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ASSET FORFEITURE Bulletin

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SAFEGUARDING THE FORFEITURE REMEDY: Protecting Third-Party Rights

Asset forfeiture has become a mainstay in the battle against narcotics trafficking, affording an expedient way of separating criminals from assets that were used or acquired illegally. The basis for asset forfeiture is civil and criminal forfeiture legislation enacted by Congress in 1970. Together with subsequent amendments, the legislation has been used to compel forfeiture of millions of dollars in cash, real estate, vehicles, vessels, airplanes, and even businesses.

A difficult question has arisen concerning the rights of individuals who are not involved in narcotics trafficking, but whose property may be subject to forfeiture because it was either used in or derived from a drug transaction. Despite the innocence of these "third parties"—owners, lienholders, unsecured creditors, bona fide purchasers, business partners, corporate shareholders, joint tenants, and others—the laws often result in forfeiture of their property.

The Bureau of Justice Assistance has addressed this issue in a recently released guide entitled *Protection of Third-Party Rights*, the 12th in a series of guides on topics related to asset forfeiture. Written by Michael Goldsmith, Professor of Law at Brigham Young Law School in Provo, Utah, with William Lenck, Legal Consultant to PERF, the 64-page guide, is available upon request from PERF. Its discussions of Federal and State legislation, case decisions, and petition procedures are summarized here.

Basis of Forfeiture Legislation

Federal narcotics laws authorize two types of forfeiture, criminal and civil. Criminal proceedings are brought against individuals, whereas civil proceeding are brought against the property sought to be forfeited. The legal theory underlying civil forfeiture has ancient historical roots. It suggests that property involved in illicit conduct is itself guilty of wrongdoing. Thus, the action is brought directly against the property rather than against its owner. Moreover, because of a rule known as the "relation-back doctrine," forfeiture is considered to have occurred actually at the time the illegal act was committed, thereby precluding subsequent transfers to third parties. Ensuing civil proceedings merely perfect the government's interest in the property. The government needs only to establish probable cause linking the property to narcotics trafficking. Once this has been done, a claimant to the property must disprove the allegations by a preponderance of the evidence (with or without the aid of certain exemptions that protect third-party interests, and which are described later in the guide).

The U.S. Supreme Court's decision in *Calero-Toledo v. Pearson Yacht Leasing Company*, 94 S.Ct. 2080 (1974), illustrates the impact of forfei-

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Bolstering Forfeiture Cases: Informants and Undercover Techniques

Too often, the strategy of incarcerating the leaders of a criminal enterprise fails to close down the operation. The enterprise continues despite removal of key members because its economic infrastructure—the glue that holds it together—remains intact.

To attack the economic base of criminal enterprises, legislators have enacted statutes authorizing the seizure and forfeiture of specified assets of those organizations. Investigations designed around those laws have resulted in forfeiture of many types of assets, including:

- Property used or intended for use in the commission of a crime.
- Property acquired or maintained as a result of a crime.
- Property purchased with the proceeds of a crime.
- Enterprise interests acquired, controlled, or conducted through racketeering.

Informants and undercover investigators play critical roles in helping law enforcement agencies identify, seize, and forfeit such assets. Procedures for drawing on these resources in efforts to seize assets, and thereby disable drug-trafficking enterprises, are described in a new guide, *Informants and Undercover Investigations*, recently published by the

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ture laws on third-party interests. The decision is significant because it endorsed the constitutionality of such legislation. The *Pearson* case, as it is known, is most applicable to conveyances seized before November 18, 1988, when Public Law 100-690 amended 21 U.S.C. 881(a)(4) to include an innocent-owner exception.

Constitutionality: The *Pearson* Doctrine Reviewed

The *Pearson* case raised two constitutional issues: (1) the propriety of seizure without prior notice or hearing and (2) the constitutionality of taking an innocent party's property without just compensation. Both issues were decided adversely to the innocent third party. Seizure without prior notice or hearing was justified by the government's interest in "preventing continued illicit use of the property . . . " and in avoiding the possibility that with such forewarning the vessel would be hidden or removed from the jurisdiction. These circumstances were found to present "an 'extraordinary' situation in which postponement of notice and hearing until after seizure did not deny due process."

Thus *Pearson* established the principles that (1) due process does NOT require preseizure forfeiture hearings and (2) innocence is not a constitutionally mandated defense in civil forfeiture cases. Since *Pearson*, however, many courts have focused on whether the decision created a limited defense for third-party claimants who take all reasonable precautions to prevent illegal use of their property. That issue and related concerns are explored best by examining pertinent defenses and procedures applicable to third-party interests.

Defenses

21 U.S.C. 881(a)(4)

As noted earlier, 21 U.S.C. 881(a)(4) was amended in 1988 to include an innocent-owner exception. The new exception, codified as 21 U.S.C. 881(a)(4)(C), reads:

(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

The new provision is similar to the innocent-owner exception in the model State Uniform Controlled Substances Act (enacted in 1970), and to 21 U.S.C. 881(a)(6) and 881(a)(7), with one notable difference. The last phrase in the new provision adds "willful blindness" to the exception. An owner can prove his "innocence," and thus protect his conveyance from forfeiture, if he can establish that he not only lacked knowledge of and did not consent to the offense, but also was not willfully blind to the offense that resulted in the seizure.

21 U.S.C. 881(a)(6)

In 1978, Federal law 21 U.S.C. 881(a)(6) was added to make the proceeds of narcotics trafficking subject to civil forfeiture. Before this provision, civil forfeiture was limited to property used to facilitate narcotics transactions. Now, money, real estate, and personal property that constitute proceeds of narcotics trafficking—whether obtained directly or indirectly—were subject to forfeiture. By authorizing forfeiture of narcotics proceeds, Congress expanded the reach of civil forfeiture to help law enforcement do more to take the profit out of narcotics trafficking.

Despite the innocence of third party owners, the laws often result in forfeiture of their property.

With this new provision, much more property was subject to forfeiture. To temper the potential severity of the measure, Congress provided an explicit innocent-owner defense to forfeitures brought under the section. The law stipulates that "no property shall be forfeited under this paragraph to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."

The government occasionally has argued that relief under *Pearson* should be denied to claimants who should have known that individuals using their property were doing so for illegal purposes. However, 21 U.S.C. 881(a)(6) imposes no "reason to know" standard; the defense is available to anyone who lacks actual knowledge of the underlying criminal transaction. Moreover, the provision seems to liberalize that defense, because it does not require the claimant to have done all that reasonably could be expected to prevent the proscribed use of his property.

