Asset Forfeiture in Public Corruption Cases

Practitioner Guide
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What is CAPI?
CAPI is a nonprofit resource center dedicated to improving the capacity of public offices, practitioners, policymakers, and engaged citizens to deter and combat corruption. Established as partnership between the New York City Department of Investigation and Columbia Law School in 2013, CAPI is unique in its city-level focus and emphasis on practical lessons and tools.

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White collar crimes, including public corruption crimes – such as bribery, bid rigging, public theft, “honest services” fraud, extortion and illegal gratuities – are typically motivated by money. In United States v. Bills, Chicago official John Bills was convicted of wire fraud, bribery, and conspiracy to commit mail fraud and “honest services” fraud, arising out of his receipt of over $680,000 in bribes in exchange for helping a company win over $124 million in contracts to install Chicago’s red-light camera system. White collar criminals are typically ordered to pay restitution to their victims. But, victims have little power to collect the restitution. Asset forfeiture is an essential law enforcement tool in prosecuting public corruption cases. Asset forfeiture deters public corruption by taking the profit out of crime. Asset forfeiture also achieves justice for victims who otherwise obtain nothing but an uncollectable restitution order because the defendant has spent, transferred or hidden the crime proceeds.

Asset forfeiture statutes authorize the government to take property from an owner without compensation because the property: (1) is proceeds of a crime, (2) was involved in a crime, or (3) was used to make a crime easier to commit or harder to detect. There are three methods to forfeit assets: (1) administrative forfeiture (where the agency sends notice of the forfeiture and the asset is forfeited if no claim is filed); (2) civil judicial forfeiture (an in rem action against the property itself); and (3) criminal judicial forfeiture (an in personam action where assets are forfeited as part of the defendant’s sentence). Civil and criminal forfeiture each have their own advantages and disadvantages. Optimal results are achieved when both civil and criminal forfeiture are used.

This publication is intended to be a practical guide to pursuing federal asset forfeiture where a public corruption crime is the underlying offense. Although the reader of this guide may be pursuing state crimes and forfeiture, reaching out to the Federal Bureau of Investigation (FBI), the experts in public corruption cases, is recommended. Addressing the laws of all fifty states is beyond the scope of this guide. Nonetheless, the considerations and guidance underlying federal forfeiture will generally apply to the pursuit of state forfeitures as the majority of the state statutes are modeled after the federal statutes and involve similar legal issues.

This guide addresses: (1) evaluating the forfeiture potential and theory of the case, (2) pre-seizure planning, (3) anticipating legal issues before initiating forfeiture proceedings, (4) filing administrative, civil and criminal forfeiture actions and the advantages and disadvantages of each, (5) litigating the forfeiture and (6) why both forfeiture and restitution should be pursued to obtain the greatest potential to compensate the victims. Forfeiture considerations are often complex, time-consuming and require a significant amount of advance planning. The recent settlement of two civil forfeiture actions against the assets of former Korean President Chun Doo Hwan (convicted of public corruption) which resulted in the return of $1,126,951.45 in forfeited assets to the Republic of Korea is just one example of what can be achieved with forfeiture.
Evaluate the Case for Forfeiture Potential

The first step is to determine whether pursuing forfeiture is worthwhile in a given case. If you have a bribery case with a corrupt official receiving a $6,000 bribe, where the bribe payer didn’t obtain an economic benefit, a federal forfeiture case may not be a good use of resources. On the other hand, if your corrupt official received tens of thousands of dollars in bribes or other valuable assets such as a sports car, or the bribe payer has received millions of dollars of contracts, then the forfeiture evaluation will be a more involved process, likely to be worth the effort.

I. Determine Whether Assets Have Been Acquired or Exist

The federal government can forfeit almost all types of property—real, personal and intangible—as well as the rights, privileges, interests, claims, and securities in the property such as liens and mortgages. The following table provides examples of each of these different categories of property.

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real property</td>
<td>House, farm, office park, store, vacant land, hotel</td>
</tr>
<tr>
<td>Tangible Personal Property</td>
<td>Cash, jewelry, art, car, boat, airplane, firearms, ammunition, antiques,</td>
</tr>
<tr>
<td></td>
<td>livestock, race horse</td>
</tr>
<tr>
<td>Intangible Personal Property</td>
<td>Liquor license, website domain name, stocks, lottery winnings, appreciation of asset (e.g., value of painting increases), virtual currency (e.g., Bitcoin), professional license, liens, mortgages</td>
</tr>
</tbody>
</table>

Even if the specific assets acquired through the crime (the directly forfeitable assets) are no longer available to forfeit, determine whether the offender has any assets. As discussed below, in a criminal forfeiture case (but not a civil forfeiture case), assets acquired with legitimate funds can nonetheless be forfeited as a “substitute asset.” A recent example can be seen in United States v. Eric Stevenson. In that case, the government obtained a $22,000 money judgment which represented the $22,000 in bribes the defendant received in return for his official acts supporting the bribe payers’ adult daycare centers. The government was able to forfeit legitimate funds in a defendant’s state retirement account as a substitute asset. Even though state law protected the retirement account from collection actions, the Second Circuit Court held that $22,000 in the retirement account was nevertheless subject to forfeiture under federal law.

To find assets and trace assets to the underlying crime, consider the following suggestions:

a. Start the Financial Investigation early

Starting the financial investigation early, i.e., at the outset of the investigation into the underlying offenses, is the best way to provide adequate time to find and evaluate assets and gather the evidence necessary to trace the assets to the crime. A financial investigation is time consuming. It takes time to get subpoenas or court orders for financial records, receive responsive records, analyze the records, and to enter the data into a useable data base. Waiting until the investigation into the underlying criminal offense is complete will not allow sufficient time to do the work necessary to support the forfeiture.

b. Obtain Financial Records

A key step in conducting a successful financial investigation is obtaining financial records. Pertinent financial records can include the target of investigation’s tax returns, bank records, business and personal financial statements, divorce records, bankruptcy records, probate records, Secretary of State records, real property records, credit reports and loan applications. Financial records are invaluable in investigating and prosecuting corruption cases. Bank records, for example, can be used: to determine the target of investigation’s legitimate income and,
conversely, his unexplained or unlawfully obtained income; to discover financial transactions that might provide the basis for money laundering charges; to find assets that the target of investigation acquired during pertinent periods; and to trace the funds that the target used – including proceeds of a corruption offense – to acquire assets.

