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

Asset Forfeiture News

A Central Source for Federal Forfeiture Information

Vol. 9, No. 4 July/August 1997

New Criminal Forfeiture Rule Approved for Comment

by Stefan D. Cassella, Assistant Chief, AFMLS, Criminal Division

On June 19, 1997, the Advisory Committee on Criminal Rules—the body that proposes changes to the Federal Rules of Criminal Procedure—approved for purposes of publication for comment a new Rule 32.2 dealing with criminal forfeiture. The new Rule would replace current Rules 7(c)(2), 31(e) and 32(d)(2), and would set forth in one place a comprehensive set of procedures to govern criminal forfeitures.

In its most significant features, the new Rule would dispense with the special verdict requirement in Rule 31(e) and make the entry of a criminal forfeiture judgment solely an issue for the court, instead of an issue for the jury in a bifurcated proceeding. Moreover, if the court determines that the requisite nexus between the property and the offense has been established, it would order the forfeiture of "whatever interest each defendant may have in the property, without determining what that interest is." The determination of a defendant's interest vis a vis that of any third party would be deferred until the ancillary proceeding, assuming someone files a third-party claim. "If no such claim is timely filed, and the court finds that a defendant had a possessory or legal interest, the property is forfeited in its entirety."

These changes are intended to address recurring criticisms of the current procedure. The first is that requiring the jury to come back after finding the defendant guilty to hear evidence relating to forfeiture and to fill out the special verdict form is burdensome to the jury, unpopular with the judges and some prosecutors, and unnecessary in light of the Supreme Court's decision in *Libretti v. United States*, 116 S. Ct. 356 (1995), which held that criminal forfeiture is an aspect of the defendant's sentence, not a substantive element of the offense that must be resolved by a jury. Under Rule 32.2, there would no

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longer be a bifurcated proceeding. Instead, the court would determine the forfeitability of the property based on "evidence already in the record, including any written plea agreement, or on evidence adduced at a post-trial hearing."

The second criticism is that current law requires the court and/or the jury to determine not only that there is a nexus between the property and the offense (*i.e.*, the *in rem* aspect of criminal forfeiture), but also the extent of each defendant's interest in the property (the *in personam* aspect). The latter requirement can lead to extremely complicated special verdict forms, as the jury is required to make a finding as to each defendant's interest in each asset. It can also lead to errors or inconsistent verdicts, as may occur when a jury finds that one defendant owned the property while another did not, thus opening the door for the latter defendant to file a claim in the ancillary proceeding. And it often duplicates what must take place in the ancillary proceeding in any event if a third party files a claim asserting an interest in the property that is superior to the interest of any defendant.

Under Rule 32.2, the court would focus only on the *in rem* aspect of the forfeiture in the criminal case. If no one filed a claim in the ancillary proceeding, the court would order the forfeiture of the property in its entirety, as long as it found that the defendant had some possessory or legal interest. And if someone did file a claim, the *in personam* aspect of the forfeiture would be resolved in the ancillary proceeding. That is, the property would be forfeited to the extent of the defendant's interest, and the forfeiture order would be amended to recognize the interests of any third party.

The new Rule would also clarify other troublesome aspects of current law. It would provide, for example, that the preliminary order of forfeiture becomes final *as to the defendant* at sentencing, even if the ancillary proceeding is yet unresolved. It also sets forth procedures for recognizing third-party interests while the defendant's conviction and the order of forfeiture are on appeal; provides for discovery and motions practice in the ancillary proceeding; and makes it clear how the court is to amend an order of forfeiture to include substitute assets when asked to do so by the Government.

The text of Rule 32.2 and the Committee Note are reprinted on page 3. The comment period will run for a period of six months beginning with the publication of the proposed Rule later this summer. During that time, the Department of Justice will be gathering comments and preparing a submission to the Committee. After the comment period closes, the Committee will determine

The *Asset Forfeiture News* is a bimonthly publication of the Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. 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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whether to recommend that the proposed Rule, or a revised version of it, be approved by the Supreme Court. If approved, the Rule would likely take effect in December 1998.

Assistant United States Attorneys interested in this issue may submit comments by e-mail to Stefan Cassella at CRM07(cassella).

Report to Standing Committee
Criminal Rules Committee
May 1997

Rules 7(c)(2), 31(e), and 32(d)(2) are repealed and replaced by the following new Rule. Rule 38(e) is amended by striking "3554," and by striking "Criminal Forfeiture" in the heading.

32.2. Criminal Forfeiture

(a) INDICTMENT OR INFORMATION. No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or information alleges that a defendant has a possessory or legal interest in property that is subject to forfeiture in accordance with the applicable statute.

(b) HEARING AND ENTRY OF PRELIMINARY ORDER OF FORFEITURE. As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in the indictment or information for which criminal forfeiture is alleged, the court must determine what property is subject to forfeiture because it is related to the offense. The determination may be based on evidence already in the record, including any written plea agreement, or on evidence adduced at a post trial hearing. If the property is subject to forfeiture, the court must enter a preliminary order directing the forfeiture of whatever interest each defendant may have in the property without determining what that interest is. Deciding the extent of each defendant's interest is deferred until any third party claiming an interest in the property has petitioned the court to consider the claim. If no such petition is timely filed, and the court finds that a defendant had a possessory or legal interest, the property is forfeited in its entirety.

(c) PRELIMINARY ORDER OF FORFEITURE. When the court enters a preliminary order of forfeiture, the Attorney General may seize the property subject to forfeiture; conduct any discovery as the court considers proper in identifying, locating or disposing of the property; and commence proceedings consistent with any statutory requirements pertaining to third-party rights. At sentencing—or at any time before sentencing if the defendant consents—the order of forfeiture becomes final as to the defendant and must be made a part of the sentence and included in the judgment. The court may include in the order of

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forfeiture whatever conditions are reasonably necessary to preserve the property's value pending any appeal.

(d) ANCILLARY PROCEEDING.

(1) If, as prescribed by statute, a third party files a petition asserting an interest in the forfeited property, the court must conduct an ancillary proceeding. In that proceeding, the court may consider a motion to dismiss the petition for lack of standing, for failure to state a claim upon which relief can be granted, or for any other ground. For purposes of the motion, the facts set forth in the petition are assumed to be true.

(2) If a Rule 32.2(d)(1) motion to dismiss is denied, or not made, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure to the extent that the court determines such discovery to be necessary or desirable to resolve factual issues before conducting an evidentiary hearing. After discovery ends, either party may ask the court to dispose of the petition on a motion for summary judgment in the manner described in Rule 56 of the Federal Rules of Civil Procedure.

(3) After the ancillary proceeding, the court must enter a final order of forfeiture amending the preliminary order as necessary to account for the disposition of any third-party petition.

(4) If multiple petitions are filed in the same case, an order dismissing or granting fewer than all of the petitions is not appealable until all petitions are resolved, unless the court determines that there is no just reason for delay and directs the entry of final judgment on one or more but fewer than all of the petitions.

(e) STAY OF FORFEITURE PENDING APPEAL. If the defendant appeals from the conviction or order of forfeiture, the court may stay the order of forfeiture upon terms that the court finds appropriate to ensure that the property remains available in case the conviction or order of forfeiture is vacated. The stay will not delay the ancillary proceeding or the determination of a third party's rights or interests. If the defendant's appeal is still pending when the court determines that the order of forfeiture must be

amended to recognize a third party's interest in the property, the court must amend the order of forfeiture but must refrain from directing the transfer of any property or interest to the third party until the defendant's appeal is final, unless the defendant consents in writing, or on the record, to the transfer of the property or interest to the third party.

(f) SUBSTITUTE PROPERTY. If the applicable statute authorizes the forfeiture of substitute property, the court may at any time consider a motion by the government to order forfeiture of substitute property. If the government makes the requisite showing, the court must enter an order forfeiting the substitute property or must amend an existing preliminary or final order to include that property.

COMMITTEE NOTE

Rule 32.2 consolidates a number of procedural rules governing the forfeiture of assets in a criminal case. Existing Rules 7(c)(2), 31(e) and 32(d)(2) are repealed and replaced by the new Rule. In addition, the forfeiture-related provisions of Rule 38(e) are stricken.

Subsection (a). Subsection (a) is derived from Rule 7(c)(2) which provides that notwithstanding statutory authority for the forfeiture of property following a criminal conviction, no forfeiture order may be entered unless the defendant was given notice of the forfeiture in the indictment or information. As courts have held, subsection (a) is not intended to require that an itemized list of the property to be forfeited appear in the indictment or information itself; instead, such an internalization may be set forth in one or more bills of particulars. *See United States v. Moffitt, Zwerling & Kemler, P.C.*, 83 F.3d 660, 665 (4th Cir. 1996), *aff'g* 846 F. Supp. 463 (E.D. Va. 1994) (*Moffitt* I) (indictment need not list each asset subject to forfeiture; under Rule 7(c), this can be done with bill of particulars). The same applies with respect to property to be forfeited only as "substitute assets." *See United States v. Voight*, 89 F.3d 1050 (3rd Cir. 1996) (court may amend order of forfeiture at any time to include substitute assets).

