hours. (No further work that day.) Total charge: 2 days or \$58.40. Charge per hour worked: \$19.47.

(c) Inspector called out to work a ship arriving at 10 a.m. on Sunday or a holiday. Total time worked 10 a.m. to 3 p.m., 5 hours. (No further work that day.) Total payment: 2 days or \$58.40. Charge per hour worked: \$11.68.

Proviso (2) above (night overtime):

(a) Inspector called out to work a ship due to arrive at 4:30 a.m. (Port hours—8 a.m. to 5 p.m.) Total time worked 4:30 a.m. to 8 a.m., 3½ hours. Total charge: (3½ and 4 hours) four periods or 2 days—\$58.40. Charge per hour worked: 3½ or \$16.69.

(b) Inspector called out to work a ship arriving at 10 p.m. (Port hours 8 a.m. to 5 p.m.) Total overtime worked 10 p.m. to 1 a.m., 3 hours. Total charge: (3 and 4 hours) four periods or 2 days—\$58.40. Charge per hour worked: \$19.47.

Although we have used only one rate of pay in the foregoing examples, we point out that the rate charged is dependent upon the basic salary of the employee who performs the service, so that varying rates are another irritation to the user, who finds it difficult to understand why he cannot expect to be billed on a uniform charge basis for equivalent service performed. Inspectors and supervisory inspectors and other personnel may be utilized to perform these services in grades GS-7 to GS-11, and paid at varying rates within these grades.

From these examples, which are not unusual, one can see why these overtime charges have been a source of recurring irritation to the carriers requesting such services.

Further, the amount of almost \$7 million paid in reimbursable overtime to the Government by the various carriers does not reimburse the Government for any of the administrative burden involved in the processing of the payrolls or the bills for the services.

The administrative burden of billing for reimbursable services and the computing of payrolls for all customs overtime services are time consuming and costly processes for both the customs service and the parties in interest.

The third problem is a basic one of utilization of funds and manpower. The amount of \$6,986,700 for reimbursable overtime would pay for the salaries of over 925 inspectors at GS-9, step 5. This is more than 10 percent of the total customs employment today. Since the user reimburses the customs service for the services

rendered on a reimbursable basis, this provides a basis for funding customs manpower in that private industry pays for many services performed outside of regular working hours. Because of budgetary restrictions, it is sometimes impossible to establish tours of duty outside of regular hours even when the need is justified, with the result that private interests pay for such services.

3. *Personnel management problems.*—Overtime earned by customs employees causes personnel management problems which do not lend themselves to easy solutions. Serious controversies have arisen between employees and management, resulting in long and costly litigation. It is impossible to accurately measure the monetary cost of the time and effort used in the processing of overtime claims through administrative channels and the courts, as well as the cost of the loss in mutual confidence between employees and management.

At present there are approximately 2,650 employees regularly participating in overtime. The average annual overtime earnings per employee will amount to approximately \$3,150. With this figure in mind, we can safely assume that the average GS-9 inspector of customs, with a salary of \$7,575 (fifth step of the grade) will have a gross income, with overtime, of some \$10,725, or the equivalent of the fifth step of grade GS-12. (See chart V-10.)

Obviously, it becomes difficult, if not impossible, to convince an inspector, GS-9, grossing over \$10,700 per year that he should accept a promotion to GS-10 or GS-11 which will also involve the loss of overtime earnings. As a result, the customs service has a continually greater problem of obtaining the best qualified replacements for vacancies in administrative and supervisory positions.

As the GS-9 inspector becomes eligible to retire with 30 years of service, at age 55 or older, he is suddenly faced with too great a reduction in income because his overtime earnings have not been subject to retirement deductions and cannot be used in his annuity computation. For example:

*GS-9 customs inspector:*

Annual salary (5th step).....	\$7, 575
Average overtime earnings.....	3, 150
<hr/>	
Gross income.....	10, 725
At age 60 with 30 years' service average salary, high 5 years \$7,000, gross annuity earned.....	3, 940
<hr/>	
Loss of gross income upon retirement.....	6, 785

Very few customs inspectors can accept such a reduction in gross income, so the average age of customs inspectors is much higher than would normally be anticipated. In fact, over 14 percent of all customs inspectors are now eligible to retire.

The amount of overtime earned varies from port to port within a district which tends to reduce the mobility of inspectional personnel, and may result in too much specialization by inspectors in only one type of inspectional work. Overtime payments preclude any prolonged cross-career training of inspectors in entry, liquidating, or other customs functions where there is no overtime paid.

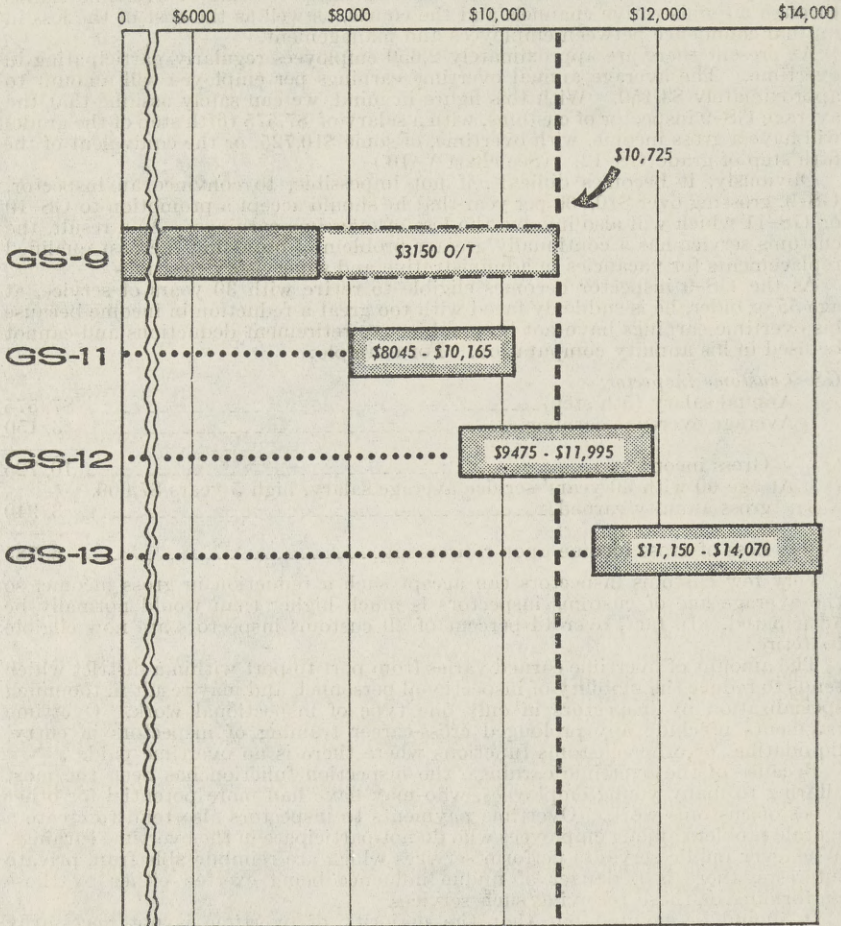
Because of the overtime earnings, the inspection function has been the most alluring to many young employees, who may have had more potential for other types of customs work. Overtime payments to inspectors also tend to create a morale problem among employees who do not participate in the overtime earnings. Whenever public servants perform services which are reimbursable from private interests, there is a danger of undue influence being exerted either by those performing or those receiving such services.

It should be pointed out that the majority of overtime is not necessarily earned in assignments of brief duration at extremely high overtime rates. Most overtime is earned by assignment for a full 8 hours of service in excess of the employee's regular 40-hour workweek and for which the rate of return is equivalent to double time. (Examples are Sunday assignments at border crossings and airports and night assignments to many vessel operations at seaports.) The necessity to be available and to perform emergency overtime assignments, which cannot always be predicted in advance, affects the employee's personal life. At some ports the excessive amounts of overtime required raise a question concerning the health of employees and the effect of extensive overtime work on the employee's performance during his regular assignment.

4. *Comparison with other inspection services.*—Numerous studies have been undertaken in the past to compare customs overtime charges with those of other inspectional services of the Government, and with overtime charges of similar

BUREAU OF CUSTOMS

EFFECT OF 1911 O/T EARNINGS ON TOTAL COMPENSATION



\* NOTE: All data based on 1962 Salary Schedule

industrial occupations, including longshoremen, transportation, airlines, railroads, and service industries. The most recent study, in depth, was made in 1955 at the direction of the President, by the Interagency Committee on Premium Pay for Certain Inspectors under the supervision of the Civil Service Commission. Their report, known as the Milkey Report, pointed up the wide variations in overtime provisions, charges in the inspectional services of the Government, and the differences between such charges and those charged in related industrial occupations. An updated summary of the differences in overtime and holiday legislation and regulations for the four inspectional services is in chart V-9. Their findings remain valid, for the most part, at this time.

Recommendations of the Interagency Committee were supported by the administration and a legislative proposal was drafted. (Conclusions and recommendations contained in the report of this committee are contained in app. A V-16-22.)

