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**ASSET
FORFEITURE**

Civil Forfeiture: Tracing the Proceeds of Narcotics Trafficking

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

Office of the Director

Washington, D.C. 20531

Dear Colleague:

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

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

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

I welcome hearing your comments about this program. We have structured this project so that most requests for information or assistance can be handled through the Forum staff in Washington, D.C., by calling 202/4 6-7 10.

Sincerely yours,


Charles P. Smith, Director
Bureau of Justice Assistance

Table of Contents

Civil Forfeiture: Tracing the Proceeds of Narcotics Trafficking	1
The Advantages of Civil Forfeiture	1
Standard and Procedures	3
Common Evidentiary Factors	5
<i>Close Proximity</i>	5
<i>Means of Support</i>	9
<i>Concealment Efforts and Commingled Funds</i>	6
<i>Pre-Trial Statements</i>	6
<i>Narcotics Records</i>	7
<i>Evasive Trial Testimony</i>	7
Net Worth Analysis	7
<i>Basic Net Worth Analysis</i>	8
<i>Tax and Forfeiture Proceedings Distinguished</i>	8
<i>Net Worth Forfeiture Cases</i>	9
Conclusion	10
Endnotes	11

Civil Forfeiture: Tracing The Proceeds Of Narcotics Trafficking

Asset forfeiture has recently become an important weapon in the fight against narcotics trafficking. This development was initially spurred by enactment of the RICO and CCE statutes statute in 1970.¹ Through this law, Congress sought to provide law enforcement with a way to disgorge criminal enterprises of their profits.² Significantly, by authorizing forfeiture as a *criminal* sanction applied directly against the perpetrator, RICO went well beyond traditional forfeiture statutes that merely allowed civil proceedings against contraband or property used during the commission of a crime.³

In 1978, further expansion was achieved when Congress authorized civil forfeiture of any proceeds derived from narcotics trafficking in violation of federal law. By expanding the type of property subject to seizure, 21 U.S.C. Section 881(6) gave prosecutors their first effective civil mechanism for striking at the profits of narcotics trafficking.⁴ State enactment of comparable provisions soon followed.⁵ However, though federal officials have pursued this remedy aggressively,⁶ its potential has not yet been realized by the states. Three factors may explain this phenomenon. First, federal forfeiture law is more favorable to prosecutors than most state statutes. Second, federal resources exceed state levels. Third, there is the perception that forfeiture of profits is often impractical because, absent a monetary seizure contemporaneous with a narcotics transaction, the targeted asset must be traced to narcotics trafficking.⁷ Tracing is a complex process requiring adequate resources and legislative tools, as well as investigative creativity and diligence.

Despite these limitations, however, tracing an asset to narcotics trafficking is not an insurmountable task. Federal courts have identified a number of factors that may be sufficient to achieve the required linkage. Though federal law is admittedly highly favorable, the factors themselves transcend federal grounds. They are equally applicable to state litigation. Moreover, relying upon analyses comparable to "net worth" proof used in tax litigation, imaginative investigators may be able to develop new avenues for attacking this problem. This paper will provide an overview of the legal principles that must be considered in achieving successful proceeds forfeitures. It consists of four sections. Section I will review the advantages of civil forfeiture in a tracing context. Section II will review federal standards and procedures, and contrast them with selected state statutes. Section III will set forth common evidentiary factors in tracing litigation. Finally, Section IV will summarize pertinent considerations derived from net worth litigation.

The Advantages of Civil Forfeiture

Although tracing is a complex process, prospects for successful forfeiture are eased considerably by the procedural benefits of civil process. The most

obvious feature is the lower burden of proof confronting enforcement officials: proof by a preponderance of the evidence rather than beyond a reasonable doubt.⁸ Furthermore, under federal law and some state legislation, the burden of proof is placed on the claimant rather than the government.⁹ Thus, enforcement officials need not achieve certainty in their tracing efforts. They need only satisfy a relaxed standard of proof. This is an advantage of enormous consequence, as many cases turn on the burden of proof. Moreover, even if criminal prosecution was precluded by operation of the exclusionary rule, civil forfeiture may still be possible. Although the exclusionary rule applies to forfeiture proceedings, untainted evidence may still be sufficient to meet the lower burden of proof.¹⁰ Indeed, civil forfeiture may be a viable option despite an acquittal on criminal charges.¹¹

