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Gregory Lawrence Warchol

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Dennis M. Payne
Major professor

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AN EXPLORATORY ANALYSIS OF THE USE AND IMPACT OF FEDERAL ASSET FORFEITURE

By

Gregory Lawrence Warchol

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ABSTRACT

AN EXPLORATORY ANALYSIS
OF THE USE AND IMPACT OF
FEDERAL ASSET FORFEITURE

By

Gregory Lawrence Warchol

One of the most unique drug trafficking control techniques currently in use by the federal government is asset forfeiture. The forfeiture laws give the federal government the authority to seize property used to facilitate drug trafficking and/or that representing the proceeds of drug trafficking. They are used by the federal government specifically to disable narcotics enterprises. However, the value of the federal forfeiture program as a drug trafficking control tool is currently in doubt.

This research represents the first major study of this program with two main objectives: to initially examine the history and development of the forfeiture program, then explore its impact on the drug trade by focusing on individual case characteristics. For the analysis, this study uses a cross-sectional data set consisting of over 6000 individual asset seizure cases from the Northern District of Illinois, the Eastern District of Michigan, the Southern District of Florida and the Southern District of California. The use of forfeiture

is analyzed overall and then by individual federal judicial district focusing on regional variation. The results indicate that the most commonly seized assets may have only a limited effect on the ability of drug traffickers to conduct their operations. Furthermore, the extensive use of in-rem forfeiture proceedings and economic inefficiencies may also detract from the effectiveness of the program.

DEDICATION

To Ruth Anne and Stan Joseph Warchol, USMC retired

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I thank God for giving me the ability to complete this work. To my mother for her unending support. Special thanks to my committee of Dr. Dennis Payne, Dr. Mahesh Nalla, Dr. Michael Moore and Dr. Larry Heimann for their insight and valuable assistance.

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KEY TO ABBREVIATIONS

BATF:	Bureau of Alcohol, Tobacco and Firearms
CCCA:	Comprehensive Crime Control Act of 1984
CCE:	Continuing Criminal Enterprises
DEA:	Drug Enforcement Administration
DOJ:	Department of Justice
EOAF:	Executive Office for Asset Forfeiture
FBI:	Federal Bureau of Investigation
INS:	Immigration and Naturalization Service
IRS:	Internal Revenue Service
NNICC:	National Narcotics Intelligence Consumer's Committee
RICO:	Racketeer and Influence Corrupt Organizations
USAO:	United States Attorney's Office
USCS:	United States Custom's Service
USMS:	United States Marshal's Service
USPP:	United States Park Police

USSFRC: United States Senate Foreign Relations Committee

Chapter One: Federal Asset Forfeiture at Issue

Statement of the Problem

Illegal drug trafficking in the United States is not a recent phenomenon. In response to the severity of drug trafficking and its side-effects - increasing violent and property crime - the government has employed various enforcement strategies. These include attempts to reduce the supply of illegal narcotics in the 1970's to the more recent effort commonly known as the *War on Drugs*. In 1989, the year the government declared war on drugs, of the 7000 bills introduced into Congress, over 350 of them dealt with the drug problem (Durkin, 1990). Due to its economic nature, one of the most controversial and least understood of the various drug control strategies employed was the revival and expansion of federal asset forfeiture laws starting in the early-1980's. These laws gave the federal government the authority to seize property used to facilitate drug trafficking and/or that representing the proceeds of drug trafficking.

The Department of Justice [DOJ] (1992) favors asset forfeiture as a drug control strategy because money drives the narcotics trade.

At every stage of the drug trade, money is transferred. Through the seizure and forfeiture of this illegal money, the DOJ hopes to quash the drug trade. Deprived of their most sought after asset, i.e., currency, traffickers will not be able to expand let alone maintain their illegal enterprises.

In accordance with this reasoning, the U.S. Attorney General's stated main goal for the federal asset forfeiture program is "to punish and deter criminal activity by depriving criminals of property used or acquired through illegal activities" (DOJ, 1990:2). The program also has a secondary goal of redistributing forfeited assets efficiently back to law enforcement to fund additional drug control efforts (DOJ, 1990). Supporting it main objective, the Department of Justice provides its view on the program: "The mission of the Department's Asset Forfeiture Program is to maximize the effectiveness of forfeiture as a deterrent to crime. Forfeiture is effective because it takes the profit out of crime and deprives crime syndicates of the tools of their trade" (EOAF, 1994:v). As such, forfeiture is partly based on fundamental principals of deterrence theory.

As the federal asset forfeiture program expanded, it attracted attention from both proponents and critics. Citing yearly dollar

deposits to the Asset Forfeiture Fund as a measure, supporters argue that the government is successfully using the program as a deterrent to narcotics trafficking (Lenck, 1987, Goldsmith, 1992, Holmes, 1992). Since the legislative changes in 1984 strengthening the forfeiture laws, the cumulative value of property of all types forfeited to the United States increased from $27,196,168.00 in FY1985 to $3,260,082,526 in FY1993 (EOAF, 1994). If success can be measured based on the forfeiture program's ability to fund the government's drug control efforts, then supporters may be correct. On the other hand, critics question the program's ability to deter narcotics traffickers, arguing that the government's primary intent is to generate revenue regardless of its impact on the drug trade (Massey, 1993; Meyer, 1991; Miller and Selva 1994). Legal scholars have also contributed much literature questioning the constitutionality of asset forfeiture and its potential for infringement on civil liberties (Goldsmith and Linderman, 1989; Kasten, 1991; Strafer, 1987; Yaskowicz, 1992).

Yet, given the attention attracted by forfeiture, criminal justice researchers have paid little attention to this policy. Currently, no scholarly research is available on this program. Therefore, this study which is an exploratory analysis, will fill the

void in the scholary research. The study has two broad objectives. First, to examine the historical and political factors that facilitated the emergence of forfeiture law and describe the current state of the federal program. Second, to analyze the value of the asset forfeiture program as a deterrent to narcotics trafficking enterprises using new measures derived from the review of the literature. Eight research questions are stated that specifically focus on these two issues.

The Research Questions

Three research questions pertain to the first objective. They are answered through an exploratory, descriptive analysis using qualitative and quantitative data. The answers to these initial questions also serve as a foundation for the second objective. Therefore, the results of the analysis are presented in Chapter Two as the first part of the literature review.

Research Question One: What are the historical origins of current forfeiture law in the United States?

Research Question Two: How is the federal forfeiture program structured and how are property seizures processed within this structure?

Research Question Three: How has the federal forfeiture program performed over time in terms of seized and forfeited assets and yearly revenue in comparison to the extent of the narcotics problem in the United States.

The second objective of this study is to analyze the value of the asset forfeiture program as a deterrent to drug trafficking enterprises. This research is exploratory in nature, a methodology well suited to areas that have not been studied previously (Babbie, 1983). The research design is cross-sectional and uses quantitative data describing individual asset forfeiture cases from four geographically and demographically different federal judicial districts. These regions are San Diego, Miami, Chicago, and Detroit. In addition, a new measure of the deterrent value of asset forfeiture is used in this analysis.

To further elaborate, the measure of the program's impact frequently reported by the Department of Justice is the dollar value of forfeited property in each judicial district. But this measure is only a partial indicator of the effectiveness of asset forfeiture. Additional measures of the value of asset forfeiture must be based on the program's goal of deterring the narcotics enterprises.

The extensive review of the literature provides insight into new measures representing deterrence. First, it is necessary to look beyond the total dollar amount the government receives from a forfeiture case. One should consider both the estimated value of the asset and the actual amount received by the government as a result of the forfeiture case - the net value.

Second, assets can be forfeited by different types of legal proceedings and cases can have outcomes favorable to the government or to the property owner. A closer examination of the different proceedings and possible dispositions provides an indication of the effectiveness of each type as a deterrent.

Finally, the literature includes a review of the structure and characteristics of drug trafficking organizations, deterrence theory, and the economic concerns of the government for asset forfeiture. Specifically identified in this section are the different types of property associated with narcotics trafficking organizations. It reveals that certain assets are more valuable and important than others to traffickers. As a result, the deterrent effect of asset seizures will vary with the type of asset. The seizure of assets critical to the operations of the narcotics enterprise will have a greater potential to disable an operation. Seizures of less important

types may have only a limited effect on the business. Therefore, to assess the use of the forfeiture as a deterrent, net value, property type, legal proceeding, prosecution time and case disposition will serve as measures of the deterrence value of an asset forfeiture case. When present in a forfeiture case, they indicate that the government's intended use of program is to deter these illegal organizations. Consequently, the presence of these variables in a forfeiture case may also show a deterrent effect on the narcotics trafficking enterprises.

The five research questions related to this issue are as follows with the results presented in Chapter Four.

Research Question Four: Are there significant differences within and between the four districts as to the type sof assets seized for forfeiture?

Research Question Five: Are there significant differences within and between the four districts as to the value of assets seized for forfeiture?

Research Question Six: Are there significant differences between the four districts as to the characteristics of the forfeiture cases prosecuted by the government?

Research Question Seven: Are there significanct differences within and between the four districts as to the amount of time required to process forfeiture cases?

Research Question Eight: Are there significant difference between border districts and the midwest districts in terms of their use of asset forfeiture?

This is an exploratory study using new and innovative measures. However, this analysis is not intended to *conclusively* demonstrate whether the government is using asset forfeiture as a deterrent or for alternative purposes. The goal is to present an in-depth look at the nature of forfeiture cases within and between the four districts and attempt to assess the value of the program as a deterrent in each of these four judicial districts. In conclusion, with the use of both qualitative and quantitative methods and a large cross-sectional data set, this study represents the first major foray into this controversial law enforcement strategy.

Significance of this Research

Asset Forfeiture as a Drug Control Strategy: Does it Work?

The government's interest in controlling narcotics trafficking was not limited to reducing the supply for users. While the government considered trafficking to be extremely serious in itself,

it was also concerned about the connection between drugs and crime. The narcotics business was considered one of the root causes of the increasing violent and property crime rates. Research by the National Institute of Justice (NIJ) and the Bureau of Justice Statistics supports the connection between drug and crime. They concluded that violence is common in the illegal drug business. The BJS reports:

> Systematic violence is the "traditionally aggressive patterns of interaction between the system of drug distribution and use." ... violence is used to protect or expand markets, intimidate competitors, and retaliate against sellers or buyers who are suspected of cheating. To avoid being arrested and punished for trafficking, drug dealers commit violent crimes against police and threaten informants or witnesses. Some observers believe that the illegal drug business attracts persons who are prone to violence (1992:5)

The data shown in Table 1 help illustrate the connection between drug trafficking and homicide.

Table 1: Percent Drug-Related Homicides of Total Homicides (1986 - 1992)

Year	Number of Homicides	Percent Drug-Related
1986	19,257	3.9%
1987	17,963	4.9
1988	17,971	5.6
1989	19,954	7.4
1990	20,273	6.7
1991	21,676	6.2
1992	22,540	5.7

Source: Table reproduced from Bureau of Justice Statistics, Drugs and Crime Facts, 1994:8

These data include only homicides that occurred specifically during a drug felony such as sales or manufacturing. Murders involving a drug felony and a more serious felony such as armed robbery were not included (BJS, 1994a). Data from a BJS survey on the connection between drugs and crime reveals that 78% of jail inmates in 1989, 79% of State prison inmates in 1991, and 83% of youth in long-term public facilities in 1987 had used drugs at some point in their lives. Furthermore, about 17% of State inmates and 13% of convicted jail inmates in 1989 said they had committed their offense to obtain money for narcotics (BJS, 1994a).

The government realized that traditional methods of punishment - prosecution and sentencing of drug traffickers - were ineffective because they left the illegal organization and its economic base intact. The government needed an alternative strategy capable of disabling these organizations and their members thereby also preventing them from fostering more violent and property crime as side-effects. The new objective was to target the profit motive of the trafficker. If the spoils of drug trafficking could be confiscated, the criminal enterprise and its members would be deterred from operating in the future.

In their search for a solution, the government turned to a sanction previously used for U.S. Customs law enforcement - asset forfeiture, Forfeiture has now evolved into an integral part of federal drug control efforts. The reasoning is that forfeiture will take the profit out of the illegal drug trade (DOJ, 1990). This is possible since the forfeiture laws permit the government to seize and forfeit controlled substances, drug manufacturing equipment, automobiles, vessels and aircraft used in trafficking and distributing drugs, money and other financial instruments used in drug transactions, and other property including real estate bought with drug profits (EOAF, 1992).

Forfeiture is considered to have the ability to reduce the supply of narcotics from the traffickers. This should reduce drug use and its negative side effects. Therefore based on such logic, the federal government decided to concentrate its efforts against the sophisticated criminals that make up the drug trafficking networks (Stellwagen, 1985). The goal is to seize as often as possible the huge spoils of drug trafficking organizations so that current and aspiring traffickers will be deterred (Bureau of Justice Statistics [BJS], 1990). Stellwagen explains:

> As a law enforcement strategy, forfeiture can be used under federal law to break up a continuing criminal enterprise. Foreign and domestic bank accounts can be seized, together with planes, vessels, cars, and luxury items like jewelry or resort homes purchased with the proceeds from the illicit drug trade. Seizure of such assets disrupts the working capital of criminal organizations and perhaps diminishes the motivation to traffick in drugs (1985:1).

Forfeiture was designed to accomplish what traditional methods of punishment could not - deter traffickers and disable their organizations. However, while forfeiture rapidly grew in popularity, its impact is subject to debate. There is no empirical evidence to support the forfeiture program's success in reducing drug trafficking. The Office of National Drug Control Policy [ONDCP] estimates that in 1990, illegal drug consumers spent over $41

billion for cocaine, heroin, marijuana, and other drugs (BJS, 1992). Additionally, world production of the coca leaf has steadily increased from 1987 to 1991 (BJS, 1992). The DEA reports that the lowest retail price of cocaine which ranged nationally from $80 per gram in 1986 has actually dropped to as low as $15 per gram in the first quarter of 1993 (DEA, 1993). One possible explanation is that forfeiture represents a business expense. According to Assistant U.S. Attorneys of the Northern District of Illinois, many traffickers consider it an easily absorbed "cost of doing business" that's factored into this very lucrative operation. A recent article in the *Chicago Tribune* noted that drug dealers are constantly finding new ways to avoid property seizures. The author states that: "[W]ith the seizure laws, the dealers have gotten smarter, so they're less likely to be dealing out of their homes"(1993, July 16). The BJS (1992) found that drug producers and distributors tend to either absorb their losses or raise the price of the drug in response to efforts by law enforcement. Another possible explanation lies in the ability of forfeiture to generate revenue. At issue is whether asset forfeiture being used as a wide net to drag in the maximum amount of revenue regardless of its policy goals of deterring criminal enterprises.

The Economic Benefits of Asset Forfeiture

Aside from the stated ability to disable drug trafficking organizations by seizing the profits of their business, the other major benefit of forfeiture is the large amounts of revenue it generates for the government. From 1985 to 1990, the number of asset seizures grew at an average rate of 59 percent annually (DOJ, 1990). In fiscal year 1993, the Drug Enforcement Administration [DEA] seized assets valued at more than $669 million (BJS, 1994a) as shown in Table 2 on the following page.

Table 2: DEA Seizures by Quantity, Type and Value for Fiscal Year 1993

Type of Asset	Number of Seizures	Dollar Value
Currency/Financial	7563	293,234,403
Instruments	570	49,340,166
Real Property	1,516	244,352,815
Conveyances	5,116	95,499,681
Other	2,295	35,815,815
Total	14,430	$668,902,714

Source: Bureau of Justice Statistics,
Fact Sheet: Drug Data Summary, July 1994:2

In addition, the total amount of net deposits to the federal government's asset forfeiture fund from 1985 to 1991 was over 2.1 billion dollars (DOJ, 1990). Figures 1 and 2 on the following pages provide an indication of the rapid growth of this program in terms of both the amount and value of property seized and forfeited to the United States.

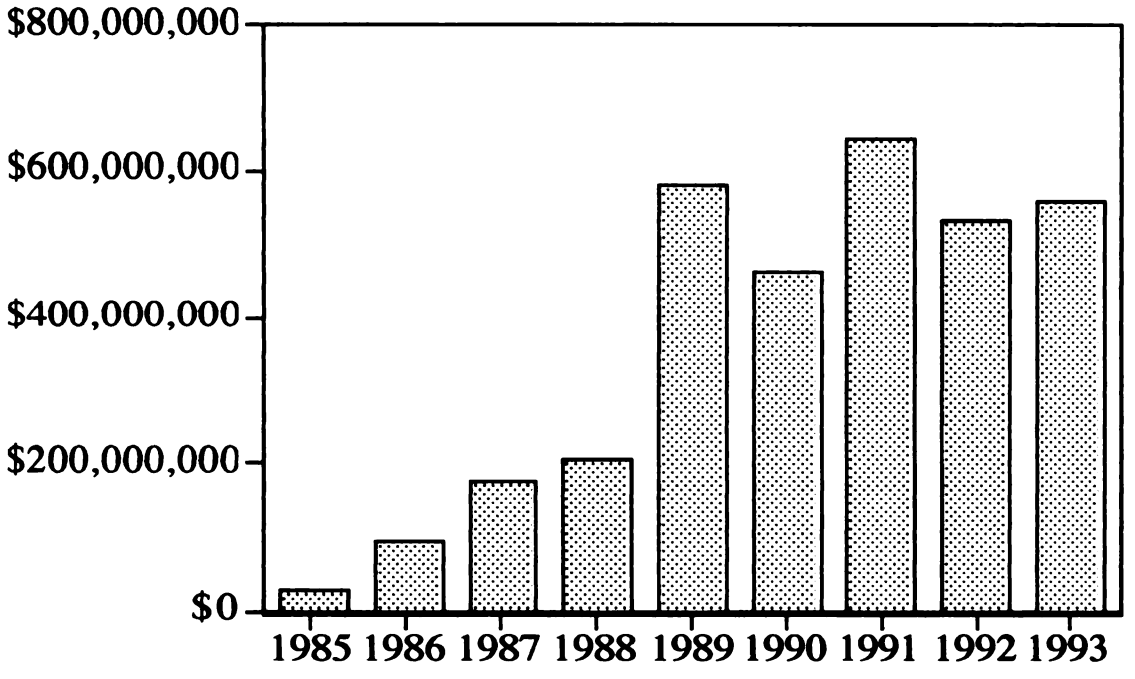


Figure 1: Total Net Deposits to the Federal Asset Forfeiture Fund (1985 - 1993)

Source: Annual Report of the Department of Justice Asset Forfeiture Fund, FY 1993. Prepared by the Executive Office for Asset Forfeiture, 1994

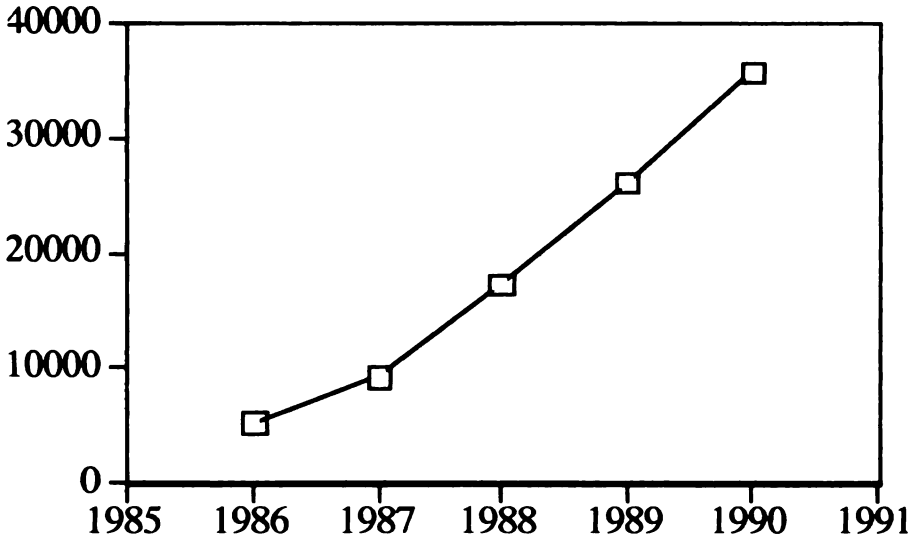


Figure 2: Total Properties Seized by the USMS (1986 - 1990)

Source: U.S. Department of Justice, Annual Report of the Department of Justice Asset Forfeiture Program, FY 1990

During periods of diminished government funding, law enforcement agencies need to stretch resources. One attractive solution to limited or declining budgets is forfeiture. Forfeiture is meant to be used to finance narcotics enforcement along with other drug-related law enforcement programs (Stellwagen, 1985).

This distribution of revenue from federally forfeited assets to law enforcement to further combat drug trafficking is the final stated goal of the asset forfeiture program (DOJ, 1990). From fiscal year 1985 to 1993, the Department of Justice shared over $1.1

billion in cash and property with state, local and foreign law enforcement agencies (EOAF, 1994). In addition, the government has allocated over $490 million from the sale of forfeited assets for federal prison construction (General Accounting Office [GAO], 1991, May). The Department of Justice distributes a portion of this revenue via the Equitable Sharing Program to state and local law enforcement agencies that participated in the asset seizure. The payments from sharing reflect the amount of direct participation by the state, local of foreign agency in the law enforcement effort that resulted in the forfeiture (EOAF, 1994). The purpose of the Equitable Sharing Program is to enhance the narcotics enforcement budgets of the participating law enforcement agencies and improve inter-agency cooperation in the war on drugs (DOJ, 1990). In addition, they also supplement law enforcement resources without the need to further tax the public (EOAF, 1994). Figure 3 on the next page shows the dollar amount shared with participating state and local law enforcement agencies from 1985 to 1993.

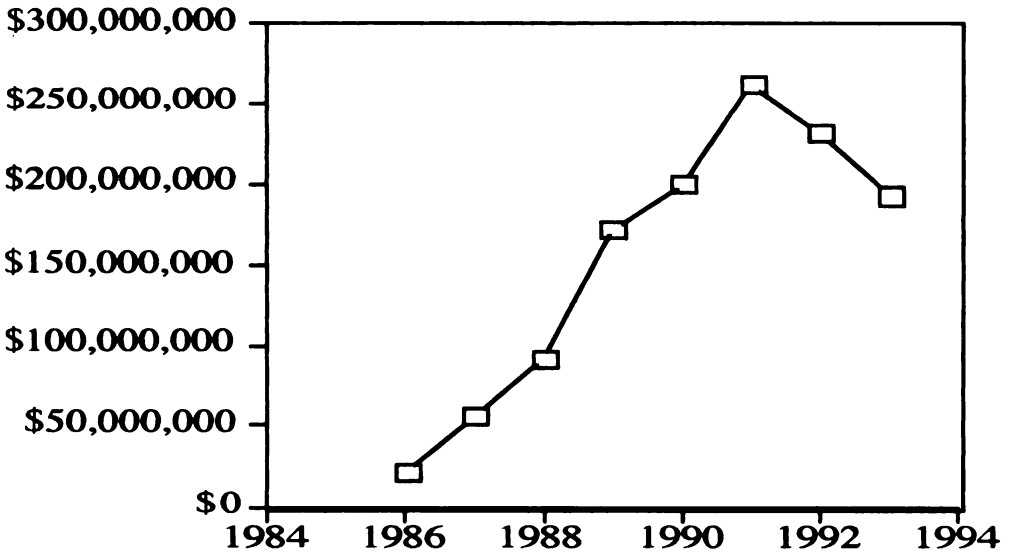


Figure 3: Asset Forfeiture Fund Equitable Sharing Disbursements (1986 - 1993)

Source: Annual Report of the Department of Justice Asset Forfeiture Program, FY 1993. Prepared by the Executive Office for Asset Forfeiture

A controversial aspect of the asset forfeiture program is that while both deterrence and providing money are considered crucial to effective drug control efforts at all levels of government, critics assert that the program's ability to generate revenue has become increasingly emphasized potentially overshadowing its deterrence goals (Massey 1993; Meyer 1991; Miller and Selva, 1994). The General Accounting Office literature may be interpreted as supporting this view. A report states: "The program's goals are to

deprive criminals of their illegal assets and maximize the return to the government. Revenue from the asset forfeiture program is used to help fight the war on drugs" (1991, May:3). In another article, Steven A. Bertucelli, Director of the Organized Crime Division of the Broward County, Florida Sheriff's Office addresses this issue: "The effectiveness of asset forfeiture depends in large part on how thoroughly law enforcement agencies identify and address key management questions associated with forfeiture programs"(BJS, 1990:1).

When monitoring the effectiveness of the program, the GAO has extensively reviewed the performance of federal forfeiture activities at the national level. These evaluations focus primarily on management issues, i.e., the Equitable Sharing Program and the property disposition and property storage activities of the U.S. Marshal's Service. Aside from these evaluations, little attention is directed at assessing the impact of the program on narcotics traffickers and their organizations. This is a surprising oversight given the scope of this program and the attention it has attracted from opponents.

Additionally, the forfeiture operations of the individual federal judicial districts have not been examined in detail. These

ninety-four regions, consisting of the local offices of the federal, state, and city enforcement agencies, and each U.S. Attorney's Office, form the elementary components of the forfeiture program. The lack of attention paid to the use and effectiveness of asset forfeiture at this level is a serious oversight with this policy for a variety of reasons. First, many police forces are participating in forfeiture programs either through adoptive seizures or the development of their own programs. The Bureau of Justice Statistics, reporting from its 1990 survey, states that over 90 percent of county, municipal, sheriff and state police forces participate in a drug asset forfeiture program (BJS, 1990). Second, asset forfeiture is rather controversial and has been criticized by the defense bar and the media which cite the law's potential for infringement on constitutional guarantees and abuse by police in search of quick revenue (Goldsmith and Linderman, 1989; Kasten, 1991; Miller and Selva, 1994; Meyer, 1991; Strafer, 1987; Yaskowicz, 1992).

Attempts at Restricting Asset Forfeiture

Recently, as a result of its controversial nature, forfeiture law has been subject to changes. The Supreme Court has issued several decisions on forfeiture law recently, three of which were:

U.S. v. A Parcel of Land (1993), *Alexander v. United States* (1993), and *Austin v. United States* (1993). Although the decisions mainly dealt with procedural issues, it appears that the high court is attempting to try to make some sense out of this complex body of law and perhaps quell the increasing amount of complaints about its harshness.

