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

Asset Forfeiture News

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Certificate of Reasonable Cause Not Limited to Civil Forfeiture

By Michele Crawford, Trial Attorney, AFMLS, Criminal Division

Recently passed legislation authorizes federal courts to award prevailing criminal defendants expenses and reasonable attorney's fees.[1] This new law was derived from the Equal Access to Justice Act, 28 U.S.C. § 2412, which permits awards of costs and attorney's fees to the prevailing party in a civil action. The law became effective on November 26, 1997, and applies to all pending and future federal criminal cases.

In a forfeiture action, 28 U.S.C. § 2465 provides a limit against governmental liability for costs. Section 2465 states:

> "Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; but if it appears that there was reasonable cause for the seizure, the court shall cause a proper certificate thereof to be entered and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution."

Although, historically, a Certificate of Reasonable Cause has been issued in connection with a civil forfeiture, its terms do not limit its application to civil forfeiture actions. Because the law expressly provides that a Certificate of Reasonable Cause applies "in any proceeding to condemn or forfeit property seized under any act of Congress," it may be applicable in criminal cases as well. For example, the provisions might apply where property is seized pretrial for use as substitute assets in a criminal case, after the statute of limitations for a civil forfeiture action has run against the property. If the indictment is dismissed, the criminal defendant is acquitted, or his conviction is reversed on appeal, for example, the Government could be protected from any claims for costs and damages.

No reported cases have expressly addressed the question as

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damages. 673 F. Supp. at 395. "The additional deterrent effect from the application of the exclusionary rule," the court said, "would be minimal." 673 F. Supp. at 395-396. The court held that "it makes sense to consider all of the information the police acted upon in seizing the property in determining whether costs and civil liability should be premised upon these actions." 673 F. Supp. 396. The certificate was issued. 673 F. Supp. at 397. Under that reasoning, if the Government's probable case is dismissed on the merits, and cause existed at the time of seizure, a Certificate of Reasonable Cause will be issued. *See also United States v. 255 Broadway, Hanover*, 9 F.3d 1000, 1006 (1st Cir. 1993) (serious errors committed by federal agents in handling funds derailed probable cause hearing, but did not diminish probable cause for seizure necessary for issuance of Certificate of Reasonable Cause).

The decision to grant or deny the issuance of a Certificate of Reasonable Cause is generally not appealable. *United States v. Frerichs*, 106 U.S. 160, at 161-162 ("[T]he refusal of the district court to grant a certificate of reasonable cause is not a matter which can be reviewed in this circuit court or in this court."); *United States v. $1,630.00*, 922 F.2d 740, 741 (11th Cir. 1991) (appeal of grant of Certificate of Reasonable Cause is dismissed, citing *United States v. Frerichs*). The grant or denial of a Certificate of Reasonable Cause involves such high stakes that some argue that the decision should be appealable. The denial of a Certificate of Reasonable Cause, for example, has been held to be conclusive that the seizure was tortious. *See Gelston v. Hoyt*, 16 U.S. 246 (1818); *Hammel v. Little*, 87 F.2d 907 (1936). Some have argued that a successful claimant has an interest in recovering the costs of the proceeding and should have an avenue of review of the issuance of a Certificate of Reasonable Cause. The Ninth Circuit agreed with that reasoning in *United States v. One 1986 Ford Pickup*, 56 F.3d 1181, 1185 (9th Cir. 1995), and held that a Certificate of Reasonable Cause is appealable as a collateral interlocutory order. *Id.*

The dismissal of an action before a ruling can be made on the propriety of seizure does not rule out the entry of a Certificate of Reasonable Cause. *United States v. One DLO Model A/C, 30.06 Machine Gun*, 904 F. Supp. 622, 639 (N.D. Ohio 1995) (Certificate of Reasonable Cause applies where the Government voluntarily dismissed its civil forfeiture proceedings); *United States v. One (1) 1984 Mercedes Benz*, 673 F. Supp. 387, 389 (D. Haw. 1987) (complaint dismissed because of undue delay between filing of the complaint and seizure of vehicle; Certificate of Reasonable Cause was issued). Courts, in deciding whether to grant or deny a motion for Certificate of Reasonable Cause, are not required to recite their reasons for the grant or denial. *Stacey v. Emery*, 97 U.S. 642 (1878).

Finally, the issuance of a Certificate of Reasonable Cause does not preclude the claimant's recovery of attorneys' fees under the Equal Access to Justice Act. *United States v. Eleven Vehicles*, 937 F. Supp. 1143, 1149; *United States v. One Parcel of Real Estate*, 864 F. Supp. 1267, 1269 (S.D. Fla. 1994).

Endnotes

[1] On November 26, 1997, a provision of the Department of Justice Appropriations Bill, commonly known as the Hyde Amendment," Pub. L. 105-153, 111 Stat. 2689, 105th Cong., 1st Sess. (Dec. 17, 1997), became law and authorized courts to award prevailing criminal defendant attorneys' fees and other litigation costs in certain situations.

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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Your forfeiture articles are welcome. Please fax your submission to the editor at (202) 616-1544 or mail 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.

The federal training program has not only given AUSAs and agents the tools needed to include forfeiture in their cases, but also has generated enthusiasm for the use of this law enforcement tool. AFMLS will continue to work with OLE and other federal components to train more prosectors, agents, and officers in forfeiture.

News from the Marshals

"Shafer Collection" Auction

By James Herzog, Asset Forfeiture Office, Business Services Division, U.S. Marshals Service, Headquarters

A vehicle auction of the "Shafer Collection" of special interest and collector vehicles was conducted, pursuant to an interlocutory sale order in the Western District of Washington, on November 22, 1997. The vehicles were seized for violation of bank fraud and money laundering stemming from a series of fraudulent leases on behalf of a local area charity.

The auction consisted of 55 vehicles which included various years, makes, and models such as Jaguar, Cobra, Porsche, Lamborghini, and Corvette, just to name a few. The sale was advertised nationwide on the contractor's Internet website and on a color sales brochure.

Total sales proceeds were $1,124,150 for an average of 109.4 percent above NADA Loan and Appraised Value. The Asset Forfeiture Office, USMS, headquarter's staff worked with district personnel and the contractor on the marketing advertising, and disposal plan.