Subsection (b). Subsection (b) replaces Rule 31(e) which provides that the jury in a criminal case must return a special verdict "as to the extent of the interest or property subject to forfeiture." *See United States v. Saccoccia*, 58 F.3d 754 (1st Cir. 1995) (Rule 31(e) only applies to jury trials; no special verdict required when defendant waives jury right on forfeiture issues). After the Rule was promulgated in 1972, changes in the law created several problems.

The first problem concerns the role of the jury. When Rule 31(e) was promulgated, it was assumed that criminal forfeiture was akin to a separate criminal offense on which evidence would be presented and the jury would have to return a verdict. In *Libretti v. United States*, 116 S. Ct. 356 (1995), however, the Supreme Court held that criminal forfeiture constitutes an aspect of the sentence imposed in a criminal case and that the defendant has no constitutional right to have the jury determine any part of the forfeiture. The special verdict requirement in Rule 31(e), the Court said, is in the nature of a statutory right that can be modified or repealed at any time.

Even before *Libretti*, lower courts had determined that criminal forfeiture is a sentencing matter and concluded that criminal trials therefore should be bifurcated so that the jury first returns a verdict on guilt or innocence and then returns to hear evidence regarding the forfeiture. In the second part of the bifurcated proceeding, the jury is instructed that the government must establish the forfeitability of the property by a preponderance of the evidence. *See United States v. Myers*, 21 F.3d 826 (8th Cir. 1994)

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(preponderance standard applies because criminal forfeiture is part of the sentence in money laundering cases); *United States v. Voight*, 89 F.3d 1050 (3rd Cir. 1996) (following *Myers*); *United States v. Smith*, 966 F.2d 1045, 1050-53 (6th Cir. 1992) (same for drug cases); *United States v. Bieri*, 21 F.3d 819 (8th Cir. 1994) (same).

In light of *Libretti*, it is questionable whether the jury should have any role in the forfeiture process. Traditionally, juries do not have a role in sentencing other than in capital cases, and elimination of that role in criminal forfeiture cases would streamline criminal trials. Undoubtedly, it may be confusing for a jury to be instructed regarding a different standard of proof in the second phase of the trial, and it is burdensome to have to return to hear additional evidence after what may have been a contentious and exhausting period of deliberation regarding the defendant's guilt or innocence.

For these reasons, the proposal replaces Rule 31(e) with a provision that requires the court alone, as soon as practicable after the verdict in the criminal case, to hold a hearing to determine if the property was subject to forfeiture, and to enter a preliminary order of forfeiture.

The second problem with Rule 31(e) concerns the scope of the determination that must be made prior to entering an order of forfeiture. This issue is the same whether the determination is made by the court or by the jury.

As mentioned, the current Rule requires the jury to return a special verdict "as to the extent of the interest or property subject to forfeiture." Some courts interpret this to mean only that the jury must answer "yes" or "no" when asked if the property named in the indictment is subject to forfeiture under the terms of the forfeiture statute—*e.g.* was the property used to facilitate a drug offense? Other courts also ask the jury if the defendant has a legal interest in the forfeited property. Still other courts, including the Fourth Circuit, require the jury to determine the extent of the defendant's interest in the property vis a vis third parties. *See United States v. Ham*, 58 F.3d 78 (4th Cir. 1995) (case remanded to the district court to empanel a jury to determine, in the first instance, the extent of the defendant's forfeitable interest in the subject property).

The notion that the "extent" of the defendant's interest must be established as part of the criminal trial is related to the fact that criminal forfeiture is an *in personam* action in which only the defendant's interest in the property may be forfeited. *United States v. Riley*, 78 F.3d 367 (8th Cir. 1996). When the criminal forfeiture statutes were first enacted in the 1970's, it was clear that a forfeiture of property other than the defendant's could not occur in a criminal case, but there was no mechanism designed to limit the forfeiture to the defendant's interest. Accordingly, Rule 31(e) was drafted to make a determination of the "extent" of the defendant's interest part of the verdict.

The problem, of course, is that third parties who might have an interest in the forfeited property are not parties to the criminal case. At the same time, a defendant who has no interest in property has no incentive, at trial, to dispute the government's forfeiture allegations. Thus, it was apparent by the 1980's that Rule 31(e) was an inadequate safeguard against the inadvertent forfeiture of property in which the defendant held no interest.

In 1984, Congress addressed this problem when it enacted a statutory scheme whereby third party interests in criminally forfeited property are litigated by the court in an ancillary proceeding following the conclusion of the criminal case and the entry of a preliminary order of forfeiture. *See* 21 U.S.C. § 853(n); 18 U.S.C. § 1963(l). Under this scheme, the court orders the forfeiture of the defendant's interest in the property—whatever that interest may be—in the criminal case. At that point, the court conducts a separate proceeding in which all potential third party claimants are given an opportunity to challenge the forfeiture by asserting a superior interest in the property. This proceeding does not involve relitigation of the forfeitability of the property; its only purpose is to determine whether any third party has a legal interest in the property such that the forfeiture of the property from the defendant would be invalid.

The notice provisions regarding the ancillary proceeding are equivalent to the notice provisions that govern civil forfeitures. *Compare* 21 U.S.C. § 853(n)(1) *with* 19 U.S.C. § 1607(a); *see United States v. Bouler*, 927 F. Supp. 911 (W.D.N.C. 1996) (civil notice rules apply to ancillary criminal proceedings).

Notice is published and sent to third parties who have a potential interest. *See United States v. BCCI Holdings (Luxembourg) S.A. (In re Petition of Indosuez Bank)*, 916 F. Supp. 1276 (D.D.C. 1996) (discussing steps taken by government to provide notice of criminal forfeiture to third parties). If no one files a claim, or if all claims are denied following a hearing, the forfeiture becomes final and the United States is deemed to have clear title to the property. 21 U.S.C. § 853(n)(7); *United States v. Hentz*, 1996 WL 355327 (E.D. Pa. 1996) (once third party fails to file a claim in the ancillary proceeding, government has clear title under § 853(n)(7) and can market the property notwithstanding third party's name on the deed).

Thus, the ancillary proceeding has become the forum for determining the extent of the defendant's forfeitable interest in the property. It allows the court to conduct a proceeding in which all parties can participate and which ensures that the property forfeited actually belongs to the defendant.

Since the enactment of the ancillary proceeding statutes, the requirement in Rule 31(e) that the court (or jury) determine the extent of the defendant's interest in the property as part of the criminal trial has become an unnecessary anachronism that leads more often than not to duplication and a waste of judicial resources. There is no longer any reason to delay the conclusion of the criminal trial with a lengthy hearing over the extent of the defendant's interest in property when the same issues will have to be litigated a second time in the ancillary proceeding if someone files a claim challenging the forfeiture. For example, in *United States v. Messino*, 921 F. Supp. 1231 (N.D. Ill. 1996), the court allowed the defendant to call witnesses to attempt to establish that they, not he, were the true owners of the property. After the jury rejected this evidence and the property was forfeited, the court conducted an ancillary proceeding in which the same witnesses litigated their claims to the same property.

A more sensible procedure would be for the court, once it determines that property was involved in the criminal offense for which the defendant has been convicted, to order the forfeiture of whatever interest a defendant may have in the property without having to determine exactly what that interest is. If third parties assert that they have an interest in all or part of the property, those interests can be adjudicated at one time in the ancillary proceeding.

This approach would also address confusion that occurs in multi-defendant cases where it is clear that each defendant should forfeit whatever interest he may have in the property used to commit the offense, but it is not at all clear which defendant is the actual owner of the property. For example, suppose A and B are co-defendants in a drug and money laundering case in which the government seeks to forfeit property involved in the scheme that is held in B's name but of which A may be the true owner. It makes no sense to invest the court's time in determining which of the two defendants holds the interest that should be forfeited. Both defendants should forfeit whatever interest they may have. Moreover, to the extent that the current rule forces the court to find that A is the true owner of the property, it gives B the

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right to file a claim in the ancillary proceeding where he may attempt to recover the property despite his criminal conviction. *United States v. Real Property in Waterboro*, 64 F.3d 752 (1st Cir. 1995) (co-defendant in drug/money laundering case who is not alleged to be the owner of the property is considered a third party for the purpose of challenging the forfeiture of the other co-defendant's interest).