The civil context provides other advantages as well. For example, prosecutors may resort to the discovery process to obtain information pertinent to tracing.¹² The claimant may be deposed and disclosure of his records compelled. Perjury and contempt sanctions are potentially available against untruthful or recalcitrant witnesses. And, while the Fifth Amendment may still be asserted, a civil claimant risks an adverse factual finding by doing so.¹³ This possibility places the claimant in a particular bind if criminal charges against him are still pending. Asserting the Fifth Amendment may result in an adverse factual determination, while answering questions may have incriminating consequences in the criminal proceedings.¹⁴ And, regardless of whether criminal charges are pending, discovery is likely to provide useful information for impeachment if the claimant testifies at the forfeiture proceeding. Such testimony will often be necessary because, once the government's evidentiary burden has been sustained, failure to provide responsive proof will result in an adverse judgement.¹⁵ Often times, however, such testimony proves counterproductive because it is presented in an evasive or inconsistent manner.

A civil claimant is also required to establish his standing to contest the forfeiture. Frequently, legal title to property will be in someone's name other than the real party at interest. Most courts will not permit forfeitures to be contested by such so-called straw men. Thus, before the prosecution must present its proof, the claimant must establish his standing. Normally, this requires proof of dominion and control beyond mere legal title.¹⁶ Federal law and some state statutes require that this be initially accomplished by filing a verified claim.¹⁷ In addition, some United States Attorneys offices routinely make standing a central discovery issue.¹⁸ Thus, civil claimants are by no means assured automatic access to the courtroom.

For these reasons, the civil claimant is in a very difficult position relative to his posture in a criminal trial. Indeed, notwithstanding tracing obstacles confronting the government, many cases are uncontested by potential claimants or otherwise lost on standing grounds.¹⁹ This means that, even when tracing

obstacles exist, forfeiture proceedings should be considered since the government may never be put to its proof.

Standards and Procedures

Federal standards and procedures are designed to facilitate the civil forfeiture of proceeds. 21 U.S.C. Section 881(a)(6) authorizes the forfeiture of "all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance... [and] all *proceeds* traceable to such an exchange..."²⁰ The term *proceeds* extends to interest, dividends, income, or property derived from the original trafficking profits. This broad scope is a consequence of the relation back theory:

When a statute provides for civil forfeiture, the forfeiture takes place at the moment the property is used or generated illegally, unless the statute provides otherwise. At that moment, all rights and legal title to the property vest in the government and any subsequent transfer is of no effect. In the eyes of the law, the subsequent judicial proceedings merely confirm or perfect a forfeiture that has, in theory, already taken place. This is known [sic] as the "relation back" doctrine and it is one of the peculiar legal rules that makes civil forfeiture such an effective weapon against crime. Because the government's right to proceeds relates back to the time they are generated, it is legally entitled to all the gain thereafter accruing from the proceeds.²¹

Once the action has been brought, the government's burden is merely to establish probable cause to forfeit the property at issue.²² Hearsay evidence maybe used to meet this burden.²³ Moreover, the probable cause standard does not require any showing by a preponderance of the evidence. Instead, probable cause is flexibly defined as a "reasonable ground for belief...[that the property constitutes proceeds of narcotics trafficking], supported by less than prima facie proof, but more than mere suspicion."²⁴ There is no need to trace the proceeds to a particular narcotics transaction; it is enough if the proceeds can be linked to narcotics trafficking generally.²⁵ Once this initial burden has been satisfied, the burden shifts to the claimant who must establish his case by a preponderance of the evidence.²⁶ Should the claimant fail to present any evidence, the property will be forfeited.²⁷

Given this favorable climate, civil forfeitures have flourished federally. Two recent cases demonstrate this point. In the *United States v. \$33,000 United States Currency*,²⁸ probable cause for forfeiture was satisfied by the following

evidence: 1) claimant's guilty plea to conspiracy to distribute marijuana and to evade taxes; 2) the seizure of \$33,000 located in a brown paper bag in claimant's home; 3) the presence of drugs on the premises; and 4) claimant's lack of legitimate employment. Although claimant presented evidence that he had received \$21,915.92 from the recent sale of a horse, the court found that his burden of proof had not been met because of his failure to explain his cash transactions at a time when he had no apparent source of income.²⁹

In *United States v. Brock*,³⁰ the government sought forfeiture of jewelry, valued at \$120,000, which was found in a bag in claimant's attic. Despite the absence of any direct evidence connecting the jewelry with claimant's narcotics activity, the Court of Appeals concluded probable cause was present:

The circumstances were sufficient to warrant a conclusion that there was no other way Brock could have acquired the jewelry than... by proceeds of the alleged narcotics violation. The jewelry was found secreted in the same house as the narcotics and paraphernalia for distribution of narcotics. In addition, a large quantity of cash and a loaded revolver, further suggestive of ongoing narcotics activity, were seized at the house. These circumstances fairly lead to an inference that the jewelry was the proceeds of narcotics activity... Circumstantial evidence and inferences therefrom are good grounds for a finding of probable cause in a forfeiture proceeding.

