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

Asset Forfeiture News

A Central Source for Federal Forfeiture Information • Volume 10, Number 5 • September/October 1998

Plea Agreements and Administrative Forfeitures

By Joseph H. ("Mike") Payne, Trial Attorney, AFMLS, Criminal Division

The Asset Forfeiture and Money Laundering Section continues to encounter sporadic concerns from the seizing agencies regarding plea agreements to return assets subject to administrative forfeiture that are negotiated without first consulting the seizing agency conducting the administrative forfeiture. All forfeiture settlements must be negotiated in consultation with the seizing agency. *Asset Forfeiture Policy Manual* (1996), Chap. 3, Sec. I.A.2, at pp. 3—2 and 3—3. Additionally, the *Asset Forfeiture Policy Manual* obligates both the Assistant U.S. Attorney (AUSA) and the investigating agent to determine, before plea negotiations begin, what property, if any, is being processed for administrative forfeiture by the seizing agency, and it obligates AUSAs not to reach agreements with defendants or their counsel about the return of any seized property that is the subject of an administrative forfeiture proceeding without first consulting the seizing agency. *Asset Forfeiture Policy Manual*, Chap. 3, Sec. I.A.3, at p. 3—3. Most important, property that has already been forfeited administratively is government property and therefore is not available for return to the defendant or for the payment of fines or restitution as part of a plea agreement. *Id.*

In order to ensure that property subject to administrative forfeiture does not become part of a plea agreement without the seizing agency's knowledge, before plea negotiations begin, AUSAs always should (1) contact the agency conducting the administrative forfeiture proceeding against any property that is to be included in the negotiations and (2) verify that the return of the property is a viable option. This means contacting the specific seizing agency office that is handling the administrative forfeiture of the property. In so-called "adoptive forfeiture" cases, AUSAs and investigative agents should not rely on the state or local investigative authorities that initially seized the property. Information concerning an administrative forfeiture by a federal agency that adopted a state or local agency's seizure should be obtained directly from the federal

*See **Plea**, page 2*

Inside this issue

Teacher Ordered to Forfeit $2.5 Million in Gambling Proceeds 2
Shareholders Standing in Forfeiture Proceedings Against Corporations 4
The FBI's New Asset Forfeiture Unit 6
People and Places 7
SARS: Now in Place 9
To All USAO Users of the AFBB 11
Compliance Forms 12
Treasury Trends 13
Road to Reinvigoration 14

Plea Agreements and Administrative Forfeitures

***Plea**, from page 1*

agency officials who are conducting the administrative forfeiture. Once the plea agreement has been negotiated, the AUSA and the investigating agent immediately should advise the seizing agency office that is responsible for the administrative forfeiture proceedings-what property, if any, is to be returned pursuant to the plea agreement.

Failure to verify that the seized property to be returned, pursuant to a plea agreement, has not been forfeited administratively can create an embarrassing and troublesome conflict. The seizing agency's declaration of administrative forfeiture transfers ownership of the property from the defendant to the Government, while the plea agreement binds the Government to return what has become the Government's property to the defendant. Pursuant to 19 U.S.C. §1609, the declaration of administrative forfeiture has "the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States." On the other hand, under the Federal Rules of Criminal Procedure, a criminal plea accepted by a court is final and enforceable. Rule 11 requires that the court sentence the defendant in accordance with the plea agreement once the court accepts it. Rule 32(e) allows the plea to be withdrawn "if the defendant shows any fair and just reason." Rule 35(c) provides that, within seven days after sentencing, the sentencing court may correct a sentence that was imposed as a result of "arithmetical, technical, or other clear error." However, there is no clear authority for the court to reopen a plea agreement for renegotiation because the Government violated its own policy by agreeing to return already forfeited property to the defendant.

Property that has already been forfeited administratively is government property and is not available for return to the defendant. . . .

School Teacher Ordered to Forfeit $2.5 Million in Illegal Gambling Proceeds

By Richard Weber, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

On June 12, 1998, a New York City school teacher and guidance counselor, Harvey Metzger, was sentenced to 15 months in prison and ordered to forfeit to the United States over $2.5 million of gambling proceeds. Metzger had previously entered into a cooperation agreement with the Government in which he pled guilty to money laundering, operating an illegal gambling enterprise, and tax evasion. Metzger, who had operated his gambling enterprise for over ten years, collected nearly $3 million from illegal electronic gambling devices, commonly referred to as "Joker Poker" machines.

The Internal Revenue Service (IRS) learned about Metzger's gambling enterprise through a cooperating government defendant turned confidential informant. The informant told IRS special agents that Metzger had earned millions from his "Joker Poker" business and that he laundered a substantial amount of the illegal profits through an offshore bank account in Switzerland.

The IRS commenced an undercover operation in which the informant recorded meetings with Metzger. Metzger, not knowing that he was being videotaped, discussed with the informant various methods he employed to launder his tainted proceeds. Metzger explained in great detail how he smuggled over a million dollars in bearer bonds out of the United States and into offshore accounts located in Switzerland.

Metzger, who had earned more than $15,000 each week from these "Joker Poker" devices, explained how he operated his business by placing the gambling devices in poor neighborhoods in New York City. Metzger bragged to the informant about his inventive ways to hide the profits, including using the bank in Switzerland to avoid a trail and any possible detection by the IRS. When asked by the confidential informant why he just didn't declare the income and give the Government one-third in taxes, Metzger responded, ". . . No, no, I couldn't do it. It would just hurt me to give the . . . [G]overnment that much money. . . ."

Metzger was not only concerned about hiding all his illegal proceeds from the IRS, he also wanted to hide his profits from his wife and children. Metzger lived a secret life in Queens, New York, where he rented a one-room, unfurnished apartment. During the week Metzger would teach at the local middle school and run his gambling operation from this apartment—concealing his secret world from the New York City school system and his family. In his apartment he kept his "Joker Poker" records and gambling stash. He would then secrete the money into safe deposit boxes or invest the cash in various brokerage and stock accounts.