Don’t overlook tax returns simply because the underlying offenses are not tax charges. Tax returns can yield a wealth of information. First, tax returns can reveal assets that the target of investigation owns or in which the target of investigation has an interest. Such assets can include the taxpayer’s residence and other real property, rental properties and other depreciable assets, stocks and bonds, and bank account. Second, tax records can establish the source of funds that the target of interest used to acquire assets and, relatedly, whether the target of interest lacked sufficient legitimate income to legitimately acquire assets during pertinent years. Third, tax returns often list the accountant, who can often prove to be an important witness in a corruption case.

c. Diagram the Money Flow
Diagraming the flow of the money in chart form can help the judge, the jury, and the investigative team understand and recall important financial transactions in public corruption investigations and prosecutions. The following are examples of charts that show the flow of money in white collar (other than public corruption) cases.

Figure 1: Money Flow – Illegal Activity to Bank Accounts (Wilson Barangirana)
Figure 2: Money Flow – In and Out of Bank Account (Amy Scarpelli)

Analysis of US Bank Platinum Checking Account #000000007203
In name Amy Scarpelli
August 2009 to March 2014

**Money Flow – Illegal Activity to Purchase & Sale of Stock to Bank Accounts (Michael Peppel)**
d. Prepare Net Worth and Unexplained Income Analysis

Preparing a “Net Worth and Unexplained Income” analysis is useful to demonstrate that legitimate sources of income are not sufficient to explain the assets acquired. The analysis, an example of which is shown below, involves calculating “Assets” minus “Liabilities” to determine “Net Worth.” “Change in Net Worth” is then calculated by subtracting the prior year's net worth. “Change in Net Worth and Expenditures” is calculated by adding “Expenditures” to “Change in Net Worth.” “Known Sources of Income” are subtracted from “Change in Net Worth & Expenditures” to obtain “Funds from Unknown Sources.” This type of analysis takes into account all of the target of investigation’s financial data. When properly prepared, this analysis will reveal whether the target of investigation has acquired assets exceeding his legitimate means – and, correspondingly, whether he has acquired assets using proceeds of his crime.

### Table 2: Net Worth and Unexplained Income

<table>
<thead>
<tr>
<th></th>
<th>12/31/10</th>
<th>13/31/11</th>
<th>06/30/12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash on hand</td>
<td>10,000</td>
<td>200,000</td>
<td>185,000</td>
</tr>
<tr>
<td>Cash in Bank</td>
<td>740,000</td>
<td>480,000</td>
<td>860,000</td>
</tr>
<tr>
<td>Stock</td>
<td>150,000</td>
<td>150,000</td>
<td>0</td>
</tr>
<tr>
<td>Art Collection</td>
<td>125,000</td>
<td>125,000</td>
<td>190,000</td>
</tr>
<tr>
<td>Real Estate</td>
<td>0</td>
<td>600,000</td>
<td>700,000</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>1,025,000</td>
<td>1,555,000</td>
<td>1,935,000</td>
</tr>
<tr>
<td><strong>LIABILITIES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit Card Balances</td>
<td>11,000</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES</strong></td>
<td>11,000</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>NET WORTH</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Total Assets- Total Liabilities)</td>
<td>1,014,000</td>
<td>1,540,000</td>
<td>1,920,000</td>
</tr>
<tr>
<td><strong>CHANGE IN NET WORTH</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Net Worth – Prior Year Net Worth)</td>
<td>--</td>
<td>526,000</td>
<td>380,000</td>
</tr>
<tr>
<td><strong>EXPENDITURES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit Card Payments</td>
<td>140,000</td>
<td>165,000</td>
<td></td>
</tr>
<tr>
<td>Private Tuition</td>
<td>20,000</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>Spa Treatments</td>
<td>43,200</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL EXPENDITURES</strong></td>
<td>203,200</td>
<td>210,000</td>
<td></td>
</tr>
<tr>
<td><strong>CHANGE IN NET WORTH &amp; EXPENDITURES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Chang in Net Worth + Expenditures)</td>
<td>729,200</td>
<td>590,000</td>
<td></td>
</tr>
<tr>
<td><strong>KNOWN SOURCES OF INCOME</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salary</td>
<td>70,000</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>Gain on Stock Sale</td>
<td>0</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL KNOWN INCOME</strong></td>
<td>70,000</td>
<td>45,000</td>
<td></td>
</tr>
<tr>
<td><strong>FUNDS FROM UNKNOWN SOURCES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Change in NW&amp;E - Total Known Income)</td>
<td>659,200</td>
<td>545,000</td>
<td></td>
</tr>
</tbody>
</table>
Generally, an analysis such as the one above, is prepared by a financial analyst, who is often a current or retired IRS agent. The take away point is that while the analysis can be very helpful in proving the target of interest has acquired assets exceeding his legitimate means; financial records must be obtained early to allow time for its preparation.

II. Determine the Underlying Offense(s)

After you have determined that the target of investigation has acquired assets, you need to determine which offenses are, or should be, investigated. The authority for the federal forfeiture comes solely from specific statutes. There is no common law authority for forfeiture and no general forfeiture statute that covers all property and all crimes. Instead, federal forfeiture is authorized through a piecemeal collection of statutes enacted over time for different purposes. The chart below includes the most common public corruption offenses and the related forfeiture statutes.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Civil Forfeiture Statute</th>
<th>Criminal Forfeiture Statute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any act involving bribery which is chargeable under state law and punishable by imprisonment for more than one year</td>
<td>18 U.S.C. § 981(a)(1)(C)</td>
<td>18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)</td>
</tr>
</tbody>
</table>

For a sample indictment see Appendix 3, United States v. Bills, where the defendant was charged with wire fraud, bribery, tax fraud and conspiracy to commit mail fraud and “honest services” fraud, arising out of his receipt of over $680,000 in bribes in exchange for helping a company win over $124 million in contracts to install Chicago’s red-light camera system.
III. Determine the Theory of Forfeiture

The offenses committed will dictate which of the three categories of assets (“proceeds”, “facilitating property” and property “involved in” the offense) may be forfeited. Almost all public corruption crimes (federal and state bribery, public theft, mail fraud, wire fraud and “honest services” fraud, extortion and illegal gratuities) are defined as “specified unlawful activities” (SUAs) pursuant to 18 U.S.C. § 1956(c)(7). As such, the “proceeds” of the offense(s) will be forfeitable. If the proceeds of the public corruption crimes are laundered in violation of 18 U.S.C.§ 1956 or § 1957, then the assets “involved in” the money laundering will be forfeitable. Most public corruption crimes do not have a statute authorizing the forfeiture of facilitating property.