* * *

The conclusion to forfeit the property was justified... [especially] given the evidence that the claimant had no source of legitimate income for several years preceding the seizure.³¹

From these examples, it is apparent that forfeiture of proceeds is relatively easy to accomplish under federal law. Though state laws are usually not as prosecution oriented, they are still adequate. Three generalizations may be drawn from statutes in selected states.³² First, some states have adopted the federal approach to civil forfeiture. In Arizona, for example, the law requires prosecutors to establish probable cause for forfeiture; once this standard has been met, the claimant has the burden of proof.³³ Similar rules may apply in Florida, though principally because of judicial interpretation rather than explicit statutory mandate.³⁴ Moreover, even in jurisdictions not adopting the federal model, federal cases are still valuable persuasive authority.

Second, although the federal probable cause standard is especially attractive to prosecutors, the traditional preponderance of the evidence burden is not substantially more difficult to meet. Fortunately, state courts have not

raised the civil forfeiture standard to proof beyond a reasonable doubt.³⁵ In addition, most state laws place the burden of proof on the claimant to establish any available statutory exemptions.³⁶ Such exemptions, however, rarely raise tracing issues.

Third, many state statutes establish presumptions providing that money or negotiable instruments found in "close proximity" to controlled substances are presumed to be forfeitable.³⁷ Though rebuttable, this presumption places the burden of proof on the claimant. Thus, in close proximity cases, state practice does not deviate significantly from federal practice. Predictably, most state civil forfeitures of proceeds have involved close proximity seizures. Though there have been numerous successes,³⁸ few reported state decisions have involved complex tracing efforts.³⁹ This suggests that state authorities are not attempting more difficult forfeitures. If this record is to improve, states must develop legally sufficient techniques for tracing proceeds in non-proximity situations. Fortunately, common evidentiary factors may be gleaned from well-established federal jurisprudence.

Common Evidentiary Factors

The common perception is that tracing proceeds to narcotics trafficking necessarily involves a complex paper trail. On occasion, of course, that is exactly what is required. If so, investigators must be prepared to subpoena and analyze documents from a wide variety of institutions. In *re Maria Familienstiftung v. United States*,⁴⁰ for example, narcotics proceeds used to purchase real estate were traced through various domestic and foreign banks. This process involved subpoenaing documents from the banks and obtaining testimony from both bank employees and couriers used by the narcotics trafficker. In addition, the veil of various nominee corporations had to be pierced. Ultimately, the forfeiture was successful.⁴¹ Similarly, in *United States v. Banco Cafetero Panama*,⁴² extensive bank record analysis was necessary to track the flow of \$3 million in narcotics proceeds through five bank accounts. Moreover, once traced, proceeds co-mingled with legitimate funds had to be distinguished.⁴³ Fortunately, the appellate court allowed the government the benefit of a favorable accounting procedure to facilitate this task.⁴⁴

The majority of reported proceeds decisions, however, have not required complex documents analysis. In large part, this may be explained by the judiciary's willingness to allow assets to be traced to narcotics trafficking generally rather than to a particular narcotics transaction.⁴⁵ A review of the cases establishes that tracing usually involves a few relatively simple factors. Although these factors are usually present in varying combinations, they are best examined in isolation. Accordingly, they are set forth separately below:

Close Proximity

Cases in which the targeted proceeds are found in close proximity to narcotics provide the easiest forfeiture setting. The *Brock* and #33,000 *United States Currency* decisions, *supra*, illustrate this point.⁴⁶

Means of Support

Most cases involve an obvious discrepancy between the claimant's life-style and his apparent means of support. This category actually consists of a number of factors: a) strong evidence of narcotics trafficking; b) high expenditures, often in cash; and c) little or no legitimate source of income. Thus, for example, it is quite common for courts to stress that claimant's cash expenditures far exceed his available income from legitimate employment. For example, in *United States v. One 1980 Chevrolet Blazer*,⁴⁷ these factors plus evidence of efforts to conceal the purchase were sufficient to establish probable cause.⁴⁸ In *United States v. Young*⁴⁹ and *United States v. Murillo*,⁵⁰ evidence of defendants' narcotics trafficking, combined with tax returns, was sufficient for forfeiture of substantial assets in a *criminal* proceeding. Therefore, discrepant life-style factors are surely pertinent in any *civil* forfeiture proceeding. Cash expenditures, in particular, have proven to be extremely probative.⁵¹ Furthermore, the claimant is in an obvious bind when he is unable to provide proof of legitimate employment. Note, however, that there must be evidence of narcotics trafficking. It obviously is not enough that the claimant was involved in criminality generally.

