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IN THIS ISSUE:

DETECTING LOCAL BUSINESS MONEY LAUNDERING

A New Guide Tells How

An' it all goes into the laundry,
But it never comes out in the wash
—Rudyard Kipling

Consider the financial "wash day" options of the drug entrepreneur. If he wants to use local businesses to launder his profits, he can overstate reported revenues, overstate reported expenses, or deposit cash and write checks in excess of both reported revenues and expenses. Whether he takes one or all options, the challenge for the money launderer is always to disguise "ill-gotten liquid economic assets as part of a normal economic cycle of a legitimate business," according to T. Gregory Murphy. In other words, making certain that whatever goes into the laundry never comes out in the wash.

Murphy, a certified public accountant and World Bank consultant, is the author of a new report on how money launderers use local businesses. The report was prepared for the Asset Forfeiture Training and Technical Assistance Project operated under a cooperative agreement between the Bureau of Justice Assistance and the Police Executive Research Forum.

The report, *Uncovering Illegal Assets Hidden In A Business*, introduces law enforcement readers to some basic terms and concepts familiar to auditors seeking out financial wrongdoing. Its premise is that to disrupt the use of hometown businesses as money-laundering schemes and seize ill-gotten cash and assets, the police have to understand how these scams operate. It urges investigators who probe money laundering to immerse themselves in the financial dynamics of business. "Information on money-laundering activity should foremost be seen as an extension of the normal intelligence-gathering activity," Murphy writes.

That amount of information is currently limited. Although money laundering through local businesses is thought to be common, little is known about its actual extent and about which methods are most widely used, according to Murphy. He notes that his report deals only with local businesses and not money laundering as carried on through banks, brokerage houses, real estate investment, and gambling casinos about which much more information is available.

There are three principal money-laundering methods that local businesses may use.

Overstating Reported Revenue

Overstating reported revenue disguises an infusion of illegal cash from non-business sources by adding it to the business' sales records. To illustrate,

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FEDERAL EQUITABLE SHARING PROGRAM:

It Now Applies To Money Laundering Forfeitures

By *Michael Zeldin*

The 1986 Money Laundering Control Act, which created a federal money laundering offense, is among the laws enforced by the Attorney General that permits equitable sharing of forfeited property with law enforcement agencies that participate in its seizure or forfeiture. Sections 981 and 982 of Title 18, United States Code, authorize both civil and criminal forfeiture of assets relating to violations of the Act. This law is an invaluable tool that enables the government to take property obtained through illegal activity, thereby removing the very resources that supported the criminal activity. At the same time, the equitable sharing program encourages federal, state, and local cooperation in keeping communities free from crime, while giving the participating agencies an added incentive by allowing them to receive a percentage share of the forfeited property. Provided at no expense to taxpayers, these additional funds are especially welcome at a time of severe budgetary constraints.

Since the Act was passed in 1986, there have been no equitable sharing requests because few, if any, forfeitures have taken place under its auspices.

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Murphy uses the example of a suburban car dealership that does much of its business in used car sales.

The dealership encourages customers to pay cash for their cars by offering special discounts, perhaps 15 or 20 percent, that for "competitive reasons" don't show on the official invoice. If

. . . to disrupt the use of hometown businesses as money-laundering schemes . . .

the dealership sells 240 cars a year at an average official invoice price of $4,000, it has $960,000 in recorded revenue. But if the cash received from customers is 20 per cent less for a total of $768,000, the dealership has laundered $192,000. That means that the dealership is able to disguise as legitimate business income $192,000 in cash from illicit enterprises by depositing the money as normal receipts in the business' bank account.

Murphy notes another, riskier way to overstate reported revenue. That way is to create wholly imaginary used car sales transactions, say five a month at an official invoice price of $4,000. At the end of a year, a business would have an additional $240,000 in receipts, allowing that much more to be passed off as legitimate business income. It's riskier because all elements of a sale are fabricated, rather than being merely modified. Records could fall prey to Internal Revenue Service and, more recently, police scrutiny.

The downside, as the business vernacular would have it, to overstating reported revenues is that openly reported receipts are fully taxable. So those who launder drug money will end up paying much of their laundered proceeds in taxes if they somehow cannot reduce their increased tax liability.

Overstating Reported Expenses

This method disguises money used for illicit purposes by inflating legitimate business expenses. A business purports to pay nonexistent employees on a regular basis, provides fees on its books for fictitious consultants, and shows it has "paid" for supplies or services it never receives. The method has two principal benefits.

First, it solves the problem of paying taxes for laundered proceeds because inflated expenses, just like real ones, are tax deductible. Thus, overstated expenses reduce the tax liability owing to overstated revenues.

Second, as Murphy notes, "cash can be siphoned back out of a business to make payoffs, buy new stocks of illicit goods, or invest in new criminal ventures."

Again using the car dealership example, Murphy lists four ways to inflate expenses and make laundered cash available for criminal activity, "but the possibilities are limited only by the imagination."

1. The dealership's payroll includes three mechanics and an assistant sales manager who don't exist, but they represent $100,000 in inflated expenses that's available to avoid taxes and take an equivalent amount of cash out of the business.