21 U.S.C. 881(a)(7)

In 1984, 21 U.S.C. 881(a)(7) was enacted to make real property used to facilitate narcotics trafficking subject to forfeiture. Because this provision contains an innocent-owner defense virtually identical to that in 21 U.S.C. 881(a)(6), it raises the same issues discussed in the preceding section.

A number of recent Federal cases have raised the issue of protection of innocent owners under section 881(a)(7). Three of these cases dealt specifically with the question of how property held as "tenants by the entirety" is affected by a section 881(a)(7) forfeiture. In two cases, *U.S. v. One Single Family Residence*, 699 F.Supp. 1531 (S.D.Fla. 1988), and *U.S. v. Marks*, 703 F.Supp. 623 (E.D.Mich. 1988), the U.S. District Court held that an innocent spouse is protected by the entireties principle, which states that neither husband or wife acting alone can alienate any interest in the property.

The third case, *U.S. v. 6109 Grubb Rd., Millcreek Tp., Erie County*, 708 F.Supp. 698 (W.D.Pa. 1989), highlights that the "tenants by the entirety" concept as applied to the innocent-owner exception in 21 U.S.C 881(a)(7) does not protect a spouse who is not truly innocent.

Expedited Petition Procedures

Public Law 100-690 also enacted new provisions regarding expedited petition procedures, which are codified as 21 U.S.C. 881-1. The Department of Jus-

tice (DEA/FBI) and the Department of the Treasury (Customs) have published final regulations related to expedited petition procedures that directly and substantially affect innocent owners of seized property. The regulations became effective on October 11, 1989. With a few minor exceptions, they specify similar procedures. The DEA/FBI regulations are contained in 21 CFR 1316.91 et seq., and the Customs regulations are contained in 31 CFR 171.51 et seq. The regulations are summarized in the manual.

"[A] claimant to the property must disprove the allegations by a preponderance of the evidence . . ."

State Forfeiture Laws

Because of the Federal government's successful use of forfeiture against narcotics traffickers, many states have enacted their own forfeiture laws. Most of these statutes provide a broad defense for innocent third parties because most state laws are based on the Uniform Controlled Substances Act, which early on built such protections into the model legislation. That model act provides that "no conveyance is subject to forfeiture . . . by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent." Secured parties are likewise protected if they had no knowledge of, and did not consent to, the illegality. While this provision is concerned specifically with conveyances used to facilitate narcotics trafficking, some state laws contain similar innocent-owner defenses for any property that constitutes proceeds of such criminality.

Although many state laws make some attempt to treat innocent-owner issues directly, they are inadequate in several important respects. First, third-party rights generally are addressed only in a civil forfeiture context; many state criminal forfeiture statutes do not provide explicit protections. Second, many state laws are ambiguous about the rights of lienholders and bona fide purchasers for value. Third, some states have failed to incorporate any type of innocent-owner defense in laws authorizing forfeiture of narcotics proceeds. Thus, further reform is needed in selected states.

The guide contains a summary of laws related to third-party rights in Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Jersey, New York, Pennsylvania, South Carolina, and Texas.

Conclusion

Third-party interests are a neglected issue in Federal and State forfeiture law. The most significant constitutional development in this area was the Supreme Court's 1974 decision in *Pearson*. Although it did not recognize an innocent-owner defense, the decision did confer implicit constitutional protections on anyone who had done all that reasonably could be expected to prevent the proscribed use of his or her property. Subsequent forfeitures were governed by this standard, and ensuing Federal legislation, particularly expedited petition procedures enacted in 1988, gave third-party claimants further protections. When these provisions fail to protect third-party interests, administrative remission may be available to protect claimants who truly are innocent.

Single copies of the guide, *Protection of Third-Party Rights*, can be obtained by writing the BJA Asset Forfeiture Project, Police Executive Research Forum, 2300 M Street, N.W., Washington, D.C. 20037.

—William Lenck

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Police Executive Research Forum. The guide was written by Sandra L. Janzen, assistant attorney general with the Arizona Attorney General's office, who specializes in civil forfeiture and related actions designed to dismantle northern Mexico's drug distribution organizations.

Forfeiture-Oriented Proactive Investigations

In this context, a proactive investigation is one that targets violators strategically and focuses on their assets, with the goal of dismantling a criminal enterprise. A proactive drug-related investigation addresses five basic questions pertaining to traffickers' assets and their forfeiture potential:

1. Who possesses identifiable and seizable assets, and in whom does ownership of the assets legally vest?
2. How extensive are the assets?
3. How are the funds that are used to acquire the assets being laundered?
4. What is the legal basis for forfeiture?
5. What role does the targeted trafficker play in the drug offense or in a larger enterprise, and what impact will forfeiture have on the enterprise?

The information gained from answering these questions can help investigators decide where to invest their time and resources. They need to know which investigations most likely will result in forfeiture of assets, thus disrupting and dismantling the illegal enterprises.

Drug dealers are very good at hiding assets, disguising ownership, laundering money, and operating under a veneer of legitimacy. That secrecy helps explain why reactive investigations sometimes produce disappointing results. A proactive investigation penetrates the first line of defense erected by street dealers, who help insulate their suppliers and their assets from law enforcement. The strategy involves the use of informants and undercover operations as well as a variety of investigative tools.

Preliminary Investigative Steps

Initially, little may be known about a target, and what is known may be uncorroborated. Investigators should contact all law enforcement agencies likely to have information—the Customs Service, Immigration and Naturalization Service, Federal Bureau of Investigation, Drug Enforcement Administration, Internal Revenue Service, and local and state narcotics intelligence and enforcement units. Their information may help

determine the scope of the criminal enterprise and identify possible informants. Other filed cases may be discovered, and they may support a forfeiture case based on the legal principal of collateral estoppel.

Investigators also may be able to determine the structure and scope of a criminal enterprise by using such investigative tools as mail covers, analysis of trash, public records, and telephone tolls, and physical surveillance.

Mail covers—Mail covers are used to obtain information from mailed envelopes, including name and address of the addressee and sender, postmark, and date of mailing. The information is recorded by postal employees at local post offices. No court order is necessary.

Trash analysis—discarded trash often yields insights into a target's finances and assets. Inspection of it is perfectly legal.

Public records analysis—A systematic search of public records not only can identify potential assets, but also can prepare investigators to serve appropriate seizure warrants. Public records of ownership can identify assets as well as recorded liens. A target's employment history is critical to a financial net-worth analysis.

Telephone records analysis—Billing statements listing a customer's intra- and interstate long-distance telephone calls can help identify co-conspirators and other members of a narcotics organization, and can be used to corroborate other information.