In response to the asset forfeiture program, Republican Rep. Henry Hyde, together with two civil rights groups, teamed up to restrict federal forfeiture laws. Citing the abuse of government power, Hyde recently introduced legislation to curb further property seizures. Attorneys for the ACLU favor the Hyde bill and would like Congress to take this legislation even further (Chicago Tribune, 6/16/93).

Due to the government's emphasis on the program's financial return, and also because of the unique legal attributes that constitute forfeiture law, the defense bar has frequently criticized this body of law for either its real or perceived infringements on individual liberties as set for in the Constitution and Bill of Rights (Kandaras, 1990; Kasten, 1991; Meyer, 1991; Osborn, 1991). The literature of the defense bar represents the only body of research on asset forfeiture, yet it is not empirical in nature.

In addition, the media has also shown a significant amount of interest in asset forfeiture over the past several years, much of it being critical. This could be due to the influence of the defense bar. An article in *U.S. News and World Report* serves as an example:

> Defense lawyers say the prospect of seized fees (attorney's fees paid out of drug proceeds) violates the Sixth Amendment right to counsel of one's choice, interferes with attorney-client privilege and precludes an effective defense since forfeiture cases require specialized expertise .... Civil libertarians, lawyers and some judges also have more misgivings about asset seizure. Especially troubling is the widespread use of civil, rather than criminal procedure to go after specific property used in or acquired through drug trafficking. Others felt that the asset-seizure strategy was abused ... when vehicles and boats were seized even though only minuscule amounts of drugs were found on them (1988:47-48).

In response to the media criticism, a paper recently prepared by the Executive Office for Asset Forfeiture (1993) clarified many of the issues reported by the media. Yet, even given all the attention to the asset forfeiture program, this topic is still devoid of sound empirical research.

Summary

Without attempting to overstate the importance of this dissertation, this study is significant for several reasons. First, because of the lack of research directed at the federal asset

forfeiture program, this study represents the first major incursion into this important government policy area.

A second significant aspect is the data source. After consultation with the Executive Office for Asset Forfeiture in Washington, D.C., it was concluded that the best source of accurate, individual-level data was the United States Marshal's Service. As described in more detail in Chapter Three, these data provide an overview of the program and an examination at the regional level. Not only will the activities of this federal program be analyzed from a broad perspective, but the data will be compared across individual federal judicial districts in relation to their own demographic and drug trafficking characteristics.

A third strength is the methodology. This study combines elements of descriptive, exploratory and explanatory research with qualitative and quantitative data. This integrated method is well suited to a topic that has not been studied in any detail. Though not a formal test of a theory, this less-structured design utilizing several research questions has an advantage. Babbie asserts that the value of a less formal approach is that "structured inquiries may overlook relationships not anticipated by formal hypotheses" (1983:93).

A final relevant feature is that by empirically examining the policy, this study will facilitate an objective understanding of asset forfeiture without relying on the influences of the mass media or the defense bar. It may help to confirm or dismiss some of the perceptions about asset forfeiture and lead to future research covering additional aspects of this policy.

In conclusion, the federal asset forfeiture program has become a rather controversial public policy that is facing increased opposition. Yet very little research exists about forfeiture. No effort has been made to fully describe the origins and development of asset forfeiture or examine if the program is being used in accordance with its primary goal of deterring drug trafficking organizations. Unless this policy is analyzed before it is changed by the Congress or the Supreme Court, valuable data on its performance will be overlooked, affecting not only the federal government, but also state and local agencies employing this strategy.

Chapter Two: The Literature

This paper is first concerned with describing the origins and development of forfeiture law and the current federal program, and then analyzing forfeiture's value as a deterrent to narcotics trafficking enterprises. These research problems have not been directly studied and there are few scholary studies that even indirectly pertain to forfeiture. This leaves a significant gap in the empirical, academic literature. However, there is a valuable body of general literature composed of a variety of sources to serve as a foundation for this research to build upon. Therefore, this study integrates the few existing academic studies with government documents and reports, federal and U.S. Supreme Court decisions, legislative histories and law journal articles to construct a nontraditional, though comprehensive literature review.

The following review consists of both general and specific literature. The general literature presented first serves a dual purpose. It is both a literature review and a historical description of the origins and development of forfeiture law. It consolidates a variety of sources describing forfeiture law, the organization of the current program and the various forfeiture processes.

The second half of this review consists of the specific research literature supporting this study's cross-sectional analysis of the use of asset forfeiture as a deterrent. It includes a summary of the literature establishing the deterrent worth of using forfeiture against narcotics trafficking enterprises and identifies the new measures of deterrent value used in the analysis. Intergrated into both sections are quantitative data supplementing the qualitative description.

The General Literature

Examining the History of Drug Control Efforts in the United States

Efforts to control illegal narcotics have a surprisingly long history in the United States dating back to the Civil War. The policies and strategies for drug control initially started with an emphasis on regulation, then moved toward treatment and eventually prohibition. A review of the literature describing the history of federal drug control policy illustrates how forfeiture became a intergral part of the overall strategy.

Early Regulatory Efforts.

Inciardi (1990) states that opiate addiction in the United States dates back to at least the mid-1880's. With the development and increased use of "patent" medicines, new drugs including opium,

morphine, laudanum, cocaine and later heroin, became widely available. Opiates could be purchased over-the-counter and heroin was even available by mail-order (Brecher, 1972). By 1900, it was estimated that over a quarter of a million people in the U.S. were drug addicts. The most commonly abused drugs were cocaine and morphine (BJS, 1992).

Initial attempts to control drugs focused on regulation including labelling and reporting requirements, taxation, and restrictions for certain populations (Inciardi, 1990). The first recorded anti-drug law in the United States was a San Francisco municipal ordinance passed in 1875 aimed at banning opium smoking. The BJS (1992) reports that the first federal drug control efforts were prohibitions on the importation of opium by Chinese nationals in 1887 and restrictions on opium smoking in the Philippines in 1905. This was followed by the Pure Food and Drug Act of 1906 that regulated the labeling of over-the-counter medicine which included certain drugs as ingredients. By the early 1900's, most every state and many municipalities had established some type of regulation controlling the distribution of certain drugs.

The BJS reports that concern over drug abuse even spread to the international arena in the early 1900's as indicated by early attempts at regulation.

> The U.S launched a series of international conventions designed to stimulate other nations to pass domestic laws on narcotics control. The Shanghai Opium Convention of 1909 strongly supported such controls, but its recommendations generated little actual legislation among the nations involved, including the U.S. Failure to pass the proposed Foster Anti-narcotic Bill led to debate at the 1911 International Conference on Opium at The Hague about whether the U.S. would actually enact such legislation. Ratification of the convention resulting from this Hague conference by the Senate in 1913 committed the U.S. to enact laws to suppress the abuse of opium, morphine and cocaine and helped ensure the passage of the Harrison Act as the cornerstone of Federal anti-drug policy (1992:80).

Bugliosi (1991) asserts that the Harrison Narcotic Drug Act of 1914 was actually not a criminal statute and the possession and use of opiates and cocaine were not prohibited. Rather, the Act was mainly a revenue measure requiring the registration of persons who distributed opium, morphine, heroin and other drugs and the use of tax stamps (McWilliams, 1990). Its only criminal provision was directed at those who failed to register or keep accurate records on narcotics sales.

Following the Harrison Act, several new pieces of legislation were introduced from the late 1920's to the 1960's. These laws illustrated how federal policy now emphasized a mix of treatment

and punishment efforts. For example, in 1929 the Porter Narcotics Farm Act established two hospitals for narcotics addicts in response to overcrowding in federal prisons. This would be the model for federal drug treatment until the 1960's (BJS, 1992). By 1937, the Treasury Department was ready to introduce marijuana control legislation. The Marijuana Tax Act of 1937, (the first federal legislation dealing with marijuana) like the Harrison Act, placed a transfer tax on the sale of marijuana. The Opium Poppy Act of 1942 and the Boggs Act of 1951 imposed more penalties on the importation and exportation of narcotics and marijuana. Additionally, the Boggs Act includes the use of mandatory minimum sentences and higher fines for violations (Bugliosi, 1991). In the early 1960's, as a result of The Community Mental Health Centers Act of 1963, Congress expanded the national government's role in the treatment of narcotics addicts. Later amendments to the Act in 1968 further expanded the federal role and classified *narcotics addiction* in the definition of mental illness (BJS, 1992).

Later Developments: An Emphasis on Trafficking Organizations.

By the late 1960's to the 1980's, partly as a result of changing illegal drug use patterns and increasing trafficking, several important laws were passed that altered the emphasis of federal

policy. The 1965 Drug Abuse Control amendments allowed for regulation of depressant and stimulant drugs. Perhaps more important was the Controlled Substances Act (1970) and the Controlled Substances Import and Export Act (1970). These new federal laws now focused on reducing the supply of drugs. The two Acts created a "common standard of dangerousness to rank all drugs rather than just focusing on specific substances. Additionally, they allowed the scheduling of substances to be changed administratively. The BJS found that these Acts, which were intended as a model for State legislation, generally have been adopted (1992:84). Worth noting is that during this same year, the Racketeer-Influenced and Corrupt Organizations (RICO) and Continuing Criminal Enterprise (CCE) laws were passed. These laws focused on the leaders of illegal drug enterprises and added forfeiture sanctions against the illegal profits of narcotics organizations. In 1971, a Presidential Cabinet Committee for International Narcotic Control was formed with the objective of providing assistance to other countries to control drug production (BJS, 1992). With the eventual passage of two additional acts focusing on treatment and prevention during the mid-1970's, the

government's anti-drug efforts were fairly evenly balanced between treatment and enforcement (BJS, 1992).

By the 1980's, government policy was now shifting more toward reducing supply and demand. Four major bills were enacted during the past decade. The 1984 Crime Control Act included a provision for expanding civil and criminal forfeiture in addition to increasing criminal penalties and establishing a determinant sentencing system. The 1986 Anti-Drug Abuse Act included an emphasis on treatment, grants to state and local governments, and controlling international drug trafficking. The 1988 Anti-Drug Abuse Act further increased penalties for drug trafficking offenses, increased treatment and prevention efforts to reduce demand, and endorsed the use of sanctions aimed at users to also reduce demand. Finally, The Crime Control Act of 1990 further strengthened the forfeiture laws, provided more money for state and local governments, and expanded drug control and education programs for schools (BJS, 1992).

Summary

This literature demonstrates how the federal narcotics legislation went from regulation to prohibition. The final changes in drug enforcement policy, especially the new federal forfeiture laws,

re-directed the government efforts more toward the illegal drug trafficking organization. The reason for the existence of these organizations - huge profits - forced the government to revive and refine an old sanction into a powerful and unique tactic in the War on Drugs: asset forfeiture.

Asset Forfeiture

The History of the Concept of Asset Forfeiture.

Forfeiture is defined as "the taking by the government of property illegally used or acquired, without compensating the owner" (*U.S. v. Eight Rhodesian Statues,* 1978). Although forfeiture is relatively new to U.S. law, it is an ancient concept with its "modern" roots found in the earliest stages of English common law. Lenck asserts that the concept of forfeiture actually dates back to the Old Testament and also appears in several subsequent legal codes. Chapter 21 of Exodus reveals the religious background of present forfeiture law: "If an ox gores a man or a woman, that they die, then the ox shall be surely stoned, and his flesh shall not be eaten, but the owner of the ox shall be quit" (1987:5). This verse is unique in that it subjects the ox to forfeiture without any regard to the guilt of innocence of its owner. A forfeiture under this verse

does not depend on the criminal conviction of any person. If the animal killed someone, the owner loses his right to the animal.

Further examination of forfeiture demonstrates that as early as 451 B.C., Roman Law included this concept: "if an [animal] causes injury to anyone, let the owner tender him the established amount of the damage; and if he is unwilling to accept it, the owner shall...surrender the animal that caused the injury" (7 Twelve Tables, translated in 1 Scott, *The Civil Law,* 69, 1973). Additionally, the Greek legal codes also dealt with this concept. AEschines the Greek (389 -314 B.C.) noted: "(W)e banish beyond our borders the sticks and stones and mindless things, if they chance to kill a man; and if a man commit suicide, bury the hand that struck the blow afar from the body." (From *The Common Law* as cited in Lenck, 1987:5).

Forfeiture in its present form, has its direct foundations in early English common law. The common law provided the idea that the property itself can be tainted with guilt if it is used in a criminal offense. This type of forfeiture is directed at the offending property rather than the owner, that is, the idea of an *in rem* action which is the basis of civil forfeiture: "Where a man killith another with a sword..., the sword shall be forfeit as deodand, and yet no default is in the owner" (*The Common Law*, at 24-26). Additionally,

the common law also developed the idea of *in personam* or criminal forfeitures based on the idea of attainder. Kasten explains the origins of the concept:

> At common law, the sovereign retained an allodial interest in all property. Any tenant who committed a felony broke the oath of fealty he had pledged to the Crown, and as a result, the original grant of property from the Crown was voided. The Crown's interest in the property vested by way of escheat, simultaneously with the breach of the oath. The commission of the felony worked corruption of the blood so that those otherwise positioned to inherit the property became deprived of that right although they were guilty of no felony. Deodand was the forfeiture of any object that caused the death of one of the king's subjects. A sword used to kill a person, for example, was declared a deodand and forfeited to God, by way of the Church. A deodand was forfeited even though the deodand's owner may have played no role in the resulting death (1991:198-199).

The basis of this concept of forfeiture is also noted in the Drug Administration's Agents' Guide to the Forfeiture of Assets:

> Our ancestors created the concept of forfeiture out of a need for revenge - against the offending thing, if not against its owner. Over the centuries, the concept of revenge has gradually faded from our laws, but the traditional doctrine of forfeiture remains. Today, forfeiture is used to protect the public from the harmful object...and it is used to deter crime (Lenck, 1987:3).

What occurred as a result of these common law ideas of forfeiture based on *escheat of attainder* and *deodand* was an eventual dichotomy of this body of law. Forfeiture based on *escheat of attainder* looks to punish a property owner for committing a

crime, while a forfeiture based on the *deodand* is directed at the guilt of the property or the *offending thing*. These differences led to a procedural dichotomy in the law. Kasten writes: "Forfeiture consequent to attainder required an underlying criminal conviction, and was, therefore, an additional *in personam* sanction against the individual.... Deodand forfeiture, however, was essentially *in rem*, with only the guilt or innocence of the property at issue" (1991:200). These form the basis of criminal and civil forfeiture proceedings.

American Forfeiture Law: Early Developments.

Since the Colonial period, American law has contained numerous civil forfeiture provisions. Examining the need for asset forfeiture, DOJ notes: "The First Congress enacted laws in 1789 subjecting vessels and cargos to *in rem* civil forfeiture for violations of the Customs laws. Governments long ago recognized the need to protect against the smuggling of contraband into their territory" (1993:1). Initially criminal or *in personam* forfeitures were prohibited by the First Congress of the United States. As a result, criminal forfeitures temporarily disappeared until the passage of the RICO Act in 1970 (Lenck, 1987), but the civil actions would become an integral part of American law.

Explaining early *in rem* forfeitures, Osborn (1991) contends that they were limited in scope and initially passed to facilitate the enforcement of functions specified by Congress such as the collection of import duties and taxes. The laws were patterned after the English navigation and Custom's laws. Later, the enactment of the Confiscation Act during the Civil War led to a major change in the development of civil forfeiture law (Reed, 1985). The Confiscation Act was passed during the Civil War to facilitate the seizure and forfeiture of the property of all Confederate officers and those found as sympathetic to the Confederacy. Though designed to support the Union's war efforts, the Act received much attention. Osborn (1991) describes the controversy surrounding the Act:

> Congressional opponents of the bill argued that the Act was an unconstitutional punitive measure. If the government could proceed *in rem* to punish treason, nothing would stop it from proceeding similarly to punish lessor crimes. Senator Browning predicted that if the confiscation bill were passed, "a total revolution will be brought in our criminal jurisprudence, and in despite of all the safeguards of the Constitution, proceedings *in personam* for the punishment of crime may be totally ignored, and punishment [will be] inflicted by proceeding against the property alone (1991:70-71).

Though controversial, the Confiscation Act passed in 1862. The Supreme Court justified the Act's constitutionality as an expedient way to end the Civil War. As a result of this "abandonment" of

constitutional limitations on forfeiture during the war, the Court had set a precedent. After the Civil War ended, the Supreme Court then rejected the idea that property could be considered guilty. In *Boyd v. U.S.* (1886), the Court stated that if "the forfeiture proceeded by reason of offense, then even though they are civil (*in rem*) in form, they are criminal in nature and the owner is entitled to all privileges which appertain to a proceeding against a person" (at 616). Yet, in 1921, as a result of an increase in forfeiture cases due to Prohibition, the Supreme Court, relying once again on the concept of the deodand, re-adopted this idea holding that "property was 'deodand' guilty based on its involvement in a criminal act...." (Osborn, 1991:23).

Modern American Forfeiture Law's Origins: The Racketeering and Influence Corrupt Organizations Act.

The concept of forfeiting guilty property has existed in the United States since the late 18th century. However, what led to its expansion as an established feature of American civil and criminal law in the late 20th century? The review of the literature identifies the government motivations that made this possible.

Criminal forfeiture would finally re-appear in 1970, when in search of a new approach to racketeering and narcotics trafficking,

Congress passed the Racketeering and Influence Corrupt Organizations Act (RICO), and the Continuing Criminal Enterprise statute (CCE). These two statutes included the authorization of forfeiture as a criminal sanction to be applied directly against the offender. They also went beyond the traditional civil forfeiture laws that only targeted contraband or property used in a crime. Congress designed these statutes to attack the core of organized crime and drug trafficking. The statutes gave the government authority to seize the "ill gotten gains of organized crime figures" (Smith, 1988:47). Valukas and Walsh explain the origins and details of RICO:

> Title 18, U.S.C. section 1962(c) prohibits any person associated with an "enterprise" from directly or indirectly participating in the conduct of the enterprises affairs through a pattern of "racketeering activity" which is defined in section 1961(a) to include a number of state and federal crimes ranging from murder to mail fraud. An "enterprise" is broadly described to include individuals, partnerships, corporations, groups of individuals associated in fact, and so on. The RICO Statute also prohibits using income derived from a pattern of racketeering activity to invest in an enterprise that affects interstate or foreign commerce. In addition to the traditional criminal sanctions of imprisonment, a RICO conviction results in the mandatory forfeiture under section 1963 of these categories of property: (1) any interest in the legal or illegal enterprise; (2) any property interest obtained through racketeering, whether in a RICO enterprise or not; and (3) any proceeds obtained directly or indirectly through a RICO violation (1988:33).

Although effective against organized crime, these criminal statutes had only limited success in controlling the rapidly increasing amount of illegal narcotics trafficking. Ferris (1989) observes that Congress and law enforcement, realizing that those participating in the illegal drug trade were seldom deterred by even the most severe sentences, sought another approach to the problem.

Toward a new solution, in 1978 Congress amended the existing civil forfeiture laws (21 U.S.C. sect. 881(a)(6) was added) to allow for the seizure of all monies used in, and all proceeds acquired from the illegal narcotics trade. Smith (1986) contends that by expanding the scope of property types subject to seizure, this amendment provided federal prosecutors with an effective civil procedure to attack the profits of drug trafficking. This event marked the first use of civil forfeiture proceedings against the profits of criminal activity. As a result, large amounts of property would be confiscated with this law for the government.

The Comprehensive Crime Control Act of 1984.

The next legislation to significantly change federal forfeiture law was the Comprehensive Crime Control Act of 1984. DOJ reports on the importance of the CCCA to the federal enforcement efforts:

> Asset forfeiture as we know it today dates back to less than a decade to the Comprehensive Crime Control Act of 1984.

> That Act modernized federal forfeiture, expanding the government's legal authority to conduct an aggressive national forfeiture program. One provision of that Act established the Department of Justice Assets Forfeiture Fund to hold the proceeds of forfeitures and to finance forfeiture-related expenses as well as certain law enforcement activities. In addition, this 1984 Act authorized the Attorney General to equitably share forfeited property with cooperating state and local law enforcement agencies (1993:1).

The legislative history of the Act shows how Congress found that the classification of property subject to forfeiture in narcotics cases was too limited. Now, large-scale forfeiture was possible. With this legislation, 98th Congress further amended the RICO forfeiture provisions with the Comprehensive Forfeiture Act of 1984 (CFA). Terry Reed describes the extensive procedural and substantive modifications affecting criminal forfeiture included in the CFA:

> The substantive changes included an expansion in the application of the criminal forfeiture provisions to more criminal offenses and a renewed attempt to define assets that fall within the statutory definition of forfeitable interests. On a procedural level, the CFA established minimal uniform procedures at both the pretrial and post verdict stages in a criminal trial of an *in-personam* forfeiture (1985:750).

The legislative history of the 1984 amendments also reveals that the Congress intended to punish drug offenders as harshly as possible. In *U.S. v. McKeithen* (1987:313), the Second Circuit relies

on the history of the statute noting that Congress intended the criminal forfeiture laws to "dissuade individuals from pursuing criminal gain and to eradicate the economic power bases making possible organized criminal and drug-related activities". Smith (1984:320) further explains the Congressional intent of the legislation:

> ... by passing the CCCA of 1984, Congress intended to eliminate the statutory limitations and ambiguities that have frustrated active pursuit of forfeiture by Federal law enforcement agencies. The Act strongly encouraged the use of the criminal forfeiture provisions by, for example, restricting pre-conviction transfer of property and expanding the reach of criminal forfeiture to cover all drug felonies within the scope of the Act. Thus, Congress was forcefully aiming both to increase the number of forfeitures and enhance their effectiveness.

Additionally, the CCCA amended the civil forfeiture provisions to allow for the inclusion of real property used to facilitate drug transactions in addition to further expanding the scope of the existing forfeiture laws. The legislative history of this amendment notes how the Senate Judiciary Committee was frustrated that section 881 could not effectively reach real property (U.S. Code, Cong. & Admin. News, 1984:3377-78). These excerpts also note the intent: "the extent of drug-related property subject to civil forfeiture under 881 is also too limited in one respect" (1984:3378).

The purpose of the Comprehensive Forfeiture Act was "to enhance the use of forfeiture", a powerful weapon in the fight against one "of the most serious crime problems facing the country ... drug trafficking" (1984:3374). According to DOJ (1990:19-20), the CFA also included the folowing changes:

* Authorized criminal forfeitures for any drug felony (previously just "drug kingpin" offenses were covered);

* Broadened the range of property subject to criminal forfeiture and strengthened theability to "freeze" forfeitable property pending forfeiture;

* Codified "relation-back" doctrine for both criminal and civil forfeitures so government title to forfeited property "relates back" to the date when the offense occurred giving rise to the forfeiture;

* Authorized equitable sharing of forfeited property with participating state and local law enforcement agencies in both Title 21 and Title 19 forfeitures;

* Authorized payment of awards of the lessor of $150,000 or 25 percent of the net proceeds of the forfeiture for information leading to a forfeiture;

* Established the Department of Justice Asset Forfeiture Fund to hold proceeds of Department of Justice forfeitures and to fund forfeiture-related expenses as well as certain law enforcement activities including purchase of evidence, equipping of conveyances, and payment of awards;

* Increased maximum claim and cost bond from 10 percent of the value of the property or $250 to 10 percent of the value of or $2500; and

* Authorized discontinuance of federal forfeiture proceedings in favor of state forfeiture.

Further Refinements to Asset Forfeiture Law.

The next revision occurred with the Anti-Drug Abuse Act of 1986. This legislation made several important changes to federal forfeiture. These included authorizing forfeiture of the proceeds of money laundering crimes, drug paraphernalia, and "substitute assets" in RICO and drug felony cases. DOJ analyzes the advantage of this new provision: "if the proceeds of the offense have been put beyond the reach of law enforcement, lawfully acquired property of equivalent value can be substituted for the missing proceeds and forfeited" (1990:20). Additionally, this Act also extended the sharing process to include cooperating foreign governments and

made the Asset Forfeiture Fund permanent in addition to expanding its uses.

With the Anti-Drug Abuse Act of 1988, Congress further amended the narcotics civil forfeiture law, 21 U.S.C. section 881(a) to give more protection to innocent third-party property owners. Goldsmith and Linderman report on the significance of the changes:

> Prior to November 1988, different third party exemptions governed the forfeiture provisions concerning real property, currency and vehicles. Subsection (a)(6) and (a)(7) exempted an owner's interest in currency and real property from forfeiture if he didn't consent to or know of the illegality giving rise to the forfeiture. Subsection (a)(4) however, did not provide a comparable innocent owner exception for conveyances. In November 1988, as part of the Anti-Drug Abuse Act of 1988, Congress amended subsection (a)(4) to provide a new third party defense. The new law states that no conveyance shall be forfeited ... by reason of any act or omission established by that owner to have been committed or omitted without [his] knowledge, consent, or willful blindness (1989:1268).

This Act also authorized the forfeiture of the proceeds of pornography trafficking and expanded money laundering forfeiture.

Lenck (1987) asserts that this new legislation strengthened law enforcement's ability to attack narcotics trafficking organizations for the very reason they exist - profit. Investigations will no longer be limited to arresting traffickers and seizing narcotics. The government can now seize the third critical element

of criminal organizations, namely the illegally acquired assets of its members.

In 1989, two additional statutes led to more changes in these laws. One authorized forfeiture in bank-related crimes as part of the savings and loan bill. By 1990, even more changes occurred. Of note was the Customs and Trade Act which authorized *administrative* forfeiture of property valued up to $500,000 and of monetary instruments without regard to value.

Aside from the major statutes reviewed in this section, there are other lessor-used federal forfeiture statutes. These include 31 U.S.C. Sect. 8313 which prohibits the undeclared importation of monetary instruments in excess of $5000, to 21 U.S.C. Sect.104 which covers the forfeiture of vessels used to import swine into the United States.