2. On its books, the dealership shows "lawyers" and "consultants" on annual retainers totaling $200,000. They do little or no work, but submit invoices for fees on expensive stationery and with suitably vague descriptions of their activities.

3. It buys lubricants from a supplier who agrees to inflate invoices by 25

. . . overstated expenses reduce the tax liability owing to overstated revenues.

percent and refund four-fifths of the inflated amount.

4. A car rental company which supplies the dealership with many of its used cars inflates its invoices by an average of 30 percent, providing still another source for laundering illicit proceeds.

The term for overstating both revenues and expenses is "income-statement

. . . illicit receipts fall afoul of the ruthless logic of accounting . . .

laundering" which can be difficult to detect, according to Murphy. "When price inflation is applied in moderate percentages to goods and services whose market value is difficult to establish (e.g., used cars, consulting fees), detection without inside information is exceedingly difficult."

Depositing Cash and Writing Checks in Excess of Both Reported Revenues and Expenses

This last method is probably the most common money laundering option used at the local level, Murphy writes. Excess cash is not disguised as normal business revenue but simply parked in a business' bank account. Easy to do, the technique is called balance-sheet laundering "because it is independent of the money that flows into and out of a business as revenues and expenses," according to Murphy. Like a loan, the excess cash involved in balance sheet laundering "represents the proceeds of a transaction that is outside everyday business activity. Also, like a loan, it appears on a company's balance sheet or statement of assets and liabilities."

Allowed to pile up in bank accounts without disguising documentation, "illicit receipts fall afoul of the ruthless logic of accounting," Murphy says. "Every asset, including cash, in a company's possession must come from somewhere—if not from revenues, then from a quite limited number of possible alternatives. All of these alternative sources, to be credible, require significant documentation." The primary sources are loans, sale of property and equipment, and shareholder investments.

Detection

Law enforcement officials can use a range of methods to uncover each of the three business-related money-laundering techniques. Some are sophisticated, in-

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HOW CPAS VIEW MONEY LAUNDERING:

From the Cash System to the Business System

To be effective in uncovering money-laundering operations, law enforcement officials should understand money laundering in the same way that a certified public accountant does, according to T. Gregory Murphy. A CPA, Murphy defines money laundering as the conversion of money from a Cash Transaction System into a Business Transaction System. Murphy, author of a new report on the use of local businesses for money laundering, says his definition addresses the underlying mechanisms and schemes of money laundering.

"There are powerful motivations, both positive and negative, for criminals to carry out some part of their activities in *both* systems," Murphy says. "This has great significance for law enforcement because it implies that virtually all criminals must move from one system to the other to carry out their activity. If it were feasible to remain entirely in one system, criminals would have strong protection from law enforcement scrutiny. But because illegal enterprises are more or less obligated to move between the two systems, they are extremely vulnerable when they switch from one to the other—and generate paper trails."

As its name implies, all transactions in the Cash Transaction System are carried out in cash and there is nothing to differentiate one dollar bill from another, Murphy notes. In contrast, the Business Transaction System relies on noncash instruments such as checks for making transactions. "All transactions in this system are unique and pass through publicly regulated institutions such as banks," Murphy points out. "Each has a specified source, destination, and date. All transactions in the Business Transaction System generate records . . . subject to review by federal, state, and sometimes local governments."

According to Murphy, here are the pluses and minuses of the two systems:

Cash Transaction System

Advantages	*Disadvantages*
• Everyone can come up with cash to pay for illicit goods or services.	• Large amounts of cash are difficult to handle and transport.
• Lack of records makes it difficult to connect a person with criminal activity or with purchase of illicit goods or services.	• In large amounts, cash is a risky medium. Loss, theft, and discovery by authorities are constant worries.
• Unreported revenues are not taxed.	• In large amounts, cash is suspicious and calls attention to those who hoard or use it.
	• Lack of records makes it difficult to prevent pilferage by "employees" or "distributors."
	• Certain assets cannot be acquired for cash without an extensive inquiry into its source.

Business Transaction System

Advantages	*Disadvantages*
• There is great efficiency and security in the transfer of funds.	• Taxes must be paid on reported revenues.
• Business expenses are tax deductible.	• Every transaction has a source and destination, either of which can lead authorities to criminal activity.
• Assets are protected by public institutions (banks), police, Securities and Exchange Commission, and state regulatory bodies.	• Business records are subject to review by all levels of government.
• Losses owing to pilferage are controllable.	• Falsification of records to reduce the risk of detection is itself a criminal act and can lead to prosecution even without proof of other criminal activity.
• The entire range of business is open, including legitimate investment in real estate, securities, etc.	
• A business, being a legitimate enterprise, is a valuable base of operations and a potential source of concealment for criminal activities.	
• Involvement in the Business Transaction System permits acquisition of community standing and influence which provides extra camouflage for illicit operations.	

volving statistical sampling and special computer programs. But many involve the use of nothing more than shrewd common sense and don't require professional training to understand how they work.

Independent indicators of revenue and expense are key tools for detecting income statement laundering. A simple example would be a 100-seat movie theater that charges $4 a seat, shows three films daily, and has a maximum gross revenue of $36,000 monthly (100 × 4 × 3 × 30). If the theater's reported monthly revenues were $50,000, it's obvious that $14,000 came from another source.