a. Proceeds

The “proceeds” of the crime generally includes anything of value obtained as a result of the crime and any property traceable thereto. As may be apparent from the table above, the principle federal forfeiture statutes are 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), both of which were enacted as part of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). CAFRA broadly expanded the federal government’s authority to forfeit the proceeds of more than 250 crimes, including all SUAs. CAFRA also authorized criminal forfeiture for any offense for which civil forfeiture is authorized.12 The authority for forfeiting “proceeds,” is found in:

i. 18 U.S.C. § 981(a)(1)(C), which authorizes civil forfeiture of any property which constitutes or is derived from “proceeds traceable to a specified unlawful activity” (as defined in section 1956(c)(7))13, or a conspiracy to commit such offense;

ii. 28 U.S.C. § 2461(c), which authorizes criminal forfeiture of any property that can be forfeited through civil forfeiture;

iii. 18 U.S.C. § 982(a)(2)-(8), which authorizes criminal forfeiture of property constituting, or derived from proceeds the person obtained directly or indirectly, as a result of certain specific violations.

b. Facilitating Property

Unlike the proceeds of crime, facilitating property may be acquired through legitimate means, but nonetheless be subject to forfeiture because of how it is used – either to make the offense giving rise to forfeiture easier to commit or harder to detect. But statutes authorizing forfeiture of facilitating property are relatively rare. When CAFRA gave the government authority to forfeit the proceeds of all SUAs, CAFRA did not give the government the authority to forfeit property that facilitated all SUAs. Accordingly, facilitating property may be forfeited in connection with only a handful of offenses – albeit some commonly charged offenses – such as drug distribution, identity theft, and access device fraud. For this reason, most public corruption cases will involve criminal offenses for which the government is authorized to forfeit proceeds of the offense but not the property that facilitated the offense.

c. Property “Involved In” Money Laundering

Property “involved in” money laundering is subject to forfeiture, both civilly and criminally, under the following two statutes:

i. 18 U.S.C. § 981(a)(1)(A), authorizes civil forfeiture of any property “involved in” a transaction or attempted transaction in violation of section 1956 or 1957, or any property traceable to such property, and

ii. 18 U.S.C. § 982(a)(1), authorizes criminal forfeiture of any property “involved in” a violation of section 1956 or 1957, and any property traceable to such property.

The “involved in” category is the broadest category of forfeitable property.14 But, its use in public corruption cases is primarily limited to money laundering. Property “involved in” money laundering includes: (1) the “proceeds of the SUA” offense;15 (2) the property that is the subject of the money laundering transaction;16 and (3) the property that “facilitated” the offense.17
Pre-Seizure Planning (Evaluating the Assets for Forfeiture)

Pre-seizure planning ensures that asset forfeiture is used as an efficient and cost-effective law enforcement tool consistent with the public interest. During pre-seizure planning consider the following:

I. Who is the owner of the property?
The term “owner” refers not only to the titled owner of the property, but also persons or entities having a statutorily recognizable interest in all or a portion of the property, such as a “leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest”. Because it is not always readily apparent who may have an ownership interest in a particular asset, investigators should obtain real property records, title reports, vehicle, boat, plane and motorcycle registration records, Secretary of State records relating to businesses and tax returns for the target of the investigation and their spouse, children, and business entities. Property titled to nominees may be forfeited if the government proves that the offender is the true owner.

II. What is the net equity in the property?
The property should have a minimum net equity to make pursuing the forfeiture worthwhile. A $2,000,000 house owned by a corrupt official is an asset worth looking into for forfeiture. But, if there is a valid mortgage on the house in the amount of $1,950,000 there is insufficient equity to make the forfeiture worthwhile.

III. Is the property an ongoing business?
Seizing and forfeiting an ongoing business is complex, with the potential for substantial losses to the owner, shareholders, employees and the government itself, and may expose the government to liabilities arising from the business. Prosecutors must obtain prior written approval from their respective U.S. Attorney before seizing or filing a civil forfeiture complaint against an ongoing business based on a facilitation theory. Prosecutors must consider the following factors, as applicable, when evaluating whether to seize, or file a civil forfeiture complaint against an ongoing business based on facilitation, and should consider these factors in all cases:

a. the nature, management structure, and ownership of the business;

b. the nature and seriousness of the criminal activity, including the risk of harm to the public;

c. the nature and extent of the ongoing business’s involvement in the facilitation or concealment of the underlying activity;

The “involved in” category may allow forfeiture of legitimate assets that have been commingled with dirty assets. Property that facilitates the money laundering offense, such as clean money commingled with dirty money, for the purpose of concealing or disguising the nature, location, source, ownership or control of the SUA proceeds is subject to forfeiture. But that facilitating property which makes the money laundering offense easier to commit or harder to detect – is forfeitable only if it has a “substantial connection” to the offense. What constitutes a “substantial connection” is not defined by statute. But, we know that the use of the property must be more than inconsequential, incidental, or merely fortuitous.

The civil complaint in United States v. Proceeds of the Sale of a Condominium Located in the Ritz-Carlton provides an excellent example of a public corruption case where the theory of forfeiture is that the defendant assets, including the condo, a motel near Disneyland, real properties in California, a stake in a consulting company, and a Porsche Boxster, constitute the proceeds of Napoles’ bribes and kickbacks to Philippine officials in exchange for over $200 million development assistance and disaster relief projects, and were involved in money laundering.
d. the pervasiveness of wrongdoing within the business, including the complicity in, or the condoning of, the wrongdoing by its principals, including corporate management and/or ownership;

e. collateral consequences, including whether there is disproportionate harm to the shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from forfeiture of the ongoing business; and

f. the adequacy of other remedies, such as a restraining order, protective order, or other court approved remedy in lieu of seizure and forfeiture of the business.

Unless it is the government’s goal to shut down an ongoing business because it is permeated by fraud or other illegal activity, consider seizing and forfeiting only an individual asset or some discrete property of the ongoing business, the forfeiture of which would not cause a substantial or complete disruption or discontinuance of business operations (e.g., a car when the business has multiple vehicles or a single financial account among several.)

