
ASSET FORFEITURE

The Management and Disposition of Seized Assets

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

Office of the Director

Washington, DC 20531

Dear Colleague:

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

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

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

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

Sincerely yours,

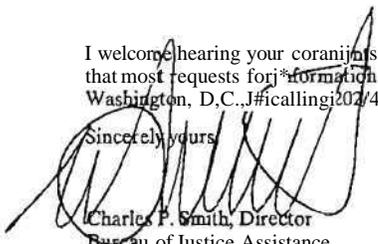

Charles F. Smith, Director
Bureau of Justice Assistance

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Introduction

From March to May, 1987, the Police Executive Research Forum (the Forum), surveyed seven law enforcement agencies on how they manage and dispose of seized assets, and the liability issues involved in asset seizure and forfeiture.

The agencies covered in the study are the U.S. Marshals Service; the U.S. Customs Service; the Florida Department of Law Enforcement; the Broward County, Florida Sheriff's Department; the Metro-Dade, Florida Police Department; the Fort Lauderdale, Florida Police Department; and the Detroit, Michigan Police Department. These agencies were chosen because they have been dealing with large volumes of seized assets over an extended period and the non-federal agencies, in particular, have acquired a reputation for sophisticated management of those assets.

The July, 1985, National Institute of Justice, *Research in Brief*, entitled "*Use of Forfeiture Sanctions in Dntg Cases*," provides an overview of the forfeiture provisions on a state-by-state basis. Regarding the disposition of forfeited property, that brief notes that;

more than half the states provide that confiscated property goes to the State or local treasury, or part to each. In some States, however, law enforcement agencies may keep the property for official use. If the property is sold or if it is cash, then the money goes to the State or local treasury. In eight States, law enforcement agencies can keep all property, cash, and sales proceeds (p. 5).

Some federal agencies have been actively involved in managing seized assets. The state of Florida, pushed by its proximity, and in response to substantial drug traffic, has responded to the point that many of the state's law enforcement agencies have developed smoothly operating forfeiture processes under the State forfeiture statute, and high-quality management procedures for handling and disposing of seized assets. While this should be the response of any advanced and professional agency, in Florida the agencies' expertise has developed out of necessity. Innovative procedures must be used to take the offensive against the drug trade. Moreover, the agencies literally would be inundated with seized assets if they had not learned to process them expeditiously, and turn the newly acquired properties into valuable resources in the fight against drug trafficking.

Background On Seized Assets

When asked what were the most commonly seized assets, the seven agencies' responses were remarkably similar: the two top assets were *cash* and *cars*,

followed by boats, planes, jewelry and weapons. Those items made up 95 percent of all seized assets. Local agencies rarely become involved in seizing businesses or real property (although this seems to be changing as more and more state forfeiture laws are used to seize so-called derivative assets). State and federal agencies, in contrast, conduct such seizures frequently.

One reason local agencies usually did not target real property for seizure is because they recognize the attendant difficulties in managing them (Detroit made this very clear: "... if at all possible do not get involved in seizing property"). Under the Florida Contraband Forfeiture Act, authorities can seize *only* that property that is an *instrumentality* of the crime—that is, cars, cash, and the Rolex watch mentioned below. Property seizable under federal law and special provisions of the Florida statutes are property and assets acquired by using financial resources accruing (derived) from illegal activities. Therefore, under Florida Racketeer Influenced and Corrupt Organizations (RICO) statutes, law enforcement agencies may be aggressive in seizing real estate acquired with drug or other racketeering proceeds.

The U.S. Marshals Service generally does not seize assets, except for judicial seizures conducted pursuant to a federal court order. However, the marshals do manage assets seized by other federal agencies, such as the Federal Bureau of Investigation, the U.S. Immigration and Naturalization Service, and the Drug Enforcement Administration (DEA), with DEA accounting for 90 percent of seized items.

Among the more unusual items seized or turned over to the Marshals from other agencies are a bank, a horse ranch, a golf course, gas stations, flower shops, a drug store, a recording studio and a brass foundry. The U.S. Customs Service lists elephants and kangaroos among the noteworthy items seized, while local agencies reported gymnastic equipment, Kruggerands, pill machines for making quaaludes, and even a Rolex watch (noted earlier) used to set the time for a drug deal.

Most of the survey respondents, as local agencies, operate independently of the U.S. Marshals Service, although Detroit currently is trying to establish a working relationship with the Service. The Broward County Sheriff's Department has probably the closest arrangement with the Service, for their county's personnel are named special U.S. Deputy Marshals for enforcement purposes, and they operate under their legal umbrella—traveling cross country to serve subpoenas, gaining access to selected Service intelligence, and receiving information on federal investigations in their area. In short, this cooperative arrangement provides a major boost to furthering the Broward County Sheriff's Department's objectives.