On October 25, 1997, Metzger's good luck ran out and his secret life came to a crashing halt: his gambling days were over. Federal agents arrested Metzger in his one-room hideaway and executed six search warrants. Over the course of the investigation, 30 seizure warrants were served and extensive interviews were conducted of Metzger's family members, accountant, and store owners where he operated the gambling devices. The warrants resulted in the seizure of $18,000 in currency found in his apartment in Queens voluminous bank records, and "Joker Poker" earnings records.

Metzger's attempts to conceal the existence of a safe deposit box by shredding a rental receipt and dividing the pieces into two different trash bags did not succeed. Careful investigators thoroughly searched the premises, piecing together even the torn receipt. When agents carefully reconstructed the torn pages, they discovered that the box had been opened only days before the search and arrest. The payoff of this thorough search was handsome: over $550,000 was seized from that box alone. Other assets retained and seized included: brokerage accounts in California and New York; a bank account held in Switzerland; real property located in the exclusive Skidaway Island in Georgia; a vehicle; and other assets.

In total, the IRS seized close to $3,000,000, which represented nearly all of his profits and proceeds from his illegal electronic gambling business. The forfeiture order, issued by United States District Court Judge Dennis R. Hurley, provided for the forfeiture of over $2.5 million to the United States.

The sentence and forfeiture was the culmination of a lengthy multi-jurisdictional joint investigation led by Group Supervisor William Sembler and Special Agent Timothy Reilly, New York IRS-CID, and involved several state and local agencies, including Nassau and Suffolk Police Departments. The case was prosecuted by Assistant U.S. Attorneys Richard Weber and Burton Ryan.

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).

Chief ..... *Gerald E. McDowell*
Deputy Chief and Senior Counsel to the Chief ..... *G. Allen Carver, Jr.*
Editor-in-Chief ..... *Denise A. Mahalek*
Managing Editor/Advertisements ..... *Beliue Gebeyehou*
Designer ..... *Denise A. Mahalek*

Your forfeiture articles are welcome. Please fax your submission to the editor at (202) 616-1344, or mail it to:

Asset Forfeiture News
Asset Forfeiture and Money Laundering Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Bond Building, Tenth Floor
Washington, D.C. 20005

Shareholders Standing in Forfeiture Proceedings Against Corporations

Case Scenario:

ABC Corporation has been facilitating several narcotic enterprises by laundering drug proceeds and by protecting property from forfeiture by filing fictitious liens on property purchased with drug proceeds. ABC Corporation has been facilitating for over ten years. The assets of the corporation are seized for forfeiture. The shareholders file a claim in the forfeiture action claiming that they are innocent owners who had no knowledge of, nor did they consent to, the facilitating conduct of the corporation.

Question:

Do shareholders have standing to file a claim for the corporate assets which have been seized for forfeiture?

By Sandra L. Janzen, Assistant Attorney General, Arizona Attorney General's Office, Phoenix, Arizona

A corporation is a distinct legal entity that has the power to acquire, own, hold, and otherwise deal with real and personal property. Corporate property is owned by the corporation, not the shareholders. *Steinfeld v. Copper State Min. Co.*, 37 Ariz. 151, 290 P. 155 (1930); *Riffle v. Robert L. Parker Company*, 19 Ariz. App. 100, 505 P.2d 268 (1973). This is true even where the shareholder owns 99 percent of the corporation. *Wollenberger v. Hoover*, 346 Ill. 511, 179 N.E. 42 (1931). Fletcher Cyc. Corp. § 2814 (perm. ed. vol. 6a).

A corporation is a person, a separate legal entity able to the business in its own right as distinct from its officers and shareholders. *Employer's Liability Assurance Corporation v. Lunt*, 82 Ariz. 320, 313 P.2d 393 (1957). This is true even when one person alone owns all the stock of the corporation. *Ize Nantan Bagowa, Ltd. v. Scalia*, 118 Ariz. App. 439, 577 P.2d 725 (Ariz. App. 1978); Fletcher Cyc. Corp. § 5709 (perm. ed. vol. 12B).

A shareholder is one who holds or owns a share or shares of a corporation. A share represents a proprietary interest in a corporation. The proprietary interests generally include: (1) the right to exercise some control over the corporation's management (through the exercise of voting rights); (2) the right to share in the corporation's residual earnings; and (3) the right, upon dissolution, to share in any residual proceeds from liquidation of the assets. Fletcher Cyc. Corp. § 5081 (perm. ed. vol. II). It does not include the ownership of the corporate assets. This fundamental principle of corporate law has been followed in forfeiture cases.

In *State v. DeSantio*, 899 S.W.2d 787, 789 (Tex. App. 1995), the seized real property was owned by the corporation. The appellee was the sole shareholder and president of the corporation. The property was seized and forfeited because it was the situs of organized criminal activity. The appellee had moved to set aside the forfeiture on double jeopardy grounds, since his criminal conviction was based on the same facts as the civil forfeiture. The court rejected the double jeopardy argument stating that the property that was forfeited was not his property, but rather the property of the corporation:

> A corporation is a legal entity separate from the persons who compose it. (Citations omitted.) *Property owned by a corporation is property of the separate corporate entity and not that of the shareholders.*

Id. at 789. (Emphasis added.) The court acknowledged that, as the shareholder, he may have suffered monetary loss in the form of reduced value of his stock, but, as a shareholder, he did not forfeit anything.

In *United States v. Ranch Located in Young, Arizona*, 50 F.3d 630 (9th Cir. 1995), the court was faced with the issue of whether property owned by the corporation was also owned by the husband and wife shareholders. The husband and wife were the sole stockholders of the corporation. The wife had claimed a community interest in the real property owned by the corporation, claiming her interest through her

husband. The trial court ruled the wife did not have standing as an owner because it was the corporation, not the individual husband, who owned the defendant property. Since the husband shareholder had never acquired an ownership interest in the property, no property rights arose in the wife. The property belonged to the corporation, not the shareholders. The wife's claim was properly struck for lack of standing.

