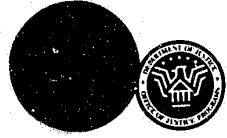


U.S. Department of Justice
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119841

ASSET
FORFEITURE

Starting Forfeiture Programs: A Prosecutors' Guide

8th in a series



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NCJRS

OCT 24 1989

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U.S. Department of Justice
National Institute of Justice

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

Dear Colleague:

Illicit drug traffic continues to flourish in every part of the country. The cash received by the traffickers is often converted to assets that can be used by drug dealers in ways that suit their individual tastes. Since 1981, federal authorities have increased their attack on these assets through both criminal and civil forfeiture proceedings with remarkable success. The recent passage and use of state asset forfeiture laws offers an excellent means for state and local jurisdictions to emulate the federal success.

The Bureau of Justice Assistance (BJA), in the Office of Justice Programs, has funded a nationally focused technical assistance and training program to help state and local jurisdictions facilitate broader use of such laws. BJA selected the Police Executive Research Forum to develop and administer this program because of its history of involvement in practical, problem-oriented research to improve police operations and the Forum's central role in developing training materials for use by police agencies and chief executives.

As part of this project, the Forum has contracted with experts in the area of asset forfeiture and financial investigations to prepare a series of short manuals dealing with different concerns in the area of asset forfeiture. We hope these manuals help meet the rapidly unfolding needs of the law enforcement community as more and more agencies apply their own forfeiture laws and strive to learn from the successes and problems of their peers.

I welcome hearing your comments about this program. We have structured this project so that most requests for information or assistance can be handled through the Forum staff in Washington, D.C., by calling 202/466-7820.

Sincerely yours,



Charles P. Smith, Director
Bureau of Justice Assistance

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The Police Executive Research Forum

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Establishing Asset Forfeiture Programs: A Guide for State and Local Prosecutors

Introduction

Asset forfeiture is an old concept with new vitality. Sounding more like a subject of interest to stock brokers and investment bankers, forfeiting the "assets" of persons involved in crime has become the topic of the day in law enforcement agencies and prosecutors' offices.

In reality, the government's idea of forfeiting the fruits and instrumentalities of crime is hardly novel. Forfeiture was a routine punishment under England's common law and was incorporated into the jurisprudence of the United States in statutes ranging from taxation acts to moonshine laws. Modern problems, however, have begged for new solutions, and the criminal justice system has turned to forfeiture as one answer to financially motivated crime: whatever profits the crime generates, the government will take them away.

Historically, forfeiture was a punishment directed against people *and* things engaged in acts that offended the Crown. In its common law form, forfeiture occurred upon conviction for felonies and treason. Convicted felons forfeited their personal property to the King, and their land reverted to their lord. Such forfeitures were called *in personam* forfeitures and were invoked only after a person's criminal liability was conclusively established.¹

English law also provided for statutory *in rem* proceedings against *property* involved in illegal activity, and most modern forfeiture laws adopt this civil, rather than criminal, theory of liability. As such, *in rem* statutes are generally unconcerned with the criminal acts of individuals and address only the role that property has played in the crime. Even though *in rem* statutes permit forfeiture upon proof that the property in question was connected to criminal activity, newer forfeiture

laws give those affected by forfeiture greater rights and protections than did their far more oppressive predecessors.²

Prior to the 1970s, most state forfeiture laws dealt with narcotics, gambling, and moonshine violations and were rarely used. However, with the emergence of drug abuse as this nation's number one law enforcement problem, the criminal justice system was forced to recognize that drug trafficking is a billion-dollar business and that its participants are unfazed by even the harshest mandatory minimum jail sentences. Individuals are easily replaced in narcotics organizations, particularly when the money continues to pour in.

But, taking away the extraordinary amounts of cash and the expensive planes, boats, and cars attached to drug traffickers and their enterprises has proven to be an effective means of getting the attention of these criminal entrepreneurs. As a result, forfeiture laws have become an important adjunct to criminal prosecution when financial gain is an obvious end result of the crime.

Planning: An Investment with Returns

An asset forfeiture program can be extremely productive, or it can turn into a very frustrating and disappointing endeavor. The way to prevent its untimely demise is to determine what one hopes to accomplish through it, carefully define those goals, and meticulously plan all phases of the effort.

To embark on the seemingly esoteric task of deciding what the forfeiture program should accomplish is not easy. A prosecutor's office, for example, must routinely *react* to what the criminal justice system throws its way and rarely has the luxury of free time to dedicate to planning. Unfortunately, asset forfeiture is still an evolving law enforcement tool that demands special attention. Apart from the unique legal issues that will arise, innumerable operational questions must be examined and addressed. These areas are not cause for undue concern and are certainly not insurmountable. In fact, they are quite manageable when they have been dealt with in the program plan.

This guide will designate those legal and operational questions that must be answered, or at least considered, before initiating an asset forfeiture program. After that, creativity and good judgment are the key additional ingredients required for this very important addition to the criminal justice effort.

Designing and Communicating the Program's Goals

Planning will actually accomplish two very important objectives: establishment of the parameters of the program, and provision of a framework for communicating the program's objectives to all involved. Although closely related, designing the program and making certain that everyone understands and agrees with it are substantially different tasks.

Many asset forfeiture programs experience difficulty because the law enforcement agencies responsible for the seizure of property have priorities different from the prosecutor's office. Disputes can occur, for example, when a prosecutor sees asset forfeiture as a logical and necessary adjunct to long-term investigations of drug-smuggling organizations, but the law enforcement agency decides that a more effective way to handle the community's drug abuse concerns is routinely to forfeit the vehicles of street-level crack cocaine buyers and sellers. Neither objective is incorrect, and asset forfeiture can be used effectively in either situation. However, limited resources will usually require that one operation receive priority status while the other is relegated to the "back burner."

The ramifications of such disagreements are obvious and can be avoided if the investigators and prosecutors agree with the program's focus and if they work cooperatively as a team.

Strict Scrutiny of Forfeiture Statutes: Can You Get Where You Want to Go?

Even when an enthusiastic decision has been made to create an asset forfeiture program, an immediate problem arises:

most states have several statutes on the books that contain forfeiture provisions, but they may not be appropriate foundations for an asset forfeiture program. If the laws are too narrow (e.g., allowing only for the forfeiture of gambling equipment or *vehicles* used in narcotics offenses), they may need to be expanded. If they do not provide for minimal due process, they may be invalid. Determining whether a state has a viable forfeiture statute is discussed at length below, but an effective program can be developed around several different forfeiture statutes if an effort has been made to identify and analyze them.

Many states presently have forfeiture statutes that are amended versions of laws in existence in the early 1900s. These statutes often provided for *in rem* forfeitures of property involved in illegal liquor and gambling operations. Most modern state forfeiture laws are based upon the extension of such statutes to property and cash involved in drug trafficking,³ but the scope of these laws, from the theories of forfeiture to disposition of forfeited property, varies greatly from state to state.

Because of the patchwork quality of many present-day forfeiture statutes, it is important to clearly understand the strengths and weaknesses of each state's laws. Some statutes are explicit in their description of offenses that will subject property to forfeiture but are silent about how the legal action should be initiated. Since there are differences in the kind of evidence required, a statute's theory of forfeiture should also be analyzed:

- Are *proceeds* of criminal activity, such as profits, forfeitable, or does the statute apply only to property actually used during the crime?
- Is property that *facilitates* an offense (such as a boat used as a decoy) subject to forfeiture?
- Is property intended for use in the course of an offense forfeitable?
- Is one offense sufficient, or is a pattern of criminal activity required?
- Is a criminal conviction required before forfeiture can be initiated, and is the forfeiture a civil or criminal action?