. . . information on money laundering has a strong predictive value.

Murphy cites another example:

"A common method employed by French tax authorities when auditing restaurant owners (who are notorious tax cheats) is to check the laundry bills for the number of tablecloths cleaned and their bakery bills for the number of loaves of bread consumed. From this they make their own independent estimate of revenues (the average price of a meal doesn't vary very much) and compare them with those reported. Obviously, small variations don't constitute adequate proof of fraud, but large-scale fraud is extremely hard to hide from this kind of analysis."

Detecting income-statement laundering depends significantly on the quality of documentation, the accuracy of independent indicators of revenue and expense, and the extent that a business shows variations from true business activity. Variations of 10-15 percent are, of course, harder to detect than differences of 50 percent.

The car dealership offers examples of how income statement laundering can be uncovered:

Inflating Revenues Investigators can compare prices on the dealership's invoices with the prices charged for the same make and model cars by competing dealers. They can gather evidence from customers who bought cars with inflated invoices. Significantly higher prices raise clear signs of money laundering. Where the dealership is suspected of making fictitious sales, investigators can check car registrations against a sample of reported sales. Proving that vehicles recorded as sold never existed provides strong evidence of money-laundering activity, according to Murphy.

Inflating Expenses Proving that the car dealership's ghost employees, the three mechanics and a salesman, don't exist is other strong evidence of money laundering. And it is difficult to create a truly convincing fictitious person because there are so many independent indications of their existence, Murphy notes, adding: "Covering up *all* these possibilities in anticipation of an investigation is highly unlikely." It is tougher to detect inflated and false retainer fees for consultants because "it is extremely difficult to get a firm estimate on the worth of vaguely defined services."

Balance-sheet laundering is uncovered through methodological investigation . . .

Balance-Sheet Laundering

Balance-sheet laundering is uncovered through methodical investigation of the "genuineness of the documents that support the various amounts on the balance sheet," according to Murphy. "Changes from the new year such as new loans or sales of equipment should be given particularly close scrutiny. Receipts and payments made during the year that are not related to revenue and expense are also traced to the balance sheet items to which they relate." An example is repayment of principal on loan which should be checked to determine that it does not exceed the underlying loan's requirements.

Murphy cautions that the process of searching for balance sheet laundering can be tedious, but "at the end significant cash balances, receipts, or payments that are not related in some logical way to the company's assets and liabilities will come to light."

Putting Knowledge to Work

Police understanding of money-laundering mechanisms and detection techniques is best put to gathering intelligence and accumulating evidence for use under criminal and asset seizure provisions of the law. According to Murphy, "Because of the vital role of money laundering in permitting a person to enjoy the fruits of criminal activity, information on money laundering has a strong predictive value. If you know how a mechanism works, you can . . . anticipate what the person will do." This predictive capacity can help in

- "improved targeting of surveillance;
- "developing leads among suppliers and customers; and
- "identifying potential witnesses in the gray area between criminal and legitimate activity, who, not being part of a criminal organization itself, can be the source of important information or testimony."

Murphy notes that money laundering often involves falsification of records and legal documents "and so it may constitute a crime in its own right. . . As such, it can be used to prosecute cases where the basic criminal activity is hard to get at. In much the same way, major organized crime figures have been sent to prison for tax evasion." He observes also that disgruntled former employees, clients, and suppliers of a local business used in money laundering can be valuable informants for the police.

In sum, Murphy says, "The criminal's need to launder money is an important asset for local law enforcement agencies . . . because criminals are often not aware of their own vulnerability in the money-laundering process and currently do not credit local law enforcement agencies with the capability of recognizing it." He concludes that "exploitation of the money-laundering process as a weak point in the armor of criminal activity should be viewed as another tool in the criminal investigative process."

Federal Equitable Sharing Program
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This is due to the wording of the Act, which only allows for forfeiture of a money launderer's "gross profits." In this case, "gross profits" are the commissions that money launderers keep for themselves. Since these amounts usually only comprise 3-5 percent of the seizure, prosecutors have little incentive to pursue a forfeiture of such a small amount. Aware of this deficiency in the wording of the Act, Congress changed the law in the 1988 Anti-Drug Abuse Act. The new language encompasses traditional forfeitures of any property involved in a violation of the money laundering laws (18 U.S.C. §§1956 and 1957); any property used to facilitate the violation of such laws; and any interest in property traceable to the gross receipts or property involved in a violation of §§1956 and 1957, used to facilitate such violations. It is anticipated that with the enactment of these changes, there will be a substantial increase in forfeitures.

. . . the program encourages federal, state, and local cooperation in keeping communities free from crime.

Program Principles

In order for law enforcement agencies to take advantage of the equitable sharing program, where property has been forfeited under the money laundering statute, certain principles should be known. Section 981(a)(1) of Title 18 describes the types of property forfeitable and eligible for equitable sharing. This includes any property, real or personal, involved in a transaction or attempted transaction in violation of 31 U.S.C. §§5313, 5324 or 18 U.S.C. §§1956, 1957 or any property traceable to such property. (The identical language exists in 18 U.S.C. §982 and applies to criminal forfeiture actions). Section 982 also includes a substitute assets provision similar to 21 U.S.C. §853(o).

