OVERVIEW OF ASSET FORFEITURE

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I. WHY DO FORFEITURE

There are lots of reasons to invest the time to do an asset forfeiture case

- *Kaley v. United States,* ___ U.S. ___, 134 S. Ct. 1090 (2014) (forfeiture serves to punish the wrong-doer, deter future illegality, lessen the economic power of criminal enterprises, compensate victims, improve conditions in crime-damaged communities, and support law enforcement activities such as police training);

1. Punish the wrongdoer

— don't just put him jail; take away the fruits of the crime;

— make him pay a judgment equal to the proceeds he received, even if he has spent the money, and even if he has reimbursed the victim

  - *United States v. Peters*, 732 F.3d 93, 98-99,101 (2nd Cir. 2013) (the purpose of forfeiture is punishment; that is what distinguishes forfeiture from restitution and other remedial tools; restitution puts the defendant and the victim back in the position they were in before the crime occurred; forfeiture punishes the defendant by forcing him to pay the gross receipts of the crime, not just his net profit);

2. Deter other wrongdoers

— the point of committing the crime was to make money

— if the defendant does not get to keep the money, there is less incentive for the next person to commit the same offense

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- *United States v. Martin*, 662 F.3d 301, 309 (4th Cir. 2011) (Criminal forfeiture is part of the defendant's sentence; its purpose is "to deprive criminals of the fruits of their illegal acts and deter future crimes");

3. Incapacitation: Take away the tools of the trade and the economic resources

— we don't want drug dealers to keep the airplane so they can use it again,

— In a money laundering case, it would make no sense to let the money launderer keep the money

— We don't want to let corrupt leaders of developing countries to use the US financial system to loot their treasuries and safeguard a nest egg to use when they have to go into exile

4. Disrupt the organization

— money is the glue that holds organized criminal enterprises together; they have to recycle the money to keep the scheme going

— it is harder for a drug organization to replace the money than to replace the drugs

— taking the money does more to interrupt the cycle than any number of buy/bust arrests

— the same is true for persons engaged in wildlife trafficking; seizing the money flowing from Asian markets back to the poaching enterprises is more effective than arresting the guy with the truck and the gun in Africa

— figuring out how terrorism is financed, and taking away the money before it can be used, is a critical part of the anti-terrorism effort

— we don't want organized crime (US or Russian) or drug organizations acquired great wealth that they may use to control markets or institutions

— and seizing money destined for sanctioned countries like N. Korea and Iran disrupts their ability to evade those sanctions

5. Get money back to the victim

— forfeiture is a more effective way of recovering money for victims than ordering the defendant to pay restitution

- *United States v. Blackman,* 746 F.3d 137, 143 (4th Cir. 2014) ("The Government's ability to collect on a [forfeiture] judgment often far surpasses that of an untutored or impecunious victim of crime . . . Realistically, a victim's hope of getting paid may rest on the Government's superior ability to collect and liquidate a defendant's assets" under the forfeiture laws);

6. Protect the community

— shutting down the crack house or meth lab removes a hazard to public health and safety and gives law enforcement the opportunity to convince the community that they're not letting the bad guys profit from their crimes

— and ensures that the playing field is level, so that people trying to run businesses honestly don't have to compete with capital from illegal sources

7. Recycle the money

— forfeited funds can be shared with state & local law enforcement and used to fund law enforcement programs.

— and some forfeited property can be put into official use or handed over to community organizations

— this is the controversial feature of forfeiture

II. WHAT CAN YOU FORFEIT?

In the US, every crime carries with it a different description of the property subject to forfeiture

— in general, the Government can forfeit the proceeds of the offense

— for many crimes, it can forfeit facilitating property; that is, property used to make the crime easier to commit

— for money laundering, it can forfeit all property involved in the financial transaction

— for RICO, it can for the defendant's entire interest in the RICO enterprise

— and in terrorism cases the Government can take everything the terrorist owns, whether the used it to commit the terrorism offense or not

— so, the prosecutor needs to check the statute to see what he can forfeit in a particular case

Your national law may be different

— for the purposes of this presentation, I'm going to assume that your law authorizes at least the forfeiture of proceeds and property used to commit the offense

1. Proceeds

What constitutes proceeds in most cases is fairly obvious

— it's whatever the defendant acquired as a result of the offense

— usually that's expressed in terms of his gross receipts without any reduction for costs

- *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 the gross receipts);

- *United States v. McHan*, 101 F.3d 1027, 1041-42 (4th Cir. 1996) (gross proceeds forfeitable in drug case); *United States v. Keeling*, 235 F.3d 533, 537 (10th Cir. 2000) (same); *United States v. Colon*, 522 Fed. Appx. 61, 63 (2d Cir. 2013) (same); *United States v. Heilman*, 377 Fed. Appx. 157, 211 (3d Cir. 2010) (same; following *McHan*);

- *But see United States v. Jarrett*, 133 F.3d 519, 530-31 (7th Cir. 1998) (affirming calculation that gave defendants credit for cost of heroin);

The scope of the term "proceeds" can actually be quite broad:

— proceeds includes any property traceable to the proceeds, including any appreciation in the value of that property.

- *United States v. Betancourt*, 422 F.3d 240, 251 (5th Cir. 2005) (if defendant buys a lottery ticket with drug proceeds, the lottery winnings are traceable to the offense even though the value of the ticket appreciated enormously when it turned out to contain the winning number);

— under the "but for" test, an entire business, and all of its revenue and assets, are subject to forfeiture if the business would not exist but for the investment of criminal proceeds to start the business or to keep it going.

- *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 nevertheless 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) (following *Warshak*; if business is so pervaded by fraud that its revenue stream would not have existed but for the fraud, any asset derived from that revenue stream is forfeitable as proceeds);

— and it also includes not only property obtained directly by the defendant as a result of the offense, but also property *retained*, or obtained by a third party who acted in concert

- *United States v. Torres*, 703 F.3d 194, 199 (2d Cir. 2012) (all that is required is a "causal nexus between the wrongdoer's possession of the property and her crime"; rent money that defendant saved or retained as a consequence of the crime is proceeds obtained "indirectly");

- *United States v. Peters*, 732 F.3d 93, 102 (2nd Cir. 2013) (because the statute makes defendant liable for property obtained "directly or indirectly," he is liable for proceeds obtained by a corporation that he dominates or controls, even if he did not obtain the money himself);

- *United States v. Olguin*, 634 F.3d 384, 398-99 (5th Cir. 2011) (the provision authorizing the forfeiture of funds obtained "directly or indirectly" is the statutory basis for joint and several liability, making each defendant liable for the proceeds obtained by his co-conspirators whether or not he obtained any of the funds himself);

While the forfeiture of proceeds is not a new concept, there are some issues that are very much alive in the courts right now

— one has to do with whether the gross proceeds rule should apply in white collar cases, or whether the defendant should be given credit for value actually provided

- *United States v. Martin,* 2014 WL 221956, *5 (D. Idaho Jan. 21, 2014) (contractor who obtains a Government contract by falsely claiming eligibility for a program for disadvantaged businesses must forfeit the net profits, not the gross proceeds, of the fraudulently-obtained contracts);

— the other is whether everyone convicted of the same crime should be held jointly and severally liable for the proceeds of the entire offense, or whether a person's liability should be limited to what he personally obtained.