It is very important to examine carefully *all* of the statutes at your disposal and to determine how each one operates and might fit into the forfeiture program. During an analysis of

each forfeiture provision, questions such as those discussed below should be addressed.

What are the statutory requirements for seizure of property?

In addition to describing the legal bases for forfeiture of property, some statutes will provide law enforcement officers with standards for seizure.⁴ Other statutes do not establish specific requirements for seizure but contain provisions for seizure based upon a "warrant" or "court process."⁵ Unfortunately, those terms are often undefined and therefore, may require creative drafting of forms that could be presented to a court.

A standard of probable cause should be established for seizure pursuant to a warrant incident to arrest or when evidence that the property is forfeitable develops.⁶ A clear understanding of the circumstances under which seizures are permitted is particularly significant to the officers who will be expected to recognize and seize property for forfeiture. The prosecutor's office must specify the requirements for seizure and be prepared to answer the more unusual questions that are certain to arise. (For example, can one law enforcement agency seize property in its jurisdiction based on a request from another jurisdiction?)⁷

Does the statute establish a procedure for filing and handling forfeiture cases?

Even though a statute may specify a particular procedure for forfeiture proceedings, its details are often not fully explained. For example, some relatively new statutes specify that the forfeiture proceeding will be initiated by a court's issuance of a rule to show cause but without clearly describing how that should be done.⁸ Other statutes may require that a forfeiture be initiated via complaint, without answering the question of who should be served if those in possession of untitled property deny that it belongs to them.

To obviate the need for court intervention to reconcile widely differing procedures, it is wise to create a procedure and suggest that it be used by all jurisdictions that will be engaged in forfeiture actions within the state. Suggestion and

ratification of a procedural framework can be handled through the state's prosecuting attorneys' association or attorney general's office. By establishing procedural guidelines that are complete and fair, and that will be used consistently throughout the state, the courts may not feel compelled to intervene and articulate procedures that are more restrictive than legally necessary.

A procedural issue that may have jurisdictional implications is the type of notice that must be given to claimants. Even when the forfeiture statute provides for legal advertising of a proposed forfeiture, particularly when ownership of untitled property like money is concerned, some courts have raised concerns about their ability to exercise jurisdiction over claimants once they are known. As a result, actual service of process may be required in such situations.⁹

When the courts alter traditional notions of service in forfeiture cases, they may incidentally alter the respective burdens of proof. For example, if service of the rule to show cause is required, is the government now obliged to prove the case by a preponderance of the evidence or will the original statutory showing of probable cause remain sufficient?¹⁰ Recently, when the Florida Supreme Court decided that jury trials were required in actions brought pursuant to Florida's Contraband Forfeiture Act,¹¹ similar concerns were expressed regarding the effect of that decision on the handling of such a trial and on the assignment of the burden of proof between the claimant and the government.¹²

Are there time limits for filing?

Because the seizure and detention of property raises significant due process concerns, considerable litigation has occurred regarding how long the government can delay initiation of forfeiture proceedings.¹³ Constitutionally, even an eighteen month delay will not necessarily violate due process,¹⁴ but it may encourage claimants to seek return of their property through civil action (replevin) or through motions for return of property directed to the criminal courts. Many state laws prohibit the institution of actions in replevin

against seized property, or at least provide the seizing agency with a reasonable grace period before a claimant can institute such action.¹⁵

Such provisions are very helpful in the face of aggressive attempts to obtain return of the seized property. Often, if the seized property could provide collateral for bail or serve as an attorney's fee, actions are taken to seek return of the property almost immediately. When a forfeiture statute does not explicitly preclude actions in replevin or for return of property, a sympathetic court might be inclined to grant such relief, particularly if the seizing agency has not had sufficient time to develop or prepare the forfeiture case. If a forfeiture statute does not address these issues, be prepared to oppose such actions by relying upon traditional forfeiture theories vesting title to the property in the government at the time of the illegal act.¹⁶

Are innocent owners and lienholders protected?

Many modern forfeiture statutes depart from the common law rule that even innocent property owners were not entitled to relief from forfeiture. By protecting the rights and interests of innocent parties, these laws are less harsh but often encourage considerable litigation to determine exactly who will be granted relief. When property is held jointly, co-owners are very much inclined to contest forfeiture and the government will often be forced to rebut the claimant's denial of knowledge that the property was to be used in criminal activity. Evidence that will rebut a claim of lack of knowledge can be difficult to obtain, but investigators must be prepared to do so when an innocent-owner claim arises.

Transfers or assignments of property by owners after seizure are often attempted to pay attorneys' fees or create collateral for bail bonds. Although statutory "relation back" provisions merely reflect the common law rule vesting title to property in the government upon its illegal use or acquisition, they can be very helpful in defeating the claims of post-seizure transferees and are of great assistance in limiting the

number of claimants who will be able to survive a standing challenge.

In regard to claims by "bona fide" lienholders, some states have strictly construed this class of claimants to include only those who have perfected their liens in a manner prescribed by state law.¹⁷ At least one state court has also held that when a note signed by a property owner agrees to the payment of attorney's fees should the lienholder have to sue to enforce the agreement, the government will be responsible for the lienholder's attorney's fee if the lienholder appears in the forfeiture proceeding to advance a claim.¹⁸ It is, therefore, advisable to notify lienholders of the government's desire to settle their claims without their having to incur attorney's fees.

If the government is ultimately unsuccessful in forfeiting the seized property, the question of the government's liability for costs or damages is certain to arise. Although courts have been reluctant to award damages for loss of use,¹⁹ they have been more willing to accommodate claims for incidental expenses such as storage fees.²⁰

Does the statute provide for the disposition of property and cash?

Many complex and technical issues are associated with the disposition of property and cash. These matters are, however, more than annoying details: they often determine whether a forfeiture program can maximize its returns and become a truly worthwhile effort. The points discussed below should be considered.

Does the statute create a fund into which cash forfeitures and the proceeds from sales of forfeited property can be deposited?

Some states have established special law enforcement trust funds that accept such deposits, thereby directly benefiting the law enforcement effort rather than the state's general revenue fund or other fund established by state law or constitution. If a law enforcement fund is established, it is important to consider legislation that prohibits reduction of the agency's operating budget as a result of the forfeited assets. Such

funds should be used to *supplement* agency budgets, not reduce them. Some state laws have sought to achieve that by prohibiting governing authorities from using forfeiture funds for recurring operating expenses of the law enforcement agency, requiring instead that the funds be used, for example, for complex or protracted investigations, special technical equipment and expertise, or special programs.²¹

To prevent forfeiture funds from being used as "slush funds," strict statutory or internal policy guidelines should be developed to describe what kinds of expenditures are appropriate and how they should be accounted for. Unjustifiable or frivolous expenditures may lead the legislature to conclude that the funds are being abused. That might lead to restrictive legislation or state, rather than local, control.

Can the special funds be interest-bearing accounts, and can the law enforcement entity keep and use the interest generated?

If the forfeiture program is successful, there is great potential for building a substantial balance in your forfeiture trust fund. Since the balance may remain high pending appropriation of the funds in the account, it would be wise to determine whether the fund can accrue interest and, if so, whether the interest can be redeposited into the fund for use by the agency.

A related question is whether seized cash, pending its forfeiture, can be deposited into the trust fund. Since *in rem* forfeitures rely heavily on the property having been involved in the offending act, some prosecutors and government attorneys are reluctant to deposit the seized monies into a bank account, thereby destroying its identifiability and any evidentiary value it might have. Furthermore, if the *packaging* of the money has some evidentiary value (for example, the small packages of twenty-dollar bills bound with rubber bands that are so popular with drug traffickers), some prosecutors prefer that the cash be maintained in the evidence room in its original condition.