IV. Is the property alive?

Anything that eats is costly to care for pending the completion of forfeiture procedures. The general rule is: Don’t do it! However, sometimes it will be worthwhile to seize and forfeit certain types of animals, such racehorses or cattle, if they constitute the proceeds of crime and have a high liquid resale value. The key consideration is determining whether the expenses will exceed the value of the property. Anticipate that expenses will be much higher than expected and that the sale price will be much lower than expected. If the forfeiture still appears cost effective, consult the agency that will take custody of the property early so that appropriate contracts for the custody and care of the animals can be awarded. Then, as soon as possible after the seizure, file a motion for the interlocutory sale, that is, for the pre-judgment sale, of the animals.

Legal Issues

I. Burden of Proof
The government has the burden, pursuant to 18 U.S.C. § 983(c), of proving the property is subject to forfeiture by a preponderance of the evidence. The claimant has the burden, pursuant to 18 U.S.C. § 983(d), of proving he or she is an innocent owner.

II. Tracing
In proceeds cases, the government must prove that the property was derived from a criminal offense or that the offense is traceable to such property. In general, circumstantial evidence is used to establish that the money is proceeds of crime. The government may use accounting principles such as “last out” and “first out” rules to accomplish the tracing.

In the case of cash or funds in a bank account, the tracing requirement is waived and the property may be forfeited as “fungible” property, if identical property is found in the same place and the action is commenced within one year from the date of the offense. For example, if a corrupt official deposits $10,000 in bribe money into his bank account, withdraws that $10,000, then deposits $10,000 of clean money, as long as the forfeiture action is commenced within one year from the receipt of the bribe, the $10,000 remaining in the account can be seized and forfeited as “fungible” property.

III. Gross v. Net Proceeds
Determining what constitutes the proceeds of the offense is a two-step process. First, the “but-for” test is applied to determine the gross proceeds. Second, determine whether gross or net proceeds may be forfeited. Under the “but-for” test, the gross proceeds include any property the defendant would not have obtained or retained but for the
criminal offense. This means that in a bribery case such as *United States v. Esquenazi*, money the defendant retains, by having his debt reduced in exchange for paying a bribe, is the proceeds of the offense. Likewise, as reflected in *United States v. $13,500 in U.S. Currency*, the money paid as a bribe in violation of 18 U.S.C. § 666 is the proceeds of the bribe.

In criminal forfeiture actions, the majority rule is that proceeds means “gross proceeds”. When a defendant is convicted of fraud, the defendant must forfeit the full amount of the scheme even if the defendant is convicted of only one or a few substantive counts.

On the other hand, in civil forfeiture actions, the definition of proceeds – as either gross proceeds or net proceeds – is not as clear. Proceeds is defined for civil forfeiture in 18 U.S.C. § 981(a)(2) as follows:

(A) In cases involving *illegal goods, illegal services*, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as a result of the commission of the offense giving rise to the forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving *lawful goods or services* that are *sold or provided in an illegal manner*, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods and services, or any part of the income taxes paid by the entity.

Thus, criminal forfeiture may be the better option in a public corruption case because criminal forfeiture will call for the forfeiture of gross proceeds.

IV. Innocent Owner

After the government has sustained its initial burden of proving the property is subject to forfeiture, a claimant may prevent the forfeiture by proving that he or she is an “innocent owner”. In both criminal and civil forfeiture, the innocent owner defense is dependent upon the timing of the owner’s acquisition of their interest in the property. Timing is the determining factor because under the relation back doctrine, the government’s interest vests in the property at the time of the offense giving rise to the forfeiture. As soon as the perpetrator commits the crime and generates proceeds, the government’s interest vests in the proceeds.

a. Preexisting and After Acquired Interests

A person with an interest in property that existed prior to the illegal activity is typically the owner of the property, a mortgage holder or a lien holder. A person with an interest in property that was acquired after the illegal activity can be the corrupt official, their spouse, family or friend, the bribe payer, a purchaser of the property, or a mortgage or lien holder who placed on lien on the property after the illegal activity.
b. Civil Forfeiture

A person claiming an interest that preexisted the illegal activity must prove they are an “innocent owner” by proving either: (1) they did not know the property was used to commit the offense, or (2) they have taken all reasonable steps to stop the illegal use. Specifically, pursuant to 18 U.S.C. § 983(d)(2)(A)(i)-(ii) and (B)(i)(I) and (II), a claimant with a preexisting interest is an “innocent owner” able to defeat the forfeiture if:

i. they did not know of the conduct giving rise to the forfeiture, or

ii. upon learning of the conduct, they did all that reasonably could be expected, under the circumstances, to terminate such use of the property, including: (1) giving timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to the forfeiture would occur or has occurred; and (2) in a timely fashion, revoking or making a good faith attempt to revoke permission for those engaging in such conduct to use the property or taking reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

This means that a property owner who is willfully blind to the distribution of illegal drugs on the property by their son is not an “innocent owner”. Note that the definition of “innocent owner” where the owner’s interest preexisted the illegal activity refers to “facilitating” property and whether the owner knew the property was being used to facilitate a crime and what actions they took to stop it. This is because, typically, an interest in proceeds is acquired after the offense.

If the claimant’s interest was acquired after the illegal activity occurred, to defeat the forfeiture as an “innocent owner”, pursuant to 18 U.S.C. § 983(d)(3), the claimant must prove:

i. they were a bona fide purchaser for value of the interest; and

ii. at the time they acquired the interest, they did not know and were reasonably without cause to believe that the property was subject to forfeiture.

If the claimant acquiring an interest after the illegal activity occurred was not required to prove they were a bona fide purchaser without cause to believe the property was subject to forfeiture, the wrongdoer could defeat the forfeiture by simply transferring the property to a third party.

c. Criminal Forfeiture

The innocent owner defense in a criminal case is only slightly different. The innocent owner defense for claimants in a criminal case who acquire their interest after the illegal activity is the same as that in a civil case. The claimant must prove they were a bona fide purchaser for value of the interest; and at the time of the purchase were without cause to believe the property was subject to forfeiture.