Concealment Efforts and Commingled Funds

A few courts have suggested that efforts to conceal ownership may be pertinent to forfeiture. This makes sense, since any person investing narcotics proceeds has a strong incentive to conceal their source. For example, in *United States v. A Single Family Residence*?² a probable cause factor cited by the Court was the trafficker's acknowledgment of having formed fictitious corporations to hide assets.⁵³ Similarly, concealment efforts were also mentioned by the court in *Chevrolet Blazer*, *supra*.⁵² On occasion, concealment is accomplished by commingling narcotics proceeds with legitimate funds. Under such circumstances, forfeiture may be on a percentage basis.⁵⁵ When bank accounts are involved, at least one court has applied a different analysis. *Banco Cafetero Panama*, *supra*, permitted the government to maximize the proceeds subject to forfeiture by giving prosecutors the option of two accounting procedures: "drugs-in, last out" or "drugs-in, first-out."⁵⁶ The former may be preferred when the government seeks funds remaining in the account, while the latter may be preferred when the government seeks to forfeit an asset purchased with funds from the account.

Pre-Trial Statements

Many forfeiture decisions place heavy reliance on statements made by the claimant before trial. Generally, these are statements made to associates or to undercover agents during the investigative stage of the case. For example, in *United States v. A Single Family Residence*,⁵⁷ testimony from several co-conspirators established that the trafficker had told them narcotics proceeds had been used to buy the property.⁵⁸ Similar statement in *United States v. Premises Known as 2639 Meetinghouse* established that narcotics proceeds had been invested in several bars.⁵⁹ And in *United States v. All Funds*,⁶⁰ the claimant confided to an undercover agent, posing as a bank officer, that 60 to 70 percent of certain corporate deposits were narcotics proceeds. Such statements have also been obtained through nonconsensual electronic surveillance.⁶¹ Finally, even evasive answers to questions concerning ownership of property have been cited as a factor in meeting the government's evidentiary burden.⁶²

Narcotics Records

Although narcotics records are rarely located, they have provided a useful way to establish a trafficker's profits. For example, in *United States v. Lewis*, entries in a drug ledger were persuasively correlated with currency deposits and expenditures on various homes.⁶³ Such records are also a valuable source of potential impeachment material.

Evasive Trial Testimony

A major factor in many forfeiture trials has been the weak testimony presented by the claimant. As previously stated, burden of proof considerations effectively compel claimants to present some proof.⁶⁴ When they do so, however, the result is often detrimental to their interests. Technically, evasive or inconsistent testimony merely serves to undercut the defendant's case, but its real impact implicitly strengthens the government's position. For example, in *United States v. Yukon Delta Houseboat*,⁶⁵ claimant testified that a loan was the source of funds used to purchase property. The Court of Appeals, however, doubted his credibility because his testimony at trial regarding the details of that purported loan were in some respects inconsistent with his prior deposition testimony. "Furthermore,... he never listed any... loan... as a liability on [various credit] application."⁶⁶ Similarly, in *United States v. One Parcel of Real Property*, the Court clearly regarded claimant's testimony concerning the source of funds for payment as a pure fable.⁶⁷

Net Worth Analysis

The cases discussed in Section III demonstrate that forfeiture may be accomplished without resort to complex financial analyses. Even so, although many of those cases involved substantial proceeds, greater success may require more sophisticated approaches. The logical next step is a net worth analysis borrowed from criminal tax litigation. In essence, this procedure seeks to establish that, an individual's reported income from legitimate sources is inconsistent with either his expenditures or his increased net worth during a designated time period.⁶⁸ In criminal tax cases, this contrast establishes nonpayment of income taxes. In narcotics cases, this procedure, combined with evidence of narcotics trafficking, may be used to establish that assets were acquired with trafficking proceeds. To appreciate the impact of this analysis, three factors should be considered: 1) the basics of net worth analysis; 2) significant differences between tax and forfeiture cases; and 3) the experience with net worth forfeiture cases.