Summary

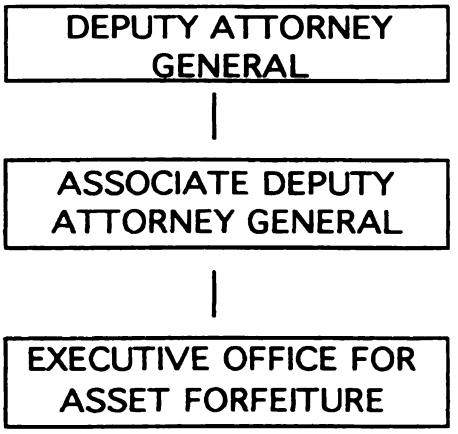
The literature summarized in this section examines the long history of the concept of forfeiture and traces the foundations of current U.S. forfeiture laws to English common law. Also summarized is the research detailing the development of modern forfeiture law as a tool to combat illegal drug trafficking and

organized crime. As a result of these changes, the government now possess a highly unique alternative sanction.

The Federal Forfeiture Process: Organization and Participants

The asset forfeiture program consists of two general levels. The basic structure is illustrated in Figure 4 on the following page.

Administrative level



Field-level Agencies and their Responsibilities

Investigations	Seizures	Processing	Asset Mngt.
FBI	FBI	Judicial:	USMS
DEA	DEA	USAO	(FBI)
INS	INS		(DEA)
USPS	(USMS)	Admin:	(INS)
IRS	USPS	FBI USPS	(USPS)
BATF	IRS	DEA IRS	(IRS)
	BATF	INS BATF	(BATF)

Figure 4: Organizational Structure of the Federal Forfeiture Program

Source: Annual Report of the Department of Justice Asset Forfeiture Program, FY 1990

At the federal level, several agencies are involved in asset forfeiture cases as a part of their responsibility for enforcement of the federal drug laws. The major Department of Justice and Treasury Department participants in federal asset forfeiture consist of the DEA, FBI, IRS, USCS, INS, the U.S. Attorneys, and the U.S. Marshal's Service. While the USPS, USPP, and BATF participate in asset forfeiture as noted in the above-chart, their involvement is somewhat limited.

Executive Office for Asset Forfeiture.

The Executive Office for Asset Forfeiture serves as the oversight agency of the federal forfeiture program. DOJ asserts that the agency was created to provide "oversight, management and direction to the various participating components" (1993:3). The office is currently involved in implementing a nationwide computerized case tracking system, developing and evaluating forfeiture policy and procedure, facilitating communication among the component agencies, and formulating the Asset Forfeiture Fund budget.

Drug Enforcement Administration.

Primary responsibility for enforcing federal drug laws and policies rests with the DEA. As a result, the DEA plays a major role in federal asset forfeiture: "as a deterrent to drug trafficking, the forfeiture efforts of the DEA effectively destroy and immobilize criminal enterprises, including Kingpin organizations. Through the Kingpin Strategy developed in FY 1992, DEA continues to focus the attack on criminal organizations that produce, transport and distribute the preponderance of cocaine and illicit drug in our nation's cities" (DOJ, 1993:4).

Because of this responsibility, the DEA pursues an integrated approach to drug enforcement that consists of a three part strategy: (1) trafficking arrests; (2) drug removal; and (3) asset seizure. Lenck further discusses the program:

> These activities are taken in concert; to pursue one and ignore another is less than effective. For example, to arrest and subsequently incarcerate a trafficker but ignore legal removal of his assets permits the trafficker the latitude of reinvesting his illicit wealth through confederates at large. Most important, asset removal strikes at the reason for illicit drug trafficking - large, quick monetary gain (1987:283).

DEA policy has emphasized the use of forfeiture under 21 U.S.C. 881 (a)(6), that is, the civil statute. The decision to utilize this statute was based on resource constraints and the relaxed burden of

proof requirement. Lenck explains the reasoning of the Drug Enforcement Administration to justify this policy: "The limited resource availability to drug enforcement indicates that we must be flexible. The decision to utilize a particular statute ... affects the extent of the investigation itself. ... an investigator will have to present a higher degree of proof in a criminal action than a civil action. This may require more time or money" (1987:290). As a result of their efficient use of asset forfeiture's civil statute, the DEA has generated a considerable amount of revenue for the government to use for further drug enforcement. The BJS (1992) report found that in 1990, the DEA seized assets valued at more than $1 billion with two-fifths of these assets being currency valued at $364 million. Aside from currency, during 1990, the DEA also seized primarily from cocaine investigations real property valued at almost $346 million, 5,674 vehicles worth over $60 million, 187 vessels valued at over $16 million and 187 vessels worth in excess of $16 million (BJS, 1992:142).

In addition to their extensive application of civil forfeiture, the DEA also administratively forfeits property that has not been claimed, rules on petitions for remission and mitigation of forfeitures, and participates in determining the amount of equitable

sharing that will be made as a result of joint investigations with state or local law enforcement agencies (DOJ, 1990).

Federal Bureau of Investigation.

The FBI also maintains concurrent jurisdiction with the Drug Enforcement Administration over federal drug laws. Additionally, the FBI has increased its cooperation with the DEA in its drug enforcement efforts (BJS, 1992:142). The reasoning is that the FBI recognized that certain drug traffickers are also involved in other types of violations, i.e., organized crime for example, that would come under the jurisdiction of the Bureau. As a result, the FBI and DEA cooperate in joint investigations. Similar to the DEA, the FBI maintains an asset forfeiture unit designed to coordinate seizures and provide information with participating agencies.

Immigration and Naturalization Service.

The INS relies on federal forfeiture in its efforts to enforce the laws on immigration and smuggling. INS is authorized to seize vehicles used in violation of these laws. Most of the INS seizure cases involves attempts to enter the United States illegally, a violation frequently related to drug smuggling as well as alien smuggling (EOAF, 1993).

Internal Revenue Service.

The Executive Office for Asset Forfeiture (1993) contends that while not involved in asset forfeiture to the extent that the DEA and FBI are, the IRS investigations into money laundering and tax and currency violations are frequently associated with narcotics trafficking. These cases commonly lead to property forfeitures. As a result, the IRS is important part of the federal forfeiture program. The Department of Justice believes that IRS efforts have a significant impact on crime by completely dismantling criminal enterprises with the removal of the fruits of their illegal business (EOAF, 1993).

United States Custom's Service.

The Custom's Service is responsible for the interdiction and seizure of contraband, including illegal drugs, that are being smuggled into the United States. Additionally, this agency also has the authority to enforce provisions of the Back Secrecy Act which covers deposits of currency and other monetary instruments, both domestic and international (BJS, 1992). This special jurisdiction brings the USCS into contact with international drug trafficking and money laundering. The USCS, which also maintains its own asset

forfeiture fund, has secured deposits of $100 million in 1990 (BJS, 1992).

United States Park Police.

Part of the United States Department of Interior, the U.S. Park Police also utilize the federal forfeiture laws in association with the FBI. The USPP emphasis is on smaller distribution organizations usually headed by mid-level traffickers conducting their business on public lands under the jurisdiction of the Interior Department. The Executive Office for Asset Forfeiture (1993) has characterized the organizations commonly targeted by the USPP as consisting of three to ten suspects and normally involving the seizure of one to three vehicles, $1,000 to $10,000 in cash, $2,000 to $5,000 in other assets and several firearms. As a result of their efforts, the USPP play an integral role in the federal program.

The United States Attorney's Office.

The 94 U.S. Attorneys are the chief federal law enforcement officers in their judicial districts. They are responsible for investigating and prosecuting federal drug offenses and are frequently involved in organized crime and drug task forces, and judicial asset forfeiture cases.

Each U.S. Attorney's Office (USAO) maintains an Asset Forfeiture Unit, usually attached to the Civil Litigation Division since most forfeiture cases are civil actions. These specialized units typically consists of attorneys, paralegals, and support staff trained in asset forfeiture. In addition to the litigation of forfeiture cases, the USAO coordinates with federal, state and local law enforcement agencies to facilitate forfeiture investigations, litigation, and equitable sharing (DOJ, 1990).

The United States Attorney's Offices also have an Organized Crime and Drug Enforcement Task Force (OCDETF). OCDETF is a specialized unit consisting of prosecutors and staff responsible for investigating, prosecuting and destroying high-level narcotics trafficking organizations and criminal groups (BJS, 1993, November). Forfeiture actions resulting from the work of the OCDETF unit are criminal cases.

The United States Marshal's Service.

The primary role of the United States Marshal's Service (USMS) in asset forfeiture is of custodian of seized and forfeited property. For example, by September 30, 1990, the USMS had custody of more than $1.3 billion worth of property including $630 million worth of real estate (BJS, 1992). Prior to the actually taking custody of an

asset, the USMS works closely with the U.S. Attorney and the federal investigative agencies to pre-plan the seizure. DOJ states that this helps avoid typical problems such as inaccurate title information, improper seizures, contaminated real property, and threats to public safety (1991, March). Once the seizure is made, and pending the resolution of the case, it is the responsibility of the USMS to store and manage the asset. This process involves the storage of vehicles in leased or government-owned facilities, the deposit of currency into government accounts, utilization of occupancy agreements for the owners of homes that have been seized, and the hiring of property managers for real estate.

Due to the large amount of property maintained by this agency, the USMS needs to run this law enforcement program similar to a business. The Attorney General notes in his annual report: "Careful coordination among the forfeiture components is necessary to achieve the maximum law enforcement impact as well as the maximum return for the taxpayer" (DOJ, 1990:12). Once the property is forfeited to the U.S., the Marshal's Service is responsible for its disposition. Property is disposed of by the USMS is various manners. It can be transferred directly to participating federal, state or local agencies in accordance with the terms of the equitable sharing

agreement, or sold at auction with the funds distributed to various law enforcement and the Asset Forfeiture Fund.

The Types of Cases: Administrative, Civil and Criminal

Federal forfeiture proceedings are divided into three categories: administrative, criminal and civil. Criminal and civil forfeitures are considered "judicial" since they result in a court order of forfeiture, while administrative cases are processed by the federal agency that seized the property or adopted the case.

Administrative proceedings.

The federal investigative agencies may forfeit property with an administrative procedure that does not involve the district court or the U.S. Attorney's Office. Pursuant to 19 U.S.C. 1607, prior to mid-1990, these agencies had the authority to administratively forfeit cash and other types of property valued at no more than $100,000, in addition to cars, boats and planes that were used to transport controlled substances regardless of their value. In August of 1990, the Customs and Trade Act raised the dollar value cap thereby increasing the number of forfeiture cases that could follow the administrative route. The new legislation permits the administrative forfeiture of monetary instruments without regard to their value and other property valued up to $500,000. All real

property must still follow the judicial route for forfeiture (DOJ, 1990).

In an administrative case, following the seizure of property, a notice of seizure and intent to forfeit is mailed to all persons known to have an interest in the property in addition to being published in a national newspaper. If a claimant comes forward to file a claim and cost bond on the asset, the case generally follows the civil court route. If no one claims an interest in the property, and following the expiration of the time requirement, the property is forfeited to the U.S. without court action (Lenck, 1987).

Administrative proceedings are the fastest, most efficient, and cost-effective manner to forfeit property because no one is claiming ownership of the asset and the dollar value caps are set very high. The refusal to assert an ownership claim may be due to guilt more than the inability to afford legal counsel or innocence. *In forma pauperous* claims allow the indigent to legally contest a property seizure. Without this protection, the indigent may end up spending more on attorneys to contest a seizure than what the asset is worth. It can also be argued that innocent owners able to afford counsel still may balk at the costly venture of contesting a civil forfeiture with the government. Yet, as described later in this

Chapter, substantial legal protections exist to protect innocent owners. A more plausible conclusion is that assets that have been administratively forfeited are tainted with guilt and would be difficult to prove otherwise. The owners have little desire to contest the seizures. It may very well be that property administratively forfeited was owned by the truly guilty.

Criminal Proceedings.

As noted in the earlier section, prior to 1970 with the enactment of the RICO and CCE statutes, criminal forfeiture was not a part of the American legal heritage. Instead, American law relied on a variety of civil forfeiture provisions actually dating back to the first meeting of Congress. Reed (1985) notes that when Congress enacted the criminal forfeiture provisions of the RICO and CCE, it adopted a new form of forfeiture based on an adjudication of criminal guilt. Later refinements in the law enacted in the Comprehensive Forfeiture Act of 1984 made forfeiture applicable to more types of criminal offenses and also included more types of property. These changes now penalized an individual convicted of a felony under federal drug laws with the forfeiture of their assets used in that offense or bought with the proceeds.

Specifically, criminal forfeitures are *in personam* proceedings directed against the individual. They authorize an *in personam* liability against the criminal defendant and are conducted in conjunction with the criminal prosecution of the defendant. The success of a criminal forfeiture depends on criminally convicting the defendant (*Calero-Toledo v. Pearson Yacht Leasing Co.,* 1974).

Criminal forfeiture laws generally adhere to their background. Lenck explains: "In ancient times, in England, the property of a convicted felon was forfeited to the king as a form of criminal fine. These proceedings were against the felon and their success depended upon the criminal conviction of the felon" (1987:70).

The forfeiture is actually part of the criminal trial, but is only initiated in conjunction with a specific criminal charge that provides for forfeiture such as a gambling or narcotics violation. The criminal indictment, in addition to outlining the criminal charges, contains the forfeiture allegations listing the subject property (Lenck, 1987). Because of these inherent features, there are several unique advantages for the defendants and for the government. Valukas and Walsh (1988) found that one advantage is that since the forfeiture allegations are in the indictment, a *not guilty* plea on the part of the defendant preserves the defendant's

rights. Additionally, because these are criminal proceedings, the government must first prove the defendant's guilt beyond a reasonable doubt - quite different from a civil action explained in the next part. Finally, if the government loses the criminal case, it also loses the associated forfeiture action.

Since these are criminal proceedings, the government maintains the advantage of the grand jury which can be a very powerful weapon in investigating criminal activity. Maveal explains, noting the Supreme Court's description of a grand jury:

> a body with powers of investigation and inquisition, the scope of which is not limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime (1992:55).

Some have described the government's latitude in using the grand jury as unregulated *(Blair v. United States*, 1992).

Another advantage to the government with starting a criminal forfeiture is venue. All the property listed in the indictment goes forward without the need to file a parallel civil forfeiture case. When a parallel civil action is filed to forfeit property from a drug offender, the civil actions can be stayed until the criminal trial is concluded (Leach, 1991). With a criminal forfeiture, both a criminal

prosecution and a forfeiture are conducted together. This can result in a substantial financial savings to the government.

Criminal actions also avoid the rather extensive discovery provisions of civil cases. In civil actions the rules of discovery permit rather broad access to government files and witnesses which may lead to evidence and impeachment problems at the trial. Traditionally, in a criminal action, discovery is limited while the entire range - depositions, interrogatories, and document requests - are available in civil forfeitures (Walsh and Valukas, 1988).

The other strategic advantage with using the criminal process is that the government may follow an unsuccessful criminal forfeiture with a civil action. Maveal (1992) argues that this can be especially beneficial since the burden of proof requirement will be lower in a civil forfeiture. One court has even held that the government may effect a criminal forfeiture after a prior civil action against the same property has been dismissed with prejudice.

Perhaps the most important advantage to using criminal proceedings is its most obvious. Not only does a criminal action forfeit the assets of the drug trafficker potentially destroying the economic base of his organization, but it also incapacitates the offender with incarceration. As a result, this strategy can prevent

much of the criticism directed at forfeiture, i.e., forfeiture without charging one with a crime and the use of civil proceedings favoring the government. Forfeitures conducted with the full protection of criminal proceedings for the defendants, followed by the incapacitation of both the offender and the organization can potentially help to meet the goals of Congress and the Department of Justice.

After the conviction is entered in a criminal case, the court will address the forfeiture allegations stated in the indictment. Since they are *in personam* proceedings, criminal forfeiture provides the district court with jurisdiction over the defendant's property even if its is located in another federal district. Because innocent third-parties with an interest in the property (leinholders, etc) are not part of the trial, they cannot assert their interest until the trial's conclusion. In other words, a criminal case is an *in personam* proceeding just between the government and the defendant, the forfeiture conviction determines only their respective rights. The rights of third party claimants (leinholders, etc) are determined at the ancillary hearings held after the trial (Valukas & Walsh, 1988). At this stage, if there is a guilty verdict, the forfeiture allegations will be addressed by the court.

This process starts with the issuance of a preliminary order of forfeiture followed by hearings to adjudicate and settle third-party claims. Historically, the innocence of a third-party claimant was not a defense to forfeiture since these proceedings relied on the concept of the *guilty property*. This concept persists in the law, both criminal and civil although there are exceptions. Each of the civil and criminal statutes contains the *relation back* provision that vests title to the forfeited property in the United States as of the moment the criminal acts were committed. Yet, third-party rights are recognized in each statute.

The ancillary hearings protect the third-party rights as long as they comply with the statutory deadlines for filing petitions, administrative claims, judicial claims, and answers. The process concludes with the issuance of a final order of forfeiture. Once this is issued by the district court, the property is forfeited to the United States.

Interestingly, there is some new interest in increasing the use of criminal forfeiture due to its benefits. George W. Proctor, Director of the Department of Justices' Asset Forfeiture Office (AFO), writing in *Asset Forfeiture News* explains the value of criminal actions:

> U.S. Attorney's that have successfully transferred the emphasis of forfeiture actions from civil to the criminal divisions of their offices have discovered many advantages.The*in personam* jurisdiction attendant with criminal prosecution has extended the reach of the U.S. Attorney to assets not only in other district, ... but in other countries as well. Forfeiture actions formerly filed civilly are now being disposed of more expeditiously as criminal cases due to the priority given by the courts to the criminal docket. Additionally, members of the public who portray the owners of civilly or administratively forfeited property as "innocent" owners in their battles waged against the forfeiture laws are disarmed by a forfeiture which is conditioned on a guilty verdict against the property owner (1991, July/August:3)

Although these are significant advantages, civil actions will still remain in the forefront due to the lesser burden of proof and their quick resolution when compared to criminal proceedings. These are discussed in the following section.

Civil Proceedings.

The most commonly used forfeiture statutes are civil. These are *in rem* proceedings brought "against the thing" or subject property in question (Loui, 1991). This idea is again based on the legal fiction that the property itself is guilty, i.e., the theory is that the property involved in the illegality is tainted by guilt (*The Palmyra*, 1827). Therefore, the guilt or innocence of the property owner is of no significance in determining if the property is subject to forfeiture (*U.S. v. Sandini,* 1987). In addition, the law considers

that the ownership interests in the property at issue vests to the United States at the time of the offense. This is the *relation back doctrine* which eliminates all subsequent transfers to third parties.

Civil forfeitures - actions against the property involved in some wrongdoing - have a long history. The First Congress of the United States passed civil forfeiture legislation to supplement Customs laws (*Calero-Toledo v. Pearson Yacht Leasing Co.*, 1974). In civil actions, the subject property is completely independent of any criminal action against the owner. The Drug Abuse Prevention and Control Act, 21 U.S.C., Section 881, provides for the civil forfeiture of controlled substances, materials and equipment, containers, conveyances, and records used to facilitate illegal drug-related activity. Additionally, property which is determined to be the proceeds of drug trafficking is also subject to forfeiture under the Act if there is a substantial connection between the property and the drug transaction. Substantial connection refers to the *link* or *chain* that connects these assets to an illicit-drug exchange. The process of identifying the chain is referred to as *tracing* (Lenck, 1987). The Joint House-Senate report states the meaning of this: "(The Statute) ... provides for forfeiture of property which is the proceeds of an illegal drug transaction only if there is a traceable

connection between such property and the illegal exchange of controlled substances" (U.S. Code Cong. & Ad. News, 1978:9522).

Civil proceedings offer the government several advantages over criminal forfeitures. Unlike criminal actions, civil forfeitures do not depend on the conviction of the wrongdoer. In these cases, it is the guilt of the property that is at issue. This explains why one sees civil complaints with captions such as *U.S. v.. One 1992 Corvette* or *U.S. v. 1,000,000 U.S.Currency*. This also been a source of controversy for the government, that is, the seizure of property with arrest or conviction. Yet in the author's experience with hundreds of civil forfeiture cases, these cases usually start with the arrest of an individual(s) for a narcotics offense, either as the result of a pre-planned investigation or a reactive action such as a traffic stop. Whether or not the government decides to proceed with the criminal charge depends on the individual and the seriousness of their offense. Additionally, if the cases are adoptive seizures, that is, the forfeiture is brought by a participating state of local agency to the U.S. Attorney for prosecution, many times the individual from whom the property has been seized will be facing state charges.

Furthermore, another advantage is that the seizure of the property is not postponed until the conclusion of the criminal trial.

In fact, the actual seizure and custody are considered jurisdictional perquisites to civil forfeiture actions (DOJ, 1987). The civil forfeiture order issued by the court is not limited to just the wrongdoer as in criminal actions. It is good against all parties without judicial actions (DOJ, 1987).

Civil actions also have a lessor standard of proof than criminal forfeitures. This is a huge benefit to the government. To initiate a civil forfeiture, the government needs only to show probable cause that the property in question was used to violate federal law. Proof beyond a reasonable doubt it not necessary (*U.S. v. Brock*, 1984). The same probable cause police need to arrest or search is adequate to begin a civil action. Probable cause is defined as: "requiring reasonable grounds for belief of guilt, supported by less than prima-facia proof, but more than mere suspicion" (*U.S. v. $250,000 USC*, 1987). The reasoning for this lessor standard of proof is that only property, not individual liberty, is at issue in a civil action. Civil forfeitures are remedial actions to right a wrong and have only been considered quasi-criminal by the Supreme Court.

Additionally, another factor in favor of the government is the law allows for the admissibility of hearsay evidence in establishing probable cause (Lenck, 1987). Once the government succeeds in

establishing probable cause, the burden of proof shifts to the person claiming an interest in the property to prove its "innocence" by a preponderance of the evidence (*U.S. v. A Single Family Residence*, 1986). Maveal (1992) notes that any hearsay evidence submitted to the government to establish probable cause cannot be considered by the trier of facts on the merits of the forfeiture issue.

In contrast to the criminal forfeiture's ability to incapacitate both the organization and the offender, the civil forfeiture can be viewed as more economically efficient in that it can forfeit property without the need to incarcerate a defendant. The result is a twofold financial benefit to the government. First, the government takes possession of the assets hindering the trafficking business. These seized assets are then used for further drug enforcement. Second, there is a financial savings of not having to carry out a lengthy criminal trial and pay for incarceration. As a result, civil forfeiture is *advertised* by the government as a self-supporting drug enforcement strategy (McAnany, 1994).

Civil forfeiture is not without disadvantages that the government must consider in its application of these law for fighting drug trafficking. Civil forfeiture does require the government to promptly seize and secure the property at issue as

soon as the forfeiture case is filed. This burdens the government with storage and maintenance costs in addition to the problems of occupancy agreements for homes and property management issues while the case is pending.

Another problem is that a civil action can be rather cumbersome in terms of procedure. Maveal explains: "Civil claimants deluge the federal courts with lawsuits and motions challenging the government's seizure, seeking return of the seized property, and insisting upon a prompt filing and trial of the civil forfeiture action" (1992:38).

The low burden of proof requirement needed to start a civil forfeiture can also be a long-term problem. The issue is that since there is such a low requirement of proof for probable cause and no grand jury to protect against unjust seizures of property, there are some inherent dangers for abuse and mistakes.

While the federal legislation was designed to enhance both criminal and civil actions, as a result of these advantages even given the disadvantages, civil forfeiture has been the preferred method.

Legal Protections

While these characteristics of civil provisions favor the government and can make forfeiture a rather harsh penalty, there are a variety of safeguards - both formal and informal - in asset forfeiture to protect the innocent. First, property cannot be seized unless the government believes that it is subject to forfeiture. Although not required by law, DOJ policy states that seizures should not be made until a neutral and detached judicial official has made an independent finding of probable cause and issued a federal warrant for seizure (AFO, 1992, March/April). While there are some limited exceptions to this policy, it is mandatory for real estate seizures. Because forfeiture actions are strictly construed by the courts, seizing agencies must adhere to constitutionally and statutory guidelines (*U.S. v. Oregon*, 1981). In addition, forfeiture actions, whether under federal or state law conform to certain principles (*Lamar v. Universal Supply*, 1985). Property owners must be given due process. Aylesworth (1991) asserts that such due process must include constitutionally adequate nature of the *taking* and a meaningful system for disputing the action. Additionally, Fourth Amendment restrictions on search and seizure also apply to forfeiture cases. Evidence required to prove a forfeiture case can be

suppressed if it was obtained illegally. The exclusionary rule doctrine used to correct "government violations of the fourth amendment rights in criminal proceedings is applicable in forfeiture cases as forfeiture actions are generally viewed as "quasi-criminal" (Aylesworth, 1991).

Following the property seizure, various safeguards are activated. Notice of seizure and intent to forfeit must be made to the person(s) in possession of the property when it was seized and all those known to have a legal interest in the asset. Any claimant can file a bond to contest the forfeiture (DOJ, 1990). The Fifth Amendment may also be asserted by a claimant, but he/she does risk an adverse factual finding if they elect to invoke this protection (*Baxter V. Palmigiano*, 1976, In *U.S. v. A Single Family Residence*, 1986).

In addition to these basic safeguards, several defenses exist to protect innocent owners of the property in question. Section 881 provides various exceptions to forfeiture. Property is not subject to forfeiture if it is a common carrier used in the transaction of business (unless the person in charge consented to the violation) or if it was used in violation of the narcotics laws while in the unlawful possession of one other than its owner (21 USC Sect. 881

(a)(4)(A)-(B), (a)(6) 1988). Property claimants are also protected by the innocent owner defense. This defense is established when a claimant proves they had no knowledge of the violation or they did all that could be reasonably be expected to prevent the illegal use of the property (*U.S. v. Four Million, Two Hundred Fifty-five Thousand*, 1985).

Innocent third-parties still must comply with the same deadlines as the criminally involved for filing petitions, administrative claims, judicial claims, and answers. However, only a phone call to the AUSA is necessary [to notify the government of their interest.] Valukas and Walsh explain the government's position: "Despite the shocking legal results in this field, the goal of the asset forfeiture statutes is the hurt the bad guys, not penalize the innocent. Most prosecutors will work hard to avoid injury to faultless bystanders" (1988:36) The government is more flexible than one may assume with the forfeiture laws. Valukas and Walsh note that when an innocent spouse of a drug dealer is a joint owner of a house, the government may sell the house and give the spouse a chance to receive the proceeds. It's possible that if children are living at home, the government will assume the dealer's forfeited position as joint owner and allow the innocent spouse and family to

remain in the house. The authors offer this advice to defense attorneys: "In fact, the government's heart is probably softest when it comes to kids. Where children's welfare is at stake, implore the prosecutor to forego the forfeiture" (1988:36).

