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Asset Forfeiture and Money Laundering Section

Asset Forfeiture News

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New Justice Directive on Permissible Use

By Michael Burke, Trial Attorney, AFMLS, Criminal Division

On August 13, 1997, the Attorney General approved a change to the former "pass-through policy," under which state and local law enforcement agencies that receive equitably shared funds were permitted, at their discretion, to transfer up to 15 percent of the shared funds they receive to private, nonprofit organizations and non-law enforcement governmental agencies for specified uses. *See A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies* [hereinafter *A Guide to Equitable Sharing*] at part X.A.3.a. The new policy, known as the "permissible use policy," was promulgated with the following revision to part X.A.3.a of *A Guide to Equitable Sharing*:

> A [s]tate or local law enforcement agency or prosecutor's office may use not more than 15 percent of its shared monies for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs or other nonprofit community-based programs or activities which are formally approved by the chief law enforcement officer (*i.e.*, chief, sheriff, prosecutor) as being supportive of and consistent with a law enforcement effort, policy and/or initiative. This provision requires that all expenditures be made by the law enforcement agency and does not allow for the transfer of cash.

With the approval of this permissible use policy, the Attorney General requested that guidelines be promulgated for federal, state, and local law enforcement officials to follow in qualifying, screening, and making disbursements on behalf of agencies and organizations under this new policy. As a result, the Asset Forfeiture and Money Laundering Section (AFMLS) drafted guidelines, which it presented to, and revised based upon the comments of, the Attorney General's Advisory Committee of United States Attorneys, the State and Local Law Enforcement Asset Forfeiture Working Group, and the Federal Asset Forfeiture Working Group.

See ***Directive****, page 2*

Inside this issue . . .

Forensic Accounting in the Courtroom 4
Treasury Trends 8
Road to Reinvigoration 9
Forfeiture Reform Bill 10
New Federal Rule 13
Food Stamp Trafficking 14
Money Laundering 14
Legislation 18
Back to the Basics 20
People and Places 24
Upcoming Training 24

New Justice Directive on Permissible Use

Directive, from page 1

AFMLS finalized the guidelines on February 26, 1998.

The "Guidelines for Administering the Permissible Use Policy" [hereinafter "Guidelines"], together with the permissible use policy, are adopted as Department policy and reprinted below. Members of the Department of Justice components should note the following aspects of the Guidelines in particular:

- The Guidelines, like the new permissible use policy, eliminate the prior requirement that assistance to private groups must be accomplished through an intermediary, non-law enforcement agency.
- Before a state or local law enforcement agency may expend equitably shared funds for permissible use purposes, the chief law enforcement officer of the agency must certify that the organization satisfies eligibility requirements set out in the Guidelines. The Guidelines require the federal investigative agencies and the United States Attorneys' Offices to assist the chief law enforcement officer in making this determination by conducting further checks of whether the applicant or its principals are the subject of federal, state, or local criminal investigation, or, in the case of United States Attorneys, are subject to grand jury proceedings or other prosecutor scrutiny. The federal officers are not required to disclose this information if non-disclosure is required by federal law or is necessary to safeguard a federal investigation in progress.
- While the permissible use policy suspends the prior practice of allowing law enforcement agencies to make cash transfers of equitably shared funds to government agencies or private groups, it does permit the agency either (1) to pay for eligible expenses itself on behalf of eligible recipients or (2) to reimburse a recipient by check for expenditures the recipient itself has made on itemized expenses, supported by receipts, that the chief law enforcement officer has previously approved. This new practice is intended to provide greater accountability and control over shared funds while providing law enforcement agencies with maximum flexibility to support activities that benefit the community.

Questions concerning the permissible use policy or the implementing Guidelines should be addressed to AFMLS at (202) 514-1263.

Guidelines for Administering the Permissible Use Policy

The permissible use policy states that a state or local law enforcement agency may use not more than 15 percent of its shared monies for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs or other nonprofit community-based programs or activities which are formally approved by the chief law enforcement officer (*i.e.*, chief, sheriff, prosecutor) as being supportive of and consistent with a law enforcement effort, policy, and/or initiative.

Unlike the "pass-through" policy it replaces, the permissible use policy requires that the law enforcement agency *must have direct involvement* in all expenditures made for eligible programs and activities and that it *may no longer transfer cash for prospective expenditures* by eligible private nonprofit organizations or non-law enforcement agencies. Accordingly, the permissible use policy permits eligible recipient organizations and agencies to benefit from shared funds in either of two ways: (1) the law enforcement agency may itself pay for specific expenses on behalf of the recipient (*e.g.*, it may purchase directly equipment or supplies for delivery to the recipient); or (2) it may reimburse a recipient by check for expenditures the recipient itself has made on itemized expenses, supported by receipts, that the chief law enforcement officer has previously approved as permissible expenses. Whichever procedure the law enforcement agency uses, it must maintain records of permissible use expenditures in the same manner and for the same time period as

required for procurement expenditures it makes on its own behalf.

To ensure that recipient law enforcement agencies administer this policy in accordance with the federal law and Department of Justice policy, an agency's chief law enforcement officer must ensure his or her agency's adherence to the following requirements governing eligibility, background, and compliance of applicants for permissible use expenditures. The federal investigating agencies and the United States Attorneys' Offices also are tasked with helping to ensure applicants' suitability to receive permissible use expenditures. Once completed, the chief law enforcement officer's certification that an applicant is eligible to receive permissible use benefits will remain effective for one year.

I. Eligibility

For an applicant to benefit from permissible use expenditures, the chief law enforcement officer shall determine that the applicant fulfills the following eligibility requirements:

A. Type of Entity

The applicant must be either:

1. a state, county, or local governmental department or agency; or

2. a private, nonprofit organization pursuant to 26 U.S.C. § 501(c)(3) or (4).

B. Activity of Entity

The applicant also must be primarily engaged in providing a program that is both:

1. community-based; and

2. supportive of and consistent with a law enforcement effort, policy, or initiative.

Such programs include, but are not limited to, the following:

- drug abuse treatment;
- drug and crime prevention education;
- providing housing; or
- providing job skills.

To assist chief law enforcement officers in determining whether a potential recipient of benefits under the permissible use policy is eligible, the Department of Justice provides the following nonexclusive list of examples of activities that it has approved in the past as qualifying to benefit from equitable sharing:

- establish a detoxification center;
- fund a Police Athletic League's "Summer Playstreets" program for crime and drug prevention;
- fund a city parks department's anti-gang initiative;
- fund "Law Enforcement Explorer Posts," a Boy Scouts program promoting law enforcement training and community service;
- fund a "Crime Stoppers" program providing reward money and assistance to neighborhood watch groups including training on observance and effective witness skills;
- purchase a computer for teaching job skills and drug and

See ***Directive****, page 7*

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.

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Forensic Accounting in the Courtroom: Using Alternative Methods of Proof

By L. Elliott Leary, Supervisory Special Agent, FBI Academy, Investigative Training Unit, Quantico, Virginia

What do you do when you are faced with trying to prosecute the money handler in a drug organization who has never been charged with a crime and your only witness against him is the drug dealer, an admitted felon? How about when the criminal's relatives claim title to assets purchased with the criminal's money? What if a business is laundering illicit funds claiming it to be legitimate income? In these circumstances it may be necessary to develop corroborating evidence that would support the criminal charge or a forfeiture action. An alternate method of proof may be just what the prosecutor ordered.

The term "alternative methods of proof" refers to the process of establishing guilt with evidence that is generated from an analysis of financial information. In many cases that go to trial, it can be very beneficial to the Government's case to prove that the defendant financially benefitted from the crime committed. The most effective way to accomplish this is to trace directly the criminal proceeds to the individuals involved. However, in many cases, it is impossible to trace the monies accumulated or spent by the defendant directly back to the crime. Most of the time, some other way must be found to show the impact the financially motivated crime had on the defendant's wealth.

There are currently several alternative methods which are being used in both criminal prosecutions and civil forfeiture matters. These methods all use relatively simple computations to prove the same conclusion: The subject has more money available than he can account for from legitimate sources. Though circumstantial in nature, this evidence can be successfully used to corroborate direct evidence that the crime was committed and tie the proceeds to the defendant.