In *United States v. New Silver Palace Restaurant, Inc.*, 810 F. Supp. 440 (E.D.N.Y. 1992), shareholders and the corporation filed claims in an *in rem* action against the assets of the corporation. The Government moved to dismiss the shareholders claims on the ground that the shareholders had no standing to file claims. The court acknowledged that the shareholders had no standing and dismissed their claims. In its analysis the court stated that only owners or lienholders had standing to file a claim, and "[s]ince the shareholder claimants are neither owners nor lienholders with respect to corporate assets, they have no standing in this forfeiture proceeding." *Id.* at 442. Shareholders do not hold legal title to any of the corporate assets. It is the corporation itself which is vested with title. *Id.* at 442.

The court also analyzed whether the shareholders had an equitable interest sufficient to grant them standing to file a claim and rejected it:

> . . . [W]hile shareholders hold equitable title to corporate assets, (citations omitted), they may not file a notice of claim. A shareholder may only recover decreases in stock value attributable to mismanagement or the loss of corporate assets if the corporation brings a direct action against the wrongdoer or if the shareholder brings a derivative action on behalf of the corporation. . . . In this case, New Silver Palace [the corporation] filed a notice of claim to the *in rem* defendants; therefore, the shareholders cannot maintain a derivative claim on behalf of the corporation, and their notices of claim must be dismissed.

Id. at 443.

The court noted there was an even more fundamental reason why shareholders, as equitable owners, may not challenge the forfeiture of the corporation's assets. It is well settled in forfeiture law that possession of bare legal title by one who does not exercise dominion and control over the property is not sufficient to establish standing. A nominee owner does not have standing. In the context of the corporation, a shareholder does not exercise dominion and control over the property of the corporation. The shareholder has the right to use his shares to vote for directors who themselves manage and direct the corporation, but the shareholder himself does not manage the assets of the corporation. If a nominee owner does not have standing in a forfeiture then neither should a shareholder, reasoned the court. *Id.* at 810.

If a corporation is liable based on the acts of its agents, it cannot escape liability because the shareholder was not aware of, or responsible for, the conduct giving rise to liability.

The logic of *New Silver Palace* is consistent with traditional corporate law. The corporation acts through its agents. Shareholders are not agents of the corporation. Directors, officers, and employees are agents of the corporation. If a corporation is liable based on the acts of its agents, it cannot escape liability because the shareholder was not aware of, or responsible for, the conduct giving rise to liability. To hold otherwise would be to immunize corporate misconduct, for ignorant shareholders could frustrate all legislative policies of holding corporations financially responsible in such areas of responsibility as anti-trust, environmental, tax, fraud, tort, and criminal liability. When corporate conduct injures the public, the corporation (not the shareholder) is financially responsible for its conduct and the shareholders in that corporation are bound by the acts of the corporation.

Corporations can be sued civilly and can also be held criminally liable for the acts of its agents. Fletcher Cyc. Corp. §§ 5.10 and 5.11 (perm. ed. vol. 19); A.R.S. § 13-305. Corporations are liable for torts it commits. 18 C.J.S. Corporations § 699. Corporations are liable even if the act engaged in by its agent or employee was forbidden or done in disobedience of instructions. *Id.* at 352-353. A corporation is liable for damages resulting from a conspiracy in

*See **Shareholders**, page 6*

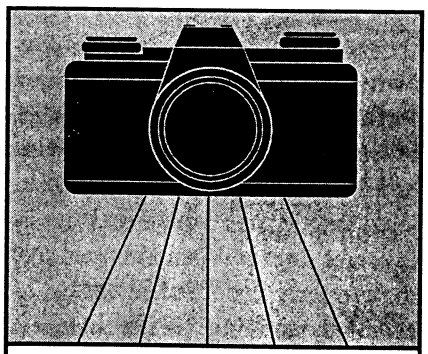
Shareholders Standing in Forfeiture Proceedings Against Corporations

***Shareholders**, from page 5*

which it participates even though the transaction involving the conspiracy is outside its corporate powers. 18 C.J.S. Corporations § 704. Corporations are not relieved from liability merely because the shareholders had no knowledge of, nor consented to, the corporate conduct.

Forfeiture case law operates on these same concepts of responsibility. The courts have recognized that a property owner is under a duty of care to see that his property is not used to further criminal conduct. This is a duty that has been part and parcel of property ownership since before the signing of the Constitution. *See generally Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), *reh'g denied*, 417 U.S. 977 (1974). A long line of cases—from *Dobbins Distillery v. United States*, 96 U.S. 395 (1877) (owner of land and building financially responsible for conduct of lessee), and *United States v. Brig Malek Adhel*, 43 U.S. 210 (1844) (owner of ship financially responsible for acts of crew), to *Bennis v. Michigan*, 516 U.S. 994, 1000 (1996) (forfeiture of vehicle used by claimant's husband without her knowledge)—affirms that both corporate and individual owners are responsible for the use of their property. Most recently, *United States v. Ursery*, 518 U.S. 267 (1996), stated that forfeiture "encourages property owners to take care in managing their property and ensures that they will not permit that property to be used for illegal purposes," citing *Bennis v. Michigan*, 516 U.S. 267 (1996). These cases define the rights and responsibilities of a property owner and the duty of care.

The property owner of corporate assets is the corporation, not the shareholder. When a corporation is accountable as a result of the acts of its agents, the shareholders are bound regardless of the knowledge or consent of the shareholders, and they cannot immunize the corporation from responsibility by filing a claim. For these reasons, a shareholder has no standing to file a claim in a forfeiture action.



The *Asset Forfeiture News* is now accepting black and white photographs.

Please call the Publications Unit at (202) 305-3049 for more information.

Please send us one or two black and white photographs with your next submission. We do not accept negatives or color photographs.