Forfeiture of Stock in The Cooper Companies, Inc.

By Robert Johnson, Assistant Chief for Administration, U.S. Marshals Service, Southern District of New York

Even the U.S. Marshals Service (USMS) was watching the stock market in 1997. In April 1997, the federal court ordered the forfeiture of more than 200,000 restricted and unrestricted shares of common stock in The Cooper Companies, Inc., to the United States to be disposed of by USMS. Cooper manufactures specialty contact lenses and surgical instruments and owns mental health facilities. On the date of the preliminary order of forfeiture, the stock was trading at approximately $6 per share. By the time the final order was entered, the stock was trading at $21 per share.

During the seven months between April and November 1997, USMS, Southern District of New York, had to locate the shares and get the restrictions removed from the restricted shares. In addition, it was clear

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FDA Sponsors Training

By Tom Wise, Dyncorp Government Services

The Food and Drug Admisitration's Office of Criminal Investigations is sponsoring two Advanced Financial Crimes Investigations and Asset Forfeiture Training Seminars in April and July 1998.

Each course is designed to provide agents, attorneys, and support staff with advanced techniques in financial investigations and forfeiture. Topics covered in each seminar include:

- application of the Racketeer Influenced and Corrupt Organizations Act;
- obtaining electronic evidence in criminal investigations;
- analysis of business and accounting records, monetary instruments and paper trails;
- subpoenas for banking records;
- applying for and executing financial search warrants; and
- case presentations to the United States Attorney's Office.

If you would like to attend these seminars, please contact John Rooney or Tom Wise, at (301) 294-4030.

FDA Training Schedule

- April 7-9, 1998, New Orleans, LA
- July 7-9, 1998, Orlando, FL

Victim Remission and the Petition Process

By Karen A. Vogel, Trial Attorney, AFMLS, Criminal Division

Asset forfeiture statutes, particulary the RICO and civil and criminal money laundering statutes, are increasingly being used to forfeit assets derived from innocent victims of fraud schemes and other economic crimes. These civil and criminal forfeiture prosecutions often deprive the perpetrator of all assets, leaving victims unable to recover their losses through court-ordered restitution. Due in part to the limited availability of restitution for victims, the Department of Justice revised its regulations governing remission or mitigation of forfeiture. The regulations, set forth at 28 C.F.R. § 9.8, outline how petitioners who, otherwise, lack an ownership interest in forfeited property may obtain remission of the property as innocent victims of the offense underlying the forfeiture.

The major criminal forfeiture statutes give the Attorney General broad discretion to "restore forfeited property to victims" and to "take any other action to protect the rights of innocent persons." 21 U.S.C. § 853(i)(1). Civil forfeiture statutes generally do not permit the Department of Justice to remit property to victims from forfeited assets. Section 981(e) of Title 18 provides the only statutory authority for the Attorney General to "restore forfeited property to any victim" and does so for forfeitures arising under section 981(a)(1)(C). The Asset Forfeiture and Money Laundering Section (AFMLS) has proposed legislation that will permit remission of civilly forfeited assets to victims because the use of forfeiture's pretrial seizure of assets often offers the most effective means by which to secure property for victims.

In order for a victim to qualify for remission under the regulations, a petitioner must have suffered a pecuniary loss as the result of the offense underlying the forfeiture of the property. A victim must establish that it did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner toward the commission of the offense for which forfeiture was ordered. In addition, the victim must not have been otherwise compensated for its loss and cannot have recourse reasonably available to other assets from which to obtain compensation for its loss.

The Attorney General has delegated to the Chief of AFMLS her authority to remit forfeited assets to victims in petitions arising from judicial forfeiture actions. Set forth below are summaries of petitions decided by the Chief of AFMLS, which illustrate the forfeiture program's effectiveness at remitting forfeited assets to victims.

State of Israel Recovers Diverted Funds Through Remission

(S.D. Ohio)—Three Swiss bank accounts containing a total of $2,674,867.94 were seized from three defendants, who fraudulently diverted payments made under a defense contract to supply equipment to the Israeli Air Force. Petitioner, the U.S. Defense Security Assistance Agency (DSAA), administers the Foreign Military Sales Trust Fund (FMSTF), which distributes appropriated funds to reimburse participating countries for military expenditures intended to promote national security interests. AFMLS granted remission, based on DSAA's traceable interest to the State of Israel's FMSTF and its status as a victim.

Remission for USPS

(D.R.I.)—Between December 1987 and April 1992, an employee of the post office used his position as manager of Accounting Services to embezzle more than $3.5 million from the U.S. Postal Service (USPS). He used his position to illegally convert U.S. Treasury checks and money orders made payable to fictitious payees. The employee was indicted, pleaded guilty to embezzlement and money laundering, and consented to the forfeiture of property involved in or traceable to his money laundering activities. AFMLS granted remission of the forfeited property because USPS established that it was a victim of the embezzlement.

IRS and USPS Combine to Halt Long-term Embezzlement Scheme

(N.D. Cal.)—A bulk mail acceptance clerk with the U.S. Postal Service (USPS) diverted funds from customer accounts to

*See **Remission**, page 8*

to the lenders and arrested him for bank fraud. Shortly before his arrest, in an effort to conceal more funds from creditors, he transferred approximately $2.2 million in U.S. currency abroad. He was then indicted for bankruptcy fraud and money laundering, pled guilty to money laundering, and agreed to forfeit $225,000 in U.S. currency.

The trustee of the bankruptcy estate filed a petition for remission for the forfeited funds, claiming that the estate was the victim of a pecuniary loss that resulted from the offense underlying the forfeiture. AFMLS granted the petition, and the funds were disbursed among the estate's remaining creditors.

Victims of Billing Fraud Compensated

(E.D. Pa.)—Seventy-five petitioners sought remission of $2 million forfeited from defendant, pursuant to his conviction under RICO. The defendant began a fraudulent billing scheme after the Supreme Court ruled that trucking companies could back bill customers for services that had been billed at rates discounted from the carrier's tariff rate filed with the Interstate Commerce Commission. The illegal acts which resulted in the forfeiture involved three types of fraudulent schemes: back billing fraud, double-billing fraud, and kickbacks. In order to ensure the most equitable sharing distribution of the funds, it was necessary to determine how much of the forfeited funds was attributable to each type of fraud. Resolution of this petition was further complicated by the large number of petitioners and the limited amount of funds available for remission. AFMLS remitted $75,710.90 to the victims.