The Net Worth Method

The Net Worth Method has its origin in IRS tax applications and was the first method adapted for use in criminal prosecutions. The term net worth refers to the amount by which assets (what you own or are owed) exceeds liabilities (what you owe). The Net Worth Method compares the increase in the subject's net worth from one period to the next, then adds in cash expenditures to calculate the subject's total income from all sources. When applied to either a criminal case or civil forfeiture matter, the calculation with sample figures appears below.

The time frame covered by the above schedule can be adjusted to accommodate the information available. This schedule only shows two time periods, but can be expanded to show any number of time periods. Typically, each period is a calendar year, since the source of the legitimate income figure is usually based on tax records. However, in some instances, the best source of information will dictate a time period other than a tax year, such as when financial statements are

	Period 1	Period 2
Total Expenditures	$100,000	$500,000
Less: Legitimate Income	($ 50,000)	($150,000)
Equals: Net Worth	$ 50,000	$350,000
Net Worth Period 2		$350,000
Less: Net Worth Period 1		($50,000)
Equals: Increase in Net Worth		$300,000
Add: Personal Living Expenses		$100,000
Equals: Total Expenditures		$400,000
Less: Legitimate Income		($35,000)
Equals: Expenditures in Excess of Legitimate Income or Income from Unknown Sources		$365,000

available which span other time periods. Many times, these schedules will actually be prepared by the defendant himself for a variety of purposes, such as to secure loans. In these situations, the schedules would be available from lenders or other sources.

Assets are always shown at cost since we are interested in what the defendant spent to purchase the asset, not its current market value. Therefore, assets are not adjusted for inflation or deflation. The increase in net worth added to the living expenses is the total amount of money spent by the defendant from all sources, legitimate and illegitimate, during the time period. This is then compared to the amount available only from legitimate sources. Any amount spent which is in excess of the legitimate income is from unknown or presumably illegitimate sources.

The Source and Application of Funds

The Source and Application of Funds Method is a simpler method and is easier for juries to understand. This method has its foundation in traditional accounting, where a schedule is prepared which shows the source of all income received by an entity and how it was spent. When used as an alternate method of proof, this calculation is changed to include only legitimate sources of income. Then, when the expenditures are compared to the legitimate sources, the amount of expenditures in excess of legitimate income will be exposed. The calculation with sample figures is as follows:

Period
Total Expenditures	$400,000
Less: Legitimate Income	($35,000)
Equals: Expenditures in Excess of Legitimate Income or Income from Unknown Sources	$365,000

This calculation is less complicated than the Net Worth Method. It can be accomplished with much less information and may pertain to only one time period. The simplicity of this method explains the growing use of this method over the Net Worth Method.

The Bank Deposits Method

This method is a variation of the Source and Application of Funds Method in which deposits to financial accounts and cash expenditures are compared to legitimate income. The calculation is as follows:

Deposits	$300,000
Plus: Cash Expenditures	$100,000
Less: Legitimate Income	($35,000)
Equals: Expenditures in Excess of Legitimate Income or Income from Unknown Sources	$365,000

The Bank Deposits Method is often the simplest method because much of the information, which must be handled as individual items in the other methods, can be combined as one item under this method. This method works best when there is heavy use of bank accounts.

Similar to the Source and Application of Funds Method, only information from one period is necessary, but the schedule can include any number of periods. Care must be taken to exclude duplicate items, such as a withdrawal from one account which is redeposited into another account or spent as cash, since this unfairly inflates the figures.

Criminal Prosecution v. Civil Forfeiture

As previously mentioned, these alternative methods of proof are equally applicable to support criminal prosecutions or forfeiture actions. In fact, these methods are particularly valuable in civil forfeiture where there is a lesser burden of proof. Also, during the civil discovery process, the defendant or witness can be asked about financial information while being deposed and compelled to produce documents. This is especially helpful in collecting information and defeating possible defenses which may be raised.

Obtaining the Financial Data

The most difficult part of performing these calculations is obtaining the necessary information. Unfortunately, during the course of the investigation, using these methods is rarely anticipated. Much of the information needed is readily available during the investigation or can be collected using covert means. But the need for an alternative method of proof usually is not recognized until after the indictment or seizure. Fortunately, many investigators and prosecutors are recognizing the value of

*See **Forensic**, page 6*

Forensic Accounting in the Courtroom: Using Alternative Methods of Proof

Forensic, from page 5

financial data and including its collection as standard operating procedure.

One concern regarding the collection of this information is that financial institution and IRS information are often needed, both of which require formal legal processes. Many times, financial information prepared by the defendant may be available. Caution should be used in relying on these figures, and independent verifications should be performed when possible. Often, individuals involved in complicated or even fraudulent financial transactions are entangled in civil suits or bankruptcies. The public records created by these actions can provide a wealth of valuable information.

Significant Factors

While performing the analysis of the financial data, items indicative of money laundering should be documented, including: the reliance upon cash transactions, the structuring of cash deposits to avoid reporting requirements, and other attempts to hide financial transactions. The ability to demonstrate these activities at the trial adds to the incriminating nature of the alternative method calculation.

Defenses

During the analysis, defenses that can be raised should be anticipated and, if possible, defeated. A typical defense might be the "cash hoard" theory, which claims that a large amount of cash has been saved from a period of time predating the time period covered by the alternative method calculation. Other typical defenses include cash gifts, inheritances, gambling winnings, and loans. Virtually all transactions, including these types of claims, will be documented in some manner, and a lack of documentation indicates that these defenses are false.

The term "alternative methods of proof" refers to the process of establishing guilt with evidence that is generated from an analysis of financial information.

Presenting the Information

These calculations can often help secure a guilty plea and avoid a trial if they are presented during pretrial discovery. They reveal that the Government has conducted a thorough investigation and added proof in addition to the direct evidence which must be overcome by the defense at trial.

At trial, an expert witness usually presents this information. It is often advantageous for this witness' role to be limited to the financial analysis. This gives the expert the appearance of objectivity when opinions are presented and restricts the areas that can be covered by the defense during cross-examination.

The use of charts and graphs will help the jury understand the purpose of what can become complicated and confusing testimony. Keeping the presentation as simple as possible will help the jury focus on the bottom line.

Conclusion

The above alternative methods of proof are valuable tools which can have a significant impact on both criminal prosecutions and asset seizures. Due to the growing use of these methods by prosecutors, it is important that today's financial investigators be familiar with the theories behind these methods, the information needed, and how the calculations are performed. Please note that the above is only a summary review of a topic that can be quite involved. For more information, contact SSA Elliott Leary, FBI Academy, at (703) 640-1116.

New Justice Directive on Permissible Use

Directive, from page 3

alcohol awareness to probationers;

- fund programs for incarcerated youth, parents of murdered children, and domestic violence victims; and
- fund a methadone clinic.

Considering each of these approved activities, the Department of Justice based its approval on the activity's nexus to a law enforcement interest, whether:

- direct (*e.g.*, paying rewards for key information);
- preventative (*e.g.*, funding a methadone clinic, drug awareness program, anti-gang initiative, and probationer training); or
- developmental, as a segue for community policing (*e.g.*, incorporating law enforcement awareness in a Boy Scout program).

II. Background and Compliance with Law and Policy

A. Certification by Applicant

An applicant for benefits under the permissible use policy must certify in writing as to the following aspects of its background and compliance with federal law and Department of Justice guidelines:

1. The applicant fulfills the basic eligibility requirements set forth in parts I.A and I.B above.
2. The applicant agrees:

   a. to account separately for all permissible use benefits received; and

   b. to subject such accounting to the standard accounting requirements and practices employed under state or local law for recipients of federal, state, or local funds.
3. The applicant is in compliance with the Federal Civil Rights laws.
4. The applicant is in compliance with federal laws that apply to the applicant.
5. No officer, director, trustee, or fiduciary of the applicant has been:

   a. convicted of a felony offense under federal or state law; or

   b. convicted of any drug offense.
6. No shared benefits will be used for political or personal purposes.
7. No shared benefits will be used for any purpose that would constitute an improper or illegal use under the laws, rules, regulations, or orders of the state or local jurisdiction in which the applicant is located or operates.

The applicant's certification must be signed by the head of the applicant entity and must be submitted to the chief law enforcement officer who will approve expenditures on the applicant's behalf. The chief law enforcement officer shall maintain this certification as a record as long as the applicant may receive permissible use benefits, and thereafter for as long as the chief law enforcement officer is required to maintain records under applicable state or local laws or regulations.