A state or local law enforcement agency directly participating in an investigation may apply for proceeds or property forfeited in that investigation. Additionally, state and local prosecutors' offices may participate in equitable transfers of federally forfeited property to the extent that such an office performs investigative work and is allowed to receive money directly from the federal government. Federal agencies may only apply for and receive tangible property. Potential asset sharers must certify that the property or cash to be transferred will result in an increase in their budgets or law enforcement resources, and not be used as an alternative to regular appropriations.

State and local agencies may participate in this program in two ways. First, an agency may join forces with a Department of Justice investigative bureau in a federal investigation and share in any property seized as a result of its direct participation. Second, an agency may request that an investigative bureau "adopt" a seizure it has made and then request an equitable share of that property, once forfeited. Federal adoptive seizures result when a state or local agency has made a seizure, but due to limitations in state law or other valid prosecutorial reason, cannot go forward in state court and/or receive a share of the property. In such cases, a Department of Justice investigative bureau may adopt the seizure and commence federal forfeiture proceedings.

Federal agencies may only apply for and receive tangible property.

After ensuring that the forfeiture arises from a federal statute enforced by the Department of Justice, the state or local agency should complete a 3-page "Application for Transfer of Federally Forfeited Property" (DAG-71). This form may be obtained from local or regional offices of the FBI, DEA, or INS. Multiple pieces of property or a combination of property and proceeds of sales obtained from the same seizure in the investigation may be requested in the same DAG-71 form. The DAG-71 should be filed with the local office of the investigative bureau that handled the forfeiture within 30 days of the seizure, but in any event, no later than the date of forfeiture.

Participation and Contribution

The equitable share that an agency may receive is reflective of its direct participation and relative investigative contribution in the seizure or forfeiture. Factors considered in determining an agency's participation include expenditures of money, manpower, equipment, and duration and intensity of involvement. The necessary administrative costs of the program are accounted for by allocating a minimum 10 percent share to the federal government (unless the forfeited asset is not readily divisible, as in a single conveyance). After a property is forfeited, the requesting agency will be notified of the sharing decision. Prior to transfer of property, the agency must pay any associated forfeiture expenses such as liens or mortgages.

For more information about the equitable sharing program, see the *Attorney General's Guidelines on Seized and Forfeited Property*, published in 1985 by the Department of Justice; or, call Michael F. Zeldin, director, Asset Forfeiture Office, Department of Justice, Washington, DC 20530, (202) 786-4952; Legal Forfeiture Unit, Legal Counsel Division, Federal Bureau of Investigation, (202) 324-3534; William Snider, forfeiture counsel, Office of the Chief Counsel, Drug Enforcement Administration, (202) 272-6435; David R. Yost, asset forfeiture manager, Immigration and Naturalization Service, (202) 786-5116; or Jeffrey Fratter, chief, Seized Asset Management Branch, United States Marshals Service, (202) 307-9221.

For more detailed information about the Money Laundering Control Act, see the *Handbook on the Anti-Drug Abuse Act of 1986*, published in March 1987 by the Department of Justice.

THE BEST AND WORST BUSINESSES FOR MONEY LAUNDERING

Almost any local business can be used for money laundering with the right amount of sophistication and managerial talent, but some businesses are better suited than others.

Restaurants, bars, and night clubs are among the most frequently used businesses, according to T. Gregory Murphy, a certified public accountant who has studied the matter. These businesses meet requirements ideal for money laundering, among them:

Revenues Restaurants, bars, and night clubs charge relatively high prices and customers vary widely in their consumption. Sales are made in cash, and it's difficult to match the costs of providing food, liquor, and entertainment with the revenue they produce.

Expenses The range of goods and services that are a normal part of these businesses is relatively broad, including salaries, food, drink, and vending and entertainment contracts.

Business Features Customers seek entertainment and distraction and so may be interested in those staples of organized crime—gambling, drugs, and prostitution.

Other local businesses that are well suited for money laundering include fast food restaurants, movie theaters, vending machines, and wholesale distribution, according to Murphy.

In contrast, he says, businesses that are highly competitive or require substantial skill are less likely to attract criminal involvement in money laundering. One reason is that it is difficult to run a demanding business and a demanding criminal network at the same time. The other reason is that the potential losses from a high-turnover, competitive commercial enterprise that is poorly run are great. Therefore, supermarkets, discount stores, and sporting goods stores are examples of businesses poorly suited to money laundering.

L E G A L C O R N E R

U.S. Attorney Challenges Bank's Innocent Owner Defense

Can a bank which holds an $800,000 mortgage on a house that it knew or should have known was the property of a drug dealer assert the innocent-owner defense and thereby avoid forfeiture of that mortgage? The answer may depend in part upon whether the bank is judged to be a bona fide purchaser.[1] This is the central issue that a U.S. District Court judge in the Southern District of Florida must decide.

The decision of the court in *United States v One Single Family Residence Located at 6960 Miraflores Avenue, Coral Gables, Florida, etc.* could have a significant effect on the future of forfeiture law relative to banking practice. If the court decides that the Republic National Bank of Miami is a bona fide purchaser (BFP) for value and therefore entitled to assert the innocent-owner defense, it will set new ground because the issue of whether a bank is a BFP has never been decided. If the court holds that the bank knew or should have known that the property constituted proceeds of illegal narcotics trafficking, then the banking industry will be forced to a higher level of scrutiny of its internal and external policies and procedures.