Basic Net Worth Analysis

The complexities of net worth analysis are beyond the scope of this paper. In essence, however, the procedure may be summarized as follows:

The Government makes out a prima facie case... if it establishes the defendant's opening net worth... with reasonable certainty and then shows increases in his net worth for each year in question which, added to his nondeductible expenditures and excluding his known nontaxable receipts for the year, exceed his reported taxable income by a substantial amount.... The jury may infer that the defendant's excess net worth increases represent unreported taxable income if the Government either shows a likely source,... or negates all possible nontaxable sources.⁶⁹

The Supreme Court has legitimized this practice, provided that three requirements are met: a) the opening net worth must be established with reasonable certainty; b) reasonable explanations by the taxpayer inconsistent with guilt must be negated; and c) the net worth increase must be attributable to currently taxable income.⁷⁰ These requirements cause substantial burdens for the government. For example, to establish a defendant's opening net worth, an exhaustive investigation of documents and witnesses must be undertaken.⁷¹ In particular, the investigation must be sufficiently thorough to negate the possibility of a cash hoard defense in which the taxpayer maintains that substantial cash reserves account for the appearance of increased net worth. This is said to be the "most frequent challenge to the government's computations..."⁷² Thus, it is not uncommon for investigations to consume

many agents' time over several years. As a result, this procedure is saved for complex tax cases in which direct proof of guilt is unavailable.

Tax and Forfeiture Proceedings Distinguished

Tax and forfeiture proceedings are similar in one critical respect. Each requires the government to identify an asset or source of income. Frequently, this item has been concealed in some manner. Fundamental differences, however, make net worth procedure easier to apply in civil forfeitures. The principal distinction is the civil nature of the forfeiture proceeding. Because forfeitures are civil, the burden of proof is not the "beyond a reasonable doubt standard."⁷⁴ This means that opening net worth may be established with less certainty than in criminal prosecutions. It also means that not every hypothesis inconsistent with guilt need be negated. Ironically, since civil discovery is available in forfeitures, it is also easier to meet the requirements of a net worth case. The claimant, for example, maybe deposed and asked to state his net worth at particular time periods. He may be compelled to produce supporting documentation. He may be asked to account for any cash hoards, and to explain all sources of income. Despite these obvious advantages, however, net worth theory has rarely been applied to forfeitures.

Net Worth Forfeiture Cases

A review of federal and state decisions reveals only two cases that explicitly apply to the net worth theory in this context. Other decisions, however, have relied on informal variations of this doctrine emphasizing the discrepancy between a claimant's life-style and his apparent means of legitimate support. Examples of this approach have already been supplied.⁷⁵ Another illustration, which comes a step closer to using net worth analysis, is *United States v. Four Parcels of Real Estate*?** Civil forfeiture was effected through the following evidence: a) extensive evidence of claimant's cash expenditures on his home; b) a tax return showing gross income in 1980 of \$35,650; and c) two financial statements, found during a search incident to arrest, showing a net worth of \$239,000 in 1981 and of \$1,079,000 in 1983. Apparently, no effort was made to comply with formal net worth requirements, but probable cause was still found.

Given the government's probable cause burden in federal cases, it is unlikely that complex net worth analysis will have to be used in that context. Two criminal forfeiture cases, however, have used this method successfully. In *United States v. Harvey*?¹ the government conducted an in-depth analysis of defendant's records. The investigation included records from his corporations, banks, real estate holdings, and tax returns. Critical statements by the defendant were obtained through nonconsensual electronic surveillance.⁷⁸ Based on this evidence, prosecutors established at trial that the defendant had a zero net worth in 1976, earned approximately \$120,000 from legitimate sources between 1976 to 1982, and accumulated a net worth of \$4.5 million during that time period. This evidence was considered sufficient for a

restraining order holding the assets for trial. In reaching this decision, the judge cited the government's use of net worth analysis which had been approved in tax cases.⁷⁹ Because defendant Harvey never went to trial, however, the net worth analysis was not tested again.