5. *Conclusions.*—

(a) During fiscal year 1963, overtime payments amounted to \$8,362,400 or an amount equal to one-eighth of the total money appropriated to the service for that year. This overtime, paid to approximately 2,650 employees, was the equivalent to straight salaries for 1,105 employees. These facts raise serious questions as to whether this represents the best use of manpower and money.

(b) The Government charges for overtime services at seaports, railroad ports of entry, and international airports, but does not charge for similar services at border crossings. This is done on the concept that "transportation companies should reimburse the Government for special services at unusual hours that advance their own interests." This is a basic question as to whether the Government should require reimbursement for services which are for the purpose of protecting the public or producing revenue.

(c) There are differences within the customs service and between customs and other inspectional agencies concerning (1) services for which reimbursements are required, and (2) charges for services rendered. These differences need to be resolved.

(d) Charges for inspection of a private aircraft arriving on a Sunday or holiday vary based upon the number of aircraft arriving at that airport on that day and the salary of the inspector and can run as high as \$58.40 for an inspection. Charges are, therefore, not consistent for the same service and frequently excessive.

(e) Steamship lines, airlines, and railroads must pay for inspections performed on overtime; trucks normally do not. Regular hours of duty vary throughout the country; e.g., airports versus seaports. Therefore, treatment is inequitable depending upon the type of carrier.

(f) Overtime payments cause serious personnel management problems because (1) employees will not accept promotions or reassignments involving loss of overtime earnings and reductions in take-home pay, (2) most employees in the collector's force tend to seek and retain inspector positions, and (3) the reduction in income upon retirement is so great that most inspectors cannot afford to retire.

#### RECOMMENDATIONS

V-1. Customs should make full use of its relatively favorable salary position by increasing the competition for appointment, and promotion, to the technical positions, GS-5 and above.

V-2. Qualification standards for technical positions should be reevaluated in the light of actual job requirements. In the event the FSEE is not the most appropriate test of essential skills and abilities for entry into these occupations, other examinations should be developed to obtain high-quality personnel.

V-3. Qualification standards should be applied uniformly in both competitive and noncompetitive actions.

V-4. Nationwide examining should be conducted for initial appointment to technical positions in the customs service.

V-5. Areas of competition for reassignment or promotion should encompass all employees in a geographic area, such as the proposed regions, or all employees in the customs service, depending upon the grade and organizational level of the position involved.

V-6. Selection boards should be utilized in making selections for key positions in lower organizational levels; e.g., a headquarters selection board of top career employees should screen and nominate candidates for key positions in regions.

V-7. Breadth of experience should be emphasized and be made a prime consideration for entrance into key positions in the field and in the headquarters.

V-8. A means of more closely controlling compliance with Bureau policy on overtime should be installed to insure: (1) All nonreimbursable tours of duty that are not vital are eliminated; (2) adequate tours of duty are provided in lieu of reimbursable assignments where this is justified; and, (3) the extent of overtime worked by any employee does not impair his efficiency during the regular tour of duty. This can be done by improved reporting to the Bureau, giving more responsibility to field auditors, and by assigning functional supervision of inspectional activities to operations divisions at regional offices.

V-9. A review should be made of present administrative policies to determine if further reduction in reimbursable overtime can be accomplished within the

framework of present legislation. For example, present regulation provides for the establishment of regular tours of duty outside of normal hours of service if a regular recurring need is established. This can be done at major airports on scheduled aircraft arrivals. Review should be made to determine if additional tours of duty can be justified to:

(a) Provide additional tours of duty at airports to service private aircraft arrivals where the volume of contemplated arrivals based on experience or valid projections will generally occupy an employee's time; and,

(b) Provide tours of duty at seaports outside regular hours if a regular-recurring need can be shown based on experience.

V-10. The Treasury Department should request the Bureau of the Budget to seek legislation which would:

(a) Clearly set a uniform Government-wide policy on reimbursements for inspectional services;

(b) Establish uniform charges for those services for which charges are made;

(c) Establish Government-wide definitions of overtime for inspectional services;

(d) Set uniform rates for overtime and holiday pay for inspectional services; and

(e) Provide equitable treatment, with appropriate savings provisions where necessary, for employees concerned.

V-11. As the first step in carrying out recommendations V-1 through V-4 above:

(a) The Bureau should establish nationwide recruitment, examination, selection, training, and initial assignment programs for inspectors similar to those programs in the USDA Plant Quarantine Division, the Immigration and Naturalization Service, and the Public Health Service, Foreign Quarantine Division.

(b) Effective use should be made of the peak workload season in the port of New York to provide a combination of classroom instruction and on-the-job training for new appointees.

V-12. The Bureau should make a comprehensive inventory of training needs to determine priority requirements, and develop specific plans for meeting those requirements on a time-phased basis.

V-13. Needed training manuals and guides should be developed to insure the effectiveness of on-the-job instruction and this method and programed correspondence courses should be used to full advantage in meeting the training requirements of the Service.

V-14. Action should be taken to clarify and strengthen the role of the employee development officer, issue more comprehensive policy and guidance concerning training responsibilities, and provide adequate staffing and budgetary support for the training function.

#### BRIEF HISTORY OF CUSTOMS OVERTIME LAWS

The present customs overtime statutes are section 5 of the act of February 13, 1911, 36 Stat. 901, as amended by the act of February 7, 1920, 41 Stat. 402 (19 U.S.C. 261, 267) and section 451 of the Tariff Act of 1930, as amended (19 U.S.C. 1451).

Section 5 of the act of February 13, 1911, *supra*, provided that "the Secretary of the Treasury shall fix a reasonable rate of extra compensation for night services of inspectors, storekeepers, weighers, and other customs officers and employees in connection with the lading or unlading of cargo at night, or the lading at night of cargo or merchandise for transportation in bond or for exportation in bond, or for the exportation with benefit of drawback, but such rate of compensation shall not exceed an amount equal to double the rate of compensation allowed to each such officer or employee for like services rendered by day, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel or other conveyance, whenever such special license or permit for immediate lading or for unlading at night or on Sundays or holidays shall be granted, to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury." The section also provided for the payment of such extra compensation to boarding officers.

The act of February 7, 1920, *supra*, amended section 5 of the 1911 act to provide that the rates of extra compensation shall be fixed "on the basis of one-half day's pay for each 2 hours or fraction thereof of at least 1 hour that the overtime extends beyond 5 o'clock postmeridian (but not to exceed 2½ days' pay for the full period from 5 o'clock postmeridian to 8 o'clock antemeridian), and 2 additional days' pay for Sunday or holiday duty." The amendment made some other changes including substitution of "overtime services" for "night services," using the

phrase "required to remain on duty" between 5 p.m. and 8 a.m., and providing that extra compensation shall be paid "if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unloading, receiving, delivery, or examination takes place or not." For discussion of the 1920 amendment see (1919) 59 Congressional Record 640; (1920) H. Rept. No. 567, 66th Congress, 2d session; (1920) 59 Congressional Record 2171.

The first, second, third, and fourth sections of the act of February 13, 1911, supra, providing for special licenses to lade or unlade cargo of vessels at night and related matters, were repealed by section 643, Tariff Act of 1922, which provided, in sections 450, 451, and 452, for special licenses to lade and unlade upon the giving of a bond conditioned, among other things, upon the payment of overtime compensation in accordance with section 5 of the act of February 13, 1911, supra. Sections 450, 451, and 452, of the Tariff Act of 1930, were similar to the corresponding sections of the 1922 Tariff Act, except that the new section 451 contained additional provisions for assigning customs officers and employees upon request of the master, owner, or agent of a vessel. Section 451 of the 1930 act was amended by section 9 of the Customs Administrative Act of 1938, to provide that "Upon request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of the owner or consignee of any merchandise or baggage" for overtime services, officers or employees will be assigned to perform "any such services which may lawfully be performed by them during regular hours of business." [Italics supplied.] Thus the coverage of the overtime provisions were extended so as not to be limited to services in connection with the lading or unlading of vessels.

The term "day's pay" in the above-mentioned 1920 amendment was the subject of a decision by the Court of Appeals for the District of Columbia in *Meyer v. Morgenthau* (1941 122 Fed. (2d) 216). The Treasury Department had provided (in Treasury Decision 49669) that the daily rate of pay for overtime services should be the gross daily rate of regular compensation, except that when such gross daily rate of regular compensation was less than \$5 or more than \$8, the daily rate of extra compensation should be \$5 or \$8, as the case might be. The court held that the term "day's pay" as used in the statute meant a day's pay at the employee's regular rate of pay and that the Treasury regulation was, therefore, invalid.

The above-mentioned provision of section 9 of the Customs Administrative Act of 1938, amending section 451, Tariff Act of 1930, also provided that "Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest." This related to the practice of assigning customs employees to regular tours of duty without extra compensation at night and on Sundays and holidays at border crossings (and some other places) where customs service was required at all hours of the day and night during the 7 days of the week. This practice was held by the Supreme Court of the United States in the case of *United States v. Myers* (1944) 320 U.S. 561 and 321 U.S. 750, to be valid as to night services on weekdays but invalid as to Sunday and holiday services. The Court held that extra compensation under the 1911 act, as amended by the 1920 act, must be paid for all services within its purview performed at any time during the 24 hours of a Sunday or holiday.