The new Rule resolves these difficulties by postponing the determination of the extent of the defendant's interest until the ancillary proceeding. Under this procedure, the court, as soon as practicable after the verdict in the criminal case, would determine if the property was subject to forfeiture in accordance with the applicable statute, *e.g.*, whether the property represented the proceeds of the offense, was used to facilitate the offense, or was involved in the offense in some other way. The determination could be made by the court alone based on the evidence in the record from the criminal trial or the facts set forth in a written plea agreement submitted to the court at the time of the defendant's guilty plea, or the court could hold a hearing to determine if the requisite relationship existed between the property and the offense. It would not be necessary to determine at this stage what interest any defendant might have in the property. Instead, the court would order the forfeiture of whatever interest each defendant might have in the property and conduct the ancillary proceeding. If someone files a claim, the court would determine the respective interests of the defendants versus the third party claimants and amend the order of forfeiture accordingly. On the other hand, if no one files a claim in the ancillary proceeding, the court would enter a final order forfeiting the property in its entirety only after the court makes a finding that one of the defendants had a possessory or legal interest in the property. This corresponds to the requirement under current law, at least as it is interpreted in some courts, in instances where Rule 31(e) applies.

Subdivision (c). Subsection (c) replaces Rule 32(d)(2) (effective December 1996). It provides that once the court enters a preliminary order of forfeiture directing the forfeiture of whatever interest each defendant may have in the forfeited property, the government may seize the property and commence an ancillary proceeding to determine the interests of any third party. Again, if no third party files a claim, the court, at the time of sentencing, will enter a final order forfeiting the property in its entirety. If a third party files a claim, the order of forfeiture will become final as to the defendant at the time of sentencing but will be subject to amendment in favor of a third party pending the conclusion of the ancillary proceeding.

Because it is not uncommon for sentencing to be postponed for an extended period to allow a defendant to cooperate with the government in an ongoing investigation, the Rule would allow the order of forfeiture to become final as to the defendant before sentencing, if the defendant agrees to that procedure. Otherwise, the government would be unable to dispose of the property until the sentencing took place.

Subsection (d). Subsection (d) sets forth a set of rules governing the conduct of the ancillary proceeding. When the ancillary hearing provisions were added to 18 U.S.C. § 1963 and 21 U.S.C. § 853 in 1984, Congress apparently assumed that the proceedings under the new provisions would involve simple questions of ownership that could, in the ordinary case, be resolved in 30 days. *See* 18 U.S.C.

§ 1963(l)(4). Presumably for that reason, the statute contains no procedures governing motions practice or discovery such as would be available in ordinary civil case.

Experience has shown, however, that ancillary hearings can involve issues of enormous complexity that require years to resolve. *See United States v. BCCI Holdings (Luxembourg) S.A.*, 833 F. Supp. 9 (D.D.C. 1993) (ancillary proceeding involving over 100 claimants and $451 million); *United States v. Porcelli*, CR85-00756 (CPS), 1992 U.S. Dist. LEXIS 17928 (E.D.N.Y. Nov. 5, 1992) (litigation over third party claim continuing 6 years after RICO conviction). In such cases, procedures akin to those available under the Federal Rules of Civil Procedure should be available to the court and the parties to aid in the efficient resolution of the claims.

Because an ancillary hearing is part of a criminal case, it would not be appropriate to make the civil Rules applicable in all respects. The amendment, however, describes several fundamental areas in which procedures analogous to those in the civil Rules may be followed. These include the filing of a motion to dismiss a claim, conducting discovery, disposing of a claim on a motion for summary judgment, and appealing a final disposition of a claim. Where applicable, the amendment follows the prevailing case law on the issue. *See, e.g., United States v. Lavin*, 942 F.2d 177 (3rd Cir. 1991) (ancillary proceeding treated as civil case for purposes of applying Rules of Appellate Procedure); *United States v. BCCI Holdings (Luxembourg) S.A. (In re Petitions of General Creditors)*, 919 F. Supp. 31 (D.D.C. 1996) ("If a third party fails to allege in its petition all elements necessary for recovery, including those relating to standing, the court may dismiss the petition without providing a hearing"); *United States v. BCCI (Holdings) Luxembourg S.A. (In re Petition of Department of Private Affairs)*, 1993 WL 760232 (D.D.C. 1993) (applying court's inherent powers to permit third party to obtain discovery from defendant in accordance with civil rules). The provision governing appeals in cases where there are multiple claims is derived from Fed. R. Civ. P. 54(b).

Subsection (e). Subsection (e) replaces the forfeiture provisions of Rule 38(e) which provide that the court may stay an order of forfeiture pending appeal. The purpose of the provision is to ensure that the property remains intact and unencumbered so that it may be returned to the defendant in the event the appeal is successful. Subsection (e) makes clear, however, that a district court is not divested of jurisdiction over an ancillary proceeding even if the defendant appeals his or her conviction. This allows the court to proceed with the resolution of third party claims even as the appeal is considered by the appellate court. Otherwise, third parties would have to await the conclusion of the appellate process even to begin to have their claims heard. *See United States v. Messino*, 907 F. Supp. 1231 (N.D. Ill. 1995) (the district court retains jurisdiction over forfeiture matters while an appeal is pending).

Finally, subsection (e) provides a rule to govern what happens if the court determines that a third-party claim should be granted but the defendant's appeal is still pending. The defendant, of course, is barred from filing a claim in the ancillary proceeding. *See* 18 U.S.C. § 1963(l)(2); 21 U.S.C. § 853(n)(2). Thus, the court's determination, in the ancillary proceeding, that a third party has an interest in the property superior to that of the defendant cannot be binding on the defendant. So, in the event that the court finds in favor of the third party, that determination is final only with respect to the government's alleged interest. If the defendant prevails on appeal, he or she recovers the property as if no conviction or forfeiture ever took place. But if the order of forfeiture is affirmed, the amendment to the order of forfeiture in favor of the third party becomes effective.

Subsection (f). Subsection (f) makes clear, as courts have found, that the court retains jurisdiction to amend the order of forfeiture to include substitute assets at any time. *See United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995) (court retains authority to order forfeiture of substitute assets after appeal is filed); *United States v. Voight*, 89 F.3d 1050 (3rd Cir. 1996) (following *Hurley*). Third parties, of course, may contest the forfeiture of substitute assets in the ancillary proceeding. *See United States v. Lester*, 85 F.3d 1409 (9th Cir. 1996).

AIRGs Helped Seize Over $134 Million in Assets Since FY 95

By David Callahan, Program Manager, Asset Identification and Removal Groups (AIRGs), U.S. Customs Service

As most people in the law enforcement community already know, the seizure and ultimate forfeiture of criminally derived assets is a valuable tool that can be utilized to disable a variety of criminal activities. The U.S. Customs Service has recognized that to fully exploit the potential of the federal asset forfeiture provisions, particularly in the international arena, specialized units are needed to focus on this aspect of the investigative process. To that end, in fiscal year 1995, the Office of Investigations of the U.S. Customs Service initiated its Asset Identification and Removal Program.

Based upon a prototype that had been operating successfully in our Special Agent-in-Charge (SAC) Miami office for a number of years, Asset Identification and Removal Groups (AIRGs) were subsequently created in 15 of U.S. Customs' 20 SAC offices throughout the country. Expansion to the remaining SAC offices, and perhaps some of our larger Resident Agent-in-Charge offices, is anticipated to take place during fiscal year 1998.

The AIRGs are investigative units under the operational direction of the individual SAC offices, with programmatic and administrative support coming from U.S. Customs' headquarters office. The AIRGs are comprised primarily of Customs special agents and intelligence research specialists, with support from data analysts and other specialists hired under contract from the private sector. Some logistical funding for the AIRGs, including the salaries and expenses of the contract employees, is reimbursed to U.S. Customs by the Treasury's Executive Office of Asset Forfeiture.

AIRGs can do a more efficient and cost-effective job, while at the same time avoid some of the traditional pitfalls....

Experienced special agents have been selected by their respective SACs to be assigned to the AIRGs. After selection, these agents receive formal training in asset identification and forfeiture from Treasury's Federal Law Enforcement Training Center. This training is presented by the enforcement training staff and by experienced agents from field locations. Periodically, these agents also receive updated asset forfeiture training through attendance at various topic related courses offered by both government entities and the private sector.

The principal responsibility of the AIRGs is to target the assets of violators within any of Customs' core areas of investigation—financial, smuggling, fraud, export—for seizure and forfeiture, in concert with the prosecution of the violators.

Traditionally, this action had not been initiated until after the arrest of the targets of the investigation. With the implementation of the program, the idea of asset identification and seizure has become integrated as part of the ongoing case strategy, being initiated as early as possible in the investigative process.