The “innocent owner” defense for owners with a preexisting interest is broader. A claimant with a preexisting interest is an “innocent owner” if their “interest was vested in [them] rather than the defendant or was superior to any [ ] interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property.” An example of the impact of the broader innocent owner defense in a criminal case can be seen where the government seeks to forfeit facilitating property. In the criminal case, if a defendant’s spouse has preexisting ownership interest in the family house, the house cannot be forfeited even if the spouse knowingly allowed the house to be used to facilitate the crime of conviction. The spouse simply needs to prove that their interest preexisted the illegal activity, the innocent owner defense applies and the forfeiture is defeated. In contrast, in a civil action seeking the forfeiture of that same house, the spouse’s “innocent owner” defense fails unless the spouse can prove (1) they did not know of the conduct giving rise to forfeiture or (2) upon learning of the conduct giving rise
to the forfeiture, they did all that they could reasonably be expected to do under the circumstances to terminate such use of the property.\textsuperscript{48}

V. Excessive Fines
The other significant defense to forfeiture is that a forfeiture may not constitute an \textit{excessive fine}.\textsuperscript{49} A forfeiture is an excessive fine if it is “grossly disproportional to the gravity of the offense”.\textsuperscript{50} The excessive fines analysis applies equally to civil and criminal forfeitures.\textsuperscript{51} With very limited exceptions, forfeiture of “proceeds” will not be excessive. Typically, the defense comes into play when the asset is forfeited as facilitating property or was involved in money laundering. The courts look to the following four factors in determining whether the forfeiture is excessive:

a. the nature of the crime and its connection to other criminal activity;
b. whether the defendant fits into the class of persons at whom the statute was aimed;
c. the maximum sentence or fine; and
d. the harm caused.\textsuperscript{52}

In \textit{United States v. Misla-Aldarondo},\textsuperscript{53} the defendant argued that the imposition of a $147,000 forfeiture money judgment arising out of a bribery and extortion scheme constituted an excessive fine. But the First Circuit affirmed the money judgment. The court noted that the government had proved that $147,000 was the corpus of criminal proceeds that the defendant had obtained at one point and it didn’t matter whether the defendant had retained any of those proceeds at the time of judgment.

The remedy for an excessive fine is to reduce the forfeiture as much as necessary to avoid the Eighth Amendment violation.\textsuperscript{54} After considering the factors above, if the forfeiture appears to be grossly disproportionate to the criminal activity, attempt to mitigate the forfeiture or forgo the forfeiture. One way to mitigate the forfeiture is to reach an agreement with claimants to forfeit an amount of cash, less than the value of the property, in lieu of the property.

\textbf{Initiating the Forfeiture Proceedings}

I. Seizing the Assets
Property subject to forfeiture is typically taken in one of the following ways: (1) it is seized pursuant to probable cause and an exception for the warrant requirement applies; (2) it is taken as evidence for the criminal case; (3) it is seized pursuant to a civil and/or criminal seizure warrant; or (4) it is restrained pursuant to a restraining order.\textsuperscript{55} Two statutes govern seizure warrants:

a. 18 U.S.C. § 981(b), which applies when the government has probable cause to believe property is subject to \textit{civil} forfeiture; and
b. 21 U.S.C. § 853(f), which applies when the Government has probable cause to believe property is subject to \textit{criminal} forfeiture.

It is advisable to obtain seizure warrants that rely on both the civil and criminal forfeiture statutes when seizing the asset so that either civil or criminal forfeiture can be used to ultimately forfeit the asset. (\textit{See Appendix 4, Sample Seizure Warrant Application & Affidavit.})
II. Filing the Forfeiture Action

The three methods for forfeiting property: administrative proceedings, civil judicial actions and criminal actions each have their advantages and disadvantages.

a. Administrative Forfeiture

Administrative forfeiture is the simplest procedure. The agency sends direct notice of the proposed forfeiture to all known potential claimants and publishes notice of the forfeiture. If no claim is filed, the asset is administratively forfeited. If a claim is filed, the administrative matter is closed and the matter is referred to the U.S. Attorney’s Office for the filing of a civil or criminal judicial action. The primary shortcoming to administrative forfeiture is that real property, as well as personal property (other than cash) having an aggregate value exceeding $500,000, may not be forfeited administratively.

b. Civil Forfeiture

Civil judicial forfeiture is an *in rem* proceeding brought against forfeitable property itself, rather than against a person who committed an offense. (See Appendix 2, Sample Civil Forfeiture Complaint, United States v. Proceeds of the Sale of a Condominium Located in the Ritz-Carlton in Los Angeles, California; et al.) Civil forfeiture is governed by 18 U.S.C. §981 and §983 and Rule G of the Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure (Supplemental Rules). Supplemental Rule G(2) requires that the complaint:

i. state the grounds for subject matter jurisdiction, *in rem* jurisdiction, and subject matter jurisdiction;
ii. describe the property with “reasonable particularity”;
iii. for tangible property, state its location when the property was seized and if different, its location when the action is filed;
iv. identify the authority for forfeiture;
v. state facts to support a “reasonable belief” that the government will be able to meet its burden of proof at trial;
vi. include an affidavit/certification from the agent to verify the complaint;
vii. be filed within 90 days after a valid administrative claim is filed or the court extended deadline.

The primary disadvantage of civil forfeiture over criminal forfeiture is that if the asset cannot be taken into custody, the asset cannot be forfeited civilly. The primary advantage of civil forfeiture is that the civil forfeiture case can be filed prior to indictment to preserve the assets pending the completion of the criminal prosecution. Another advantage is that a criminal conviction is not required to forfeit assets. The offense and the forfeitability of the asset need only be proven by a preponderance of the evidence.

c. Criminal Forfeiture

Criminal forfeiture is an *in personam* action and is part of a convicted defendant’s sentence. (See Appendix 3, Sample Indictment, Motion for Preliminary Order of Forfeiture, Preliminary Order, United States v. Bills.) The primary disadvantage of criminal forfeiture is that waiting until indictment to seize assets means that those assets are likely to have been spent, transferred or hidden. Another disadvantage is that the assets must be tied to a count of conviction, and if that count is overturned on appeal, or the defendant dies while an appeal is pending, the forfeiture is void.

The primary advantage of criminal forfeiture is that the asset does not need to be taken into custody. In fact, if the defendant has made the forfeitable assets unavailable – by, for example, spending the proceeds, selling, transferring or hiding the assets – the government can obtain a money judgment for the amount of the proceeds. Further, the
government can forfeit substitute untainted assets if the defendant has made the directly traceable assets unavailable for forfeiture. These advantages were seen in the following cases. In *United States v. Nagin*, after a jury convicted the defendant of bribery, “honest services” wire fraud, conspiracy to commit bribery and “honest services” wire fraud, and conspiracy to commit money laundering, the court entered a forfeiture money judgment under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(e) in the amount of $501,200.56, a sum equal to the proceeds of Nagins’ offenses. In *United States v. Eric Stevenson*, the government was able to collect against the defendant’s legitimate funds in his retirement account as a substitute asset to satisfy the $22,000 money judgment.

d. Parallel Proceedings
Parallel proceedings, that is, conducting administrative, civil and criminal forfeiture cases simultaneously, are not only proper, they are encouraged. By working together, you can “better protect the government’s interests (including deterrence of future misconduct and restoration of program integrity) and secure the full range of the government’s remedies (including incarceration, fines, penalties, damages, restitution to victims, asset seizure, civil and criminal forfeiture, and exclusion and debarment”). As a practical matter, using parallel proceedings allows the prosecutor to get the advantages of each type of proceeding while avoiding the disadvantages.