Physical surveillance—Physical surveillance can establish a target's associates, residence, cars, place of work, banks, safe-deposit boxes, attorneys, and accountants, and the private contractors who service his or her residence.

Use of Informants in Asset Recovery

Co-participants in criminal activity have always provided information to law enforcement personnel. As essential as they are, however, their assistance—often secured through a negotiated plea or an agreement not to prosecute—presents several potential problems.

Because criminal informants usually are reluctant to cooperate, they may not reveal their full knowledge of criminal activity. Their loyalty may be in doubt as well. Moreover, even the most cooperative criminal informant may not be the best source of information about a target's financial activities. The informant may know of only one type of forfeitable property, for example, assets used in criminal activities but not the property purchased with proceeds of a crime.

Criminal enterprises continue despite removal of key members because the economic infrastructure remains intact.

Criminal informants can be used in a variety of ways, depending on the individual's position relative to the target and on the requirements of the investigation. The informant can "sponsor" and undercover officer seeking to infiltrate the drug enterprise, or can play a much more active role by seeking out illegally acquired assets.

As an informant takes a more active role in the undercover investigation, greater consideration must be given to his or her eventual trial testimony. To avoid pitfalls, the investigator must determine the informant's motives for cooperating. The stronger an informant's self-serving incentive, the greater the need for corroborating evidence.

The motives of criminal informants are always suspect. Agreements that grant benefits to the informant increase the concern about informant reliability. Perhaps most scrutinized are agreements that grant benefits, particularly monetary awards, contingent on certain outcomes. Some courts hold that such "contingent-free agreements" violate due process.

Noncriminal informants—that is, cooperative citizens, called "sources" by many agencies—are mainly of two types: (1) those who know the target's pattern of living and (2) those who have business or commercial dealings with the target. The first group includes girlfriends or boyfriends, neighbors, friends, and others familiar with the target's lifestyle. They may or may not know that the target is a criminal, but they are likely to be familiar with the target's spending patterns, property, favorite places of entertainment, means of transportation, shopping habits, vacation spots, and so forth—all of which can lead investigators to assets that the target controls or has interest in.

The second group of noncriminal informants includes bankers, tax-return preparers, business associates, and financial advisors. These individuals generally are motivated to cooperate not by promises of nonprosecution, but by values they share with society's law-abiding elements.

The following topics should be addressed with informants:

- Members of the criminal organization—Who belongs to the organization, and what are their duties? What are their positions in the organization's hierarchy?
- Product of the organization—What quantity of drugs is involved? What is their quality, and how much are they worth? Is the target/organization involved in manufacturing, importing, or distributing?
- Finances—Where do the violators bank? Do they have personal bankers, accountants, and stockbrokers? Who are they?
- Business records—All records, even records of legitimate businesses, can help form a picture of how an organization operates.
- Receipts—What sort of purchases does the target make? Does the violator make substantial cash expenditures?

Role of Undercover Operations in Asset Recovery

An undercover officer can adopt several roles in an undercover opertion—as the receiver of information, participant in a reverse sting, or infiltrator of an organization that supports the target enterprise.

Regardless of the role, the officer should, early in the investigation, anticipate the defenses that might be used in a trial. The officer should then attempt to gather evidence that will successfully negate these defenses.

One type of undercover operation focuses not on the drug trafficking enter-

prise itself, but on those who aid the drug trade in various ways. The officer might work to identify and infiltrate organizations that financially or otherwise assist drug traffickers.

The success of undercover investigations depends, in large part, on three factors: networking with other law enforcement agencies, sharing forfeited property, and seeking the support of the private sector.

By networking with other law enforcement agencies, the undercover officer can detect patterns, use intelligence information more effectively, obtain greater resources, and forge a spirit of camaraderie.

Through sharing forfeited property, agencies may be able to recover at least part of their investigative costs. An inventory of all forfeited property could serve as a resource bank for the next undercover operation. Such sharing of forfeited property requires communication among agencies and a willingness to attack the drug industry with a united front rather than on a fragmented basis.

Finally, the private sector should be approached for assistance. Most businesses are run by honest, hard-working individuals who are fed up with drug traffickers and are only too eager to help.

Conclusion

The recent development of nontraditional approaches to drug enforcement has been driven by the economic basis of the illicit drug industry. Investigators must think of the drug industry as a network of criminals who have leveraged economic power through building the illicit enterprise and who seek additional criminal opportunities in many other areas. The foundation for this network is financial wealth. The financial resources must be identified and attacked through the use of proactive investigations.

Single copies of the report, *Informants and Undercover Investigations*, can be obtained by writing to the BJA Asset Forfeiture Project, Police Executive Research Forum, 2300 M Street, N.W., Washington, D.C. 20037.

Steve DeNelsky

L E G A L C O R N E R

ALABAMA — Innocent Owner/ Lienholder

The trial court in this case denied forfeiture of a vehicle. It held that the bank involved had exercised reasonable diligence in preventing illegal use of the vehicle, and hence was entitled to protection as an innocent owner. The state appealed, contending that the trial court had erred in its finding of diligence and that the bank should have run a criminal history check on the vehicle's owner before it extended credit. The appellate court affirmed the trial court's decision. It held that the bank's failure to run a criminal history check did not indicate a lack of diligence. It should be noted that the requirement that lienholders run criminal history checks was eliminated under Federal remission requirements approximately 15 years ago. *State of Alabama v. Johnston, et al.*, Civ. No. 7244. Court of Civil Appeals of Alabama (6/20/90).

ARIZONA — Forfeitable Amount/ Jury Issue

State v. Ott, No. 1 CA-CV 89-250, Court of Appeals of Arizona (10/18/90). In a civil forfeiture action resulting from a racketeering case that was pending, the trial court granted the state a summary judgment against $1.8 million. As part of the forfeiture action, which was based on the same conduct involved in the criminal indictment, the defendant made numerous admissions concerning his drug trafficking activities over an extended period. The defendant appealed the summary judgment. At issue was the amount of money subject to forfeiture. The state's witnesses had admitted that the amount was a "guesstimate." The Court of Appeals of Arizona reversed the summary judgment. It remanded the matter for further proceedings by a jury to determine the amount of the defendant's assets that were subject to forfeiture as a result of his drug trafficking.