The FBI's New Asset Forfeiture Unit

By Kathleen Leary, Program Analyst, Federal Bureau of Investigation, Asset Forfeiture Unit

The Federal Bureau of Investigation (FBI) recently formed the Asset Forfeiture Unit in the Criminal Investigative Division at its headquarters office. The new unit joins the FBI's Forfeiture and Seized Property Unit, Finance Division, and the Legal Forfeiture Unit, Office of General Counsel, in providing assistance to the FBI field offices with asset forfeiture matters.

While the Forfeiture and Seized Property Unit primarily manages administrative and financial matters and the Legal Forfeiture Unit deals with legal issues relating to the FBI's Asset Forfeiture Program, the Asset Forfeiture Unit was formed to provide operational assistance and guidance to agents in the field offices through training, on-site reviews of forfeiture programs in the field, and specialized contract assistance for major cases. The Asset Forfeiture Unit has already provided training to over 1,000 FBI agents in order to encourage the use of asset forfeiture throughout investigations. This rigorous training schedule has

been extended into fiscal year 1999. The Asset Forfeiture Unit is also working on several initiatives involving the strategic use of asset forfeiture in cases targeting major criminal organizations.

Leading this new unit is Unit Chief Gail Seavey, who is no stranger to the asset forfeiture community. Ms. Seavey was a supervisory special agent with the Forfeiture and Seized Property Unit from 1990 to 1994. The agents in her unit are: Supervisory Special Agent (SSA) William Vanderland from the McAllen Resident Agency out of the San Antonio Division and SSA Maury Taylor, who was previously working as an agent on the Forfeiture Asset Seizure Team (FAST) in the Los Angeles Division. Both agents bring a great deal of forfeiture experience to the unit. Also assigned to the unit are two program analysts: Kathleen Leary, who was a paralegal specialist for the Washington Field Office's FAST, and Jean Fanelli from the Property Unit at FBI headquarters. Working in conjunction with the Forfeiture and Seized Property Unit and the Legal Forfeiture Unit, the Asset Forfeiture Unit will be a valuable addition to the FBI's Asset Forfeiture Program.

People and Places . . .

New Management Analyst at USPIS

Robin Henry recently joined the U.S. Postal Inspection Service's (USPIS's) Asset Forfeiture Group as a management analyst. She transferred to the USPIS from the Postal Service Inspector General's Office.

Ms. Henry previously served as a USPIS forfeiture specialist for the eastern region in Bala Cynwyd, Pennsylvania, for eight years, and she assisted in developing the forfeiture transition instructions during the USPIS's restructuring in 1993. Ms. Henry also provided assistance to field personnel on numerous USPIS seizures and brings a substantial amount of experience to the Asset Forfeiture Group.

In her new position, Ms. Henry is responsible for overseeing and managing forfeiture activities for nine of the agency's twenty-three divisions.

New AUSA in W.D. Ky.

In May, Assistant U.S. Attorney (AUSA) Suzanne M. Warner returned to her home in Louisville, Kentucky, and to her duties in the U.S. Attorney's Office in the Western District of Kentucky. A 1977 graduate of the University of Louisville Law School, AUSA Warner worked in the Louisville/Jefferson County Public Defender's Office and was then in private practice until 1986, when she joined the U.S. Attorney's Office. She served as trustee of the University of Louisville Law Foundation and was awarded the 1990 Kentucky Bar Association Service Award.

She received two Director's Awards for her work at the Office of Legal Education (1993) and at the Asset Forfeiture Subcommittee of the Attorney General's Advisory Committee (1996).

AUSA Warner had been in Washington, D.C., on detail to the Executive Office for United States Attorneys where she served as Assistant Director for Asset Forfeiture.

Returning to the Western District of Kentucky, AUSA Warner coordinates the Asset Forfeiture Program, reporting directly to Criminal Chief Julie Apperson. The Consolidated Asset Tracking System (CATS) remains a part of her responsibilities.

FDA/OCI Welcomes SSA Rawls

The Food and Drug Administration's (FDA's) Office of Criminal Investigations (OCI) recently named Supervisory Special Agent (SSA) Dwight Rawls as the new operations manager for the Asset Forfeiture Program. SSA Rawls is responsible for the oversight and review of all operations relative to FDA's asset seizure and forfeiture activities. His first priorities include developing a new asset forfeiture policy and procedures manual and expanding FDA's forfeiture program.

Prior to being assigned to the Asset Forfeiture program, SSA Rawls was the OCI operations manager for the FDA Centers for Drug and Biologics Evaluation and Research. He was responsible for coordinating FDA resources and activities for all criminal investigations of violations of the Federal Food, Drug and Cosmetic Act. From 1993 until joining the head-

*See **People**, page 8*

People and Places . . .

People, from page 7

quarters staff in 1996, he was assigned to the OCI Metropolitan Washington Field Office as a criminal investigator. His previous experiences with the Asset Forfeiture Program included an assignment with the Drug Enforcement Administration's (DEA's) Washington Field Office from 1987 to 1993. As a D.C. Metropolitan Police detective assigned to the Organized Crime Drug Enforcement Task Force (OCDETF), SSA Rawls received numerous awards in recognition of his contributions to the Asset Forfeiture Programs of the D.C. Metropolitan Police Department and DEA.

Two New Positions at Treasury Enforcement

On August 4, James E. Johnson was sworn in as Under Secretary of the Treasury for Enforcement. Mr. Johnson's predecessor was Raymond W. Kelly who has now been confirmed as the Commissioner of the U.S. Customs Service. Mr. Johnson was the Assistant Secretary of the Treasury for Enforcement during Mr. Kelly's tenure as Under Secretary.

In addition, Elisabeth Bresee was sworn in as the Assistant Secretary of the Treasury for Enforcement. Ms. Bresee had previously been the Deputy Assistant Secretary (Law Enforcement). Karen Wehner has been designated as Acting Deputy Assistant Secretary (Law Enforcement). Treasury's Executive Office for Asset Forfeiture is part of the Office of the Under Secretary for Enforcement reporting to the Deputy Assistant Secretary (Law Enforcement).

USCS Welcomes New AIRG Manager

The U.S. Customs Service (USCS) welcomes Senior Special Agent (SSA) Catherine Sanz as its new Asset Identification and Removal Group Program manager. SSA Sanz will be responsible for administering the program's budget and will provide general oversight and direction of the program on a national level.