Even after the forfeiture, federal law authorizes the Attorney General to *remit* or *mitigate* the forfeiture if it would be unduly harsh (Louis, 1988). The Attorney General's 1990 report notes: "The Department of Justice routinely grants petitions for remission or mitigation of forfeiture, primarily to innocent leinholders and innocent family members. It is the Department's policy to liberally grant such petitions as a manner of avoiding harsh results" (1990:18).

In conclusion, each type of forfeiture proceedings has its attributes and liabilities. A comparison of the three procedures is shown Table 3 on the next page.

Table 3: Comparison of Administrative, Criminal and Civil Forfeiture

Advantages of each Proceeding

Administrative	Criminal	Civil
Processed directly by the seizing agency	Covers all types and values of assets	Covers all types and values of assets
Allows for the immediate seizure of the assets	Incapacitates both the asset and the defendant	No need for a lengthly and costly criminal trail to establish the guilt of the defendant
No requirement for a civil or criminal trial	Leaves less doubt about the illegal use of the asset	Allows for the immediate seizure of the asset
Covers most types of property	No need for a parallel civil proceeding to forfeit the asset	Lessor standard of proof than in a criminal case
Unclaimed assets quickly forfeited and placed into official use	Allows for the use of the grand jury	Hearsay evidence allowed
Less time consuming and costly	Provides the full range of legal protections to the defendant	Limited Fifth Amendment protection favors government
	Innocent owners protected with ancillary hearings	Wide range of discovery allowed
	Limited discovery	
	Unsuccessful criminal case can be followed by a civil forfeiture case	

Table 3 (cont'd)

Disadvantages of each Proceeding

Administrative	Criminal	Civil
A claim of ownership requires that the case becomes a civil action	Time consuming and costly	More time consuming than administrative proceedings
Cannot be used to forfeit real property	A finding of guilt necessary before addressing the forfeiture allegations	Lengthly cases can lead to high storage and management costs
Commonly subject to criticism due to seizures without arrest or prosecution	If the government loses the case, it also loses the forfeiture	Subject to criticism since the guilt of the asset owner is not at issue
		Extensive discovery can lead to impeachment or evidence problems at trial

The Case Flow

Forfeiture cases can start in a variety of manners including traffic stops where narcotics are discovered, pre-planned raids leading to the seizure of homes and business, controlled drug purchases and sales, or "profile stops" of suspects at transportation terminals. The seizures must be made pursuant to a lawful arrest or search (AFO, 1991). As noted earlier, a variety of law enforcement agencies are involved in the process. The local, state or federal law

enforcement agency (Drug Enforcement Administration, Federal Bureau of Investigation, Internal Revenue Service and Immigration and Naturalization Service) involved in the seizure; the U.S. Marshal's Service acting as property custodian after seizure and responsible for property disposition following the case's conclusion; and the U.S. Attorney's Office as prosecutor of the case.

If the property is seized by a federal law enforcement agency, the case then directly enters the federal system. If a state or local law enforcement agency seized the property, the case enters the federal system through the adoption process. Adoption is the process whereby: "a state or local law enforcement agency that has seized the property, in some instances, can request one of the United States Department of Justice investigative bureaus to adopt the seizure and proceed with federal forfeiture" (DOJ, 1987:3). First, the property must be forfeitable pursuant to one of the federal provisions the Department of Justice enforces. Second, there must be a valid prosecutorial purpose in requesting the adoption of a property seizure for forfeiture. For example, a state's forfeiture provisions may require proof beyond a reasonable doubt and the case in question may not meet those standards. Federal standards usually require a lessor burden of prior (DOJ, 1987 September). An additional

requirement for this process is the adopting federal investigative bureau must have the available resources to process the case. Finally, the property must meet the minimum monetary standards of equity (vehicles: $2500, aircraft: $5000, real property: $10,000 and all other types of property: $1000) before it can be accepted.

Following the seizure, the government will proceed initially with an administrative or judicial action depending on the property type and its value. Those holding an interest in the property have the opportunity to file a claim asserting their interest. For certain types of property, if a claim of ownership is not filed, and after the complying with notice and time requirements, the government may directly forfeit the property administratively and close the case without having to go through the courts. If the seizure and forfeiture is contested by a claimant or the property must be forfeited judicially, the case moves on to the prosecutor.

Once the case enters the federal system, it is forwarded to the U.S. Attorney for prosecution provided there is a claim of ownership or the property falls under certain statutory requirements mandating judicial activity. Covington (1989) explains that in making the decision to prosecute and file the case with the federal district court, the case is reviewed to determine if there is probable

cause to proceed, the validity of any ownership claims, and whether its is financially viable. Dismissals of cases that are never filed commonly occur at this early stage.

Once accepted for prosecution, the civil case follows the typical path through the federal judicial system and is generally concluded either through a forfeiture order, settlement, or dismissal. If the property is forfeited, the government then retains title to the asset. Third-party claims, if any, are settled and the remaining value of the asset is disposed of by the U.S. Marshal's Service. The Department of Justice and the participating law enforcement agencies typically receive a portion of the asset through the Equitable Sharing program.

As briefly noted earlier, a provision in the Comprehensive Crime Control Act of 1984 authorized the Attorney General of the U.S. to transfer or share forfeited property with participating state or local law enforcement agencies. The shares are distributed in proportion to the contribution of the agencies that directly participated in any of the facts that led to the seizure or forfeiture (FBI,1985). Prior to the passage of the CCCA, the federal government could not share property with other non-federal law enforcement agencies. The goal of this provision was to enhance inter-agency

cooperation in narcotics trafficking cases as well as provide them with valuable resources in their anti-drug efforts (FBI, 1985).

Recent Procedural Changes to Asset Forfeiture

During 1993, the Supreme Court issued rulings in five asset forfeiture cases. The ruling indicate that the Court is showing considerably less tolerance for the aggressive and excessive use of asset forfeiture by the government. Three of the relevant cases are discussed below.

In a case entitled *U.S. v. A Parcel of Land,* (1993) the Supreme Court dealt with the issue of innocent owners. In this case, the Department of Justice sought to seize the home of a woman in New Jersey because it was purchased with tainted drug money without giving the woman a chance to prove that she was an innocent owner. In an article on this case, the *New York Times* stated: "the [government's] argument was so sweeping that mortgage lenders and title searchers could lose their shirts if a real estate deal turned out to involve a home purchased with tainted funds" (1993, February 27). The Justice Department argued that the "proceeds of the illegal drug transaction actually belonged to the government and in turn converts any subsequently acquired property to the government as well. In the Department's view, the only 'innocent owner' was the

one who owned the property before someone else made illegal use of it" (New York Times, 1993, February 25).

The Court, in a 6-3 decision, restricted the government's sweeping power to confiscate property. Justice John Paul Stephens, writing for the majority, said that the government's argument "would effectively eliminate the innocent owner defense in almost every imaginable case in which proceeds could be forfeited". Two of the concurring Justices added in a separate opinion that the government's argument "has rested on a fundamental misconception" that the government automatically takes legal title to property at the moment it is used illegally without the need for additional proceedings. A close examination of this decision reveals that although it does not prevent the government from seizing assets directly from drug dealers, it does raise some complications for prosecutors. Mainly, its questions the relation-back doctrine upon which forfeiture rests. Based on this doctrine, no matter what happens, the government "owns" the property from the time of the offense. Justice Stephens did note that "this doctrine might be valid in its general outline, it was not self-executing. Forfeiture could occur only through some sort of judicial proceeding" (New York Times, 1993, February 25).

The second critical decision that gives an indication of future changes is *Alexander v. United States* (1993). Alexander was a First Amendment challenge to the government's use of forfeiture under RICO. In this case, the government forfeited an entire chain of adult bookstores and movie houses after finding obscene items for sale. The government destroyed thousands of books and films after the jury found seven items that met the legal test for obscenity (New York Times, 1993, January 15). The total amount of loss to the defendant was placed at $39 million.

The principal question for the high court was whether the government's action amounted to an unconstitutional prior restraint of expression that is protected by the First Amendment. Chief Justice William Rehnquist, writing for a 6-3 majority, stated: "the forfeiture order in the case imposes no legal impediment to ... [Alexander's] ability to engage in any expressive activity he chooses" In a strong dissent, Justice Kennedy, joined by Justices Blackman and Stephens, called for a ruling on the "ominous, onerous threat" to free speech and press freedom. But perhaps the more important part of the ruling that would soon have an implication for asset forfeiture was the Court's unanimous decision that the

forfeiture *could* be challenged for excessiveness under the Eighth Amendment.

The third decisive forfeiture case ruled on that year was *Austin v. United States* (1993). At issue was the forfeiture of the petitioner's home and autobody shop after he pleaded guilty to the sole charge of possession of cocaine with intent to deliver. The forfeiture was made pursuant to 21 U.S.C. 881, section (a)(4) and (a)(7) - the facilitation statute - which provides for the forfeiture of property used or intended to be used to facilitate the commission of certain drug related crimes. At issue was whether the forfeiture violated the Eighth Amendment's excessive fines provision. The Court, in a unanimous decision, ruled that the Constitution limits the government's authority to seize homes, business and other types of property of criminals and suspects. The Court found that the Eighth Amendment clause on excessive fines does require that there must be a relationship between the gravity of an offense and the property that is seized. Although the Court did not explicitly rule in this particular instance that the amount of the fine was in fact excessive, it just said that it could be. The Court remanded the case back to the trial court.

An analysis of these cases illustrates their impact on asset forfeiture and what might occur in the future. As a result of *Alexander* and *Austin*, with its unopposed decision regarding the Eighth Amendment to asset forfeiture, the government must take a new look at its civil and criminal actions to confiscate property. It will have to consider the value of assets to be forfeited in relation to the severity of the offense at issue. This ruling gives critics of forfeiture and defendants a potent new weapon to fight back when the government seizes property. The ruling also may weaken the facilitation statute that provides for the more efficient forfeiture of property when compared to the proceeds statute. Even more important, this recent decision illustrates the Court's concern with the government's increasingly aggressive use of the forfeiture laws. It appears that the high court is trying to make some sense out of the concept of forfeiture.

Summary of Part One

This first part of the literature review details the historical and politcal forces that led to the development and expansion of federal asset forfeiture. The concept of forfeiting property has a long history. Forfeiture laws have been part of the American legal code for over 200 years in a variety of forms. Their most recent

incarnation is a result of the government's search for an effective means to deter organized criminal groups involved in narcotics trafficking. Presently, the federal program employs three different forfeiture proceedings, all with their own specific requirements, merits and liabilities as drug control tools.

Aside from the laws, the current federal program is a large scale effort combining several law enforcement agencies with an administrative office. The quantitative data presented in this study illustrate the rapid growth of the program from the 1984 to 1993 and its economic potential. Though still growing, it has recently come under scrutiny from the Supreme Court. A series of decisions in 1993 made resulted in procedural changes to these laws.

Research Literature

The Research Literature on Deterrence and Asset Forfeiture

This second part of the review supports the analysis of the deterrent value of asset forfeiture. The review initially examines studies on the philosophy of deterrence and its connection to forfeiture law. This is followed by research on the target of federal forfeiture - the drug trafficking enterprise. These studies identify their structure and motivation and most importantly, the assets crucial to the operation these illegal businesses. Based on the

results of these studies, important conclusions are made about the deterrent value of each of these assets. The identification of an asset's deterrent value will serves as the new measure employed in the analysis.

Describing General Deterrence.

Deterrence is act of preventing crime before it occurs by means of the threat of criminal sanctions. Bentham (1748-1832), an English philosopher believed that people could be deterred or frightened away from crime if the punishment associated with its commission was swift, appropriately severe, and of unwavering certainty (Abadinsky and Winfree, 1992). Deterrence can be summarized in a quote by John Bradford (1510-1555) made four hundred years ago: "The familiar story, that on seeing an evildoer taken to the place of execution, he was want to exclaim" 'But for the grace of God goes John Bradford,' is an universal tradition which has overcome the lapse of time".

There are two types of deterrence, general and specific. General deterrence has been defined as "the inhibiting effect of sanctions on the criminal activity of people other than the sanctioned offender (Blumstein, Cohen and Nagin, 1978:3). It is at the heart of classical criminology. Classical theorists including

Ernest Van Den Haag believe that the purpose of the law and justice system is to create a threat system. Van Den Haag explains:

> Criminal laws prohibit some acts and try to deter from them by conditional threats which specify the punishment of persons who were not deterred. Sufficiently frequent imposition of these punishments by courts of law make the threats credible. If the community feels that they are deserved, punishments also gratify its sense of justice, and help to legitimize the threat system of the criminal law by tigmatizing crime as morally odious (1982:709).

What is referred to is the predicted inverse relationship between the chance that a criminal act will take place and the speed, certainty and severity of punishment directed against the offenders (Seigel, 1989). As Cesare Becarria asserts in his formula for deterrence theory, if a potential criminal feels that its reasonably certain that he will be caught by the authorities, quickly tried and punished appropriately, he will not commit this illegal act (Paolucci, 1977). Its important to note that deterrence is also based on the idea that people are rational and calculating. Seigel explains:

> The underlying assumption of the general deterrence model is that people are fully aware of the punishments associated with criminal acts and choose to forego law-violating behavior because of those punishments. If people were unaware of the pains associated with criminal sanctions, then the force of punishment would have no effect on them (1989:101).

The potential offenders are aware of, and weigh the costs and benefits of their future actions. All three elements, that is, speed,

certainty and severity must also be present in this formula for the law to deter.

Researchers Michael Geerken and Walter Gove have attempted to place the idea of awareness of the punishment into a theoretical perspective of deterrence. They assert that as people hear about crime and punishment in the mass media, they develop and exaggerated view of the effectiveness of law enforcement and the severity of the punishment. This is because the media tend to report on dramatic individual crimes that are frequently solved and the offender is punished. The more people rely on the mass media as their source of information, the more distorted their view becomes of crime and punishment and the greater the effects of the deterrence system (1975:505). Reuter (1992) notes that media reports on illegal drugs were a frequent topic in 1988 actually increasing the public knowledge of the drug crisis. The Department of Justice has been well aware of the media attention specifically given to its program. Cary Copeland, Director of the Executive Office for Asset Forfeiture acknowledges media attention directed at the forfeiture program referring to it as a "massive media contact" (AFO, 1992, May/June:2). It is important to mention that few studies illustrate that perceptions of deterrence or deterrent measures

actually reduce the propensity to commit crime or reduce the crime rate (Seigel, 1989).

Raymond Paternoster (1983) argues that individuals do not always fit the mold of being rational criminals. This is in accordance with Simon's (1976) view of bounded rationality, that is, one can never be fully aware of all available options when choosing a course of action. Paternoster and his associates, W. William Minor and Joseph Harry (1983) found little evidence that perceptions of punishment actually deter crime.

Specific Deterrence and Incapacitation.

Specific deterrence aims at punishing offenders already sentenced for an offence from committing future crimes (Samaha, 1994). The model of specific deterrence requires that the punishment be severe enough to prevent the offender from repeating their acts. For example, a person convicted of drunk driving could be fined, jailed and have his car confiscated. The sought-after effect would be that this individual refrains from future driving while intoxicated.

James Q. Wilson is an advocate of specific deterrence. In *Thinking About Crime*, Wilson (1975) concludes that punishment appropriate to deter future criminal behavior could prevent crime

regardless of the reasons that people committed it in the first place. Wilson asserts that a small number of people are responsible for the majority of crime. This group does not fear punishment because of the weaknesses in the justice system, i.e., different length sentences for the same crime and the failure of rehabilitation. He argues that the answer lies in specific deterrence theory. If criminals realize that the cost of their crime increases without any change in their expected benefits, then potential criminals will be deterred from this course of action.

Directly associated with specific deterrence is the effectiveness of punishment. Incapacitating criminals is designed to prevent them from committing crimes both while behind bars and after their release. Seigel notes current research findings: "The incapacitation view is supported by findings on the chronic career criminal. If in fact a small number of dangerous criminals commits a large percentage of the nation's crimes, then an effort to incapacitate these few 'troublemakers' makes sense" (1992:146). Peter Greenwood of Rand Corporation (1982) concluded that incapacitation would be effective if directed against a specific population of offenders. Some additional research supports these

findings, yet the cost of incarceration of problem populations makes this strategy extremely expensive.

Asset Forfeiture as a Deterrent.

Before the government turned to asset forfeiture, incarceration was the relied-upon method for controlling narcotics traffickers. Reuter argued that incarceration *should have* been an effective deterrent driving up the price of the drug. He states: "Incarcerating sellers should raise the price of the drug by removing those who were the most willing to be dealers" (1992:38). The imprisonment of drug traffickers incapacitates the individual, but fails to reach their organization. However, the huge profits weakened the deterrent effect of prosecution and imprisonment. Surprisingly, traffickers seem to be undeterred by event the harshest mandatory minimum sentences (DOJ, 1990). Even if imprisoned, new members of the competition could fill the void left in this illegal market.

A new approach was necessary to compensate for this inherent weakness in the traditional sanction of incarceration. In the War on Drugs, forfeiture was designed as an alternative to the use of prisons or jails for drug traffickers. DOJ and Congress realized that the lifeblood of drug trafficking was money. It provides the criminal

organization with the necessary capital to maintain and expand their illegal business. If the flow of money can be cut off, the criminal organization will wither no matter how great the demand for their product (DOJ, 1990). Massey explains the reasoning:

> Forfeiture ... is particularly useful because it targets asset producing patterns of criminality. The desire to engage in drug trafficking is spurred on by the offenders' beliefs the drug trade is a highly lucrative endeavor that affords traffickers an opportunity to accumulate substantial wealth with a relatively small expenditure of energy. Were forfeiture not an option to drug enforcement agencies, arrest and conviction for drug trafficking would be a small price to pay if one were able to retain the proceeds from the illegal enterprise (1993:9).

In addition to removing the economic base of the trafficking organization, asset forfeiture should also increase the price of the illegal drugs, having an effect on consumption. In their research on heroin markets, Reuter and Kleiman assert: "If falling heroin prices pose a problem, one solution is to take action to increase prices. This is primarily the domain of law enforcement. In general, a program that imposes costs on the heroin industry, via seizure or destruction of drugs, seizure and forfeiture of assets, or imprisonment of heroin entrepreneurs and their employees, tends to force prices up" (1986:18). Asset forfeiture, with its assumed ability to deter the drug trafficker and incapacitate the narcotics enterprise, was the new solution to an old and persistent problem.

There is some evidence of the effectiveness of forfeiture on the drug trade. James Jacobson, an investigator with the Bayfield County Sheriff's Department writes: "the belief is that this [the forfeiture of real property] used to grow marijuana had a serious impact on the growing activities. We have found the price of marijuana to have increased 100 percent. The asset forfeiture of the Hayes property, although not a large monetary return to the federal government, had an impact in one area that cannot be measured in dollars and cents" (1990:1). Asset forfeiture is designed to alter the cost-benefit ratio of the criminal drug trafficking organization reducing or neutralizing its benefits (Massey, 1993).

What makes asset forfeiture unique is that it is relied upon as a deterrent. Asset forfeiture meets the requirements of deterrence theory. As a general deterrent, asset forfeiture threatens the drug dealer's prospects of making huge economic gains from trafficking. As a specific deterrent, forfeiture is designed to target the actual property as an instrumentality of the crime (Massey, 1993) thereby incapacitating the enterprise. If the use of this sanction makes the facilitation if the crime more costly to the potential offender, then there is a deterrent effect.

Administrative and civil forfeiture best fulfill the requirements of certainty and swiftness. As a threat, administrative and civil forfeitures lead to the same outcome as a criminal proceeding. However, civil forfeiture is unique in that it increases the certainty of punishment since it is an *in rem* civil proceeding. Civil actions offer substantially fewer protections for the property owners ordinarily granted to a criminal defendant. Civil forfeiture does not consider the criminal liability of the property owner, only that of the property. Additionally, with the burden of proof shifted to the claimant in civil proceedings, the odds that an owner will be victorious is reduced significantly.

The swiftness of the punishment is obvious in administrative forfeiture and strengthened with the relation-back doctrine in criminal actions. This states that the offending asset becomes forfeitable at the time it was used to facilitate the illegal act. The government's only requirement to support the asset seizure is probable cause demonstrating that it was used to facilitate the offense. The punitive effect is then sustained by a "house of horrors" a claimant enters when they attempt to recover their seized asset (Valukas and Walsh, 1988).

A strong argument can also be made regarding the proportionality of the punishment with forfeiture. Civil and administrative forfeitures are unique in that they only target the guilty property. Criminal proceedings result in both the incarceration of the traffickers and the loss of his ill-gotten gains. Massey writes: "Where the cost of prison time might be off-set by the long-term enjoyment of crime's proceeds, forfeiture removes benefits associated with such a trade-off" (1993:15). Forfeiture not only reduces the benefits of the crime, but serves as poetic justice. The trafficker's seized assets are sold by the government and used to fund drug enforcement. From a deterrence perspective, the value-added component associated with forfeiture does not in itself support excessive or gratuitous punishment" (Massey, 1993:15).

Finally, forfeiture meets the requirement of specific deterrence with its ability to incapacitate the narcotics enterprise. The seizure of assets - both those necessary for operating the business and the profits of the business - can disable this illegal enterprise.

Though the Department of Justice states that its main goal is to use forfeiture as a deterrent, the program can generate a large amount of revenue. This makes it very attractive to law enforcement

especially with equitable sharing. The second goal of the program is to use forfeiture to fund narcotics enforcement (DOJ, 1990). The potential for conflict between the goals of deterrence and revenue is commonly cited by critics (Massey, 1993; Meyer, 1991; Miller and Selva, 1994). They contend that forfeiture is mainly being used to generate revenue for law enforcement with little regard for deterring narcotics trafficking organizations. Miller and Selva (1993), in an ethnographic analysis of asset forfeiture, concluded that "asset forfeiture is a dysfunctional policy which, in implementation, has strayed from its original intent" (315). The authors assert that seizing assets solely to generate revenue has become the primary concern of smaller agencies at the expense of the larger goal of deterrence (319). Though a common criticism, there is only very limited empirical research to support this assertion.

Research Examining the Nature of Modern Drug Trafficking

The asset forfeiture program is formally designed to deter drug trafficking enterprises by destroying their economic foundation through the aggressive seizure and forfeiture of assets. Liverpool's research supports the reasoning behind this policy: "Traffickers seem to fear imprisonment only second to losing their assets"

(1983:21). An understanding of the structure, motivation and assets of narcotics trafficking enterprises allows one to evaluate the application of federal asset forfeiture as a deterrent. Therefore, this section of the paper reviews the literature describing the nature of drug trafficking networks, their motivation, and the types and importance of specific assets associated with the business. In turn, the identification of these assets will be used to analyze forfeiture's value as a deterrent to narcotics trafficking.

Structure and Motivation.

Tullis (1991) notes that at the beginning of the current drug use wave, much of the narcotics distribution was informal, i.e., akin to a cottage industry. Small-scale traffickers moving a few hundred grams of the drug relied on informal and trusted contacts to conduct their operations. Some of the current trafficking is still carried on this way. However, drug trafficking is becoming increasingly organized, especially at the production, wholesale and middleman levels pushing many of the small-scale dealers strictly into retail sales.

Similar to legitimate business, the drug trafficking enterprise exists in a variety of forms. These range from the cartels to mid-level dealers to the street-level sellers. Table 4 on the following

pages provides an overview of the structure of drug trafficking at different levels of the business.

Table 4: Structure, Function and Roles within the Narcotics Enterprise

Approximate Role in a Legal Market	Role by Common Title	Major Functions done at this Level
Grower/Producer	Coca, opium or marijuana farmer	Grow coca, opium or marijuana - the raw materials
Manufacturer	Collector, transporter, elaborator, chemist, drug lord	All stages of preparation for cocaine, heroin and marijuana as commonly sold
TRAFFICKERS:		
Importer	Multi-kilo importer, mule, airplane pilot, smuggler, trafficker, money launderer	Smuggling large quantities of drugs into the U.S.
Wholesale Distributor	Major distributor, investor, "kilo-connection"	Transportation and redistribution of multi-kilogram and single quantities
DEALERS:		
Regional Distributor	Pound and Ounce men, weight dealers	Adulteration and sale of moderate cost products
Retail Store Owner	House connections and suppliers	Adulteration and production of retail-level dosage units in very large numbers
Assistant Manager, Security Chief, or Accountant	"Lieutenant", "muscle", transports, drugs, crewboss, crack-house manager	Supervises three or more sellers, enforces formal contracts, collects money, distributes multiple-dosage units to sellers

Table 4 (cont'd)

SELLERS:		
Store Clerk, Salesman	Street drug seller, runner, juggler	Makes actual direct sales to consumer; private seller responsible for both money and drugs
LOW-LEVEL DISTRIBUTORS:		
Advertiser, Security Guards, Leaflet Distributor	Steerer, tout, cop-man, look-out, holder, runner, help friend	Assists in making sales, advertises, protects seller from police and criminals, solicits customers, handles drugs or money, but not both
Servant, Temporary Employee	Runs shooting gallery, injector, taster, free-baser, apartment cleaner, drug-bagger	Provides short-term services to users and sellers for money or drugs

Source: Johnson, Williams, Dir, and Sabina (1990)

Table 4 illustrates that paralleling legitimate industry, the illegal narcotics enterprise is involved in producing, refining, wholesaling and retailing of narcotics.

Drug trafficking is commonly viewed as having a formal, highly organized structure because its participants undertake complex tasks over a period of time. Yet, aside from the very top levels of the business, drug trafficking is characterized by the absence of a highly formal, corporate or military structure. Instead these

organizations are somewhat more informal in nature as Holmes explains:

> Generally, drug trafficking has an informal organizational structure with a network of more dominant and less dominant figures playing various roles in the business venture. As in the [legitimate] real estate industry, with its roles of financing, developing, construction, and sales, drug traffickers also play definable roles. Cocaine trafficking, for example, requires production, processing, transportation, distribution, and money laundering. The cocaine industry - at least at its higher importing and wholesaling levels - needs support-service business such as legal defense, money laundering, and financial advice (1992:10).