ARIZONA — State's Attorney Fees

This case involved an unusual Arizona statute that allows a court to order a claimant to pay the State's Attorney fees if the claimant is unsuccessful in contesting a forfeiture proceeding. The wife of a violator asserted an interest in $329,880 seized from her husband. The issue became whether the wife was a "claimant" under the statute, and thus was liable for State's Attorney fees. The trial court ruled, and the appellate court agreed, that the wife was not a "claimant," but merely a party who had asserted an interest in the forfeiture matter. Since the wife had not really contested the entire forfeiture of the currency, the State's Attorney fees should not be assessed against her. *Cross v. Attorney General of the State of Arizona*, No. 1 CA-CV 88-576. Court of Appeals of Arizona, Division One, Department D (7/31/90).

CALIFORNIA — Jury Trial/Proof

State v. Washington, No. A044901, Ct. of App. of Calif., 1st App. Dist. Div. One (5/23/90). After a criminal jury trial on a cocaine possession charge, the same trial court jury, in a separate proceeding, ordered forfeiture of $14,930 seized from the defendant. On appeal, the defendant contended that (1) the trial judge should have given an instruction that unanimity by the jury was required to sustain forfeiture, and (2) since the forfeiture was related to the criminal case, the proof required to sustain forfeiture was "beyond a reasonable doubt." The Court of Appeals of California affirmed the forfeiture. It held that California statutes do not provide for forfeiture as part of the criminal offense; rather, they provide for a separate civil proceeding wherein the burden of proof is by a "preponderance of the evidence" and also wherein the jury verdict may be by three-fourths of the jurors. Moreover, the Appeals Court held that a criminal conviction on the underlying criminal charge is not a prerequisite to forfeiture.

COLORADO — Public Nuisance Remedy

The trial court in this case ordered forfeiture of certain real and personal property that had been declared a public nuisance. It directed that the property, including real estate, buildings, furniture, and fixtures, be sold. The property owner contended that the relevant nuisance statute required that the property be closed, rather than forfeited and sold. The appellate court affirmed the forfeiture and sale. It noted that, subsequent to the 1987 amendment to the Colorado nuisance statute, the statute is clear: Forfeited property should be sold after forfeiture, and the closing of property is applicable only if the property is not forfeited. The court further held, contrary to the owner's contention, that the personal property within the premises was also subject to forfeiture; the state had established that the personal property was used in aiding or abetting the nuisance, and the owner had failed to rebut the state's evidence. *State v. 21020 Colorado Highway 74*, No. 88CA0945. Court of Appeals of Colorado, Division Three, 791 P.2d 1189 (1989).

FLORIDA — Tax on Illegal Drugs

Harris v. State, Ct. of App. of Fl., No. 88-3026 (4/16/90). In this case, a Florida trial court granted a state jeopardy tax assessment based on the defendant's Federal indictment for importing 460 kilograms of cocaine. The defendant raised various contentions at the trial level and on appeal, attacking the validity of the assessment without success. The contentions raised included (1) the privilege against self incrimination based on the U.S. Supreme Court *Marchetti* case 88 S.Ct. 708, (2) denial of procedural due process because the Florida drug tax statute deems the drug tax assessment to be prima facie correct in any administrative or judicial proceeding, and (3) denial of Fourth Amendment rights since the drug tax assessment statute provides that the suppression of evidence in the criminal case does not affect the assessment under §212.0505. The Court of Appeals of Florida distinguished the principles applicable under the drug tax assessment statute from those applicable under the state forfeiture statutes, and concluded that although the exclusionary rule is applicable to forfeiture, it is not applicable to drug tax assessments.

FLORIDA — Facilitation

The trial court in this case denied forfeiture of a vehicle used to arrive at the scene of a cocaine transaction, where the violator subsequently delivered crack cocaine to an undercover officer. Although the trial court gave no reason for its ruling, it appears that its denial was based on the fact that the violator exited the vehicle before he delivered the cocaine. The appellate court reversed the trial court and cited *Edgewood v. Williams*, 556 So. 2d 1390 (Fla. 1990) regarding facilitation. It held that because the violator had possession of the cocaine in the vehicle, and because the illegal activity took place in conjunction with the use of the vehicle in an area known for curbside narcotics transactions, the vehicle was used to facilitate the violation. *Gallagher v. Mansbridge*, Case No. 89-2410, Court of Appeal of Florida, Fifth District (8/2/90).

FLORIDA — Personal Possession

The violator in this case got out of his car and, carrying a clear plastic bag of rock cocaine, ran away from arresting officers. The violator later testified that he was on his way to his girlfriend's house, had no intention of selling or using the drugs, and did not "pull" the cocaine from anywhere in the vehicle. The trial court, relying on *Crenshaw v. State*, 521 So. 2d 138 (Fla. 1st DCA 1988) (Crenshaw I), found that the police failed to show that the car had played a part in the violator's possession of the cocaine, and it denied forfeiture of the vehicle. The appellate court, relying on *State v. Crenshaw*, 548 So. 2d 223 (Fla. 1989) (Crenshaw II), reversed the trial court. It quoted the following language from Crenshaw II: "We hold that the legislature intended for forfeiture to be an appropriate penalty where an individual possesses a felony amount of drugs while in a vehicle, even if the drugs are intended solely for personal use." *In re the forfeiture of One 1972 Maroon Mercedes*, Case No. 89-01914, Court of Appeal of Florida, Second District (7/11/90).

FLORIDA — Traffic Stop Profile

The following question was certified to the Supreme Court of Florida as one of great public importance: "May a profile of similarities of drug couriers, which is developed by a law enforcement officer and which, in light of his experience, suggests the likelihood of drug trafficking, be relied upon by him to form an articulable or founded suspicion which will justify a brief investigatory detention after the conclusion of a legitimate traffic stop on highways known to the officer to be used for the transport of drugs?"

The facts in this case reveal that a Florida Highway Patrol trooper assigned to a special drug detail on Interstate 95 stopped the defendant for "following too closely," a traffic law violation. At that time, the trooper observed the following: (1) the defendant was very nervous, (2) he was traveling north on I-95, a known drug corridor, (3) he was alone in the vehicle, (4) he had a Massachusetts drivers license, though the car had a Maine license, (5) the vehicle was full size and had a large trunk, (6) the ignition key was separate from the other keys, (7) the driver had no trunk key, and (8) there was a CB radio in the car. Because some of these observations matched his personally developed drug courier profile, the trooper decided to detain the defendant in order to investigate further. After issuing a warning for the traffic infraction, the trooper asked the defendant to open the vehicle trunk. The driver replied that he did not have the key. The trooper then radioed for a narcotics dog. The defendant refused to sign a consent form for a search of the trunk, and the trooper indicated that he was not free to leave. The narcotics dog arrived about 45 minutes later and alerted on the vehicle's trunk. The trunk was opened, marijuana was found, and the defendant was arrested. The defendant was subsequently convicted.