Honeycutt

In *Honeycutt v. United States,* the Supreme Court held that a criminal defendant is liable to forfeit only the proceeds that he personally obtained, and is not liable vicariously for proceeds obtained by co-conspirators

- in that case, two brothers were convicted of selling drugs from the older brother's business
- altogether, they received something like $260,000 for the drugs they sold, but all of the money went to the older brother
- when the older brother agreed to forfeit $200,000 the Government sought to hold the younger brother liable for the remaining $60,000, but the Supreme Court said no
- the younger brother received none of the money, so he was not liable to forfeit anything, even though he was convicted of the same offense
    - *Honeycutt v. United States,* ___ U.S. ___, 137 S. Ct. 1626 (2017) (application of the doctrine of joint and several liability is inconsistent with statutory language limiting criminal forfeiture to "proceeds the person obtained"; defendant cannot be liable for proceeds obtained by someone else);

This has created a lot of confusion in the lower courts where *Honeycutt* has to be applied to cases involving person acting in concert with each other

Acting in concert

Suppose five people are convicted of receiving a $300,000 bribe to betray a law enforcement investigation

- Can the Government assume that they split the money five ways ($60,000 each), or does it have to prove how they split it up before it can hold any of them liable to forfeit anything?
    - *United States v. Lobo*, 2017 WL 2838187, *6 (S.D.N.Y. June 30, 2017) (defendant, one of five individuals who received a $300,000 kickback as part of a money laundering scheme, is not liable for the forfeiture of any part of the money unless the Government can prove how the kickback was divided among the conspirators);

Suppose a family – mom, dad and an adult child – run a shoplifting scheme and obtain hundreds of thousands of dollars selling the stolen merchandise on eBay

- Does the Government have to show how they divided the money among themselves

    - *United States v. Bogdanov*, 863 F.3d 630 (7th Cir. 2017) (saving "for another day" the application of *Honeycutt* to proceeds received by family members who acted jointly in committing an offense);

Assets acquired by the leader

Suppose the leader of a drug organization is convicted of heading an operation that realized a million dollars in drug proceeds, some of which he allowed his underlings to retain as their share

- Is he liable only for the amount he kept for himself?

    - *S.E.C. v. Metter*, 706 Fed. Appx. 699, 702 n.2 (2nd Cir. 2017) (Honeycutt is limited to cases involving "incidental figures" whose role in the offense does not justify joint and several liability and does not apply to a person with a controlling interest who determined how the proceeds of the offense were distributed);

    - *United States v. Ward*, 2017 WL 4051753 (W.D. Mich. Aug. 24, 2017) (leader of a drug organization "obtains" the gross proceeds of the drug offense, even if some of the money is actually received by his employees; *Honeycutt* does not limit his liability to the money that comes into his own hands);

    - *United States v. Djibo,* 730 Fed. Appx. 52 (2nd Cir. 2018) (remanding forfeiture order holding ringleader of heroin conspiracy jointly and severally liable for the wholesale value of the drugs seized from his co-conspirators);

It will take some time to sort this all out.

2. Facilitating Property

The term "property used . . . to facilitate the commission of the offense" is very broad

- facilitating property is anything that makes the crime easier to commit or harder to detect

    - *United States v. Schifferli*, 895 F.2d 987, 990-91 (4th Cir. 1990) (dentist's office "provided an air of legitimacy and protection from outside scrutiny," and thus made the crime of writing false prescriptions less difficult to commit and "more or less free from obstruction or hindrance";

- *United States v. Huber*, 404 F.3d 1047 (8th Cir. 2005) (facilitating property is anything that "makes the prohibited conduct less difficult or more or less free from hindrance");

- *United States v. Rivera*, 884 F.2d 544, 546 (11th Cir. 1989) (defining facilitating property broadly);

In cases stretching back over decades, courts have upheld the forfeiture of real property, vehicles, and other personal assets as facilitating property

- *United States v. Diaz*, 413 Fed. Appx. 704, 708 (5th Cir. 2011) (real property where owner allowed drug dealers to park their tractor-trailers while waiting to transport drugs and money across the border forfeited as facilitating property);

- *United States v. Ortiz-Cintron*, 461 F.3d 78, 80 (1st Cir. 2006) (residences where defendants packaged drugs and stored drug money, and where telephone calls were made, was forfeitable as facilitating property);

- *United States v. Juluke*, 426 F.3d 323, 326 (5th Cir. 2005) (property is subject to forfeiture as facilitating property under § 853(a) even if only a portion of it was used to facilitate the offense; defendant's residence was forfeitable even though no drugs were found in the house because he parked his car containing heroin in the driveway and kept guns and currency in the house);

- *United States v. Singh*, 390 F.3d 168, 190 (2d Cir. 2004) (a medical license is forfeitable as facilitating property under section 853(a)(2) if the doctor uses the license to distribute controlled substances in violation of the Controlled Substances Act; under section 853(b), property includes "rights, privileges, interests, claims, and securities");

- *United States v. Harris*, 903 F.2d 770, 777 (10th Cir. 1990) (under section 853(a)(2), property used to facilitate a drug offense is forfeitable in its entirety, even if only a portion of the property was used for the illegal purpose);

— in fact, an entire business and/or all of its assets could be forfeited as facilitating property

- *United States v. $7708.78 in U.S. Currency,* 2011 WL 3489835, *3 (S.D. Miss. Aug. 9, 2011) (facilitating property is anything that makes the crime "less difficult or more or less free from obstruction or hindrance;" a pharmacy used as a cover for the illegal distribution of drugs is forfeitable as facilitating property, and hence so are all of its assets; including funds in its bank accounts that include money traceable to legitimate sales);