The production of the narcotics takes place in Bolivia, Columbia, Peru, Ecuador and Mexico. The control of the trade is presently vested in the hands of a limited number of drug cartels all located in South American. They manage cocaine and marijuana distribution. Four major organizations have been identified as the Medellin, Cali, Bogota, and North Atlantic Cartels. All of these are located in South America and they represent the major wholesalers and retailers of cocaine and marijuana. The Department of Justice (1990) estimates that the Medellin and Cali cartels in Columbia could control up to 80 percent of the cocaine sent to the United States.

Operating within the United States are several different types of organized narcotics enterprises. Perhaps the most famous is the mafia which is considered a major distributer of heroin in the U.S. (DOJ, 1990). In 1988, the FBI estimated that about 25 percent of crime families making up the mafia or La Cosa Nostra (meaning "our thing") are involved in drug trafficking. Contemporary research on the structure of the mafia indicates that it is not one, massive national organization, but many smaller local groups (Ianni, 1972 and Albini, 1971). Albini further concluded that organized crime was based on loosely constructed "patron-client relations". Examining organized crime in Seattle, William Chambliss (1971) found that it commonly consisted of local political and business leaders, not a national syndicate.

Smaller organizations - local gangs representing racial or ethnic groups - have also been identified as heavily involved in narcotics trafficking. These groups operate in both urban and rural areas and represent a significant category of traffickers. Lyman observes: "They are frequently well-organized, highly structured and usually composed of extremely violent career criminals" (1991:218). The government found that Jamaican, Cuban and Dominican gangs commonly sell cocaine powder and crack in many U.S. cities. Much of

the heroin trade is controlled by the Chinese, Thai, Sicilian and Mexican organizations (DOJ, 1990). The El Rukns of Chicago were an example of this type urban narcotics enterprise. Formed in the mid-1960's as the Blackstone Rangers, the El Rukns were heavily involved in the cocaine and heroin trade on the Southside of Chicago. It is also estimated by the Chicago Police that the El Rukns were responsible for between 24 to 72 murders in their years of operation (*Chicago Tribune Magazine*, 1994, August 21). This gang was eventually disabled as a result of a large-scale joint, federal and local investigation that included both criminal prosecutions and forfeitures.

Another domestic organized group noted for their involvement in narcotics trafficking is the outlaw motorcycle gang. Originating with the Hell's Angels (named after a World War II bomber) in 1947, the role of the outlaw motorcycle gang changed from being just considered troublemakers by local police to a serious criminal enterprise by the 1970's (Lyman, 1991). The FBI currently reports that the Hell's Angels narcotics operations include the production and distribution of methamphetamine. Lyman explains the extent of these gangs:

> Today, outlaw motorcycle gangs have emerged into sophisticated criminal groups that, according to the DEA

> number about 850 with a membership exceeding 8000 in the United States alone. Their criminal activities vary, but include drug trafficking, contract killing, extortion, arson, fraud, embezzlement, and money laundering (1991:193).

The outlaw motorcycle gangs are also involved in legitimate businesses. These include, but are not limited to bars, clubs, amusement arcades, restaurants, billiard parlors and vending machine operations (Lyman, 1991). The use of legitimate businesses by these gangs has several purposes. They serve as cover for their operations, a place to make contacts, and perhaps most important, a location for laundering their illegal profits from narcotics trafficking.

The Limited Success at Controlling the Illicit Narcotics Business.

The government has made a concerted effort to win the *War on Drugs*. Funding has risen significantly at the federal level to support narcotics enforcement. Law enforcement has also pursued it integrated policy of targeting narcotics at the source, in transit, and at the wholesale and retail levels. Table 5 and Figures 5 through 7 on the following pages provide a partial indication of the government's efforts at narcotics control at the different levels.

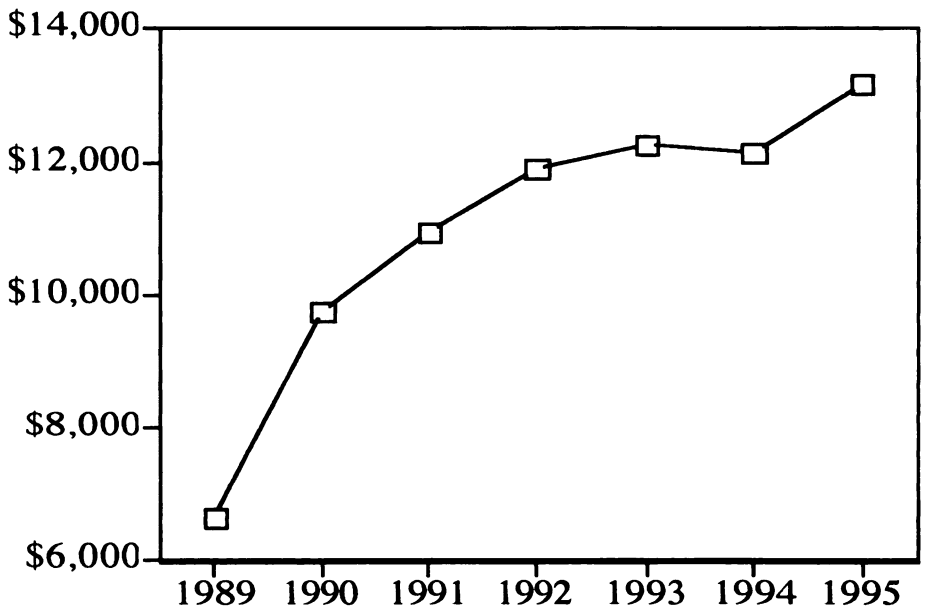


Figure 5: Trends in Federal Drug Control Spending, 1989 - 1995 (in millions)

Source: U.S. Department of Justice, Drugs & Crime Data, Fact Sheet: Drug Data Summary, July 1994, p. 5

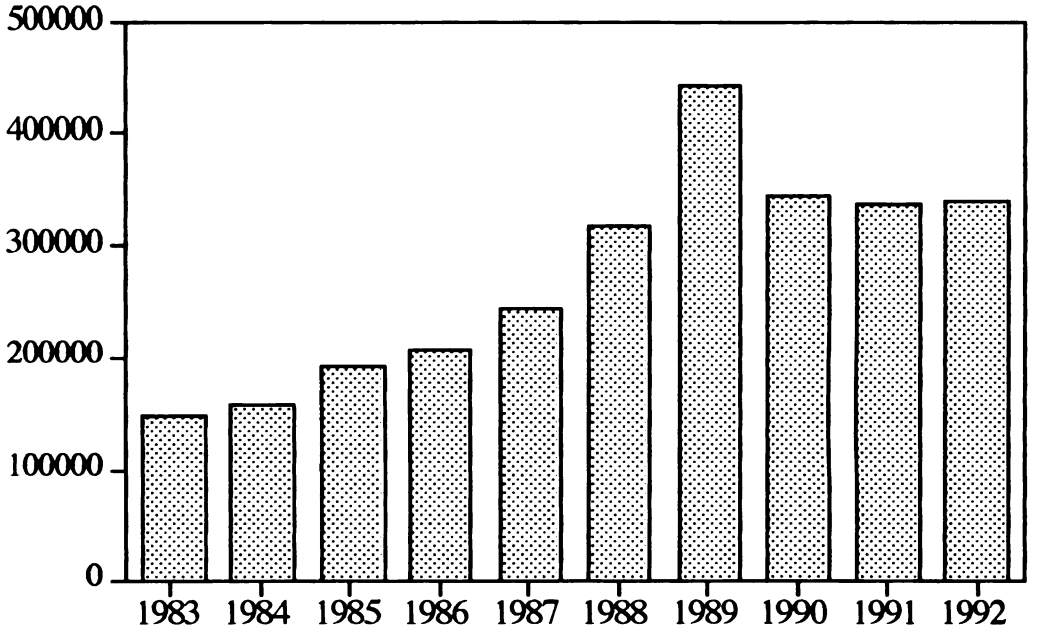


Figure 6: State and Local Arrests for the Sale and Manufacturing Drugs (1983 - 1992)

Source: U.S. Department of Justice, Drugs & Crime Data, Fact Sheet: Drug Data Summary, July 1994, p.1

Table 5: DEA Drug Removals of Cocaine and Heroin (1983 - 1992)

Year	Cocaine in Pounds	Heroin in Pounds
1983	19,625	662
1984	25,344	850
1985	39,969	985
1986	59,699	801
1987	81,823	804
1988	127,967	1,841
1989	182,357	1,554
1990	160,097	1,405
1991	129,481	2,479
1992	172,391	1,534

Source: U.S. Department of Justice, Drug Enforcement Administration, Drug Enforcement Statistical Report, 1992, (Washington, D.C. U.S. Department of Justice, 1993).

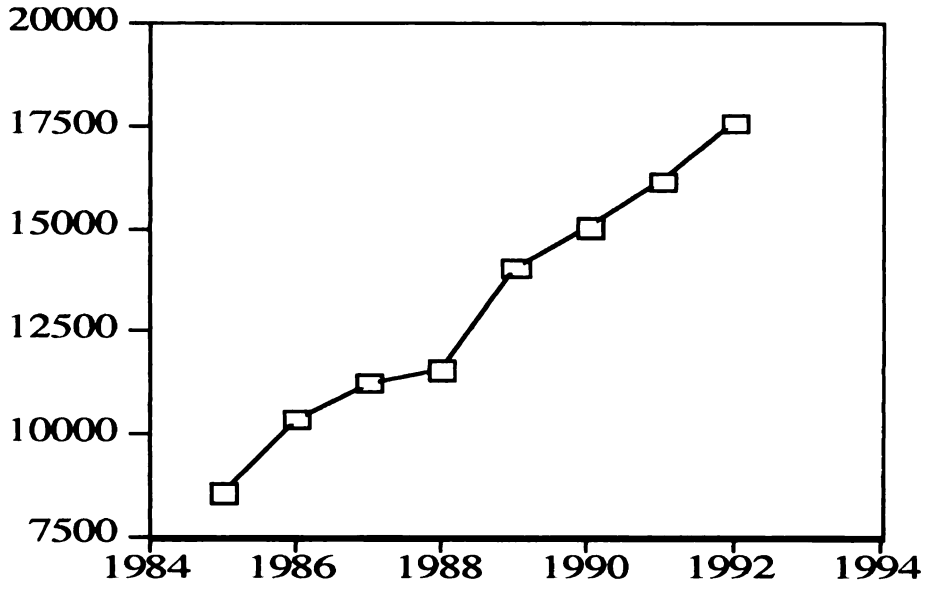


Figure 7: Trends in Federal Defendants Convicted of Drug Offenses (1985 - 1993)

Source: Bureau of Justice Statistics, Federal Criminal Case Processing (1993)

While the impact of the asset forfeiture program on the drug trade has yet to be researched, there is a consensus as to the failure of the government to reduce the supply of narcotics and win the drug war. A considerable body of research exists stating that government efforts have failed in the War on Drugs. (Friedman, 1991; Kleiman and Caulkins, 1990; Nadelmann, 1991; Reuter, 1991). Given the increased use of forfeiture and the continuing traditional enforcement efforts of drug interdiction, education, and

incarceration, its logical to expect that the drug trade would have all but disappeared in the past few years. This is also expected since the drug business is economically motivated and should respond to changes in the market (Reuter, 1992).

A disturbing trend is that the price of illicit drugs has either remained stable or declined - quite contrary to what should have happened as a result of the massive government enforcement efforts (Skolnick, 1992). The 1991 NNICC report, describing the recent trends in heroin pricing, stated that the supply of heroin to the U.S. market has been increasing over the past several years. The frequency of large-scale seizures has risen as have the sizes of individual seizures, but wholesale kilogram-level prices are substantially below those of the early 1980's. Additionally, the retail-level purity of heroin has increased substantially. The average retail price per-miligram of heroin in New York, its largest market, is comparable to its price in the mid-1960's.

Reuter examined cocaine prices and concluded that they only increased modestly in 1990 as illustrated in Figure 8. Even with stringent enforcement - cocaine prices were only about 25% above their 1988 nadir and close to their 1986 levels in nominal dollars (1992:36-37).

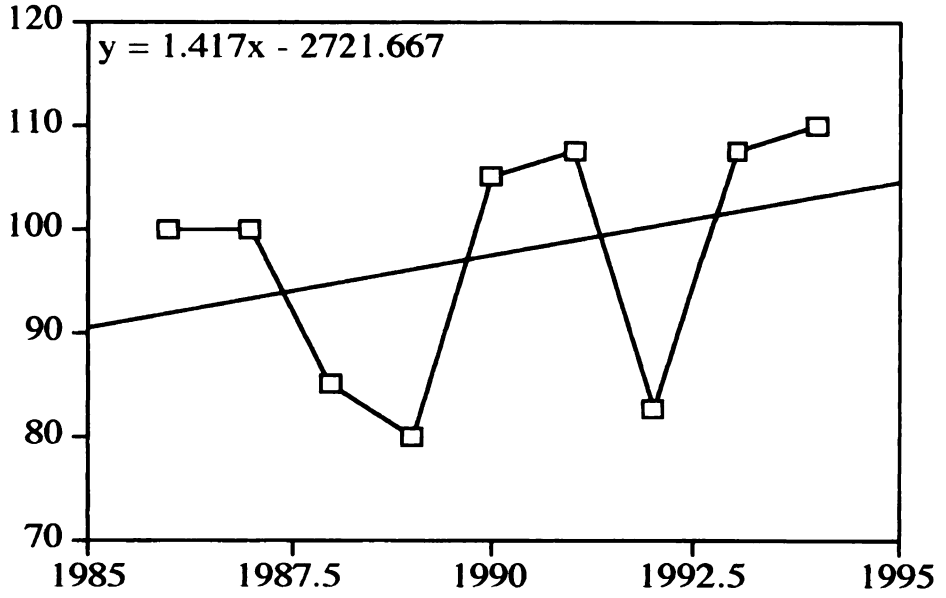


Figure 8: Recent Trends in the National Average Price of Cocaine (1986 - 1994)

Source: Drug Enforcement Adminstration, Illegal Drug Price/Purity Report, November 1994

Furthermore, the DEA (1993) reports that while cocaine pricing has been relatively stable, the purity at the gram and ounce level has increased as shown in Table 6.

Table 6: Trends in the National Average Purity of Cocaine (1990 - 1994)

Quantity	1990	1991	1992	1993	1994
Kilogram	80%	86%	83%	82%	83%
Ounce	58%	72%	74%	70%	73%
Gram	54%	59%	64%	63%	65%

Source: Drug Enforcement Adminstration, Illegal Drug Price/Purity Report, November 1994

There are several possible explanations for this phenomena. Skolnick (1992) argues that this problem may be due to increased production. The demand for illegal drugs continues to grow in Europe and the United States which leads to more production at the source countries. Table 7 provides an indication of the tremendous production potential in this trade for both cocaine and opium.

Table 7: Worldwide Potential for Cocaine and Heroin Production in Metric Tons (1989-1993)

	Metric Tons Produced				
	1989	1990	1991	1992	1993
Opium	3,948	3,257	3,519	3,409	3,699
Cocaine	298,070	305,970	331,140	333,900	271,700

Source: Bureau of International Narcotics Matters, U. S. Department of State, International narcotics control strategy report, March 1991:22

The rise in production further increases demand, which stimulates the whole cycle again. The problem may also lie in the nature of the drug trade and the government's use of its drug control strategies. Skolnick makes the interesting observation that interdiction only hurts the marginally inefficient traffickers and their enterprises. "... the best organized, the most corrupting of the authorities, the most ruthless and efficient, survive... " (1993:143). Kleiman (1985), in support of this view, contends that the drug market may be inelastic. If this is the case, drug enforcement may actually increase the profits of traffickers who are able to elude the government's efforts. The "fittest" traffickers now make even larger profits.

The attraction of large profit margins may be another explanation. Reuter (1992) states that the significant profit margin of dealers, as indicated by his 1988 District of Columbia findings of even an hourly rate of $30 for dealers at the low end, provides an incentive to remain in the business. The enormous profits from the drug trade are hard to offset with enforcement efforts. Abadinsky (1991) calculated that a $500 to $700 purchase of cocaine leaves, when converted to a kilogram of cocaine hydrochloride, increases to a value of $3000 to $5000. When shipped to Miami for street-level distribution, it yields $160,000 to $240,000. Unfortunately for the traffickers, the glut of cocaine reaching the U.S. has kept prices down from their high 1983 levels (1991:214). With these prices, it is easy to see the motivation to stay in the business.

A fourth explanation examines how traffickers respond to enforcement efforts. According to the National Drug Control Strategy (1989), the government has been successful in seizing increasing amounts of illegal drugs which has forced the traffickers to change their strategies as shown in Table 8. Yet, the traffickers have responded with new tactics that are increasingly difficult for the government to deter.

Table 8: Illegal Drug Seizures (FY 1990 - 1993)

	Seizures in Pounds			
Drug	FY 1990	FY 1991	FY1992	FY 1993
Heroin	1,794	3,030	2,551	3,345
Cocaine	235,214	246,324	303,254	238,053
Marijuana	483,248	499,070	783,343	752,114
Hashish	17,062	178,211	4,048	26,080

Source: U.S. Department of Justice,
Drugs & Crime Data, Fact Sheet: Drug Data Summary, July 1994

A final explanation holds that the success of government enforcement efforts may actually contribute to increased narcotics use. Zinberg and Robertson (1972), examining the results of the 1969 Operation Intercept at the Mexican border to cut off the supply of marijuana, found an increase in heroin use among urban, white, middle-class high school students shortly after the start of the operation (1972:210). Successful enforcement may force users to switch to more potent and available substances increasing the demand for these substances.

Evaluating the Importance of Assets Common to Narcotics Trafficking

The research in this part of the review indicates that forfeiture can potentially be a deterrent. It also summarized the studies describing the nature of narcotics trafficking organizations and the failure of traditional enforcement to control this problem. The following section connects the two by reviewing the studies detailing the types of assets common to narcotics trafficking enterprises and suggesting their relative importance. The findings from these studies are intergrated to develop a measure of deterrent value used in the analysis.

Research on a cocaine distribution enterprise illustrates what's required for a successful trafficking business. Holmes writes:

> A participant, say a wholesaler, seeks to put his assets to work to secure his position as a dominant network member. The assets he needs include dependable sources of good product, trustworthy transportation, and a network of distributors. If he undertakes transportation himself, he may control physical assets such as boats, planes and auto. He may also control a safe location for cutting and distributing the cocaine and insure a secure method of communication, such as a beeper and mobile phone setup, his greatest necessity, of course, is to convert cash received from distributors into usable personal wealth through a secure money laundering process (1992:11-12).

The general makeup of drug trafficking organization - whether it be cocaine, heroin, marijuana or *designer drugs* - and their methods of operation have important implications for law enforcement. Holmes (1992) asserts that the enterprise is the sum of its components. For example, the basic delivery of cocaine to a customer requires a number of tasks and the use of different assets. The drug must be produced, imported, transported, and distributed, with the final profits laundered either by cash or business transactions. The disruption of business at any one of these steps through forfeiture can stop of hinder or stop the flow of drugs.

It is asserted in this study that the deterrent value of the government's seizure and forfeiture of assets linked to drug trafficking organizations will vary with the type of asset. Figure 8 on the preceding pages gave an initial indication of the types of assets common to the narcotics enterprise. These assets, further described in the following section, include large amounts of cash and financial instruments, businesses for money laundering and as fronts, real property (both residential and open land for cultivation of crops and clandestine labs), equipment used in cultivating and processing narcotics, conveyances including planes, boats and automobiles that are either used for transporting narcotics or

represent the proceeds of the business, and personal property such as jewelry, furs and electronics.

Currency and the Need to Launder Money.

Money is what drives the drug trade (Skolnick, 1992). As described earlier in this study, different government sources estimate the value of the illegal narcotics trade in the United States to be between $40 - $50 to as much as $110 billion (DOJ, 1993). The USSFRC Subcommittee on Narcotics and Terrorism (1990) quotes a figure of $300 billion as an estimate of the global value of the drug profits. As far back as 1985, the NNICC estimated that with an average price of $300 to $600 for a pound of marijuana at the wholesale level and Mexican production at 3-4 thousand metric tons, the end result of marijuana production in Mexico had a wholesale value between $2.3 and $4.6 billion. The retail value would be several times higher when priced at the 1985 cost of $50 - $100/ounce (NNICC Report, 1987). Figure 9 gives an indication of the increasing value of heroin as it moves from production to retail sale:

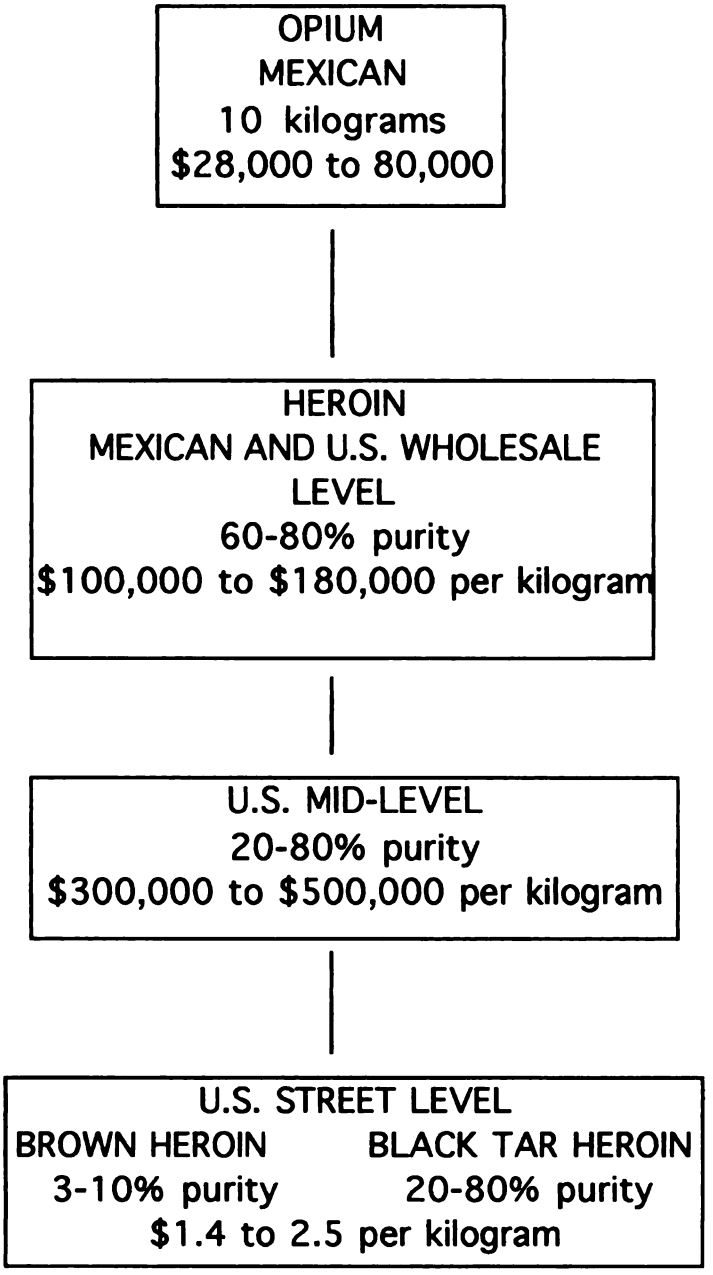


Figure 9: Value-added from Opium Production to the Retail Heroin

Source: Bureau of International Narotics Matters, U.S. Department of State, International Narcotics Control Strategy Report, March 1991

Because of the lucrative nature of this business, narcotics enterprises have literally amassed billions of dollars dealing drugs (Ruiz-Cabanas, 1989) with little incentive to stop. The rewards of drug dealing are greater than the risks. Reuter and Kleiman (1986) calculated that a cocaine retailer in 1984 had an expectation of spending no more that 9 percent of his time incarcerated, yet his expected earnings might have been about $75,000. This is a considerably higher risk return than in many other criminal occupations, especially given the low skill level of most dealers.

In a 1989 study, Peter Reuter and John Haaga researched the high-level narcotics organizations and concluded that those dealers who were in the business for several high-level deals had annual incomes in the hundreds of thousands. While not all are as fortunate, their findings did confirm the common perception that this is a highly profitable business. Reuter and Haaga:

> Men of obvious skill were able to earn enormous incomes for incurring quite modest risks. These unusually large incomes were almost entirely rewards for risk-taking, since no large initial investment was required. Capital in this business consists almost entirely of an inventory which is turned over very regularly and the "good will" built up by knowing good suppliers and customers" (1989:35).

Supporting this finding, Karchner (1990), in his examination of aspects of the narcotics business determined that the wholesalers

and mid-level dealers can earn hundreds of thousands or even millions of dollars. One large enterprise was the heroin trafficking business established by organized crime in the 1980's. Known as the "Pizza Connection", DOJ estimates that this group imported more than $1.6 billion worth of heroin to the U.S. The investigation showed that extensive multikilo heroin trafficking and money laundering were characteristics of the business. This group used a series of pizza parlors to operated by members to launder their profits (Blumenthal, 1988).

A study by Peter Reuter, Robert MacCoun and Patrick Murphy (1990) on regular and part-time street-level dealers in Washington D.C. presents a dealer profile and the amount of money at the low-end of this business. The research showed that their average income from their respondents who were occasional sellers - one day a week or less - is approximately $700 per month. Drug dealing was commonly used to supplement their income from legitimate jobs. The authors concluded that street-level dealers accumulate little wealth since it is common for them to use their profits to support their own habits. However, the study also revealed that the regular dealers - those selling more than once a week and even daily - could be as high as $55,000 annually.

The drug trafficking business has many peculiar characteristics including the specific types of assets common to and necessary for conducting business. The seizure of certain types of property can have a significant impact on the enterprise. Holmes describes these important assets:

> law enforcement must attack the key assets, both physical and personal, of the drug kingpin. The physical assets ... include safe houses, and vehicles used in drug importation and money exportation, land for marijuana cultivation, and, above all, cash proceeds. Civil remedies play an indispensable role in effective drug trafficking law enforcement. Removing assets and thereby dissuading potential profit-seekers causes the network to suffer a realistic loss making the venture an unattractive investment despite the potential profit (1992:19).