After the decision in *United States v. Myers, supra*, section 451, Tariff Act of 1930, as amended (19 U.S.C. 1451), was further amended by the act of June 3, 1944, 58 Stat. 269, to exempt the owners, operators, or agents of highway vehicles, bridges, tunnels, or ferries from reimbursing the Government for extra compensation of customs employees for services performed at these facilities.

Another important court decision on the customs overtime laws was the decision of the Court of Claims in *O'Rourke v. United States* (1947) 109 Ct. Cls. 33. In that case, the court held that extra compensation under the 1911 act, as amended was payable for inspectional services performed at free bridges and highways as well as for services at toll facilities. There were also a number of other questions decided in the case.

The current customs regulation on extra compensation under the customs overtime laws in section 24.16 of the Customs Regulations of 1943 (19 CFR 24.16), as amended. One provision of that regulation which has been the subject of considerable discussion is the provision, in certain situations, for compensable time in addition to the time spent at the place of the overtime assignment. This provision (in par. (g), as amended by T.D. 52903) is supported by the authority given to the Secretary of the Treasury in the 1911 act, as amended, to fix reasonable rates of overtime compensation. In this connection, reference is made to

the above-mentioned decision in the case of *Meyer v. Morgenthau*, 122 Fed. (2d) 216, in which the court said that "The fixing of pay for overtime services includes two elements; the definition or measurement of the 'overtime service,' and the definition of the pay for such services. The Secretary, has, and exercises, a considerable discretion in regard to the first element. \* \* \*."

This memorandum does not purport to mention every statute that has ever been passed or every court decision on customs overtime. Some old statutes prior to the act of February 13, 1911, and a few court decisions on particular points, which would not seem to be of interest in connection with the present consideration of the overtime question, are omitted.

NOTE.—This memorandum prepared by chief counsel's office (Bureau of Customs).

UNITED STATES CODE

STATUTES APPLICABLE TO THE PAYMENT OF CUSTOM'S OVERTIME CHARGES ON A REIMBURSABLE BASIS

**19 § 261. Boarding officers' compensation**

Customs officers acting as boarding officers, and any customs officer who may be designated for that purpose by the collector of customs, shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays, at the rate prescribed by the Secretary of the Treasury as provided in section 267 of this title, the said extra compensation to be paid by the master, owner, agent, or consignee of such vessels (Feb. 13, 1911, c. 46, § 5, 36 Stat. 901; Feb. 7, 1920, c. 61, 41 Stat. 402; Sept. 21, 1922, c. 356, § 643, 42 Stat. 990).

\* \* \* \* \*

**19 § 267. Compensation for overtime services; fixing working hours**

The Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. In those ports where customary working hours are other than those hereinabove mentioned, the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed (Feb. 13, 1911, c. 46, § 5, 36 Stat. 901; Feb. 7, 1920, c. 61, 41 Stat. 402).

\* \* \* \* \*

**19 § 1450. Unlading on Sundays, holidays, or at night**

**19 § 1451. Same; extra compensation**

Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section

267 of this title. In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unloading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to pay, or gives a bond in an amount to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unloading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: *Provided*, That the provisions of this section, sections 1450 and 1452 of this title, and the provisions of section 267 of this title insofar as such section 267 of this title requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry between the United States and Canada or between the United States and Mexico, nor to the lading or unloading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At ports of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, the collector, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U.S. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term "ferry" shall mean a passenger service operated with the use of vessels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided (June 17, 1930, c. 497, title IV, § 451, 46 Stat. 715; June 25, 1938, c. 679, § 9, 52 Stat. 1082; June 3, 1944, c. 233, § 1, 58 Stat. 269; Sept. 1, 1954, c. 1213, title V, § 503, 68 Stat. 1141).

LEGISLATION AUTHORIZING AGENCIES TO LEVY FAIR AND REASONABLE USER CHARGES

*Fees and charges of Federal agencies (new)*

**5 § 140. Services as self-sustaining; uniformity; regulations; deposit in Treasury; effect on other laws**

It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction

of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided*, That nothing contained in this section shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price: *Provided further*, That nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price. Aug. 31, 1951, c. 376, Title V, § 501, 65 Stat. 290.

[OUTSIDE DIVISION CIRCULAR NO. 2-62]

Circular: PER-6-OUTSF

January 17, 1962

Subject: Establishment of a regular tour of duty at San Francisco International Airport between 4 p.m. and 12 p.m.

References: Bureau of Customs letter of December 26, 1961, file TRA 191.11D, authorizing the establishment of a regular tour of duty between 4 p.m. and 12 p.m.

1. *Purpose*

To provide the various airlines with customs inspectional services for clearance of cargo and passengers during the hours of 4 p.m. and 12 p.m. each night, Monday through Saturday, except on holidays.

2. *Background*

Heretofore it was necessary for the airlines to reimburse the Government for services of a customs inspector or a supervisory customs inspector on an overtime basis between the hours of 5 p.m. and 6 a.m. While it still will be necessary for the airlines to reimburse the Government on an overtime basis for services of customs inspectors and supervisory customs inspector between the hours of 12 p.m. and 6 a.m. each day, Monday through Saturday, and on Sundays and holidays, reimbursement for services between the hours of 5 p.m. and 12 p.m. will not be required unless the available manpower on such tour cannot satisfactorily handle the clearance of cargo and passengers.

3. *Action*

Effective on Monday, February 5, 1962, this office will establish a regular tour of duty at San Francisco International Airport between the hours of 4 p.m. and 12 p.m., Monday through Saturday.

The tour will be staffed by supervisory customs inspector and three journeyman customs inspectors for the purpose of providing inspectional service to the various airlines on a "first come-first served" basis. Since we will provide 6-day service and our inspectional personnel are on a 5-day workweek there will be days in which the full complement of inspectional manpower will not be on hand due to days off, annual leave, etc.

If an airline desires the service of one or more customs inspector solely for clearance of their cargo and passengers and such service cannot be provided by the inspectors assigned to the regular tour of duty it will be necessary for the airline to request overtime assignment of additional customs inspectors at their expense. It is expected that we will be able to handle clearance of passenger flights carrying up to 20 passengers from foreign countries requiring full baggage inspection with inspectors assigned to the regular tour of duty unless the cargo and miscellaneous inspectional duties preclude such assignment. On flights carrying more than 20 passengers it may be necessary to assign inspectors on an overtime basis at the expense of the airline. However, in all cases, the supervisory customs inspector on the regular tour of duty will supervise the baggage examination.

4. *Effective date*

Effective on Monday, February 5, 1962.

R. C. KORHUMMEL,  
*Supervisory Inspector (Deputy Collector in Charge) Outside Division.*

Approved for distribution to airlines and customs brokers.

GEORGE K. BROWKAW,  
*Collector of Customs.*

The following is a list of reimbursable customs, etc., immigration, and PHS overtime picked at random during 1965:

*Customs, Public Health Service, and immigration overtime, Seattle, Wash.*

Date	Name	Service	Time	Amount	Agency
Mar. 14, 1965	Balfour Guthrie	Boarding	0700-0800	71.20	Customs.
Feb. 16, 1965	Blue Star Line	Inspection of passengers and crew	0945-0830	34.40	Immigration.
Mar. 21, 1965	do	do	0230-0515	34.40	Do.
Mar. 6, 1965	do	do	0000-0000	47.88	Do.
Do	do	do	1217-1400	66.88	Customs.
Mar. 21, 1965	do	Boarding, P.F.	0300-0445	15.28	Do.
Feb. 26, 1965	do	Waiting and boarding	1700-1800	16.72	Do.
Feb. 6, 1965	do	Discharging	0600-0800	66.88	Do.
Mar. 21, 1965	do	Waiting and boarding	0800-1000	53.40	Do.
Mar. 25, 1965	General Steamship	Boarding	0500-0700	17.20	Do.
Mar. 21, 1965	do	do	0800-0900	66.88	Do.
Mar. 14, 1956	do	Entering and clearing	0900-1010	30.56	Do.
Mar. 16, 1965	do	Boarding	1800-2400	29.68	Do.
Mar. 17, 1965	do	Discharging	2400-0300	16.72	Do.
Do	do	do	1700-1900	50.00	Public Health Service.
Mar. 4, 1965	do	Overtime	R-65-14	75.68	Customs.
Mar. 14, 1965	Con. Gen. Transatlantique	Unloading	0800-1530	54.96	Do.
Mar. 17, 1965	General Steamship	Boarding	2200-2400	51.60	Immigration.
Mar. 14, 1965	do	Inspection	0900-1030	18.32	Customs.
Mar. 10, 1965	do	Enter and clear	0700-0800	50.16	Do.
Feb. 26, 1965	do	Boarding	2300-2400	75.68	Do.
Feb. 21, 1965	do	do	2255-2330	59.36	Do.
Feb. 7, 1965	do	Boarding and issue, P.E.	1945-2105	59.36	Do.
Feb. 8, 1965	do	Boarding	1800-2400	66.88	Do.
Feb. 9, 1965	do	do	2400-0300	136.24	Do.
Feb. 6, 1965	do	Discharging	1900-2400	24.32	Do.
Feb. 7, 1965	do	do	2400-0700	75.68	Do.
Do	do	Unloading	0800-1630	133.44	Do.
Jan. 26, 1965	do	do	1900-2400	130.56	Do.
Jan. 27, 1965	do	do	2400-0400	17.64	Do.
Do	do	do	1700-2000	66.88	Do.
Jan. 6, 1965	do	do	1700-2400	61.12	Do.
Jan. 7, 1965	do	do	2400-0400	71.20	Do.
Do	do	do	1900-2400	61.12	Do.
Jan. 8, 1965	do	do	2400-0400	66.88	Do.
Do	do	do	1900-2400	133.44	Do.
Do	do	do	2400-0400	61.12	Do.
Jan. 3, 1965	do	Loading and unloading	0800-1700	83.44	Do.
Jan. 5, 1965	do	Loading	1900-2400	61.12	Do.
Jan. 6, 1965	do	do	2400-0245	48.40	Do.
Feb. 7, 1965	International Ship	Inspection	0315-0700	122.08	Immigration.
Mar. 17, 1963	McKenzie & Co.	do	2315-0715	93.92	Do.
Feb. 14, 1963	do	do	1900-2415	66.88	Do.
Mar. 26, 1963	Grace Line	Boarding and discharging	1900-2400	66.88	Customs.
Mar. 27, 1965	do	do	2400-0300	66.88	Do.
Do	do	do	1800-2400	66.88	Do.

