U.S. Department of Justice
Criminal Division
*Asset Forfeiture and Money Laundering Section*

# Asset Forfeiture News

A Central Source for Federal Forfeiture Information

Volume 9, No. 1 January/February 1997

## Proposed Legislative Amendment to Close Gap in Counterfeiting Enforcement

*by Michele Crawford, Trial Attorney, AFMLS*

The U.S. Secret Service's current authority to enforce federal laws protecting the coins, obligations, and securities of the United States and foreign countries is less than complete because it does not include the power to administratively forfeit property used to facilitate counterfeiting. While counterfeiting proceeds are subject to forfeiture civilly, criminally and administratively, pursuant to 18 U.S.C. § 981(a)(1)(C) and 18 U.S.C. § 982(a)(2)(B), no criminal or administrative forfeiture authority exists to forfeit counterfeiting paraphernalia that is facilitating property only. Consequently, seized computers, printers, cameras, and paper cutters used to facilitate counterfeiting are currently being returned to perpetrators when their value does not meet minimum thresholds for civil forfeiture. The inability to administratively forfeit counterfeiting paraphernalia, therefore, represents a frustrating gap in the enforcement of federal laws against counterfeiting.

Recognizing this, the Asset Forfeiture and Money Laundering Section (AFMLS), in conjunction with the Secret Service Chief Counsel's Office, has submitted a legislative proposal to provide for criminal forfeiture of counterfeiting paraphernalia and to increase the Secret Service's power in this area by authorizing administrative forfeiture as well.

Nevertheless, the statute currently addressing the United States' authority to forfeit counterfeiting paraphernalia, 18 U.S.C. § 492, reads in pertinent part, as follows:

> All counterfeits of any coins or obligations or other securities of the United States or of any foreign government, or any articles, devices, and other things made, possessed, or used in violation of this [and related] chapter[s] . . . or any material or apparatus used or fitted or intended to be used, in the making of such counterfeits, articles, devices or things, found in the possession of any person without authority from the Secretary of the Treasury or other proper officer, shall be forfeited to the United States. . . .

*See **AMENDMENT**, page 3*

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Message from the Chief...

# Reinvigoration Update with Attorney General Janet Reno

On January 10th, 1997, I briefed Attorney General Janet Reno and a number of officials in the asset forfeiture program including Deputy Assistant Attorney General Mary Lee Warren, Deputy Assistant Attorney General Bob Litt, and Principal Deputy Director of EOUSA, Donna Bucella, on our reinvigoration efforts over the past year. I gave the Attorney General a report, prepared by the *Asset Forfeiture and Money Laundering Section (AFMLS)*, that highlights the current state of asset forfeiture.

The purpose of the meeting was to report on the progress of the reinvigoration of our asset forfeiture program since the Reinvigoration Memo, dated February 12, 1996, that the Attorney General issued with FBI Director Louis J. Freeh and DEA Administrator Thomas Constantine. The memo instructed the asset forfeiture community to develop ways to effectively use forfeiture in each judicial district and to identify ways to reinvigorate the use of asset forfeiture as a law enforcement tool. This past year we have worked hard to get back on the right track. As part of my briefing, the *AFMLS* presented to the Attorney General the best practices memorandum and model district plan based on your district plans, thereby illustrating the progress the community has made over the past year.

The briefing materials for the Attorney General included reports from the DEA and FBI, an EOUSA report, model district plans, our proposed legislation, forfeiture fund receipts over the past four fiscal years, and international efforts in the area of asset forfeiture.

One of the issues that the Attorney General feels very strongly about is training in asset forfeiture for all criminal prosecutors. An emphasis on wise and appropriate use of asset forfeiture is a goal of this administration. Attorney General Reno wants all asset forfeiture personnel to actually go through with a forfeiture in any situation where seizure and forfeiture are needed to break up the economic underpinnings of serious crime.

For her part, Attorney General Reno will discuss the importance of forfeiture in her speeches and discussions with law enforcement at every level of government. Recently, the Attorney General delivered a speech to a group of DEA country attaches and gave credit to forfeiture as a vital tool of law enforcement, both in our country and internationally. I feel this commitment by the Attorney General to focus on asset forfeiture should be welcome to everyone in the forfeiture community and should serve to encourage everyone to keep up the good work.