People and Places . . .

U.S. Marshals Service Asset Forfeiture Business Expert

Leonard Briskman has joined the staff of the Asset Forfeiture Office, U.S. Marshals Service (USMS) headquarters, as the senior business analyst. Mr. Briskman will head up the Seized and Forfeited Businesses Unit, and he is responsible for oversight of all seized and forfeited businesses in USMS' custody.

Mr. Briskman brings a wealth of experience and knowledge to this position. Prior to joining the Asset Forfeiture Office, he was associated with TriCapital Corporation, a local investment banking firm that raises equity capital and long-term financing for high-growth businesses. Prior to that, Mr. Briskman spent over 20 years as the founder and chief executive of a large public company in the retail and distribution sector. He has held financial management positions with Citicorp and American Can Company and Champion International, two Fortune 100 industrial companies.

Mr. Briskman has a B.A. in Economics and a M.B.A. from the Graduate School of Business, New York University.

Since joining the staff in early February, Mr. Briskman has spent most of his time in USMS' district offices. He has already been conducting business reviews in pre-seizure planning discussion on 2 cases involving an insurance company, a welfare hotel, and an operating prison. His business review of the insurance company provided persuasive evidence that the business was rapidly deteriorating and that the best course of action was not seizure, but interlocutory sale.

In any case involving the potential seizure of an ongoing business, thorough pre-seizure planning must be done to avoid the extremely difficult and costly management and disposition problems. The district offices have been advised to contact this office at the earliest possible time in order to obtain the necessary resources. Please feel free to contact this office through your local USMS office, Asset Forfeiture Unit staff.

IRS Welcomes Senior Analyst

Internal Revenue Service's Criminal Investigation Division (IRS-CID) welcomes Gail Donaldson, as a senior analyst at the Washington, D.C., office.

Ms. Donaldson will be responsible for the oversight of IRS-CID's asset tracking system, known as AFTRAK, and the analysis of overaged inventory. Ms. Donaldson will also handle the distribution of the newsletter, "Views and News," to IRS-CID chiefs and asset forfeiture coordinators nationwide. The newsletter will include recent court decisions, new or revised procedures on asset tracking, equitable sharing, and other significant issues. If you have any questions about the newsletter please contact Ms. Donaldson at (202) 622-5239.

Editor's Note

If you would like to see your name in the "People and Places" section, send us your biography. We will publish biographies of new government attorneys, prosecutors, agents, and other professional and managerial staff working in the areas of federal asset forfeiture and financial investigations.

by Manuel Garcia used some of these accounts to transfer drug money to banks located abroad, including banks in Switzerland. Review of transactions conducted through bank accounts in Miami, including accounts at a Swiss bank branch located there, also indicted a link between the Garcia organization and that of Gaitan-Ortiz, who regularly supplied Garcia with proceeds from narcotics sales. Customs agents in southern Florida had been investigating the trafficking and laundering activities of the Gaitan-Ortiz organization since May 1989 and had executed an undercover operation, in which they provided the group with banking services for money laundering.

In pursuing these investigations, the United States Attorney for the Southern District of Florida, through the Office of International Affairs, submitted MLAT requests to Switzerland in 1991 asking for records from banks located in Zurich and Geneva. As a result of the information contained in these requests, the chief public prosecutor for the Canton of Geneva opened a Swiss criminal inquiry into suspected money laundering based on Switzerland's then-recently enacted money laundering statute. Within a year, the Geneva examining magistrate conducting the Swiss criminal investigation located more than 20 accounts at Credit Suisse in Geneva held in the name of, or for the benefit of, Guillermo Gaitan-Ortiz, his wife (Martha), her brothers (Raul, Jose David, Feliz Eduardo, and Ignatio Gaitan), or entities these persons controlled, and he determined that these accounts had received transfers from accounts and entities in the United States and elsewhere that were suspected of being, or were known to be, money laundering conduits. Based on these findings, the Geneva magistrate froze $36 million on deposit in these accounts and conducted inquiries with Zurich, Luxembourg, and Austrian officials regarding transfers with these accounts. In addition, the magistrate identified connections between the accounts and laundering activity under investigation in Italy and Spain, and he monitored visits to and telephone calls from Geneva by members of the Gaitan-Ortiz family.

The Geneva magistrate presented his findings, which included detailed information on a complex series of international account transfers previously unknown to U.S. authorities, in a Swiss MLAT request to the United States in August 1992. The request showed that the Geneva magistrate's tracing of account transfers had made the connection between the Gaitan-Ortiz organization and that of money launderer Steven Saccoccia, whom Swiss authorities had recently extradited to the United States to stand trial in Rhode Island for RICO conspiracy and money laundering of hundreds of millions of dollars in narcotics proceeds through precious metals companies he controlled in Rhode Island. In the Swiss MLAT request, the examining magistrate sought a full range of evidence-gathering assistance from U.S. authorities, including documents, testimony, and extensive access to investigators and case files.

As a result of the Swiss treaty request, the Geneva magistrate and three Geneva police detectives made the first of numerous visits to the United States in November 1992, traveling repeatedly to Miami, New York, and Rhode Island to meet Customs, IRS, FBI, and DEA agents and others who had worked on the Garcia, Gaitan-Ortiz, and Saccoccia investigations and to collect and develop evidence for the Swiss money laundering investigation.