Mar. 28, 1965	do	Discharging	2400-0800	61.12	Do.
Do	do	do	0800-1600	66.88	Do.
Do	do	do	1600-2400	66.88	Do.
Mar. 29, 1965	do	do	2400-0800	74.20	Do.
Do	do	do	0800-1600	16.72	Do.
Do	do	do	1600-2400	30.36	Do.
Mar. 17, 1965	do	Inspection	1900-2130	18.12	Immigration.
Mar. 20, 1965	do	do	0600-0730	85.28	Do.
Feb. 6, 1965	do	Discharging	0600-0800	71.20	Customs.
Feb. 16, 1965	do	do	1700-2400	61.12	Do.
Feb. 17, 1965	do	do	2400-0400	45.56	Do.
Do	do	do	1900-2400	45.84	Do.
Feb. 18, 1965	do	do	2400-0130	50.00	Public Health Service.
Dec. 22, 1964	do	Quarantine inspection	1620-1710	32.48	Do.
Jan. 6, 1965	do	do	0545-0630	40.00	Do.
Jan. 9, 1965	do	do	1845-2245	32.48	Do.
Feb. 6, 1965	do	do	0545-0630	40.00	Do.
Feb. 12, 1965	do	do	1900-2200	24.36	Do.
Mar. 10, 1965	do	Boarding	2400-0605	40.60	Customs.
Mar. 12, 1965	do	Unloading	1900-2400	61.12	Do.
Do	do	do	2400-0430	66.88	Do.
Feb. 13, 1965	do	Boarding	0700-0800	18.32	Do.
Feb. 22, 1965	do	do	2100-2400	154.96	Do.
Jan. 24, 1965	do	Standby to board	0900-1700	33.44	Do.
Do	do	do	0900-1700	33.44	Do.
Mar. 4, 1965	do	Boarding	0600-0700	13.08	Do.
Feb. 7, 1965	do	do	0500-0700	35.60	Do.
Jan. 24, 1965	do	do	0200-0345	54.24	Do.
Do	do	do	0600-1600	159.36	Do.
Do	do	do	0200-0345	54.24	Do.
Do	do	do	0600-1600	159.36	Do.
Do	do	do	1600-2010	63.04	Do.
Jan. 12, 1965	do	Unloading	1700-2200	47.28	Do.
Mar. 19, 1965	do	Boarding and unloading	2000-2400	63.04	Do.
Jan. 27, 1965	do	do	2400-0500	78.80	Do.
Jan. 28, 1965	do	Unloading	1900-2400	72.48	Do.
Do	do	do	2100-2400	94.96	Do.
Jan. 29, 1965	do	Boarding	0700-0800	10.16	Do.
Do	do	do	2200-2400	10.16	Do.
Feb. 10, 1965	do	Unloading	0700-0800	66.88	Do.
Jan. 19, 1965	do	do	1300-2400	10.76	Do.
Do	do	do	2400-0400	63.04	Do.
Jan. 20, 1965	do	Inspection of passengers	0200-0330	34.40	Immigration.
Mar. 19, 1965	do	do	0600-0730	40.08	Do.
Mar. 4, 1965	do	do	0700-0740	35.28	Do.
Mar. 21, 1965	do	do	0650-0810	40.08	Do.
Mar. 9, 1965	do	do	2200-0200	66.88	Do.
Nov. 29, 1964	do	Loading and entry	43.00	Public Health Service.	
Nov. 7, 1964	do	Quarantine	32.48	Do.	
Oct. 7, 1964	do	Public health	50.00	Do.	
Nov. 7, 1964	do	Inspection of crew and passengers	72.48	Immigration.	
Nov. 1, 1964	do	Public health	50.00	Public Health Service.	
Do	do	do	1955-1130	50.00	Do.
Nov. 29, 1964	do	do	1955-1130	50.00	Public Health Service.

1 Prorated.

*Customs, Public Health Service, and immigration overtime, Seattle, Wash.—Continued*

Date	Name	Service	Time	Amount	Agency
Nov. 29, 1964	States Marine	Quarantine	1400-1440	50.00	Public Health Service.
Nov. 30, 1964	do	Inspection of passengers	1250-1450	72.48	Immigration.
Mar. 21, 1965	Transpacific Transportation Co.	Unloading	2400-0400	63.04	Customs.
Mar. 20, 1965	do	do	1900-2400	66.88	Do.
Apr. 3, 1965	do	do	1900-2400	66.88	Do.
Apr. 4, 1965	do	do	2400-0400	11.64	Do.
Jan. 9, 1965	B. A. McKenzie & Co.	Inspection of passengers	2035-2235	36.24	Immigration.
Jan. 14, 1965	do	Boarding	2100-2200	33.44	Customs.
Feb. 8, 1965	Twin Harbor Stevedoring	do	1930-2030	33.44	Do.
Feb. 10, 1965	B. A. McKenzie & Co.	Standby, boarding and discharging	0900-1000	50.16	Do.
Mar. 10, 1965	do	Discharging	1600-2400	74.20	Do.
Jan. 3, 1965	G. S. Bush Co.	do	2400-0400	66.88	Do.
Do	do	do		66.88	Do.
Jan. 4, 1965	do	do		66.88	Do.

Mr. DEWEY. The first in my appendix is entitled "Excerpts From the Stover Report," released in March of 1965, and it is the section of the Stover report which is being quoted entitled "The Impact of Customs Overtime Payments," and this includes historic summary of the statutes under court decisions and impact of all of this upon the carriers as well as the costs of present overtime services. And many of the figures I inserted from my statement are in this particular appendix.

I would like to read just a couple of sentences from this section of the Stover report:

A basic question is whether the Government should require reimbursement for work which is for the purpose of protecting the general public or producing revenue rather than providing a service for the person or firm making the reimbursement. A second question is, What are special services and unusual hours?

The other important quotation from this appendix that has a bearing on what we have been talking about appears in this appendix which is No. V-84. The recommendation in the Stover report reads as follows, recommendation V-9:

A review should be made of present administrative policies to determine whether if further reduction in reimbursable overtime can be accomplished within the framework of present legislation.

And again on page V-85 of the Stover report, it reads as follows, recommendation V-10:

The Treasury Department should request the Bureau of the Budget to seek legislation which would—

- a. Clearly set a uniform Government-wide policy on reimbursements for inspectional services;
- b. Establish uniform charges for those services for which charges are made;
- c. Establish Government-wide definitions of overtime for inspectional services;
- d. Set uniform rates for overtime and holiday pay for inspectional services; and
- e. Provide equitable treatment, with appropriate savings provisions where necessary, for employees concerned.

So much for the quotes from the first appendix.

The second appendix is entitled "A Brief History of Customs Overtime Laws," three pages long.

The next appendix is entitled "Statutes Applicable To Payment of Customs Overtime Charges on a Reimbursable Basis" and it quotes from title 19 of the United States Code, three sections which currently bear on the question of overtime payments to customs officials.

The next appendix is entitled "Legislation Authorizing Agencies To Levy Fair and Reasonable User Charges," and there we have quoted the text of the act of 1951 which requires all Government departments to charge on an equitable basis.

My next appendix is confirmation of what I indicated in my statement, that the airlines now enjoy tours of duty at night, and there is a circular here that confirms that.

My final appendix is a listing, and not a full listing, of a 3-month period in Seattle of overtime pay, and here you will note a number of 1- and 2-hour duties where extremely high fees were paid, \$71, \$66, \$75, for 1 hour's work. Here is one, 10:55 to 11:30. It is not even an hour; \$75.68 was paid to one man.

These are not selected to dramatize the question. These are all the charges paid by the group of companies in this span of 3 months.

You can peruse those examples yourself, Mr. Chairman and staff, if they are important.