- *United States v. Segal*, 432 F.3d 767, 779 (7th Cir. 2005) (if a business is forfeited, then so are all of its assets, including any subsidiary business that is wholly owned by the forfeited business; that there is no independent basis for the forfeiture of the subsidiary does not matter);

But the Government does have to show that the connection between the property and the offense was more than "incidental or fortuitous"

- 18 U.S.C. § 983(c)(3) requires a "substantial connection" between the property and the offense

- if the connection is too tangential, the forfeiture will not succeed

    - *United States v. Herder*, 594 F.3d 352, 364-65 (4th Cir. 2010) (the substantial connection test applies in both civil and criminal forfeiture cases, but the test is satisfied by showing that the property made the offense less difficult to commit, or more or less free from obstruction or hindrance; cash in defendant's pocket at the time of his arrest forfeited as property used to facilitate possession with intent to distribute);

    - *United States v. Heldeman*, 402 F.3d 220 (1st Cir. 2005) (forfeiture of the residence where physician wrote illegal prescriptions for steroids and painkillers satisfies the requirement; it served as a base of operations as surely as the place where a drug dealer stores and delivers drugs; it makes no difference that the offense could as easily have been committed in another place);

    - *United States v. Coffman,* 364 Fed. Appx. 192, 193-94 2010 WL 373773, *2 (6th Cir. 2010) (evidence that defendant sold drugs to guests at his residence sufficient to establish substantial connection);

All forfeitures of facilitating property are limited by the Excessive Fines Clause of the Eighth Amendment.

- that means that a claimant can ask the court to reduce or eliminate the forfeiture if it would be "grossly disproportional to the gravity of the offense"

    - 18 U.S.C. § 983(g) (codifying the *Bajakajian* decision for civil forfeiture cases)

    - *United States v. Bajakajian*, 524 U.S. 321, 323 (1998) (full forfeiture of unreported currency in a CMIR case would be "grossly disproportional to the gravity of the offense" unless the currency was involved in some other criminal activity);

3. Money Laundering

If you prove the money laundering offense, you can forfeit "all property involved" in the offense

— this term is broader than proceeds and facilitating property

— it includes, for example, any clean money commingled with the proceeds when the money laundering offense takes place

— and it includes the property that is acquired in the course of the money laundering transaction, even if commingled funds are involved

- *United States v. Huber*, 404 F.3d 1047, 1056, 1058 (8th Cir. 2005) (forfeiture under section 982(a)(1) in a money laundering case allows the Government to obtain a money judgment representing the value of all property 'involved in' the offense, including the money or other property being laundered [the corpus], and 'any property used to facilitate the laundering offense'; the corpus includes untainted, commingled property);

- *United States v. Beltramea,* 2016 WL 427096, *6-7 (N.D. Iowa Feb. 3, 2016) (defendant's use of fraud proceeds to pay for improvements to real property was a money laundering offense, making the property forfeitable in its entirety as the "object" of the offense);

- *United States v. Aguasvivas-Castillo*, 668 F.3d 7, 17 (1st Cir. 2012) (retailer who commingled $4.4 million in food stamp fraud proceeds with legitimate funds "to shield the fraud" ordered to forfeit $20 million);

Again, this is limited by the Eighth Amendment

- *United States v. Stanford,* 2014 WL 7013987, *4-6 (W.D. La. Dec. 12, 2014) (declining to forfeit residence when defendant pays down mortgage with commingled funds in violation of § 1957 but drug proceeds were a relatively small part of the commingled funds);

- *But see United States v. Beltramea,* 2016 WL 427096, *10 (N.D. Iowa Feb. 3, 2016) (ordering forfeiture of real property involved in money laundering offense in its entirety; "money laundering inflicts significant harm on society as a whole because it attempts to legitimize criminally obtained funds and impedes law enforcement");

OK. That's *what* you can forfeit in some of the typical cases:

— proceeds and facilitating property, and perhaps much more if you charge RICO or money laundering or terrorism

— now, the question is how do we do forfeiture

III. OVERVIEW OF FORFEITURE PROCEDURE

A. Administrative and Civil Forfeiture

In the US there are three kinds of forfeiture: administrative, civil and criminal

Administrative forfeiture:

Most forfeitures start out as administrative forfeitures handled by the seizing agency;

- these can be purely federal cases or cases that the federal agency adopts from State or local law enforcement
- the agency sends out notice and if no one claims the property, it is forfeited by default;
- there is no prosecution; no court or prosecutor gets involved
    - *see* 18 U.S.C. § 983(a)(1) and (2), and 19 U.S.C. § 1602, *et seq.,* setting forth the procedures governing administrative forfeitures
- in 80 percent of the cases, no one files a claim to the property – often because there is a parallel criminal prosecution

Civil judicial forfeiture

If someone does contest the forfeiture the Government has the option of doing it civilly or criminally, *see* 18 U.S.C. § 983(a)(3)

- civil forfeiture cases (often called "non-conviction-based" or "NCB" forfeitures) are *in rem* actions against the property; that's why they have funny names
- civil forfeiture is simply a procedural device designed to get everyone with an interest in the property in the courtroom at the same time
    - *United States v. Ursery*, 518 U.S. 267, 295-96 (1996) (Kennedy, J. concurring) (proceedings *in rem* are simply structures that allow the Government to quiet title to criminally-tainted property in a single proceeding in which all interested persons are required to file claims contesting the forfeiture at one time);
    - *United States v. Real Property Located at 475 Martin Lane*, 545 F.3d 1134,1144 (9th Cir. 2008) ("*in rem* actions are generally considered proceedings against the

world" in which "the court undertakes to determine all claims that anyone has to a thing in question");

The important thing to know about civil forfeiture is that it doesn't require a conviction or even a criminal case,

- but the Government still has to prove that a crime was committed *and* that the property was derived from or used to commit that crime

Moreover, the owner of the property does not have to be the wrongdoer

- if the owner is not the wrongdoer, however, he can assert an innocent owner defense
- so, for example, if someone uses his wife's car to commit a crime but she knew nothing about it, the Government must return the car to the wife and pay her attorney's fees
- but if the wife knew all about the crime and let her property be used to commit it, we can forfeit the car in civil case even though the wife is not charged with any crime
    - *Bennis v. Michigan*, 516 U.S. 442, 446 (1996) (innocent property owners have no protection from civil forfeiture under the Due Process Clause; unless the legislature enacts an innocent owner defense by statute, property may be forfeited based solely on its use in the commission of an offense);
    - 18 U.S.C. § 983(d) (creating a statutory innocent owner defense for civil forfeiture cases);

Civil forfeiture procedure is set forth in Supplemental Rule G of the Federal Rules of Civil Procedure.