SSA Sanz began her Customs career in 1987 in Miami, Florida, where she was assigned to the Florida Joint Task Group. In November 1991, SSA Sanz was promoted to the position of group supervisor. Throughout her years as a group supervisor she managed various sections including smuggling, fraud, special operation, and financial. She also held the position of Organized Crime Drug Enforcement Task Force (OCDETF) coordinator.

New DEA Forfeiture Counsel

In June 1998, John Hieronymus reported as the Forfeiture Counsel for the Drug Enforcement Administration (DEA). Mr. Hieronymus had previously served as an Assistant U.S. Attorney (AUSA) for the Western District of Michigan, with primary responsibility for that office's forfeiture program since 1989.

Mr. Hieronymus had been a DEA special agent from 1983 to 1989, with assignments in Detroit, Philadelphia, and DEA headquarters. At DEA headquarters, he was assigned as a special agent/attorney in the Asset Forfeiture Section, Office of Chief Counsel, with responsibility for reviewing, processing, and deciding forfeiture issues. Additionally, he has had extensive experience as an instructor on forfeiture issues for the Department of Justice's Office of Legal Counsel and the Asset Forfeiture and Money Laundering Section, DEA, and the Federal Bureau of Investigation. He also served as an evaluator for the Executive Office for U.S. Attorneys' Evaluation and Review Staff.

In September 1997, he was awarded the Department of Justice Case-of-the-Year Award for his outstanding participation in a state-federal investigation into illegal sports gambling which epitomized the LECC spirit of joint investigations and resulted in an unprecedented number of felony convictions.

Mr. Hieronymus brings a long and outstanding law enforcement and prosecutive career to his new position with DEA. His nine-year service as a police officer in Southfield, Michigan, combined with his experience as a DEA special agent and an AUSA, will give him a unique perspective as a Forfeiture Counsel to continue the outstanding cooperation and effectiveness of DEA with the U.S. Attorney's Offices.

SARS: A Nationwide System is Now in Place

By Scott Lodge, Special Agent, SAR Project Office, FinCEN, Department of the Treasury

The following information was extracted from *1st Review of Suspicious Activity Reporting System (SARS)*, published by FinCEN. The full report is available on the Internet at http://www.treas.gov/fincen/sarptfin.html. You may also request a copy in writing from FinCEN's Office of Communications, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, or fax your request at (703) 905-3885.

The Suspicious Activity Reporting System (SARS), created by the five federal financial supervisory agencies and the Financial Crimes Enforcement Network (FinCEN), is now two years old. SARS has processed approximately 150,000 reports of suspicious activity submitted by depository institutions. Those reports are available electronically, in their entirety, to the system's builders, to five federal law enforcement agencies, 52 state and territorial law enforcement agencies, and 25 state bank regulators.

The development and operation of SARS is a special responsibility and a special challenge. SARS was designed to be the centerpiece of a new approach to using the Bank Secrecy Act (BSA) to fight financial crime, and involved an unparalleled attempt to build an explicit and continuous data flow about potentially serious activity among: (1) depository institutions detecting that activity; (2) the five federal financial supervisory agencies (Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration), and the Department of the Treasury's FinCEN; and (3) law enforcement officials throughout the United States.

Under the system, FinCEN is designated as the single filing point for suspicious activity reports and is responsible for distributing the information within the Government. In addition, FinCEN is responsible for analyzing this information and providing the resulting intelligence to investigators, regulators, and the banking industry.

Background and Purpose of SARS

Depository institutions are required to file suspicious activity reports by the authority of the Secretary of the Treasury under the BSA to: require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation, and general supervisory authority of the five federal financial supervisory agencies. Each supervisory agency issued rules under its own authority that make SAR filings mandatory.

The implementation of SARS achieved several important objectives:

- to create one form, adopted by all agencies involved, that can be forwarded to a single collection point to satisfy all applicable filing requirements;
- to use a single, centralized database system so that information can be simultaneously made available to the federal financial supervisory agencies;
- to provide federal and state law enforcement officials with access to this same database, making the information available quickly;
- to provide information about the types of financial crimes affecting depository institutions nationwide and the manner in which government agencies respond to these reports; and
- to provide an ability to understand patterns of suspicious activity—or at least activity thought by bank officials to be suspicious—so that the Government can alert banks to emerging patterns of white-collar crime.

On a more fundamental level, SARS reflects the philosophy that suspicious transaction reporting is central to counter-money laundering policy, both in the United States and abroad. Officials at financial institutions are more

*See **SARS**, page 10*

SARS: A Nationwide System is Now in Place

SARS, from page 9

likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual methods of legitimate commerce. Under those circumstances, simply relying on currency transaction reporting is neither adequate nor cost-effective for the institutions involved or the Government. The change in emphasis moves the enforcement focus from reporting all routine currency transactions above a certain amount to reporting information most likely to be useful to law enforcement officials and financial regulators. SARS, then, is a key component of the flexible and cost-efficient compliance program under the BSA required to prevent the use of the nation's financial system for illegal purposes.

SARS Requirements

The relevant rules call for the reporting of five general types of activity:

- insider abuse of a financial institution involving any amount detected by the institution;
- federal crimes against, or involving transactions conducted through, a financial institution that the financial institution detects and that involve at least $5,000 if a suspect can be identified, or at least $25,000 regardless of whether a suspect can be identified;
- transactions of at least $5,000 that the institution knows, suspects, or has reason to suspect involve funds from illegal activities or are attempts to hide those funds;
- transactions of at least $5,000 that the institution knows, suspects, or has reason to suspect are designed to evade any regulations promulgated under the BSA; and
- transactions of at least $5,000 that the institution knows, suspects, or has reason to suspect to have no business or apparent lawful purpose, or the transactions are not the sort in which the particular customer would normally be expected to engage and for which the institution knows of no reasonable explanation after due investigation.