Although evidentiary questions must be resolved in accordance with available state precedent, persons from whom cash

is seized are often amenable to stipulations allowing the cash to be deposited into interest-bearing accounts, since the interest might inure to their benefit if the forfeiture is not successful.²² Such stipulations should clearly waive any right to challenge the commingling in the forfeiture proceeding and should waive any *evidentiary* (as opposed to constitutional) objections to introduction of the evidence in a criminal trial involving the claimant.

Can property be split among several agencies participating in an operation, or must the seizing agency retain all property?

Since many narcotics operations involve multiagency task forces, some statutes recognize that by permitting the equitable distribution of property among participating agencies. The prosecutor's office should also determine whether it can receive forfeited assets or proceeds, or whether costs associated with prosecution of a forfeiture are recoverable.²³

Can existing liens be paid off with public funds?

If a law enforcement or prosecuting agency decides to retain property that has a lien against it, it is important to determine whether monthly payments can be made while the forfeiture litigation is in progress and whether the lien can be satisfied from the agency's budget or special forfeiture fund. That is especially significant in forfeitures of real property, for existing mortgages often place the property in danger of foreclosure if mortgage holders are statutorily protected and anxious to preserve their investment.

The importance of a viable statute cannot be overstated. In addition to the procedural issues mentioned above, forfeiture statutes should be examined for defects that can affect their constitutionality: is the statute fundamentally fair and does it provide for minimal due process? Although certainly easier said than done, legislative changes may be the only way to maximize the effectiveness of the forfeiture program. Due to their considerable history and very favorable treatment by the courts, the federal drug forfeiture laws [21 U.S.C. Sections

881 (civil) and 853 (criminal)] provide excellent models for state forfeiture statutes. However, until such amendments can be made, consideration of the issues listed above leads to recognition and anticipation of problem areas *before* they become formidable obstacles.

Identifying Other Related Statutes: Knowing What State Laws Are Available and How to Use Them

Becoming familiar with other statutes that can be used by the forfeiture program will give it greater flexibility and can enhance its effectiveness. Although the state's generic forfeiture statute will be the primary enforcement tool, it is important to remember that other laws have been developed in recent years that can be very useful. Revenue statutes that tax illegal controlled substances, laws relating to professional and business licensure, and innumerable other regulatory provisions often offer enforcement alternatives when such laws have been violated. Even if some form of forfeiture is not permitted, the state might be able to file for injunctive relief or to record an enforceable statutory lien; both can be as effective as forfeiture in thwarting the targeted criminal activity.²⁴

Another class of particularly formidable civil enforcement statutes are state RICO laws. Although some states have given these laws different names (for example, the "Wisconsin Organized Crime Control Act" and the "California Control of Profits of Organized Crime Act"), the statutory scheme is the same. RICO-type statutes generally have a two-pronged approach: they define prosecutable crimes and create other remedies that can include forfeiture and injunctive relief.

The availability of broad-based civil relief under such statutes is especially important when criminal prosecution has been ineffective and forfeitable assets cannot be located. In one major investigation of massage parlor prostitution operations, law enforcement and prosecuting agencies realized that arresting individual prostitutes would result in minimal fines

and little, if any, jail time. The investigation revealed that the storefronts in which the parlors were located were rented and that no other assets were worth pursuing. At the time, identification of the profits and the principals involved was difficult. Using a state RICO law that provided for injunctive relief, all operations were permanently shut down after injunction proceedings determined that the primary activity of the businesses was prostitution. The criminal enterprise was stopped completely through injunctive relief only.

It is, therefore, advisable to determine whether RICO or other regulatory enforcement will be included in the asset forfeiture program, will be handled by a separate unit or agency, or will be considered for inclusion in the forfeiture program at some future date. Even though the prosecutor's office may not be able, or may not choose, to become involved in nonforfeiture types of civil relief, awareness of such possibilities can enhance the entire effort.

Designing the Program: The Operational Plan

Several areas must be considered when the asset forfeiture program is designed. The list of issues to be addressed is derived from the experience of states like Florida, where the immediacy of a devastating drug trafficking problem launched asset forfeiture efforts without much planning. Answering certain questions about the type of criminal activity that has proven most difficult for a jurisdiction to suppress, the various statutes or local ordinances at one's disposal, and the investigative, prosecutive, and financial resources available to the asset forfeiture program will help define its scope and likelihood of success. Your operational plan should, therefore, include the components discussed below.

Identification of the problem

Every jurisdiction faces law enforcement problems that are difficult to solve. Arrest and prosecution have traditionally

been the only options available to deal with criminal activity. But they often overlooked the considerable financial motivation involved in gambling, prostitution, pornography, and narcotics offenses. Asset forfeiture laws provide additional penalties and an exceptionally appropriate means of attacking ill-gotten gains.

Concentrating the investigative and legal focus on one type of criminal activity, at least initially, allows the enforcement team to develop expertise in the procedural and technical aspects of that particular type of forfeiture. For example, if the jurisdiction determines that narcotics offenses warrant asset forfeiture activity, investigative and legal issues will develop through the handling of the first few cases. The resolution of problems encountered in *those* cases is imperative before a new set of issues must be faced in, for example, forfeiture cases brought against pornography operations. Once those in the forfeiture program develop expertise, the focus of the program can be expanded.

Evaluating the investigative and prosecutive commitments

An issue closely related to the selection of applicable statutes is the selection of cases and the designation of responsibility for investigative and prosecutive aspects of the program. When several law enforcement agencies operate in the jurisdiction, all must understand their roles in the asset forfeiture effort. If a prosecutive decision is made to accept initially those cases generated only by a special multiagency task force, that decision must be clearly communicated to the other law enforcement officers in the area. This is particularly important in jurisdictions that have not had an asset forfeiture program and where the local law enforcement agencies are anxiously awaiting its creation. If the program's limitations are not clearly explained, the prosecutor's refusal to file non-targeted cases will cause considerable ill-will and frustration and may impede expansion of the program when that becomes possible.

Within the prosecutor's office, responsibility for the forfei-

ture program must be established and, if possible, a special, identifiable unit should be established. If one attorney is to participate on a full- or part-time basis, all legal advising and case filing duties should be clearly delegated to that person. Investigators who have to search the office to find an attorney interested in assisting them with a forfeiture question or case will soon lose interest.

Finding a prosecuting attorney who is challenged by the prospect of a trailblazing civil practice is also important. As a bastion of pure criminal law, many prosecutors' offices view civil matters as an inferior or less prestigious form of practice. However, with the present interest in forfeiture and its recognized viability, asset forfeiture programs have become elite units that attract outstanding people.

Training

Unfortunately, enthusiasm in the investigative and attorney ranks cannot completely substitute for adequate training and preparation. Particularly where civil enforcement efforts will rely upon complex statutes like state RICO laws, attorneys *and* investigators must understand the legal and evidentiary requirements of the laws involved. If investigators feel uneasy about securing and reviewing financial records, or if the prosecutors have no idea what the legal basis for a RICO forfeiture is, few cases will materialize.

In Florida, RICO and financial investigation training programs for law enforcement officers and prosecutors were designed when it became clear that enforcement efforts against drug trafficking would routinely include some form of forfeiture. Those programs sought to combine legal fundamentals with operational realities: attendees should leave the course with a good understanding of the law and the evidentiary issues they would face *and* feel comfortable with the day-to-day fundamentals of dealing with seized property and the often creative efforts on the part of owners to get their property back.