AIRG "Concept"

There are two primary benefits to be gained through the utilization of what is referred to as the AIRG "concept." First, the AIRGs will develop a higher level of expertise in this increasingly complex field of investigation, thus providing a more thorough and efficient impact in the area of asset identification and removal. The second benefit is that investigators will be allowed to concentrate their time, effort and limited resources on the primary unlawful activity under investigation, without the added responsibilities of asset identification and removal.

It should be noted that there is a school of thought within the law enforcement community that believes the need for these "specialists" is unnecessary and that all special agents should be capable of doing their own asset

work. Unquestionably, criminal investigators are more than capable of conducting their own asset investigations. However, it has been our experience that the AIRGs can do a more efficient and cost-effective job, while at the same time avoid some of the traditional pitfalls such as loss of equity, liquidation of assets and environmental concerns.

Other Positive Benefits

While the AIRGs have performed admirably in support of their primary missions—improved seizure capabilities and allowing case agents to concentrate their efforts on the overt activity under investigation—there are several other side-benefits derived from the AIRG program. They include:

- use of asset removal in investigative areas not traditionally associated with asset removal (*i.e.*, fraud, export violations);
- ability to accurately determine equity in a given asset;
- ability to defeat "innocent owner" claims, a primary obstacle in any asset investigation; and
- ability to recognize potentially "bad" seizures such as those with heavy encumbrances or environmental problems.

Problem Areas for AIRGs

Probably the single largest problem facing the AIRG "concept" is the question of who gets credit for the seizure—the AIRG or the originating investigator. In today's atmosphere of measuring success by the number of "stats" a case generates, this is often a contentious issue and one that is not easily resolved.

Since the majority of asset cases will be worked on in conjunction with ongoing investigations, in order to be effective the investigative units within an office must be willing to coordinate with the local AIRG and provide them with investigative leads. While there are some administrative remedies that can help with this situation, the only real solution is to foster confidence in the concept that turning over certain aspects of an investigation is in the best interest of better law enforcement.

Closely related to the issue of cooperation is the degree of support the program receives from management. Our experience has shown that when field managers are not "bought into" the AIRG concept, the programs tend to fragment and the level of interaction between the investigative units and the AIRGs deteriorates.

Conclusion

The AIRG program has met or exceeded many original expectations of the U.S. Customs Service, as evidenced by the units having participated in the seizure of over $134 million worth of assets since its inception in fiscal year 1995. In addition, although difficult to measure, anecdotal evidence suggests that U.S. Customs investigators are being allowed to focus more of their time and effort on the principal violations by leaving the asset work to the AIRGs.

Probabaly the single largest problem facing the AIRG "concept" is the question of who gets credit for the seizure—the AIRG or the originating investigator.

Perhaps the only real surprises were the peripheral benefits generated by the program. These include the expansion of asset removal to traditionally non-asset types of investigations like fraud and export violations, and the improved management of seizures after they are initially secured.

Through continued expansion of the AIRG concept, the continuing increase in the level of expertise of the existing groups and greater acceptance among investigators, even better results are anticipated from the AIRG program in the future.

Any questions concerning the AIRG program can be directed to the Special Agent Dave Callahan, at U.S. Customs Service headquarters' office at (202) 927-1983).

Luxembourg's Assistance Adds Millions to International Forfeiture Efforts

By Juan C. Marrero and Linda M. Samuel, Special Counsel, International Forfeiture Matters, AFMLS, Criminal Division, and Margaret Cotter, Senior Legal Advisor, Office of International Affairs, Criminal Division

Although geographically a small country, Luxembourg is one of Europe's most important banking centers and a major partner in our international forfeiture efforts. The United States has successfully pursued the forfeiture of tens of millions of dollars that drug traffickers have deposited in Luxembourg banks.

Moreover, the senior prosecutors handling confiscation matters in Luxembourg have informed representatives of the Department of Justice that Luxembourg will use its laws energetically to ensure that drug traffickers, their assignees, or heirs will not be able to use Luxembourg's financial system to insulate their wealth from forfeiture. Indeed, under Luxembourg law, drug funds that are frozen for thirty years, but not confiscated under Luxembourg law for whatever reason, escheat to the State.

Luxembourg law provides for the enforcement of foreign criminal forfeiture judgments based on drug and drug-related money laundering violations. Luxembourg's authority to do so derives from legislation adopted on March 17, 1992. The law approved the United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (the Vienna Convention of 1988), which contains mandatory domestic and international forfeiture provisions, and modified domestic law so as to implement the Convention.

Requests to Luxembourg to block or seize assets subject to forfeiture under U.S. law, or subsequently to enforce an U.S. criminal forfeiture judgment in drug cases, must be made through a letter rogatory issued by the U.S. federal judge having jurisdiction in the case.[1] The letter rogatory is submitted by the Criminal Division's Office of International Affairs through diplomatic channels to the Luxembourg Ministry of Justice, which, in turn, will refer the matter to "the Court sitting in criminal matters or the investigating magistrate having jurisdiction."[2]

Before enforcing a foreign forfeiture judgment, the Luxembourg court must conclude that the underlying conduct would also constitute a criminal offense under Luxembourg law and that the foreign judgment is "final." Under Section 6 of the March 1992 law, the Luxembourg court is "bound by the findings of fact of the foreign decision," although it may conclude that these findings of fact are insufficient and then request additional evidence. Moreover, the defendant and third parties claiming a right to the property are to be heard by the court and may be represented by counsel. Luxembourg will not enforce a foreign forfeiture judgment if the underlying criminal conduct is also the subject of a Luxembourg criminal proceeding.

Luxembourg also established an asset forfeiture fund, "Fonds de Lutte Contre le Trafic des Stupefiants" ("Fund for the Fight Against Narcotics and Drug Trafficking"), as part of its March 1992 legislation. Although Luxembourg and the United States have not entered into a formal asset sharing agreement, Luxembourg has indicated that it will share with the United States in cases where they enforce our forfeiture judgments. As of May 1995, the United States has transferred over $17 million to Luxembourg through asset sharing.

Because its international forfeiture law is explicitly linked to the Vienna Convention of 1988, Luxembourg cannot enforce foreign drug-related forfeiture judgments in some older cases. That is, where the facts underlying the foreign forfeiture judgment predate the enactment of Luxembourg's international forfeiture cooperation legislation, Luxembourg would view such enforcement as a retroactive application of a "criminal" law.

Moreover, Luxembourg prosecutors informed us during recent consultations that their courts are likely to interpret the March 1992 law to provide only for the enforcement of criminal,

not civil, foreign forfeiture judgments. Nevertheless, if no other option exists, the Luxembourg prosecutors would consider asking the appropriate court to recognize and enforce a U.S. civil judgment under the March 1992 law.

When such difficulties arise, Luxembourg prosecutorial authorities have suggested that the United States (through a letter rogatory) ask Luxembourg to repatriate the funds in connection with a pending U.S. criminal proceeding. Such a U.S. request, of course, is not possible unless the underlying case remains open or there are related criminal proceedings which are still pending in the United States. Assistant United States Attorneys should ensure that a letter rogatory seeking repatriation of funds is issued at the time a forfeiture claim is filed and before judgment in all cases where the underlying facts predate March 1992.

In addition, Article 18 of Luxembourg's law of February 19, 1973 was amended by the March 1992 legislation to add a "non-restoration" provision that Luxembourg may be able to use to keep drug funds from the hands of drug traffickers, their heirs or assignees. Specifically, this provision—which also may be applicable to cases based on offenses predating March 1992—is an equitable measure that empowers the Luxembourg authorities to refuse to restore assets to claimants who fail to prove their "right" to the funds in question or in cases where such assets are shown to be linked to drug trafficking activities. "Non-restored" funds are deposited in the Luxembourg asset forfeiture fund where they are available for international sharing.

The repatriation of forfeitable funds from a bank account in Luxembourg to the United States can be most "easily" effected when the person who controls the account (signatory authority) is cooperating with U.S. authorities—typically as part of a settlement or a plea agreement. A cooperating signatory authority can sign a letter of instruction to the bank in question asking that the funds be transferred in accordance with instructions from the Luxembourg Government. For its part, the United States (through the Office of International Affairs) would ask that Luxembourg unblock the account in question and that all or part of the proceeds be repatriated to the United States.

One of the largest international forfeiture cases to date involved over $54 million of cocaine profits in Luxembourg bank accounts generated by deceased Colombian trafficker Jose Gonzalo Rodriguez Gacha. After Gacha's death, the United States Attorney for the Middle District of Florida (per Assistant United States Attorney Edward Gaines) obtained civil forfeiture judgments against Gacha's bank holdings worldwide, including his deposits in Luxembourg. In order to facilitate the forfeiture of the funds, the United States entered into a settlement agreement with the signatory authorities (Gacha's relatives).

