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# FBI Law Enforcement

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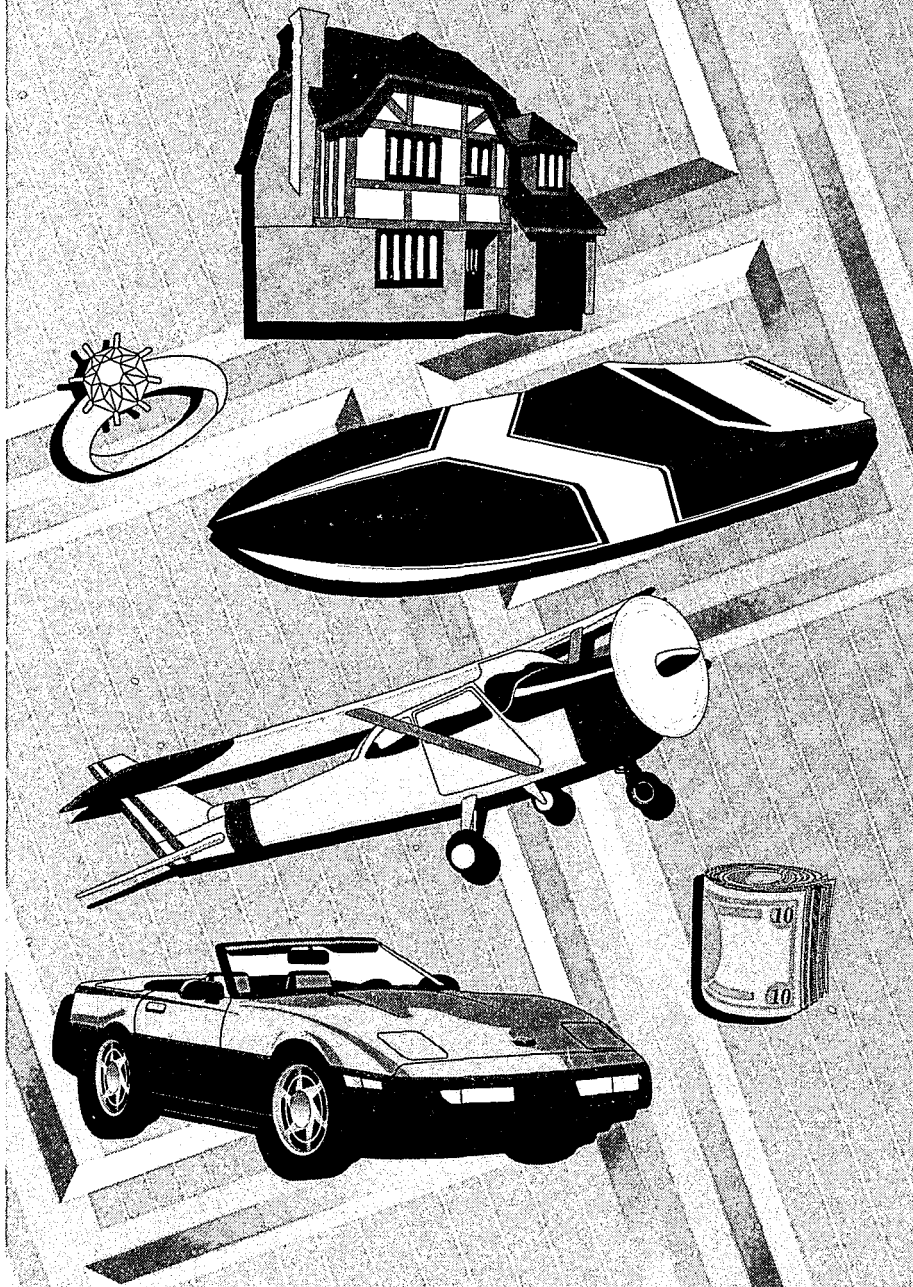
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# Asset Forfeiture Units

By  
ROBERT M. LOMBARDO, M.A.