At this writing, *United States v. Lewis*⁸⁰ is the only reported decision explicitly addressing the net worth doctrine in a forfeiture setting. Although it stands alone, *Lewis* is very significant because it was a criminal forfeiture. Since the government was able to use net worth analysis successfully under the reasonable doubt standard, the doctrine holds great potential for civil forfeitures operating under the preponderance standard and liberal discovery rules. Moreover, *Lewis* is significant because the court applied the net worth doctrine despite the government's failure to establish the defendant's opening net worth. The Court held that "where the government shows an accumulation of income far beyond the defendant's legitimate means, an opening net worth figure is not essential."⁸¹

Although this holding was limited to the "unique facts" involved,⁸² *Lewis* is potentially broadly applicable because its circumstances, in fact, were hardly unique. Rather, the court stressed factors typical of many narcotics investigations. First, consensually recorded tapes revealed the defendant's statement refuting "the possibility of a preexisting legitimate source for his remarkably high net worth."⁸³ Second, the decision observed that "the government proved the existence of a lucrative drug distribution enterprise over several years."⁸⁴ Third, "the government's financial evidence was thorough; for the period in question, the evidence [appeared] to foreclose all leads which might have suggested other legitimate sources of income."⁸⁵ Accordingly, *Lewis* provides an appropriate benchmark for considering future net worth applications.⁸⁶

Conclusion

Asset forfeiture continues to hold great potential for attacking large scale narcotics trafficking. Using the benefits of civil discovery and a lower burden of proof, law enforcement has an important opportunity to strike at the profits generated by such criminality. Thus far, most civil forfeitures have been accomplished by federal authorities. Although federal law is admittedly preferable to most state statutes, the states do have adequate legal tools to achieve comparable success. Existing case law demonstrates that forfeitures can be accomplished through modes of proof that are relatively straightforward. Beyond that, net worth analysis may offer new means for reaching the proceeds of complex narcotics enterprises.

Endnotes

1. 18 U.S.C. Section 1961 et seq. (1976); 21 U.S.C. Section 848 (1983).
2. See, e.g., *Russello v. United States*, 464 U.S. 16,27-28 (1983); S. Rep. No. 617, 91st Cong., 1st Sess. 78 (1969).
3. For a historical overview of criminal and civil forfeiture doctrine see Clark, *Civil and Criminal Penalties and Forfeitures: A Framework for Constitutional Analysis*, 60 Minn. L. Rev. 379 (1976); Maxeiner, *Bane of American Forfeiture Law-Banished At Last?*, 62 Cornell L. Rev. 768 (1977).
4. Smith, *Prosecution Afid Defense Of Forfeiture Cases 4-2* (1986) [hereinafter cited as Smith, *Forfeiture*].
5. Citations to some pertinent state statutes are set forth *infra* notes 33, 36-37.
6. As recently as 1981, however, federal enforcement efforts were severely criticized. See *Asset Forfeiture — a Seldom Used Tool In Combatting Drug Trafficking* (GAO April 1981).
7. See generally *The National Governors' Association, EtAl, State Laws And Procedures Affecting Drug Trafficking Control: A National Overview 73-77* (1985).
8. See, e.g., *United States v. Regan*, 232 U.S. 37,50(1914).
9. See *infra* notes 22-24,33-35 and accompanying text.
10. See, e.g., *United States v. \$31,828*, 760 F.2d 228,230 (8th Cir 1985); *United States v. Monkey*, 725 F.2d 1007,1012 (5th Cir. 1984).
11. See *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 360 (1983); *United States v. Fifty Thousand Dollars*, 757 F.2d 103,104 (6th Cir. 1985); *United States v. Premises Known as 2639 Meetinghouse*, 633 F. Supp. 979, 983 (E.D. Pa. 1986) (one of forfeiture claimants had never been prosecuted).
12. SMITH, *Forfeiture*, *supra* note 4, at 10-3.
13. See *Baxter v. Palmigiano*, 425 U.S. 308,318 (1976). In *United States v. A Single Family Residence*, 803 F.2d 625, 629 n.4 (11th Cir. 1986), *Baxter* was cited as permitting an adverse inference when a witness asserted the Fifth Amendment in a civil deposition.
14. For this reason, claimants customarily request that civil proceedings be stayed pending resolution of the criminal case. This issue is discussed in Smith, *Forfeiture*, *supra* note 4, at 10-2.
15. See, e.g., *United States v. A Single Family Residence*, 803 F.2d 625, 629-30 (11th Cir. 1986).