If civil forfeiture is so wonderful, why doesn't the Government forfeit everything civilly instead of including it as part of a criminal case?

- first, it's a lot of extra work for something that can be done easily if there is a criminal case
- also, civil forfeiture has a serious limitation
- recall the second requirement: that the Government must prove the property was derived from or used to commit the crime

— because it is an *in rem* action against specific property, there are no substitute assets or money judgments in civil forfeiture cases

— so, if the Government cannot establish the connection between the particular asset and the underlying crime, there can be no forfeiture

— for example, if someone defrauds his victims of a million dollars, and years later we find a million dollars in his bank account, we can recover it through civil forfeiture only if it is traceable to the fraud

— if it is not traceable, there is nothing we can do

- *United States v. $465,789.31 Seized from Term Life Ins. Policy,* 2018 WL 4568408 (D. Conn. Sep. 24, 2018) (if, at trial, the Government is unable to prove its money laundering theory to establish that all funds in a commingled account are forfeitable, and must rely on a proceeds theory, it will have to use accounting techniques to establish that forfeitable proceeds were in the account; what techniques it will be able to use will be determined at the time of trial);

So civil forfeiture should be reserved for cases where the criminal forfeiture is not possible, or where a criminal case is not ready to indict

When would you use civil forfeiture?

Examples

1. when the property is seized but the forfeiture is unopposed
2. when the wrongdoer is dead or is incompetent to stand trial;
3. when the defendant is a fugitive or a foreign national beyond jurisdiction of the United States;
4. when the statute of limitations has run on the criminal case;
5. when we have recovered the property but do not know who committed the crime giving rise to the forfeiture;
6. when the defendant pleads guilty to a crime different from the one giving rise to the forfeiture;
7. when there is no federal criminal case because the defendant has already been convicted in a state or foreign or tribal court;

8. when there is no criminal case because the interests of justice do not require a conviction;

9. when the evidence is insufficient to prove that the defendant committed the offense beyond a reasonable doubt;

10. when the defendant uses someone else's property to commit the crime and that person is not an innocent owner.

— the key disadvantage to civil forfeiture is that there is no possibility of obtaining a money judgment or forfeiting substitute assets

— we can only forfeit property that is traceable to the offense

— I will give you a number of illustrations of all of this with some PowerPoint slides after the break

Criminal Forfeiture

The Supreme Court has held that criminal forfeiture is part of the defendant's sentence.

- *Libretti v. United States*, 516 U.S. 29, 39 (1995) ("criminal forfeiture is an aspect of punishment imposed following conviction of a substantive criminal offense"); *see* Rule 32.2(b)(3) (the order of forfeiture "shall be made part of the sentence and included in the judgment");

- *United States v. Smith,* 770 F.3d 628, 637 (7th Cir. 2014) ("Criminal forfeiture is considered to be punishment and therefore is part of the sentencing process;" therefore, the Government's burden at the forfeiture hearing is preponderance of the evidence, and the rules of evidence do not apply);

A number of things flow from that:

— here are a few of the most important points that illustrate some of the advantages and disadvantages of criminal forfeiture as compared to civil forfeiture

Because forfeiture is part of the sentence, there is no forfeiture unless the defendant is convicted

— if the conviction is vacated, so is the forfeiture

- *United States v. Harris*, 666 F.3d 905, 910 (5th Cir. 2012) (reversal of defendants' money laundering conviction means that $1.5 million money judgment must be reversed as well);

— which is why it's useful to have a parallel civil forfeiture case available as an option

Because forfeiture is part of the sentence, the forfeiture will be limited to the property connected to the particular crime for which the defendant was convicted, unless your country recognizes the concept of extended confiscation

— the United States does not recognize that concept except in conspiracy cases and cases involving continuing schemes

— if we convict the defendant of Crime A, we can only forfeit the property connected to Crime A

— it doesn't matter that the defendant could have been convicted of Crimes B and C

- *United States v. Capoccia,* 503 F.3d 103, 110, 114 (2nd Cir. 2007) (notwithstanding prefatory language in the indictment stating that the defendant's acts were part of a larger scheme, defendant who was convicted of an ITSP offense under § 2314 may be made to forfeit only the proceeds of the specific acts alleged in the indictment; if the Government wants to forfeit property involved in other acts that were part of the scheme (but not alleged because of venue issues) it should have charged a conspiracy or another offense of which a scheme is an element);

— the same is true if you limit the offense of conviction to a particular drug deal or a particular period of time

- *United States v. Juluke*, 426 F.3d 323 (5th Cir. 2005) (the Government must prove that the property subject to forfeiture was the proceeds of the drug activity that formed the basis for the defendant's conviction, not of the defendant's drug trafficking generally*);*

- *United States v. Robbins,* 2011 WL 3862054, *5 (N.D. Iowa Aug.11, 2011) (because defendant pled guilty only to manufacturing marijuana during a two-month period, money judgment must be limited to proceeds received from selling marijuana manufactured during that period);

– one way around this is to charge a conspiracy

- *United States v. Venturella*, 585 F.3d 1013, 1015, 1016-17 (7th Cir. 2009) (forfeiture in a mail fraud case "is not limited to the amount of the particular mailing but extends to the entire scheme;"

Because forfeiture is part of sentencing, it's an *in personam* punishment

— the punishment is directed against the defendant, not his property

— which means we are not limited, as we are in civil forfeiture cases, to the traceable property

— criminal forfeiture's claim to fame is that when the defendant has dissipated the property, we can still get an order of forfeiture in the form of a money judgment

- *United States v. Vampire Nation*, 451 F.3d 189, 202 (3d Cir. 2006) (expressly rejecting the argument that a forfeiture order must order the forfeiture of specific property; as an *in personam* order, it may take the form of a judgment for a sum of money equal to the proceeds the defendant obtained from the offense, even if he no longer has those proceeds, or any other assets, at the time he is sentenced);

- *United States v. Hampton,* 732 F.3d 687, 691-92 (6th Cir. 2013) (following all other circuits and holding that forfeiture being a mandatory part of the defendant's sentence, the court may enter a money judgment in the amount of the proceeds of the offense even though the defendant has dissipated the traceable property and has no other funds with which to satisfy the judgment);