For years, individuals involved in the drug trade maintained luxurious lifestyles, complete with expensive automobiles, extensive real estate holdings, valuable jewelry, and prized artworks, without the fear of asset forfeiture. This is no longer the case. Asset forfeiture statutes now allow both the Federal Government and individual States to seize property or funds acquired through illegal activity. While these statutes provide an effective weapon against major offenders, they also present new challenges to law enforcement officers throughout the Nation.

In order to meet these new challenges, many law enforcement agencies create asset forfeiture units. However, a 1990 survey conducted by the Jefferson Institute for Justice Studies revealed that most local jurisdictions do not use these units to their fullest potential. In fact, few of the units successfully tap the full potential of forfeiture statutes.<sup>1</sup>

Recognizing forfeiture statutes as an effective tool with which to combat illegal drug trafficking, administrators of the Chicago Police Department established a specific unit designed to enhance the department's forfeiture efforts. This article discusses how officials developed the Asset Forfeiture Unit (AFU), the separate functions of the unit, and how these functions work together to achieve a common goal.

## THE ASSET FORFEITURE UNIT

Initially, department administrators established the Asset Forfeiture Unit to serve as an administrative unit responsible for tracking

money, vehicles, real property, and other items of value seized in drug investigations. As the unit evolved, the department assigned investigators to the unit to provide additional support for property seizures and to conduct proactive investigations of targeted drug traffickers.

In 1988, officials reorganized the unit into five separate functions—local case management, vehicle forfeitures, real property forfeitures, Federal case management, and investigations. This division of labor allowed for more efficient management of the program by assigning specific responsibilities having to do with the forfeiture process to officers within the separate functions.

### Local Case Management

The local case management function of the unit serves primarily as administrative oversight for drug seizures. For example, when officers outside the unit seize money in drug-related investigations, AFU personnel record the amount of money seized and review the case to ensure that the officers considered all aspects of forfeiture law.

If the officers failed to do this, the AFU commanding officer assigns the case to the investigative function of the unit for additional investigation. This usually occurs when the case lacks probable cause or when street officers—unfamiliar with the intricate asset forfeiture statutes—neglect to seize other valuable assets.

In addition, when local case management personnel receive copies of the property inventory reports filed by the officers who confiscated the money, they obtain the related

police reports, enter the appropriate information into the unit's computer system, and forward the reports to the State's attorney, who determines whether to prosecute. AFU personnel then take additional steps based on the State attorney's decision.

### Prosecuted cases

If the State's attorney decides to prosecute, the forfeiture court adjudicates the case. At the completion of the proceeding, AFU personnel receive a copy of the final court order so that they can further update the database. They then send copies of the appropriate court orders to the evidence and recovered property section. Personnel in this section verify that the department has custody of the money and then release the money to the Illinois State Police. The director of the State police then distributes the money according to a formula set by the State legislature.

All States use forfeited monies for drug law enforcement; however,

each State has its own formula for distributing the money. For example, in Illinois, 65 percent of the money goes to the seizing law enforcement agency, 25 percent goes to the prosecutor, and 10 percent goes to the State police, who administer the program.

### Cases not prosecuted

If the State's attorney declines prosecution, AFU personnel enter that information into the database. They then notify the owners of the seized money that they can claim the money at the evidence and recovered property section.

### Vehicle Seizures and Forfeitures

AFU personnel take certain steps when officers *seize* vehicles. Then, when the vehicles are legally *forfeited*, AFU personnel complete the forfeiture process.

### Process for seized vehicles

When officers seize vehicles, AFU vehicle officers obtain all related police reports, enter the

“**Asset forfeiture places a new role upon the law enforcement community.**”



Sergeant Lombardo serves in the Chicago, Illinois, Police Department.

necessary information into the unit's database, and ensure that the vehicles remain properly stored until either forfeited or returned to the owners. Next, AFU personnel identify the registered owners of the vehicles, determine whether the seizures were warranted, and ensure that officers followed correct procedures. Factors that impact on the final forfeiture decision include the owners' innocence, whether commercial liens exist on the vehicles,

and the age, mileage, and condition of the vehicles.