In a typical case, at the time the investigation goes overt and search warrants are executed, cash, vehicles and possibly art, jewelry, and antiques are seized pursuant to the search warrants and probable cause for the forfeiture. The assets are turned over to the agency to start administrative forfeiture proceedings by sending notice to potential claimants. At the same time search warrants are executed, bank accounts are seized pursuant to seizure warrants so that the account contents are not transferred with a few clicks of the target’s finger. Other personal property that won’t be found at the search warrant locations, for example a trash truck purchased with the proceeds of a bribery offense, are also seized pursuant to seizure warrants. Finally, on the day of the search, a civil complaint, and a Notice of *Lis Pendens* will be filed against any real property subject to forfeiture to preserve the equity pending completion of the forfeiture.

If the agency does not receive a timely claim to the assets noticed for administrative forfeiture, the asset is forfeited administratively. If a claim is timely filed, a civil forfeiture complaint must be filed within 90 days of receipt of the claim. If no claim is filed in response to the civil forfeiture complaint, the government seeks default judgment and the assets are forfeited civilly. If a claim is filed in the civil forfeiture action, the civil forfeiture action is typically stayed pursuant to 18 U.S.C. § 981(g) on the basis that civil discovery would adversely affect the related criminal investigation or prosecution. Finally, criminal forfeiture is pursued through the indictment by including notice to the defendant that the government intends to seek forfeiture of the directly forfeitable assets, a money judgment in an amount equal to the value of the proceeds, facilitating property, or property involved in the offense, and the government intends to seek substitute assets, as applicable.

**Litigating the Forfeiture**

If the case is tried, the trial must be bifurcated into guilt and forfeiture phases. After a guilty finding, the government has the burden of proving the forfeitability of the property by a preponderance of the evidence. Either party can demand the jury be retained to determine whether the government has met its burden of establishing the nexus between the property and the offense. However, if a request is not made to retain the jury, it is waived and the Court will determine the forfeiture issues as a part of sentencing. Because the amount of the money judgment is determined by the court, there is no need to retain the jury when the government seeks only a money judgment as to the amount of the proceeds resulting from the offense or the amount involved in money laundering. *(See Appendix 3, Sample Motion for Preliminary Order of Forfeiture, Preliminary Order, *United States v. Bills*.)
It is only after the entry of the preliminary order of forfeiture that third parties may litigate their claim to the property in an “ancillary proceeding.” To defeat the forfeiture, the claimant must show either that: (1) the claimant had an interest in the property before the illegal activity occurred that was vested in them rather than the defendant or was superior to the defendant’s interest at the time of the acts giving rise to the forfeiture of the property, or (2) the claimant was a bona fide purchaser for value and at the time of the purchase was without cause to believe the property was subject to forfeiture.

More often than not, the criminal case is resolved through a plea agreement. When negotiating the plea consider potential third party claims to the assets. If any property is titled to a nominee, spouse, family member, or business controlled by the defendant, negotiate admissions to facts that will support the forfeiture and defeat potential claims. Better yet, have potential claimants sign a Global Settlement Agreement resolving their potential claims. (See Appendix 5, Sample Plea Agreement, Global Settlement Agreement and Agreed Orders and Decree of Forfeiture, United States v. Oldiges.) If a parallel civil forfeiture was filed, consider negotiating the filing of an Agreed Order and Decree of Forfeiture in the civil action as soon the defendant enters his plea.

When globally resolving parallel civil and criminal forfeiture matters, resolving the forfeiture matters in the civil case can offer several advantages. First, if the criminal conviction is overturned on appeal, or the defendant dies after his plea but before he is convicted or while his criminal appeal is pending, the parties’ stipulated civil forfeiture of the assets would stand. In contrast, the criminal forfeiture could not be completed. Second, if the defendant absconds, the civil forfeiture can be completed in his absence under the “fugitive disentitlement doctrine.” Third, if the process of providing notice of the civil forfeiture has been completed (a necessary condition for obtaining a civil forfeiture decree), then resolving the forfeiture in the parallel civil will save months of time that would otherwise have to be devoted to completing the forfeiture notice process in the criminal case.

## Returning Assets to Victims

The government should seek both restitution and forfeiture in public corruption cases. At the end of a public corruption crime case, an order of restitution must be entered pursuant to the Mandatory Victims Restitution Act (MVRA). The Order of Restitution is likely to be for a government entity. In United States v. Bills, where Chicago paid over $124 million in contracts to install a red-light camera system after the city was persuaded to award the contract to an inferior company by Bills who selected the best red-light photos from bribe payer and the worst, unclear photos from the competitor claiming the photos were randomly selected, the city is the victim. But, government is not always the only victim. When Chicago state employees issued drivers licenses to truck drivers in exchange for bribes, one unqualified truck driver caused a serious accident resulting in the death of six children.

Regardless of the identity of the victim in the restitution order, the victim is liable to have difficulty getting payment. The MVRA does not include any provisions to preserve property for restitution. At the end of a criminal prosecution, most defendants have spent, transferred or hidden the proceeds of their crimes. They have no money to pay restitution.

The forfeiture statutes however, give the government the power to recover assets that far exceed those of victims. When a money judgment is ordered because the directly forfeitable assets could not be found, substitute assets can be seized, forfeited and sold to satisfy the money judgment. Through forfeiture procedures the government can seize the defendant’s assets before he knows he is being investigated and the assets are spent, transferred or hidden. After the assets are forfeited, either through civil or criminal forfeiture, and are sold, the proceeds are deposited in the Asset Forfeiture Fund. Thus, a victim’s hope of getting compensated for their loss may rest on the government’s superior ability to collect and liquidate a defendant’s assets under the forfeiture laws.
The Asset Forfeiture Fund is used to compensate victims for their losses related to the crime that gave rise to the forfeiture. Returning assets to victims is a priority in the Department of Justice. When CAFRA authorized the forfeiture of the proceeds of all SUAs, forfeitures increased dramatically and so did the amount of forfeited funds returned to victims. Remission and restoration are the two principle methods used to provide victims compensation.