— the entry of a money judgment is mandatory

- *United States v. Blackman,* 746 F.3d 137, 143 (4th Cir. 2014) (§ 2461(c) makes criminal forfeiture mandatory in all cases; "The word 'shall' does not convey discretion . . The plain text of the statute thus indicates that forfeiture is not a discretionary element of sentencing. . . . Insofar as the district court believed that it could withhold forfeiture on the basis of equitable considerations, its reasoning was in error.");

- *United States v. Newman*, 659 F.3d 1235, 1240 (9th Cir. 2011) ("When the Government has met the requirements for criminal forfeiture, the district court must impose criminal forfeiture, subject only to statutory and constitutional limits"); *id.* (the district court has no discretion to reduce or eliminate mandatory criminal forfeiture; overruling district court's refusal to enter money judgment);

— moreover, pursuant to 21 U.S.C. § 853(p), we can satisfy the money judgment by forfeiting substitute assets

— the forfeiture of substitute assets is mandatory, and can be any property the defendant owns, even though it is not traceable to the offense

- *United States v. Fleet*, 498 F.3d 1225, 1231 (11th Cir. 2007) (Congress chose broad language providing that *any* property of the defendant may be forfeited as a substitute asset; it is not for the courts "to strike a balance between the competing

interests" or to carve out exceptions to the statute; thus, defendant's residence can be forfeited as a substitute asset notwithstanding state homestead and tenancy by the entireties laws);

- *United States v. Carroll*, 346 F.3d 744, 749 (7th Cir. 2003) (defendant may be ordered to forfeit "every last penny" he owns as substitute assets to satisfy a money judgment);

- *United States v. Alamoudi*, 452 F.3d 310, 314 (4th Cir. 2006) ("Section 853(p) is not discretionary… [W]hen the Government cannot reach the property initially subject to forfeiture, federal law requires a court to substitute assets for the unavailable tainted property");

- *United States v. Garza*, 407 Fed. Appx. 322, 324 (10th Cir. 2011) (same; following *Alamoudi*); *United States v. McCrea,* 548 Fed. Appx. 157, 158 (4th Cir. 2014) (same; there is no exception for the defendant's residence);

- *United States v. Weitzman*, 936 F. Supp.2d 218, 221 (S.D.N.Y. 2013) (there is no exception in § 853(p) for the defendant's IRA account; it may be forfeited as a substitute asset);

The criminal forfeiture statutes allow the court to order the forfeiture of any property derived from or used to commit the offense, but because third parties are excluded from the criminal case, property that belongs to third parties cannot be forfeited

— this is the flip side to the *in personam* nature of criminal forfeiture

— we don't have to prove the property belonged to the defendant; we only have to prove the nexus to the offense

- *De Almeida v. United States,* 459 F.3d 377, 381 (2d Cir. 2006) (criminal forfeiture is not limited to property owned by the defendant; "it reaches *any* property that is involved in the offense;" but the ancillary proceeding serves to ensure that property belonging to third parties who have been excluded from the criminal proceeding is not inadvertently forfeited);

- *United States v. Watts*, 477 Fed. Appx. 816, 817-18 (2d Cir. 2012) (following *De Almeida*; property may be forfeited based on its nexus to the offense, regardless of ownership; the purpose of the ancillary proceeding is to allow third parties to challenge the forfeiture on ownership grounds);

- *United States v. Dupree*, 919 F. Supp.2d 254, 274-275 (E.D.N.Y. 2013) (criminal forfeiture is not limited to property of the defendant; it reaches any property derived from or used to commit the offense; in the case of proceeds, the *in personam* nature of forfeiture is satisfied if the property is the proceeds of the crime the defendant committed; older cases such as *O'Dell* and *Gilbert* were based on former Rule 31(e) which was replaced by Rule 32.2 and are no longer good law);

- *United States v. Molina-Sanchez,* 298 F.R.D. 311, 312-13 (W.D.N.C. 2014) (same);

— this is the major *disadvantage* to criminal forfeiture

— there is, of course, a procedure for forfeiting the property of third parties who knowingly allowed their property to be used to commit a crime

— it's called civil forfeiture

Criminal Procedure

OK, so how do we make sure we forfeit the property in a criminal case

— the procedure is set forth in Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853 (which applies to all criminal forfeitures by virtue of 28 U.S.C. § 2461(c));

1. Include Forfeiture in the Indictment.

2. Preserve the Property Pending Trial.

3. Include the Forfeiture in the Plea Agreement

4. Get a Consent Order of Forfeiture

5. If the Defendant Goes to Trial and is Convicted, Establish the Grounds for Forfeiture in a Separate Forfeiture Hearing

6. Include the Forfeiture Order at Sentencing

7. Deal with Third Parties in the Ancillary Proceeding

IV. CASE EXAMPLES

MegaUpload

The first case is the MegaUpload case

For those who don't know it, an international cast of characters, including Mr. Kim Schmitz,

— who changed his name to Kim Dotcom to reflect his view of himself as someone who was internet savvy

— set up a file-sharing website on the internet called MegaUpload

— The function of which was to allow users to transfer pirated intellectual property such as motion pictures, television programs, and music anywhere in the world

— In violation of the owners' property rights and national copyright laws

In its heyday, MegaUpload was the largest file-sharing service for pirated property in the world

— Causing losses to copyright holders of more than $500 million

— And earning $175 million in income for its perpetrators

Dotcom lives in New Zealand and operated his business from there and other countries,

— but the computer servers that he used to transfer the software – and to transfer the proceeds of his crime -- were located in Virginia in the United States

— so the United States had a basis for charging Dotcom with at least two criminal offenses: copyright infringement and money laundering

— because the crimes occurred at least in part in the United States

So he was indicted; but there were two problems:

— he resisted extradition and it was clear he would not be coming to the US to stand trial anytime soon

— and the money that he earned from his illegal business (which the US would like to recover) was located not in the US but in bank accounts in New Zealand and Hong Kong

So what to do

Well one of the key tools that a prosecutor has to recover criminal proceeds when a criminal conviction is not possible

— read: when the bad guy is a fugitive fighting extradition

— is to file a civil forfeiture action against the money

— so that's what the US Department of Justice did

— it filed a civil forfeiture action against the money in the New Zealand and Hong Kong banks

— $60 million in Hong Kong, and $15 million in New Zealand and asked those countries to restrain the money, which they did