16. See *id.*, at 630; *re Maria Familienstiftung v. United States*, 643 F. Supp. 139, 145 (S.D. Fla. 1986) (citing other authority).
17. See, e.g., Smith, *Forfeiture*, *supra* note 4, at 9-62; N. J. STAT. ANN. Section 2C:64-3(d) (West 1982).
18. Smith, *Forfeiture*, *supra* note 4, at 9-54.2. A further benefit of civil forfeiture is the government's right to appeal. See *id.*, at 11-26.
19. This is especially so when couriers have been intercepted. Under such circumstances, the courier may not have the necessary legal interest in the proceeds, and his employer is rarely inclined to risk discovery by contesting the forfeiture. *Id.*, at 4-20. In many instances, all concerned deny ownership. *Id.*, at 4-23. Consequently, default judgements are quite common. *Id.*, at 4-28.
20. The full text of section 881 is set forth in the appendix.
21. Smith, *Forfeiture*, *supra* note 4, at 4-34 to 4-35.
22. See, e.g., *Unites States v. \$41,305 in Currency*, 802 F.2d 1339,1343 n.6 (11th Cir. 1986); *Unites States v. \$5,644,540 in Currency*, 799 F.2d 1357,1362 (9th Cir. 1986).
23. See, e.g., *United States v. One 56 Foot Motor Yacht*, 702 F.2d 1276,1282 (9th Cir. 1983); *United States v. One 1964 Beechcraft*, 691 F.2d 725,728 (5th Cir. 1982).
24. *United States v. \$250,000 in Currency*, 808 F.2d 895, 897 (1st Cir. 1987); *United States v. A Single Family Residence*, 803 F.2d 625, 628 (11th Cir. 1986).
25. See, e.g., *United States v. \$4,255,625.39 in Currency*, 762 F.2d 895,904 (11th Cir.1985); *Unites States v. \$23,000 in Currency*, 733 F.2d 581, 585 (8th Cir. 1984).
26. See, e.g., *United States v. Banco Cafetero Panama*, 797 F.2d 1154,1160 (2d Cir. 1986); *United States v. \$4,265,000 in Currency*, 762 F.2d 895, 904 (11th Cir. 1985) (citing extensive authority).
27. See, e.g., *United States v. \$250,000 in Currency*, 808 F.2d 895, 900 (1st Cir. 1987); *United States v. A Single Family Residence*, 803 F.2d 625, 629-30 (11th Cir. 1986).
28. 640 F. Supp. 899-900 (D.Md. 1986).
29. *Id.*, at 900.
30. 747 F.2d 761,762-63 (D.C. Cir. 1984).
31. *Id.*

32. This project involved a survey of cases and statutes in the following states: Arizona, Colorado, Florida, Georgia, Illinois, Michigan, New Jersey, New Mexico, and Pennsylvania. In addition, every state was surveyed for cases involving net worth analysis or explicit analysis focusing on the tracing concept. No traditional net worth case was located. Pertinent state decisions are cited in the footnotes below.
33. ARIZ. REV. STAT. ANN. Section 13-4305,4311(H)(Supp. 1986).
34. In *re Forfeiture of Approximately \$48,900,432* So. 2d 1382,1385 (Fla, Dist. Ct. App. 1983)(noting legislative intent to conform to federal law). This decision is potentially very important because prosecutors won a favorable interpretation despite statutory language which did not reflect the federal model. See also *People v. Lot 23, - Colo. - P.2d - (April 13,1987)*(forfeiture under public nuisance statute; holding that once the government establishes a prima facie case, burden shifts to claimant and that claimant's failure to present evidence mandates forfeiture).
35. See *People v. Lot 23,735* P.2d 184,188 (Colo. 1987); *Commonwealth v. \$15,836.85- Cash*, 511 A.2d 871, 873 (Pa. Super. Ct. 1986); ILL. ANN. STAT ch. 56 1/2 para. 1655(3) (b)(Smith-Hurd, Supp. 1986).
36. See FLA. STAT. ANN. Section 893.10 (West 1976, Supp. 1987); GA. CODE ANN. Section 16-13-50 (Supp. 1986); MICH. STAT. ANN. Section 14.15(7531) (1987 Supp.).
37. See ILL. STAT. ANN. ch. 56 1/2 para. 1505(5) (Smith-Hurd, Supp. 1986); MICH STAT. ANN. Section 14.15(7521)(f)(Supp. 1987); PA. STAT. ANN. tit 35, Section 780-128(1) (iii) (Supp. 1986).
38. See, e.g., *People v. Lot 23,735* P.2d 184,189-91 (Colo. 1987) (Quidicial inference). See also *People v. Strong*, 502 N.E.2d 744,748-49 (111. App. 3rd Disi 1986); *Commonwealth v. \$15,836.85- Cash*, 511 A.2d 871 (Pa. Super. Ct. 1986).
39. Two Pennsylvania decisions stand out as significant in this respect. See *Lappas v. Brown*, 483 A.2d 979, 983-84 (Pa. Super. Ct. 1984) (some evaluation of bank records and claimant's reported source of legitimate income); *MI Grossman v. Commissioner of Police*, 465 A.2d 1007,1009 (Pa. Super. Ct. 1983) (detailed analysis of marijuana sales operation; issue not addressed on appeal).
40. 643 F. Supp. 139 (S.D. Fla. 1986).
41. *Id.*, at 142-48.
42. 797 F.2d 1154 (2d Cir. 1986).
43. *Id.*, at 1157-59.