The Attorney General has the sole authority to restore forfeited property to victims and to grant petitions for remission or mitigation. Restoration and remission both provide payment to the victims of the crimes underlying the forfeiture. The primary difference is that the victim must file a petition for remission while there is no need to file a petition for restoration. Remission is granted pursuant to 29 C.F.R. Part 9 when (1) the petitioner is a victim of the offense underlying the forfeiture and (2) other requirements are met, such as the victim lacked any involvement in the offense giving rise to the forfeiture. Restoration can be granted only when there is an order of restitution and the U.S. Attorney, or his or her designee, informs AFMLS that all victims have been properly accounted for in the restitution order, the victims do not have recourse reasonably available to them to obtain compensation for their losses, and the victims did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner, toward the commission of the offenses underlying the forfeiture.

**Conclusion**

Forfeiture has been with us since biblical times. It is however, only relatively recently that forfeiture has emerged from the peculiar practice of forfeiting vessels through admiralty procedures. By the mid-1980s, money laundering laws were enacted and forfeiture laws were strengthened to combat drug trafficking and money laundering. In the early 2000s, forfeiture laws were expanded to allow the forfeiture of the proceeds of almost all federal crimes. Forfeiture has now developed to the point where it is an essential tool to combat crime in white collar cases.

The best way to achieve justice in a white collar case is to use all the tools in the government's toolkit. The essential tool is asset forfeiture. This guide describes the work required to execute asset forfeiture, including: (1) evaluating the case for forfeiture potential, (2) finding and tracing assets, (3) obtaining and analyzing financial records, (4) diagraming the money flow, (5) preparing a net worth and unexplained income analysis, (6) obtaining seizure warrants, (7) seizing assets at the time the investigation goes overt and search warrants are executed, (8) drafting and filing civil forfeiture complaints and (9) drafting criminal indictments with forfeiture allegations. The work involved in executing civil and criminal forfeiture is often complex, time-consuming and requires a significant amount of advance planning. But, the work is necessary.

White collar crimes, including public corruption crimes, are motivated by money. The criminal prosecution typically results in conviction, incarceration and an order for restitution. But, white collar criminals typically receive lesser sentences upon conviction than drug or violent crime defendants. White collar criminals are often more willing to admit to their guilt than they are to give up their assets. A year or two in a federal penitentiary is not too problematic when there are millions of dollars waiting at home upon release. Although restitution must be ordered, victims have little power to collect the restitution. By the time the defendant is convicted and restitution is ordered, the defendant’s assets have typically been spent, transferred or hidden. Asset forfeiture addresses these problems. Through criminal forfeiture, the government can forfeit the crime proceeds. Further, if the defendant has spent, transferred or hidden the proceeds, a forfeiture money judgment for the amount of the proceeds can be obtained and is collectable against the defendant’s legitimate substitute assets. But, the most powerful tool is civil forfeiture. Through civil forfeiture, the government can seize the crime proceeds before the defendant knows he is being investigated and spends, transfers or hides the assets. Civil forfeiture not only takes the profits out of the crime by taking the crime proceeds away from the defendant, civil asset forfeiture is the best tool to preserve the assets
pending completion of the case. By seizing the assets before the defendant spends, transfers or hides the assets, the crime proceeds can come full circle and be returned to the victims. Through civil asset forfeiture, the proceeds of the crime are given back to the very people the defendant lied to, stole from, or cheated. This is why forfeiture use has exploded and rightfully will continue to expand.