But Mr. Dotcom and his associates did not take kindly to this action, and they opposed the US action in the Virginia court

— Opposed it, that is, through counsel, without ever appearing in the US

The Issues

The case presented two important legal questions that are central to most international asset recovery cases, and particularly those that involve international money laundering

1. Does a court in one country (here, the USA) have jurisdiction to issue a civil or non-conviction-based forfeiture order against property in another country (such as New Zealand or Hong Kong)

2. Can the defendant in a criminal case who is fighting extradition nevertheless use the resources of the country in which he refuses to appear to defend his property rights

– In *United States v. Batato,* the court answered those two questions

  - *United States v. Batato*, 833 F.3d 413 (4th Cir. 2016);

There was jurisdiction because the crime occurred at least in part in the United States

— That is, it was committed using computer servers in Virginia

— So the US court has the power to issue a non-conviction-based forfeiture judgment against property overseas

— Whether that judgment will be enforced is up to the courts in the country where the property is located

— I'll come back to that point in a little bit

The second question was whether a person who is indicted in a criminal case and is fighting extradition can intervene in the civil forfeiture action to protect his property interests while remaining a fugitive

— the court answered that question too

First, there is a statute that allows a court to dismiss a claim to property solely on the ground that the claimant is a fugitive: 28 U.S.C. § 2466

— it's called the fugitive disentitlement doctrine

Does that statute violate due process in that it deprives a person of his right to be heard before he is deprived of his property?

— No, the statute does not deprive the fugitive of the right to be heard

— It just says that he forfeits that right if he decides to remain a fugitive

— He will have every opportunity to be heard in the forfeiture case if he decides to surrender on the criminal charges

What does the Government have to prove for the statute to apply?

— it must show that the defendant's reason for not appearing personally in the United States is to avoid prosecution

— Mr. Dotcom and his associates claimed that their absence from the US had nothing to do with the criminal charges

— They had not been to the US, were comfortable living where they were, and simply had no desire to travel

— The court acknowledged that the world is full of homebodies who just like to stay home, but that is not a defense

The Government does not have to show that avoiding the criminal charges is the *only reason* a person has not appeared in the United States

- it only has to show that that is one of the reasons he is unwilling to travel

- and Dotcom's battle against extradition in the New Zealand courts was strong evidence that avoiding prosecution was one of his reasons for staying home

But Dotcom argued, he has a *right* under New Zealand law to oppose extradition

- is it not a violation of international law for one country to prevent a person from freely exercising his rights in the courts of another country?

It may indeed be a violation of international law to do that, the court said, but that was not what was happening here

- the United States was not depriving Dotcom of his rights under New Zealand law

- it was merely putting him to the choice of exercising those rights knowing that doing so meant that he would be putting himself at a disadvantage with respect to his ability to defend his property in a US court

- placing a fugitive in the position of having to make that choice, the court said, is not unfair and does not violate international law

Abacha

Now, the question I passed over was whether a foreign court can or would enforce a forfeiture order entered in the United States against property located overseas

- the second case addressed that question

- it also asked whether it makes a difference that the judgment was a default judgment

The case is that of Gen. Sani Abacha, the late military ruler of Nigeria who looted $4 billion from his country's treasury, laundered it through financial institutions in the United States, and placed it in bank accounts around the world in the names of nominee companies that his family controlled

— $287 million of that money was traced to bank accounts in Jersey in the Channel Islands

Taking the view that the United States does not want its financial institutions used to launder money for kleptocrats in developing countries,

— And that the US has an obligation to attempt to recover that money and return it to the people of the country from which it was stolen

— The U.S. Department of Justice filed a civil forfeiture action against the $287 million in the Jersey bank in the district court in Washington DC relying on the same jurisdictional statute that was at issue in the MegaUpload case: 28 U.S.C. § § 1355(b)(2)

The money in the bank account was held in the name of one of the Abacha family's shell companies called Doraville

— So the Government sent notice of the forfeiture action to Doraville with instructions on how to file a claim contesting the forfeiture

— Doraville received the notice but chose not to file a claim

— So the court entered a default judgment.

The case in Jersey

Now, what to do with the default judgment:

— The judgment has been entered by a court in the US, but the money is still in Jersey

— So the US asked Jersey's assistance

Acting on behalf of the United States, the Attorney General of Jersey asked the Royal Court to restrain the money in the Doraville accounts in anticipation of a request by the US to enforce the default judgment.

— The court made that order, but Doraville sought to have it vacated on the ground that the default judgment was not enforceable under Jersey law, and on two other grounds as well

The matter was litigated in the Royal Court

- *Doraville Properties Corporation v. Her Majesty's Attorney General* [2016] JRC128, Royal Court, Bailiwick of Jersey, (July 2016)

— The court conducted a three-day hearing, and I had the opportunity to serve as the Attorney General's expert witness on US forfeiture law

— It was great fun, though I must say that the idea of a court sitting through two days of opening statements before taking any evidence is something that would never happen in the US, and certainly not in NEW JERSEY where I am from, and where everything moves at a somewhat faster pace

— I should note parenthetically that another difference is that none of our courtrooms in the US have a life-sized portrait of George III looming over the witness has he testifies

Default Judgment

In any event, Doraville's principal argument was that Jersey law permits the enforcement of a foreign forfeiture orders only if the foreign court has "found" that the property in question is "tainted property."

— Because the US judgment was a default judgment, Doraville said, it was not based on any "finding of fact" that the property was tainted.

— the court held that Claimant's reading of Jersey law was too narrow.

Not to permit the enforcement of foreign forfeiture judgments because no findings of fact were made when the parties were in default, the court said, would "severely emasculate the scheme for the recognition and enforcement of such overseas orders."

— All one would have to do to avoid the confiscation of Jersey assets would be to ignore the overseas proceedings and let the foreign court enter judgment by default.

— That would lead to the counter-intuitive result that judgments entered in close cases that were vigorously contested could be enforced in Jersey

— But judgments entered in cases where the evidence was overwhelming, such that no one contested the judgment, could not

Moreover, the court held that Jersey, like other parties to the various multilateral mutual legal assistance agreements, has an obligation to give force an effect to foreign judgments where it is possible to do so

— Giving Jersey law the narrow reading that Doraville was urging would be inconsistent with those obligations

The court also noted that the default judgment should not be considered in isolation, but in the context of the facts alleged in the complaint that was filed to commence the action

Those facts were sufficient, the court said, if assumed to be true to support a finding that the property in the Jersey accounts was the proceeds of crime

— and is all that Jersey law requires.