In the appeal to the Supreme Court of Florida, the issues were the weight to be accorded the trooper's experience, the innocent elements that when taken together may constitute a founded suspicion, and the reasonableness of a *Terry* detention period.

The Supreme Court of Florida reviewed a number of cases involving drug courier profiles, including the U.S. Supreme Court's decision in *United States v. Sokolow*, 109 S.Ct. 1581 (1989), that factors in a profile "rising to the level of probable cause may, in appropriate circumstance, so strongly suggest concealed criminal conduct as to justify a stop." It then concluded that the trooper's observations, coupled with the subsequent circumstances, including the lack of consent and the dog alert, were the basis of his reasonable suspicion, based on articulable facts, that criminal activity "may be afoot." Hence, it ruled, the detention and subsequent search of the vehicle were proper. *Cresswell v. State*, No. 72,494, Supreme Court of Florida (5/10/90).

GEORGIA—Federal Adoption Preempted State Forfeiture

Freeman v. City of Atlanta, No. A90A0821, Court of Appeals of Georgia (4/24/90). The defendant was stopped at a routine roadblock in an area known for drug trafficking and was arrested for failure to prove he had automobile insurance. Police officers searched the defendant and his vehicle and found $7,026. A drug sniffing dog alerted to the money. The police officers turned the seized money over to the Drug Enforcement Administration (DEA). About six weeks later the DEA, pursuant to 21 U.S.C. 881, initiated a forfeiture proceeding against the money. The defendant then initiated an action against the City of Atlanta to recover the money. Both parties sought a summary judgment. The city contended that the Federal forfeiture proceeding preempted forfeiture on the part of the state. The trial court granted a summary judgment in favor of the city. It relied on the police report of the arrest, the DEA report of investigation, and the DEA notice of seizure and forfeiture, which included a copy of the return receipt signed by the defendant and a copy of the DEA newspaper notice of seizure.

On appeal, the defendant contended that the city had not complied with state law regarding the processing of such forfeitures. The Court of Appeals of Georgia held that because the forfeiture was referred to Federal authorities for processing, state procedures were not applicable. The court noted that had the state been the entity initiating the forfeiture proceeding, the city's noncompliance with OCGA Section 16-13-49(e) would have resulted in a ruling favorable to the defendant. Once the case was referred to the Federal government, and a Federal forfeiture proceeding was initiated, however, the cited section was not applicable and the summary judgment for the city was proper.

ILLINOIS—Inventory vs. Narcotic Search of Vehicle

State v. One 1989 Cadillac, No. 3-89-0805, Appellate Court of Illinois, 3rd Dist. (10/5/90). Police officers responded to a report of a disturbance at a residence. When they arrived, the owner of the residence was attacking the defendant, who was lying on the floor. The defendant consented to the police taking custody of his vehicle, which was parked at the residence, and the vehicle was removed to an impound lot. Subsequently, the police learned of a possible narcotics violation by the defendant and altered the towing report to indicate that the vehicle was not eligible for release. Two days after the vehicle was placed in the lot, the police searched the trunk and found a test tube containing a white powdery residue that proved to be cocaine. The state then sought forfeiture of the vehicle.

The trial court held for the defendant. It ruled that the vehicle had not been in police custody at the time of the inventory search, and hence the cocaine was not admissible evidence in the forfeiture action. The court further ruled that the vehicle was not subject to forfeiture. The state appealed, contending that the police did have custody of the vehicle because the owner had allowed the police to arrange for its towing and storage. The state also contended that the police had authority to make an inventory search of the entire vehicle once it was placed in storage. The Appellate Court of Illinois affirmed the denial of forfeiture. It held that the police did not have "a sufficient custodial interest to justify the search which uncovered the cocaine." Rather, the search resulted from a tip that "possible narcotics" were involved. Therefore, the search was not a routine custodial inventory search and a warrant should have been obtained.

ILLINOIS—Seizure Notice Rebuttal

State v. One 1984 Toyota Supra, No. 3-90-0013, Appellate Court of Illinois, 3rd Dist. (9/5/90). The state sought forfeiture of a vehicle, $14,705, and a cellular telephone used to facilitate various drug violations. The trial court denied forfeiture of all the property. It held that the vehicle was not subject to forfeiture because the state had not established that the notice of the vehicle forfeiture had been sent to the defendant by certified mail. The court further held that the $14,705 and the telephone were not subject to forfeiture because the state had not proved, by a preponderance of the evidence, that the money and telephone had anything to do with the defendant's possession of a controlled substance.

The Appellate Court of Illinois dealt separately with the three types of property. It reversed the trial court's finding on the vehicle. It found that the defendant had received actual notice of the seizure and had filed a certified answer to the complaint, and hence had suffered no prejudice from the possible lack of notice by certified mail. It remanded the case to allow forfeiture of the telephone. In making that decision, it held that the state had established that the phone was subject to forfeiture, and that the defendant had failed to rebut the presumption that the phone was forfeitable, particularly since the phone was covered with a white powdery substance similar to cocaine when it was seized. Finally, the Appellate Court affirmed the trial court's denial of forfeiture of the money. It held that the defendant had successfully contended that the

money, seized from the vehicle's trunk, belonged to the defendant's mother. In a lengthy dissent, one Appellate Justice stated that the failure of the trial court to forfeit the money was contrary to the manifest evidence. Further, the defendant's "unbelievable" explanation for the purchase of the telephone and resultant lack of credibility should apply to the money as well as the telephone.

IOWA—Substantial Connection

In the Matter of Property Seized from D.D. Kaster, Sup. Ct. of Iowa, En Banc, No. 89-40 (4/18/90). The County Attorney in this case sought the forfeiture of a boat, outboard motor, trolling motor, depth finder, boat trailer, gill net, miscellaneous items, and three fish used to facilitate illegal gill netting under Iowa law. The fisherman (who had caught three fish over the legal limit) sought the return of all of his property other than the three fish. The trial court sustained the fisherman's application for the return of the property, and the state appealed. The Supreme Court of Iowa, En Banc, reviewed the term "facilitate" in the Iowa forfeiture statutes and the Federal forfeiture cases which require a "substantial connection" in order to forfeit. It then concluded that the term "facilitate" in the Iowa statute requires a "substantial connection" between the property and the crime. Failing to find a "substantial connection" between the "three fish violation" and the property sought to be forfeited, the Court affirmed the lower court's decision, which ordered return of the fisherman's property. A lengthy dissent in the Court decision argued that the Iowa forfeiture statute should be declared unconstitutional on the basis of the "void for vagueness" doctrine, rather than on the basis of a lack of "substantial connection," since the latter term does not appear in the Iowa statute. (It should be noted that the term "substantial connection" is not in the Federal statutes either—it *is*, however, in the legislative history of 21 U.S.C. §881(a)(6)).