As a result of this agreement, and upon the request of the United States, Luxembourg unblocked the accounts. On May 21, 1997, the Luxembourg Government wire transferred two-thirds ($36,208,715.47) of the forfeited amount to the United States (except the BCCI-related accounts, as to which there will be a later transfer). Luxembourg retained one-third of the forfeited funds which the United States had agreed to "share."

The experience with Luxembourg in the return of fraud proceeds has been very positive. U.S. authorities may make a letter rogatory request for the freeze of funds, and request return of funds as restitution to the victims of the fraud.

In April 1994, in the *Eddie Antar* case from the District of New Jersey, Luxembourg authorities used provisions of domestic law to return approximately $600,000 to a trustee-receiver appointed by the court to receive the proceeds of a Securities and Exchange Commission stock manipulation fraud. Luxembourg had frozen the funds pursuant to a request for blocking made in mid-1993.

Obtaining the repatriation of forfeitable funds from Luxembourg is not always easy or quick, but, as the *Gacha* and *Antar* cases have shown, it is eminently worthwhile.

Endnotes

[1] The United States and Luxembourg have negotiated a mutual legal assistance treaty (MLAT) for assistance in criminal matters. Once the MLAT is ratified by the U.S. Senate (hopefully by the end of this year or early 1998), requests for forfeiture assistance will be made directly from the U.S. MLAT Central (Office of International Affairs) to Luxembourg Central Authority (the Parquet General). This will simplify and expedite the process in making forfeiture requests to Luxembourg.

[2] Section 5 of the Law of March 17, 1992.

How to Conduct a Successful Food Stamp Fraud Investigation

By Larry Lynch and Bob Knight, Asset Forfeiture Branch, U.S. Secret Service

Conducting a Food Stamp Investigation

Because food stamp fraud has been listed as a specified unlawful activity (SUA) for money laundering since 1992, the proceeds of food stamp fraud may be forfeited—administratively, civilly, or criminally—in a money laundering case.

There are several asset forfeiture and money laundering factors to consider when conducting a food stamp fraud investigation.

First, you will need to identify your target through information sources, confidential informants, state and local law enforcement agencies, or the U.S. Department of Agriculture. Ask: "Is your target an authorized or unauthorized redemption retailer?" You should also identify the target's business associates and co-conspirators. You can find this information in various sources, including: the Investigative Support databases; State Department of Motor Vehicles; State Department of Taxation; State Liquor Control Departments; and State Lottery Commissions.

Second, the U.S. Department of Agriculture can provide information pertaining to the volume of the retailer redemptions. For example, is the target redeeming the food stamp coupons in excess of total food sales? In some cases the target will attempt to conceal the excess coupons by enlisting a collusive merchant to deposit them into an account established for this very purpose.

The Internal Revenue Service is also a valuable source of information. Agents assigned to the Criminal Investigative Division can provide invaluable assistance in working the money laundering aspect of the investigation.

In addition, you should conduct undercover sales of food stamps to trace the path of the food stamps from merchant to merchant accounts. This physical tracing of movement of the food stamps can help identify authorized and unauthorized merchants. Tracing can also establish the money flow, subsequently assisting the investigator in building a money laundering case.

After identifying the target, discuss the case with the Assistant United States Attorney, to address both criminal and forfeiture considerations. You should determine the Assistant United States Attorney's criteria for establishing a money laundering case and identify bank records through the issuance of Grand Jury subpoenas.

You should then inform the Assistant United States Attorney of any forfeiture potential early in the investigation to ensure the success of the forfeiture, and discuss your forfeiture strategy to include administrative, civil, judicial, and criminal alternatives.

A recent legal development occurring in the welfare reform legislation of 1996 expands criminal forfeiture for food stamp fraud. The legislation, which went into effect October 1, 1996, adds a new subsection (h) to 7 U.S.C. § 2024. *See* Joseph H. Payne and Todd Blanche, "Mixed Session on Forfeiture," *Asset Forfeiture News* [July/August 1996]: 1.

The amendment in section 2024(h) makes the proceeds of all such property—real or personal—used to commit or facilitate the commission of such offenses, subject to forfeiture.

A recent analysis of this legislation by the Department of Justice concluded that the provision is flawed. First, it is a criminal forfeiture provision, which does not cross-reference any criminal forfeiture procedures, such as 21 U.S.C. § 853. This may negate applicability of the statute.

Second, the legislation only provides for criminal forfeiture and makes no provision for civil or administrative forfeiture. Also, there is not any clear direction for the distribution of proceeds after forfeiture. The statute directs that the proceeds be used to reimburse any costs incurred by the Department of Justice, the U.S. Department of Agriculture's Office of Inspector General, and any federal or state law enforcement agency for their law enforcement efforts resulting in the forfeiture.

In view of these existing flaws in the legislation, the prudent direction to proceed at this time is to continue to utilize the money laundering statute to forfeit proceeds in a food stamp coupon investigation.

After you have determined the Assistant United States Attorney's criteria for establishing a money laundering case, begin to identify assets as part of your pre-seizure planning. Examples include: bank accounts, safe deposit boxes, vehicles, residential property, business property (owned or leased), licenses that can be sold or transferred, and inventory.

In addition, you will need to identify dates of purchase when targeting assets and forfeiture. You then must determine if the properties—*e.g.*, vehicles, computers—were purchased during the period the fraud was committed. In addition, you must determine if the properties were purchased with proceeds and thus, they are forfeitable.

After the investigation has targeted the suspects and identified the assets, the property contractor, EG&G Dynatrend, should be notified through the local seized property specialist U.S. Customs officer. EG&G Dynatrend provides numerous services from securing businesses to managing seized property. Each office has copies of the Asset Forfeiture Implementation Plan, which explains the assistance that EG&G Dynatrend will provide.

The following is an overview of the Shop Joy Food Market case conducted by Chattanooga resident agent Bob Knight. This case is an example of a food stamp fraud/ money laundering investigation that successfully utilized pre-seizure planning to affect a high impact forfeiture.

Summary of the Shop Joy Food Market Investigation

Shop Joy Food Market was a small grocery store located in a low income area of Chattanooga, Tennessee. The shop was owned and operated by Chang Son, an architect, and his wife, Kay Son, a medical doctor. Chang also owned and operated an architectural firm and Kay Son was employed as a doctor by the U.S. Veterans Administration and had a private medical practice in her own clinic. The reason they both also worked at Shop Joy became readily apparent after a period of about one and a half years—the Son's redeemed roughly $2.1 million dollars in food stamps through their store; sometimes as much as $10,000 a day.

Shop Joy Food Market . . . is an example of a food stamp fraud/money laundering investigation that successfully utilized pre-seizure planning to affect a high impact forfeiture.

The Shop Joy investigation had four overlapping stages: (1) the targeting of stores; (2) making a criminal case against the store and its operators; (3) the identification of seizable proceeds belonging to the owners; and (4) the judicial phase of the case including the indictment and seizure of assets.

Targeting

One way to target stores for food stamp fraud investigation is to contact the U.S. Department of Agriculture's Food and Consumer Services to determine which stores redeem a disproportionate amount of food stamps. The Shop Joy Food Market case was, however, initiated in another way. The Fraud Investigation Unit of the Tennessee Department of Health and Human Services operates a hotline for the public to call and report welfare fraud. The unit provided the Chattanooga resident agency with the names of the establishments which had received the most calls.

For the most part, informants were obtained from the local police department and were given a small amount of stamps and sent into the targeted stores. The informants went into the stores alone until they were able to make a purchase. Thereafter, an undercover agent accompanied each informant. Shop Joy was one such store where illegal use of food stamps occured. If the informant was unsuccessful in making a sale after two attempts, the store was dropped as a target.

The U.S. Department of Agriculture's Food and Consumer Services was subsequently contacted and asked to provide copies of the food stamp program and application and redemption statistics for the store. At the same

*See **Food Stamp**, page 16*

How to Conduct a Successful Food Stamp Fraud Investigation

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time, account records were obtained from Shop Joy's bank. Because Shop Joy maintained a corporate account, no subpoena was required. These documents were compared against each other and it became apparent that as much as 95 percent of Shop Joy's deposits were food stamps. Shop Joy remained a target.

Criminal Investigation

The investigation of Shop Joy Food Market continued along with several other targeted stores in Chattanooga. The undercover agents made sales in the targeted stores while utilizing a camera concealed in a handbag.

One of the employees handled the purchases of food stamps in Shop Joy. The transactions were conducted in a backroom. Once the employee became familiar with the undercover agent, he began to sell "crack" to the agent for the stamps. This would ultimately prove to be extremely important because toward the end of the criminal investigation, he was charged with trafficking of a controlled substance. This resulted in his cooperation in the food stamp case. This employee implicated Chang and Kay Son, the store owners, in the food stamp fraud.