Accordingly, the Jersey court overruled all of Claimant's objections to the entry of the restraining order to preserve the Jersey assets for the benefit of the United States.

So what conclusions can we draw from these two cases?

- That a court in one country)where the crime occurred) can make an order forfeiting property in another country

- And the court in the second country can enforce it

Prevezon

The next example involves the laundering of the proceeds of organized crime and corruption in Russia and the use of the forfeiture laws to recover it.

— This is the Prevezon case

— It involved the theft of $230 million from the Russian treasury

— The laundering of that money through numerous shell companies and bank accounts in Eastern Europe

— And eventually in the investment of a portion of the money in real estate in New York

The case has gained some notoriety for several reasons

— This was the case in which the lawyer for one of the victims who uncovered the crime, Sergei Magnitsky, was arrested and found murdered in his jail cell

— The case has also been much in the news more recently because Prevezon Holdings, the Russian company that ended up with the laundered funds,

— And that purchased the apartments in New York

— Was represented by this woman, Natalia Veselnitskaya, who at the same time was meeting with Donald Trump, Jr, the President's son, Jared Kushner, the President's son-in-law, and other members of the Trump Campaign, including the campaign chairman

— As well as with this man, Ike Kaveladze, a US-based employee of a Russian real estate company with a long history of creating shell companies and using them to acquire US assets.

Kaveladze was implicated in 2000 in an investigation into the methods Russians and other foreign nationals used to launder large amounts of money through US financial institutions.

— The report revealed that as the head of a company called International Business Creations, Kaveladze had opened 236 bank accounts in the United States for shell corporations formed in Delaware on behalf of mostly Russian brokers

— And that $1.4 billion was subsequently wire-transferred into the 236 accounts

All of which may be a coincidence

— But it is surely of interest to this man, Robert Mueller, the Special Counsel investigating ties between Russia and the Trump Campaign during the 2016 election.

— Anyway, that's why this money laundering case is particularly interesting

— The question is, how was it done

The Scheme

According to the complaint filed in a civil forfeiture action in New York to recover the apartments, the scheme worked like this:

- a Russian company (the victim) owned three businesses
- a Russian criminal organization stole the identities of the three companies by stealing corporate documents
- the criminals then orchestrated a series of sham lawsuits against the stolen companies, obtained default judgments against them,
- and used those judgments to apply for tax refunds, claiming that the losses so reduced the companies' profits as to negate their tax liability.
- The result was that the Russian treasury sent $230 million in false tax refunds to the three businesses, which were now controlled by the criminals.

That's how they stole the money

— Now, how did they launder it

The money laundering

— Here's how: this is a diagram that only a forensic accountant could love

— It comes from the civil forfeiture complaint and details how the money moved from the Russia bank to the New York property in just over 60 days

— The judge in the case called this "a Byzantine web of conduit accounts"

— I don't know if anyone in ancient Byzantium ever used this many bank accounts to conduct business, but I agree that it is complex

— Let me simplify it for you

The $230 started out in three accounts at the two Russian banks

— It then moved through the accounts of no fewer than 14 shell companies at nine different Russian banks,

— Was deposited it in the correspondent account of yet another Russian bank for the benefit of four more shell companies,

— and ultimately was placed in the accounts of two Moldovan shell corporations with accounts at Banca di Economii in Moldova

— all within a period of 60 days.

Finally, part of the money, commingled with other funds, was transferred from the Moldovan companies to three entities:

— a New Zealand shell company and a British Virgin Islands shell company that had accounts at an Estonian bank,

— and another BVI company with an account at a Lithuanian bank

— finally $1.9 million was transferred from the Moldovan and Lithuanian banks to the Swiss bank account of Prevezon Holdings,

— which used a portion of it to acquire the parcels of property in Manhattan.

The Legal Issues

First, Prevezon, the owner of the real estate and the claimant in the civil forfeiture action argued that there was no US jurisdiction because all of this consisted of transactions between foreign banks.

— But the court held that because the transactions were made in US dollars and passed through correspondent bank accounts in the US, they occurred in the United States

— The use of US-based correspondent accounts, the court said, was not trivial:

— the foreign transactions “could not have been completed without the services of these US correspondent banks;”

— accordingly, the use of the correspondent banks was sufficient to support the jurisdiction of the US court, whether the parties conducting the transaction knew they were using US banks to do so or not.

Second, Claimant said, even so, where is the violation of US law?

There were two answers:

- moving stolen money through the United States – i.e. through the correspondent account of a US bank – is a violation of the Stolen Property Act a/k/a Interstate Transportation of Stolen property (18 U.S.C. § 2314)

- and it is also a money laundering offense if there is evidence the money was being moved for the purpose of concealing or disguising is source, nature, location, ownership or control

- The use of shell corporations to funnel the proceeds of the fraud scheme "to other fictitious business accounts and then eventually to [the defendant property]" was all the evidence the Government needed of concealment

- Such evidence, the court said, "is perhaps the only way to prove money laundering" in particularly complex financial cases where criminals "use shell companies that regularly flush their accounts."

The US, of course, did not have custody of any of the perpetrators of this scheme, and still may not know who they were

- The remedy in that situation is to file a civil forfeiture action against the proceeds of the crime

- In that case, the Government must show that a crime was committed and that the property is traceable to that crime

- But it does not have to show *who committed* the crime nor obtain a criminal conviction against that person

Finally, Claimant argued that the Government could not satisfy the tracing requirements to establish that the money being laundered was traceable to the Russian fraud, or that the defendant property in New York was traceable to the money laundering.

- But the court had several responses.

First, the Government may rely on circumstantial evidence to show that the money moving through a complex series of transactions was in fact traceable to the initial fraud.

- Such evidence could include the "suspicious timing of the transactions" and the "strikingly similar patterns of activity" occurring more or less at the same time in multiple bank accounts.

Second, the Government is entitled to rely on accounting principles – such as "first in, first out" -- to trace money through a series of bank accounts.

Third, to the extent that there was untainted money commingled with the criminal proceeds along the way, such commingled funds had become "tainted" when they were used to facilitate the earlier steps in the money laundering scheme,

- and thus constituted forfeitable funds when they were used to purchase the defendant property.

- So, in the end, the court held that the Government could forfeit the New York property as property derived from the original theft, *or* as property involved in a money laundering offense.