Giving investigators and prosecutors a solid foundation in the legal requirements for forfeiture has a twofold purpose: it

ensures that everyone involved in the process understands what the legal elements of the government's claim will be, and lays the basis for a thorough discussion of how those elements can be proven.

For example, regarding laws that permit forfeiture of the "proceeds" of illegal activity, both investigators and prosecuting attorneys should be aware of the various means of proving that a drug trafficker's Ferrari is indeed a "proceed" of his criminal activity. If an eyewitness will testify that the trafficker was paid in cash for five kilos of cocaine and immediately rushed to the Ferrari dealer to purchase the car, proving that the Ferrari is a proceed of drug trafficking is a relatively simple matter.

However, if the Ferrari was bought two years ago and there is no witness to or documentary evidence of the transaction, the only way to seek forfeiture of the car might be to pursue a "net worth" theory; that is, the drug trafficker had no legitimate means of support while he was dealing in narcotics but lived extravagantly, buying expensive clothing, jewelry, and cars. A detailed description of his criminal activities, the amount of money he probably made as a result of his drug trafficking, and the lavish properties he acquired without working at a legitimate job are all *circumstantial* evidence that the properties were the proceeds of illegal activity. Rather than assuming that a net worth analysis is nothing more than an unwieldy and horribly complicated tax investigation technique, investigators and attorneys can be introduced to the net worth concept in a training setting that demonstrates its simplicity and effectiveness.

The objective of an asset forfeiture training program must, therefore, be to expose all concerned to the new laws and investigative techniques that can be used in the forfeiture effort. Some subject areas to consider are as follows:

Forfeiture law. Provide a detailed explanation of the various state laws available and stress the legal elements needed for each type of forfeiture. If asset sharing under federal statutes is likely, a discussion of any significant differences between state and federal law is helpful. Since forfeiture cases are gen-

erally civil proceedings, it is also important to describe the procedural aspects of the litigation as established by state law and court rule and to point out those tools (e.g., seizure orders, temporary restraining orders, liens, *lis pendens*) that are uniquely available in forfeiture actions to protect and preserve property.

Sources of information. Present a thorough description of the different *places* information can be found and the different *means* by which the information can be obtained. Although public records are relatively easy to find and can provide excellent information regarding an individual's assets, obtaining financial documents like bank records will require an understanding of what is available, what should be requested, how it should be sought (e.g., subpoena, search warrant), and what the fee is, if any. The differences between personal and business records should be explored, including a review of some of the legal considerations involved in how such records are obtained.

Financial investigative techniques. Provide an exposure to subject that sufficiently demystifies it and demonstrates how easily and effectively such techniques can be employed in forfeiture cases. Net worth analysis and asset tracing should be discussed, with advice given on how to read and interpret certain business and financial records.

Property management. Describe the problems that every forfeiture effort will confront in tracking, maintaining, and disposing of seized and forfeited property. Sample policies and procedures should be discussed and, if possible, distributed to attendees.

Objectives of the forfeiture program. If the training program is being held for local officers and prosecutors, this is an excellent opportunity for both to describe the objectives of the forfeiture effort and the type of cases that will be accepted for filing. In this setting everyone will be exposed to the forfeiture policies that have been developed by the police and prosecuting officials in the jurisdiction.

Many other subject areas can be included in the training

program if time permits: money laundering, complex case management techniques, real estate records and analysis of property transactions, federal asset sharing programs, use of electronic surveillance, and any issues that may be of particular interest in the jurisdiction. However, one of the most important aspects of the program should be to provide "nuts and bolts" instruction, rather than lots of interesting theory. Even legal issues and financial investigative techniques should be immediately brought to the practical level through hypothetical fact situations and class workshops.

To provide the most effective instruction in some of these highly technical areas, consideration should be given to seeking out recognized experts who are also good instructors. Organizations such as the Police Executive Research Forum and the National District Attorneys Association are often able to suggest excellent instructors that have proved abilities in specialized areas.

Evaluating Resources: What Can the Program Afford?

Although most asset forfeiture cases are relatively simple proceedings that do not have unusual or complex investigatory or evidentiary requirements, RICO or regulatory forfeitures can require substantial expertise in financial investigations. When it is necessary to obtain and analyze financial and property records in order to trace money from an illegal transaction to the purchase of an asset, the asset forfeiture program must have access to experienced financial investigators or, at the very least, people with a background in accounting.

If local law enforcement agencies cannot provide such expertise, financial investigators in other governmental agencies should be identified and asked if they are willing and able to assist. It is also essential that management personnel in those agencies agree to provide the investigators when needed. If no state or federal agencies can provide investigative assistance, it may be necessary to look into the possibility of contracting with a certified public accountant to do the work. The worst possible scenario is to execute a subpoena or

search warrant for business or financial records and have no one available to organize and analyze them.

Although other government agencies might tentatively agree to help with financial investigations out of a spirit of cooperation, they may not be able to follow through because of pressing demands in their own areas. If one of the asset forfeiture program's objectives will be to pursue complex forfeitures, either the law enforcement agencies or the prosecutor's office must make the hiring of experienced investigative personnel a priority.

In addition to expert investigators, the program designers must evaluate the costs involved in conducting long-term financial investigations. Many states now authorize banks to charge fees for retrieving documents requested pursuant to subpoena, and these fees can be staggering. Travel, document copying, informant, and personnel costs all tend to rise in complex forfeiture cases, but so does the return. If investigators are tracking the course of several million dollars from the United States to an offshore corporation and back, the time and money invested will likely result in a civil forfeiture case that dismantles a major criminal enterprise.

Targeting cases

Probably the most difficult issue to resolve in an asset forfeiture program is that of targeting. Here, targeting refers to the decision a prosecutor or police officer must make when evaluating whether a particular investigation will include forfeiture. Without dampening the enthusiasm of the investigators or prosecutors, it must be made clear that forfeiture is very effective but uniquely susceptible to abuse. If courts receive cases that suggest an inappropriate preoccupation with a defendant's assets rather than his criminal culpability, it is likely that the forfeiture statute will be very strictly construed. Since considerable precedent holds that forfeiture statutes are not favored in the law,²⁵ adverse appellate decisions could put the entire forfeiture effort in jeopardy. It is, therefore, essential that the legislative intent behind forfeiture statutes

be clearly understood and that inappropriate uses of these statutes be restrained.

One example of an investigative practice that threatened the existence of Florida's forfeiture act was a case involving a reverse sting drug operation initiated against several individuals through a paid informant.²⁶ After the informant "sold" the defendants several hundred pounds of marijuana, they were arrested and charged with drug trafficking. The defendants alleged entrapment on the ground that the police and the prosecutor's office had agreed to pay the informant 10 percent of all civil forfeitures arising out of the investigation. The facts also revealed that the informant was an essential witness in the criminal prosecution and was required by the agreement to testify. In a strongly worded opinion, the Florida Supreme Court concluded that such practices violated the defendants' due process rights and reversed their convictions. At the least, this case represents a forfeiture policy gone awry.

To insure that forfeitures do not become the motivating force behind criminal investigations, suspects should be targeted for investigation based on their criminal activity.

Plea bargaining and forfeiture settlements

An issue closely related to targeting is the involvement of forfeitures in plea bargaining. If prosecuting agencies agree to jointly settle a criminal defendant's charges and any forfeitures he may have an interest in, a lenient sentence may appear to have been bought by a criminal eager to avoid serious punishment.²⁷ In the absence of a filed petition for forfeiture, conveyances of property by criminal defendants to law enforcement and prosecuting agencies may have the same appearance of impropriety, especially if criminal charges against the defendant are dismissed for any reason.