The section of the federal forfeiture statute applicable in this case, 21 USC 881(a)(6), is commonly known as the proceeds section because it provides for forfeiture of property traceable to drug activity. The innocent-owner provision of this section exempts property from forfeiture "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 or consent of that owner."

Facts of Case

The basic facts of the case as asserted by the government are as follows: A Panamanian holding company called Thule was formed by Indalecio Iglesias. Iglesias then purchased a lot, hired contractors to build a house, and paid them $7,000 to $9,000 a week in cash (delivered in briefcases) for a total of $266,000. The president of Republic National Bank was approached on behalf of Thule by Puentes, a long-standing bank customer, regarding a mortgage loan on the house and land which were valued at $1.2 million. The bank president personally inspected the property, which at that time was unoccupied and up for sale. Though there was no documented source of income for repayment, an $800,000 loan was obtained. It was secured by a mortgage on the house with a note that provided for repayment within one year with a balloon payment.

Subsequently, the federal government filed a complaint for forfeiture alleging that the property represented an asset derived from the proceeds of illegal narcotics activity. Republic Bank asserted its interest in $800,000 of the proceeds of a government forfeiture sale of the property. In the typical case, the outstanding mortgage is paid to banks claiming to be innocent owners or lienors. However, here the government alleges that the bank's interest is properly subject to forfeiture as the bank knew or should have known of the illegal activity of the true property owner.

In a hotly contested forfeiture trial, the government attempted to show that Thule was a dummy corporation, owned by Iglesias, who was trying to liquidate its sole asset. Three government informants testified, through a government agent, that Iglesias had no legitimate source of income. They indicated that he amassed $180 million in a period of five years and that he transported 30,000 kilos of cocaine for Colombian drug traffickers.

The government's evidence further showed that on the day before the loan closed, Iglesias purchased a prepaid vacation to the Caribbean, complete with airline tickets and hotel reservations, for

the newlywed son and daughter-in-law of the bank president.

Property Forfeited

Shortly before the forfeiture trial, Thule consented to forfeiture of the property. Republic National Bank, however, asserted its claim as an innocent lienor which made a loan without prior notice of any illegal activity associated with the property which secured the note. The government protests that the bank cannot raise the innocent owner defense because the relation back doctrine[2] cuts off that claim, and has the effect of avoiding all intermediate sales, even to purchasers (lienors) in good faith.

The court therefore must first determine whether under these facts Republic National Bank is entitled to assert the innocent owner defense. Once the court decides that the relation back doctrine does not preclude Republic from raising the defense, it must then decide the proper standard to apply i.e.—that one knows or has actual knowledge of the illegal activity giving rise to the forfeiture or that one should have known, based on the principle that a reasonable person, under the given circumstances, should have known of the illegal activity.

The bank argues that "actual" knowledge should be the standard. This standard would allow banks to continue to engage in money-laundering transactions and avoid forfeiture as long as they lacked actual, as opposed to constructive, knowledge of the illegal activity. The objective "should have known" standard would require banks to use more care and caution in their lending practices. This, of course, is the stance urged by the government.

Trial Held

The forfeiture trial was held in June 1988. Since that time, the bank president resigned. Shortly thereafter, he was indicted and arrested on money-laundering charges arising from this incident. The U.S. attorney's office and the Republic National Bank have filed many documents and briefs with the court urging a careful review of their respective arguments on the issues. Judge Thomas Scott has yet to announce a ruling in the case.

The Florida courts, both federal and state, have been on the forefront of many issues in the area of forfeiture because of the state's heavy volume of drug trafficking. This case presents yet another opportunity to broaden the scope of forfeiture law. Law enforcement and the banking industry alike are anxiously awaiting the outcome of Judge Scott's decision in the case. When available, this bulletin will publish the decision.

—Wanda G. Bryant

1. A bona fide purchaser in this instance is one who obtains a lien on property without having knowledge that the property is connected to any illegal activity.
2. The relation back doctrine states that title to property subject to forfeiture vests in the government immediately upon commission of the act giving rise to forfeiture. However, a true application of the doctrine in many cases, especially such as this, would obviate the need for the statutory innocent owner defense.

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A Review of Recent Law Review Articles on Forfeiture and Related Issues

Note, "Forfeiture of Attorneys' Fees: Should Defendants Be Allowed to Retain the 'Rolls Royce of Attorneys' with the 'Fruits of the Crime'?"
39 Stanford L. Rev. 663 (1987).

This article addresses the problems inherent in forfeiture of attorneys' fees under the current Racketeer Influenced and Corrupt Organizations Act (RICO) and the Continuing Criminal Enterprise (CCE) section of the Comprehensive Drug Abuse Prevention and Control Act of 1970. The author's main focus is the criminal forfeiture provisions of RICO and CCE and the effect of the "relation back" clause of the Comprehensive Forfeiture Act of 1984 on these earlier acts. The 1984 act introduces the "relation back" clause that gives the government an interest in the proceeds of illegal activity at the time the crime is committed, rather than upon the defendant's conviction. Attorneys' fees are not specifically exempt from this new forfeiture provision. The only exemption is for a "bona fide purchaser for value" who, at the time of purchase, was "reasonably without cause to believe that the property was subject to forfeiture."