AFU personnel also forward all police reports, vehicle registrations, and a notice/inventory of seized property to the State's attorney. The Department of Motor Vehicle Registration also receives a copy of the notice/inventory of seized property.

#### *Process for forfeited vehicles*

When a case is prosecuted and a vehicle is legally forfeited, AFU

vehicle officers update the information in the unit's database. They also apply for the title to the vehicle.

Personnel in the Motor Maintenance Division make the final decision on what to do with forfeited vehicles. Typically, they trade luxurious vehicles not suitable for department use for autos more appropriate for surveillance and undercover work. However, some forfeited vehicles are sold at auctions. AFU vehicle officers also review

## **Forfeiture Investigation Checklist**

### **Facilitation Criteria**

#### **Establish connection between owner of property and offense**

- Was owner arrested?
- Was owner consenting participant?
- Is nominee ownership involved?

#### **Determine whether property was used to transport, possess, or conceal drugs or to facilitate the sale and distribution of drugs**

- Was delivery negotiated on property?
- Did payment for drugs occur on property?
- Was there an escort vehicle?
- Did vehicle bring offender to delivery?
- Was there a lookout or countersurveillance vehicle?

#### **Determine whether property was used to transport or store forfeitable manufacturing and distributing paraphernalia and materials**

### **Proceeds Criteria**

#### **Obtain license, title, and sales information by identifying owner, seller, lien holder, mortgager, etc.**

#### **Establish nexus between offender and drugs through arrest history and testimony**

#### **Establish income of offender**

- Tax returns, welfare, unemployment compensation, etc.
- Did owner have sufficient income to purchase property?

#### **Interview seller and obtain sales records, mortgage application, etc.**

- What was method of payment—cash or check?
- Obtain copy of canceled check?
- Were currency transaction reports filed?

department vehicle records to ensure that all funds received from the forfeited vehicles are returned to the department's forfeiture account.

### **Real Estate Forfeitures**

When drug trafficking offenses occur on privately owned property, investigators determine whether the property is subject to forfeiture under either State or Federal law. Some State laws restrict the forfeiture of real estate for drug violations to those instances where suspects manufacture or deliver drugs on the property or possess large amounts of drugs (more than 30 grams) with the intent to deliver. Most Federal agencies restrict the initiation of forfeiture of real property to instances where a substantial connection between the property and a felony violation can be established.

If the property is subject to forfeiture, investigators attempt to identify the owner of the property through a tax or title search. If the person arrested does, in fact, own the property, the investigators refer the case to the State's attorney for prosecution. However, if officers suspect nominee ownership of the property, they refer the case to AFU investigative personnel for further investigation.

Investigators also conduct a computerized records search of the location, by address, in order to identify past drug offenses. A history of drug offenses at the location may further indicate that the suspect used the property for drug trafficking. Finally, the AFU real property officer plans and executes all real property seizures for the department. Although civil in nature,

## **Steps to Overcome Nominee Ownership**

### **Interview seller**

- Who controlled purchase?
- Who chose options, if motor vehicle?
- Who paid for property?
- Do picture spread?

### **Review insurance and repair records**

- Who is insured?
- Who controls repairs?

### **Determine through surveillance who actually drives vehicle or lives on the property**

these seizures require the same careful planning as any other type of police raid.

### **Federal Case Management**

Police departments can participate in the Federal forfeiture program in two ways. First, officers at the local level can conduct joint investigations with Federal agencies. Second, they can conduct independent forfeiture investigations and request that the Federal government adopt them for prosecution when they do not fit the parameters of State law on forfeitures.

#### *Joint investigations*

The Federal case management officer plays an important role in joint investigations. This officer tracks the Federal forfeiture activities of the entire department, as well as the forfeiture activities of officers assigned to Drug Enforcement Administration (DEA) task forces. The

officer also enters information on assets seized for Federal forfeiture into the AFU Federal case management database and files an application for transfer of federally forfeited property—also known as a sharing request—to the appropriate Federal agency.