The employee explained that Chang or Kay would provide him with $10,000 every morning with which to purchase the stamps. At the end of the day, Chang or Kay would prepare the store's receipts and make the deposit of the cash and the stamps. The employee also implicated two other store employees who ultimately corroborated his statements.

Once the employee became familiar with the undercover agent, he began to sell "crack" to the agent for the stamps.

Asset Identification

In addition to owning the store, the investigation revealed that the Sons had other assets, which might be subject to seizure. County Courthouse records revealed that they owned a house on Signal Mountain, an exclusive residential area, and that Kay Son had recently purchased undeveloped property in Council Fire—another exclusive residential area in Chattanooga. The county's auto and boat registration records reflected that the Sons owned three cars and two boats. Further investigation determined that the two properties and the three cars may be subject to seizure, based on the dates the properties were purchased and the periods that the Sons operated the Shop Joy.

Judicial Phase

The Internal Revenue Service was a helpful source in this investigation. Its Criminal Investigation Division assigned an agent to help work the money laundering aspects of this case. The agent conducted a comprehensive investigation of the business which reflected that the purchases of food products from the suppliers and wholesalers could not possibly have supported the daily food stamps being deposited into the Shop Joy business account.

The store shelves were sparsely stocked and the bank records showed few payments to suppliers for products. Shop Joy's largest wholesale purchases were for beer and cigarettes, items which cannot be purchased with food stamps. Chang and Kay Son could, however, argue that they paid cash for products but would have had to put suppliers on the stand to corroborate their story.

The Sons' assets which could be traced as proceeds of the money laundering and food stamp fraud were indicted along with Chang and Kay Son. This was a criminal indictment of their assets which included: the store; their residence; the residential building lot; three vehicles; five investment accounts; and $25,000 in travellers checks, which they purchased through one of their bank accounts just prior to the indictment. The Petit Jury would decide the fate of the Sons and their assets.

There was, however, one problem. Kay Son was nowhere to be found and Chang Son had made flight reservations to travel to several cities in the United States. Given his travel plans and the fact that he had purchased $25,000 in travellers checks within two weeks of the indictment being returned, the decision was made to arrest him and execute the seizure warrants. It turned out that Kay Son was in South Korea.

The United States has no extradition treaty with South Korea. Without her being legally "noticed" of the action against her, the forfeitures, either criminal or civil, were in jeopardy. However, based on his wife and middle child being in South Korea, his other two children being cared for by friends or family, his travel plans, the purchase of the travellers checks (which were never seized), and indications from witnesses that his wife did not plan to return to face the charges, the U.S. Magistrate denied bond for Chang Son.

Ultimately, Kay Son returned to the United States and she and her husband entered into a plea agreement with the Government. Both defendants pled guilty to criminal counts and agreed to a civil forfeiture of the seized assets (including the $25,000 in travellers checks). The United States Attorney filed a verified complaint for forfeiture *in rem*, moving the matter to civil court. On the same day, the judge signed a consent decree for forfeiture.

In the final phase of the seizure, the Asset Forfeiture Branch of the U.S. Secret Service will advertise the property and notice the interested parties. Interested parties will, in turn, file their claims with the clerk of the court and the matter will then be resolved in civil court. The District Court Judge will then sign a final order of forfeiture and EG&G Dynatrend will sell the real property and two of the seized vehicles. The proceeds from the sale of the property, vehicles and investment accounts will be forwarded to the Treasury's Forfeiture Fund. The third seized vehicle will be placed into official use.

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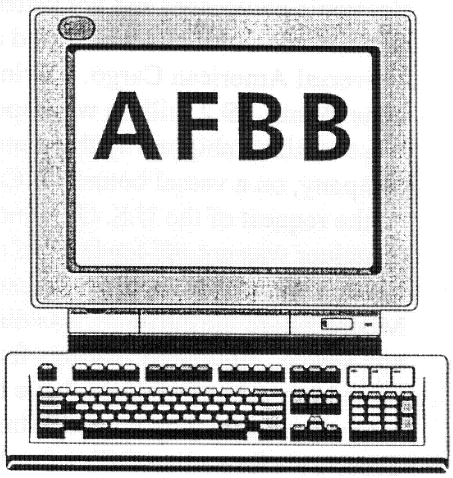

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Treasury Trends

By Charles Ott, Special Projects Advisor, Executive Office for Asset Forfeiture, Department of the Treasury

Clean Air Act Case Leads to Forfeitures

The Department of the Treasury's Customs Service along with the Criminal Investigation Division of the Internal Revenue Service joined with the Environmental Protection Agency to unmask a smuggling operation that had brought over 4,000 tons of the ozone depleting refrigerant gas, freon, into the United States from 1993 to 1995. The importation of freon, also known as CFC-12 or dichlorodiflouromethane gas, is strictly regulated by the Environmental Protection Agency as a result of the Clean Air Act. Under an international agreement known as the Montreal Protocols, the United States has pledged to take effective measures to reduce the production and consumption of such ozone depleting chemicals. To do this, Congress has imposed significant taxes on their sale and use and has charged the Environmental Protection Agency with overseeing consumption allowances designed to reduce each year the amounts that can be manufactured and imported for use in the United States each year.

On June 2, 1997, three individuals and their corporation, Refrigeration USA, entered guilty pleas in Miami to charges of smuggling and associated money laundering. The defendants purchased freon from a variety of sources in Europe and paid through fictitiously named accounts in Switzerland and the Channel Islands. They then used nominee corporations and bank accounts in the Turks and Caicos Islands to further conceal their activities and impede Internal Revenue Service collection of excise taxes on domestic sales.

As part of the plea agreement, almost $5 million held in off-shore accounts, real properties in Miami and London worth over $3.4 million, and 11,200 thirty pound cylinders of gas valued at $6.7 million, is to be forfeited. The United States Attorney for the Southern District of Florida, while commending the investigation leading to the guilty pleas, noted that this was the largest forfeiture of assets yet achieved in an environmental crimes case.

Business Card at Long Island Home Leads to Miami Currency Seizures

Detectives from Long Island's North Shore community of Port Washington were searching a money launderer's residence when they came upon a business card for Universal American Cargo, a freight forwarder in Miami. Passing this information through the Drug Enforcement Administration to U.S. Customs agents in Miami has resulted in two administrative forfeitures totalling over $15 million. In August 1996, $6.3 million hidden in electronic equipment and hot water heaters destined for Colombia was seized at Universal American Cargo. During the same month, $9.2 million was reported to be in a container, shipped by the same company, on a vessel bound for Cartagena. At the request of the U.S. Government, the container was not off-loaded in Colombia but instead returned with the vessel to Miami where the currency was discovered and seized. Equitable sharings from both these high value forfeitures have been recently approved by the Department of the Treasury's Executive Office for Asset Forfeiture.

Equitable Sharing

Petition Granted

By Michael Burke, Trial Attorney, AFMLS, Criminal Division, and Terrence Sweeney, DynCorp Government Services

International Drug Traffickers Provide Funds for International and Domestic Sharing

ND/Florida—In 1989, the Drug Enforcement Administration's (DEA's) Organized Crime Drug Enforcement Task Force commenced an investigation of the Miguel Angel Leon-Sanchez organization, a group of traffickers from the north coast of Colombia engaged in the worldwide distribution of narcotics. The Sheriff's Departments in Wakulla County and Gilchrist County, Florida, and the Gainesville, Florida, Police Department aided this investigation, in part by housing witnesses at their facilities.

On behalf of the taskforce, one of the witnesses housed in Gilchrist County, Joaquin Gallo, arranged for several of his former trafficker associates to import 5,000 pounds of marijuana into the United States. This arranged shipment led to the arrest of three traffickers, including Samuel Alarcon-Mengual. Following Aarcon-Mengual's arrest, a witness housed at the Wakulla County facility produced a photograph of Alarcon-Mengual's wife, Alicia Gallo, and provided detailed information about her involvement in Alarcon-Mengual's drug trafficking operation. This information led investigators to a Swiss bank account registered in Alicia Gallo's name, which led the Department of Justice to enlist the help of Swiss law enforcement authorities in the investigation.

The investigation also uncovered a Swiss bank account in the name of Yvette Gallo-Donado. She is the sister of Alicia Gallo—as well as the ex-wife of drug trafficker, Pedro Hernandez, and the niece of Joaquin Gallo—the informant housed in Gilchrist County. The task force recorded a telephone call and several meetings between Yvette Gallo-Donado and the informant, Joaquin Gallo, which enabled the task force to identify the assets in Yvette Gallo-Donado's account as deriving from proceeds of Pedro Hernandez's cocaine trafficking.