The Attorney General was concerned with the decline in the numbers of forfeiture case brought in the past year. She planned on meeting with DEA and FBI officials to discuss ways to insure forfeiture continues to be utilized whenever appropriate. One of the lessons that has been learned from this reinvigoration effort is the need for the different agencies in the area of asset forfeiture to work together in improving communication and coordination. This applies to field offices working with USAOs, and also with headquarters. The past year has been an important learning experience for everyone and we have improved in countless areas.

I want to encourage everyone involved in asset forfeiture to continue to work hard to make our program as effective as it can be. The work that we do is essential to the success of the Department of Justice's law enforcement efforts, and the Attorney General recognizes and appreciates our work.

*— Gerry McDowell*

# Proposed Legislative Amendment to Close Gap

*AMENDMENT, from page 1*

Section 492, which was enacted in 1909, and has not been amended since 1938, is largely silent as to applicable procedures. While the statutes permitting the forfeiture of counterfeiting proceeds cross-reference statutes that contain forfeiture procedures, section 492 does not. In 1948, in order to clarify the ambiguity in federal statutes that provided for forfeiture without specifying the mode of recovery or enforcement, Congress enacted 28 U.S.C. § 2461. Section 2461 provides that when a federal statute permits the forfeiture of nonmonetary assets seized on land, forfeiture may be enforced "by a proceeding by libel which shall conform as near as may be to proceedings in admiralty." Thus, civil forfeiture, by way of section 2461, is currently the sole mode of enforcement of section 492.

There have been only a handful of reported decisions in section 492 cases.[1] The reason that there are so few cases under section 492 may be that the counterfeiting paraphernalia involved is often worth too little to justify initiating litigation. For example, if the Secret Service seized a used computer, scanner, and laser printer involved in making counterfeit money, and if the combined value of the assets was less than $2,000, the time and resources required to prosecute the civil forfeiture might easily exceed the value of the assets. Lacking administrative forfeiture authorization, the Secret Service would have no choice in such situation but to return the seized property to the perpetrator of the counterfeiting offense.

The proposed amendments will bring section 492 up-to-date and into conformance with modern forfeiture statutes. The amended section 492 will cross-reference the procedures pertaining to administrative forfeitures in the customs laws, 19 U.S.C. § 1602 *et seq.*, and the civil forfeiture procedures in 18 U.S.C. §§ 981-86. The amended section 492 will also include a criminal forfeiture provision that cross-references the procedures in 18 U.S.C. § 982. Should the legislative proposal be adopted as submitted, the full panoply of forfeiture remedies will be available to combat counterfeiting. Until then, we urge U.S. Attorneys' Offices to approve civil forfeiture actions against counterfeiting paraphernalia when practicable. ●

[1] *See, United States v. Bolar*, 569 F.2d 701 (9th Cir. 1978) (indictment charging possession of counterfeiting materials not fatally defective for failing to state that materials were subject to forfeiture; defendant not deprived of opportunity to seek return of seized materials); *United States v. Sturgeon*, 529 F.2d 993 (8th Cir. 1976) (conviction affirmed; court made no comment whether administrative forfeiture of counterfeiting paraphernalia was authorized by section 492); *Mayo v. United States*, 425 F. Supp. 119 (E.D.Ill. 1977); *United States v. One Chief 1722 Offset Press*, 129 F. Supp. 276 (D.Mass. 1955); *United States v. One (1) Offset Addressograph, etc.*, 530 F. Supp. 761 (W.D.Pa. 1982), *vac'd and remanded w/o opin.*, 720 F.2d 669 (3d Cir. 1983).

The *Asset Forfeiture News* is a bi-monthly publication of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice. Our telephone number is (202) 514-1263.

Articles in the *Asset Forfeiture News* are intended to assist federal prosecutors and agents in enforcing the forfeiture laws by providing guidance, information, and references. Unless otherwise stated, they represent the views of the individual authors, and not necessarily the Department of Justice. Nothing contained herein creates or confers any rights, privileges, or benefits for or on any claimant, defendant, or petitioner. *United States v. Caceres*, 440 U.S. 741 (1979).