In pursuing forfeiture action against such property, local agencies have not been deterred by the need to track assets to other states: The Broward County Sheriff's Department, for example, seized sixty-four Arabian horses and autos

on a farm in Michigan where marijuana was being grown. The Detroit Police Department went far afield to seize a farm in Tennessee.

Major Issues In The Management Of Seized Assets

When Detroit personnel were asked about how they maintain and preserve the value of such assets as cars, real estate, farms, and businesses, their answer was precise: "prompt disposal." The issues of maintenance and preservation were of major concern to all seven agencies, or they remained sensitive to the requirement to responsibly manage the asset while it was in their possession.

In Florida, local departmental use of the most frequently seized property, cars, requires approval from local courts. Then, the agency can use the autos in investigations or hold them for auction with the proceeds going to the asset forfeiture Law Enforcement Trust Fund (LETTF). This type of account can be set up in Florida jurisdictions to hold seized proceeds, pending approval of city or county commissions for its expenditure—exclusively for additional investigative activity.

After seizure, an item should be appraised in order to document its value at the time of seizure, and to identify encumbrances and liens (especially those affecting autos and real estate parcels) that might make an item a financial liability to the seizing agency. Detroit even has second appraisal done if they must go to court, so that they have a record that the property did not decrease in value while in their possession.

Some agencies (e.g., the U.S. Marshals Service and the Florida Department of Law Enforcement) report that they try to determine if an item will be a financial liability prior to deciding whether to seize it. In fact, the Marshals Service participates with the local U.S. Attorney's Office and the investigating federal agency in a "pre-seizure planning" process to avoid having to assume responsibility for high financial liability items.

Storing conveyances (including planes, boats and automobiles) often requires an enclosed space to preserve the items in optimum condition. This requires either owning or renting storage space. Often the dollar value of the conveyance will determine how it is held in storage—for example, a Rolls Royce in good condition warrants an enclosed storage facility, while an old model automobile in poor condition could be stored in an open-fenced area. Broward County processes older and less valuable cars (with book values of \$500 to \$1000) by allowing owners to repossess them for a fee of \$250 to cover the agency's legal costs. Ft. Lauderdale places a \$250 service charge on seized rental cars, or those with legitimate liens.

In addition to storage, mechanical maintenance must be provided, and that requires either using staff skills within the agency or hiring qualified contractors. If a conveyance such as a boat or plane is expected to be stored for

an extended period, experienced mechanics must be hired to specially prepare ("pickle") the engine and other mechanical parts for long-term storage.

Autos are comparatively simple to maintain, and some agencies use their own people (in many cases sworn personnel) to handle servicing. In other agencies, civilians assigned to city or county maintenance yards care for cars. Planes and boats present a more difficult task, for their maintenance requires much more technical knowledge and skill. Most agencies that deal with planes and boats use contracted maintenance services—except for Broward, which assigns the boats permanently to the Marine Interdiction Unit of the Organized Crime Bureau. The planes are assigned to their own Aviation Section.

Usually, the boats and planes are first stripped of valuable electronic equipment. This is either used by the agency (for, in many cases, the hardware is better and more sophisticated than the agency's current equipment) or, in Florida, sold with the proceeds going into a Law Enforcement Trust Fund (LETF). Every agency commented on the extraordinary expense of maintaining boats and planes.

Seized cash is immediately placed in interest bearing accounts. In Florida, upon receiving court approval through the receipt of title, the account with the cash is transferred to the appropriate LETF—local or state, depending upon the seizing agency. Ft. Lauderdale's arrangement with a local bank and the state's attorney allows the bank to use its machines to count and simultaneously photograph every bill, and then deposit the funds in the agency's account.

Florida's Law Enforcement Trust Fund (LETF) program merits special mention. Seized money and the proceeds from sales and auctions are placed in such accounts, subject to certain state statutory provisions. A local department must apply to the locally maintained Fund to use the money; a state agency applies to the state fund. A request from a particular division or bureau in a locality is passed through the chain of command to the chief's office and, if approved, is forwarded to the respective city or county council for consideration. Ft. Lauderdale has to submit monthly reports on all seizures and trust fund activity to the city manager, and along with other Florida agencies, another complete list to FDLE.