U.S. assistance to the Swiss investigation continued into 1995 and involved thousands of hours of effort by U.S. investigators and prosecutors. District of Rhode Island prosecutors provided the magistrate with the transcripts of key witnesses in the Saccoccia trial, allowing Swiss authorities to reap the benefits of the extensive efforts of federal, state, and local law enforcement agencies, including the Rhode Island State Police Department, the Providence Police Department, the Cranston Police Department, and the Warwick Police Department that led to that successful prosecution. Similarly, federal agents and prosecutors in Florida hosted the Swiss investigation team on seven occasions, providing: commissioner services, information and manpower to enable the Swiss authorities to procure documents, conduct depositions, interview witnesses, review grand jury testimony, and access intelligence information on banks and investigative information obtained in part with the assistance of the North Miami Beach Police Department. The New York Drug Enforcement Task Force availed the magistrate of its two-year investigation into the Gaitan-Ortiz organization's

*See **Sharing**, page 15*

nationwide program through which audiocassette recording equipment seized from music pirates is put to good public use at facilities that produce books on tape for blind and physically handicapped library patrons. The "books on tape" program originated with the idea that the same machinery that was routinely ordered destroyed at the conclusion of music piracy cases could instead be used by libraries. The National Library Service, by and through its affiliate regional and local libraries, such as the Philadelphia Regional Library for the Blind and Physically Handicapped, manufactures and distributes free of charge "books on tape" to disabled library patrons. Individuals whose physical disabilities prevent them from reading printed books, such as those who are blind or those with cerebral palsy, multiple sclerosis, or muscular dystrophy, may borrow recorded books and magazines and special cassette players through this free service. The National Library Service's "books on tape" program is administered by the Library of Congress in Washington, D.C.

The audiocassette duplicating equipment transferred to the National Library Service and on display during the presentation ceremony is valued at more than $100,000. Because the number of duplicating machines seized exceeds the production need of the Philadelphia Regional Library, the law enforcement agencies involved transferred the equipment to the other National Library Service affiliate libraries for the blind and physically handicapped. Representatives from Pittsburgh, Pennsylvania, and Trenton, New Jersey, regional libraries for the blind and physically handicapped were also present at the presentation ceremony and received tape duplicating equipment.

This case was prosecuted by AUSAs William C. Nugent and Judson Aaron.

Largest Cash Forfeiture in IRS Gulf Coast District

By James Ingram, Assistant United States Attorney, U.S. Attorney's Office, Northern District of Alabama

A 14-month investigation conducted by the Internal Revenue Service (IRS) with state and local agencies into an illegal sports gambling operation resulted in a guilty plea of the main target and the forfeiture of $200,000.00 in gambling proceeds. The IRS' Criminal Investigation Division teamed with the Alabama Alcoholic Beverage Control (ABC) Board and the Jasper, Alabama, Police Department to investigate a bookmaking operation controlled and supervised by Billy Ray Waldrop. Waldrop's gambling business focused on sporting events such as football, basketball, and baseball and operated in violation of state and federal laws for more than four years. The investigation revealed that Waldrop used his residence and two nightclubs as sites for illegal gambling activities.

As part of the negotiation leading up to the entry of his plea agreement, Waldrop agreed to the forfeiture of $160,000 in currency to be paid by the plea date in lieu of forfeiture of Waldrop's properties. Waldrop executed the plea agreement and later pled guilty to a violation of the federal gambling statute, 18 U.S.C. § 1955, but failed to pay the agreed amount by the scheduled date; the Government then filed a civil forfeiture action under 18 U.S.C. § 1955(d) against various real properties and vehicles that were involved in Waldrop's illegal gambling activities. This action apparently got Waldrop's attention, for he quickly accepted the Government's offer to settle for $200,000 and brought the money in three days later. The $200,000 sum was judicially forfeited by consent under 18 U.S.C. § 1955(d) to the United States on July 30, 1997.

Equitable sharing requests from the Alabama ABC Board and the Jasper, Alabama, Police Department were approved by the Department of the Treasury. At a presentation ceremony on December 5, 1997, in his office in Birmingham, U.S. Attorney G. Douglas Jones presented equitable sharing checks for $96,591.88 to the Jasper Police Department and $19,318.38 to the

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National Code of Professional Ethics for Asset Forfeiture

Bookmarks

A limited quantity is available. Call Pat Fouse, AFMLS Training Assistant, at (202) 514-0136.

A Great Teaching Tool for Ethics

Equitable Sharing

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narcotics distribution activities in the New York area that were connected with the organization's operations in Miami and Colombia and resulted in profits that were transferred abroad.

By December 1995, Swiss authorities were concluding their investigation, and the targets had proposed a settlement in which Gaitan-Ortiz and his associates would agree to forfeit 50 percent of the contents of the frozen accounts in Switzerland—an amount by that time totaling more than $46 million, including $15 million laundered by Stephen Saccoccia—leaving $23.2 million for the Swiss government to split evenly between itself and the U.S. Government, in accordance with the established practice between the two governments concerning forfeited asset sharing. In exchange, the Swiss government would dismiss its proceedings, and the United States would dismiss its civil forfeiture action in the Eastern District of New York and agree that no criminal charges would be filed based on the acts giving rise to the forfeiture that occurred before March 1991. Ultimately, the Department of Justice did not approve the settlement agreement because Gaitan-Ortiz's associates were unwilling to waive double jeopardy protections. The Swiss authorities, however, settled the matter by forfeiting $23.2 million and releasing an equal amount to Gaitan-Ortiz's associates. The settlement was necessary because the combined investigations had been able to produce evidence for only a portion of the money frozen and because some of the money laundering offenses had taken place before Switzerland's 1990 money laundeirng statute had entered into force.

In August 1996, the Swiss authorities transferred the $11,599,985 to the United States in recognition of the assistance that federal, state, and local law enforcement agencies in the United States provided. In 1998, the Department of Justice approved domestic sharing with participating agencies.

News from the Marshals

Marshals, from page 5

that a carefully planned disposition strategy was needed due to the possibility that "dumping" shares on the market could adversely effect the stock price. The district felt that, if it could realize a fair price without unnecessarily harming other shareholders, it would try to do so.