MICHIGAN — Interest on Currency

The trial court in this case ordered that the state pay to a claimant who had successfully contested a forfeiture action interest earned on seized currency while the action was pending. The city appealed. It contended that the trial court had erred in ordering it to pay interest from the date of seizure, and that interest was due only from the date of the trial court judgment. The appellate court affirmed the trial court's ruling that interest was due from the date of seizure. It noted that although the Michigan forfeiture statute is silent on the issue of interest, the Michigan circuit courts traditionally have the power of equity courts. Under equity principles, a claimant who is successful in a forfeiture action involving currency is entitled to interest from the date of seizure when he is effectively denied use of the currency. *City of Lansing v. $30,632.41, et al.*, No. 113104, Court of Appeals of Michigan (7/17/90).

NEW YORK — No Double Jeopardy

The trial court in this case ordered forfeiture of the violator's vehicle. The violator appealed, contending that because the New York State forfeiture law (Public Health Law, section 3388) is criminal in nature, the constitutional provisions regarding double jeopardy and proof beyond a reasonable doubt apply. The appellate court affirmed the forfeiture. It held that although the forfeiture statute has obvious punitive aspects, the important remedial purposes of the statute establish its civil nature. Among these purposes are stripping the drug trade of its instrumentalities, diminishing the probability of drug trafficking by increasing the costs associated with it, and helping to finance and provide vehicles to support government efforts to combat drug trafficking. The appellate court further held that, given these broad remedial purposes, proof had not been presented to establish that section 3388 was criminal in nature; therefore, the legislature intended the section to be civil in nature. Hence, the constitutional provisions regarding double jeopardy and proof beyond a reasonable doubt did not apply. *Constantine et al. v. One 1980 Datsun*, Supreme Court of New York, Appellate Division, Fourth Department (7/13/90).

NEW YORK — Facilitation

The undercover officers in this case purchased cocaine from two individuals seated in the seized vehicle; prerecorded "buy" money and drug paraphernalia also were seized from the vehicle. The trial court granted forfeiture of the vehicle based on a preponderance of evidence that the vehicle was used in furtherance of a crime, and that the grounds for forfeiture were sufficiently established. The appellate court affirmed the forfeiture. It held that the defendant-owner's unverified answer prepared by his attorney and founded "upon information and belief" was insufficient to controvert the city's evidence. Therefore, the defendant did not sustain his burden of proof to contest the forfeiture. *Property Clerk, N.Y.P.D. v. Fanning*, No. 40001, Supreme Court of New York, Appellate Division, First Department (6/21/90).

NEW YORK — Hearing on DEA Adoption

In this case, the claimant's vehicle was seized by the New York State Police while it was in the possession of another person, who was charged with possession of a controlled substance. The following day the vehicle was adopted for Federal forfeiture by the Drug Enforcement Administration (DEA). The claimant initiated an action in the Steuben County Court in an effort to recover the vehicle. He contended that although DEA had intended to adopt the state police seizure, no DEA seizure or forfeiture proceedings had been initiated prior to the claimant seeking relief in the county court. The county court, after examining affidavits relevant to the petition, ruled that the DEA's action had been accomplished pursuant to the provisions of 21 U.S.C. 881, and that the court lacked jurisdiction "over the property or the ultimate jurisdiction thereof." The appellate court reversed the trial court. It held that rather than merely reviewing the affidavits involved, the trial court should have held a hearing to determine whether DEA's purported adoption of the seizure was in fact accomplished pursuant to 21

U.S.C. 881, and whether the purported adoption was effected prior to commencement of the action in the county court. The appellate court noted that the determination of those questions of fact can be made only after a hearing. *Coon v. New York State Police*, 557 N.Y.S.2d 222, N.Y. App. Div. (1990).

NEW YORK — Forfeiture and Restitution

State officers expended $455.00 in official state "buy" money in making numerous drug purchases from the defendant involved in this case. At the time of his arrest, $490.00 was also seized from the defendant. The defendant subsequently agreed to forfeit the $490.00. The state then sought to recover the $455.00 as a form of restitution. The court noted that New York case authority does not address that issue, although the courts do distinguish between seized money and "buy" money. It then held that since the defendant was charged and convicted of offenses involving only $300.00 of the $455.00, the defendant would be required to pay restitution for only $300.00, and not for the additional $155.00 involved in the offenses for which he was not charged. Hence, the court ruled that even though restitution and civil forfeiture are clearly intended for different purposes, they are not mutually exclusive remedies. *State v. Ten Eyck*, 549 N.Y.S.2d 362 (1989).

OHIO — Notice Requirement

The trial court denied the state's petition for forfeiture of an automobile pursuant to section 2933.43 of the Ohio forfeiture statute. Its denial was based on the state's failure to give the second weekly notice required by the statute. Section 2933.43(C)(2) requires the state to "publish notice of the proceedings once each week for two consecutive weeks . . . ." The state had published the first notice, but not the second. After a hearing, the trial court ruled that because the state had not complied with the notice requirements, its petition for forfeiture must be denied. The state appealed. It contended that because the vehicle owner had failed to show how his substantial rights were prejudiced by its failure to publish a second notice, the trial court had erred in denying the forfeiture. The appellate court affirmed the trial court's denial of forfeiture. It held that because the forfeiture action is a civil action *in rem* against the property itself, the purpose of the two-notice requirement is to ensure that substantial due process rights are preserved by giving all those claiming ownership an opportunity to contest the forfeiture, and the second forfeiture notice is a prerequisite to the forfeiture itself. By failing to comply strictly with the mandatory notice requirements, the state had failed to perfect its petition for forfeiture, and the trial court had properly denied the petition. *State v. Tysl*, No. 14348, Court of Appeals of Ohio, Ninth Appellate District, Summit County (6/20/90).