Based on this information, Swiss authorities froze $4 million in Yvette Gallo-Donado's account in March 1993, pursuant to the United States-Swiss Mutual Legal Assistance Treaty. Yvette Gallo-Donado eventually settled with U.S. and Swiss authorities and transferred two-thirds of the funds to the United States for forfeiture. A U.S. court entered a forfeiture judgment on October 4, 1995.

In 1996, the Department of Justice and the State Department approved the sharing of a portion of these forfeited assets with Switzerland and Canada. These countries also provided assistance in the investigation, leaving $1,092,402 available for domestic sharing. On May 9, 1997, the Department of Justice approved domestic sharing with the Gainesville Police Department and the Sheriff's Deparments in Wakulla County and the Gilchrist County in recognition of their assistance to the investigation.

Operation Clean House Provides New Opportunities for Low-Income Residents

SD/Mississippi—In early 1995, the United States Attorney's Office for the Southern District of Mississippi, the City of Jackson, and the Jackson Metro Housing Partnership (JMHP) undertook to revitalize depressed and crime-ridden areas in Jackson. They chose the Department of Justice's Weed and Seed Initiative, which provides for the transfer of federally

See Equitable Sharing, page 20

Equitable Sharing

Equitable Sharing, from page 19

forfeited real property to state or local government agencies and nonprofit organizations for community-based uses including drug-abuse treatment, drug and crime prevention and education, housing, and job-skills programs. The United States Attorney's Office, City of Jackson, and JMHP sought to replace blighted and neglected structures that served as locales for crime with refurbished single-family dwellings for low-income homebuyers. To achieve this goal, they joined the Jackson Police Department (JPD), the Drug Enforcement Administration (DEA), and the U.S. Marshals Service to develop Operation Clean House.

Under Operation Clean House, after the United States Attorney's Office forfeits the properties in civil proceedings, the U.S. Marshals Service conveys the properties to the JPD for retransfer to the City. Ultimately, the City of Jackson transfers the forfeited properties to a private, nonprofit entity such as the JMHP, which renovates the properties and resells them to low-income first-time homebuyers.

To facilitate this process, the City of Jackson and the JMHP combine resources to establish a land bank, which serves as a repository for forfeited properties transferred to the City of Jackson until the nonprofit recipient is equipped to rehabilitate the properties. This process allows the City of Jackson to remove a property from illegal use immediately while providing the nonprofit recipient with ample time to gather necessary resources and to conduct long-range community planning. The agreement establishing the land bank recognizes other private, nonprofit organizations, including Habitat For Humanity and Voice of Calvary Ministries, as groups eligible to receive properties held in the land bank.

In the two years since its inception, Operation Clean House has been an immense success. The land bank currently holds title to more than 50 properties, and JMHP alone has constructed and renovated 42 single-family homes and provided 135 home loans to low-income homebuyers. On June 6, 1997, Acting Deputy Attorney General Seth Waxman approved the transfer through Operation Clean House of five more properties in Jackson, marking the end of their use as drug havens and the beginning of JMHP's work to re-establish them as family residences.

State and Local Law Enforcement Curriculum Updates

By Araceli Carrigan, Trial Attorney, and Alice Dery, Assistant Chief, AFMLS, Criminal Division

The Curriculum

Lesson plans, student handouts, transparencies, case scenarios, workshops, review tests, teaching techniques—all these and more are now available to federal, state, and local law enforcement in the recently published *State and Local Law Enforcement Asset Forfeiture Curriculum*. Developed by the State and Local Law Enforcement Asset Forfeiture Training Working Group and the Asset Forfeiture and Money Laundering Section (AFMLS) of the Department of Justice, this curriculum is comprised of the following modules: Introduction to Asset Forfeiture; Ethics; Investigative Techniques; Constitutional Protections; Custody, Management, and Disposition of Property; and Equitable Sharing. *See* Dee Edgeworth, "State and Local Law Enforcement Asset Forfeiture Curriculum," *Asset Forfeiture News* [January/February 1996]: 25.

In December 1996, the curriculum was presented to state prosecutor coordinators, POST directors, Law Enforcement Coordinating Committee (LECC) coordinators, and Drug Enforcement Administration (DEA) asset

forfeiture group supervisors. Given the significant role that each of these groups had in the development, ceritification, and implementation of training for state and local law enforcement, they were invited to attend this seminar to receive the curriculum. At the seminar, the curriculum was modeled for the students and "Train the Trainer" techniques were demonstrated. Plans of action were discussed among the students as to the coordination and implementation of the curriculum in their individual states and districts.

Curriculum Updates

One of the additions that is being finalized is the Resource Allocation module. This module, which is designed for law enforcement executives and supervisors, will inform police chiefs and other executives and prosecutors on how their resources may be allocated when planning or improving an asset forfeiture program. A popular handout for this module is the *Model Asset Forfeiture Manual*.

With the growing sophistication of criminal targets in hiding their illegal assets, it has been recommended that the financial investigations section of the Investigative Techniques module be expanded from a five-hour lecture/workshop to a three-day seminar. A working group, comprised of Arizona Assistant State Attorneys General Kip Holmes and Sandy Janzen, San Bernardino Deputy District Attorney Dee Edgeworth, Pennsylvania Attorney General's Office Senior Investigator George Albeck, Federal Bureau of Investigation Agents Eliott Leary and Jim Robertson, Internal Revenue Service Agent Jerry Macready, and AFMLS Attorneys Alice Dery, Susan Smith, and Araceli Carrigan, has developed an asset forfeiture financial investigations curriculum. It will cover the following topics as they relate to the forfeiture of assets: basic money laundering, business organizations and operations, banking organizations and operations, analysis of financial records, overt and covert investigative techniques, sources of financial information, new tools for financial investigations, and seizing computers and computer data. Once the lesson plans and teaching materials are completed, several pilots of the curriculum will be held prior to making it available to federal, state, and local law enforcement.

Curriculum Training

Since the issuance of the curriculum, California has formally adopted the curriculum and several other states have conducted training using the curriculum. These training sessions include the following:

- California District Attorneys Association (CDAA) adopted the curriculum and uses it in their Basic Asset Forfeiture Seminar and the Asset Forfeiture Commanders Course;
- Food and Drug Administration's Basic Asset Forfeiture Course in Utah and Louisiana;
- Drug Enforcement Administration's Advanced Dangerous Drugs School and the in-service course in Florida;
- Asset Forfeiture Seminar sponsored by the United States Attorney's Office in the Northern and Southern Districts of Ohio and the Police Executives Leadership College;
- International Association of Directors of Law Enforcement Standards and Training (IADLEST) Conference in North Dakota;
- Asset Forfeiture Seminar sponsored by the United States Attorney's Office in the Western District of Louisiana and the Louisiana Sheriffs Association in Louisiana; and
- 1997 National Sheriffs' Association Conference in Atlanta, Georgia.

In addition, the curriculum will be presented or utilized at the National District Attorneys Association Conference in Virginia, the Georgia Association of Chiefs of Police Conference in Georgia, the LECC Asset Forfeiture Conference in Arizona, the International Association of Chiefs of Police Conference in Florida, and the International Association of Women Police in Texas. The first pilot of the asset forfeiture financial investigations curriculum will be held during the CDAA's Advanced Asset Forfeiture Seminar in California.

Questions regarding the state and local asset forfeiture curriculum should be addressed to Araceli Carrigan at (202) 616-5088 or Alice Dery at (202) 514-1320.

LECC Asset Forfeiture Working Group Meeting

By Joanne Harrison, Law Enforcement Coordinating Committee, United States Attorney's Office, Northern District of Ohio

The members of the Law Enforcement Coordinating Committee (LECC) Asset Forfeiture Working Group met with members of the Asset Forfeiture and Money Laundering Section (AFMLS) of the Criminal Division, in Washington, DC, on May 20-21, 1997. LECC coordinators in attendance were: LECC Program Manager Barbara Walker, Grace Denton (CD/CA), Fred Rocha (ND/CA), Rebecca Tillman (WD/MO), Don Connelly (ED/NC), Joanne Harrison (ND/OH), Rick Romain (WD/OK), Nick Dellarciprete (MD/PA), Jim Leene (D/VT), and Kate Greenquist (WD/WA). The working group meeting was chaired by Alice Dery and Celi Carrigan of AFMLS. This one and a half day meeting was very informative and productive.

The working group planned the agenda for an upcoming AFMLS/ LECC Conference for all LECC coordinators, to be held on September 9-11, 1997, in Phoenix, Arizona. The group decided that the first day and a half of the conference will be devoted to asset forfeiture issues. Topics to be covered include: why do forfeitures; updates on asset forfeiture legislation and policy issues; and "Train the Trainer" techniques modeling the equitable sharing module in the state and local curriculum. The "Train the Trainer" session will involve the videotaping of experienced LECC coordinators instructing from the equitable sharing module with follow-up criticism from a professional trainer.