Who Uses the Reported Information?

Currently, five federal law enforcement agencies have full access to the information in SARS. Three of the five agencies—the Federal Bureau of Investigation, the U.S. Secret Service, and the U.S. Customs Service—have chosen to obtain SARS information by downloading data in bulk onto their internal computer systems rather than obtaining access to the system itself.

Conclusion

SARS has made a strong and effective beginning. A nationwide system is now in place for the filing and distribution of suspicious activity reports. Equally, if not more importantly, the banking community has made strong efforts to support SARS.

On a more fundamental level, SARS reflects the philosophy that suspicious transaction reporting is central to counter-money laundering policy, both in the United States and abroad.

The process of building the system, however, is far from over. The system's effectiveness depends upon continued attention to the steps necessary to bring it to maturity. Improving analysis of information, tracking resulting cases, refining expectations about the scope of reporting, and providing feedback to financial institutions are all part of the growth process. These steps can only occur if all the government agencies and private institutions involved work together to identify and solve problems in the system's operation.

To All USAO Users of the AFBB

The Asset Forfeiture Bulletin Board has been renamed Asset Forfeiture Online (AFO) and relocated to the U.S. Department of Justice Intranet.

Why?

The move to the Department of Justice Intranet will provide you with better services and resources such as:

- easy Internet-type access through a graphical, user-friendly interface;
- a convenient, central location from which to get policies, publications, pleadings, motions and briefs, case summaries, and other materials on asset forfeiture;
- quick retrieval of materials; and
- full-text search engine to help locate more relevant materials.

How?

If you work in a U.S. Attorney's Office (USAO), then access the AFO from your desktop computer in just six easy steps:

1. Start **Netscape**.
2. Netscape will open, but your default home page may be set to another location. If this is the case, you must go to the **USANet Home Page** (located at http://www.usa01.usanet/).
3. Go to **Internet Links**.
4. Use the arrow to select **USDOJ Net AFO Home** from the pull down menu.
5. Select **Go**.
6. Click on the **Search** or **Files** link to locate documents. Use the **Help** link for assistance on line.

Contacts

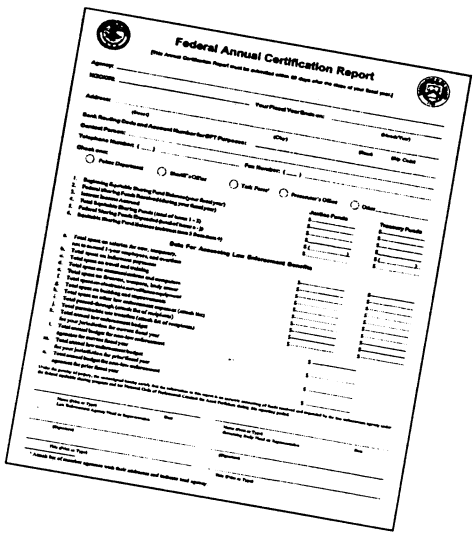
For further assistance ask your system manager to contact PCAssist at (202) 616-6961 or the AFO System Operator Morenike Soremekun at (202) 307-0265.

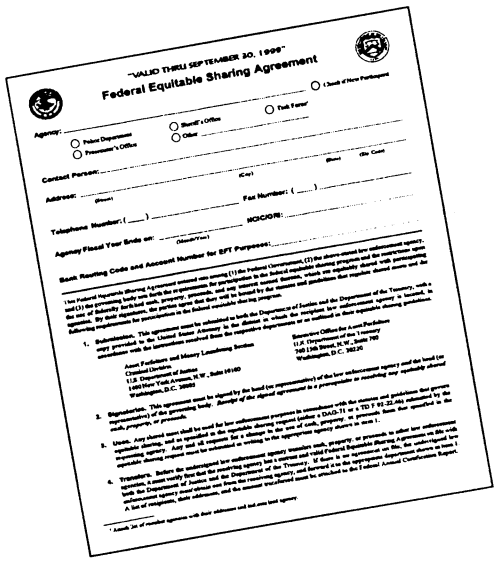
Please note that, if you are a ***state or local law enforcement user****, the AFO has relocated to* ***Law Enforcement On Line (LEO)****, an Intranet site for federal, state, and local law enforcement personnel. For details on how to access LEO please refer to the Asset Forfeiture News, July/August 1998, at 17.*

Don't Forget to Complete Compliance Forms

State and Local Law Enforcement Agencies:

1. A state or local agency that would like to participate in the Equitable Sharing Program must complete the Federal Equitable Sharing Agreement Form.
2. Any state and local law enforcement agency that received forfeited cash, property, or proceeds must complete the Federal Annual Certification Report Form, and, if appropriate, an annual audit. The Federal Equitable Sharing Agreement Form must be current.
3. Noncompliance may result in the denial of the equitable sharing request.


Federal Annual Certification Report


"VALID THRU SEPTEMBER 30, 1999"
Federal Equitable Sharing Agreement

Seizing Agencies and U.S. Attorneys' Offices:

1. Check the Compliance List on the Asset Forfeiture Online (AFO) for agencies that are in compliance with the reporting requirements:
   - USAO personnel can access the AFO from their desktop computers. *See* AFO advertisement on page 11.
   - Other federal agencies can access the AFO by registering with Law Enforcement Online.

   For further information about the AFO, contact AFO System Operator Morenike Soremekun at (202) 307-0265.

Points of Contact for Compliance Requirements

Department of Justice Fund:

Araceli Carrigan
Asset Forfeiture and Money Laundering Section
Criminal Division, Department of Justice
1400 New York Avenue, N.W., Tenth Floor
Washington, D.C. 20005
Phone: (202) 514-5088

Department of the Treasury Fund:

Rebecca Brown
Executive Office for Asset Forfeiture
Department of the Treasury
740 15th Street, N.W., Suite 700
Washington, D.C. 20220
Phone: (202) 622-2807

Treasury Trends

Forfeiture is a Key Element in International Crime Control Strategy

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

When President Clinton addressed the United Nations on the occasion of its fiftieth anniversary in October 1995, he characterized international crime as a major threat to national security. Right after that event, Presidential Decision Directive No. 42 charged executive branch agencies with prioritizing and coordinating their responses to international crime. Subsequently, the National Security Council at the White House called upon the Department of Justice, the State Department, and the Department of the Treasury to develop and implement a comprehensive national strategy to attack this danger. The resulting international crime control strategy was released earlier this year and prominently mentions asset forfeiture as a key means of achieving its goal of countering international financial crime.