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Equitable Sharing

*by Irene Gutierrez, Trial Attorney, AFMLS, and Terence Sweeney, DynCorp Government Services*

## Seven Year Investigation Results in Over $6 Million in Forfeited Assets

*New Mexico/Utah* - From 1985 to 1991, eleven state and local agencies and seven federal agencies investigated the massive drug trafficking operation operated by Gabriel Aguirre. In 1985, the Border Patrol arrested Gabriel Aguirre and his brother, Ramon, near Columbus, New Mexico, for transporting 28 pounds of marijuana.

In March of 1989, the U.S. Customs Service, the Deming Police Department, the Luna County Sheriff's Office, and the New Mexico State Police searched Gabriel Aguirre's residence and found sixty-five pounds of marijuana. Based upon suspicions created by the Aguirre family's numerous drug-related arrests and sizeable family assets, a Combined Law Enforcement Task Force was created to pursue the investigation. The investigation extended into Utah, where the Salt Lake City Sheriff's Office, Salt Lake City Police Department, and the Utah Division of Investigations were able to produce cooperating witnesses, informants, and introduce an undercover agent into the Aguirre family. In February 1990, U.S. Customs and the Drug Enforcement Administration sponsored the adoption of the investigation by the Organized Crime Drug Enforcement Task Force. Years of hard work were rewarded on October 20, 1992, when a federal grand jury in Las Cruces, New Mexico indicted 22 members of the Aguirre organization.

The investigation also led to the exhaustive job of dismantling and forfeiting the widespread holdings of the Aguirre organization. On October 21 and 22, 1992, 250 agents from federal, state, and local agencies executed more than 300 seizure warrants and 30 search warrants in New Mexico, Arizona, and Texas, pursuant to federal narcotics, money laundering and structuring statutes. Their efforts resulted in the forfeiture of $1,781,607.39 in U.S. currency, 247 horses, 131 vehicles, and 51 parcels of real property. The total value of the property forfeited is approximately $6,115,244.50. On October 21, 1996, the Assistant Attorney General for the Criminal Division approved equitable sharing of the net proceeds with the participating state and local agencies and the Department of the Treasury.

## East Wheeling Task Force Seeks To Revitalize Neighborhood Through Weed & Seed Initiative

*ND/West Virginia* - For more than thirty years, Paul Hankish's criminal organization plagued the Ohio Valley. Known as "Pauly No-Legs," after he lost his legs in an organized crime-related car bombing, Hankish was considered the leading organized crime figure in West Virginia. His organization, which had connections to the Gambino crime family, was involved in heroin, cocaine, marijuana, trafficking, illegal bookmaking, prostitution, extortion, and the interstate transportation of stolen goods. The East End Beer Mart, located in Wheeling, West Virginia, was utilized by Hankish's organization as a front for their illegal activities. The building served as a base of operations for the organization's drug distribution and bookmaking and the business provided convenient cover for the illegal profits.

In 1990, federal, state, and local law enforcement agencies completed a large scale investigation into Hankish and his organization's activities. Their efforts resulted in a 218 count indictments filed against Hankish and approximately thirty other members. The criminal forfeiture of the East End Beer Mart was provided for in the indictment. Upon the successful prosecution of the case, Hankish was sentenced to 33½ years in prison and the East End Beer Mart was forfeited.

The East Wheeling Task Force, a non-profit organization comprised of residents and business persons who work toward revitalizing Wheeling's high-crime neighborhoods, believed that the long-term criminal use of the East End Beer Mart greatly contributed to the depressed condition of the neighborhood. The Task Force and the law enforcement community in Wheeling believed that the East End Beer Mart's removal and transformation would be an important first step in the neighborhood's rehabilitation. To that end, the Task Force petitioned the United States Attorney for the Northern District of West Virginia, William Wilmoth, to be granted title to the building pursuant to the Department of Justice's Weed and Seed initiative. United States Attorney Wilmoth recommended the transfer. On December 30, 1996, the East End Beer Mart was transferred to the Wheeling Police Department, which then transferred it to the East Wheeling Task Force under the Weed and Seed Program. The Task Force plans to use the building as a headquarters for their counseling services, group work camp, job training, and economic development projects.