As an example of concrete activity in Florida's trust fund program, Metro-Dade recently requested and received funds to rent a large airport hangar as an enclosed space for a large number of seized vehicles managed by the department. Previously, the vehicles were housed in an open-fenced lot. In addition, Ft. Lauderdale funds five staff positions out of this fund: an attorney, three forfeiture specialists, and a secretary— all of whom work directly on forfeiture legal proceedings and the preservation and maintenance of seized assets.

Most agencies use a combination of in-house expertise, such as sworn personnel who are pilots or auto mechanics, and hired consultants, including aircraft mechanics and marina staff, to manage the various types of conveyances seized. Following a competitive bidding process, the U.S. Customs Service hired a general management consultant who is responsible for all custody, management and disposition of seized conveyances. The general contractor is responsible for hiring subcontractors to deal with specific mechanical and storage requirements of seized assets.

When businesses are seized, it must be determined whether to continue operating the business or close down its activity. Experiences among agencies has varied. Obviously, Broward County did not choose to continue to operate a seized porno theatre, on the rare occasion when it seized a business. If it is projected to be cost-effective to continue operation of a seized business, the U.S. Marshals will employ a business manager to oversee the business. The Florida Department of Law Enforcement has never had occasion to continue operating any business seized, and the U.S. Customs Service and local agencies usually avoid seizing businesses.

When hiring consultants to appraise the value of a conveyance or a business, provide mechanical maintenance, store items or actually manage a business, the seven agencies reported using a variety of methods to locate reputable contractors. Typically, local trade associations and professional groups are contacted for referrals, advertisements are placed in appropriate trade journals and newspapers, and other law enforcement agencies maybe contacted for assistance. Metro-Dade uses the county's current list of approved vendors. References are requested and checked to assure that the contractors are competent and reputable. The U.S. Marshals Service maintains a list of vendors in each of its thirteen regional offices, while the other agencies surveyed stated that they do not maintain approved lists but can easily retrieve the names of reputable contractors with whom they have dealt in the past.

Disposition Issues

AU agencies stated that they are allowed to convert seized equipment to departmental use. Although a state or federal agency may on its own decide to use a vehicle which has been seized—usually in a district or region outside the one where it was seized—a local agency is more likely to sell the seized vehicle. In Florida, an agency may in turn request money from the Law Enforcement Trust Fund to purchase another needed vehicle. By selling assets, a local agency avoids any appearance of seizing an item specifically for agency use. Broward County has even "traded" one piece of seized equipment for another. On one occasion, because its regular radios did not have enough channels, the

agency agreed to return a confiscated truck to the owner after he upgraded the radios.

Although a Florida statute vests title of any seized property with the seizing agency at the time of seizure, the agency must follow a series of legal procedures to transfer title to the agency prior to its *selling* the item. FDLE may also transfer title to another agency. For example, boats may be given over to the Florida Marine Patrol (although the FDLE's general counsel stated that most vehicles are sold).

In the case of the U.S. Customs Service, the general contractor manages the arrangements for all sales or auctions. The decision about what property will be sold or auctioned, however, rests with the Customs Service.

The U.S. Marshals Service contracts with commercial brokers and auctioneering companies to handle their sales and auctions, and they conduct consolidated sales whenever possible. For example, they will use one central location to sell jewelry seized at sites throughout the country. Sales are advertised extensively in trade journals and newspapers, and more buyers are attracted by consolidating the merchandise for one large sale. Additional coverage of sales has been provided by national TV (such as the daily "Good Morning America" show) in its reporting on seizures. Detroit, Broward and Ft. Lauderdale run their own auctions, with less valuable items sometimes assigned to general auctions of unclaimed property.

Detroit, having conducted sales for a long time, has a Management Services Division within the department that runs weekly auctions with other agencies participating. Ft. Lauderdale contracts with smaller cities to include their items in its own auction.

Methods For Handling Common Problems

All agencies reported having both full-time and part-time staff working on seized assets and forfeitures. The U.S. Marshals have 13 regional offices and 94 judicial districts covering all the United States and the Trust Territories of the Pacific Islands, with seizures occurring in 93 districts.

The U.S. Customs Service has seven regions and 45 customs districts, also encompassing all of 50 states and the Trust Territories. Each Customs district has one or more fines, penalties and forfeiture officers, who are paralegals working full-time under the supervision of a district manager—for a total of between 100 to 150 personnel. There are also federal attorneys available, as needed, to deal with legal issues arising from seizures. However, since many forfeitures are administrative in nature, attorneys are not always needed.