As one of the strategy's eight goals, countering international financial crime seeks to thwart criminal exploitation of financial systems and institutions. The forfeiture objective that supports this goal calls for an aggressive use of forfeiture laws to seize the assets of international criminals. The strategy cites as a model the case of Juan Garcia Abrego, a Mexican drug trafficker currently serving a life sentence, who forfeited over $30 million as a result of a Customs investigation involving other American as well as British and Mexican authorities. Part of Abrego's forfeited wealth has been shared with the cooperating foreign governments paving the way for other successful joint international ventures.

The forfeiture objective that supports this goal calls for an aggressive use of forfeiture laws to seize the assets of international criminals.

Additionally, the strategy notes that the United States will press forward in both bilateral and multilateral forums for international commitments to institute asset forfeiture regimes that undercut the profit motive in international crime. The United States will also support new asset forfeiture sharing agreements with our international partners with the underlying aim of providing greater incentives for international cooperation.

The international crime control strategy is a component of the national security strategy and complements other anti-crime strategies involving drug control, counterterrorism, and alien smuggling. It is part of an overall action plan that lays out a coordinated, effective and long-term attack on international crime.

Send Us Your Forfeiture News Articles Today!

Topics of Interest

- Investigation Tools
- Cases
- Training Conferences
- Policy Changes
- Areas of Concern
- New Employees
- Working Group Meetings
- New Publications
- Awards

Please contact

AFMLS/CRM/DOJ
Bond Building, Tenth Floor
1400 New York Avenue, N.W.
Washington, D.C. 20005

Telephone: (202) 305-3049

Road to Reinvigoration

If your agency was involved in a case that illustrates how forfeiture was used to dismantle a criminal enterprise, send a summary to AFMLS. In addition, we welcome summaries from Assistant United States Attorneys and LECC coordinators about their successful and innovative programs in which they alert prosecutors, agents, or law enforcement officers to the use of forfeiture as a law enforcement tool and train them in forfeiture law and financial investigations. Send your stories to Belitue Gebeyehou, via fax (202) 616-1344 or DOJ e-mail: CRM20(bgebeyeh).

USCS Academy Sponsors Training for Agents

By William H. Berkeleg, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Florida

In August, the U.S. Customs Service (USCS) Academy in Glynco, Georgia, sponsored a nine-day Asset Forfeiture and Financial Investigations Training Course for 30 Customs agents. The training was held in Jacksonville, Florida, and the agents came from all over the United States with field experience ranging from 1 to 20 years.

The curriculum included presentations on basic forfeiture law, preseizure planning, civil and criminal forfeitures, corporate structure, and asset sharing.

In addition to the USCS Academy's instructors, several Assistant U.S. Attorneys (AUSAs) and one attorney from the Department of Justice participated as members of the faculty. The group included: AUSA Thomas Swain from the Northern District of Florida, AUSA William Beckerleg from the Southern District of Florida, and Special Counsel Linda Samuel from the Asset Forfeiture and Money Laundering Section, Criminal Division. Special Agent Mike Lemnah, an instructor with the USCS Academy, was the lead coordinator for the training event.

The course culminated with an informal graduation ceremony in which agents received a diploma certificate.

The House that Crack Built: Largest Civil Forfeiture in M.D. Ga. Since Reinvigoration

By Rena M. Johnson, Assistant U.S. Attorney, and June C. Binford, Forfeiture Paralegal Specialist, Middle District of Georgia

The U.S. Attorney's Office for the Middle District of Georgia recently forfeited over a half a million dollars of real and personal property as a result of a civil action filed in May 1998. The forfeited property consisted of approximately 35 acres of land in a rural, secluded section of Monroe County, Georgia, as well as a fully-furnished 7,000 square foot brick residence located on the property. The house, land, and furniture were purchased with the proceeds from illegal drug sales.

The United States Attorney's Office elected to file a companion civil forfeiture proceeding during the pendency of a criminal case against the targets of an indictment charging violations of 21 U.S.C. §§ 841 and 846 and 18 U.S.C. §§ 1956 and 1957. The criminal case against the targets of this indictment is still ongoing. However, no claims were filed by any of the legal title owners or named defendants in the criminal case. Honorable Duross Fitzpatrick, U.S. District Judge for the Middle District of Georgia, entered a final order of forfeiture on August 4, 1998.

The purchase of the land, the building of the house and the acquisition of the furnishings constituted acts designed to launder drug money into legitimate assets. The property will now be sold by the U.S. Marshals Service (USMS) with the proceeds from the sale being returned for use by law enforcement in the Middle District of Georgia.

This forfeiture was the culmination of a massive investigation conducted by: the Internal Revenue Service's Criminal Investigation Division; the Drug Enforcement Administration's MET Team; Macon Police Department; Bibb County Sheriff's Department; Monroe County Sheriff's Department, and the USMS. The local law enforcement agencies will receive substantial equitable shares as a result of this civil forfeiture action, and the important contributions of the MET Team and the Criminal Investigation Division will be recognized by means of a significant share for the Assets

Forfeiture Fund and an appropriate transfer from the Assets Forfeiture Fund to the Treasury Fund, respectively.

Middle District of Florida's Law Enforcement Strategy and Planning Conference

By Virginia H. Glaiber, DynCorp Office Manager, Middle District of Florida

In cooperation with the Law Enforcement Coordinating Committee (LECC), the United States Attorney's Office sponsored the Middle District of Florida Law Enforcement Strategy and Planning Conference, which was held in Orlando, Florida, on June 3-5, 1998. Hosted by U.S. Attorney (USA) Charles R. Wilson, the conference was designed to develop a five-year strategy for enhancing coordination among federal, state, and local law enforcement agencies in the investigation and prosecution of individuals involved in illegal activity.