44. *Id.*, at 1159-62.
45. See *supra* note 25 and accompanying text.
46. See *supra* notes 28-31, and 37-38 and accompanying text.
47. 572 F. Supp. 994 (E.D.N.Y. 1983).
48. *Id.*, at 995-96.
49. 745 F.2d 733, 745-46, 762-63 (2d Cir. 1984).
50. 709 F.2d 1298,1298-99 (9th Cir. 1983).
51. See generally *United States v. Four Parcels of Real Estate*, 647 F. Supp. 1440 (N.D. Ala. 1986); *United States v. One Plymouth Colt Vista*, 644 F. Supp. 1546, 1549-50 (N.D. HI. 1986); *United States v. One Chevy Blazer*, 572 F. Supp. 994, 995 (E.D.N.Y. 1983).
52. 803 F.2d 625 (11th Cir. 1986).
53. *Id.*, at 629.
54. 572 F. Supp. at 996. See also *United States v. One 1980 Red Ferrari*, 827 F.2d 477 (9th Cir. 1987) (fictitious name).
55. See *United States v. Premises Known as 2639 Meetinghouse*, 633 F. Supp. 979, 990 (E.D. Pa. 1986).
56. 797 F.2d at 1159.
57. 803 F.2d 625 (11th Cir. 1986).
58. *Id.*, at 629.
59. 633 F. Supp. 979, 983-85 (E.D. PA. 1986).
60. -F.Supp.-(S.D.N.Y. 1986)(LexisGenfedLibrary).
61. See *United States v. Harvey*, 560 F. Supp. 1040,1090-91 (S.D. Fla. 1983).
62. See *United States v. Certain Real Property*, 568 F. Supp. 434,436 (W.D. Ark. 1983).
63. 759 F.2d 1316,1330 (8th Cir. 1985).
64. See *supra* note 15 and accompanying text.
65. 774 F.2d 1432 (9th Cir. 1985).
66. *Id.*, at 1435.
67. 648 F. Supp. 436, 437-38 (D. Mass. 1986).

68. For an excellent review of net worth analysis, see *U.S. Department of Justice, Criminal Tax Manual* Section 31 et seq. (1985) [hereinafter cited as *Criminal Tax Manual*].
69. *United States v. Sorentino*, 726 F.2d 876, 879-80 (1st Cir. 1984).
70. *Holland v. United States*, 348 U.S. 121,132-37 (1954).
71. *Criminal Tax Manual*, *supra* note 68, at 31-17.
72. *Id.*, at 31-26.
73. *Id.*, at 31-19 et seq. (citing numerous examples).
74. See *supra* note 8 and accompanying text.
75. See *supra* notes 47-51 and accompanying text. In addition, a substantial number of criminal cases — not involving forfeiture — have used this method to corroborate criminality. See Nossen, "One-on one" *Uncorroborated Testimony: the Dilemma of Prosecutors, Defense Attorneys and the Courts in Fraud, Waste, and Abuse*, Cases, 58 NOTRE DAME L. REV. 1019 (1983) (containing numerous citations); R. Nossen, *Vie Detection, Investigation And Prosecution Of Financial Crimes* (1982).
76. 647 F. Supp. 1440 (N.D. Ala. 1986); see also *In re Coastal Seafood Enterprises*, 648 F. Supp 79 (D.S.C), affd without opinion, 823 F.2d 546 (4th Cir. 1987) (emphasizing discrepant expenditures); *United States v. Miscellaneous Jewelry*, 667 F. Supp. 232 (D. Md. 1987) (same); *Lappas v. Brown*, 483 A.2d 979,984 (Pa. Super, Ct. 1984).
77. 560 F. Supp. 1040,1090 (S.D. Fla. 1983).
78. *Id.*, at 1090-91.
79. *Id.*
80. 759 F.2d 1316 (8th Cir. 1985).
81. *Id.*, at 1327-28.
82. *Id.*
83. *Id.*
84. *Id.*, at 1328.
85. *Id.*
86. *Lewis* also contains a useful review of the admissibility of financial records to rebut net worth defenses. *Id.*, at 1328-30.