Any applicant that cannot certify its compliance with number 5 above (criminal record of principals) should provide the chief law enforcement officer with a detailed explanation of the aspects in which, and the reasons why, certification is not possible. A chief law enforcement officer who wishes to provide permissible use benefits to an applicant that cannot certify as to compliance with number 5 above shall provide an explanation for his or her position, along with a copy of the applicant's explanation, as an attachment to the law enforcement agency's Form DAG-71 (Application for Transfer of Federally Forfeited Property) to AFMLS, Criminal Division, Department of Justice. AFMLS will make the final decision on whether the provision of permissible use benefits is appropriate.

An applicant for benefits under the permissible use policy that cannot certify the other aspects of its background and compliance with federal law and Department of Justice guidelines (numbers 1-4, 6 and 7 above) will be denied permissible use benefits.

See Directive, page 8

New Justice Directive on Permissible Use

Directive, from page 7

B. Statement by Chief Law Enforcement Officer

The chief law enforcement officer shall explain in writing why the applicant's receipt of permissible use benefits for the particular activity or use is supportive of and consistent with a law enforcement effort, policy, and/or initiative within the permissible use policy. The chief law enforcement officer also shall maintain this written statement as a record as specified in part II.A above.

C. Inquiry by the Chief Law Enforcement Officer

A chief law enforcement officer also is responsible to determine whether an applicant for benefits under the permissible use policy or its principals (*i.e.*, officer, director, trustee, or fiduciary) currently is the subject of federal, state, or local criminal investigation. Accordingly, a chief law enforcement officer shall:

1. check all means available to him or her (*e.g.*, National Crime Information Computer) to determine the applicant's status and provide its findings to the federal investigative agency on the Form DAG-71; and
2. fully identify the applicant and its principals on the Form DAG-71.

D. Inquiry by the Federal Investigating Agency

The federal investigative agency that receives the Form DAG-71 shall use the information identifying the applicant and its principals to conduct further checks of whether the applicant or its principals currently are the subject of a federal, state, or local criminal investigation. The federal investigative agency also shall provide this identifying information to the United States Attorney in the district where the applicant is located, and where it is operating, and to the chief law enforcement officer involved (unless non-disclosure is required to safeguard a federal investigation in progress).

E. Inquiry by the United States Attorney

The United States Attorney in the district where an applicant or one of its principals is located, or where it or one of its principals is operating, shall determine whether the applicant or principal currently is the subject of grand jury proceedings or other prosecutorial scrutiny in that district, and the United States Attorney shall notify the federal investigative agency of the findings, and also shall notify the chief law enforcement officer involved (unless non-disclosure is required by federal law or to safeguard a federal investigation in progress).

Treasury Trends

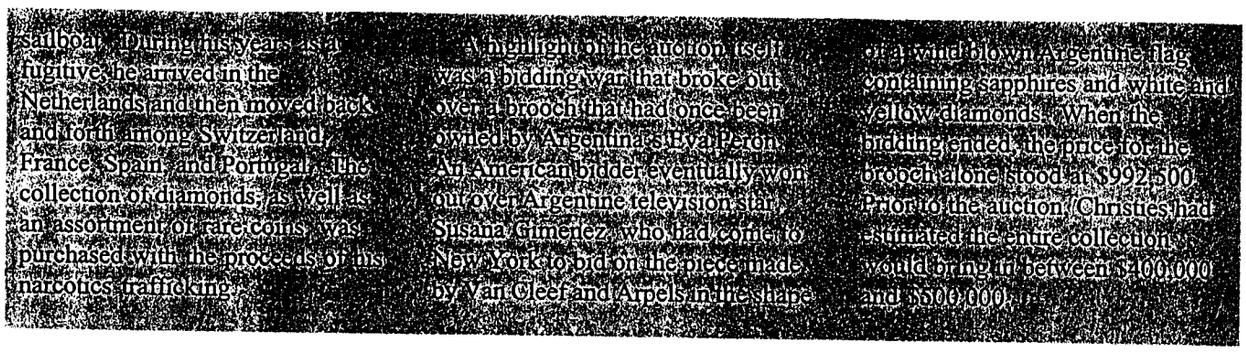
By Charles Ott, Special Projects Advisor, Executive Office for Asset Forfeiture, Department of the Treasury

Forfeited Diamonds Auctioned

Christies in New York City was the site of an auction of 38 colored diamonds that had been forfeited as a result of a Customs drug trafficking investigation that had begun back in the 1980s. The collection of gems (the largest of which was a marquise cut blue stone weighing over three carats) was auctioned on April 6 and 7.

The diamonds had belonged to a Floridian by the name of Stephen Jenks who, beginning in the mid-1970s, would head sailboat crews off the coast of Florida where they would rendezvous with larger vessels and off-load tons of marijuana for final delivery to the United States. As federal agents began to close in on Jenks in 1982, he suddenly disappeared along with the wife of one of his crewmembers. Rumor had it that the two had fled to Europe but for twelve years there was no sign of them. When an associate of Jenks, who had been released from prison, tried to telephone him in 1994 a trace of that call renewed the search. By June of that year, Jenks was apprehended in Fort Myers, Florida.

Jenks had, in fact, fled to Europe on an 80-foot luxury motor



sailboat. During his years as a fugitive, he arrived in the Netherlands and then moved back and forth among Switzerland, France, Spain and Portugal. The collection of diamonds, as well as an assortment of rare coins, was purchased with the proceeds of his narcotics trafficking.

A highlight of the auction itself was a bidding war that broke out over a brooch that had once been owned by Argentina's Evan Peron. An American bidder eventually won out over Argentine television star Susana Gimenez, who had come to New York to bid on the piece made by Van Cleef and Arpels in the shape of a wind-blown Argentine flag containing sapphires and white and yellow diamonds. When the bidding ended, the price for the brooch alone stood at $992,500. Prior to the auction, Christies had estimated the entire collection would bring in between $400,000 and $500,000.

Road to Reinvigoration

Basic Asset Forfeiture Seminar in D.V.I.

By James S. Carroll III, Assistant United States Attorney, United States Attorney's Office, District of the Virgin Islands

The United States Attorney's Office for the District of the Virgin Islands sponsored a three-day Basic Asset Forfeiture Seminar, April 1-3, 1998, at Marriot's Frenchman's Reef Beach Resorts, St. Thomas, U.S. Virgin Islands. John Rooney, Operations Manager, Food and Drug Administration, Investigative Operations Division, Asset Forfeiture Program, organized and led the seminar, which was attended by 126 law enforcement personnel from St. Thomas, St. Croix, St. John, and Puerto Rico.

The Caribbean has witnessed a significant increase in illegal drug activities, resulting in the escalation of drug-related and violent crimes in the district. Because the Caribbean islands are being used as a transshipment point for illegal drugs, the U.S. Virgin Islands and Puerto Rico have been designated a High Intensity Drug Trafficking Area. Thus, there have been changes and increases with respect to manpower in law enforcement agencies.

The main objective for providing the seminar was to educate local and federal law enforcement agents and attorneys to consider asset forfeiture potential when cases are being investigated. Asset forfeiture is an important law enforcement tool that must play a vital role in addressing the increased drug and crime problems.

Attendees heard talks in a variety of areas important to asset forfeiture, including: presentations on civil judicial forfeiture, criminal forfeiture, and money laundering statutes by Harry Harbin, Assistant Chief, Asset Forfeiture and Money Laundering Section (AFMLS), Department of Justice. Paul King, President, West River Group, in Shady Side, Maryland, gave presentations on probable cause and repatriation of foreign assets. Sue Czerwinski, Acting Director, Immigration and Naturalization Service, Office of Enforcement, Asset Forfeiture Program, spoke on equitable sharing and petitions for remission or mitigation.

Attendees also heard talks on the Controlled Substances Act and the Food, Drug and Cosmetic Act, by Dwight Rawls, Operations Manager, Food and Drug Administration, Investigative Operations Division, and law enforcement ethics in forfeiture by Alice Dery, Assistant Chief, AFMLS, Department of Justice. The seminar concluded with a panel discussion on forfeiture issues and remarks by the Honorable James A. Hurd, United States Attorney, Judicial District of the U.S. Virgin Islands.