Unique about drug trafficking and what makes asset forfeiture a useful sanction is that the narcotics business is a cash business with payments in-kind and loans being very much the exception (Lenck, 1988, Dorn, Murji, and South, 1992). At each point in the drug trade, the transactions are handled in cash. Checks, money-orders and other monetary instruments leave a paper trail for law enforcement to follow (Lenck, 1987). As a result, cash - especially in large amounts - is the most common and preferred asset by drug traffickers. Profits from the cash and carry drug trade are eventually hidden by changing their form. They are converted into

homes, yachts, planes cars, precious metal accounts, stock, bonds businesses, bank accounts and other property. Lenck writes: "The power to seize and forfeit cash exchanged for drugs strikes at the operational funds of the illicit business. The power to seize and forfeit drug proceeds poses a much greater threat to the accumulated profits of traffickers" (1987:100). Subsequently, cash is also considered the best asset to seize by the government, both from a deterrence and efficiency viewpoint (USMS Official interview, 1994). Currency requires no expensive storage and tends to be forfeited faster than other types of property especially in larger amounts. The DEA's *Drug Agent's Guide to the Forfeiture of Assets* reminds agents that "large sums of cash are highly unusual in the community, finding a large sum of cash with other evidence of trafficking makes it probable that the money was exchanged or intended for exchange for drugs" (Lenck, 1987:104). Traffickers are hard pressed to account for large cash holdings. As a result, the larger the amount of currency seized, the less frequently the seizure is contested by the owners. (DEA Official Interview, 1994).

Currency and Money Laundering.

Even though cash represents a major asset for the narcotics enterprise, it is also a major liability. Lenck (1987) asserts that

cash is physically bulky and heavy in large amounts. Its easily stolen and difficult to trace. If it is not invested, it will not earn interest. Yet, it is difficult for traffickers to make large deposits to a bank due to the currency transaction reporting laws. DOJ elaborates: "Drug traffickers want to use their drug money to expand their business, to support their lavish lifestyles, and to increase their wealth and power" (1990:62). The drug traffickers find themselves in a dilemma: how to reduce the likelihood of detection and asset seizure of their illegal cash income. Keeping money in safe deposit boxes or home safes are well-used methods, but as the amount of currency increases into the hundreds of thousands or even millions, these practices become less useful. Authorities target savings deposit boxes, bank accounts and home safes in their investigations of narcotics enterprises. Because of these liabilities, traffickers need to find new ways to convert cash and at the same time, earn additional revenue. Drug money is eventually invested in the legitimate economy in businesses, securities, real estate and other assets (DOJ, 1990:62).

A favorite and useful method of traffickers for converting and concealing large amounts of cash is money laundering. Money laundering is "the concealment of income and its conversion to other

assets in order to disguise its illegal source of use" (Karchner, 1988:6). This practice originated in Switzerland in the 1930's. Wealthy Europeans, hoping to protect their money from the German government, sought new methods to move money (Lyman, 1991). Currently, money laundering is a major component of the illegal narcotics trade. A prime example of a money laundering operation is La Mina, The Mine, an illegal organization that reportedly laundered $1.2 billion for the Columbian cartels over a two year period. Figure 10 illustrates the process.

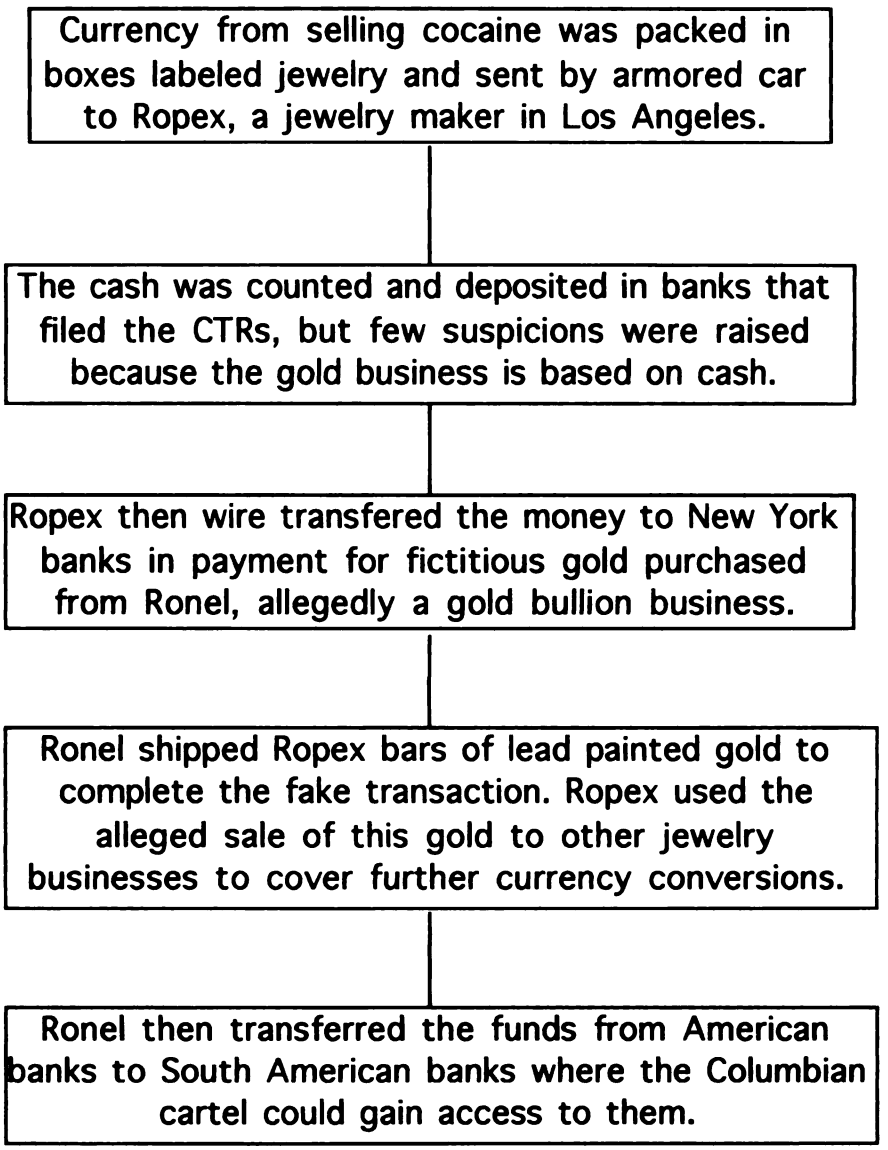


Figure 10: La Mina Money Laundering Process

Source: Figure reproduced from BJS Drugs, Crime, and the Justice System, December 1992, NCJ-133652:64

Money laundering has evolved into a crucial component of the high-level drug dealer compared to the street dealer who is

motivated more by their own desire for drugs in addition to money. They see little alternative to dealing drugs and is not always deterred by criminal or civil penalties (Holmes, 1992). There are a variety of different money laundering strategies. One is referred to as "smurfing" or structuring. DOJ (1990) defines that as the conversion of cash in amounts less than $10,000, the threshhold level that requires filing a currency transaction report (CTR) with the IRS, into bank accounts or other negotiable instruments. Figure 11 illustrates the rapidly increasing volume of currency reports.

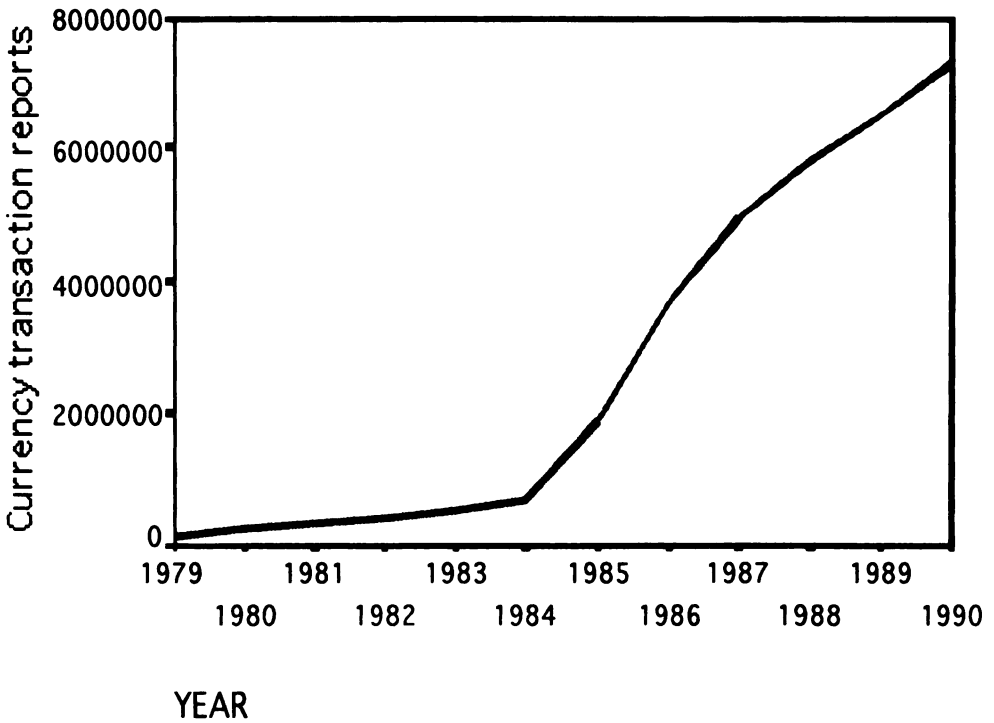


Figure 11: Volume of Currency Transaction Reports Filed with the Internal Revenue Service (1979 - 1990)

Source: Data taken from Bureau of Justice Statistics, Technical Appendix to Drugs, Crime and the Justice System, June 1993:64 citing the U.S. Department of the Treasury, 1991.

Other common money laundering techniques include the use of businesses, banks, brokerage houses, real estate investment, gambling casinos, and offshore corporations. For purposes of this study, the focus is on money laundered through a business. Money laundering through a business commonly involves reporting more

income on the books of the business that was actually produced, overstating expenses that actually necessary to operate the business, or depositing excess cash (Murphy, 1992).

Dorn, et al, describe a simple, narcotics money laundering operation in the U.K. run by a husband and wife team with a front of being in the art business:

> It all worked with false bills, false receipts. For example, what went through my legitimate business was money for film extras and so on. Its quite easy, really! I went to France and had an artist do some modern paintings, and I bought them for 200 pounds each. Then I threw them away and wrote myself receipts for 2000 pounds each. You don't have to produce the buyer himself, you can just book it as a cash sale (1992:28).

Perhaps the most famous highly sophisticated money laundering case involved the Bank of Credit and Commerce (BCCI). Allegedly, BCCI was used by one-time Panamanian President General Noriega and other major drug traffickers to launder their profits. Dorn, et al. elaborate:

> it is known that the bank moved at least $28 million of money around for Noriega and that it continued to move his money out of U.S. jurisdiction even after he had been indicted. Furthermore, the prosecuted incidents are said to be only a small number of the alleged cases in which BCCI has helped in the laundering of criminal moneys. Operation C-Chase, a U.S. Customs and FBI undercover 'sting' operation against BCCI uncovered the Noriega fund transfers. The undercover agents were involved in laundering up to $32 million in cash from the cocaine sale of one of the Medellin Cartel (1992:70).

The federal prosecution of BCCI resulted in $14 million forfeited to the United States.

This need to launder large amounts of dirty money is in fact the "achilles heel" of these criminal organizations (DOJ, 1990:24). The forfeiture of businesses used to launder profits can have a devastating effect on narcotics enterprises by depriving them of a necessary asset. Forfeiting businesses, aside from depriving the trafficking enterprise with a location for money laundering, can also remove a front facilitating their operations.

Supporting the findings about the need to target money laundering, a major finding of the President's Commission (1986) was that narcotics traffickers account for almost 38 percent of all organized criminal activity in this country. The largest part of organized crimes' money comes from the narcotics business. Following up on this finding, the Wharton Econometric Forecasting Associates (1992) estimated that more than 62 percent of the total revenue of organized crime ($25.5 billion) comes from the drug trade. They also concluded that organized crime is extensively involved in legal businesses including construction, food and liquor distribution, clubs, hotels, banking and real estate. Also identified among businesses are car dealerships and repair shops, motels,

appliance stores, medical labs, and import/export houses. Drawing a similar conclusion, Murphy (1992) asserts that bars, restaurants and night clubs are the most common establishment for money laundering. This is due to a variety of reasons including: (1) the cash nature of most transactions in these places; (2) that these establishments represent traditional gathering places and are well suited for making contacts for illegitimate activity such as gambling and drugs; and (3) they are commonly associated with ethnic groups in specific locations and they represent a starting point for each ethnic group's legal and illegal activities. Reuter and Haaga (1989) found in that many of the dealers in their study were owners of businesses - restaurants, bars and nightclubs. This characteristic helped them make contacts with potential customers and suppliers. As a result, businesses represent a major critical asset necessary for the criminal enterprise.

The importance of the cash nature of narcotics trafficking and money laundering can not be understated. High-level dealers are motivated by profit and this money is the engine that drives the violent, economic and corruptive aspects of drug trafficking. As discussed earlier, the criminal narcotics enterprise has to move money as part of its business. Money is also the most flexible and

powerful single asset in the hands of a criminal; therefore, it should be the physical asset targeted first by law enforcement (Holmes, 1992). To protect themselves from asset seizure, increase their profits and make illegal revenue appear to be legitimate, the trafficker needs to launder his money. The federal government recognizes this vulnerability and targets money laundering. There are hundreds of federal statutes that authorize the forfeiture of property and the laws most frequently used by the Department of Justice are the drug laws, the money laundering laws, and the racketeering laws. The seizure of businesses, either that serve to facilitate narcotics trafficking and/or are related to money laundering are a prime target of the government forfeiture efforts. The seizure of cash and businesses used for money laundering and as a "cover" for the operation strikes at the heart of the criminal enterprise depriving them of critical assets.

Domestic Drug Production.

While cocaine and heroin are primarily manufactured overseas then imported to the United States, several drugs are produced domestically. Perhaps the most common is marijuana, followed by LSD, PCP, and methamphetamine. A conservative estimate puts domestic marijuana production as accounting for about 12 percent of

the country's retail market although there are indications that it is increasing rapidly (DEA, 1987). Federal law enforcement has been aware of the problem for many years. One indication of the extent of domestic marijuana production and federal enforcement efforts comes from a Report of the National Drug Policy Board (1987): "According to the DEA, in 1987, 12.9 million cannabis plants were destroyed and 645 greenhouse/indoor operations were seized" (1987:104). Figure 12 documents the DEA's efforts.

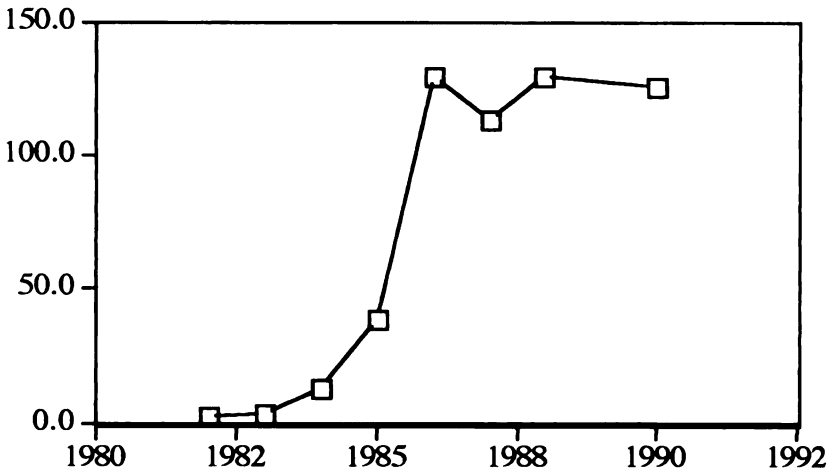


Figure 12: Millions of Domestic Cannibas Plants Eradicated (1981 - 1991)

Source: DEA, 1990 Domestic Cannibas Eradication/Supression Program, 1991:10

Critical resources necessary for the domestic production and processing of narcotics are open land for marijuana cultivation and clandestine laboratories. The seizures of ranches and farms used for marijuana cultivation are common (USMS Official interview, 1994). In addition to outdoor growing, indoor techniques have become more popular and successful. Techniques such as pot-growing and hydroponics can result in year-around production. Associated with this method is necessary equipment including pots, lighting systems, greenhouses, and irrigation systems (DEA, 1990). Combined

with the land, a marijuana cultivation can represent a major investment, but with a high return.

Besides marijuana, *designer drugs* are produced in the United States in clandestine laboratories. The DEA reports that the drugs most commonly produced by clandestine laboratories are methamphetamine (82%), amphetamine (10%) and PCP (2.5%) (1990). Domestic clandestine drug laboratories range from crude, makeshift operations to highly sophisticated and technologically advanced facilities. They are often found in private residences, apartments, house trailers, houseboats, campgrounds, and commercial establishments. Often these labs are hidden in nondescript houses or barns in remote rural areas (DEA, 1990). These labs are frequently located in isolated rural areas in part due to the strong odors emitted from methamphetamine and PCP production.

Figure 13 reveals the number of clandestine labs seizures.

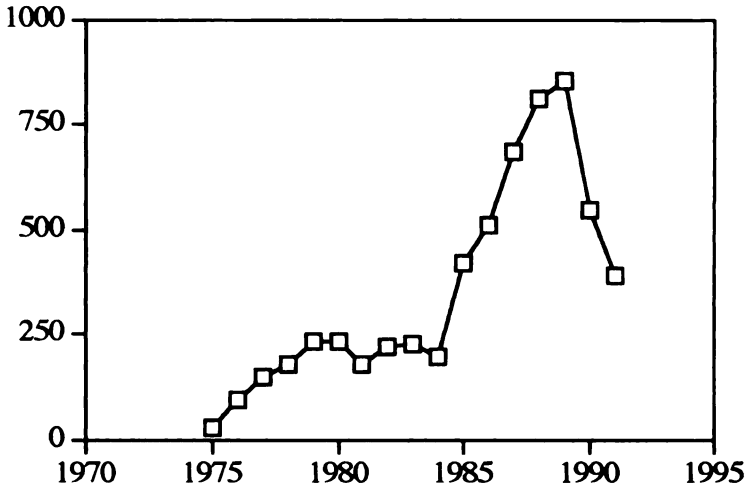


Figure 13: Clandestine Labs Seized by the DEA (1975 - 1992)

Source: DEA as presented in BJS, Sourcebook of Criminal Justice Statistics, 1990 NCJ-130580:467

The popularity of labs is due in part to the successful interdiction efforts of federal enforcement and increased demand for the drugs (Lyman, 1991). The seizure of clandestine labs and their equipment - chemicals, stoves, flasks, beakers, glass-tubing, and packaging - has always been a target of the federal asset forfeiture program (Lenck, 1987). While the seizure of just the processing equipment is important, its not necessary enough to deter the trafficker. The seizure of the real property with its higher value should have more of a deterrent effect. Therefore, seizures of

labs and chemicals are considered to be of moderate value for this study.

Conveyances: Facilitation and Proceeds.

Conveyances - primarily automobiles, aircraft and vessels - represent either the proceeds of this enterprise or resources necessary to facilitate drug trafficking. It is common for narcotics traffickers to convert a portion of their profit into luxury automobiles, boats, and motorcycles. Frequently, these items are purchased for cash for the trafficker, his family and friends. Lyman observes: "automobiles are also one of the most sought after of the drug dealer's status symbols. Vehicles such as Mercedes Benz's and Rolls Royces have been seized by law enforcement agents after vehicles have been purchased with cash earned from illicit sources" (1991:66). Based on the author's experience in this program, other favorite types of drug traffickers include high-end vehicles such as the BMW, Jaguar, Lincoln and Cadillac.

Yet, there is some indication that traffickers are becoming less ostentatious. This is due in part to law enforcement's success in tracing cash purchases of conveyances back to trafficker resulting in successful forfeitures. Additionally, the high-priced luxury car tends to be more noticeable attracting the attention of

the authorities especially when driven by a known criminal. As Reuter and Haaga (1989) noted, traffickers respond to the strategies of the authorities. Over time, traffickers are not as willing to display their wealth with expensive vehicles. Frequently, drug traffickers are not making cash purchases of luxury automobiles. Expensive seized vehicles can also have substantial liens making them less attractive to the government. Federal policy dictates that automobiles need to have substantial equity to warrant their forfeiture. If a $30,000 Cadillac is seized, but a title search determines that its owner has only $2,000 equity in the vehicle, it is likely that the case to be dismissed. If prosecuted and the automobile forfeited, the federal government, protecting the rights of leinholders, would be responsible for compensating the finance company out of the proceeds of the car's sale. For example, if the forfeited Cadillac was sold at auction for $30,000, then the government would pay GMAC its $28,000 balance due. This would leave the government a total of $2,000 revenue as the financial benefit of its seizure.

By financing their purchases, the dealer enjoys use of the asset, yet limits his loss's if the asset is seized. This also has implications for the federal forfeiture program. Because of these

trends, seizures of luxury automobiles belonging to traffickers are of questionable deterrent value to the organization as a whole.

Aside from representing the proceeds of drug trafficking, cars, trucks, and vans are also obviously necessary to transport narcotics. DOJ (1990:44) reports:

> Illegal drugs from foreign countries myust be smuggled into the United States for distribution. The U.S. has 88,633 miles of coastline an more than 7500 miles of borders with Canada and Mexico. There are more than 300 ports of entry to the U.S. In fiscal year 1991, more than 438 million people entered or re-entered the country. That year more than 128 vehicles, 157,000 vessels, 586,000 aircraft, and 3.5 million containers also entered the U.S.

The large number of vehicle seizures by the INS at the border are directly related to drug trafficking (USMS Official Interview, 1994). Conveyances are a necessary part of the narcotics business - they provide the trafficker with mobility. In his testimony before Congress, John Ingersoll, the Director of the Bureau of Narcotics and Dangerous Drugs stated:

> Effective law enforcement demands that there be a means of confiscating the vehicles and the instrumentalities used by the drug trafficker in carrying on his trade. The traffickers must merchandise his product, and to do so, he needs mobility. Seizure and forfeiture of vehicles he uses in carrying on his illicit trade will prevent their use in subsequent offenses and restrict mobility, which in many cases is vital to the illicit traffickers success (Ingersoll, 1970).

The narcotics business primarily relies on face to face communication. Cars serve as mobile offices to negotiate and finalize drug deals with customers. Automobiles offer privacy from electronic telephone surveillance and public observation. They are also used to transport large quantities of currency and narcotics. Traffickers have gone to great lengths to modify vehicles to carry contraband. Seized automobiles have been adapted for this role with hidden compartments in trunks, fuel tanks, frames, and behind rear seats. Automobiles also help the trafficker escape capture. They are required operating tools of the drug trade (Lenck, 1987, *U.S. v. One 1941 Pontiac Sedan*, 1948).

However, vehicles used to transport narcotics may realistically represent an expendable asset to traffickers. High numbers of vehicle seizures due to the use of drug courier profiles, traffic stops, and aggressive drug investigation reflect new tactics used by dealers. Traffickers responding to law enforcement's efforts use less expensive vehicles in this role. Lyman (1991) notes that a police developed drug courier profile now alerts officers to ordinary looking rental cars. These changes in strategy by traffickers serves several purposes. First, the use of inexpensive vehicles attracts less attention. Second, if seized, the financial losses are limited. Third,

traffickers have hired individuals to transport narcotics in their own cars. The seizure of the vehicle most likely represents more of a deterrent to the hired driver than the trafficker. As a result, the deterrent effect of vehicle seizures used to transport narcotics or facilitate deals by criminal enterprises is questionable. Its safer to assume that these forfeitures could potentially deter low-level dealers, but in terms of the objectives of the federal forfeiture program, they represent a less important asset.

Another common asset that facilitates narcotics trafficking is aircraft. Lyman states: "In 1985, general aviation aircraft were suspected in being responsible for over 50 percent of the cocaine and 10 percent of the marijuana entering the United States. Drug smugglers prefer light, twin engine general aviation aircraft and will usually fly at low altitude, placing them under the line of sight coverage of coastal scanners" (1991:270). Yet, even though light aircraft are an expensive asset necessary for certain operations, the deterrent effect of their seizure and forfeiture is limited.

Reuter and Haaga (1989) found that piloting represents a unique skill needed by the criminal enterprise. Research does show that while top- level drug enterprises may own transport aircraft (seizures of multiple aircraft have occurred), this situation is not

very common. The high cost of maintenance and storage makes owning aircraft inefficient. As a result, pilots are frequently hired by narcotics dealers to transport the contraband in their personal aircraft. According to the DEA, the Medellin Cartel recruits American pilots who fly planes equipped with advanced navigation equipment to move their drugs to the United States (Lyman, 1991). These pilots can be paid as high as $5,000/kilo and transport loads as large as 300 kilograms. The huge profits in this enterprise allow the cartel to afford the high cost of air transport.

The seizure and forfeiture of aircraft, if "subcontracted" by the trafficking enterprise, may not have a substantial impact on this organization especially if narcotics were not confiscated. Reuter (1988) also concluded that the dealers are able to absorb the loss's because of the low cost of raw material and labor. The criminal drug enterprise simply has more to spend on transportation than the authorities have to stop them. Additionally, because of the lucrative nature of this business, the loss of an aircraft and its pilot may only have a limited deterrent effect on aspiring pilot/traffickers. A recent article in the *Minneapolis Star Tribune* notes that Columbian drug traffickers are using converted Boeing 727s to transport huge loads of cocaine into Mexico. Profits are so high that traffickers can

afford to abandon the aircraft on remote airstrips if necessary (Golden, 1995). The seizure and forfeiture of aircraft can generate substantial income for the authorities and possibly deter some pilots, but it is more likely considered a cost-of-doing-business by the criminal narcotics enterprise.

The third category of conveyance used for narcotics transportation is vessels. The use of this method parallels aircraft in many ways. While high speed power boats and larger cargo ships are expensive, they are not necessarily owned by the criminal enterprises. High-value cash payments are an enticing draw for boat and ship owners.

In summation, the forfeiture of the conveyances described above, especially those involved in facilitating narcotics trafficking, will not necessarily deter the criminal drug enterprise from engaging in future business. Partly due to pressure from the authorities and also the need to maximize profit, the research on trafficking illustrates that these assets are either of low value or are hired for the job. Their loss to the government may have little impact on the criminal enterprise.