The second day of the conference will be spent discussing the state and local forfeiture training initiative (*i.e.*, techniques, resources, and new programs); CATS and the Assets Forfeiture Fund. The remainder of the second day and the third day will be spent on LECC issues. Representatives from numerous federal agencies will be invited to speak about resources and technical assistance available to the LECC coordinators. There will also be breakout sessions on basic and advanced grant writing.

Another important highlight of this working group session was the opportunity for LECC coordinators to meet and talk on an informal basis with several individuals from AFMLS, other Department of Justice components, and the Department of the Treasury's Executive Office of Asset Forfeiture. It was a great opportunity to meet with everyone, and to ask questions about what is going on in their particular areas of expertise. These individuals included: Gerald McDowell, Chief, AFMLS; Stefan Cassella, AFMLS; Nancy Rider and her staff, AFMLS; Allen Carver, AFMLS; Suzanne Warner, EOUSA; Kim Lesnak and Rick Easter, LECC; Ken Massey and Rachael Palumbo, Department of the Treasury; and Bob Samuels and Nancy McWhorter of EOWS.

A brief synopsis of the key points discussed during our one and a half day session is as follows:

Legislation

Stefan Cassella discussed the history and current status of Representative Henry Hyde's forfeiture reform bill. He reported that the Department of Justice's forfeiture bill was introduced by Representative Chuck Shumer (D-N.Y.). For recent information regarding the status of legislation, *see* Stefan Cassella, "Legislation: Forfeiture Reform is Coming," *Asset Forfeiture News* [May/June 1997]: 1.

Policies

Celi Carrigan discussed the new agreement and certification reporting requirements and reminded us that every state or local law enforcement agency must submit these documents as a prerequisite to the approval of any equitable sharing request. Noncompliance may result in the denial of the agency's sharing request. Effective with the federal fiscal year 1997, the Federal Sharing Agreement must be submitted triennially (every three years) on or before October 1. It must be signed by the head of the law enforcement agency and a designated official of the governing body. AFMLS will send letters to all law enforcement agencies asking them to update their information.

How to Access the AFBB

By Morenike Soremekum, Asset Forfeiture Bulletin Board System Operator, Aspen Systems

The Asset Forfeiutre Bulletin Board (AFBB) is a dial-up server that is maintained by the Asset Forfeiture and Money Laundering Section. It is a central location from which you can download pleadings, forms, policies, publications, sample indictments, jury instructions, briefs, and other material useful to asset forfeiture practitioners. Federal, state, and local personnel working in the field of asset forfeiture law are allowed access to the AFBB. Many users find the AFBB to be an invaluable research tool.

If you work at an United States Attorney's Office you can continue to access the AFBB by registering to use the Asset Forfeiture Conference located on the EOUSA Bulletin Board (EOUSA BBS). Your system manager is familiar with the EOUSA BBS and will help you with the registration process, or you may call Morenike Soremekun, the AFBB system operator, at (202) 307-0265.

If you work at a federal, state, or local government site, you can access the AFBB by registering via modem. There are specific hardware and software requirements that you need in order to register for access to the AFBB. For more information about how to register, call Morenike Soremekun, the AFBB system operator, at (202) 307-0265.

Please note that the Asset Forfeiture and Money Laundering Section is exploring the possibility of posting the AFBB to the USANet (an EOUSA Intranet) and to the Department of Justice's Intranet to allow improved access to the AFBB.

Law Enforcement Executives Seminar

By Joanne Harrison, Law Enforcement Coordinating Committee, United States Attorney's Office, Northern District of Ohio

Each year, the Law Enforcement Coordinating Committee (LECC) for the Northern District of Ohio strives to sponsor an asset forfeiture conference for local, state, and federal law enforcement officials throughout the district. Its purpose is to keep agencies abreast of current legislation, trends, and policies, as well as to allow them an opportunity to raise questions and issues about real-life situations in the asset forfeiture area.

To this end, on May 9, 1997, the Asset Forfeiture Management for Law Enforcement Executives Seminar was conducted at the Holiday Inn, in Independence, Ohio. This seminar was co-sponsored by the LECC of the United States Attorney's Office and the Police Executive Leadership College Alumni Association (PELC). PELC provides a continuing source of contemporary training for police executives and serves as a forum to encourage progressive police management. It also fosters high professional standards in law enforcement.

In attendance were various local, county, and federal prosecutors and law enforcement agents/officials totaling approximately 50 people.

Among the persenters were: Jim Morford of the U.S. Attorney's Office speaking on trends in federal forfeiture laws; Alice Dery of the Asset Forfeiture and Money Laundering Section (AFMLS) and Herb Villa of the United States Attorney's Office speaking on ethics; Alice Dery and Araceli Carrigan of AFMLS and Sergeant Jim Zawodny of the Toledo, Ohio Police Department speaking on resource allocation; as well as Araceli Carrigan and Michael Burke of AFMLS and Joanne Harrison of the United States Attorney's Office speaking on equitable sharing.

Many favorable comments were received about this seminar. In particular, the evaluations reflected that the audience enjoyed the case scenarios and the open discussion about the Ohio forfeiture law update.

People and Places . . .

. . . IRS Welcomes Vicki Duane

Ms. Vicki Duane has been named the new chief of the Asset Seizure and Forfeiture Section of the Internal Revenue Service (IRS) at the headquarter's office in Washington, DC. Ms. Duane has the oversight and review authority of district office operations relative to their asset seizure and forfeiture activities.

Ms. Duane began her IRS career in 1977 as a revenue agent in Alabama. After becoming a special agent and being assigned to both the Alabama and Florida offices, Ms. Duane was promoted to group supervisor in Florida. As part of her job, Ms. Duane supervised several groups in Florida, including those in West Palm Beach and Fort Lauderdale. She also held the position of branch chief in the South Florida district. As branch chief, she was primarily responsible for a variety of progam areas, which included High Intensity Drug Trafficking Areas (HIDTA), Organized Crime Drug Enforcement Task Force (OCDETF), and health care fraud.

In her current position, Ms. Duane is interested in ensuring that the IRS' asset forfeiture program is the best it can be. She is focusing on the final phases of a fully automated nationwide IRS asset seizure and forfeiture system. She will be developing a tracking system to monitor the success of the IRS' asset seizure and forfeiture program.

. . . FBI Welcomes SSA John Kelley

The Federal Bureau of Investigation (FBI) welcomes supervisory special agent (SSA) John Kelley as its new chief of the Legal Forfeiture Unit in the Office of the General Counsel. SSA Kelley will move to Washington, DC to join the Legal Forfeiture Unit by September after he closes shop in Little Rock, Arkansas.

Presently, the chief division counsel of the Little Rock division, his responsibilities include providing substantial oversight to the Little Rock forfeiture program. SSA Kelley has been involved with asset forfeiture since 1991 when he was the principal legal advisor in the Jaskson, Mississippi division. A special agent since 1984, SSA Kelley joined the FBI after working as an Arkansas law enforcement officer for seven years and obtaining his Juris Doctor from the University of Arkansas at Little Rock in 1984. His first years in the FBI involved assignments with the Jackson and New York City divisions, with his greatest victory being the case agent assigned to the successful investigation and 1994 prosecution of Byron De La Beckwith for the 1964 assassination of Medgar Evers. In 1996, SSA Kelley also was the team leader of the Asset Forfeiture Working Group which studied with FBI's asset forfeiture program and made recommendations for improvement.

The Legal Forfeiture Unit staff is pleased to have SSA Kelley join their team as he has previously shown his dedication and contributed significantly to the FBI's asset forfeiture efforts.

UPCOMING TRAINING CONFERENCES

STATE AND LOCAL

- *International Association of Chiefs of Police (IACP) National Conference*
  October 26-30, 1997
  Orlando, Florida
- *International Association of Women Police (IWAP) National Conference*
  November 8-11, 1997
  Dallas, Texas

For more information about state and local conferences, please contact Alice Dery or Araceli Carrigan, AFMLS, Criminal Division, at (202) 514-1263.

FEDERAL

- *Advanced Money Laundering Course*
  September 9-11, 1997
  San Antonio, Texas
- *Southwest Border Seminar*
  September 23-25, 1997
  San Diego, California

For more information about the Advanced Money Laundering Course, please contact Nancy Martindale, AFMLS, Criminal Division. For more information about the Southwest Border Seminar, please contact Mary Ann DeToro, AFMLS, Criminal Division. Both can be reached at (202) 514-1263.