Care should, therefore, be taken to address forfeitures and plea negotiations separately. If the defendant initiates negotiations to settle a forfeiture case and a criminal prosecution together, the court file should reflect, by appropriate plead-

ing, that the defendant chose to do so voluntarily and without any coercion from the prosecutor's office. In cases where the defendant decides to sign over his interest in seized property before the government has actually filed a case against it, filing the forfeiture is still advisable. The defendant's desire to waive his claim to the property can be evidenced in a settlement agreement concluding the case, and the government will be less likely to suffer criticism for engaging in "cash register justice."

Participation in federal asset-sharing programs

One option that can be incorporated into a state forfeiture effort is participation, at some level, in federal asset-sharing programs. This option is especially viable when state or local law enforcement agencies participate in federal task forces or joint investigations. In such cases, seized property will be equitably distributed to participating law enforcement agencies after a forfeiture proceeding has been successfully resolved by the appropriate federal agency. A state or local law enforcement agency's request for distribution of forfeited assets must be made on an "Application for Transfer of Federally Forfeited Property" (U. S. Justice Department Form DAG-71) that is available from local DEA or FBI offices.

Even when there is no joint federal/state investigation, forfeitures can be "adopted" by the federal government if the property is forfeitable pursuant to a federal forfeiture law. Presently, 15 federal statutes permit asset sharing.²⁸

Management of Seized Assets

Although volumes could be written on this seemingly mundane topic, a few words must suffice regarding the effect of property management on the success or failure of an asset forfeiture program. This area unquestionably requires more detailed attention than can be given to it in this paper, but pointing out a few of the more serious pitfalls will hopefully

encourage development of sound property management policies.

Unless a forfeiture statute provides for the release of seized property to its owner upon the posting of an appropriate bond,²⁹ the program will be responsible for maintaining all property pending forfeiture. Property that is allowed to deteriorate can cause two serious problems: (1) it will be of less value to the seizing agency and, if sold, will bring little or nothing at auction; and (2) if the forfeiture is unsuccessful, the court may require that the government restore the property to its condition at the time of seizure. Restoration may not be too difficult on a 1978 Volkswagen van, but making a twin-engine Beech King Air airworthy after it has been neglected for over a year is another matter.

Maintaining vehicles that are locked in a compound is not easy, but preventing the deterioration of the more exotic and more valuable properties is much more difficult. Procedures should be drafted that detail where property will be kept (warehouse, airplane hangar, boatyard) pending forfeiture and who will be responsible for its maintenance. If leases or contracts for space are likely to be needed, they should be drafted. If a boat is to be kept at a marina, the agreement with the marina should be reduced to writing and should spell out the duties and responsibilities of the marina. For example, is the marina required to check the boat periodically for damage or leaking, or does the charged fee cover only the dock space? Who will start the engines to insure that they remain in working order?

Such questions take on almost cosmic significance for aircraft, which involve unique maintenance requirements that the average police department is not in a position to fulfill. Once again, specialists must be identified. What they are being asked to do must be included in their contracts. Since aircraft are usually the most expensive kinds of property involved in forfeiture, it is wise to determine if the responsible government entity has, or could purchase, insurance to cover hull damage (as opposed to liability insurance) rather than exposing the agency's operating budget to payments for possible future damage.

Conclusion

Asset forfeiture programs are creating an intriguing body of law and an unique set of investigative challenges for the criminal justice system. With careful planning, intelligent policies, and a strong commitment to the goals of the forfeiture program, both law enforcement and the prosecutor's office can take pride in the success that is certain to occur. If difficulties arise that this guide cannot resolve, call upon your colleagues in other states for help. The only thing more exciting than having your problem solved is being the one who provides the solution.

Endnotes

1. For a general discussion of the historical basis for forfeiture, see *Astol Calero-Toledo et al. v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 40 L.Ed. 2d 452, 94 S.Ct. 2080 (1974) and *A Comprehensive Perspective on Civil and Criminal RICO Legislation and Litigation*, A.B.A. Criminal Justice Section, at pp. 72-83 (1985).
2. For example, compare the result in *Dobbins Distillery v. United States*, 96 U.S. 395, 24 L.Ed. 637 (1878), where a lessor's innocence in a violation of the revenue laws would not prevent the forfeiture of his real and personal property, with MASS. GEN. LAWS ANN. ch. 94C §47(a)(7), pertaining to secured creditors, and (c)(3) pertaining to owners of conveyances. See also FLA. STAT. §932.703.
3. For a brief overview of the various provisions of the controlled substance forfeiture statutes in all 50 states, see L. Stellwagen, "Use of Forfeiture Sanctions in Drug Cases," *National Institute of Justice/Research in Brief*, July 1985.
4. See, for example, MD. ANN. CODE art. 27 §47(f).
5. MD. CODE ANN. art. 27 §297(b); MASS. GEN. LAWS ANN. ch. 94C §47(f).
6. Although some statutes are silent in regard to the standard for seizure, others specify that probable cause is required. See TENN. CODE ANN. §53-11-409(b)(1-4); MD. CODE ANN. art. 27 §297(b)(iv).
7. Unfortunately, case law has not revealed a direct answer to this particular question, but a probable cause analysis might suggest that the seizure could be made.
8. Florida's Contraband Forfeiture Act, FLA. STAT. §932.701 et seq., had been amended several times to correct deficiencies in statutory language, but none of those amendments addressed the vague procedure created in the law. As a result, Florida's appellate courts were compelled to articulate procedures through case law. See, for example, *In re Forfeiture of United States Currency in the Amount of Five Thousand Three Hundred Dollars \$5300*, 429 So.2d 800 (Fla. 4th DCA 1983). Other states, like Massachusetts, detail a procedure to be used in forfeiture cases. MASS. GEN. LAWS ANN. ch. 94C §47(d).
9. See, for example, *Wille v. Castro*, 490 So.2d 250 (Fla. 4th DCA 1986).
10. In the more general context of construing those statutes that establish probable cause as the government's initial burden of proof, the Ninth Circuit has held that probable cause means probable cause, not a preponderance of the evidence or any other burden of proof standard. *United States v. One 56-Foot Yacht Named Tahuna*, 702 F.2d 1276, 1282 (9th Cir. 1983).
11. *In re Forfeiture of 1978 Chevrolet Van*, 493 So.2d 433 (Fla. 1986).
12. For example, would the government's initial showing of probable cause be a legal question decided by the court, or would it be submitted to the jury with a probable cause instruction? How would the government's burden of probable cause, the claimant's case, and the government's rebuttal of the claim be explained to the jury?
13. See, for example, *United States v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850.00) in United States Currency*, 461 U.S. 555, 103 S.Ct. 2005, 76 L.Ed.2d 143 (1983); *United States v. Forty-Seven Thousand Nine Hundred Eighty Dollars (\$47,980) in Canadian Currency*, 804 F.2d 1085 (9th Cir. 1986).
14. *United States v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850.00) in United States Currency*, *op. cit.*
15. See, for example, FLA. STAT. §932.703.
16. *Western Pacific Fisheries, Inc. v. SS President Grant*, 730 F.2d 1280 (9th Cir.

1984); *U.S. v. One Piece of Real Estate, Described in Part as: 1314 Whiterock and Improvements, San Antonio, Bexar County, Texas*, 571 F.Supp. 723 (S.D. Tex. 1983)

17. See, for example, *Lamar v. Wheels Unlimited*, 513 So.2d 135 (Fla. 1987); *In re Forfeiture of One 1975 35' Cigarette Boat*, 498 So.2d 960 (Fla. 3d DCA 1986); *In re Forfeiture of One 1979 Chevrolet CIO Van*, 490 So.2d 240 (Fla. 2d DCA 1986); and *In re Forfeiture of One 1973 Mercedes 2-Door Convertible*, 463 So.2d 1181 (Fla. 4th DCA 1985).