Topics included discussions of asset forfeiture, environmental crimes, the High Intensity Drug Trafficking Area (HIDTA) Initiative, Organized Crime Drug Enforcement Task Force (OCDETF) Strategy, weed and seed, domestic violence, counterfeiting, health care fraud, hate crimes, child pornography, and cybercrimes. Break-out sessions were organized by region (Jacksonville, Tampa, Orlando, and Fort Myers) to develop a five-year strategic plan for the Middle District of Florida.

Following these sessions, USA Wilson announced a coordinated and comprehensive law enforcement strategy for prosecuting wrongdoers and providing resources to communities to combat crime through such programs as the Department of Justice's Equitable Sharing and Weed and Seed Programs.

The Middle District of Florida has implemented several real property transfers pursuant to the Weed and Seed Initiative. Assistant U.S. Attorney (AUSA) Virginia M. Covington highlighted the success of the Quality Life Center of Southwest Florida, Inc., which received the property located at 3210 Dr. Martin Luther King, Jr. Boulevard, Fort Myers, Florida. The property, formerly known as the Club 21, was forfeited to the United States because it was used to facilitate illegal drug activity and represented proceeds of such activity. The Quality Life Center uses the property as a center for youth activities, including mentor programs, academic assistance, and leadership training. *See also* "Forfeited Commercial Property Transferred to Quality Life Center of Southwest Florida, Inc.," *Asset Forfeiture News*, September/October 1997, at 6.

On Wednesday, June 3, 1998, USA Wilson hosted a reception at which $2,199,138.34 was disbursed to law enforcement agencies pursuant to the Equitable Sharing Program. The funds were derived from over $3 million in assets forfeited in the middle district's judicial proceedings. Checks were presented to law enforcement agencies that participated in joint investigations with federal investigative authorities. Recipient agencies included: the Hillsborough County Sheriff's Office; the Metropolitan Bureau of Investigation; the Daytona Beach Police Department; the Lake County Sheriff's Office; the Orange County Sheriff's Office; the Orlando Police Department; the Sanford Police Department; the Seminole County Sheriff's Office; the Volusia County Sheriff's Office; the Winter Park Police Department; the U.S. Postal Inspection Service (USPIS); the Florida Department of Law Enforcement; the Collier County Sheriff's Office; the Cape Coral Police Department; the Florida Highway Patrol; the Fort Myers Police Department; the Lee County Sheriff's Office; the Naples Police Department; the Sanibel Police Department; and the Polk County Sheriff's Office.

The funds distributed to the law enforcement agencies represent their equitable share of the proceeds forfeited in nine judicial cases. In one of the cases, the USPIS conducted an investigation into a series of structured postal money orders involving Vernon Prather, Jr., who also was under investigation by the Drug Enforcement Administration (DEA) for trafficking in pseudoephedrine, a chemical used in the production of methamphetamine. As a result of these investigations, the United States was able to secure civil seizure warrants for two bank accounts of Vernon Prather, Jr.

The United States subsequently filed a civil forfeiture action in *United States v. Contents of Accounts*, No. 95-670-CIV-ORL-19 (10th Cir. Sept. 6, 1998) (unpublished), seeking forfeiture

*See **Road**, page 16*

Road to Reinvigoration

***Road**, from page 15*

of the funds seized from his bank accounts pursuant to 18 U.S.C. § 981(a)(1)(A). Pursuant to a settlement agreement, approximately $1 million was forfeited to the United States. Vernon Prather, Jr. also was indicted and convicted in the Northern District of Georgia for conspiracy to distribute and distribute pseudoephedrine, as well as money laundering offenses. These cases exemplify how cooperation and coordination among federal, state, and local law enforcement agencies result in successful forfeitures.

The conference concluded with closing remarks by USA Wilson in which he thanked all of the participants for attending the conference.

Aguirre Forfeited Bar Now Columbus New Town Library

By Ron Lopez, LECC Coordinator, U.S. Attorney's Office, District of New Mexico

On Friday, May 22, 1998, Columbus' former Pancho Villa Bar became that community's new public library under the Department of Justice's Asset Forfeiture Program. The property was formerly owned by members of the Gabriel Aguirre organization and was seized by federal authorities during a crackdown on the Aguirre crime family's drug trafficking and money laundering operation in southern New Mexico. Columbus is a New Mexico border town only three miles north of the international boundary with Mexico.

The federal court ordered the bar's forfeiture on December 23, 1993. The U.S. Attorney's Office then recommended jointly with the Drug Enforcement Administration that the property be turned over to the local community for use as a library.

One hundred sixty-eight thousand five hundred dollars in community development block grants and village appropriated funds paid for the major renovation and repair of the building. Book shelves and a spacious reference area now fill the carpeted and tiled floors of the former bar.

The Asset Forfeiture Program encourages the return of federally forfeited real property to local public agencies and private nonprofit community groups for community rehabilitation purposes. Under the Department's guidelines, forfeited property is equitably shared with law enforcement agencies that participated in the seizure, which in this case is the Luna County Sheriff's Department. In accordance with these guidelines, the Luna County Sheriff's Department received title to the property and then transferred its ownership to the Village of Columbus for use as a community service oriented facility on September 23, 1995.

Assistant U.S. Attorneys (AUSAs) Alfred J. Perez and James Braun, along with representatives of the federal, state, and local law enforcement agencies who participated in the investigation and prosecution of the Aguirre crime organization, were on hand for the ribbon cutting ceremony. The Aguirre crime organization was prosecuted by AUSAs Thomas L. English and Charles L. Barth, while AUSA Stephen R. Kotz handled the forfeiture proceedings.

AUSA Alfred J. Perez lends a hand as Columbus, New Mexico, Mayor Ken Riley cuts the ribbon at the door of the town's new public library.