## Pool Hall to Police Station: Port Arthur strives to revitalize neighborhood through increased police presence

*ED/Texas* - In late 1994, Port Arthur Police Department narcotics officers learned through their drug intelligence activities that Curley Adams was using Curley's Pool Hall to sell crack cocaine. Based on this information, Port Arthur Police Officers undertook a dangerous surveillance of the pool hall from behind a bush seventy feet from Curley's Pool Hall. Their efforts paid dividends because they were able to record numerous instances of Curley and his dealers conducting drug sales. This information was the basis for the arrest of Adams and the seizure and subsequent forfeiture of the building. Adams pleaded guilty to drug trafficking charges and consented to the forfeiture of the building. The Final Order of Forfeiture was entered on May 1, 1996.

The Port Arthur Police Department recommended the building for use as a police department and youth center because it believed that the area's decline could be stemmed by the increase in police presence. They also felt that the youth center would give the children of the area a productive way to spend their time and keep them away from criminal activity that infests the neighborhood. Such use of a building forfeited from a crack dealer would also serve to illustrate to local youths the futility of drug dealing.

The Port Arthur Police Department's proposal received the strong support of the United States Attorney for the Eastern District of Texas and the Drug Enforcement Administration and, on December 16, 1996, the property was transferred by the United States Marshals Service to the Port Arthur Police Department. ✹

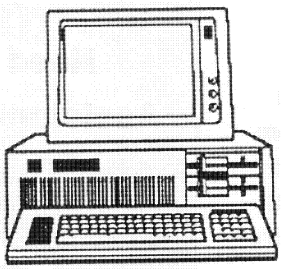
## Need Legal Assistance During After Duty Hours?

The new point-of-contact for legal assistance during after duty hours is Ms. Michele Crawford, Trial Attorney, AFMLS. Ms. Crawford will be available to answer your legal questions, Monday-Friday, from 5:00 to 6:30 p.m., EST. Please call her at (202) 514-1322 if you need any assistance.

# Asset Forfeiture Bulletin Board

## AFBB: Phase I Upgrade to Windows Completed

The Asset Forfeiture and Money Laundering Section (AFMLS) has completed Phase I of the AFBB upgrade to a Windows-based (menu driven) format. This allows users, who have not yet been upgraded to a Windows environment, to access the AFBB in its current state. The AFBB has been moved to the Executive Office for United States Attorneys Bulletin Board System (EOUSA BBS). If you are a Department of Justice employee, you can get access to the EOUSA BBS by simply speaking to your System Manager, or by calling the AFBB System Operator (Sysop), Ms. Morenike Soremekum, at (202) 307-0265.



## AFBB: Phase II Update

The actual upgrade of the AFBB to a Windows environment is expected to be completed by February 28, 1997. For maximum efficient use of the new Windows system, we are recommending that all users have a 28.8 baud modem. Under this new environment, users who have not yet been upgraded to Windows may continue to access the AFBB in its current state by logging on to the EOUSA BBS.

Further information about the Phase II of the AFBB upgrade, including user requirements, will be posted in the March/April issue of *Asset Forfeiture News*. You can also find the latest news on the AFBB developments by accessing the AFBB or EOUSA BBS.

Thank you for your patience during this transition. Please contact Ms. Soremekum, the AFBB Sysop, at (202) 307-0265, or send e-mail to CRM07(soremek) if you have questions or concerns.

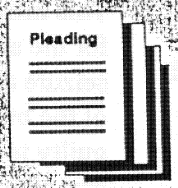
## Submissions Needed

Did you know that you can request to have documents posted to the AFBB? Please contact the AFBB Sysop for details.

Submissions on the following topics are of particular interest:

- civil forfeiture money laundering jury instructions;
- depositions and interrogatories; and
- civil and criminal motions and briefs on various issues.

## Sample Pleadings Needed




AFMLS is looking for sample pleadings (indictments, complaints, and TRO's) in connection with obscenity and child pornography forfeitures under 18 U.S.C. §§ 1467, 2253 and 2254.