Disposing of these shares took a considerable amount of effort and coordination. USMS sought the advice of the Chief, Securities Fraud Section, U.S. Attorney's Office, and an associate director with the Securities and Exchange Commission (SEC) regarding taking precautions in connection with the sale of this stock. McCracken & Associations, a subcontractor of Price Waterhouse, LLP, assisted in evaluating disposal options and establishing a target price for the shares. The vice president of Legal Affairs, The Cooper Companies, Inc., worked with USMS to remove the restrictions on 180,000 shares of stock and was the liaison with Cooper's transfer agent, American Stock Transfer & Trust Company. After considering various private offers and proposals from a number of brokers, USMS signed a listing agreement with Deutsche Morgan Grenfel (DMC), Inc., on October 29, 1997. DMC is a registered investment banking firm that had recently underwritten a stock offering for Cooper and was familiar with the market for the company's shares. The average price per share during the month prior to selling the shares was $35, and DMG was instructed to sell all of the shares at a price not less than $35 1/2 by December 31, 1997. No more than 12 percent of the shares were to be sold in any single day without prior approval from USMS.

Between November 4-9, 1997, all of the shares were sold at an average price of just $37 per share. Gross proceeds of $7,427,089.92 were realized. Commissions totaled $8,008, and SEC fees of less than $250 resulted in net proceeds to the Government of $7,418,833.87.

Treasury Trends

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

Classic Guitars Go On the Block

A vintage collection of 49 forfeited electric guitars, including such Fender classics as a 1965 Jaguar and a 1957 Stratocaster as well as a Gibson Les Paul Custom and several Flying Vs, was sold at auction in Rancho Dominguez, California, on February 12. The guitars had been seized by the Criminal Investigation Division's Internal Revenue Service as part of an Ohio money laundering case. The collection was transported for sale to the Los Angeles area to take advantage of the larger music and entertainment market there. Valued at between sixty and seventy thousand dollars, the guitars brought a total return of over $80,000 at the auction.

Treasury and Marshals Pursue Property Management Initiatives

A second combined sale of Treasury and Justice forfeited real properties was held in mid-January in Puerto Rico and brought in a total of just over $1.6 million or an average of 112 percent of fair market value. Eight of the ten properties sold were in the forfeited inventory of the U.S. Marshals Service (USMS), had gone unsold when previously offered for sale, and were considered distressed. These Justice properties, forfeited between 1992 and 1996, had been identified under the government-owned real estate or GORE initiative that grew out of the Vice President's National Performance Review. Treasury's national seized property management contractor EG&G Services, marketed the properties and conducted the auction.

On a related front, Treasury's Executive Office for Asset Forfeiture and USMS will be conducting several joint training sessions in 1998 to consider asset management issues. The conferences will focus on pre-seizure planning, problem identification, and resolution as well as program management and accountability. This training is being designed for managers from Treasury and Justice law enforcement bureaus and the U.S. Attorneys' Offices. Three to four conferences are anticipated during the year with the first scheduled in early April in Miami. Other sites, to be determined, will correspond generally with districts having the largest volumes of seized property.

UPCOMING TRAINING CONFERENCES

FEDERAL FORFEITURE

- *Tenth Circuit Component*
  May 12-14, 1998
  Location TBA
- *Advanced Money Laundering and Asset Forfeiture*
  June 23-25, 1998
  Columbia, SC
- *Eighth Circuit Component*
  July 14-16, 1999
  Location TBA

FINANCIAL INVESTIGATIONS

- *Basic Financial Investigations*
  April 14-16, 1998
  Santa Fe, NM
- *Reinvigoration Seminar*
  May 28, 1998
  Washington, D.C.
- *Southwest Border*
  June 23-25, 1998
  Albuquerque, NM

For more information about federal forfeiture conferences, please contact Nancy Martindale, AFMLS, Criminal Division. For more information about financial investigations conferences, please contact Mary Ann DeToro, AFMLS, Criminal Division. Both can be reached at (202) 514-1263.

Road to Reinvigoration

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Alabama ABC Board. Mr. Jones praised the efforts of all three agencies involved in this case and noted that this case represented the largest cash forfeiture in the history of the IRS Gulf Coast District.

E.D. Mich. Hosts Multi-agency Forfeiture Meeting

By Michelle R. Buszka, Legal Technician II, STG, Inc., U.S. Attorney's Office, Eastern District of Michigan

The U.S. Attorney's Office for the Eastern District of Michigan recently hosted its Third Multi-agency Asset Forfeiture Meeting. Members from those federal law enforcement agencies participating in the Department of Justice's Asset Forfeiture Program attended the meeting.

Its purpose was to address current issues that impact on all of the agencies participating in the Asset Forfeiture Program. Topics covered at this meeting included: the use of expedited settlement agreements and interlocutory sales; appraisal and valuation of property; observance of set guidelines for threshold values; new pre-seizure planning forms introduced by the U.S. Marshals Service (USMS) and an in-depth discussion of the implementation of USMS' lead-based paint policy; petitions for remission and mitigation; comparisons of civil and criminal forfeiture; and an update of how the civil and criminal divisions are working in cooperation with each other to maximize asset forfeiture potential.

These multi-agency meetings help promote open discussion resolution of concerns which impact the Asset Forfeiture Program in the district. Each attendee is encouraged to participate in discussions and offer any suggestions to improve the practice of forfeiture within the Eastern District of Michigan.

N.D. Fla. Trains the Investigator

By John Peaden, LECC Coordinator, U.S. Attorney's Office, Northern District of Florida

From January 5-9, 1998, United States Attorney P. Michael Patterson for the Northern District of Florida, the Law Enforcement Coordinating Committee (LECC), and the Federal Law Enforcement Training Center co-sponsored the Money Laundering and Asset Forfeiture Course, at Pensacola Beach, Florida.

This training was geared to the investigator interested in enhancing skills in tracing assets. The course provided an opportunity to learn new financial investigative techniques. These techniques covered everything from fraud to drug investigations, where money is the underlying motive of the crime.

The money laundering segment of the course included: instruction in identifying indicators of money laundering, evidence collection, obtaining assistance in conducting investigations, and analyzing evidence for prosecution.

The attendees were given instruction on electronic sources of information, methods, and techniques involving money laundering. The attendees heard from representatives of FinCen about its role, what records are available for the investigator, and how the investigator can best utilize FinCen's information.

A staff member from the Federal Reserve briefed on domestic and international fund transfers issues and laws. In particular, offshore banking as a source of hiding illegal assets was discussed as well as the Bank Secrecy Act and tracing funds through institutions.

The training was concluded with a practical exercise which carried the attendees from the suspect's arrest to identifying properties or assets and probable cause for seizure and asset forfeiture.