That completes my statement at the moment. Except if I could, I had a couple of comments to make on the earlier witness' statement, and one was concerning the question of codification or recodification of title 46 as being a method whereby the Congress could treat with the questions raised concerning overtime.

May I say that that won't do any good. The customs overtime question arises in title 19. You can recodify and revise title 46 till hell freezes over, but unless you treat title 19, you are not treating the customs overtime statute.

The second thing is, I take note, Mr. Chairman, that customs themselves, when they proposed that they intended to levy certain charges, rationalizes those charges on the basis of \$6 per hour.

It might be interesting if they rationalized some of the customs overtime charges for inspection at the same \$6 an hour. We might not even be here today, if they were as reasonable as that.

Thank you, Mr. Chairman.

Senator BARTLETT. Thank you, Mr. Dewey. You have contributed to the committee's knowledge on this subject.

I am not familiar with piers or even ships to the extent I ought to be, but I was puzzled when you said it was sometimes hard to locate inspectors on the piers. Why would that be?

Mr. DEWEY. Let me answer that question in this way, Mr. Chairman: During the course of preparing myself for this testimony, I was in touch with a number of pier supervisors and I said now, once again, we have been through this now since I came to work for this organization, once again, very slowly, tell me what these men do during the night hours.

And the answer came, anywhere from darned if I know to bless be if I know, and they are on duty, one of the pier supervisors said, I don't know, but they are on duty.

I said, where is their station?

And he suggested that he really didn't know, but it was sometimes in the wardroom of the vessel, sometimes in the pier office, the customs where they work during the daytime hours is performed where there is delivery going on between the pier and delivery is being made to the consignees.

There was apparently no fixed place of duty. He is not standing at the bottom of the hook to count the cargoes that are coming out of the vessels, although he could stand there. He could be in any of the places but he has no apparent fixed place.

Well, rather than accepting this sort of vague description, I made a personal survey of the San Francisco waterfront over a period of 3 weekdays and 1 Sunday within the past 10 days, and on all the occasions that I was on the piers, I later checked to find out that customs inspectors had been hired. There were five piers I looked at. I found customs officers on four. I did not find him and nobody had seen him on the fifth, although apparently he was there, because the company got a bill the next morning or was told that they would get a bill. I am sure he was there, sir. I just was not really able to find him.

I didn't want to make inquiry if anybody had seen him, but I checked all of the places that my colleagues had said he should be or might be, or where the customs law might require that he be.

Senator BARTLETT. You learned three things, then, you learned first that the pier supervisors don't know where the inspectors are, you learned for yourself where four out of five are, and you learned in general that pier supervisors use very gentle language. [Laughter.]

Mr. DEWEY. I didn't take a tape recording of some of the colorful language, but I think they are given to colorful language in describing, let's say, onerous situations, aggravating situations, and I guess they used it in this instance.

Senator BARTLETT. What did you say, Mr. Dewey, the Stover report first became available to Treasury?

Mr. DEWEY. The Stover report, Mr. Chairman, is entitled "An Evaluation of Mission, Organization, Management." It carries the date of December 1964, Bureau of Customs, Treasury Department.

Senator BARTLETT. You said something about October, did you not?

Mr. DEWEY. December 1964.

Senator BARTLETT. Government witness who said October, and you received your copy when?

Mr. DEWEY. I received my copy, date stamped March 26 in my office in San Francisco. I later made inquiry and the earliest I could find any of my colleagues that got it was March 21.

But I could be mistaken, sir, that the thing was given to general public and that my sources of receiving these things was logged somewhere, but that is when I got it.

Senator BARTLETT. Let me ask Senator Dominick if he recalls the date when he received his copy.

Senator DOMINICK. I would like to say that I have not received a copy. I have never gotten one.

Senator BARTLETT. I am going to ask Mr. Foster the same question.

Mr. FOSTER. Same answer, Mr. Chairman.

Senator BARTLETT. I am going to—who is Stover, do you know?

Senator DOMINICK. Mr. Chairman, I am informed by my staff that we did get one, apparently. We asked for it and got one.

Senator BARTLETT. You are one up on Mr. Foster and me.

Is that a private consultant firm?

Mr. DEWEY. No, sir; Mr. Stover is Mr. James H. Stover. His title is "Director, Office of Management and Organization, Office of the Secretary, Treasury Department."

Senator BARTLETT. I have reason to believe that the Senate has already acted upon one phase of the Stover report relating to collectors of customs.

Mr. DEWEY. Yes, the piece of action which you refer to is known as a Reorganization Plan No. 1 of 1965, Bureau of Customs, ordered to be printed on May 20, 1965, by the Committee of Government Operations, Mr. Ribicoff, chairman, and that has now, that feature of the Stover report dealing with the matter of collectors of customs has already been implemented through the nondisapproval by Congress.

Senator BARTLETT. I might say, my eloquent testimony before the committee against it voted against it.

Senator Dominick?

Senator DOMINICK. Just a couple of questions. First of all, I want to thank Mr. Dewey for bringing this up so clearly in this particular hearing. Secondly, I would like to ask him whether he knows whether the users pay for the overtime services of the Agriculture Department, HEW, Immigration, Justice Department, and so on?

Mr. DEWEY. First of all, I would like to correct the word "users," Mr. Chairman, if I can, because I have already misused that word myself, and I would like to correct it now. We do not fashion ourselves as users in the case of customs overtime. These are fees imposed upon us. We are not users—

Senator DOMINICK. Would you say victims?

Mr. DEWEY. Victims, thank you, sir.

To answer the question, in the case of HEW, Public Health Service inspectional officers are reimbursed by private interests when they are called out in off hours, off hours being, in the case of PHS inspectors, maybe one of my colleagues can correct this—I believe it is between 6 p.m. and 8 a.m.

Immigration, I believe, 6 p.m. to 6 a.m., and Department of Agriculture, I don't know, but the provision is made in all four inspectional services for reimbursement where there is a private interest served.

Senator DOMINICK. My understanding is that their rates of pay, however, are far different from the custom rates of pay.

Mr. DEWEY. Immigration is the same formula as customs, but immigration inspection is not as prolonged a function as is customs inspections. Immigration inspectional function is all accomplished upon the entry of the vessel. There is almost no inspection on the clearance of the vessel. So there they are on the same overtime formula, but their net return from the participation is much smaller.

The Public Health Service formula is strictly doubletime, with certain penalties inserted in the statute.

The Department of Agriculture is at the discretion of the Secretary and I am sorry I don't know what that overtime rate is.

Senator DOMINICK. Each one of the services are performed in the general public interest; are they not?

Mr. DEWEY. In my view; yes.

Senator DOMINICK. This is the basic purpose behind them?

Mr. DEWEY. Yes.

Senator DOMINICK. The Stover report says a basic question is whether the Government should require reimbursement for work which is for the purpose of protecting the general public or producing revenue rather than providing a service for the person or firm making the reimbursement. What would you consider to be a service for the person or firm making the reimbursement? In other words, the victim?

Mr. DEWEY. Mr. Chairman, at the risk of perhaps prejudicing my own case, in an appearance before the Treasury Department under the Administrative Procedures Act, in the event they should make proposals for new rates, I will at this time, make certain reserved opinions and I would say that the recording of bills of sales, mortgages, and preferred mortgages carries a definite value to the steamship owner. It is one place where that can be filed, where all persons, all foreign flags can know the owner of the vessel and it is an important legal document. It is of benefit to the shipowner. The name of the vessel is in a sense something akin to a copyright. If I owned the SS *United States*, I think that I would have some interest in protecting the name SS *United States* against a user of another competing passenger company.

The certificate of ownership in the abstract of title, I suppose, comes into that category. I would answer your question very

definitely that the entry and clearance of the vessel, the fees which are now levied at the rate of \$2.50 per entry are definitely not of any benefit to the shipowner except that he must file them in order to clear or enter.

Senator DOMINICK. I would be interested in your estimate as to why the recording of the bill of sales, mortgages, preferred mortgages, certificate of ownership, and the name of the vessel should be under the Customs Bureau. Why wouldn't that be under the Maritime Administration?

Mr. DEWEY. Mr. Chairman, I presume that it is more historic. It is perhaps lost in history, the reason for that. I have never had the question brought to my attention before.

In a way, it predates the formation of the Maritime Administration by well over 150 years, for one thing. Secondly, it was obviously in the very early days, necessary to have customs collectors, it was an important source of revenue in those days. The collector of customs was a very important person and perhaps logical that he was the prime Government official in most port cities and should be given all sorts of duties.

I might comment there, that one of the sections of the statute that is being repealed by S. 1875 is section 58 of title XIX, and that is the one that enumerates some 15 different documents and the specific fees for each.

Now that particular statute goes back into the very earliest days and that set forth the fees that collectors could collect from private interests, that was their source of income. They weren't paid by the Treasury as they are now.

Senator DOMINICK. The reason I asked the question was that obviously no other vessel that comes in other than a ship has this kind of a range. You don't do this with an airplane, or an automobile, or train, or anything else. You only do it with maritime vessels?

Mr. DEWEY. I am not sure about airplanes. I had the impression that title of airplanes was filed at the customhouse. But I could be corrected.

Senator DOMINICK. You file with the Federal Aviation Agency, at least domestic planes.