The author begins with a discussion of the background, purpose, and provisions of the 1984 amendments to the Organized Crime Control Act of 1970 and the Comprehensive Drug Abuse Prevention and Control Act of 1970. The 1984 amendments to RICO and CCE were designed to "eliminate the statutory limitations and ambiguities that have frustrated active pursuit of forfeiture by federal law enforcement agencies." (S. Rep. No. 225, 98th Cong., 1st Sess. 191 (1984)). The next section

of the article discusses the constitutional, ethical, and practical concerns arising from the forfeiture of attorneys' fees. The last section argues in favor of exempting attorneys' fees from forfeiture. It points to factors such as the uncertainty in separating legal from illegal income and the inadequacy of appointed lawyers to handle complex forfeiture cases. This 24-page article has a moderate number of footnotes (federal cases) and one interesting footnote (#36) which draws an analogy between the problems raised by attorneys' fees forfeiture and issues raised by jeopardy assessment under the Internal Revenue Code.

Strafer, "Civil Forfeitures: Protecting the Innocent Owner,"
37 U. Fla. L. Rev. 841 (1985).

This article suggests safeguards for the rights of innocent property owners caught in the crossfire of the government's war against narcotics traffickers. It calls for courts to provide owners with prompt post-seizure hearings where the government bears the initial burden of showing probable cause that property was involved in unlawful activity. The high points of third-party rights are touched upon by the author in this 20-page article. Among the main topics are the statutory scheme, the innocent owner defense, the probable cause requirement, the due process requirement of a prompt post-seizure hearing, and sovereign immunity. The author also explains aspects of forfeiture law unique to Florida federal courts such as the requirement for prompt probable cause hearings and the holding calling for pre-seizure *ex parte* hearings in United States v. Certain Real Estate Property, 612 F. Supp. 1492 (S.D. Fla. 1985). He also mentions the independent "Bivens"-type cause of action to remedy improper seizures of property, so named after the case of Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). These independent actions arise directly under the Constitution, furthermore, because the Fifth Amendment supplies an express waiver of sovereign immunity; in the forfeiture context, sovereign immunity would not be a bar to a "Bivens" counterclaim.

Comment, "State and Federal Forfeiture of Property Involved in Drug Transactions,"
92 Dick. L. Rev. 461 (1988).

This comment explores forfeitures under the Controlled Substance Act (19 U.S.C.A. SS 1602-1618 (West 1980)), comparing and contrasting them with forfeitures under the Drug Control Act (21 U.S.C.A. S 881 (1982)). It also gives a list of the civil forfeiture provisions of the drug acts of all the states and territories that have them (in footnote 4). Pennsylvania has adopted the Controlled Substance Drug, Device, and Cosmetic Act (35 Pa. Cons. Stat. Ann. SS 780-101 tp 780-144 (Purdon 1977 & Supp. 1986)) from the Drug Control Act, making relatively few changes in the statutory language. The article's purpose is to resolve the gaps and ambiguities in Pennsylvania forfeiture case law by analyzing federal court rulings that address parallel issues under the Drug Control Act.

After giving a brief history of forfeitures, the author explores specific statutory deviation between the Controlled Substance Act and the Drug Control Act and examines the basic scope and procedure established by the two acts. In general, both acts subject the same type of property to forfeiture and employ the same procedures. The real difference comes with the availability of defenses to claimants of property. Unlike the Drug Control Act, the Controlled Substance Act uniformly allows owners to assert innocence as a defense without recognizing any distinction between particular types of property. Therefore, Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974) did not specifically affect Pennsylvania case law on the forfeiture of conveyances since the Controlled Substance Act specifically permits innocent owners to retain possession of their conveyances. Also, in Pennsylvania the relation back doctrine has never been expressly applied to the Controlled Substance Act.

Ahuja, "Current Topics in Law and Policy: Civil Forfeiture, Warrantless Property Seizures, and the Fourth Amendment,"
5 Yale Law & Policy Review 428 (1987).

The thrust of this article is that Fourth Amendment warrant requirements must be applied to forfeiture seizures. The author illustrates the injustice of the "forfeiture exceptions" to the warrant requirement carved out by some courts. In United States v. Certain Real Estate Property Located at 4880 S.E. Dixie Highway, 612 F. Supp. 1492 (S.D. Fla. 1985), the United States District Court for the Southern District of Florida ruled on the sufficiency of the factual allegations in a forfeiture complaint submitted by the government against the property of Joseph Spina, the owner of a resort complex in Port Salerno, Florida. Spina's property was seized based solely on an allegation of belief by two government attorneys. The deputy clerk of the court affixed the court's seal to the warrant; no judge or other official had weighed the government's contention. Finding that the forfeiture complaint did not contain sufficient factual allegations to support a finding of probable cause, the court dismissed the complaint and ordered the property returned to its owner.