One of the highlights of the course was allowing each attendee to tell the class which databases or sources of information would help other attendees in identifying suspects and their assets. This sparked lively discussion, and it was beneficial to learn about some of the information that was available and could be shared by agencies.

Road to Reinvigoration

The first summary highlights a case in which the seizure of $96 million counterfeit audiotape recording equipment impacted on the recording industry. 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 Beliue Gebeyehou, via fax: (202) 616-1344 or DOJ e-mail: CRM20(bgebeyeh).

$96 Million Seized Recording Equipment Benefits the Disabled

By U.S. Attorney's Office, Eastern District of Pennsylvania

On December 4, 1997, Kenneth Hunter, Chief, U.S. Postal Inspection Service (USPIS), and United States Attorney Michael Stiles for the Eastern District of Pennsylvania made a presentation of tape duplicating equipment to the Philadelphia Library for the Blind and Physically Handicapped, a branch of the Library of Congress. The library was presented with more than $100,000 in state-of-the-art tape duplicating equipment seized in a 1994-1995 investigation of a $96 million counterfeit audiocassette tape ring. This is the largest counterfeit audiotape case in the history of the recording industry. The Philadelphia division of USPIS was the lead in the investigation with assistance from the Federal Bureau of Investigation and the Internal Revenue Service.

The equipment presentation was a culmination of the successful prosecution of 17 individuals charged by a federal grand jury in two indictments in October 1995. The convictions of all 17 defendants resulted in substantial sentences. The illegal operations spanned states throughout the East and Midwest, including Pennsylvania, New Jersey, Ohio, Illinois, Tennessee, and Indiana, and produced audiocassette tapes with an estimated gross retail market value to the recording industry of more than $96 million. The equipment was originally seized from the music pirates during the execution of search warrants conducted by law enforcement and was subsequently ordered disposed of by court order, releasing the equipment to the National Library Service for use in the production and distribution of "books on tape" to blind and disabled persons. The equipment was used by defendants during the conspiracies to manufacture millions of counterfeit audiocassette tapes.

"The defendants' criminal activity victimized not only the musicians, artists, and record companies who are the rightful owners of the many copyrighted sound recordings infringed in this case," AUSA Michael Levy said, "but also the thousands of factory workers in this country who legitimately produce audiocassette tapes of popular sound recordings, the many distributors and retailers of legitimate tapes, and the consuming public. And because the illegal proceeds were laundered, the local, state, and federal governments were denied the tax revenue that would have been generated. It is gratifying to know that the duplicating equipment that was used by the defendants to victimize so many people in the past will be used to help many others with physical disabilities in the future."

According to the recording industry, the cases prosecuted by the U.S. Attorney's Office in the Eastern District of Pennsylvania represented the largest federal prosecuting of sound recording piracy ever brought, a crime that the industry estimates results in losses of over $300 million annually in the United States alone, and losses of over $1 billion annually worldwide.

The Recording Industry Association of America, a private nonprofit corporation whose member companies produce, manufacture, and distribute approximately 95 percent of all legitimate recorded music in the United States, and the National Library Service have been working together since 1995 on a

Equitable Sharing

Polar Cap V Assets Approved for Sharing

By Sanna Storm, Attorney, DynCorp Government Services, and Michael Burke, Trial Attorney, AFMLS, Criminal Division

(S.D. Fla., D.R.I., S.D.N.Y.)—In June 1992, Polar Cap V, the last stage of a narcotics investigation known as Operation Polar Cap, culminated with seizures in Florida, Rhode Island, and the Southern District of New York. The Polar Cap investigation began in 1988 and targeted multinational narcotics and money laundering enterprises. Polar Cap V was conducted by four federal agencies—the Drug Enforcement Administration, Federal Bureau of Investigation, Internal Revenue Service, and the U.S. Customs Service—and they received assistance from eleven state and local agencies—the Atlanta Police Department, Georgia Bureau of Investigation, Clayton County (Georgia) Narcotics Unit, New York City Police Department, New York State Police Department, Nassau County (New York) Police Department, Cranston (Rhode Island) Police Department, Rhode Island State Police, and the Warwick (Rhode Island) Police Department. The nationwide investigation has resulted in the forfeiture of assets with an estimated cumulative value to date of $8.7 million.

Because the Department of Justice recognized the money launderers' ability to transfer funds quickly from city to city, thus, creating the potential for large seizures to occur in geographical areas where Polar Cap V investigative efforts were minimal, the Asset Forfeiture Office (now the Asset Forfeiture and Money Laundering Section) organized a committee in 1991 to establish a mechanism for equitably handling the processing of sharing requests generated by forfeitures resulting from the investigation. This committee included a representative from each participating federal agency, and, in order to represent the participating state and local agencies, a representative from each U.S. Attorney's Office from districts where such agencies were involved in the Polar Cap V case. The committee drafted a sharing agreement to govern the distribution of forfeited proceeds from the Polar Cap V investigation, which the Department of Justice approved in 1991.

By the end of the investigation in 1992, the state and local participants had contributed 66.69 percent of the total work hours of 75,872, and the federal agencies contributed the remainder. On November 14, 1998, the Department of Justice approved the sharing of all Polar Cap V assets in accordance with the sharing agreement. To date, $1.7 million has been liquidated and deposited into the Assets Forfeiture Fund and is available for equitable sharing. Additional assets seized by the U.S. Customs Service currently are being liquidated and placed in the Treasury Forfeiture Fund.

Trafficking and Laundering Activities of the Gaitan-Ortiz Organization

By Maggie Ascher, Attorney, Dyncorp Government Services, and Michael Burke, Trial Attorney, AFMLS, Criminal Division

Guillermo Gaitan Ortiz, a Colombian national, was one of several leaders of a family-based narcotics trafficking operation in Florida and New York that laundered its profits through, among other avenues, precious metals companies in Rhode Island and bank accounts in Florida and Switzerland. Beginning in 1987, IRS-CID and FBI agents began investigating accounts at banks in southern Florida that they suspected were conduits for narcotics proceeds. The investigation revealed that a money laundering organization controlled

Victim Remission and the Petition Process

***Remission**, from page 7*

personal accounts of his co-conspirators. The clerk's accomplices would receive bulk mail refunds and transfer the funds to the clerk. The clerk used those funds and thousands of dollars worth of postage stamps and parcels stolen from the USPS to purchase at least four vehicles, various personal property, and renovations to his home. He was indicted for embezzlement, pleaded guilty, and agreed to the forfeiture of the fraudulently obtained property. AFMLS granted remission because USPS established it did not contribute to, benefit from, or act in a willfully blind manner toward the clerk's scheme.