Secondly, I was interested in your statement that you would prefer that this is done administratively rather than legislatively. I will call your attention to the fact that at least in the case of aircraft, we are required to have radio transmitters and receivers in an aircraft in any controlled aircraft, but in order to put those in, we are required by the Federal communications authority to pay a fee for them. So here is one agency of the Government administratively requiring that we have certain equipment, and we have another agency of the Government requiring that you pay a fee to get it. And it seems to me that this is really being pretty arbitrary.

If we are requiring by Government services to have certain equipment, it would strike me that you shouldn't have to pay for the privilege of getting the equipment, and I am talking about the license, not the actual payment for the equipment.

Mr. DEWEY. I would agree with you, Senator. I am under the impression there is a bill introduced to require only a single licensing of that mobile radio equipment, both for vessels and aircraft. If I am not mistaken, there is a bill introduced to make it in perpetuity, once the licensing has been accomplished. This might ease the situation,

but of course it doesn't go directly to the question you raised. I realize that.

Senator DOMINICK. I think you should know, for the record, or it should be in the record that I have introduced a bill on more than one occasion now to try and say that customs officials or inspectors at least are designed to be there in the general public interest, and as such they should be paid for out of the Treasury and not by victims that are using them. This legislation has gotten a negative report from the Treasury Department.

Mr. DEWEY. If I may, sir, perhaps the Treasury knows they would have to pay this fantastic rate by the formula which I have asked be removed.

Senator DOMINICK. One thing I want to be crystal clear on, and this jars me, I must admit, is the fact that you would rather fight with the Treasury Department over what documents you have to pay for, and whether these documents are even necessary, rather than have recommendations come from the Treasury Department for legislation to try to streamline this procedure and establish fees where it is in the interests of the user in order to have the documentation filed or recorded.

Mr. DEWEY. Senator Dominick, maybe what I was really saying was that, and as I did say in my statement, we would be willing to take our chances. I think that sort of suggests that I appreciate the chances we are taking, but perhaps that is the price that we would be willing to pay to get the bill amended in the fashion we describe.

It seems to me that we have got to be consistent in one direction or the other. We feel the formula does not belong in the statute, at least not in the fashion it is.

An amendment that changes the formula is something more realistic and more in terms of 1965 which, I would think, would be acceptable.

Senator DOMINICK. I also understand unless these amendments are adopted that your group is opposed to the bill?

Mr. DEWEY. Let me say we would be opposed to the bill moving forward without treatment of this question now because we feel it is germane, we feel that it presents an opportunity for the Congress to deal with similarities at the same time and not come back at some remote time, and for that reason we feel that the awful important step in the direction that you, sir, in your bill, and Senator Monroney in his bill, are moving, that you plow a very big furrow for that field by removing the formula from the statute or at least correcting the statute, one of the two.

Senator DOMINICK. I ask this question because your statement is headed "A Statement On Behalf of The Steamship Industry in Support of S. 1875."

Mr. DEWEY. Maybe I should have said regarding S. 1875, because it is a qualified support. I think I tried to make that clear.

Senator BARTLETT. Thank you, Mr. Dewey, very much.

Senator BARTLETT. We will hear Mr. Murphy, please, on S. 1875.

#### STATEMENT OF JOHN J. MURPHY, NATIONAL PRESIDENT, NATIONAL CUSTOMS SERVICE ASSOCIATION

Mr. MURPHY. Good morning, Senator Bartlett and Senator Dominick. I appreciate very much this opportunity to make a statement. I would like to emphasize, sir, that I arrived in this

hearing room about 10 minutes ago from a hearing on the House side, and I had no idea until then that the previous witness recommended offering an amendment to S. 1875, which would effect, carry out a number of the proposals which are embodied in S. 2173 and S. 1596.

Senator BARTLETT. Mr. Murphy, before you proceed, will you identify yourself more particularly, please?

Mr. MURPHY. Yes, sir. My name is John J. Murphy. I am national president of the National Customs Service Association. Our organization is an organization of employees of the customs service. We have branches throughout the United States and members in all of the 48 States and in Hawaii, Alaska, and Puerto Rico, and in foreign areas where we have—

Senator BARTLETT. You have members in the 50 States of the Union?

Mr. MURPHY. Fifty States; I stand corrected.

We represent the people who perform this overtime work which has been alluded to here this morning and I feel that since this has been something that Congress has studied a number of times that it should be taken up in an orderly way by having full hearings on this, and introduce legislation rather than have an amendment tacked on this bill.

The reason why I say that is, in the limited time I have been here this morning, I have heard some statements that I feel need clarification, and I am sure that if we had the time, we could give you another side of the picture.

I think particularly that I would have to respectfully disagree with Mr. Dominick's appraisal of the carriers as being victims or that there is anything improper about this type of overtime. In no sense are the customs employees working for the carrier or the third party. They are employed by the Government, doing their job, which is prescribed and the fact that the Government requires reimbursement has nothing to do with the employee himself.

My only suggestion, sir, is that we be given an opportunity to make a full statement on this, if you have in mind, considering amendments to the bill.

Senator BARTLETT. Mr. Murphy, I think there will be adequate time for you to make an adequate presentation.

Mr. MURPHY. Thank you, sir.

Senator BARTLETT. Thank you very much.

Mr. MURPHY. I appreciate again the opportunity to speak.

Senator DOMINICK. I want to say for the record, Mr. Murphy, that a person who gets burned at the stake, he is a victim whether he is being burned by order of the court or order of a dictator or anything else. And I have no complaint to express about the personalities of the customs inspectors. I know that what they are doing is under the law and what I am trying to do is change the law.

Mr. MURPHY. I think in that regard it should be made a part of the record that the victim evidently is a willing one, since he makes the request for these services which he complains about reimbursing. This is the only thing that the complaint is about, the fact that it must be reimbursed. We feel it is completely unrealistic to shift the burden of this to the Government and to ask the Government to provide 24-hour a day service, 7 days a week, at any time and place at the convenience or whim of the carrier. We feel this is certainly improper:

Senator BARTLETT. How many inspectors are there throughout the country?

Mr. MURPHY. There are approximately 2,700 to 3,000, sir.

Senator BARTLETT. I have no further questions.

Senator DOMINICK. How many ports of entry are there?

Mr. MURPHY. I couldn't tell you that, sir. There are numerous ports.

Senator DOMINICK. That is all.

Mr. FOSTER. Mr. Chairman, the only thought I had, maybe the witness could be of assistance in supplying or help to supply that information that you requested before in terms of the amount of overtime that is obtained by members. I presume members of your association. And the Department said they would attempt to get that information. I don't know whether you could be of any assistance.

Mr. MURPHY. The official records would be in the Bureau of Customs. They would be the ones who would have the most readily available information, but we would be very happy to cooperate in any way at all.

Mr. FOSTER. Thank you, Mr. Chairman.

Senator BARTLETT. Thank you, Mr. Murphy.

The record will be kept open on S. 1875 for a week for the submission of further statements.

The committee will be in recess until 10 o'clock tomorrow morning. (Whereupon, at 12:18 p.m., the subcommittee was adjourned.)

(The following statements and letter were submitted to the committee after the hearings were concluded:)

#### STATEMENT OF THE NATIONAL ASSOCIATION OF CUSTOMS INSPECTORS ON S. 1875

Mr. Chairman, members of the subcommittee, my name is William Harrington and I am an executive director of the National Association of Customs Inspectors, an organization incorporated as a nonprofit corporation in Washington, D.C. and which has received official recognition on a national level as a national association by the Bureau of Customs in accordance with Executive Order 10988. This National Association of Customs Inspectors represents customs inspectors from the Atlantic coast to the Pacific coast and from the Canadian border to the Mexican border and in Bermuda and Puerto Rico.

I am a customs inspector assigned to the port of New York and have 24 years of experience as a customs inspector. Joseph Cagney, my fellow executive director of this organization, is a customs inspector assigned to the port of Baltimore—detailed to the support of Washington, D.C., and he has 23 years of experience as a customs inspector.

As an organization, we support the theory of the collection of fees for services under our navigation laws and we urge passage of S. 1875 with this purpose in mind.

We do though object to the suggestion of Mr. Ralph Dewey, president of the Pacific American Steamship Association that the subject of reimbursement of customs inspectors overtime should be considered under S. 1875 which was made during the hearings on this bill on August 10, 1965. We do not believe that this subject is germane to the subject matter of S. 1875.

We do not believe that customs inspectors' overtime rates are out of line with the transportation industry with which the customs business is so closely aligned. We also believe that the U.S. Government should not be saddled with the responsibility of paying customs inspectors overtime inasmuch as the customs service schedules the hours of work for custom inspectors to coincide with that of the industry. In the port of New York the customs inspectors are scheduled for 6 hours of duty at Kennedy International Airport—12 midnight to 9 a.m., 6 a.m. to 3 p.m., 7 a.m. to 2 p.m., 8 a.m. to 5 p.m., 2 p.m. to 10 p.m., and 4 p.m. to 12 midnight. If overtime payments are necessary, it is simply because planes are arriving off schedule and the U.S. Government cannot overstaff tours of duty to

meet a possible excessive workload. The steamship companies are scheduled for an 8 a.m. to 5 p.m. workday. If overtime payments are necessary, it is because the steamship company wants to turn a ship around, etc. and overtime work is sporadic and there is no way of scheduling customs tours in advance work schedules to cover these work assignments. In many instances, the airline and steamship company pays their own employees overtime compensation and it is for the airline or steamship companies financial advantage that such overtime work is scheduled on a few hours' notice.