#### *Federal adoption cases*

When cases do not fit the parameters of State law, the department forwards the cases to either the FBI or the DEA to handle as Federal adoption cases. For example, Illinois law does not provide for the forfeiture of real property used in marijuana violations. Therefore, when violations of this type occur and the State's attorney declines to prosecute, AFU personnel conduct the investigation and forward the information to the appropriate Federal agency. This agency then presents the case to the U.S. attorney for prosecution. This cooperative

## Recommendations for Major Investigations

### Identify targets

- Members of drug organization
- "Family" tree (parents, relatives, wives, children, girlfriends, etc.)

### Establish nexus between target and drug trafficking through arrest history and testimony

### Establish sources of income using tax returns, welfare payments, unemployment compensation, etc.

### Identify assets (money, vehicles, real property etc.)

- Department of Motor Vehicles
- County Recorder of Deeds (real property)
- Documentary search warrants
- Informants
- Defendants (recent arrestees and those incarcerated)
- Surveillance
- Garbage pickup
- Mail cover
- Telephone record analysis
- Pen register
- Wire tap
- State Department of Revenue (income tax, occupational sales tax, etc.)
- Grand jury testimony, court transcripts
- Clerk of Court (liens, judgments, and lawsuits)
- Banks (safe deposit boxes and checking and savings accounts)
- Polygraph (as part of plea bargain)
- Credit history

### Draw up seizure warrant

effort between local law enforcement and government agencies results in forfeitures that would be impossible without the adoption program.

### Investigations

Personnel in the investigative function of the AFU handle cases that fall within four categories—drug money, vehicles, real property, and narcotic racketeering. Assigning responsibility for specific types of investigations facilitates training and allows the AFU supervisor to manage investigative activities more efficiently.

#### *Drug money investigations*

In some States, such as Illinois, money found in close proximity to drugs, to manufacturing and distribution paraphernalia, or to drug records is presumed to be connected to drug trafficking offenses. In these cases, drug officers seize the money, and personnel in the AFU local case management function of the unit handle the case administratively.

However, if the money is seized without the presence of drugs, drug records, or drug paraphernalia, AFU investigative personnel are assigned the case for further investigation. In these cases, AFU investigative personnel review certain circumstantial evidence in drug money prosecutions, such as:

- A prior drug record by whom-ever possessed the money
- A suspect's connection to others involved in drug trafficking
- A positive alert on the currency by a drug detector dog



- A positive laboratory analysis of the currency and/or its container for drug traces
- The use of false or multiple identities by the suspect
- Employment record of suspect
- Evasive or incomplete answers by suspect concerning who owns the money
- A suspect's possession of an unusually large sum of money
- The location of the money (Money hidden in an unusual place.)

This type of evidence helps to further substantiate the case.

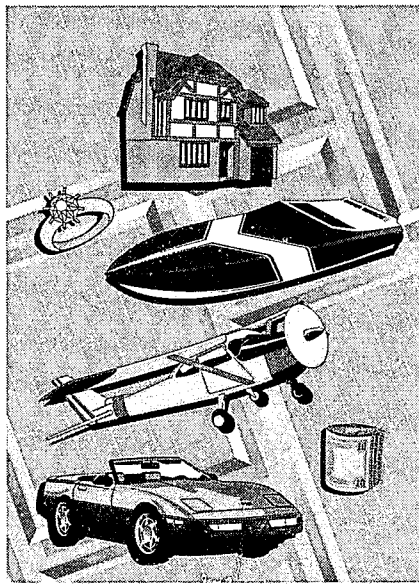
#### *Vehicle investigations*

Officers initiate vehicle investigations in drug cases based on two factors—facilitation and proceeds. Officers can seize any vehicle used to facilitate drug transactions or any vehicle purchased with the proceeds of drug dealing.

Most vehicles are seized because suspects actually use the vehicles to facilitate drug dealing. For example, officers seize vehicles used to deliver, transport, possess, or conceal controlled substances. If officers discover drugs in a vehicle, AFU vehicle forfeiture officers handle the case unless they suspect nominee ownership.