Endnotes

4 See, Appendix 1 (Selected State Forfeiture Statutes).
5 Former Korean President Chun Doo Hwan had been convicted in 1997 in criminal court in Korea of accepting more than $200 million in bribes from Korean companies in the 1990s. In 2013, the United States learned that Chun, his family members, and associates may have laundered the bribery proceeds. The FBI seized $726,951.45 from a California escrow account after tracing the funds in the account to the sale of a house Chun’s son had purchased with bribe money. The United States was also able to trace Chun’s bribery to a secured investment worth approximately $500,000 in a Pennsylvania company.
7 United States v. $30,670 in U.S. Funds, 403 F.3d 448, 465-66 (7th Cir. 2005) (district court is entitled to rely on claimant’s bankruptcy filing and tax returns in determining that claimant lacked sufficient legitimate income to account for possession of large amount of currency).
9 PIN has supervisory jurisdiction over public corruption offenses and can provide additional information and assistance.
10 Any act involving bribery which is chargeable under state law and punishable by imprisonment for more than one year is defined by 18 U.S.C. § 1961 (1) as a “specified unlawful activity”.
13 See United States v. $6,190.00 in U.S. Currency, 581 F.3d 881, 884 (9th Cir. 2009)(discussing the listings of SUAs in 18 U.S.C. § 1956(c)(7) and 18 U.S.C. § 1961(1).)
14 United States v. McGaulity, 279 F.3d 62, 75-76 (1st Cir. 2002).
15 United States v. Iacoboni, 363 F.3d 1, 6 (1st Cir. 2004) (gambling proceeds used to promote the SUA is forfeitable as property involved in promotion money laundering); United States v. Millet, 123 F.3d 268, 277-78 (5th Cir. 1997) (defendant ordered to forfeit amount equal to bribe money; no discussion).
16 United States v. Kennedy, 201 F.3d 1324, 1326 (11th Cir. 2000) (equity acquired when SUA proceeds used to buy residence was forfeitable as property involved in a violation of § 1957); United States v. Kwon, 714 F.3d 782, 794-95 (4th Cir. 2013).
17 United States v. Aguar insurgas-Castillo, 668 F.3d 7, 17 (1st Cir. 2012).
18 United States v. Huber, 404 F.3d 1047, 1058 (8th Cir. 2005) (the SUA proceeds involved in a financial transaction, as well as any clean money commingles with it, constitute the corpus of the money laundering transaction; both are subject to forfeiture).
19 United States v. Huber, 404 F.3d at 1058, United States v. Aguar insurgas-Castillo, 668 F.3d at 17; United States v. Seber, 562 F.3d 1344, 1369-70 (11th Cir. 2009).
20 18 U.S.C. § 983(c); United States v. Seber, 562 F.3d 1344, 1369-70 (11th Cir. 2009) (clean money in bank account jeweler used to launder drug dealer’s money was forfeitable as facilitating property, but money in other bank accounts did not pass the substantial connection test.)
21 AFMLS recommends looking at whether the property had more than a negligible, inconsequential, incidental, tangential, or merely fortuitous role in facilitating or concealing the criminal activity; whether the property was specifically designed, adapted, or modified to facilitate or conceal the criminal activity, or the property otherwise possessed unique features or characteristics making it particularly useful for facilitating or concealing the criminal activity; and the amount of time that the property was used, the frequency of such use, and total portions(s) of the property used in facilitating or concealing the underlying criminal activity in considering whether there was a substantial connection between the property and the offense.
22 United States v. Premises Known as 3639 2nd St., 869 F.2d 1093, 1096 (8th Cir. 1989); United States v. Herder, 594 F.3d 352, 364-65 (4th Cir. 2010).
23 (Appendix 2).
27 United States v. One Lincoln Navigator 1998, 328 F.3d 1011, 1015 (8th Cir. 2003) (state law used to determine if claimants are owners, but state law is overridden by section 983(d)(6) if the owner is a nominee who exercises no dominion and control over the property).
30 Supplemental Rule G(7)(b).
31 United States v. $8,221,877.16, 330 F.3d 141, 158 (3rd Cir. 2003).
32 United States v. $174,206, 320 F.3d 658, 662 (6th Cir. 2003) (drug dealer’s lack of legitimate income, as demonstrated by his federal tax returns, is sufficient to establish forfeitability of his property by a preponderance of the evidence); United States v. 6 Fox Street, 480 F.3d 38, 44 (1st Cir. 2007) (Claimant’s lack of legitimate income, as reflected on his tax returns during the time he sold drugs and acquired the defendant assets, left district court with no choice but to grant summary judgment on forfeitability); United States v. $30,670 in U.S. Funds, 403 F.3d 448, 466 (7th Cir. 2005) (claimant’s self-serving admission that earlier bankruptcy filing and tax returns – showing minimal legitimate income – were false is insufficient to create a genuine issue of material fact).
33 United States v. Banco Cafetero Panama, 797 F.2d 1154, 1158-62 (2nd Cir. 1986) (the government may use “first in, first out” or “first in, last out” analysis in tracing tainted funds through volatile bank account; subject to the “lowest intermediate balance” rule).
35 United States v. Warshak, 631 F.3d 266, 329-330 (6th Cir. 2010) (all proceeds of defendant’s business are forfeitable because the business was “permeated with fraud” but even if a part of the business was legitimate, the proceeds of that part are nonetheless forfeitable if the legitimate side of the business would not exist but for the “fraudulent beginnings” of the entire operation); United States v. Smith, 749 F.3d 465, 488-89 (6th Cir. 2014).
36 United States v. Esquenazi, 752 F.3d 912, 931 (11th Cir. 2014) (money defendant retained by having its debt reduced in exchange for promise to pay a bribe was the proceeds of the offense).
38 18 U.S.C. § 982 and 21 U.S.C. § 853(p); United States v. Peters, 732 F.3d 93, 101 (2nd Cir. 2013) (the purpose of forfeiture is punishment; forfeiting defendant’s profits is not punishment because it merely returns him to the economic position he occupied before he committed the offense; therefore, defendant must forfeit gross receipts).
39 United States v. Venturella, 585 F.3d 1013, 1015, 1016-17 (7th Cir. 2009).
42 United States v. Collado, 348 F.3d 323, 327-28 (2nd Cir. 2003).
43 United States v. Hooper, 229 F.3d 818, 822-23 (9th Cir. 2000).
47 Id.
48 18 USC § 983(d)(2).
50 Id.
51 United States v. Ahmad, 213 F.3d 805, 824, 815 n.3 (4th Cir. 2000).
52 United States v. Malewicka, 664 F.3d 1099, 1104 (7th Cir. 2011).
53 United States v. Miza-Alderondo, 478 F.3d 52, (1st Cir. 2007)
54 United States v. Castello, 611 F.3d 116, 120-21 (2d Cir. 2010) (criminal forfeiture is mandatory, limited only by the Excessive Fines Clause of the Eighth Amendment; thus a court must enter a forfeiture order equal to the maximum authorized by statute, reduced only by the minimum necessary to avoid the Eighth Amendment violation.)
57 United States v. Loubian, 756 F.3d 295, 307 N. 12 (4th Cir. 2014); United States v. Vampire Nation, 451 F.3d 189, 202 (3rd Cir. 2006); United States v. Lazarenko, 476 F.3d 642, 647 (9th Cir. 2007).
58 United States v. Davenport, 668 F.3d 1316, 1320 n.7 (11th Cir. 2012).
In criminal forfeiture cases, the process of giving notice to third parties, and resolving any third-party claims, begins only after the defendant has been found guilty and the defendant’s interest in property subject to forfeiture has been preliminarily forfeited. The subsequent process of providing notice of the forfeiture to third parties will take approximately two months to complete.

18 U.S.C. § 3663A.

Critics of civil forfeiture arguing that the “explosion” in civil forfeiture is a function of law enforcement’s “policing for profit” and the desire to receive “equitable sharing” typically fail to acknowledge that the increased use of civil forfeiture coincides with the seizure and forfeiture of assets in white collar crime involving significantly larger amounts of money taken from victims. Assets are returned to victims before any equitable sharing is authorized.

\[\text{See Returning Forfeited Assets to Criminal Victims}: \text{http://www.justice.gov/criminal/afmls/pubs/}.\]

\[\text{Asset Forfeiture Policy Manual (2013), Chap. 12, Sec. 1.A.}\]

\[\text{Asset Forfeiture Policy Manual (2013), Chap. 12, Sec. 1.B.}\]

\[\text{See Austin v. United States, 509 U.S. 602, 611-13 (1993).}\]

\[\text{Comprehensive Crime Control Act of 1984, Pub.L. No. 98-473, § 310, 98 Stat. 1837 (1984); Asset Forfeiture Law in the United States, 2d. Stefan D. Cassella, Section 2-4, (a dramatic expansion of the forfeiture laws occurred in 1978 and 1984 when Congress amended the drug forfeiture statutes, first to allow the forfeiture of the proceeds of the offense, and then to permit the (forfeiture of property used to facilitate it.)}\]


\[\text{See, Policing For Profit: The Abuse of Civil Asset Forfeiture, 2nd Ed. Dick Carpenter II, Ph.D., November 2015, pg. 5 (The forfeiture funds of the DOJ and Treasury Department together took in nearly $29 billion from 2001 to 2104.)}\]

\[\text{Id.}\]