We also believe that the question of equitable compensation (S. 1594, a bill for grade 10 nonsupervisory customs inspector positions pending before the U.S. Senate Post Office and Civil Service Committee) should be considered before the subject of overtime compensation is scheduled or discussed. The administrative decision by the Bureau of Customs in 1963 on this subject was neither fair, just, nor equitable. Without overtime compensation, the customs inspectors' yearly income would not be adequate.

The overtime that customs inspectors earn is by putting in many, many hours in excess of 40 hours a week—working on Sundays, holidays, and all night at times, which amounts to in excess of 20 percent additional time over the normal 40 hours a week. This overtime is no giveaway program. We earn every penny of it. The overtime rates for customs inspectors were set up by the act of February 13, 1911, and has been before the Supreme Court several times. We are not out of line or paid exorbitant rates as claimed when you compare us with the industry, we are associated with in our daily work.

WILLIAM H. HARRINGTON, *Executive Director.*

MARINE EXCHANGE, INC.,  
San Francisco, Calif., October 12, 1965.

MR. EDWARD JARRETT,  
Chief Clerk, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. JARRETT: The board of directors of the Marine Exchange of the San Francisco Bay region have formally endorsed and supported in principle the position of the Pacific American Steamship Association, the American Merchant Marine Institute, Inc., and other interested industry organizations in support of S. 1875, to amend the statutes relating to collection of customs fees and charges from carriers engaged in international trade, including the amendments as proposed by PASSA President Ralph B. Dewey, in his August 6 testimony.

The Marine Exchange has been engaged for almost a decade, jointly with PASSA and other industry organizations, in an intensive program to reduce, standardize, and simplify shipping "redtape" and other barriers on our Nation's foreign commerce. This effort has included close cooperation with several agencies and departments of the Government with responsibilities over waterborne commerce. Significant accomplishments have already been achieved, and both nationally and worldwide, major and continued breakthroughs are opening. An exchange-initiated program almost 5 years ago, supported by the above organizations, has, for example, resulted in adoption nationally this spring of a single, standard format for most of our export documentation, including the Government-required export declaration as well as carriers' bills of lading and ancillary documents.

S. 1875, and the amendments proposed thereof, appear to us highly consistent with this joint Government-industry program to rationalize and expedite our Nation's commerce, to make our harbors and waterborne trade more efficient and competitive, and to reduce the necessary burdens both on the business world as well as the Bureau of Customs.

In summary, the Marine Exchange believes that removal of user charges from statute and allowing the revised fee structure to be established by administrative action is desirable; that S. 1875 should be amended to include the removal of the overtime rate formula for customs inspection, and that these actions appear highly consistent with the recent and commendable Stover report prepared by the Treasury Department.

Action by your committee to assure such amendments and to favorably repeal this bill would, therefore, in our opinion be a constructive and beneficial action on behalf of our Nation's commerce and shipping industry.

Sincerely,

ROBERT H. LANGNER, *Manager.*

SUPPLEMENTAL STATEMENT OF JOHN J. MURPHY, PRESIDENT, NATIONAL  
CUSTOMS SERVICE ASSOCIATION, ON S. 1875

The National Customs Service Association appreciates the opportunity to present additional comments to the subcommittee concerning the testimony for the shipping industry by Mr. Ralph B. Dewey, president, Pacific American Steamship Association, that was presented to your subcommittee at hearings on S. 1875 on August 6, 1965.

Although we favor S. 1875 as introduced, we had not planned to testify concerning the bill because the NCSA had no idea that any question relating to amendment of the Customs Overtime Act of 1911 would be raised until Mr. Dewey addressed himself to the subject during his testimony on August 6. The Treasury itself made it clear to the subcommittee that the bill "does not affect overtime customs charges at all" (McIntyre testimony, transcript of hearings, pp. 31-32). Having had no advance notice, we had no time for preparation and were, therefore, unable to do more at the hearing than touch briefly on a few of the statements made in oral testimony.

At the outset, we must state that we do not believe a subject as important, complex, and controversial as reimbursable overtime should be considered in the context of S. 1875. We do not believe that it is fair to your committee, to the Bureau of the Budget, to the Treasury Department, or to ourselves as representatives of the customs employees, to have such a vital subject made a matter of such incidental consideration. We recognize, however, that the interest of the carriers in eliminating reimbursement of customs overtime may well cause them to feel it would be an advantage to have the subject handled in such a manner.

Judging from the written statement submitted by Mr. Dewey for the steamship organizations, they are unable to decide what they, themselves, wish to accomplish by their maneuver in this proceeding (typewritten statement, p. 9). They admit to being perplexed as to the conditions under which they should pay reimbursement (statement, p. 9): "There are some conditions under which a carrier probably should pay for the overtime inspection; for example, to accomplish some unusual private advantage or convenience." Professing indecision, they conclude by asking the committee to choose one of their three proposed amendments to S. 1875 and state that unless the committee adopts one of these amendments the steamship industry will withhold support of S. 1875.

We are strongly opposed to the amendments of S. 1875 put forward by the steamship industry. We oppose each and all of the proposed amendments both because of the procedure attempted by the industry in seeking to inject legislation not germane to S. 1875 and because of the substantive changes each proposal would make in the basic Customs Overtime Act of 1911. We submit this statement in order to make our position in opposition to these proposals completely clear to the committee. In addition, we wish to comment on a number of other aspects of the industry's statement. The several points are considered separately below.

PROPOSED AMENDMENTS TO S. 1875

The industry's proposals are labeled "Amendment (A)," "Amendment (B)," and "Amendment (C)" (statement, pp. 7-9). All three are equally objectionable.

1. Proposed amendment (A) (at p. 7) would amend the Customs Overtime Act of 1911 so as to give the Secretary of the Treasury complete discretionary authority over overtime rates and hours by repealing outright the existing mandatory rate-and-hour provisions of the 1911 act.

This proposal we consider unthinkable. In our view it indicates a most superficial approach to the subject by his industry group. Such a proposal would be a very long backward step indeed. The end result of such a step would be most harmful to everyone concerned. It would re-create the abuses and unwholesome conditions that brought about the need for the act of 1911 in the first place and caused its amendment in 1920 to make it a mandatory overtime law. It should be borne in mind that historically the steamship operators themselves brought about the passage of the 1911 law so that they could operate at other than official hours for their benefit and convenience. It should also be borne in mind that the mandatory character of customs overtime hours and rates fixed by amendment in 1920 is the only safeguard against revival of the old abuses. It was the 1920 amendments which replaced the discretion previously allowed the Secretary to determine customs overtime rates and hours with mandatory provisions fixing our rates and hours by law. We believe that Congress should not now relinquish its authority to set the ground rules in this critical area. We are totally opposed to vesting in the Secretary of the Treasury discretionary authority to fix overtime hours and rates.

2. Proposed "amendment (B)" (at pp. 7-8) would repeal the mandatory Customs Overtime Act of 1911 and replace it with an overtime law like that applied since 1950 to plant quarantine inspectors. That law gives complete discretion to the Department over not only the right to be paid overtime compensation at all, but also over rates and hours, and over the duty to reimburse.

We oppose proposed "amendment (B)" because it would likewise be a drastic retrogressive step and would not fulfill the needs of the customs type of overtime. The conditions under which customs overtime services are performed are not comparable with Agriculture, particularly since customs services are of considerably longer duration. As in the case of proposed "amendment (A)," we object most strenuously to restoring broad discretion to the Secretary of the Treasury over all the aspects of customs overtime services.

3. Proposed "amendment (C)" (at pp. 8-9) would repeal the mandatory reimbursement provision of the Customs Overtime Act of 1911 so that there would no longer be authority to require the carriers to reimburse.

To suggest that carriers be relieved of the reimbursement requirement "under any and all circumstances" is an unreasonable self-interest proposal which runs directly counter to long-established public policy.

More specifically, it is a bid for a wholly unwarranted subsidy to the transportation industries. The customs services for which reimbursement is presently required are at the request of the carrier at hours other than the prevailing working hours of the port and are for its benefit and convenience. To say that the taxpayer should provide free service on a 24-hour, 7-day-week basis at every place, subject to the whim of the carrier, is completely unrealistic in terms of cost to the Government, impossibility of assignment, and abuse of the rights of the Federal employees concerned.

#### THE STOVER REPORT

The shipowners' representative places great reliance on the contents of the so-called Stover report (statement pp. 5-7). He refers at length to parts of the report document in such a way as to give the false impression that the amendments to S. 1875 which he proposes in the statement are a part of the report. We call attention to this misleading tactic because we feel sure the members of the committee will not find time to discover the fact from their own study of the voluminous Stover report. Beyond this, however, we want the committee to know that, in our view, the conclusions stated in the Stover report are not entitled to weight for any purpose. We find the conclusions concerning inspectional overtime in the report an unbelievably shallow treatment of a highly complex subject with which we ourselves are thoroughly familiar. Many of the observations and asserted conclusions show on the face that they are based on flimsy knowledge of the facts. By and large, problems are posed and solutions suggested in language loaded with meaningless generalities. The overall recommendations are insubstantial. In many instances they simply assume the conclusion. By this we mean the report is, on the whole, little more than a compendium of purported statements of fact for which hardly a shred of supporting proof or justification is given.