OHIO — Contraband/Offense

The defendant in this case was arrested and charged with seeking to purchase alcohol while being underage, and with drug abuse resulting from the possession of cocaine. After his arrest, the defendant was taken to his motel room, where $4,905.00 was seized. The defendant initially said that he had received the money from his father. Upon further questioning, however, he stated that he had obtained the money through drug sales. He was subsequently indicted and pled guilty to the crime of receiving stolen property. The state then obtained from the trial court the forfeiture of the $4,905.00. The defendant appealed, contending that the money was not contraband and had not been used "in the commission of an offense other than a traffic offense," as required by section 2933.41 of the Ohio forfeiture statute. The appellate court affirmed the forfeiture by the trial court. It held that the trial court, as the fact-finder, could choose to accept the defendant's admission that the money had been obtained through drug sales rather than from his father. Hence, the necessary base offense of drug trafficking was present, even though the defendant had not been charged or convicted of a drug offense. *State v. Hardy*, No. CA-7952, Court of Appeals of Ohio, Fifth Appellate District, Stark County (6/18/90).

OHIO — Money as Contraband

The claimant in this case had given another individual $10,030.00 to buy a half kilogram of cocaine. That individual had then turned the money over to the police, who initiated forfeiture proceedings against the money. No charges related to the intended drug purchase were ever filed against the owner of the money. The state contended that the money was contraband because it was intended to be used to violate the drug trafficking provisions of Ohio law. The owner of the currency contended that the court lacked jurisdiction; further, the money was not contraband since he had not been charged with any felony related to possession of the money. The trial court denied forfeiture of the currency, and the appellate court affirmed that judgment. The courts held that the money must be returned to the claimant because the state had never filed criminal action against the claimant with regard to the intended purchase of cocaine. They further held that the state's argument that such charges need not be filed was contrary to statutory law. *In Re: Forfeiture of $10,030.00*, No. L-89-310, Court of Appeals of Ohio, Sixth Appellate District, Lucas County (7/13/90).

PENNSYLVANIA—Return of Property

Commonwealth v. Pomerantz, Superior Ct. of Penn., No. 3401 Philadelphia, 1988 (8/3/89). In this confusing case, the defendant sought in the trial court to have items of seized property returned. The trial court issued an order both denying the return and forfeiting the property. The Appeals Court noted the confusion of the trial judge and the attorneys as to the proper procedures to be applied. The Appeals Court then distinguished the procedures to be applied under Pa. R. Crim. P. 324 (motion for return of property) from those to be applied under 35 P.S. §§780-128 and 780-129 (controlled substance forfeiture pro-

cedures). The Appeals Court then noted that although the trial court had alluded to the state's "petition" for forfeiture, *no* such petition had, in fact, been filed. Hence, the trial court's order forfeiting the property, which was based on a nonexistent petition for forfeiture, was vacated, and the matter was remanded to the trial court for application of the proper procedures by all concerned.

PENNSYLVANIA — Personal Possession

Following a hearing, the trial court in this case ordered that a car be returned to the defendant. It reasoned that it would be "unfair" to forfeit the car, because the defendant had originally been stopped for the purchase of marijuana, and also because of the limited amount of cocaine recovered from the defendant's person. The state appealed, contending that section 6801(a)(4) of the Pennsylvania forfeiture statute requires forfeiture of a vehicle regardless of the amount of controlled substances involved. The appellate court reversed the trial court. It held that even though the cocaine was discovered incident to the stop and arrest for marijuana possession, that fact had no bearing on operation of the statute for the possession of controlled substances. The court further held that it was inappropriate for the trial court to apply the *de minimus* statute to this case, because the statute has no application to a forfeiture proceeding involving possession of any amount of cocaine, no matter how small. *Commonwealth v. One 1983 Toyota Corolla*, No. 2172 C.D. 1989, Commonwealth Court of Pennsylvania (8/1/90).

PENNSYLVANIA — Hearing on Restraining Order

The trial court in this case originally granted a temporary restraining order to preserve money held by a law firm while a forfeiture action against a violator's assets was pending. The original order directed that the money be held in the firm's escrow account pending further court order and completion of the forfeiture action. Subsequently, without hearing and based on pleadings filed by the state and the law firm, the court vacated the temporary restraining order. The state appealed, contending that a hearing was necessary so that it could establish that the funds paid to the law firm as a retainer were subject to forfeiture. The appellate court remanded the matter back to the trial court, stating that the threshold question of whether the assets paid to the law firm represented assets subject to forfeiture could be resolved only by an evidentiary hearing on the source of the funds held by the law firm. The appellate court also held that at such hearing the state must demonstrate a substantial probability that it would be successful on the forfeiture issue and that the property would be destroyed, removed, or made otherwise unavailable for forfeiture if the order was not entered. The state must also show that the need to preserve the property outweighs any hardship on the part of any party who would be affected by the entry of such an order. *Commonwealth v. Hess*, 566 A.2d 605, Superior Court of Pennsylvania (1989).

PENNSYLVANIA — Jury Trial

The trial court in this case ordered civil discovery and a jury trial in a vehicle forfeiture proceeding resulting from a controlled substances violation. The state filed an appeal on the sole issue of whether a jury trial is required in such forfeiture proceedings. The claimants conceded that no jury trial was provided for in the forfeiture statutes, and instead based their argument on state constitutional grounds. The appellate court reversed the trial court. It held that no jury trial is required in a civil forfeiture action. The court noted that the Pennsylvania constitution does not expressly guarantee the right to a jury trial in forfeiture proceedings unless the proceeding had a common law basis. It also noted that although *in rem* forfeiture proceedings were known at common law, early Pennsylvania common law did not even guarantee a hearing in such forfeiture proceedings. The court then reviewed the legislative intent behind laws governing various forfeiture proceedings that did not mention jury trials. It further noted that the legislature had, at one time, provided for jury trials in liquor forfeiture cases, but had then repealed the entire statute. Hence, the court concluded that there is no right to a jury trial in Pennsylvania forfeiture cases, on either a constitutional or a legislative history basis. *Commonwealth v. One (1) 1984 A-28 Camaro Coupe, et al.*, No. 1693 C.D. 1989, Commonwealth Court of Pennsylvania (7/16/90).

PENNSYLVANIA — Personal Possession

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TENNESSEE—Facilitation

Hicks v. Jones, Ct. of App. of Tenn., App. No. 89-419II (5/9/90). The trial court in this case affirmed the Tennessee Commissioner of Public Safety's administrative forfeiture of a drug defendant's $5,121 which was seized from a residence, but it denied forfeiture of the defendant's 1979 Lincoln. The Commissioner appealed. The Court of Appeals of Tennessee agreed with the trial court

that the Tennessee vehicle forfeiture statute (53-11-409(a)(4)) "contemplates that something more must be proven than the mere fact that a vehicle belongs to a drug dealer." It then found "something more" by highlighting that immediately before the defendant's arrest she was noted exiting the vehicle and entering her residence, where drugs were seized from her coat and purse, which she had just had in the vehicle. Hence, the Appeals Court reversed the trial court. It found substantial and material evidence that the vehicle had been used to transport the drugs in her coat and purse and therefore was subject to forfeiture.