18. *City of Orlando v. Sun Bank*, 428 So.2d 769 (Fla. 5th DCA 1983). But see *United States v. Escobar*, 600 F.Supp. 88 (S.D. Fla. 1984).

19. See *Morton v. Gissendanner*, 12 F.L.W. 2339 (Fla. 3d DCA 1987); *Morton v. Gardner*, 513 So.2d 725 (Fla. 3d DCA 1987).

20. See *One 1978 Green Datsun Pickup Truck, Kruijsman v. State ex rel. Manatee County*, 457 So.2d 1060 (Fla. 2d DCA 1984) and *State ex rel. City of Pompano Beach, Broward County v. Washington and 1970 Oldsmobile Convertible*, 352 So.2d 138 (Fla. 4th DCA 1977).

21. See FLA. STAT. §932.704(3)(a).

22. See *Jones v. Office of Finance of Baltimore County*, 451 A.2d 926 (Md. 1982).

23. See, for example, CAL. HEALTH & SAFETY CODE §11489 (ten percent of recovery to prosecutor); IND. CODE ANN. §34-4-30.1-8 (expenses of prosecution).

24. See, for example, FLA. STAT. §212.0505, pertaining to the taxation of illegal controlled substances.

25. See, for example, *United States v. Oregon*, 1971 Cadillac Coupe de Ville, 644 F.2d 500 (5th Cir. 1981); *United States v. One 197735 Chevrolet Pickup*, 503 F.Supp. 1027 (D. Colo. 1980); and *Pheil v. Griffin*, 469 So.2d 942 (Fla. 5th DCA 1985).

26. *State v. Glosson*, 462 So.2d 1082 (Fla. 1985).

27. A report of the National Criminal Justice Association indicates that commingling of forfeitures and plea negotiations is not a favored practice. The report made the following observation:

...(A) prosecutor may consider using seized property as part of the plea bargaining process. However, officials in a few southern region states indicated that prosecutors in their states do not intermingle forfeiture and plea bargaining, either because prosecutors want to avoid any appearance that defendants can buy their way out of charges or because of concerns about the risks of coercion.

Southern Region Seminar on State Legislative Options for Drug Laws Enforcement, January 1987. (Printed materials prepared by National Criminal Justice Association and National Governor's Association.)

28. *Facts on Sharing*, a report prepared by the Legal Forfeiture Unit, Legal Counsel Division, of the Federal Bureau of Investigation (September 1987).

29. See, for example, MD. CODE ANN. art. 27 §297(i).

**Appendix A: Petition for Rule to Show Cause
and for Final Order of Forfeiture and
Affidavit in Support of Petition for Rule to
Show Cause**

IN THE CIRCUIT COURT OF THE
FIFTIETH JUDICIAL CIRCUIT, IN
AND FOR SUN COUNTY, FLORIDA

CASE NUMBER 88-596

JUDGE:

FLORIDA BAR NUMBER 000000

IN RE:

FORFEITURE OF ONE 1987
MERCEDES BENZ, 300 D
VIN 378911KB2S74MA4T1

**PETITION FOR RULE TO SHOW CAUSE
AND FOR FINAL ORDER OF FORFEITURE**

JOHN Q. DOE, as Sheriff of SUN COUNTY FLORIDA, by and through undersigned counsel, files this Petition for Rule to Show Cause and For Final Judgment and Order of Forfeiture pursuant to Rule 1.190 of the Florida Rules of Civil Procedure and says:

1. This is an action for forfeiture brought pursuant to Sections 932.701 through 932.704, Florida Statutes (1987), with jurisdiction of this Court based upon Section 932.704, Florida Statutes (1987).

2. JOHN Q. DOE is the Sheriff of Sun County, Florida, a "law enforcement agency" and "seizing agency" as those terms are used in the Florida Contraband Forfeiture Act, Sections 932.701 through 932.704, Florida Statutes (1987).

3. The property which is the subject matter of this action is a motor vehicle, more particularly described as:

One Mercedes Benz, 300 D
VIN 378911KB2S74MA4T1

4. The motor vehicle described above was, on July 4, 1987, used or intended to be used in violation of Section 932.702, Florida Statutes (1987), or a violation of that section took place in, upon, or by means of said vehicle, or said vehicle is a "contraband article" as defined by Section 932.702(2)(a)-(e) Florida Statutes (1987).

5. On July 4, 1987, the Sun County Sheriff's office seized the motor vehicle described in Paragraph 3, above, in Sun County, Florida under circumstances as set forth in the affidavit attached hereto as Exhibit #1 and by reference incorporated into this Petition.

6. The following person may claim some interest in the motor vehicle that is the subject of this action:

JACK SMITH
2001 Moon Road
Sun City, Florida

7. Pursuant to the filing of this Petition, the routine requirements of Section 932.704, Florida Statutes (1987), will be met and will be accomplished in the required time frame, with Petitioner presenting proof of such notice prior to the issuance of the Rule To Show Cause, or any other order or judgment Petitioner may seek.

8. By reason of Section 932.703, Florida Statutes, (1987), the rights, interest in, and title to the above-described property have vested in the Sun County Sheriff's Office, and said rights, interest and title should be perfected by this Honorable Court.

WHEREFORE, the Petitioner, John Q. Doe, Sheriff of Sun County, Florida, respectfully requests this Court to issue a Rule to Show Cause requiring JACK SMITH and any other persons who may claim an interest in said vehicle to show cause why the property should not be forfeited to the use of, or to be sold by, the Sun County Sheriff's Department, and, upon proper motion of Petitioner, to enter a Final Order of Forfeiture perfecting the Sun County Sheriff's Department's right to, title to, and interest in said property.

If no claimant comes forth to claim an interest in said vehicle after notice is made pursuant to statute, Petitioner prays this Court to enter a Final Order of Forfeiture summarily and forthright.

Respectfully submitted,

RON BRILLIANT
Assistant State Attorney
Office of the State Attorney
Sun City, Florida 33333
(904) 555-0000

STATE OF FLORIDA
COUNTY OF SUN

BEFORE ME, the undersigned authority, appeared Assistant State Attorney, Ron Brilliant, who being first duly sworn, says the above is true and correct to the best of his information and belief and that

there appears to be just cause for the forfeiture of the subject motor vehicle under the Florida Contraband Forfeiture Action.

RON BRILLIANT

SWORN TO and SUBSCRIBED
before me this ____ day of
_____, 1988.

NOTARY PUBLIC

My commission expires:

Appendix B: Affidavit in Support of Petition for Rule to Show Cause

IN THE CIRCUIT COURT OF THE
FIFTIETH JUDICIAL CIRCUIT, IN
AND FOR SUN COUNTY, FLORIDA

CASE NUMBER 88-596

JUDGE:

IN RE:

FORFEITURE OF ONE 1987
MERCEDES BENZ, 300 D
VIN 378911KB2S74MA4T1

AFFIDAVIT IN SUPPORT OF PETITION FOR RULE TO SHOW CAUSE

STATE OF FLORIDA
COUNTY OF SUN

BEFORE ME, the undersigned authority, personally appeared Susan Smart, Deputy Sheriff, Sun County, Florida, who, being first duly sworn, states the following:

1. On July 4, 1987, in Sun City, Sun County, Florida, at approximately 10:30 a.m., your Affiant observed two males parked in a 1981 Mercedes Benz, 300 D, the motor vehicle which is the subject of the forfeiture action to which this affidavit relates. The Mercedes Benz was parked in front of the Sun City Bank located at 100 Constellation Avenue, Sun City, Florida.