Unique Joint State-Federal Forfeiture Conference in New York State

By Richard D. Kaufman, Assistant United States Attorney, United States Attorney's Office, Western District of New York

In a spirit of cooperation, the United States Attorneys' Offices for the Western District and Northern District of New York assisted the New York Prosecutors Training Institute (NYPTI) in

*See **Road**, page 23*

House Divided Over Forfeiture Reform Bill

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

One year ago, at the beginning of the 105th Congress, Representative Henry Hyde (R-Ill.), Chairman of the House Judiciary Committee, introduced a "civil asset forfeiture reform" bill, H.R. 1835, that would substantially curtail the Government's ability to use civil forfeiture as a law enforcement tool. The Department of Justice countered with a forfeiture bill of its own, H.R. 1745, that made more reasonable reforms and also expanded the Government's ability to forfeit the proceeds of most federal crimes and to use criminal forfeiture more effectively.

The result was a compromise bill, H.R. 1965, that the House Judiciary Committee approved in June 1997 by a vote of 26-1. Despite the overwhelming vote, and the support of the Department of Justice and most federal and state law enforcement groups, the bill stalled. Largely, this was due to the opposition of defense attorneys, who felt that the compromise gave away too many of the "reforms" in the original Hyde bill, and the National Rifle Association, which thought that the bill gave too much power to federal law enforcement.

The Department of Justice offered to make changes to the compromise to address some of the defense attorneys' concerns, as well as the concerns of some of the police organizations that did not support the bill, but on March 30, 1998, Chairman Hyde announced that he was abandoning the compromise and would offer his original bill as a substitute for it when H.R. 1965 came to a vote on the House floor. *See Quick Release* [April 1998]: 18-19. The substitute — or "manager's amendment" in congressional jargon — would reinstate most, if not all, of the unreasonable provisions of H.R. 1835, such as the appointment of counsel in all civil forfeiture cases without regard to the standing of the claimant or the merits of the claim. But just as important, it would strip out *all* of the pro-law enforcement provisions that Chairman Hyde had agreed to accept as part of the compromise bill. A fact sheet on the provisions of the managers' amendment appears below.

Fact Sheet On Managers' Amendment to H.R. 1965, the Civil Forfeiture Reform Act of 1998

- The "managers' amendment" to H.R. 1965 (the Civil Forfeiture Reform Act of 1998) is a re-packaged version of the original bill sponsored by Chairman Hyde, H.R. 1835, that law enforcement overwhelmingly opposed.

- Enactment of the "managers' amendment" will cripple the ability of law enforcement to use asset forfeiture as a weapon in the war on drugs.

- The "managers' amendment" is a relief bill for drug dealers and their attorneys.

1. The "managers' amendment" will allow drug dealers to protect drug proceeds from forfeiture by investing it in their residences.

2. The "managers' amendment" will force judges to release seized property to criminals pending trial.

3. The "managers' amendment" will give a *free lawyer* to anyone who filed a claim to seized property, regardless of the merit of the claim.

4. Drug dealers should not be able to use their drug profits to build mansions, while ordinary working Americans suffer under crippling mortgage payments.

5. We should not give seized property back to the defendant pending trial. 80 to 85 percent of all seizures involve an arrest; the arrested drug dealer should not keep the car he used to transport the drugs.

6. The Department of Justice makes 30,000 seizures a year, most from drug dealers and alien smugglers. 85 percent of those seizures are uncontested because the connection between the property and the crimes is obvious. But if everyone in those cases is entitled to a free lawyer, the courts will be overwhelmed with frivolous claims, and the taxpayers will have to pay for it. Only defense lawyers could think this is a good idea.

• The "managers' amendment" is not about forfeiture reform; all of the pending forfeiture bills, including the ones supported by law enforcement -- H.R. 1965 and H.R. 1745 -- contain the same reforms.

1. All of the bills place the burden of proof on the [G]overnment in civil forfeiture cases.

2. All of the bills contain an "innocent owner" defense.

3. All of the bills give the owner 30 days to file a claim to the property.

4. All of the bills make the [G]overnment liable for damage to the property that occurs while it is in government custody.

5. All of the bills award successful claimants pre-judgment interest.

• The "managers' amendment" is not needed to achieve these reforms; it undercuts law enforcement by striking the most important provisions of the other bills.

1. The "managers' amendment" strikes the provision allowing forfeited funds to be used to pay restitution to victims of crime.

2. The "managers' amendment" strikes the provision allowing judges to restrain drug dealers' assets pretrial so that they remain available for forfeiture when the trial is over. A judge in New York who was recently forced to release the assets of organized crime kingpin John Gotti pretrial says that this is something Congress must address.

3. The "managers' amendment" strikes the provision allowing the [G]overnment to seize and forfeit the proceeds of fraud so that the money could be returned to the victims.

4. The "managers' amendment" strikes the provisions allowing the forfeiture of the instrumentalities of terrorism.

5. The "managers' amendment" eliminates all of the provisions relating to international crime, including the ability to forfeit the proceeds of foreign crimes and the instrumentalities of foreign drug crimes, the ability to freeze the assets of persons arrested abroad, and the ability to gain access to foreign bank records.

The reaction of law enforcement to Chairman Hyde's March 30 announcement was predictable. All of the major law enforcement groups in the country, as well as the U.S. Attorneys and the Department of Justice, have denounced the manager's amendment and Chairman Hyde's unilateral decision to abandon the compromise, and have urged Members of the House to oppose the amendment if it comes up to a vote. The leader of the opposition to the amendment is Rep. Gerald Solomon (R-N.Y.), Chairman of the House Rules Committee, which controls the flow of legislation to the House floor. On April 27, 1998, Chairman Solomon sent a "Dear Colleague" letter to all House Members opposing the manager's amendment in strong terms and soliciting support to defeat it. Chairman Solomon's letter is reproduced below. What all of this means for the prospects of getting forfeiture legislation enacted before Congress adjourns for the elections this fall remains to be seen.

See ***Reform****, page 12*

House Divided Over Forfeiture Reform Bill

Reform, from page 11

Congress of the United States
House of Representatives
Washington, DC 20515-5222

JOIN AMERICA'S POLICE AND OPPOSE FORFEITURE REFORM

Dear Colleague:

As you know, Judiciary Committee Chairman Henry Hyde intends to bring civil asset forfeiture reform legislation to the floor this session. Though my good friend is certainly well-intended, his bill poses a real and serious threat to effective law enforcement and specifically, the War on Drugs.

By pushing the manager's ammendment to H.R. 1965, Chairman Hyde has decided to abandon the hard-fought compromise legislation reached with the Department of Justice and America's law enforcment groups. The manager's amendment to H.R. 1965 is virtually identical in substance to H.R. 1835, Congressman Hyde's initial reform bill. This legislation is objectionable on several grounds:

- It elevated the burden of proof on the [G]overnment to the "clear and convincing evidence" standard
- It takes money from the [A]sset[s] [F]orfeiture [F]und to pay for defense counsel
- It allows criminals to protect their ill-gotten property by transfering it to third parties such as spouses, minor children and friends
- It gives seized property back to the defendant, pending trial — allowing it to be depleted or hidden

Because of these provisions, there is not a single law enforcement organization that supports the manager's amendment. In addition, the Clinton Administration is adamantly opposed to Chairman Hyde's bill.

Civil asset forfeiture laws promote the bedrock principle that no person should profit from ciminal activity. Seizing expensive cars and luxurious homes from drug traffickers not only advances the rule of law, but also sends a powerful message that crime will not pay. The forfeiture laws have been an incredible success across the entire country. They have been used for the benefit of victims and communities. We should not turn back now.

Sincerely,

/signed/

GERALD B.H. SOLOMON
Member of Congress

New Federal Rule Governing Criminal Forfeitures Clears Its First Hurdle

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

On April 27-28, 1998, the Advisory Committee on the Federal Rules of Criminal Procedure considered the Department of Justice's proposal to replace all of the current federal rules dealing with criminal forfeiture with a new Rule 32.2. By a vote of 9-2, the Advisory Committee agreed to recommend that the new Rule be adopted.