We wish to take particular exception to the comment quoted from the Stover report in paragraph 6 at page 6 of Mr. Dewey's statement wherein he reproduces the Stover conclusion (p. V-35), "Whenever public servants perform services which are reimbursable from private interests, there is a chance of undue influence being exerted either by those performing or those receiving the services."

It is certain that both the Stover survey group and the spokesman for the steamship industry know that the quoted conclusion does not describe a factual situation. They cannot but be aware that the type of customs service for which reimbursement is required under the law has nothing whatever to do with any direct contact between the employee performing the service and the third party who is required to reimburse the Government. The employee is assigned to duty under rigidly prescribed rules and regulations to perform duties required of him during both official and other than normal hours. There is absolutely no possibility of "undue influence being exerted by those performing or those receiving the service." The statement in the report is open to the sternest criticism as an unwarranted reflection both on the integrity of the private interests and the Federal employees performing the services. Injection of the statement into this hearing by the industry, which knows better, can serve no genuine purpose. In our view, it verges on the irresponsible.

## SCOPE OF THE SUBCOMMITTEE REPORT

Mr. Dewey goes so far as to propose that, entirely apart from the action the committee may take on S. 1875, it should write "certain important understandings" into its report on the bill (statement p. 1). One of these "understandings," he states, is that the subcommittee should note "the need for establishing overtime tours of duty and to offer the Senate's blessing to collectors of customs to use their authority and to seek funds for overtime periods" (p. 10).

We object to this proposal as improper and presumptuous. It is presumptuous because it amounts to a demand that the subcommittee deal with a subject which is not before it. It is improper because it purports to be based on conclusions that Mr. Dewey intimates were reached in earlier official studies of this complex subject when, in fact, no such conclusions were reached in such studies.

The matter of whether the customs business at a given port at a given time should be handled by additional regular tours or overtime assignments is not one to be resolved by "suggestions to collectors." Further, we believe it is not a matter on which the subcommittee should take a position without a thorough study of the entire problem. Collectors presently have ample authority to establish tours of duty under section 1.8(f) of the customs regulations if the prescribed criteria can be met.

Mr. Dewey's proposal that tours of duty should be established to cover steamship cargo operations presupposes that such tours could feasibly be established and reveals a regrettable lack of knowledge of the problems inherent in this operation. We have studied this very problem over a period of many, many years, and we have come to know that it would be administratively impossible to establish cargo tours of duty and that such tours would be an unjustified use of appropriated funds. The operations of the steamship industry are so fluctuating and unpredictable that there is no practical way in which customs could establish tours of duty. The accuracy of this conclusion is borne out by the fact that the industry itself has never been able to establish regular tours of duty.

## BALANCE OF PAYMENTS AND TRADE EXPANSION

Mr. Dewey asserts that the "charges levied by customs at rates set by Congress are \* \* \* a negative factor in trade expansion and affects our balance of payments" (statement p. 11). This is a misstatement of fact which should be corrected on the record. According to Mr. Dewey, the steamship industry pays approximately \$5 million annually in reimbursable customs overtime charges. Approximately 75 percent of ship arrivals at U.S. ports are foreign-flag vessels. This would indicate that three-fourths of the \$5 million is paid by foreign-flag ships. The result is that the reimbursement is a positive and favorable factor with respect to the balance of payments since the Government recoups nearly \$4 million each year that otherwise would go abroad as income to foreign-flag ships from business done in the United States.

It is clear, therefore, that the adverse effect on trade expansion and balance of payments with which Mr. Dewey purports to be concerned would occur only if the services to vessels for which reimbursement is now required were to be provided without reimbursement. Further, such a change would in fact work as an indirect subsidy to foreign-flag carriers. This would be a windfall to the foreign operators and would further aggravate the already poor competitive position of American-flag vessels. Since Mr. Dewey represents himself as being sponsored largely by associations of domestic shipowners, it would seem that he is confused about where his real interest lies when he represents to this committee that it should substitute completely free service for the reimbursement that is now required.

## GENERAL PUBLIC POLICY FAVORS REIMBURSEMENT

Customs overtime services are given only upon the request of the carrier and at its convenience. Under such circumstances, it must in reason be assumed that the services are requested only when the carrier, being aware of its liability for reimbursement of charges, thinks it is to its advantage to proceed in overtime hours. Contrary to the shipowners' contention (statement, p. 3), customs overtime services are therefore in all instances of special "value" to the carrier at whose request they are provided. Mandatory reimbursement of charges for such serv-

ices is fully within the intendment of the general policy stated by the congressional directive in the act of August 31, 1951 (5 U.S.C. 140). That directive is to obtain reimbursement of the cost of governmental services of value to the recipient when such services are provided specially for the benefit of such person.

#### CUSTOMS REIMBURSABLE CHARGES AT SEATTLE

The list of what Mr. Dewey incorrectly describes as "fees," filed with his statement (see p. 3), actually involves reimbursable charges made at the port of Seattle for special overtime, Sunday and holiday services requested by the carriers and provided for their benefit and convenience.

It is self-evident in the customs overtime situation that time, place, service and the duration of the service actually given is entirely under the control of the carrier. The shipowners' representations to the subcommittee (at p. 3) that they receive no "tangible benefit" from the special overtime services provided by the Customs Service are pure fiction. The added contention argued by Mr. Dewey in his oral testimony that the shipowners are not really "users" of such overtime services—apparently on the theory that the charges are "imposed," not assumed voluntarily—is a quibble. Certainly in every instance where services outside regular hours are provided to shipowners or other carriers at their request, the carrier has a choice between waiting for free customs service within the regular hours at the port or of applying for and receiving the benefit of the special customs services outside such hours.

The principle of mandatory reimbursement which is the basis of the charges the carriers are called upon by law to pay for special services of this kind has its roots deep in the history of the Customs Service. The customs laws are in truth the prototype. The principle has been reconfirmed and extended again and again over the years. The very 1951 statute (5 U.S.C. 140) which the Treasury Department seeks power to implement through enactment of the present bill spells out a congressional demand that the principle of reimbursement for special services to parties in interest be applied throughout the Government wherever the situation warrants.

We respectfully suggest to the subcommittee that the shipowners' appearance before it in this instance, urging outright repeal or modification by one means or another of the basic reimbursement provisions of the customs laws, looks very much like a planned effort to block passage of the Treasury bill by injecting proposals for amendments which run exactly counter to the purpose of the bill itself; that is, the purpose to extend the Treasury's authority to obtain reimbursement for special services in areas other than customs overtime.

Referring again to the list of reimbursable charges at Seattle submitted by Mr. Dewey, we have been unable, in the limited time available, to check each item as listed. However, based on the partial information we have received, we think that there are undisclosed factors which, if known, would materially change the character of what is set out by the industry's presentation to appear to be uniformly high charges for services. For example, we believe that the time shown in each instance is for the basic service only and does not include inseparable time elements such as travel, awaiting arrival of vessels, delays from weather conditions, necessary paperwork before and after the basic service. We further believe that there are some inaccuracies in the items listed and that the total effect is to give a distorted picture.

It is highly relevant to point out that overtime earnings of customs inspectors are comparable to overtime earnings in the steamship industry. In fact the earnings of a steamship company chief cargo clerk, which is the only position in the industry that is somewhat comparable to an inspector supervising a cargo operation, are in many cases considerably higher than those of customs officers.

While the list of Seattle charges in question is obviously intended to show high cost of overtime to shipowners, the fact is that, on the Seattle waterfront, customs inspectors' annual overtime earnings were about \$2,800 per man in 1964. This bears sharp contrast to the showing the industry purports to make by the "random" list of reimbursable charges at Seattle.

On the other hand, the list unquestionably shows significant facts of a different order. It shows in many instances repeated but intermittent demands at the port of Seattle by individual vessels for customs services at isolated hours outside the regular hours of the port, frequently of short duration. These are the very types of situation in which providing customs services is of special benefit to the

carrier. The Customs Overtime Act of 1911 should not be changed, as the industry proposes, so as to require the cost of such special services to be shifted to the Government. Equally, the 1911 act should not be changed so as to place any carrier industry in a position to exert pressure on the Secretary for partial relief from reimbursement of such overtime charges at the expense of the customs employees. Such pressure could be expected to follow if the 1911 act were amended, as the shipowners propose, to give the Secretary discretion to define what is compensable overtime and to fix overtime rates and hours.

The concluding points just stated go to the substance of the shipowners' proposals to amend the Customs Overtime Act of 1911 by amending S. 1875. As we have said, we sincerely hope the subcommittee will not reach these questions in these proceedings but will decline to consider the industry's proposals for amendment of the basic customs overtime laws in the context of S. 1875, which involves an entirely different subject.