Residential Property.

An important category of property is residential real estate belonging to domestic drug traffickers. (The forfeiture of homes belonging to the foreign cartels is not considered a factor for this study). This property can be seized either as the proceeds of trafficking or that used to facilitate trafficking. The forfeiture of real property can deprive criminals of assets and a site for their activities, discourage similar activity, establish a positive public relations image and provide the seizing agency with a source of revenue (Aylesworth, 1991).

Residential real estate seizures represent a high-value asset and depending on their dollar value, have the potential to be a strong deterrent to the criminal enterprise. The federal government in the Northern Judicial District of Illinois once seized an $800,000 house and its furnishings which included more than 40 oriental carpets as drug proceeds. The owner had negotiated to buy heroin from an undercover DEA agent. In order to convince the agent of his ability to pay, he took him on a tour of the house stating that the house and everything in it had been acquired from his drug dealing (Valukas and Walsh, 1988).

The forfeiture of homes can have a devastating effect on the mid to low-level trafficker. Family-run criminal enterprises may be both deterred and incapacitated by the seizure of their residence. The seizure of homes of traffickers of larger organizations can also represent a substantial financial loss to the enterprise. As discussed in the following section, real property is commonly used to house clandestine narcotics laboratories or for producing marijuana - either indoors or outdoors. The DEA has forfeited real estate used as laboratory sites, marijuana growing lands, airstrips locations and drug storage facilities under 21 U.S.C. Section 881(a)(7) (Lenck, 1987). The seizure of these properties can potentially disable the entire operation.

Based on the experience of the author, narcotics traffickers at all levels of the business frequently vigorously contest the seizures of their homes. In a previous longitudinal study of the asset forfeiture program at the Northern Judicial District of Illinois, real estate seizures took the longest amount of time to prosecute and resulted in the highest number of settlements and closed cases (Warchol, 1993). Not only does the forfeiture of a home represent a major financial loss, but it also forces the trafficker to relocate himself and/or his family. It may also be perceived as a direct,

personal attack on the trafficker unlike the seizures of assets used solely to maintain and expand his business. Because of the potential impact of forfeiting residential property, it's deterrence value is considerable.

Personal Property.

The next category of assets is personal property. This includes the jewelry, weapons, electronic equipment, art, antiques, and clothing. Certain items such as jewelry and furs can have high value, but for a high-level criminal enterprise, these loss's are not necessarily substantial. As a result, they will be classified as of low deterrent value.

Rating the Impact of Assets

The government literature stresses that the seizure of the assets of the trafficking organization will deter the current and aspiring traffickers and disable the narcotics enterprise. Yet little concern is directed at rating the value of these assets. It is the contention of this study that the deterrent value of property seizures will vary with the type and value of an asset. The preceeding studies examining the different assets owned and used by narcotics enterprises helps clarify this issue. The different types of property associated with narcotics trafficking have been defined and

assessed in terms of their value to the trafficking organization. The results of this review are tabulated in Table 9 on the following page.

Table 9: Rating the Deterrent Value of Assets

ASSET	DETERRENCE VALUE	JUSTIFICATION
Monetary Instruments	High	*Primary motivation for trafficking *Necessary to conduct business *Most liquid of all type of assets *Income producing source for business *Nature of trafficking requires large amounts of currency to be on-hand
Real Property	High	*Money laundering facility *Used to facilitate contacts *Provides cover for trafficking *Necessary for domestic drug production *High dollar value has potential for for considerable financial impact
Drug Lab Equipment	Moderate	*Necessary to produce specific narcotics *May disable small-scale operations *Questionable effect on large operations if only equipment is seized
Conveyances	Low	*Successful enforcement has caused traffickers to use low-value or rental vehicles *Large leins are negate effect of seizure *Common practice to hire individuals who are not a part of the organization to use their own conveyances *High profit margin at higher levels of the business makes conveyances easily replaceable

Financial Concerns of the Program: Efficiency and Deterrence

While deterrence is the main purpose of forfeiture, the other important objective of the federal program is provide money for law enforcement. According to the Attorney General, the second goal of the program is to: "redistribute these assets in the most efficient manner back to law enforcement to fund additional anti-drug efforts" (DOJ, 1990:2). The need for proper management of the program is detailed in the government literature. The GAO (1990, June) concluded that the efficient seizure, management and forfeiture of assets is crucial to the success of the federal program. Improved processing of large amounts of currency is one of the critical goals - both from a management and law enforcement perspective. The faster the currency can be forfeited, the quicker it can be placed back into law enforcement to further enhance narcotics control programs. Therefore, prosecution time becomes an issue.

Uncovering and correcting internal case processing problems within the various component agencies helps increase efficiency and enhance revenue (GAO, 1991 June). The operations of the United States Marshal's Service has been the subject of government auditor's attention. The GAO (1991, May) noted problems with the

pre and post-seizures of businesses. The failure to obtain title information before the seizure, and to maintain and manage these assets have resulted in substantial economic losses to the government. A related area is the disposition of real property by the USMS. The objective is to dispose of real estate in a timely manner at the best price, yet this is not always the situation (GAO, 1992 September). Real estate is a high value asset, but also costly to maintain. The rapid processing of the case and quick disposal of the asset after forfeiture not only saves the government property management costs, but places the proceeds of the sold asset back into law enforcement.

In addition to being concerned with proper management of financial resources, the government relies on total dollar deposits to the Asset Forfeiture Fund as one measure of success. Yet, as stated at the outset of this paper, the value of the asset can also be linked to the government's intent to deter deter narcotics traffickers. A better method to assess the intent of the government is to compare the estimated value of the asset at the time of seizure to the final dollar amount received by the government following disposition of the case. (The deterrent value of the asset must also obviously be considered in this equation) It is reasoned

that if the government is seizing high deterrent value, high dollar value assets, yet receiving little for their efforts, there is only a limited deterrent effect. If this is the case, it may indicate that the government's intent is to target high-value assets without much initial investigation as to third-party innocent owners who must be compensated or the strength of the case. That is, property with substantial leins will not have much deterrent effect on the drug traffickers nor will cases in which a substantial portion of the assets are returned to the owner. Therefore, for purposes of this exploratory analysis, the difference between the estimated value and value received - referred to here as *net value* - will be used as a measure of the government's intent.

Summary of Part Two

This final part of the review supports the analysis of the deterrent value of the federal asset forfeiture program. It demonstrates that narcotics trafficking organizations utilize various types of assets. Some types are crucial to the operation of the business while others are expendable. Their forfeiture is one cost of doing business. There are important implications from this for the federal forfeiture program. If it is to effectively deter, then it must seize and forfeit those assets critical to trafficking

enterprises. A rating system based on the identification of these asset's deterrent value was established for use as a measure in the analysis.

Chapter Three: Methods of Data Analysis

Introduction

This work has two primary objectives: to describe the history of forfeiture law and the state of the current federal program, and analyze its value as a deterrent to narcotics trafficking enterprises. A total of eight research questions are specified based on these objectives. These research questions use different methodological approaches and data. A historical, descriptive analysis of qualitative data combined with aggregate-level, quantitative data are used to depict the origins and development of forfeiture law. Individual-level, quantitative data are used to explore the value of asset forfeiture as a deterrent to narcotics trafficking organizations. This study also uses a new measure to analyze the deterrent value of the federal asset forfeiture program. The flexibility of this approach should yield considerable insight into this policy.

Data

Qualitative

A wide variety of documents are used to describe the origins and development of forfeiture law. To provide a complete and objective portrayal, the sources include publications from the

Department of Justice and local law enforcement agencies, articles from law andacademic journals, newspapers and magazines, interviews with asset forfeiture specialists in the Department of Justice, and federal and Supreme Court cases.

Aggregate Quantitative

Aggregate-level, quantitative data are used only to supplement the qualitative representation of the federal asset forfeiture program presented in Chapter Two. They describe the extent of this program and the magnitude of narcotics trafficking in the United States. These data were obtained from various government sources. The sources include the Drug Enforcement Administration, the Executive Office for Asset Forfeiture, and the Bureau of Justice Statistics (*The Sourcebook*).

Individual-Level Data

At the outset of this study, it was realized that individual-level data are best suited to analyze the deterrent value of asset forfeiture. These data would have to contain information about specific characteristics of individual asset forfeiture cases identified as having a deterrent value. The required characteristics of each case include the type of asset seized, its value, prosecution time requirements, the type of forfeiture proceeding, and the

disposition of the case. The use of these variables will facilitate an analysis of the intent of the government in using asset forfeiture as a deterrent to drug trafficking enterprises. They also help provide a rich, cross-sectional description of this federal program.

The challenge for this study was obtaining data meeting these requirements and not exceeding the available resources of money and time. Discussions with administrators at the Executive Office for Asset Forfeiture, colleagues familiar with this subject, and personal experience identified three potential data sources - USAO, PROMIS and USMS data. The first two sources were considered, but not used for reasons stated below.

Initially considered was the idea of collecting data from the individual case files of the United State's Attorney's Offices from different judicial districts. While the case files generally contain the necessary information in addition to other details, collecting these data would be prohibitively expensive and time consuming for several reasons.

First, collecting the USAO data would first require obtaining a sampling frame from the Prosecutors Management Information System (PROMIS) for each of the selected four judicial districts. Unfortunately, the PROMIS database is generally considered

inaccurate and the sampling frame would require considerable cleaning. Once the sampling frame was prepared, the second step would be to obtain each of the case files and transcribe the sought-after information into a database. The author was involved in a study using this data gathering technique at just one judicial district. The problems with this method included finding the case files selected for the sample and locating missing documents. Common practice for the USAO is to transfer closed cases to remote storage. These files are not always complete, commonly missing final disposition orders and other necessary pleadings. It was necessary to obtain missing documents from the district court files for the incomplete cases - a very time consuming process. The district court also transfers their overflow to remote storage facilities further complicating the data collection process. The data collection for the above-mentioned project for one judicial district took approximately 10 months to complete. Because of these problems, the USAO and PROMIS data were eliminated as choices.

The decision was made to use an available, existing source of quality data. The author was familiar with the different data kept by the USMS in their role in the asset forfeiture program. Contacts at the EOAF and USMS confirmed the accuracy and availability of these

sources. The selected source of data was the Property Disposition Reports. These reports contain a comprehensive record of the population of individual properties seized by the U.S. for forfeiture and disposed of by the USMS by fiscal year for any of the 94 federal judicial districts. The data also contain the other necessary information to answer the research questions. The EOAF agreed that the USMS data would meet the needs of this project and offered assistance in obtaining the information.

The next step was to select the four different sites. The selected judicial districts and their main cities are Southern District of California (San Diego), Southern District of Florida (Miami), Northern District of Illinois (Chicago), and the Eastern District of Michigan (Detroit). They were selected based on their geographic location and level of drug trafficking. San Diego and Miami represent border districts commonly used as ports of entry for illegal narcotics and have been classified by the Office of National Drug Control Policy as "High Intensity Drug Trafficking Areas" (ONDCP, 1993). The selected sites allow for an exploratory comparison of asset forfeiture cases based on these geographic and narcotics trafficking differences.

Two fiscal years of data are used in this study. These are 1991 and 1992. The number of observations for each district is as follows:

District	*N(1991)*	*N(1992)*
Northern District of Illinois:	478	539
Eastern District of Michigan:	458	346
Southern District of Florida:	825	837
Southern District of California:	1666	1138
Totals:	3427	2860

This data source has several advantages. First, since the entire population of cases was available for each of the four districts, it will be used for the analysis eliminating potential problems with sampling error and bias within each district. Second, it also provides a large sample to generalize to other districts. Third, it is not only the most adequate source of existing data, but considered highly accurate (USMS Official interview, 1994). Fourth, these data are specific. The definitions of property type, dollar value, time and disposition are absolutely specific and unambiguous. What is meant by each term is clear and accurate giving these definitions a scientific virtue. This is a major strength for comparing the activities of the four districts.

Individual-Level Variables and Measures

The available variables in the data set - their descriptions, values and level of measurement - are described below:

ASSET: Describes the specific type of asset seized by the government in the forfeiture case. Values: conveyances, monetary instruments, real property, lab and equipment. (Nominal)

PROSTYPE: Indicates the type of forfeiture proceeding used by the government. Values: civil, criminal and administrative. (Nominal)

DISTRICT: The four federal judicial districts used in this analysis. Values: Northern District of Illinois (IL), the Eastern District of Michigan (MI), the Southern District of California (CA), and the Southern District of Florida (FL). The principal cities in each of these districts are respectively: Chicago, Detroit, San Diego, and Miami. (Nominal)

ESTVALUE: The estimated value of the asset at the time it was seized. (Interval)

APPVALUE: The accurate appraised value of the asset after it has been placed in the custody of the United States Marshal's Service pending the outcome of the case. (Interval)

DISPTYPE: This variable describes how the property was disposed of by the USMS. Values: not forfeited, forfeited/sold, forfeited-

retained, or forfeited substitute asset. Forfeited-retained indicates that after the asset was forfeited, it was retained by the government for its own use. Forfeited substitute asset indicates that the claimant contesting the case forfeited a substitute asset of equal value in place of the seized asset. (Nominal)

AMTDEP: The dollar amount received by the United States as a result of the forfeiture and deposited to the Asset Forfeiture Fund. (Interval)

PROSTIME: The amount of time in days used to process a forfeiture case from date of custody to the date of disposal by the USMS. (Interval).

Validity and Reliability

A new measure is used to analyze the deterrent value of the asset forfeiture program. Therefore, one must identify the specific charactertics in a case that lead to a forfeiture so they can be used measures of the deterrent effect of the program. The problem is how to develop such a measure that will be a valid representation of the concept when using an existing source of data that is limited in some respects. Babbie, addressing this issue states: "the problem of validity in connection with the analysis of existing statistics can usually be handled through logical reasoning and replication" (1983:

309). As documented in the literature review, the specific values of property type, legal proceeding, disposition and net value have been established as representing deterrence. When present, they may have a deterrent effect on narcotics trafficking enterprises.

The choice of these variables was not serendipitous. The justification for these measures is grounded in the literature on asset forfeiture, drug trafficking, deterrence theory, interviews, and logical reasoning. The literature reviewed in Chapters Two and Three outlines the different forfeiture proceedings and possible outcomes in addition to the comparative worth of the various values and types of assets to the drug trafficking organization. To facilitate the analysis, the net value, property type, legal proceeding, and disposition are categorized as to their deterrent value.

Limitations of the Study

Given that this study relies on an existing data source for its social-scientific inquiry, there are limitations. These data were not specifically collected for the purpose of this research. As a result, they lack some supplemental detail about the attributes of each asset forfeiture case.

The data used for the first research issue have been obtained from several governmental sources. They are used only for descriptive purposes to illustrate the history and development of the asset forfeiture program and the extent of narcotics trafficking in the United States.

To address the second research issue on the deterrent value of a forfeiture, net value, property types, legal proceeding, and disposition are used as measures. While it is acknowledged that other specific attributes of each case are lacking and these measures are serving as proxies, their use represents a new approach to an unanswered question. The objective of addressing this question is not to find absolute proof of the government's intent for the forfeiture program, but to provide an indication of the value of asset forfeiture as a deterrent to drug trafficking enterprises.

Another limitation is the use of a cross-sectional design. Although one would prefer to understand this policy over time, this design only allows for conclusions to be made about a particular point in time. To compensate for this limitation, a second year of data is used as a follow-up to address any anomalies in the data.

Overall, although there are limitations to this study, it does represent the first major empirical study of federal asset

forfeiture. This is exploratory research using new and innovative measures to examine unanswered questions. The findings will help illustrate the need for future research and new methodologies and data sources.

Research Questions and Methodological Approach

This study uses both qualitiative and quantitative methods. The research questions and methodological approaches are listed below.

Research Question One: What are the historical origins of current forfeiture law in the United States?

Research Question Two: How is the federal forfeiture program structured and how are property seizures processed within this structure?

Research Question Three: How has the federal forfeiture program performed over time in terms of seized and forfeited assets and yearly revenue in comparison to the extent of the narcotics problem in the United States.

These three questions are answered with a descriptive, qualitative and quantitative research methodology to provide significantly more than a casual answer to the question. The results are based on a review of the literature. Aggregate data specifically

describing the forfeiture program and federal drug enforcement efforts from the 1984 to 1993 at a national level are also used to answer this question. These data will describe the four selected districts and the nation as a whole. The quantitative data will be analyzed with the SPSS 6.1 statistical program. Results are presented with descriptive statistics and graphical displays.

Research Question Four: Are there significant differences within and between the four districts as to the type of assets seized for forfeiture?

Research Question Five: Are there significant differences within and between the four districts as to the value of assets seized for forfeiture?

Research Question Six: Are there significant differences between the four districts as to the characteristics of the forfeiture cases prosecuted by the government?

Research Question Seven: Are there significanct differences within and between the four districts as to the amount of time required to process forfeiture cases?

Research Question Eight: Are there significant difference between border districts and the midwest districts in term of their use of asset forfeiture?

The objective is for this second part of the study *not* to determine if the forfeiture program is deterring trafficking enterprises, but rather to present a detailed picture of the types of forfeiture cases in the four district and assess the value of asset forfeiture as a deterrent based on how the government is using this program. If the government is using forfeiture to deter, certain patterns should be present in the data in each judicial district. First, the predominant type of property seized should be that classified as having a high deterrent value. (See Figure 8) Seizing the high deterrent value assets is a preliminary indication that the government is targeting the type of property most likley to deter and incapacitate these organizations. Therefore, high-deterrent value assets should be over-represented among the types of seized property.

Second, the government should be winning forfeiture cases. Not just any type of forfeiture case, but those *specifically* involving high deterrent value assets. Successful prosecutions of these types of assets are an indication that the government not only seized the right type of property, but also had a strong case that led to a forfeiture.

Third, there should be little difference in the dollar value of seized property and the amount received by the government after the forfeiture. If the government is seizing high dollar value property and receiving little for its efforts, it may indicate problematic cases involving assets with significant leins held by innocent owners. As discussed in Chapter Three, the deterrent effect of an asset seizure is partly a function of how much equity the owner had in the seized asset. A house seized from a high-level drug trafficker with a lien on 80 percent of the value of the property hinders the trafficker less than if he had 80 percent equity in the house. The deterrent value of the seized asset must also be considered in this analysis. The seizures should be of high deterrent value assets to have the most impact on the trafficking enterprises.

Fourth, the time required to prosecute a case is examined. The effectiveness of forfeiture as a deterrent is in part a function of the amount of time necessary to forfeit an asset to the government or return an asset to its owner.

Finally, the type of proceeding must be considered. If administrative forfeitures are over-represented among the three types of forfeiture proceedings, a considerable number of asset owners declined to contest the property seizures. However, criminal

forfeitures have the double deterrent effect of incapacitating both the asset and the defendant. The frequency of the use of the three types of proceedings has implications for the effectiveness of the program. The reasons for this have been discussed in Chapter Two.

The patterns in the data will indicate if the program is actually being used in accordance with its primary goal of deterring the trafficking enterprises and to what degree. That is, does it appear that the government is targeting the high-level trafficking organizations, or those at the lower levels of this business. It will also give an indication of the government's concern for producing revenue. Accordingly, the analysis will focus on: (1) the type of property seized in each district; (2) the type of legal proceeding; (3) the type of outcomes; (4) prosecution time; and (5) the net value received by the government.

Analytic Techniques

The data was entered into a SPSS 6.1 data set for the analysis. Summary statistics are used to describe and compare the populations and subpopulations from each district. This gives a preliminary indication of the forfeiture activities of each district and how the districts compare to one another. The next consideration is to decide which type of procedure to use on these data.

Nonparametric procedures are appropriate for the categorical data. The distributions of the interval level variables are also checked for normality with the skewness and kurtosis tests. These results dictate the use of both parametric and nonparametric statistics. Following this, contingency tables and elaboration analysis are employed with the appropriate measures of association and the chi-square test of independence to examine bivariate relationships for the categorical variables within and between each of the districts. Due to the large number of tables to be generated, the results of some of the tablular analysis are combined into summary tables. To test for significant differences between the four districts in terms of property values and prosecution times, the appropriate parametric or nonparametric one-way analysis of variance is employed. The 1991 and 1992 results are displayed together to facilitate a comparison of the two years.

Chapter Four: Findings

Descriptive Summary of the Data

Tables 10 and 11 on the following pages present an aggregate summary of the variables for the 1991 and 1992 data without controlling for individual judicial districts. Overall, the results show that the most frequently seized assets are monetary instruments and conveyances representing 81.4% and 78.6% of all seizures for both years. A surprising finding is the very low percentage of criminal forfeitures. While criminal forfeiture has been promoted (AF News, July-August 1991), it represents less than 1% of all forfeiture proceedings. However, administrative forfeiture (68.5% in 1991 and 62.3% in 1992) is the most frequently used forfeiture proceeding followed by civil. Aside from the proceedings, the data also provide a measure of the government's success with this program. Over 73% of all property seizures for both years resulted in a forfeiture. However, less than 10% of forfeited assets were retained by the seizing agency for their own use.

The average values (estimated and appraised) of the seized assets are considerable. Monetary and real property averaged the highest of all types. Even property categorized as "other" - mainly

personal assets including cellular phones, computers, jewelry, and furs - had appraisedvalues of $8,244 and $10,001 per seizure for both years. One surprising finding is that there is little disparity between the estimated and formal appraised value of an asset. The estimated value is an informal evaluation of the worth of the asset. The appraised value is the more exact evaluation of the asset's worth following custody (USMS interview, 1994). These results may initially contradict the idea federal law enforcement is randomly seizing assets that appear valuable. These results indicate that there is accurate planning involved in determining the true worth of an asset.

While the estimated and appraised values are high, the amount finally deposited to the Asset Forfeiture Fund (AFF) is substantially lower than these initial values for all types of assets. This is due to a number of factors including the payment of innocent leinholders, lower sale values, and settlements with claimants. The government averaged $15,316 in 1991 and $22,248 per seizure in 1992 deposited to the AFF per forfeiture. These AFF deposit figures represent 43.7% and 55.1% of the appraised value of the asset - a considerable percentage increase from 1991 to 1992 in AFF deposits. DOJ even

managed over $1,300 in 1991 and $2,018 in 1992 per asset revenue on property that was returned to the owner.

One rather controversial aspect of the program is the use of forfeited property by the government. The data show the average estimated value of assets (primarily conveyances) that were forfeited to the government and retained by the participating agency. The 1991 and 1992 average estimated asset values of retained conveyances of $7,367 and $8,773 represents approximately 55% and 59% of their average appraised value. Also of note is that while the total number of assets declined from 1991 to 1992, the average overall amount deposited to the AFF actually increased substantially from $15,316 to $22,248 per seizure. This may be an indication that the government is becoming more selective in targeting asset to obtain the highest return on each seizure.

Table 10: Descriptive Statistics for all Districts (1991-1992)

Variables	1991 N	1991 (%)	1992 N	1992 (%)
Asset				
Monetary	1763	(51.0)	1261	(44.1)
Real Property	279	(08.1)	314	(11.0)
Conveyance	1038	(30.3)	987	(34.5)
Lab Equipment	6	(00.2)	4	(00.1)
Other	341	(10.0)	294	(10.3)
ProsType				
Administrative	2347	(68.5)	1782	(62.3)
Civil	1049	(30.6)	1058	(37.0)
Criminal	31	(00.9)	20	(00.7)
Agency				
DEA	2940	(85.8)	2343	(81.9)
FBI	310	(09.0)	323	(11.3)
ATF	0	(00.0)	3	(00.1)
USCS	9	(00.3)	4	(00.1)
IRS	85	(02.5)	118	(04.1)
USPS	3	(00.1)	7	(00.2)
N/A	80	(02.3)	62	(02.2)
District				
NDIL	478	(13.9)	539	(18.8)
EDMI	458	(13.4)	346	(12.1)
SDFL	825	(24.1)	837	(29.3)
SDCA	1666	(48.6)	1138	(39.8)
Disptype				
Not Forfeited/ Returned	786	(22.9)	748	(26.2)
Forfeited/Sold	2348	(68.5)	1913	(66.9)
Forfeited/ Retained	253	(07.4)	164	(05.7)
Forfeited/Cash Substitute	40	(01.2)	35	(01.2)

Table 10 (cont'd)

Variables	1991 Mean ($)	1991 Std. Dev. ($)	1992 Mean ($)	1992 Std. Dev.($)
Estvalue (Overall)	35,982.33	127,672.84	41,684.01	113,725.65
(By Asset)				
Monetary	33,681.93	124,913.72	42,194.37	133,646.61
Real Prop.	160,756.91	272,057.45	146,238.11	148,810.19
Conveyance	15,083.45	45,078.61	16,983.22	51,821.47
Lab Eqpmnt.	11,124.50	20,222.37	22,337.50	21,747.53
Other	9,840.70	42,809.69	10,528.72	40,212.64
(By Disposition)				
Not Forfeited	38,977.66	98,944.00	47,107.35	102,047.77
Forfeited/Sold	37,389.54	142,619.24	41,112.74	121,107.02
Forfeited/ Retained	7,367.92	9,439.56	8,773.11	9,153.05
Forfeited/Cash Substitute	75,507.50	54,906.73	112,837.19	148,016.95
Appvalue (Overall)	35,043.87	119,007.70	40,228.19	111,649.17
(By Asset)				
Monetary	33,724.33	125,031.66	42,224.12	133,677.05
Real Prop.	157,479.33	229,585.66	140,133.66	141,803.94
Conveyance	13,316.90	27,478.90	14,807.91	47,465.74
Lab Eqmnt.	11,124.50	20,222.37	22,337.50	21,741.53
Other	8, 244.87	42,262.78	10,001.34	39,651.84
Amtdep (Overall)	15,316.15	97,663.18	22,284.83	91,650.52
(By Asset)				
Monetary	21,302.25	114,895.09	36,139.26	127,356.09
Real Prop.	42,087.16	177,580.33	41,679.03	87,701.55
Conveyance	2,292.95	8,546.09	4,508.56	18,845.84
Lab Eqmnt.	242.66	594.40	1,353.00	1,538.02
Other	2,371.63	15,095.72	1,760.11	8,883.29
(By Disposition)				
Not Forfeited	1,332.41	16,636.46	2,018.56	24,489.49
Forfeited/Sold	21,523.48	116,974.60	32,053.05	109,585.89

Table 10 (cont'd)

Variables	1991 Mean ($)	1991 Std. Dev. ($)	1992 Mean ($)	1992 Std. Dev.($)
Forfeited/ Retained	0.0	0.0	48.78	624.69
Forfeited/Cash Substitute	22,601.22	32,216.57	22,751.08	32,006.75

Table 11 Descriptive Summary of Prosecution Times (1991 - 1992)

Variables	1991 Mean days	1991 Std. Dev.	1992 Mean days	1992 Std. Dev.
Prostime (Overall)	378.43	349.22	400.67	403.72
(By Asset)				
Monetary	316.31	340.43	287.82	345.83
Real Prop.	599.17	400.82	717.88	481.63
Conveyance	388.10	318.60	443.77	390.01
Lab Eqmnt.	805.33	581.74	551.00	418.25
Other	459.83	358.86	399.18	381.30
(By Prostype)				
Admin.	332.04	331.55	278.34	335.15
Civil	472.22	359.99	605.23	420.30
Criminal	715.90	457.71	445.95	651.11

Kurtosis and Skewness statistics were calculated on the interval-level variables to justify the selection of the correct significance tests. The results in Table 12 indicate that a combination of parametric and nonparametric tests are appropriate for these data.