The Asset Forfeiture and Money Laundering Section (AFMLS) drafted the new Rule in 1996 to resolve recurring problems with existing Rules 7(c), 31(e), 32(d)(2), and 38. *See Asset Forfeiture News* [July/August 1997]: 1. In particular, the new Rule eliminates the role of the jury in criminal forfeiture cases, and directs the court to enter a preliminary order of forfeiture based only on the determination of the nexus between the property and the offense. The elimination of the jury's role dispenses with the need for a special verdict form and treats the forfeiture as part of the sentencing process, consistent with the Supreme Court's decision in *Libretti v. United States*, 516 U.S. 29 (1995). The second change eliminates the requirement in at least some districts that the finder of fact determine not only the nexus between the property and the offense, but also the extent of the defendant's interest in the property, before the court can enter the preliminary order. By deferring the determination of the extent of the defendant's ownership until after third parties are given the opportunity to claim the property pursuant to section 853(n), the new Rule eliminates the need to make the same determination twice — in the forfeiture phase of the trial and in the ancillary proceeding.

The new Rule also provides a procedure for adding newly discovered property and substitute assets to an order of forfeiture, and establishes a procedure governing motions practice and discovery in the ancillary proceeding. It also makes it clear that a preliminary order of forfeiture becomes final *as to the defendant* at the time of sentencing, but remains a preliminary order *as to third parties* until the conclusion of the ancillary proceeding. Thus, the Rule clarifies that the ancillary proceeding may take place while the defendant's appeal is pending, and provides a mechanism for resolving third-party claims before the appeal is final.

The most significant change in the Rule from the Department of Justice's proposal appears in Rule 32.2(b)(2). The Department had proposed that, if no one files a claim in the ancillary proceeding, the property should be forfeited in its entirety on the ground that its relationship to the offense had been established, and there was no reason to believe that anyone other than the defendant had an interest in the item(s) being forfeited. The Advisory Committee, however, felt that the trial judge should be required to find that the defendant (or some combination of co-defendants) were the only persons with an interest in the property before ordering the forfeiture of the property, even if no one filed a claim in the ancillary proceeding. The Advisory Committee agreed with the Department of Justice's suggestion, however, that the defendant, whose interests in the property have already been extinguished by the time the preliminary order is entered, should not be allowed to object to the final order of forfeiture on the ground that third parties — *i.e.*, friends and family members who could have filed claims in the ancillary proceeding but failed to do so — were the true owners of the property. *See* Rule 32.2(b)(2), *infra*.

The only opposition to Rule 32.2 came from the National Association of Criminal Defense Lawyers (NACDL). At a hearing before the Advisory Committee, two NACDL witnesses testified that the elimination of the jury's role in criminal forfeitures under Rule 31(e) would violate the principles of liberty on which the founding of the Republic were based in 1776. The Department of Justice's testimony was provided by Assistant Chief Stef Cassella, AFMLS.

The Advisory Committee's approval of the new Rule is only the first step in a lengthy process. The proposal now must go before

See ***Rule****, page 16*

Task Force Combats Food Stamp Trafficking

By Steve Sozio, Assistant United States Attorney, Strike Force Unit, United States Attorney's Office, Northern District of Ohio

A multi-agency task force, operated under the auspices of the U.S. Secret Service (USSS), has been investigating food stamp trafficking and related financial crimes in the Northern District of Ohio, with the goal of prosecution under the federal money laundering laws and corresponding criminal or civil forfeiture. The task force's investigative and prosecutive methodology has had great success.

The Problem

Isolated investigations by several federal and local agencies in the early to mid-1990s revealed that there existed within northeastern Ohio a network of Middle Eastern businessmen who were engaging in a variety of criminal activity, involving food stamp trafficking, currency smuggling, arson, attempts at public corruption, and other frauds. The fraud on the food stamp program was rampant, with many small store operators earning most of their profits through food stamp trafficking. In addition, there were several layers of black market brokers who purchased the stamps at discounted rates from food stamp recipients and low level traffickers, and would in turn find other store operators to launder the stamps through their merchant accounts. Some of the proceeds from the fraud were being carried or wire transferred to the Middle East.

Traditional food stamp fraud investigations usually involved "buy/ busts" or "controlled buys" from individual traffickers or pursuing store owners who were redeeming more in food stamps than they were reporting in gross sales. Such investigations usually resulted in trafficking violations (7 U.S.C. § 2024) with little or no incarceration and no forfeiture potential. Thus, the perpetrators were able to enjoy the proceeds of their illegal activity.

The Task Force

The Cleveland Field Office of the USSS formed (informally in early 1996 and formally in January 1997) a task force to address the problem. In addition to the USSS, each of the following agencies have assigned at least one full-time agent to the task force: Federal Bureau of Investigation; Internal Revenue Service's Criminal Investigation Division; U.S. Department of Agriculture's (USDA's) Office of Inspector General; U.S. Customs Service; Ohio Department of Public Safety; and the Cleveland Police Department.

Since its inception, the task force has worked closely with the U.S. Attorney's Office, receiving training which focused on the elements of and proof necessary for successful money laundering charges and forfeiture, as well as conferring regularly on the progress of the investigations. The task force has also received training from other federal and local agencies involved in the food stamp program and maintains a liaison with the local county prosecutor.

The task force is utilizing investigative techniques usually used to investigate large scale fraud and traditional organized crime groups. Early in the investigations, the task force identifies members and factions of the criminal organizations, as well as targets assets for potential forfeiture through a variety of means, including mail covers, trash recovery, physical surveillance, pen registers, trap and trace and source development. The USDA's Office of Food and Nutrition Service identifies for the task force "high redeemer" stores, and through the use of grand jury subpoenas and access to agency records, the task force monitors suspect merchant and personal accounts. In addition, the task force has used cooperating sources, witnesses and defendants, as well as undercover agents, to infiltrate the criminal organizations. Controlled sales of food stamps have been made to traffickers/ brokers and have then been tracked through the system to identify the merchants who laundered the trafficked stamps. Searches of the targets' residences and stores have also produced valuable evidence and forfeitable assets, including food stamp and cash hoards.

Charges and Forfeiture

The task force has focused its efforts on the brokers who deal in

large quantities of food stamps and the merchants who launder for a fee the illegally obtained stamps through their merchant accounts. As a result, almost all of those charged through the task force's efforts have been convicted of money laundering.

The theory of the prosecution is that, once food stamps are acquired through an illegal transfer (other than for the purchase of authorized food items), they become the proceeds of specified unlawful activity (7 U.S.C. § 2024, food stamp trafficking and 18 U.S.C. § 641, conversion of government money or vouchers). When the merchant deposits the illegally acquired stamps into his merchant account and represents that he has obtained the stamps in compliance with USDA regulations, as is required for all such deposits, he is concealing the illegal nature of the proceeds by making the stamps appear as if they were legitimately received in the course of business. Therefore, most cases have been brought under the concealment prong of the money laundering statute, 18 U.S.C. § 1956(a)(1)(B)(i) or (h) (conspiracy to launder).

These cases provide significant forfeiture potential, pursuant to 18 U.S.C. §§ 981 and 982, for assets "involved in" the violations and proceeds of the activity. Forfeited assets have included residences used to store illegally acquired stamps, vehicles used to transport such stamps, all funds in merchant accounts used to launder the stamps, grocery stores, proceeds from the sale of stores, proceeds from the sale of store leases, smuggled currency, and cash hoards.

The Cases

Five federal money laundering cases involving 24 defendants have been prosecuted since the task force's inception. Three of the cases involved a merchant who laundered through his store account approximately $6,000,000 in trafficked food stamps for a 4 percent fee in four years, another merchant who laundered approximately $2,000,000 in stamps in one year and a third merchant who laundered over $100,000 in stamps in just three months. Defendants have also been charged under the federal food stamp trafficking and currency smuggling laws. Several cases not warranting federal prosecution have also been referred to the local prosecutor for state food stamp trafficking, bribery, and other charges.

The task force has focused its efforts on the brokers who deal in large quantities of food stamps and the merchants who launder for a fee the illegally obtained stamps through their merchant accounts.

Assets with a net value of approximately $800,000 have been forfeited through the cases. At the time the investigations became overt, which was usually when the task force executed search warrants, assets which had been targeted for forfeiture were restrained or seized through the use of the pre-indictment restraining order provisions of the federal money laundering or criminal forfeiture laws (18 U.S.C. § 982(b)(1), which incorporates 21 U.S.C. § 853 (e) and(f)). Experience has taught that whatever assets are not restrained at the time the targets become aware of the investigation will be unavailable for forfeiture at the conclusion of the case.