Please contact Mr. Michael Davitt, Trial Attorney, AFMLS, at (202) 514-1302 if you have these materials.

# Seized Properties Revitalize City

Two new community centers have replaced abandoned lots along Cucharilla Street in Cataño, Puerto Rico, as the Marshals Service donated a pair of seized properties to city residents.

The adjacent properties, originally seized by Service deputies, Drug Enforcement Administration agents and local police officers, are located in what was once a high-intensity crime area. They went unsold for six years.

Puerto Rico Deputy Roberto Vizcarrondo suggested to Marshal Herman Wirshing that the Service offer the lots — formerly referred to by Vizcarrondo as a "shooting gallery for drug addicts" — to Cataño Mayor Edwin Rivera-Sierra. After proper approval procedures, the properties were sold to the city for one dollar.

A children's park was created on one lot and a counseling center established on the other.

Vizcarrondo, representing the Service at a gathering of civic leaders and city residents, commended the local government for making such good use of the properties and urged everyone to take good care of the areas.

Jose Lopez-Nieves, better known as Johnny Cucharilla, spoke at the ceremony as well. A city resident who recently finished serving prison time for selling drugs, Johnny was one of 16 defendants arrested during the original property seizure.

"Doing drugs was a high price I have paid," said the right-hand man to former World Boxing Association Champion Samuel Serrano. "I will now work with the [Cataño] mayor and the government of Puerto Rico to teach youngsters that doing drugs is not an alternative." ●

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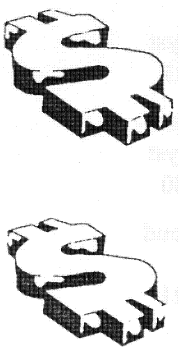
# Treasury Trends



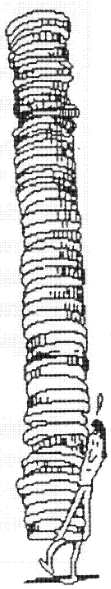
*by Charles Ott*
*Special Projects Advisor*
*Executive Office for Asset Forfeiture*

## Round of Seized Property Management Conferences Concluded

The fifth of an initial series of five seized property management conferences, sponsored by Treasury's Executive Office for Asset Forfeiture, was held in San Diego in January. Begun last fall in Houston, these conferences brought together special agents, seized property custodians and specialists, fines, penalties and forfeiture officers and contract support personnel to explore ways to make this aspect of the Treasury Department's forfeiture program more efficient. They were aided in this task thanks to special presentations given by local Assistant United States Attorneys on the relationships between their offices and Treasury forfeiture activities. Updates on forfeiture related Supreme Court decisions and pending issues as well as the differences between civil and criminal forfeiture proceedings were provided by Harry Harbin of the Justice Department's Asset Forfeiture and Money Laundering Section and Leslie Westphal of the U.S. Attorney's Office for the District of Oregon.

The sessions gave added effect to the designation last summer of seized property management as a forfeiture program priority by the Under Secretary of the Treasury for Enforcement. To continue and build upon the momentum generated from these meetings, Treasury's Executive Office for Asset Forfeiture is planning two conferences this spring, in Atlanta and Austin, that will be geared more specifically to the information needs of Treasury agents and supervisory personnel.

## Treasury Property Management Eulogized

When federal prosecutors from the United States Attorney's Office for the Northern District of Texas obtained a conviction and criminal forfeiture judgment against a Richard Hughes for various money laundering offenses, they were able to move against substitute assets. These other assets turned out to be a group of funeral homes and cemeteries that had been operated a family business in the Dallas area for more than fifty years. Disposition of these assets in this Internal Revenue Service (IRS) Criminal Investigation Division case presented some unique challenges.

In a recent letter to Treasury's Executive Office for Asset Forfeiture, the U.S. Attorney complimented the prompt and supportive work of not only the IRS case agents involved, but also the EG&G Dynatrend contractor employees who handled the disposition of the properties. Their combined efforts facilitated a very complex sale that was able to realize $2 million for the Forfeiture Fund. ●