2. The driver of the motor vehicle, identified as JACK SMITH was observed by your Affiant to have a paper bag and a plastic bag in his possession, while the passenger, identified as JOE DOKES, had nothing visible in his hands.

3. The area in which the Sun City Bank is located is known to your Affiant and other agents of the Sun County Sheriff's Department to be an area in which "crack" cocaine and other controlled substances are regularly sold and purchased. Based upon this knowledge, and based upon what I had observed, your Affiant suspected that the sale or purchase of a controlled substance had occurred, was occurring, or was about to occur in the motor vehicle. I decided to continue to observe the two individuals in the Mercedes Benz motor vehicle.

4. The two individuals eventually left the vehicle, walking west on Start Street.

5. As backup Deputy Larry Lonestar approached the two males on foot, the person who had been observed behind the driver's wheel subsequently identified as JACK SMITH threw an object under the front porch of 802 Star Street.

6. JACK SMITH and the person observed as the passenger in the motor vehicle, subsequently identified as JOE DOKES, began walking away from 802 Star Street towards Constellation Avenue.

7. Deputy Lonestar retrieved from under the porch at 802 Star Street a plastic bag containing what appeared to be "crack" cocaine. The bag was the only item under the porch found in the area where JACK SMITH and JOE DOKES had been observed. The bag was identical to the one Deputy Lonestar saw SMITH toss under the porch.

8. JACK SMITH and JOE DOKES were arrested for possession of cocaine and were advised their legal rights pursuant to the *Miranda* decision.

9. Both subjects were taken to the Sun County Sheriff's Office where JACK SMITH, in response to questioning by Deputy Lonestar admitted:

(a) that he had picked up JOE DOKES and had asked him where he could buy "crack." (From your Affiant's experience and training, "crack" is a street term for cocaine, a controlled substance under Florida Statutes.)

(b) that JOE DOKES accompanied him as they drove to Constellation Avenue; and

(c) that he and JOE DOKES then walked to the house on Star Street where, according to SMITH, an unknown female had handed SMITH the bag of "crack" cocaine and he had thrown it down.

10. During the time that JACK SMITH was under observation by Deputy Lonestar, no person had approached either JACK SMITH or JOE DOKES and at the time JACK SMITH was observed by Deputy Lonestar to have thrown the object under the porch, no other person other than JOE DOKES was near JACK SMITH.

11. The 1987 Mercedes Benz 300 D was seized by your Affiant in Sun County on July 4, 1987, and is the motor vehicle which is the subject of this forfeiture action.

12. The suspected "crack" cocaine was submitted to the Sun County Crime Lab for analysis and said analysis indicated the presence of cocaine, a controlled substance under the Florida statutes.

13. A search incident to the arrest of the person of JACK SMITH produced \$500 in United States Currency, which was seized as evidence and is being maintained by the Sun County Sheriff's Office.

14. An inventory search of the motor vehicle produced miscellaneous papers, and one Motorola Porta-Phone Pager, and an additional 40 grams of "crack" cocaine, which is being maintained by the Sun County Sheriff's Office.

15. Based upon facts as stated above, it is your Affiant's belief that the subject motor vehicle was used in violation of Section 932.702, Florida Statutes (1987) in that it was used to transport, carry, or convey "crack" cocaine; and/or in that it was used to conceal or possess contraband, to wit: "crack" cocaine; and/or in that said motor vehicle was used to facilitate the transportation, carriage, or conveyance, concealment, receipt, possession, purchase, sell, barter, exchange, or giving away of contraband to wit: "crack" cocaine.

16. By reason of the above and foregoing, your Affiant believes that the motor vehicle should be forfeited under Sections 932.701-932.704, Florida Statutes (1987), the Florida Contraband Forfeiture Act, with the right and interest in and title to said motor vehicle having vested in Sun County at the time it was seized by the Sun County Sheriff's Office.

FURTHER AFFIANT SAYETH NOT.

I have read the above and foregoing and it is true and correct to the best of my knowledge and belief.

SUSAN SMART, Deputy Sheriff
Sun County Sheriff's Office

SWORN TO and SUBSCRIBED before me, this _____ day of _____, 1988.

NOTARY PUBLIC

My commission expires:

Appendix C: *In Personam* State RICO Act Forfeiture Petition*

COMPLAINT FOR FORFEITURE (IN PERSONAM)

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR DADE COUNTY,
FLORIDA.

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS,
Plaintiff

Case No. _____

vs.

A.B.; C.D.; E.F.; G.H., as Trustee;
XXX, INC., a Florida corporation;
and ZZZ, N.V., an alien business
organization.

Defendants.

_____ /

Complaint

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, brings this civil action for forfeiture and other statutory relief under the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, Ch. 895, Fla. Stat. (1985), and says:

Jurisdiction

1. This Court has jurisdiction pursuant to the provisions of §895.05(5), Fla. Stat. (1985).

Parties

2. Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, is authorized to bring this action by §895.05(5), Fla. Stat. (1985).

*Reprinted from the *Formbook for Use in Civil Actions Under the Florida RICO Act*, Florida Department of Legal Affairs, Jim Smith, Attorney General, First Edition 1985

3. Defendant A.B. is a resident of the State of Florida residing at [address].

4. Defendant C.D. is a resident of the State of New York whose address is [fill in address]. C.D. is engaged with the other individual Defendants in various business ventures in the State of Florida, and also owns real property in the State of Florida, as described in this Complaint. C.D. is subject to the process of this Court under §48.181 and 48.193, Fla. Stat. (1985).

5. Defendant E.F. is a resident of the State of Florida who is currently a fugitive. His last known address is [address].

6. Defendant G.H. is a resident of the State of Florida residing at [address]. G.H. holds title to real property as trustee for the individual Defendants, and is sued in his capacity as trustee.

7. Defendant XXX, INC., is an active Florida corporation for profit having its principal place of business at [address].

8. Defendant ZZZ, N.V., is an alien business organization ostensibly organized under the laws of the Netherlands Antilles, but transacting business and owning real property in the State of Florida. ZZZ, N.V., has failed to maintain a registered office and registered agent, in violation of the requirements of §607.325, Fla. Stat. (1985).

Facts Common to All Counts

9. Beginning in March 1981 and continuing through and including June 1984, Defendants A.B., C.D. and E.F., combined, as a group of individuals associated in fact although not a legal entity, for the object and purpose of possessing, importing and trafficking in cannabis in the State of Florida. This combination of persons constitutes an "enterprise" as defined in §895.02(3), Fla. Stat. (1985). In furtherance of the affairs of the enterprise Defendants committed the following acts:

10. [First Predicate Crime and specific statute violated]

11. [Second Predicate Crime and Additional Predicate Crimes and specific statutes violated]

12. The conduct described in paragraphs 10 and 11 above evidence similar intents, results, accomplices, and methods of commission, and are otherwise interrelated and not isolated incidents, so as to form a "pattern of racketeering activity" as defined in §895.02(1) and (4), Fla. Stat. (1985).

Count I

13. This is a claim for civil relief for violation of §895.03(1), Fla. Stat. (1985). The allegations of paragraph 9 through 12 are incorporated by reference.

14. Defendants A.B., C.D. and E.F. with criminal intent received proceeds derived, directly or indirectly, from the pattern of racketeering activity.

teering activity described above, and used or invested, directly or indirectly, such proceeds in the acquisition of title, rights, interest or equity in real property, and in the establishment and operation of the Defendant corporations, in violation of §895.03(1), Fla. Stat. (1985).