Victim Remission Provides Welcome Return on Unfortunate Investments

(C.D. Ill.)—A father and son set up a phony investment company and fraudulently induced investors to purchase Certificates of Deposit, then unlawfully converted the investors' funds to their own private use. A criminal investigation established that the defendants purchased real estate with proceeds of their scheme. The United States Attorney indicted the father and son, charging violations of the federal money laundering statutes and one count of forfeiture. Multiple petitioners sought return of $295,586 in funds that they transferred to the defendants during the scheme. AFMLS granted 14 petitioners their *pro rata* shares of the forfeited property.

Pyramid Scheme Collapses

(E.D. Pa.)—Two defendants operated a pyramid scheme in which they solicited approximately 26,000 subscriptions to a quarterly financial newsletter that they fraudulently represented as being prepared by 26 Washington, D.C., attorneys. Each subscription cost $125, and defendants promised subscribers an ultimate return of up to $427,000 on their investment. A criminal investigation resulted in the seizure and forfeiture of $1,636,129.97 in U.S. currency and the conviction of the defendants. AFMLS received petitions for remission from 11,516 individual subscribers and, in accordance with the U.S. Attorney's recommendation, granted remission to each victim in the amount of their actual losses.

Union Pension Fund Compensated for Loss

(S.D.N.Y.)—Members of the Genovese organized crime family fraudulently induced the Mason Tenders District Council Pension Fund to purchase real property at inflated prices and borrowed from the fund, based on inadequate collateral and fraudulent property appraisals. The pension fund was designed to benefit union laborers who performed a variety of construction jobs. The defendants converted pension fund assets to their own personal use, and the pension fund lost approximately $40 million. The Government seized real property worth $231,667.31, and the defendants pled guilty to one RICO violation and a related count of forfeiture. The pension fund filed a petition for remission or mitigation of forfeiture, in spite of unlawful conduct by former pension fund officials. AFMLS concluded that the beneficiaries of the pension fund were innocent victims and granted full remission to the pension fund.

Worker's Union Compensated for Loss

(D.D.C.)—The comptroller of the United Food Worker's Union (UFWU) embezzled over $1.7 million by drafting checks drawn on UFWU's general account made payable to contractors who were co-conspirators. The contractors, in turn, transferred a portion of the funds to the comptroller and another co-conspirator. The Federal Bureau of Investigation (FBI) seized the co-conspirator's bank account, real property purchased by the comptroller and her co-conspirator, and a cashier's check made payable to the comptroller. AFMLS granted remission of the real property and cashier's check to UFWU because it qualified as an innocent owner, and AFMLS remitted $14,399.40 from the forfeited bank account to UFWU because it was the victim of the offense, which led to the forfeiture of the account.

Bankruptcy Estate Granted Remission

(D. Or.)—A businessman defaulted on over $5 million in loans and attempted to conceal his assets from the collection efforts of the lenders. The lenders commenced involuntary bankruptcy proceedings against him, and the court appointed a trustee and ordered relief under Chapter 11 of the United States Code. Around the same time, the FBI was investigating him for submitting false tax returns

Update on State and Local Financial Investigations Curriculum

By Pat Fouse, Dyncorp Government Services

The Financial Investigations Curriculum Working Group met on February 3, 1998, to continue development of new curricula and topics. Deputy District Attorney Dee Edgeworth for San Bernardino County, Investigator Stephanie Flanders of the Pennsylvania Attorney General's Office, and Special Agent Lenora Sowers of the Drug Enforcement Administration met with Alice Dery, Araceli Carrigan, and Susan Smith of the Asset Forfeiture and Money Laundering Section to share ideas and pool resources.

To make the curricula pertinent to most audiences, it was decided to develop three programs, each with its own focus. The existing Financial Investigations Module is appropriate for general audiences. A Supervisors Curriculum for a two-day program is being devised in order to meet the needs of law enforcement management personnel responsible for long-term planning and department budgets. Investigators and prosecutors—the "diggers" in complex financial investigations cases—will have a more detailed curriculum available in a four-day seminar, where practical application of investigative techniques to real-life situations will be emphasized.

For each program, working group members are collaborating on audiovisuals to illustrate the importance of financial investigations. As the Attorney General has emphasized, the elimination of the infrastructure of criminal enterprise is a long-term goal. New training video segments for the Financial Investigations Curricula will be based on case scenarios, both successful and unsuccessful, in order to demonstrate the effectiveness of long-term investigations, the results of sound investigative techniques, and the importance of interagency cooperation. These video excerpts will also illustrate the beneficial effects to communities of the eradication of criminal enterprise.

The elimination of the infrastructure of criminal enterprise is a long-term goal.

For each new curriculum, the Financial Investigations Working Group will develop materials for seminar participants. These handouts and practical tools, assembled in an "Idea and Information Kit," will make implementation of course concepts more practicable as participants return to their own agencies.

The Financial Investigations Working Group plans to have prototype curriculum modules ready for pilot programs in the fall of 1998.

Questions regarding the Model Asset Forfeiture Curriculum of the developing Financial Investigations Curriculum should be addressed to Araceli Carrigan or Alice Dery at (202) 514-1263.

State and Local Training Curriculum

Do you have a copy of the **State and Local Law Enforcement Asset Forfeiture Training Curriculum** (which includes Instructors, Participants, and Training Coordinators Guides)?

If you answered YES, **YOU ARE WANTED!!**

Please call Pat Fouse, at (202) 514-0136, to obtain copies of the revisions to the curriculum.