The author argues for strict judicial application of the Fourth Amendment. Citing such defects in the forfeiture procedures as no requirement of judicial proceedings immediately following the initial seizure, and warrantless seizures serving as the basis for a subsequent warrantless search, he stresses the need for the government to have a reasonable basis for seizing property at the time it initiates a forfeiture proceeding. The author then traces the history of the origin of the Fourth Amendment beginning with Article 39 of Magna Carta. Following this background, he examines cases of courts upholding the government's right to seize items of contraband per se without a warrant. He concludes that these cases are defective in light of the general principle upheld by the court that an opportunity to be heard is required by due process before property may be attached in civil litigation (Fuentes v. Shevin, 407 U.S. 67 (1972)).

After a brief look at the constitutional defects of Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims, the author ends with an overview of the remedies for unconstitutional seizure. These remedies include application of the exclusionary rule, award of attorneys' fees to litigants prevailing on the Fourth Amendment issue, and a private right of action for unreasonable search and seizure by the government. *—Joseph Sadighian*

NOW AVAILABLE

Profile Stops after Sokolow

The Police Executive Research Forum has prepared a summary and analysis of the U.S. Supreme Court decision in *U.S. v. Sokolow*, handed down April 3. The decision upheld the use of profiles as a drug enforcement tool to uncover contraband and assets. For a copy of the "Profile Stop Paper" please write: BJA Asset Forfeiture Project, Police Executive Research Forum, 2300 M Street, N.W., Washington, D.C. 20037.

B O O K S H E L F

Wiseguy

Nicholas Pileggi
Simon and Schuster
New York 1985, 256 pages $17.95

Not all prosperous career hoods launder their take from organized crime. Some compulsively squander their cash—no matter how much—as fast as it comes in. For readers of *Asset Forfeiture Bulletin, Wiseguy* is a reminder, if one is needed, that there are a lot of free-wheeling, crazy spenders as well as prudent, conservative money launderers among high-earning racketeers.

Wiseguy's subject is Henry Hill, whose criminal career, begun in New York City at age 11, eventually included drug dealing, bookmaking, airline heists, credit card fraud, hijacking, loan sharking, fencing stolen jewelry, insurance scams, fixing trials, forgery, and illegally trading guns. As the book shows, almost all the proceeds from his lucrative activities went to day-to-day high living.

As a novice in crime, Hill partook in small money-making schemes such as credit card fraud. He stole automobiles, receiving $750 a car and accumulating ten to twelve cars in a day or two. Hill found that his continuous scheming and hustling was exciting and increasingly profitable. By his twenties, he had a new, lucrative deal at least once a week.

Eventually, Hill became involved in hijackings at Kennedy Airport where cargo worth $30 billion passed through annually. Cargo handlers in debt to loan sharks worked off their obligation with tips on valuable cargo; truck drivers would "accidentally" drop some goods along the road or leave their keys in the ignition while in a coffee shop only to have the truck and cargo "stolen." The bodies of informants and potential witnesses to the daily larceny were left strangled, trussed, and shot in the trunks of stolen cars abandoned at the airport's long-term parking lots. Hill learned to accept murder as a commonplace, routine occurrence from which nobody was immune.

Hill earned $5,000 for his first hijacking. The loads were often quickly and easily sold to legitimate retailers or to fences. On an average hijacking, Hill and his friends would know the truck number, what it was carrying, who was driving it, where it was going, and how to circumvent any security devices such as alarms and locks. Stolen bearer bonds would be sold to "Wall Street types" who in turn could send them overseas, where the banks didn't know they were stolen, and then use them as collateral on loans in the United States. Once the stolen bonds were accepted as collateral, their serial numbers would never be checked again.

By the age of 26, Hill had more money than he knew what to do with. He owned new cars, countless expensive clothes, and jewels, bought mink coats for his wife, and even had the ultimate luxury, a girl friend. His affair caused domestic battles from which Hill would escape by taking vacations. One such vacation to Tampa, Florida, led to a long prison sentence. On this trip, Henry and a friend visited a man, John Ciaccio, who owed them money. Ciaccio was badly beaten. His sister worked for the FBI, which knew of Hill and seized the opportunity to bring up charges of kidnapping, attempted murder, and extortion. Hill and his friend were tried and sentenced to ten years.

At Lewisburg Federal Penitentiary, Hill was together with a number of his "friends"; this crew "owned" most of the men who ran the penitentiary. They were given comfortable beds, private baths, stoves, refrigerators, and allowed to have unlimited beer and liquor. In prison, Hill learned to read. If he wasn't taking bets, gambling, or smuggling things into prison, he was reading. After a time, Hill was assigned to a prison farm where his wife brought him envelopes of hash, cocaine, amphetamines, and quaaludes by hiding them under a poncho. Still later, he connived a transfer to Allenwood Correctional Facility, a minimum security prison. In July, 1978, he won early parole for being a model prisoner. The Bureau of Prisons noted his progress as very good and said it was unlikely he would ever return.

Once out, Hill's first objective was to make money. He immediately flew to Pittsburgh, in violation of his parole, to pick up $15,000, his share of a marijuana partnership he had started in prison. His partner had only $2,000 in cash, but he did have a garage full of high-grade marijuana. Hill filled a suitcase and headed back to New York. He made money easily and quickly by unloading the suitcase so he began buying more and selling marijuana in New York. Soon he had a drug crew of his own, selling uppers, quaaludes, cocaine, and heroin. He also began selling rifles and pistols and became involved in fencing jewelry.