15. Defendant A.B. used the proceeds of the pattern of racketeering activity to purchase the following described real property, held in trust for him by the Defendant G.H.:

[legal description]

16. Defendant C.D. used the proceeds of the pattern of racketeering activity to acquire the following described real property in his own name:

[legal description]

17. Defendant E.F. used and invested the proceeds of the pattern of racketeering activity to form the corporate Defendant XXX, Inc. XXX, Inc., used the illegally invested funds to acquire the following described real property:

[legal description]

18. Defendants A.B., C.D., and E.F. used and invested the proceeds of the pattern of racketeering activity to form or acquire the corporate Defendant ZZZ, N.V. ZZZ, N.V., used the illegally invested funds to acquire the following described real property:

[legal description]

19. The real property described in paragraphs 15 through 18 above was derived from or realized through conduct in violation of the RICO Act.

Count II

20. This is a claim for civil relief for violation of §895.03(3), Fla. Stat. (1985). The allegations of paragraphs 9 through 12 are incorporated by reference.

21. The Defendants A.B., C.D. and E.F. were associated with the enterprise described in paragraph 11, and conducted or participated, directly or indirectly, in that enterprise through a pattern of racketeering activity, as described in paragraph 12.

22. The following described property was used as an off-loading site for the cannabis trafficking operations described in paragraphs 10 and 11:

[legal description]

23. The following described property was used as a hidden stash house and meeting place in the cannabis trafficking operations described in paragraphs 10 and 11:

[legal description]

24. The corporate Defendants XXX, INC., and ZZZ, N.V., and the respective corporate assets thereof, were intended for use to conceal or launder the proceeds of the cannabis trafficking operations described in paragraphs 10 and 11. The corporate assets intended for use in this process included the following described real property:

[legal description]

25. Defendants realized the real property described in paragraphs 15 through 18 above with the proceeds of the cannabis trafficking operations described in paragraphs 10 and 11 above.

26. Defendants have used the proceeds from their violation of the RICO Act to purchase, invest in, acquire interests in, and improve other real property; to purchase motor vehicles, aircraft and other tangible personal property; to establish bank accounts and acquire securities, receivables and other intangible property; and to make loans, bailments and gifts, the further descriptions of which cannot be ascertained by Plaintiff at the time of filing this Complaint.

27. The properties described in paragraphs 15 through 18, and 22 through 26 above were used, intended for use, derived from or realized through conduct in violation of the RICO Act.

Relief

Plaintiff requests the Court to grant the following relief:

- (1) Subject all Defendants' real and personal property to Court supervision, and order Defendants to refrain from disposing of, transferring, relocating, dissipating or otherwise altering the status of said properties without prior approval of the Court, during the pendency of this action, under §895.05(5), Fla. Stat. (1985);
- (2) Order forfeiture of all real property described in the Complaint to the State of Florida, pursuant to §895.05(2), Fla. Stat. (1985);
- (3) Order forfeiture of all corporate stock in the corporate Defendants to the State of Florida, pursuant to §895.05(2), Fla. Stat. (1985);
- (4) Order forfeiture of the corporate charter of the corporate Defendant XXX, INC., pursuant to §895.05(1)(e), Fla. Stat. (1985);
- (5) Order a money judgment against Defendants in an amount equal to the fair market value of any property subject to forfeiture which Defendants have rendered unavailable for forfeiture after the filing of this action, under §895.05(2), Fla. Stat. (1985).
- (6) Award Plaintiff such costs of investigation and litigation, including attorneys fees, as may be taxable by law.
- (7) Retain jurisdiction to direct the proper distribution of the proceeds of forfeiture pursuant to §895.09, Fla. Stat. (1985).
- (8) Award other relief the Court deems appropriate.

Appendix D: *In Rem* State RICO Act Forfeiture Petition*

COMPLAINT FOR FORFEITURE (IN REM)

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR DADE COUNTY,
FLORIDA

IN RE: The Forfeiture of Real
Property located in Dade
County, Florida, more
particularly described as [legal
description].

Case No. _____

Complaint

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, brings this civil action for forfeiture under the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, Ch. 895, Fla. Stat. (1985), and says:

1. This Court has jurisdiction pursuant to the provisions of §895.05, Fla. Stat. (1985).
2. Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, is authorized to bring this action by §895.05(5), Fla. Stat. (1985).
3. The real property sought to be forfeited in this action is located in Dade County, Florida, and is more particularly described as follows:
[legal description]
4. The above described property is presently owned by X.Y.Z., Inc., pursuant to a deed dated October 12, 1984, and recorded in the records of Dade County at O.R. Book _____, Page ____.
5. The present owner, X.Y.Z., Inc., has no equitable interest in the subject premises, but is merely a straw or alter ego for one or more members of the illegal enterprise described below.
6. The following additional persons may claim an interest in the subject property: (a) A.B. is a resident of the State of Florida residing at [address]. (b) C.D. is a resident of the State of New York

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whose address is [address]. (c) E.F. is a resident of the State of Florida who is currently a fugitive. His last known address is [address]. (d) SUNSHINE BANK of FLORIDA, INC., a Florida corporation, holds a Mortgage dated July 1, 1980, and recorded in the records of Dade County at O.R. Book _____, Page _____.

Facts

7. Beginning in March 1981 and continuing through and including June 1984, the aforementioned A.B., C.D. and E.F. combined, as a group of individuals associated in fact although not a legal entity, for the object and purpose of possessing, manufacturing and trafficking in cocaine in the State of Florida. This combination of persons constitutes an "enterprise" as defined in §895.02(3), Fla. Stat. (1985). In furtherance of the affairs of the enterprise they committed the following acts:

8. [First Predicate Crime and specific statute violated]

9. [Second Predicate Crime and Additional Predicate Crimes and specific statutes violated]

10. The conduct described in paragraphs 8 and 9 above evidence similar intents, results, accomplices, and methods of commission, and are otherwise interrelated and not isolated incidents, so as to form a "pattern of racketeering activity" as defined in §895.02(1) and (4), Fla. Stat. (1985).

11. A.B., C.D. and E.F. were associated with the enterprise described in paragraph 7, and conducted or participated, directly or indirectly, in that enterprise through a pattern of racketeering activity, as described in paragraph 10, in violation of the Florida RICO Act, §895.03(3), Fla. Stat. (1985).

12. The subject premises were used or intended for use in connection with the violations described above as a laboratory for the manufacture of cocaine; as a storage site for materials used in connection with such manufacturing process; as a storage site for the manufactured product; and as a front to conceal the foregoing activities through the appearance of legitimate use. The property is subject to forfeiture as property used or intended for use in the courts of a RICO Act violation, under §895.05(2), Fla. Stat.

Relief

Plaintiff requests the Court to grant the following relief:

(1) Order forfeiture of the subject property, subject to the rights of any innocent persons duly established in this cause, pursuant to §895.05(2), Fla. Stat. (1985);

(2) Retain jurisdiction to direct the proper distribution of the proceeds of forfeiture pursuant to §895.09, Fla. Stat. (1985).

(3) Award other relief the Court deems appropriate.



About the Author

Janet Ferris is an attorney and former Chief of the RICO Section of the Florida Department of Legal Affairs. She has also served as Chief Counsel of the Florida Department of Law Enforcement. Currently, she is a Senior Research Associate with the Institute for Intergovernmental Research in Tallahassee.

Police Executive Research Forum

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- Substantial and purposeful academic study is a prerequisite for acquiring, understanding, and adding to the body of knowledge of professional police management;
- Maintenance of the highest standards of ethics and integrity is imperative in the improvement of policing;
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- The principles embodied in the Constitution are the foundation of policing.

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