Federal Forfeiture Training is Reinvigoration Cornerstone

By Nancy Rider, Deputy Chief, AFMLS, Criminal Division

During FY 1997, the Asset Forfeiture and Money Laundering Section (AFMLS) spearheaded an ambitious forfeiture training program in response to the Attorney General's call for asset forfeiture reinvigoration. Working with other Justice components, AFMLS concentrated on training criminal prosecutors in asset forfeiture and investigative agents in financial investigations.

Training for Federal Criminal Prosecutors and Attorneys

Nearly 290 criminal prosecutors attended three Asset Forfeiture Criminal Prosecutors Seminars and one Fundamentals of Asset Forfeiture Seminar, sponsored by AFMLS and the Office of Legal Education (OLE). The Executive Office for United States Attorneys strongly promoted the training of criminal prosecutors, and the training was consistently well received. Criminal prosecutors often relayed to us that the training was excellent and had provided them with tools they planned for use in their day-to-day practice.

AFMLS and OLE also sponsored the Basic and Advanced Asset Forfeiture and Money Laundering Seminars, where 130 criminal prosecutors were trained.

With the support of the Attorney General, AFMLS has undertaken to train every trial attorney in the Criminal Division on how to forfeit assets through a half-day "nuts and bolts" course. Last year, 170 trial attorneys attended the two sessions offered. Three more sessions are planned this fiscal year.

In addition, AFMLS and OLE conducted two refresher seminars for persons versed in asset forfeiture law. Seventy-five Assistant United States Attorneys (AUSAs) attended the Advanced Asset Forfeiture Seminar and 78 support staff attended the Dual-level Asset Forfeiture for Support Staff Seminar. AFMLS also hosted asset forfeiture component seminars in the First and Eleventh Circuits, where over 240 AUSAs, agents, marshals, and other asset forfeiture personnel discussed district-wide issues and developed district forfeiture plans of action.

Criminal prosecutors often relayed to us that the training. . .had provided them with tools they planned for use in their day-to-day practice.

Finally, in September 1997, AFMLS conducted the Forfeiting the Proceeds of Crime Seminar in Vienna, Austria. Department attorneys and AUSAs led discussions with approximately 65 prosecutors and law enforcement officials from Austria, Germany, and Liechtenstein. The discussion was frank, yet lively and cordial, and dealt with Russian organized crime, bank secrecy laws, money laundering, and international asset sharing.

Training for Federal Agents

During the last year, AFMLS held three Basic Asset Forfeiture Financial Investigations Seminars and trained 225 federal agents in how to conduct a financial investigation in a forfeiture context. AFMLS also began its work to incorporate forfeiture into the Southwest Border Initiative by designing financial investigations courses to meet the needs of various border sectors. In June 1997, AFMLS trained 65 federal agents in Del Rio, Texas, and in September 1997, it trained 85 federal agents in San Diego, California. Another seminar in Las Cruces, New Mexico, is planned for later this year.

Each of the Southwest Border Seminars is tailored to the needs of the sector where the training is held. John Houston, Forfeiture Chief, in San Diego, reported that no seminar has generated so much ongoing discussion and enthusiasm as a seminar that met the needs of the agents in pursuing their cases as the Asset Forfeiture Southwest Border Seminar.

Certificate of Reasonable Cause Not Limited to Civil Forfeiture

Certificate, from page 1

to whether a Certificate of Reasonable Cause can be issued in a criminal case involving forfeiture. One case, however, *Hammel v. Little*, 87 F.2d 907, 912 (D.C. Cir. 1936) suggests that where there is no opportunity for the certificate to issue, as when no civil forfeiture action has ever been filed, then the Certificate of Reasonable Cause does not apply. In *Hammel*, a prohibition agent, Little, obtained a search warrant and searched Hammel's property for untaxed liquor, resulting in the seizure of some liquor. Hammel was acquitted of the charges brought against him relating to the liquor and the liquor was returned to him. No libel was filed. 87 F.2d at 908. Hammel sued Little on the grounds that, in the absence of a Certificate of Reasonable Cause, Little was automatically liable for costs and/or damages for the seizure. *Id.* The court disagreed and held that neither the acquittal nor the absence of a Certificate of Reasonable Cause is conclusive that Little was liable. 87 F.2d at 912. It further held that the certificate did not apply. But, if evidence established probable cause for the seizure, then Hammel's action would not lie. *Id.* Because criminal forfeiture laws, in comparison to section 2465 and civil forfeiture laws, are still in their nascent stages, perhaps prosecutors have not had time to notice the provision. The following discussion is intended to make the Certificate of Reasonable Cause a familiar part of forfeiture law.

The purpose of a Certificate of Reasonable Cause is to protect the person at whose instance seizure is made, should an action of trespass be brought against him by the claimant for wrongful seizure of the property. *United States v. Frerichs*, 106 U.S. 160, 161-162 (1882). The issuance of a Certificate of Reasonable Cause is a bar to any future litigation against the Government for costs. *Id.* A Certificate of Reasonable Cause is a complete defense in a tort action for damages for wrongful seizure of assets. *Id.*

Reasonable cause for the issuance of the Certificate of Reasonable Cause is essentially the same as probable cause to believe that the property is involved in activity to which the forfeiture statute relates. *United States v. Eleven Vehicles*, 937 F. Supp. 1143, 1147 (E.D. Pa. 1996); *United States v. One DLO Model A/C, 30.06 Machine Gun*, 904 F. Supp. 622, 639 (N.D. Ohio 1995).

Although barred from use in the Government's case-in-chief in both criminal and civil forfeiture cases, evidence obtained in violation of the Fourth Amendment has been ruled admissible for purposes of issuing a Certificate of Reasonable Cause. *United States v. One (1) 1984 Mercedes Benz*, 673 F. Supp. 387, 395 (D. Haw. 1987). In *One 1984 Mercedes Benz*, the United States Attorney declined to prosecute any criminal charges in the case, but initiated civil forfeiture proceedings against the vehicle. 673 F. Supp. at 390. Because of the delay between the date of seizure and the commencement of the forfeiture proceedings, however, the court dismissed the case. *Id.* The Government moved the court for a Certificate of Reasonable Cause. The claimant argued that the evidence of probable cause should be excluded from the court's consideration because it was obtained in violation of the Fourth Amendment. The court reasoned that the claimant did not stand to lose his property, which must be returned to him, but only the chance to recover his costs or

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