North Korea Sanctions Case

The last case I want to talk about makes the same point regarding the use of civil forfeiture but involving an entirely different set of facts

- it involves the use of the US financial system to send money to North Korea to fund their nuclear weapons and ballistic missile program in violation of international sanctions

- and the use of civil forfeiture to intercept and recover the money that was being sent for that purpose

Dandong Zhicheng

The case is *United States v. All Wire Transactions Involving Dandong Zhicheng Metallic Material Co.,* 2017 WL 3233062 (D.D.C. May 22, 2017)

- a civil forfeiture action that was filed in Washington, DC

The complaint alleged that that a Chinese company called Dandong Zhicheng Metallic Material Co. and four related companies were acting as "front companies" for North Korea

- that they were using various tactics to disguise the use of US dollars obtained through the US financial system to purchase coal from North Korea in violation of international sanctions, with 95 percent of the money going to fund North Korea's weapons program

Specifically, the complaint alleged that the Chinese company had received over $700 million through the US financial system for this purpose over a period of years

- And that money has passed through eight correspondent accounts at US financial institutions in New York

- with each of eight correspondent banks processing the transfer of at least $20 million to Dandong

The forfeiture theory

Now any money being sent to North Korea in violation of the sanctions is subject to forfeiture under US law under several theories

- a recently-enacted statute, 18 U.S.C. § 981(a)(1)(I) makes any property involved in a violation of the North Korea Sanctions and Policy Enhancement Act of 2016 subject to forfeiture

    - Any property, real or personal, that is involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a prohibition imposed pursuant to section 104(a) of the North Korea Sanctions and Policy Enhancement Act of 2016.

- It is also forfeitable as the proceeds of a violation of the International Emergency Economic Powers Act (IEEPP) under § 981(a)(1)(C)

- As the proceeds of bank fraud (in the sense that the banks were not advised of the true nature of Dandong Zhicheng's business and that wiring money on its behalf would violation the North Korea sanctions), also under § 981(a)(1)(C)

- And as property involved in money laundering, 18 U.S.C. § 1956(a)(2)(A) and 981(a)(1)(A)

The problem, of course, is that the $700 million that had been sent to China through these correspondent accounts in the past was already gone

- What could the US do to stop the flow of this money in the future?

Damming warrant

The answer is that the Government applied to the court for what is called a "damming warrant"

- That is, a warrant that permits the Government not to seize money already in a bank account that was involved in a crime that occurred in the past

- But a warrant that acts as a net to catch new money as it flows through a particular bank account on a date sometime in the future

In this case, the Government had probable cause to believe that these eight correspondent bank accounts at US banks in New York had been used in the past to send money to the Chinese companies in violation of US law

- And that the illegal activity was ongoing ($52 million in the last 7 months)

And accordingly, that there was probable cause to believe that additional money, also forfeitable under US law, would be moving through those same accounts in the near future

- So the court issued eight warrants, authorize the Government to freeze any money moving through those eight accounts to Dandong Metallic for a period of 14 days

At the end of that time, the Government had captured $1.9 million in its net, and filed its civil forfeiture action against that money

The action, as I said, is a civil action against the money, not a criminal action against and person or entity

- Anyone with an interest in the money may file a claim contesting its forfeiture,

- But if no one files a claim, or if the US establishes by a balance of the probabilities that the money was being sent to North Korea in violation of the sanctions

- It will be forfeited to the United States.

The Importance of Civil Forfeiture

These cases illustrate why civil forfeiture is such a critical law enforcement tool

— As I have said, there are times when the wrongdoer is dead, a fugitive, a foreign national beyond the jurisdiction of the domestic courts or otherwise not subject to criminal prosecution

— Yet the Government can lay hands on the money or other property involved in the crime

— And needs a tool to recover it.

The *Prevezon* case and *Dandong Zhicheng* are just the two most recent examples

— Here are some others:

- *United States v. One Gulfstream G-V Jet Aircraft,* 941 F. Supp. 2d 1 (D.D.C. 2013) (aircraft purchased with proceeds of public corruption by leader of West African country);

- *United States v. A 10th Century Cambodian Sandstone Sculpture,* 2013 WL 1290515 (S.D.N.Y. Mar. 28, 2013) (cultural property stolen during civil war in Cambodia);

- *United States v. $671,160.00 in U.S. Currency,* 730 F.3d 1051 (9th Cir. 2013) (money seized from fugitive Canadian drug dealer);

- *United States v. All Assets Listed in Attachment A (MegaUpload, Ltd.),* 89 F. Supp.3d 813 (E.D. Va. 2015) (funds derived from theft of U.S. intellectual property on internet website managed from New Zealand);

- *United States v. All Assets Held in Account Number 80020796*, 83 F. Supp.3d 360 (D.D.C. 2015) ($2 billion stolen from Nigeria by Gen. Abacha, laundered through U.S. banks, and deposited in Jersey, France and the UK);

- *United States v. All Assets Held at Bank Julius Baer & Co.,* 2015 WL 4450899 (D.D.C. July 20, 2015) (action to recover more than $250 million deposited into over 20 bank accounts located in Guernsey, Antigua, Switzerland, Lithuania and Lichtenstein by former Ukrainian Prime Minister Pavel Lazerenko); 2017 WL 65554 (D.D.C. Jan. 6, 2017) (same);

- *In re 650 Fifth Ave. and Related Properties*, 830 F.3d 66 (2nd Cir. 2016) (civil forfeiture action against a building and related properties owned by front for the Government of Iran, and financed in violation of IEEPA);

- *United States v. Two General Electric Aircraft Engines*, 2016 WL 6495397 (D.D.C. Nov. 2, 2016) (civil forfeiture action against two aircraft engines being shipped to Iran in violation of

US law and were intended to be delivered to a terrorist organization: the Islamic Revolutionary Guard Corps-Qods Force);

- *United States v. $70,990,605*, 2017 WL 573499 (D.D.C. Feb. 13, 2017) (action to recover funds in Afghan banks traceable to $70 million in fraud proceeds paid to contractor to provide transportation for military supplies in Afghanistan); *United States v. Sum of $70,990,605,* 4 F. Supp.3d 189 (D.D.C. 2014) (same);

Many countries – particularly the English common law countries – now have civil or non-conviction based forfeiture systems

– the European Union has been considering the implementation of similar systems for some time

My hope is that these examples will serve to illustrate the critical role that this tool plays in cases of great importance to all of us.