Conclusion

The task force's investigations have revealed approximately $10,000,000 in trafficked or laundered food stamps in the Cleveland, Ohio, area alone during a period of approximately four years. The $10,000,000 figure represents, of course, only that which has been discovered by the task force. In addition, task force investigations have revealed that stamps purchased in northeastern Ohio have been redeemed in merchant accounts in other states and stamps illegally acquired outside the state have been redeemed in Ohio.

While the food stamp trafficking, laundering and related frauds appear to be widespread and involve a network of organized groups, the results of the task force's efforts are encouraging. Several well known black market brokers and launderers are serving lengthy prison terms because of money laundering convictions. Task force sources within the community of those engaged in the illegal activity described above

*See **Stamp**, page 19*

New Federal Rule Governing Criminal Forfeitures Clears Its First Hurdle

Rule, from page 13

the Standing Committee on the Federal Rules which meets in Santa Fe, New Mexico, on June 18, 1998. If the Standing Committee approves the Rule, it will be referred to the Judicial Conference, the Supreme Court and, if there is no congressional veto, will become law in December 1999.

The text of the Rule as approved by the Advisory Committee appears below. Comments on any of its provisions — including both illustrations of how it would be helpful to prosecutors and identifications of possibly unforeseen problems or loopholes that the Rule would create — would be greatly appreciated.

Unofficial Text of Rule 32.2 as Approved by the Advisory Committee on April 28, 1998

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

32.2 Criminal Forfeiture

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

(b) HEARING AND ENTRY OF PRELIMINARY ORDER OF FORFEITURE.

(1) As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment or information for which criminal forfeiture is alleged, the court must determine what property is subject to forfeiture because it is related to the offense. The determination may be based on evidence already in the record, including any written plea agreement, or on evidence adduced at a post-trial hearing. If the property is subject to forfeiture, the court must enter a preliminary order directing the forfeiture of whatever interest each defendant may have in the property, without determining what that interest is. Deciding the extent of each defendant's interest is deferred until any third party claiming an interest in the property has petitioned the court to consider the claim.

(2) If no such petition is timely filed, the court must determine whether the property should be forfeited in whole or in part depending on the extent of the defendant's interest in the property. The determination may be made at any time before the order of forfeiture becomes final pursuant to subdivision (c) and may be based on evidence already in the record, including a written plea agreement, or evidence submitted by the [G]overnment in a motion for the entry of a final order of forfeiture. The defendant may not object to the entry of the final order of forfeiture on the ground that the property belongs, in whole or in part, to a co-defendant or third party. If the court determines that the defendant, or any combination of co-defendants, were the only persons with a legal interest (or, in the case of illegally obtained property, a possessory interest) in the property, the court must enter a final order forfeiting the property in its entirety. If the court determines that the defendant, or any combination of co-defendants, had a legal interest (or, in the case of illegally obtained property, a possessory interest) in only a portion of the property, the court must enter a final order forfeiting the property to the extent of the defendant or defendants' interest.

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

(d) ANCILLARY PROCEEDING.

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

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

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

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

(e) STAY OF FORFEITURE PENDING APPEAL. If the defendant appeals from the conviction or order of forfeiture, the court may stay the order of forfeiture upon terms that the court finds appropriate to ensure that the property remains available in case the conviction or order of forfeiture is vacated. The stay will not delay the ancillary proceeding or the determination of a third party's rights or interests. If the defendant's appeal is still pending when the court determines that the order of forfeiture must be amended to recognize a third party's interest in the property, the court must amend the order of forfeiture but must refrain from directing the transfer of any property or interest to the third party until the defendant's appeal is final, unless the defendant consents in writing, or on the record, to the transfer of the property or interest to the third party.

(f) PROPERTY LOCATED POST-TRIAL; SUBSTITUTE PROPERTY.

(1) If property subject to forfeiture under the order of forfeiture is identified after the order of forfeiture is entered, the court may consider a motion by the [G]overnment to amend the order to include the property. If the applicable statute authorizes the forfeiture of substitute property, the court may also, at any time, consider a motion by the [G]overnment to order forfeiture of substitute property. In both cases, the [G]overnment must serve a copy of the motion on the defendant.

(2) If the [G]overnment makes the requisite showing that the property is subject to forfeiture or, in the case of substitute property, that the conditions for the forfeiture of substitute property set forth in the applicable statute have been satisfied, the court must enter an order forfeiting the property, or must amend an existing preliminary or final order to include that property.

(3) If the court enters a new order of forfeiture, or amends an existing order of forfeiture pursuant to Rule 32.2(f)(2), the court must conduct a new ancillary proceeding as to the additional property.

Money Laundering/Forfeiture Legislation Moving in Congress

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

On April 29, 1998, Rep. Bill McCollum (R-Fla.), Chairman of the House Crime Subcommittee, and Rep. Charles Schumer (D-N.Y.), the committee's ranking Democrat, introduced H.R. 3745, the Money Laundering Act of 1998, a bill that expands the Government's authority under the money laundering statutes and their related forfeiture provisions. The bill has broad bipartisan support and appears to be on the fast track for approval by the House of Representatives this summer. A similar bill, S. 2011, was introduced in the Senate by Sen. Patrick Leahy (D-Vt.) on April 30, 1998.

The money laundering bill addresses a number of problems that arise when the existing laws are applied to international money laundering offenses. In particular, the bill would include, for the first time, a large number of foreign crimes within the definition of "specified unlawful activity." The bill also enacts a "long-arm" statute to make it easier for the Government to file a civil enforcement action under section 1956(b) against a foreign person — such as a bank — that violates the federal money laundering laws.

With respect to civil and criminal forfeiture for money laundering under sections 981 and 982, the bill would authorize the immediate freezing of the U.S. assets of any person arrested abroad for an offense that would give rise to a forfeiture in the United States, and would give prosecutors greater access to bank records in bank secrecy countries and facilitate the admission of foreign business records into evidence. Perhaps most important, the bill would make it easier for the Government to forfeit drug money laundered through the "black market" or "peso exchange market" in South America by requiring persons asserting an innocent owner defense to establish that they were bona fide purchasers who took all reasonable affirmative steps to ensure that they were not acquiring illegally derived property.

The Senate version of the bill does not contain the innocent owner provision, but it does contain a provision codifying the fugitive disentitlement doctrine, thus, restoring the authority that existed before the Supreme Court's decision in *Degen v. United States*, 517 U.S. 820 (1996).

The text of both bills is available on the Internet at the Library of Congress website: http://thomas.loc.gov. The Senate bill is also available on Westlaw at 1998 WL 210452. A section-by-section summary of the House bill is shown below.

Summary of the Money Laundering Act of 1998

Sections 1 and 2

- Short Title and Table of Contents

Section 3

- clarifies the knowledge requirement for 18 U.S.C. § 1960 which makes it an offense to operate an illegal money transmitting business
- provides for civil forfeiture for section 1960 violations

Section 4

- authorizes a federal court to restrain the U.S. assets of a person arrested abroad to give the Government an opportunity to assemble the evidence needed to establish probable cause for forfeiture

Section 5

- forces litigants to make records in bank secrecy jurisdictions available to the Government, if the records are material to a claim pending in federal court or suffer dismissal of the claim

Section 6

- creates a long-arm statute to give federal courts jurisdiction over civil money laundering actions filed under section 1956(b) against foreign banks that launder money in the United States

- provides for the restraint of assets in the United States needed to satisfy civil judgments under section 1956(b).

Section 7

- clarifies that a foreign bank is a "financial institution" for purposes of section 1956.

Section 8

- expands the list of "specified unlawful activities"—*i.e.*, the predicate offenses for money laundering—to include foreign offenses such as crimes of violence, fraud, bribery, smuggling and other offenses for which extradition is mandated.

Section 10

- authorizes criminal forfeiture of property involved in money laundering conspiracies charged under section 371.

Section 11

- authorizes the Government to subpoena bank records before the civil forfeiture action is filed.

Section 12

- makes foreign business records admissible in federal civil cases.

Section 13

- authorizes federal prosecutors to charge money laundering offenses as a course of conduct instead of having to file a separate count for each financial transaction.