Hill was out of prison only two months when he also heard of a plan to rob Lufthansa Airlines which carried cash that had been exchanged in West Germany by American tourists and servicemen. The cash was often stored overnight in Lufthansa cargo vaults at Kennedy before it was picked up the next day. The heist was carried out successfully by a group of six gunmen. Hill only found out about the robbery on the news the following morning. Five million dollars in cash and $875,000 in jewels were gone. The FBI assigned 100 agents to the case.

According to the assistant U.S. Attorney Edward A. McDonald, there was no mystery about who masterminded the Lufthansa robbery—Hill's friends had been identified as suspects. A round-the-clock surveillance was begun. McDonald also knew it had been an inside job since the gunmen knew exactly in which of the cargo warehouses the money was placed. As he began assembling the case, key witnesses began to disappear, and reports of murders connected with Lufthansa were accumulating.

Hill had problems of his own. His telephone had been tapped for some time—the police had obvious evidence indicating involvement with large-scale bookmakers, jewelry fences, and loan sharks and with the sale of drugs and the manufacture of heroin. He was arrested and faced a 25-year-to-life sentence. He was also in the position to make a deal with the government, and tell about his contacts, friends, and the Lufthansa heist. He knew this made him a mark; his choice was to make a deal or to be killed by the mob. Hill chose to testify against his associates rather than stand trial. His testimony was crucial in convicting several other criminals. However, he was never able to help McDonald completely crack the Lufthansa case; all but two people who in some way were traceable to the robbery were dead.

Hill and his family are now part of the federal Witness Protection Program, living somewhere in the United States.

BJA Asset Forfeiture Publications

Six reports in the BJA-PERF Asset Forfeiture series are now available. They are: 1) Civil Forfeiture: Tracing the Proceeds of Drug Trafficking; 2) Public Record Information; 3) Managing an Inventory of Seized Assets; 4) Financial Search Warrants; 5) Plea Bargains and Use of the Polygraph; and 6) Tracing Money Flows through Financial Institutions. Write for individual copies to: BJA Asset Forfeiture Project, Police Executive Research Forum, 2300 M Street, N.W., Washington, D.C. 20037.

NEW GUIDE AVAILABLE ON STATE AND LOCAL FORFEITURE PROGRAMS

A new 80-page guide from the National Criminal Justice Association (NCJA) examines the policy and management issues that state and local agencies face in developing and expanding asset seizure and forfeiture programs.

NCJA developed the guide, *Asset Seizure & Forfeiture: Developing & Maintaining A State Capability*, in cooperation with the Police Executive Research Forum with grants from the National Institute of Justice and the Florence V. Burden Foundation.

The guide's premise is that successful assets seizure and forfeiture requires cooperation between law enforcement agencies and prosecutors' offices. "Development of an effective forfeiture program consequently must involve management-level officials of both agencies, as well as personnel responsible for prosecuting and investigating cases," according to NCJA. "The guide therefore addresses the varying concerns of law enforcement agencies and prosecutorial offices, including their respective chiefs, unit supervisors, budget and planning officers, and investigators, as well as both civil and criminal litigators."

The guide covers such matters as state and federal laws and procedures applicable in forfeiture cases, policy considerations affecting the development of a forfeiture capability, and the roles of the police, prosecutors, and judges in carrying out forfeiture actions. It also has a model curriculum for training prosecutors and law enforcement personnel.

The guide is available upon request from NCJA, 444 N. Capitol St., N.W., Suite 608, Washington, DC 20001; (202) 347-4900.

ASSET FORFEITURE BULLETIN

A periodic newsletter of the Asset Forfeiture Training and Technical Assistance Project. The project is funded under Cooperative Agreement Number 87-DD-CX-K090, between the Bureau of Justice Assistance and the Police Executive Research Forum. Points of view and opinions expressed in the Bulletin are those of the authors and editors and do not necessarily represent the policy or opinions of the Bureau of Justice Assistance or the U.S. Department of Justice.

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BJA Asset Forfeiture Project
Police Executive Research Forum
2300 M St., N.W., Suite 910
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SEND US YOUR CASES

Have you developed asset forfeiture cases in the following areas?

If so, please send us the information so that it can be shared with others involved in asset forfeiture. Indicate in the space provided the full case reference—citation, docket number, department file number, etc. We are especially interested in reported cases. Attach as many additional sheets as necessary to discuss the case. Remember to include your name, address and telephone number. We may cite these in future issues of the Bulletin.

Asset Seizure & Forfeiture

Consent Searches _____

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Profile Searches _____

_____

Financial Search Warrants _____

_____

Property Used to Facilitate Drug Trafficking _____

_____

Nexus Between Drugs and Assets _____

_____

Innocent Owners/Third Party Rights _____

_____

Interesting or Unique Types of Assets:
Real Estate, Businesses, Etc. _____

_____

Use of Net Worth Theory _____

_____

Other Forfeiture Cases _____

_____

Please send to the attention of
Cliff Karchmer or John Stedman
Police Executive Research Forum
2300 M Street, N.W.
Washington, D.C. 20037

Name/Title _____

Agency _____

Address _____

City, State, Zip _____

Telephone Number ( ) _____