The U.S. Marshals' role is somewhat different than Customs: It employs 200 full-time and part-time employees to deal with the management and disposition of assets seized by other federal agencies. Among the expertise represented within the Marshals Service are auctioneers, real estate experts, pilots, and staff qualified in such specialized areas as ranch operations and livestock care.

Metro-Dade has two full-time and two part-time attorneys, two full-time police officers, and two part-time researchers (law students who work on forfeitures). Ft. Lauderdale has five people working full time, while Detroit employs 28 people with a variety of functions and responsibilities that are generally absent in the other surveyed agencies. Detroit's team comprises one inspector, one lieutenant, four sergeants, 14 forfeiture analysts, four property management specialists, and four "Probable Cause" legal specialists. The analysts review police reports, identify property listed, and attempt to pinpoint additional assets that can be seized, along with any hidden assets. The probable cause specialists review reports and may trigger additional surveillance after narcotics raids or arrests, depending on the amount of drugs seized or the amount of cash carried by a person. This unit then tries to make a second, bigger case that could lead to more seized assets. The property management specialists are assigned to do exactly that—arrange for preservation and some maintenance, and prepare items for auctions.

Resources for managing the assets come from vendor lists, the local Yellow Pages, and, most important, from experienced unit managers. The Ft. Lauderdale attorney who works exclusively with the city's forfeiture unit conducts a two-day seminar to assist other agencies in handling both the initial seizure and forfeiture of assets and their subsequent maintenance and preservation.

Liability Issues

None of the agencies surveyed voiced extraordinary concern regarding liability issues related to seized assets and forfeitures. All pointed out the importance of the federal or state statutes under which they operate in protecting them from frequent suits. Florida's statute declares that the title of the seized asset resides with the seizing agency from the time of seizure, thereby allowing the departments to easily manage and dispose of such assets. The U.S. Marshals Service also stated that, according to federal statute, title to a seized asset resides with them.

None of the agencies surveyed reported hesitating to seize an asset merely because of a liability question. But there was concern about overall liability issues, according to the FDLE agency's general counsel. She stated that the Florida Association of Police Attorneys (FAPA) had volunteered its services

and those of its membership to address law enforcement groups and to make sure that those groups are familiar with all of the requirements of the pertinent statutes. All agencies reported that, if at all possible, each asset is evaluated before seizure to be sure that it actually belongs to the suspect.

The Marshals use a system of "pre-seizure planning," in which targeted assets are evaluated to ascertain ownership and the existence of any encumbrances or liens. The Marshals stated that they have had difficulty with mortgage lenders and title insurance companies recognizing the Marshal's title to a piece of seized real estate. Such companies are concerned that owners may claim their constitutional rights have been violated, and that the property is still theirs. For example, has a fugitive received the notification required by law regarding the pending disposition of his property?

The Marshals Service has never been sued directly, but they reported a suit has been brought challenging the constitutionality of a particular seizure. The Marshals also noted that they would hesitate to seize an asset deemed a financial liability because of encumbrances or liens that summed to an amount greater than the property's assessed value.

Asset seizure and forfeiture lawsuits have focused almost exclusively on the perceived slowness of the process for returning a seized asset to the rightful owner. However, on the bright side, when jurisdictions have been sued, their actions have been upheld in every case (such as Ft. Lauderdale and Detroit).

With the reasonable burden of proof and the preponderance of the evidence burden in civil cases, the above agencies reported few reservations about pursuing a case or deciding to attempt the seizure. After seizure, however, other troublesome situations may arise. Broward wrestled with the problem of what to do with a load of maple wood that was surrounded by a load of hashish. Could they donate it to a shelter facility? They eventually destroyed it, feeling that they could not justify returning it, or giving it away.

Resource Directory: Roster Of Persons Interviewed

1. U.S. Marshals Service

Joseph Enders, Chief
Operations Support
(703) 285-1271

2. U.S. Customs Service

Gary George
Seized Property Officer
(202) 566-5435

3. Metro-Dade Police Department

Major Art Nehrbass
Executive Officer
Special Investigations Division
(305) 592-7323

George Aylesworth, Esq.
Supervisor
Police Legal Unit
(305) 547-7404

4. Ft. Lauderdale Police Department

Robert Wennerholm, Esq.
Legal Advisor
(305) 761-5626

5. Broward County Sheriffs Department

Captain Carl Parrott
Assistant Commander
Organized Crime Unit

Commander William Dunman
Director
Organized Crime Centre
(305) 492-1810

6. Detroit Police Department

Inspector Terry Ford, Esq.
Director
Forfeiture Unit
(313) 224-4490