Section 14

- provides that venue in money laundering cases lies in either the district where the financial transaction takes place, or the district where the underlying "specified unlawful activity" took place.

Section 15

- clarifies that the defendant in a money laundering case does not need to know that the crime from which the illegal proceeds were derived has been designated a felony.

Section 16

- provides that persons asserting an innocent owner defense to the forfeiture of money laundered on the "black market" or "peso exchange market" must show that they took all reasonable steps to avoid purchasing drug proceeds.

Section 17

- permits sharing of forfeited assets with "decertified" countries if the Secretary of State approves.

Section 18

- instructs the Sentencing Commission to limit the offense level for section 1957 violations involving only the receipt and deposit of criminal proceeds to one level more than the offense level for the underlying offense.

Section 19

- technical amendment to the definition of "state" for purposes of 18 U.S.C. § 20.

Task Force Combats Food Stamp Trafficking

***Stamp**, from page 14*

have reported a deterrent effect from the prosecutions, in that fewer store owners are willing to work with the traffickers and brokers because of the real threat of incarceration and forfeiture. In addition, the USDA reports that, as of early 1998, there was a significant drop in the number of Cleveland area stores reporting a suspiciously high percentage of gross sales from food stamps. Thus, the use of money laundering and forfeiture laws to combat food stamp trafficking fraud seems to be having a positive impact.

To obtain a copy of written materials for agent training regarding the use of money laundering and asset forfeiture in food stamp trafficking, contact AUSA Steven Sozio or the Cleveland Field Office's task force at (216) 522-4365.

Letters to the Editor . . .

Send your comments or suggestions to:

'*Asset Forfeiture News*' Letters
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Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Bond Building, Tenth Floor
Washington, D.C. 20005
Fax: (202) 616-1344

Please include your address and telephone number.

Back to the Basics

By Timothy J. Sullivan, Special Agent, Drug Enforcement Administration, New York Field Office

Over the years, criminal organizations have created unique and sophisticated methods of hiding the source of their ill-gotten wealth. As investigators, we are faced with the sometimes enormous task of unraveling complex webs of financial transactions. But when investigators contemplate organizing a financial investigation to identify assets for forfeiture in such cases, they frequently envision a labyrinth of financial machinations of nightmare proportions, arising from highly sophisticated international money laundering operations utilizing offshore shell corporations in locations such as the Cayman Islands or Netherlands Antilles, as well as secretive numbered bank accounts in Hong Kong or Switzerland to electronically transfer funds at dizzying frequencies and speeds. All too frequently, investigators become frustrated and overwhelmed by their lack of financial training and understanding of how the international corporate and banking worlds operate. However, if they would only step back and examine the investigative tools that are readily available, and which they routinely use in their criminal investigations, the task becomes greatly simplified.

Investigators also tend to underestimate the importance of financial investigations. They often consider the financial aspect of a criminal investigation as a separate entity from other enforcement and intelligence gathering activities. In actuality, they are inextricably intertwined and should be treated as such. Mere testimonial evidence of illegal activity, frequently provided by cooperating co-participants and uncorroborated, can sometimes be difficult for a jury to accept. When that testimony is bolstered by evidence of unexplained wealth on the part of the defendant(s), however, it can lead to a successful prosecution and forfeiture of ill-gotten gains.

Organizing a financial investigation is akin to building a house: There must be a blueprint to follow. Then, the proper tools and equipment are needed to put the plan into action. Starting with a sound foundation, both a house and an investigation are built step-by-step from the bottom up. Financial investigations are essential not only from the standpoint of seizing criminals' assets for forfeiture, but also to ensure a successful prosecution of their illegal activity — whether it is narcotics trafficking, hijacking, mail fraud, or any other criminal endeavor.

Ironically, greater financial success in criminal activity also produces greater opportunities for investigators to uncover evidence of criminals' financial affairs. The more that criminals use their ill-gotten gains to accumulate assets, the wider the paper trail for investigators to follow. To trace the source of funds used for those assets, however, requires the ability to gather intelligence and to properly analyze it. In short, investigators must use those tools and techniques at their avail to aggressively develop financial information as an integral element of the overall criminal investigation.

Cooperating Individuals

Cooperating individuals are a traditional source of information for the illegal activities of criminal enterprises, but are underutilized when it comes to the organization's finances and proceeds. In narcotics investigations, for example, the debriefing of informants will generally be limited to several topics: the members of the organizations; their duties or positions in the organization's hierarchy; the quantity, quality, and price of the drugs involved; the method of distribution; the source of supply; and the all-important question of whether an undercover can be introduced into the organization. Such debriefings, however, do not explore the primary motivating factor behind the illicit drug distribution; namely, the profits generated from it. If the questions are not asked, most informants will not volunteer the information even though they may have extensive knowledge about the organization's illegal receipts, sham or front corporations used for money laundering, the location of records and ledgers, assets used or purchased, etc. Thus, when investigators debrief informants, they must also focus on the assets used and the profits generated by the criminal enterprise.

Undercover Operations

Similarly, undercover operations are not utilized to their optimum effect in uncovering financial information. Undercovers will converse with defendants ad nauseum about their illegal activity, but not necessarily about the money generated and the assets acquired as a result of the crimes. As a receiver of information, the undercover's role is extremely important. In addition to obtaining evidence of criminal activity, an undercover who has gained the confidence of the defendants should also inquire about their assets, methods of shielding them, another legitimate source of income, if any. In short, undercovers should be trained to focus not only on an organization's illegal activity, but also the property used or generated by it.

Public Records and Databases

Accessing public records and databases has the advantage of identifying potential assets, as well as assisting in the preparation of seizure warrants, with minimal risk of compromising an ongoing criminal investigation. Public records, for instance, can reveal relevant information about ownership and recorded liens. Similarly, financial statements filed in civil cases or divorce suits can be an excellent source of admissions of net worth and locating assets claimed by a defendant. This information could be critical in establishing a starting point for a net worth analysis. Databases, whether they be financial, commercial , or law enforcement, also contain a wealth of relevant information.

Manpower is always at premium in every investigation, regardless of the agency or department. Pursuing leads on databases has eliminated the need to leave the office to research information. Moreover, with the establishment of the Financial Crimes Enforcement Network (FinCEN), the investigator's job has become even easier; it's like one-stop shopping. With FinCEN, there is no longer an excuse for not conducting an in-depth database search of defendants.

FinCEN. . .it's like one-stop shopping.

Trash Analysis

Trash, if retrieved for a one-month period, will likely glean information about a defendant's financial status through bank statements, canceled checks, credit card receipts, bills and other discarded documents. The likelihood of uncovering quarterly statements from brokerage firms and other financial institutions will be increased if the retrieval of the trash is done during the first month of a quarter. The statement will not only identify the financial institutions and other commercial businesses with which the defendant is dealing, but will also reveal the account numbers, balances, and recent transactions. Trash can also contain circumstantial evidence which could be useful at trial or assist in establishing probable cause for a search warrant. In either instance, the minimal time and effort expended can be very fruitful to the investigation.

Mail Covers

If retrieval of discarded trash is impractical, or the items retrieved don't glean the sought-after financial information, a mail cover is an alternative worth considering. Mail covers can provide the name of the addressee, return address, postmark and date of mailing. While this method cannot reveal the same detailed information as a trash analysis, it can provide leads for the future service of subpoenas and potential seizure warrants.

Physical Surveillance

Most investigations conduct physical surveillance while an undercover or informant is meeting with members of the criminal enterprise, and they are engaged in some form of illegal activity. This limited surveillance, however, does not provide much information about the organization's financial dealings. While engaged in crime, criminals are often too preoccupied with the possibility of being apprehended to be involved with financial dealings. Surveillance must therefore be conducted at other times as well, in order to identify money laundering activities, safe-deposit boxes, money stash locations, and sundry other activities that may appear non-criminal in nature, but are in fact the laundering or expenditure of criminal proceeds.

Electronic Surveillance

Similar to physical surveillance, Title III wiretaps generally target only the illegal activity. When the talk turns to money transfers, bank or brokerage accounts, real estate transactions or other financial

*See **Basics**, page 22*

Back to the Basics

Basics, from page 21

matters, there is a tendency to view the conversations as nonpertinent. After obtaining authorization from the court, these conversations should not be minimized.