TENNESSEE — Juvenile Offenses

In this case, the state filed a petition in a county juvenile court seeking forfeiture of a minor's automobile after it was found to contain stolen property. The juvenile court held that it did not have jurisdiction to enforce the confiscation statute and dismissed the state's petition. It stated that "the forfeiture statute is intended for criminal defendants and not for juvenile delinquents." The appellate court affirmed the juvenile court's decision. It held that forfeiture proceedings under section 40-33-101 of the Tennessee Code are plainly inconsistent with the stated purpose of the juvenile courts. The appellate court also noted that juveniles who commit delinquent acts are not criminals, and are not indicted or convicted. Although the legislative assembly could have included juveniles under section 40-33-101, it had not. Hence, the juvenile court did not have jurisdiction to order forfeiture of a delinquent minor's vehicle. *State v. Stout*, Appeal No. 89-331-II, Court of Appeals of Tennessee, Middle Section, at Nashville (7/5/90).

TEXAS — Delay

In this case, the state filed a notice of seizure and intended forfeiture on July 12, 1989. The owner filed his verified answer on July 21, 1989. On August 23, 1989, the owner's attorney stated in a letter to the involved district attorney that "the hearing concerning the automobile forfeiture can be scheduled at any time." The trial court denied forfeiture on the basis that the state had failed to comply with section 5.07(a) of the Texas provisions, which requires that "if an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer, and notice of the hearing shall be sent to all parties." On appeal, the state contended that the owner had waived the 30-day requirement by means of the August 23 letter, and hence was estopped from asserting it. The appellate court affirmed the trial court's denial of forfeiture. It noted that the letter from the owner's attorney was dated after the required 30-day period had expired. Because the state neither requested nor obtained a setting for the forfeiture hearing within the required 30-day period, the trial court was correct in dismissing the forfeiture. *State v. One (1) 1986 Nissan*, No. 08-89-00324-CV, Court of Appeals of Texas, Eighth District, El Paso (6/27/90).

TEXAS—Answer Sufficiency

$25,070.00 (Javier Martinez) v. State, No. 01-90-00018-CV, Court of Appeals of Texas (8/30/90). The state sought forfeiture of $25,070 found in a trailer house on the defendant's premises. The state's notice of seizure and intended forfeiture alleged that the money was subject to forfeiture because it was obtained as a result of illegal drug trafficking. When the case was called to trial, the state moved for judgment on the pleadings. It claimed that the defendant's answer was insufficient, and hence that the state was entitled to summary judgment. The trial court granted the state's motion and declared the property forfeited. The defendant, on appeal, contended that because an answer to the state's notice of seizure and intended forfeiture had been filed, the trial court should have set a time for hearing rather than grant the state's motion for summary judgment. The Court of Appeals of Texas reversed the summary forfeiture. It held that the defendant's answer was adequate to contest the forfeiture, and hence the matter should not have been decided by summary judgment. It remanded the case to the trial court for further proceedings.

BOOKSHELF

WARLORDS OF CRIME

Chinese Secret Societies: The New Mafia, by Gerald L. Posner, Penguin Books, New York, 1988, 289 pages, $8.95 (paper)

The word "Mafia" conjures an image of scheming, bloodthirsty, passionately secretive men conducting their "family business" behind closed doors. The violence of the Mafia has seldom been felt—at least in this country—by the innocent public and law enforcement officials. This will change radically, however, as the "New Mafia"—Chinese secret societies known as Triads—increasingly emigrate to the West, especially with the reversion of Hong Kong to mainland China in 1997.

The first Triad was founded in the late seventeenth century. It was formed by five monks for the sole purpose of overthrowing the Manchu dynasty, which earlier had overthrown the Chinese imperial government. Although they come from the same lineage, today's Triads focus little on their history and traditions. Nor do they pursue noble causes, as their forefathers did. Today's Triads have one goal: to make money, any way they can.

Chinese Triads do not feud with one another, as the Sicilian Mafia families once did in the United States. Instead, they concentrate on fighting law enforcement agencies. Their cohesion makes them strong, and their attitudes make them deadly. They often use violence indiscriminately. Anyone who might hinder them—a police officer, an innocent bystander, a disloyal member—may be killed. They may not look for confrontation, but they certainly don't dwell too long on ways to avoid it.

Gerald Posner gathered information on Triads through firsthand encounters with high-ranking members and discussions with law enforcement officials concerned with their eradication.

Hong Kong police estimate that there are approximately 50 Triads, with the largest numbering nearly 30,000 members. Posner explains that although headquartered in Hong Kong, the Triads

"have tentacles spread around the globe, and are bound together by elaborate ritual, kinship, and the desire to make money. They also operate an underground banking system that moves literally billions of dollars a year without leaving a trace of paper. 'And if you are [Caucasian], you can't get inside'."

The financial aspects of the Triads are staggering. According to Posner, they control the export of more then 70 percent of the world's opium and heroin supply. In the United States alone, they have commanded the sale of more than $150 billion of heroin. The Triads also vigorously pursue such traditional vices as prostitution, gambling, and extortion.

Laundering this enormous wealth is no problem. In Hong Kong, money laundering is not even investigated. The lack of government restrictions on the banking industry makes successful laundering investigations almost impossible. Furthermore, Hong Kong's bank secrecy laws provide a shield for illegally earned funds.

The Triads' intricate underground banking system is based on ethnic and historical trust. Coded messages on small pieces of paper represent receipts that can be immediately exchanged for money. No other records are kept, and laundering is done exclusively by the Triads for the Triads. As such, the system is virtually impenetrable from a law enforcement standpoint.

Warlords of Crime focuses on the history and current operations of Triads. Incidents involving these groups are presented in rich detail. The book also looks briefly at the Hong Kong Police Department. Posner concludes with an overview of the many problems the Triads pose for law enforcement agencies. The problems and frustrations of agencies already dealing with the Triads are described, making the book especially interesting for enforcement agency officials. Posner also touches on problems in the criminal justice system, including the lack of cooperation among law enforcement agencies.

Warlords of Crime is an excellent source of information on Chinese Triads—especially on their financial operation. It serves as an introduction to a problem that has plagued Hong Kong for many decades and now is starting to impact the United States.

—Steve DeNelsky

ASSET FORFEITURE BULLETIN

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