When officers suspect nominee ownership, AFU investigative personnel interview both the nominee and the person from whom the vehicle was purchased. During the interview, investigators ask the seller to identify the purchaser of the vehicle from a number of photographs. Even though both the drug dealer

and the nominee owner may have been present when the vehicle was purchased, AFU investigators must determine the identity of the person who actually controlled the purchase. That is, they determine who chose the options and the color of the vehicle and who paid for the vehicle.



If AFU investigators can establish a strong connection between the owner of a vehicle and the drug trade, they can target the vehicle for seizure, based on the premise that the vehicle was probably purchased with drug proceeds. They establish this connection or "nexus" through a previous arrest for a serious drug offense or a lengthy arrest record for drug-related crimes.

In addition to establishing the nexus between suspects and the drug trade, AFU investigators also establish the income of the suspects to determine whether they can afford such vehicles. They do this by

reviewing court-ordered State tax returns or through welfare and employment records.

Once AFU investigators establish the nexus to the drug trade and the income of the offender, the bulk of a proceeds investigation is complete. Armed with this information and the facts of the particular case, AFU personnel meet with prosecutors to review the investigation and determine whether sufficient probable cause exists to seize the vehicle in question.

#### *Real property investigations*

As with automobiles, AFU officers seize real property under both the facilitation and proceeds criteria. Routine facilitation investigations, cases involving nominee ownership, and proceeds cases are all assigned to AFU investigative personnel.

Investigators take the same steps to conduct both nominee and proceeds investigations of real property as they do to conduct vehicle investigations of this type. One difference, however, is that in nominee real property investigations, AFU personnel meet with attorneys and bank closing officers to determine the identity of the person who actually controlled the purchase of the property, as well as the manner of payment. And, as in vehicle proceeds investigations, real property investigations require that officers establish both the nexus to drug trafficking and the income of the offender.

#### *Racketeering investigations*

AFU investigative personnel also conduct proactive investiga-

tions of large-scale drug traffickers who fit the drug racketeering profile established by State law. In some States, all property acquired between the dates of two or more felony violations of the Controlled Substance Act or the Cannabis Control Act, committed within 5 years of each other, is presumed to have been obtained with the proceeds of the drug trade, if there was no other likely source for such property other than a violation of the above acts. Racketeering investigations target drug traffickers who either fit these parameters or have an extensive drug record and have amassed significant assets.

Identifying a suspect's assets is the key to successful investigations in this type of case. Investigators use informants, surveillance, search warrants, garbage pickups, mail covers, telephone record analysis, financial investigations, etc., to identify property owned by drug traffickers.

Once AFU investigators determine what property the suspect owns, they investigate each asset separately to determine whether it was purchased with drug proceeds. Racketeering investigations involve a series of individual currency, vehicle, and real property investigations combined into one case.

To prove such cases, AFU personnel use the modified net worth theory of proof. Using this method, they compare individuals' total expenditures to their legitimate sources of available funds. For example, in a recent investigation, Chicago police officers recovered 3 kilograms of cocaine during the execution of a search warrant. At the

same time, investigators found tax returns for 3 years that totaled approximately \$58,000. Further investigation by the AFU uncovered expenditures for a custom home and a number of luxury automobiles totaling over \$300,000 during the same 3-year period. Total expenditures exceeded funds available to the offender from legitimate sources by over \$243,000, creating a strong inference that the money used to buy the assets was derived from drug sales.

### CONCLUSION

Asset forfeiture places a new role upon the law enforcement community. Police officers now seize bank accounts, automobiles, and real property—all of which require well-planned programs and procedures.

The Chicago Police Department's Asset Forfeiture Unit exemplifies an effective, comprehensive forfeiture program that taps the full potential of both State and Federal forfeiture law. As a result of the unit's work, the department's forfeiture revenue has increased significantly.

Most importantly, the full potential of this new law enforcement tool has been brought to bear upon the drug trafficking problem in the City of Chicago. The city now uses the funds acquired from drug traffickers themselves to continue the battle against this insidious crime. ♦

### Endnote

*Asset Forfeiture Programs: Policy and Program Choices* (Washington, DC: Jefferson Publishing Co.), 1990.

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