Search Warrants

One of the primary goals of every investigation, large or small, should be to conduct searches at the defendants' residences, businesses, or other locations they may use to further their criminal activity. Throughout every stage of the investigation, efforts should be made to establish probable cause for search warrants. Document search warrants should also be considered in those locations where no known criminal activity is conducted but where there is sufficient probable cause to believe that the location contains pertinent books and records, documents regarding concealed assets, and other items of evidentiary value to the investigation. The newly created Document Exploitation Unit at the National Drug Intelligence Center (NDIC) can provide valuable assistance in such endeavors.

Service of Subpoenas

Subpoenas are another valuable tool for uncovering financial information. During an ongoing criminal investigation, particularly one involving an undercover operation, serving subpoenas can be risky. Even when using a grand jury subpoena with a non-disclosure clause, compromising an investigation is a distinct possibility. If this is a concern, a list of subpoenas should be maintained until the culmination of the undercover phase of the investigation, and after the defendants have been apprehended. Service of subpoenas should either coincide with the arrests or immediately follow to obtain the required information for potential seizure warrants, particularly where the property to be seized can be easily moved or hidden. Service of subpoenas can lead to previously unknown sources of information and potential witnesses for trial regarding the defendants' lifestyle as well as business or commercial dealings. Additionally, the documentation of expenditures will be needed at trial to bolster the prosecution's presentation of unexplained wealth of the defendants.

Throughout every stage of the investigation, efforts should be made to establish probable cause for search warrants.

IRS Participation

In long-term criminal investigations with a potential for extensive asset forfeitures, it is strongly recommended that the Internal Revenue Service (IRS) participate in the investigation as early as possible. Much of the information needed to do a net worth analysis (*i.e.*, income tax returns) of the defendants require a court-authorized *ex parte* order before the IRS can share any of the information. Obtaining the order will take time, and early participation by the IRS will ensure a more in-depth investigation.

Summary

In this day and age, with criminals becoming increasingly sophisticated at concealing their ill-gotten wealth, it is increasingly important for investigators to use every available tool to uncover those assets. The criminal and financial aspects of an investigation must be conducted simultaneously, and with equal vigor. The traditional investigative techniques utilized in the purely criminal side of a case can be used just as effectively in tracking down the financial information as well. Cooperating individuals, undercover operations, public records and database inquiries, trash analyses, mail covers, physical and electronic surveillance, search warrants, service of subpoenas, and IRS participation are only some the tools available. Failure to utilize these opportunities to the fullest extent can make all the difference between an all-encompassing operation with substantial asset forfeitures and one yielding minimal or no results.

Road to Reinvigoration

***Road**, from page 9*

presenting a statewide conference on asset forfeiture. From April 20-21, 1998, over 100 law enforcement officers and prosecutors came to Syracuse, New York, for the combined training on federal and state forfeiture laws.

Although New York has a number of statutes allowing the seizure and forfeiture of assets tainted by criminal activity, state prosecutors in upstate and western New York have been reluctant to utilize these statutes; instead, they opt to allow the forfeiture case to be adopted by their federal counterparts. With this in mind, it was determined that a training event with emphasis on both state and federal forfeiture and how to determine which path may lead to a more favorable result could be very worthwhile.

Day One

In welcoming the participants to the seminar, New York State Police Superintendent James W. McMahon implored the audience to continue the tremendous cooperation that local, state, and federal law enforcement has exhibited over the last ten years in forfeiting criminal assets. However, Superintendent McMahon stressed that New York law enforcement should become more self reliant upon the State's own statutes and not continually rely upon the Federal Government's forfeiture program to do the work for them.

The first day concentrated on the State's forfeiture statutes and their application in every day cases. An excellent overview of the state forfeiture laws was presented, followed by a breakdown of investigative techniques in financial investigations. One of the instructors, Michael McCartney, was particularly insightful, while another instructor dazzled the audience with examples of successful prosecutions and forfeitures resulting from some of the most basic investigative techniques, *i.e.*, the trash search. A session on motor vehicle and other *in rem* forfeitures, along with techniques for sharing and access to protected information such as grand jury materials and electronic surveillance, were also presented. An insightful explanation of the state statutory scheme in seizing and restraining assets pretrial, along with a discussion on settlements and accelerated judgments under state law, also kept the audience captivated. In the final portion of the first day's events, a panel of state prosecutors debated the best means and methods to reach global dispositions. With the issue of ethics always looming in the forfeiture world, a lively time was had by all.

Day Two

The second day of the seminar concentrated on the federal forfeiture program and its comparison to state procedures. Federal prosecutors led a panel of state prosecutors and investigators on establishing and operating a forfeiture unit within both a prosecution and law enforcement office. It was particularly interesting to note that many of the state prosecutors in the audience are now contemplating the establishiment of forfeiture units within their respective offices. Later in the day, everyone was also brought up-to-date on the constitutional issues in forfeiture today. One topic of interest was how to get cases adopted for federal forfeiture and the procedures and problems associated with the process. The next session dealt with federal judicial forfeiture and what state law enforcement officers can expect when they bring their cases to the federal district courts. The conference ended when a panel of both federal and state prosecutors discussing numerous case scenarios and whether the application of federal or state forfeiture laws would be the most appropriate method to employ. This last session highlighted both the strengths and weaknesses of both statutory schemes and their practical effects.

In conclusion, this unique joint state-federal forfeiture conference provided important insights in determining when one forfeiture process may be more appropriate to employ than another. It is our hope that this tremendous spirit of cooperation continue among all local, state, and federal law enforcement agencies to ensure that forfeiture remains a useful weapon against crime, not only in the federal system but also in New York State courts as well.

People and Places. . .

. . .New Assistant Director at the Treasury Executive Office

The Executive Office for Asset Forfeiture at the Department of the Treasury welcomes Raymond M. Dineen as its new assistant director for Policy and Operations. Mr. Dineen comes to the Executive Office from the U.S. Secret Service (USSS) where he has worked for 19 years in various assignments in New York, Atlantic City, and Washington, D.C. He has been the assistant special agent-in-charge of the Asset Forfeiture Office at USSS headquarters, and immediately prior to this new posting, he was with USSS's Division of Inspection.

Mr. Dineen is a native of New York City and graduated from St. Francis College in Brooklyn with a degree in psychology. In this assistant director position, which is rotated among personnel from the Treasury law enforcement bureaus, he succeeds Ken Massey, who has left the Executive Office to become the assistant special agent-in-charge of the Chicago Field Office of the Bureau of Alcohol, Tobacco, and Firearms.

. . .New AUSA at C.D. California

AUSA Greg Staples joins the Asset Forfeiture Section of the U.S. Attorney's Office in the Central District of California from the Federal Trade Commission (FTC), where he was most recently the acting regional director for the FTC's Los Angeles Regional Office. He joined FTC as a staff attorney in 1991 after graduating from the University of California, Hastings College of Law. While at the FTC, AUSA Staples worked on antitrust, consumer fraud, and false advertising cases, and ligitated a number of consumer fraud cases netting millions of dollars in consumer redress. He graduated Phi Beta Kappa from the University of California at Irvine in 1988.

New Detail in AFMLS

Gurnia Michaux-Griffin has been detailed to the Asset Forfeiture and Money Laundering Section, Criminal Division, and assigned to assist with state and local liaison matters.

Ms. Michaux-Griffin taught in the Criminal Justice Department at North Carolina Central University during law school and two years after completing law school. She worked in private practice until 1980, when she came to the Department of Justice, Criminal Division. Ms. Michaux-Griffin was previously assigned to the Office of Enforcement Operations (OEO), where she most recently served as senior counsel.

UPCOMING TRAINING CONFERENCES

FEDERAL FORFEITURE

- *Advanced Money Laundering and Asset Forfeiture*
  June 23-25, 1998
  Location TBA
- *Eighth Circuit Component*
  July 14-16, 1998
  Little Rock, AR
- *Seventh Component Seminar*
  August 11-13, 1998
  Chicago, IL

FINANCIAL INVESTIGATIONS

- *Southwest Border*
  June 23-25, 1998
  Alburquerque, NM
- *Reinvigoration Seminar*
  July 9, 1998
  Washington, DC
- *Basic Financial Investigations*
  August 4-6, 1998
  San Francisco, CA

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.