Table 12 Kurtosis and Skewness Results by District (1991-1992)

	1991		1992	
	Kurtosis	Skewness	Kurtosis	Skewness
Amount Deposited				
Florida	112.71	9.64	33.69	5.27
Illinois	50.37	6.41	174.23	12.19
Michigan	133.51	9.88	91.16	8.59
California	277.09	15.36	71.02	7.40
Appraised Value				
Florida	93.65	8.24	22.83	4.25
Illinois	28.15	4.78	124.79	9.82
Michigan	41.44	5.25	24.70	4.41
California	102.97	8.85	65.00	6.53
Estimated Value				
Florida	128.53	9.45	19.58	4.00
Illinois	57.92	6.48	121.83	9.78
Michigan	32.07	4.85	24.42	4.33
California	112.65	9.24	70.63	6.87
Prostime				
Florida	1.75	1.41	2.07	1.35
Illinois	3.36	1.62	1.75	3.59
Michigan	2.22	1.45	1.91	1.55
California	2.19	1.48	5.98	2.20

The dollar value variables of Estvalue, Appvalue and Amtdep show a considerable amount of skew in their distributions. The high kurtosis values further indicate that the distributions of these three variables are not uniform. Because of the uncertainty raised by these results, the nonparametric Kruskal-Wallis One-Way Analysis of

Variance will be used to compare the four judicial districts on these variables. The kurtosis and skewness results for the Prostime variable are much closer to zero allowing for the use of a parametric analysis of variance to compare the different districts. The remainder of the variables are categorical, measured at the nominal level. As a result, the chi-square test will be used to test for significance.

Identifying Asset Types by District

While the aggregate data help present an overview of the federal forfeiture program, the primary objective of this research is to analyze and compare the forfeiture activities of the four judicial districts. Therefore, a first concern is to explore the relationship between district and asset type. Specifically, what types of assets are seized in the four districts and how different are the districts in terms of seized assets?

Forfeiture, according to the Department of Justice, is intended to be used at the source of the drug problem - drug trafficking organizations at the higher levels of the business. The literature revealed the different types of assets used by drug trafficking organizations. These included monetary instruments, real property, conveyances, and drug production equipment. The literature also

established that certain type of assets - monetary instruments, real estate and drug production equipment - are more valuable to the organization both in terms of economic worth and for conducting business than other types. These have been categorized as "high-impact" assets. However, at the higher levels of the business, and to an extent at the mid and lower levels, conveyances and personal property are more expendable due to their lower dollar values. Based on these findings, it is reasoned that the ability of asset forfeiture to disable drug trafficking organizations is in part a function of the types of assets seized by law enforcement. The type of seized asset serves as one measure of the government's use of the forfeiture program and its potential impact of drug trafficking. By identifying the types of seized assets, one obtains an initial view of how the asset forfeiture program is being used by the Department of Justice. If the government is interested in targeting the higher-level narcotics traffickers and their organizations, one would expect an over-representation of the "high-impact" assets identified in Chapter Two.

The four judicial districts must also be considered in this analysis. Two districts - Southern Florida and Southern California - have been identified as "high-intensity drug trafficking areas" and

serve as ports of entry being border districts. The two central districts - Northern Illinois and Eastern Michigan - are less known as drug distribution centers and may exhibit different characteristics from the border districts. By comparing the four districts, one can draw initial conclusions about how the forfeiture program used and regional variation. The data in Tables 13 and 14 illustrate the relationship between district and asset for 1991 and 1992.

Table 13: Asset Type by Federal Judicial District (1991)

	DISTRICT			
	Florida	Illinois	Michigan	California
ASSET				
Monetary	47.4% (491)	35.4 (169)	48.9 (224)	58.8 (979)
Real Prop.	15.0 (124)	11.3 (054)	16.4 (075)	1.6 (026)
Conveyance	30.2 (249)	48.1 (230)	24.5 (112)	26.8 (447)
Lab Equip.	0.0 (000)	0.2 (001)	0.0 (000)	0.3 (005)
Other	7.4 (061)	5.0 (024)	10.3 (047)	12.5 (209)
Totals	100% (825)	100 (478)	100 (458)	100 (1666)
Cramer's V = .176	Chi-square = 319.368		df = 12	p < .001

Table 14: Asset Type by Federal Judicial District (1992)

	DISTRICT			
	Florida	Illinois	Michigan	California
ASSET				
Monetary	40.0% (335)	34.5 (186)	42.8 (148)	52.0 (592)
Real Prop.	16.2 (136)	15.4 (083)	16.5 (057)	03.3 (038)
Conveyance	36.4 (305)	42.9 (231)	24.6 (085)	32.2 (366)
Lab Equip.	00.0 (000)	00.2 (001)	00.6 (002)	00.1 (001)
Other	07.3 (061)	07.1 (038)	15.6 (054)	12.4 (141)
Totals	99.9% (837)	100 (539)	100 (346)	100 (1138)
Cramer's V = .148	Chi-square =188.483		df = 12	p < .0000

The most striking finding from these tables is the overall relative similarity of the four districts with monetary intruments and conveyances comprising the highest percentage of seized assets. The variation between districts is in terms of these specific asset types. The Northern District of Illinois has the highest percentage of conveyance seizures for both years. Additional variation is found in

the Southern District of California. This district stands out with the highest percentage of monetary asset seizures and the lowest percentage of real property seizures. The 1991 results are confirmed by their resemblance to the 1992 data.

The distribution of asset types raises questions about the use of this policy. The literature indicates that the illegal drug business is about money. Money is *the* necessary asset for conducting business at all levels of the trade. Therefore, monetary assets have been identified in this research as a "high-impact" asset. However, real property, another critical asset due to its high value, never exceeds more that 16.4% in any of the districts. Of note is the Southern District of California with only 1.6% and 3.2% of all seizures being real property in 1991 and 1992. In this district, monetary assets comprise over 50% of its seizures for both years. Additionally, lab equipment seizures never exceed .6% of all asset types for either year.

Conveyances also constitute the other major class of assets comprising no less that 24.5% of seizures to a maximum of 48.1% of seizures in Illinois for 1991. Nonetheless, based on the literature, the value of conveyance seizures as a way to disable drug trafficking organizations is questionable. A final striking result

from these tables is the high percentage of seizures of "other" types of assets in the Southern District of California and the Eastern District of Michigan. Though not considered an important asset to confiscate, it represented over 15% of all seized assets in Michigan in 1992.

While the chi-square test of independence indicates statistically significant results for both years, the similiarty of the four districts is confirmed by the weak Cramer's V statistic of only .17 and .14 for the 1991 and 1992 results. Even though the districts are distinct from one another geographically and in terms of the extent of narcotics trafficking, these data suggest that there is an overall similarity in terms of the most common types of assets they are targeting. There are only subtle differences between the districts. An initial conclusion is that there is only limited deviation regarding policy determining the types of assets targeted for forfeiture.

Examining the Value of Seized Assets

The identification of asset types in the previous section gives an initial indication of the intended use of this policy by federal law enforcement and its potential for impacting the drug trafficking organization. However, a critical issue long recognized by the

government is the value of the seized assets. The literature reveals that the government is very concerned with the financial management of the forfeiture program. It is also one of the most thoroughly audited federal programs. A main concern is to prevent waste in terms of asset storage and property disposition and improve the program's economic efficiency. The data in the previous section show that while the number of seizures has decreased, the AFF deposits have increased from 1991 to 1992 as have the estimated value of seized assets. However, aside from the issue of economic efficiency, these property values provide additional information about the value of this program as a deterrent.

Contributing to the effectiveness of the forfeiture's ability to disable drug trafficking organizations is the financial value of the seized assets. The effectiveness of a forfeiture case is a function of both the dollar return received by the government since this money is returned to drug enforcement and its ability to deprive the trafficker of the spoils of their illegal enterprise. The idea behind forfeiture is to economically disable the trafficking organization. One approach is to seize <u>all</u> of the organizations assets. While this strategy would deprive an owner of the use of the asset, the financial impact of the seizure on the trafficker depends on the

value of the asset and the presence of any liens. It is of limited value to seize assets that have substantial liens, that is, the trafficker has little or no equity in the asset. It may have little or no financial impact on the trafficker and provides no financial benefit to law enforcement. The asset or the proceeds of its sale will be returned to the lienholder. Traffickers, realizing this, now frequently use rented or low-value vehicles to transport drugs, and conduct business in motels and hotels to avoid the loss of valuable cars and homes. As a result, the effectiveness of the forfeiture program depends on seizing assets that are necessary for the operation of the business and if forfeited, will have a significant financial impact.

This section will address this issue by first examining the value of the different assets in each of the district. Three dollar values have been identified and will be used in this analysis. These are the initial appraisal or estimated value of an asset (estvalue), the more precise appraised value (appvalue) made by the USMS after custody, and the dollar amount deposited to the Asset Forfeiture Fund (amtdep). For the highest dollar return and the most impact on the trafficker, the less disparity between the appraised value and the amount deposited, the better.

This is followed by an analysis of the value of forfeited and non-forfeited assets and the difference between the estimated and appraised values of an asset. These differences between forfeited and non-forfeited values and the estimated and appraised value serve as a measure of efficiency of the government in judging the value of property. It can also be considered a measure of the misuse of the program. Estimated values that are considerably higher than the more accurate appraised values may indicate that law enforcement is mistakenly targeting what it considers valuable assets only to find that they are of much less value.

This analysis is followed by a more in-depth examination of the relationship between property values and judicial district by controlling for the specific characteristics of the forfeiture case, that is, asset type, legal proceeding and disposition. This is accomplished with a Kruskal-Wallis one-way analysis of variance of the subpopulations to test for differences between the four differences.

Table 15: Estimated, Appraised, and AFF Deposit Mean Values by Asset (1991)

District	Estimated Value	Appraised Value*	AFF Deposits
FL	$76,963	$73,977	$43,015
IL	$27,656	$26,332	$14,222
MI	$35,767	$34,518	$12,156
SC	$18,136	$18,396	$ 2,781

* 6 missing cases

Table 16: Estimated and Appraised Mean Asset Values (1992)

District	Estimated Value	Appraised Value	AFF Deposits
FL	$79,597	$76,269	$44,305
IL	$42,033	$42,239	$24,383
MI	$31,848	$31,082	$13,212
SC	$16,742	$15,676	$ 7,762

Table 17: Kruskal-Wallis One Way Anova: District by Estimated, Appraised and AFF Deposits (1991 - 1992)

	1991		1992	
	Chi-square	p<	Chi-square	p<
Estvalue	252.706	.0000	278.134	.0000
Appvalue	226.197	.0000	260.272	.0000
Amtdep	968.566	.0000	70.228	.0000

The data in Tables 15 and 16 indicate the disparity of property values between two border districts considered to be high drug trafficking areas. One finds a high mean value of seized property in the Southern District of Florida and a surprisingly low value in California. There is even a $8,000 and $10,000 dollar difference between the two central districts of Illinois and Michigan for 1991 and 1992. While the data in the previous section showed that the types of assets in each district are relatively similar, their values differ considerably. A more precise comparison of the four districts is accomplished by the Kruskal-Wallis one-way analysis of variance. The results of the Kruskal-Wallis Anova in Table 17 confirm the earlier observation that the four districts are different from one another on all three asset values.

Table 18: Percentage Difference between Estimated and Appraised Values (1991 - 1992)

District	Percent Difference 1991	Percent Difference 1992
FL	96.1%	95.8
IL	95.2	+0.004
MI	96.5	97.5
SC	+0.01	93.6

Table 19: Percent Difference between Appraised and AFF Deposit Values (1991 - 1992)

District	Percent Difference 1991	Percent Difference 1992
FL	58.1%	58.0
IL	54.0	57.7
MI	35.2	42.5
SC	15.1	49.5

Of note is the minimal disparity between the estimated and appraised value of the assets showing the accuracy of these early estimates of the value of an asset. There is little variation between the four districts in this respect. Finally, while these approximated values are considerable, the mean amount deposited to the AFF is substantially lower. However, when comparing the two years, the

mean amount deposited to the Asset Forfeiture Fund increased for every district.

Table 18 shows the percentage difference between these values never exceeds 93.6% for California in 1992. The appraised values are actually higher than the estimated values in California in 1991 and Illinois in 1992. Table 19 reveals distinct differences between the four district in terms of the difference between the appraised values and the AFF deposits. The Southern District of Florida deposited the highest amount - 58.1% and 58.0% of the appraised value of a seized asset. They were followed closely by the Northern District of Illinos at 54.0% and 57.7%. This may suggest better pre-planning of asset seizures in these two districts to minimize liens and innocent owner claims. Michigan and California in 1991 showed the greatest disparity in these values. This indicates that they received considerably less for their efforts than the other two districts in 1991. This pattern changed in 1992 with a large percentage increase in both districts.

Another approach to the issue of asset values is to compare the values of assets that are forfeited to those that are returned to the owners, that is, not forfeited. The data in Table 20 on the following page provides some interesting findings.

Table 20: Mean Estimated Dollar Values Comparing Forfeited and Not Forfeited Assets by District (1991 - 1992)

ASSET	DISTRICT Florida	Illinois	Michigan	California
Monetary				
1991 Forfeited	$ 77,757	34,720	30,355	18,349
Not Forfeited	$ 60,892	13,219	26,951	16,597
1992 Forfeited	$ 99,089	55,413	29,180	12,399
Not Forfeited	$ 82,607	15,745	48,323	9,210
Real Property				
1991 Forfeited	$230,097	122,466	92,907	198,900
Not Forfeited	$175,055	72,500	109,085	269,281
1992 Forfeited	$168,923	120,294	83,973	159,700
Not Forfeited	$170,770	134,934	104,362	222,566
Conveyances				
1991 Forfeited	$ 22,966	10,319	14,617	8,724
Not Forfeited	$ 38,015	9,196	16,355	11,794
1992 Forfeited	$ 33,623	8,103	12,004	8,550
Not Forfeited	$ 35,836	12,319	14,016	15,629
Lab Equipment				
1991 Forfeited	$N/A	N/A	N/A	14,686
Not Forfeited	$N/A	N/A	N/A	8,000
1992 Forfeited	$N/A	15,000	36,675	1,000
Not Forfeited	$N/A	15,000	N/A	N/A
Other				
1991 Forfeited	$ 8,031	3,048	20,200	5,338
Not Forfeited	$ 21,553	13,117	6,446	13,122
1992 Forfeited	$ 33,623	7,823	7,988	3,065
Not Forfeited	$ 14,810	5,525	12,812	5,626

These data suggest that for currency seizures in all the districts the estimated value appears related to disposition with the higher value monetary assets being forfeited. This may be an indication of their focus on forfeiting an asset considered to have a higher deterrent value. However, this pattern changes as one examines the four other types of assets. In 1991 Florida and Illinois are more successful with higher value real property. However, by 1992, all districts have forfeited the lower value real property assets. Even more surprising, for both years, only Illinois in 1991 has forfeited the more valuable vehicles. The pattern is less distinct with the low numbers of lab equipment seizures and other types of property fluxuating from 1991 to 1992. Regardless, with the exception of real property and monetary assets, these other types of assets are considered to have less of an impact on the trafficking organization if forfeited.

For a more detailed analysis of any differences between the districts, the Kruskal-Wallis one-way analysis of variance was calculated on the property values for each district while controlling for asset, proceedings and disposition. These results are surprising. They show that for a majority of cases resulting in a forfeiture, the districts are significantly different at a minimum of the .05

probability level. The values of the the seized assets are distinct from one another when comparing districts. However, there are only limited differences in terms of non-forfeitures. The financial values of assets that are returned to their owners are less distinct from one another between districts. That is, the districts are more similar in terms of the financial values of seized assets in cases that are lost or those the government dismisses.

Table 21: Kruskal-Wallis One-way Anova Results: District by Estimated and Appraised Values and Amount Deposited. (Controlling for Asset, Forfeiture Proceeding and Disposition) - 1991 and 1992

		NOT FORFEITED K-W Chi-sqr/p <	FORFEITED K-W Chi-sqr/p <
Admin/ Monetary (1991)	Estvalue:	1.569/.6663	106.251/.0000
	Appvalue:	1.576/.6648	106.463/.0000
	Amtdep:	0.098/.9920	881.749/.0000
Admin/ Monetary (1992)	Estvalue:	7.543/.0565	72.885/.0000
	Appvalue:	7.542/.0565	70.664/.0000
	Amtdep:	0.235/.9717	69.511/.0000
Admin/ Conveyance (1991)	Estvalue	1.429/.6987	004.675/.1972
	Appvalue	5.666/.1290	000.514/.0000
	Amtdep	0.000/1.0000	240.676/.0000
Admin/ Conveyance (1992)	Estvalue	16.651/.0008	12.010/.0073
	Appvalue	15.587/.0014	06.098/.1069
	Amtdep	02.745/.4325	58.864/.0000
Admin/ Other (1991)	Estvalue	8.483/.0370	2.474/.4799
	Appvalue	8.487/.0369	2.562/.4642
	Amtdep	1.689/.6372	21.326/.0001
Admin/ Other (1992)	Estvalue	00.160/.9837	31.009/.0000
	Appvalue	16.535/.0009	34.441/.0000
	Amtdep	16.459/.0009	28.166/.0000
Civil/ Monetary (1991)	Estvalue	9.201/.0267	5.555/.1354
	Appvalue	9.201/.0267	5.569/.1346
	Amtdep	0.294/.9611	89.742/.0000

Table 21 (cont'd)

		NOT FORFEITED K-W Chi-sqr/p <	FORFEITED K-W Chi-sqr/p <
Civil/ Monetary (1992)	Estvalue	31.259/.0000	34.253/.0000
	Appvalue	31.511/.0000	34.282/.0000
	Amtdep	00.024/.9990	30.102/.0000
Civil/ Conveyance (1991)	Estvalue	20.135/.0002	26.700/.0000
	Appvalue	20.549/.0001	29.529/.0000
	Amtdep	1.583/.6631	53.955/.0000
Civil/ Conveyance (1992)	Estvalue	08.112/.0438	10.759/.0131
	Appvalue	07.904/.0480	11.481/.0094
	Amtdept	03.294/.3485	19.529/.0002
Civil/ Real Prop. (1991)	Estvalue	28.343/.0000	35.222/.0000
	Appvalue	30.296/.0000	35.656/.0000
	Amtdep	3.426/.3304	13.122/.0044
Civil/ Real Prop. (1992)	Estvalue	9.261/.0260	20.844/.0001
	Appvalue	11.658/.0087	17.226/.0006
	Amtdep	13.620/.0035	19.694/.0002
Civil/ Other (1991)	Estvalue	3.354/.3401	11.957/.0075
	Appvalue	3.637/.3034	22.252/.0001
	Amtdep	0.170/.9822	14.408/.0024
Civil/ Other (1992)	Estvalue	07.123/0681	10.013/.0185
	Appvalue	07.123/.0681	11.403/.0097
	Amtdep	01.118/.7725	03.037/.3859

Note: The Kruskal-Wallis statistic was not calculated for criminal forfeitures due to the small samples sizes of less than 10 for each combination.

Time Requirements for Prosecuting Forfeiture Cases

One unique aspect of the forfeiture program relevant to its effectiveness is the amount of time necessary to prosecute a property seizure. This is an issue of concern to the government, but primarily for management reasons. Once an asset is seized, property management costs accrue. These can be considerable with real property and businesses. The longer a forfeiture case takes to prosecute, the greater these costs. These are partly offset if the asset is forfeited, but if the case is lost, the government may not recoup any of its management expenses. Asset seizures cases that have little chance of resulting in a forfeiture should be disposed of as quickly as possible to minimize costs to the government and inconvenience to innocent owners.

Time is also a critical element for a second reason. The faster an asset can be forfeited, the sooner the asset or the proceeds of its sale can be used to fund additional drug enforcement with minimal depreciation. Finally, timely forfeitures serve the interests of justice. Assets belonging to innocent owners should be returned promptly and the guilty assets should be forfeited swiftly for maximum effect. This will also help allay some criticism of the program. This brings us to the question of of how long does it take to

prosecute a forfeiture case. This section addresses this issue by comparing the four districts overall, then by asset type and by legal proceeding.

The data in Table 22 reveal that with the exception of the Southern District of Florida, its takes approximately one year to prosecute a forfeiture case. A surprising finding is that the mean amount of time increased for every district except the Southern District of California. Time requirements in the Southern District of Florida showed the greatest increase -just over 100 days from 1991 to 1992. The problem with these findings is that prosecution time increases are contrary to the goals of efficiency and impact. Included with these results is an analysis of variance results and the Levene Test. This post-hoc test tests the hypothesis that the groups come from populations with the same variances in the One-Way Anova. The observed significance levels are small for both years, thereby allowing for a rejection of the null that all the variances are equal.

Table 22 Mean Prosecution Time by Federal District (1991 - 1992) with Analysis of Variance Results

Year	District	Mean Days	S.D.	Case
1991	Florida	427.66	392.89	825
	Illinois	332.02	328.43	478
	Michigan	318.67	265.50	456
	California	383.72	348.45	1666
1992	Florida	528.55	438.16	837
	Illinois	356.15	391.06	539
	Michigan	397.66	388.75	346
	California	328.62	363.70	1138
1991	F Ratio = 12.994	p < .0000	Levene Stat = 23.013	p < .001
1992	F Ratio = 44.180	p < .0000	Levene Stat = 16.487	p < .000

Table 23 Prostime by District with Modified LSD Bonferroni at the .05 level

	1991 District					1992 District				
District	MI	IL	CA	FL	District	CA	IL	MI	FL
Michigan					California				
Illinois					Illinois				
California	*	*			Michigan	*			
Florida	*	*	*		Florida	*	*	*	

While the results of the analysis of variance in Table 22 support a rejection of the null hypothesis, a Bonferroni multiple comparison test is used to indicate which specific pairs of groups have means significantly different from one another. The results in Table 23 allow for a more precise analysis offering protection from calling too may pairs of means as significantly different.

An asterisk marks the pairs of means that are different at the .05 level. The differences are only marked once in the lower diagonal of the table. The 1991 Bonferroni results show that Illinois and Michigan differ from California and Florida. The 1992 Bonferroni test results indicate that the mean prosecution times in California are significantly different from Michigan and Illinois. Additionally, Illinois and Michigan differ from Florida, but not from one another. Overall, the central districts are not significantly different from one another but are distinct from the border districts. However, the Southern Districts of California and Florida are significantly different from one another in terms of prosecution times.

The prosecution time analysis is taken further by controlling for asset and legal proceeding. These data in Table 24 suggest that the prosecution times vary by asset type and legal proceeding. Before considering the legal proceeding for all districts, monetary

asset forfeiture cases require on average about 10 months to prosecute at 302.93 days in 1991 and 309.61 in 1992. For the four districts, conveyances average 373.26 days and 408.99 days in 1991 and 1992. The longer time-frame for real property at 568.73 days in 1991 and 667.75 days in 1992 is not surprising. These are high-value assets and commonly involve third-party lein holders. They are also all judicial forfeitures. One does find a considerable amount of variation between the four districts for real property times with a low of 395.93 days in Michigan to a high of 748.56 days in Florida in 1991.

When examining legal proceeding, the criminal forfeitures require a considerable amount of time to prosecute. Florida real property criminal forfeitures averaged 1205.50 in 1991 and 1552.50 days in 1992. Averaging all the prosecution times for the 1991 criminal cases provides a mean time of 746.21 days. The efficiency in terms of time of administrative proceedings becomes more apparent.

Table 24 Prosecutions Times by District, Asset and Legal Proceeding

DISTRICT	1991 Mean Days	1991 Std. Dev.	1991 N	1992 Mean Days	1992 Std. Dev.	1992 N
FLORIDA	427.66	392.89	825	528.55	438.16	837
Monetary	353.41	387.59	391	375.35	316.74	335
Admin	330.14	409.01	268	277.55	283.28	213
Civil	407.30	331.62	122	547.51	301.01	121
Criminal	N/A	N/A	001	375.00		001
Real Property	748.56	413.69	124	861.30	557.54	136
Civil	726.35	403.74	120	853.14	554.71	133
Criminal	1205.50	307.12	004	1552.50	542.35	002
Conveyance	396.12	299.87	249	556.40	418.51	305
Admin	344.90	289.82	170	444.19	392.14	205
Civil	506.32	293.10	071	789.63	374.03	098
Criminal				620.00	625.08	002
Other	380.09	407.06	061	488.77	377.04	061
Admin	430.20	270.60	025	372.06	266.06	043
Civil	345.30	480.42	036	828.62	447.63	016
Criminal				279.00	171.11	002
ILLINOIS	332.02	328.43	478	356.15	391.06	539
Monetary	269.89	273.79	169	255.32	380.85	186
Admin	235.60	237.39	126	188.33	342.56	136
Civil	355.75	333.46	041	484.88	418.58	045
Criminal	670.50	574.87	002	N/A	N/A	005
Real Property	558.77	398.30	054	651.40	429.87	083
Civil	556.22	401.66	053	660.62	430.64	081
Criminal	694.00	N/A	001	278.00	176.77	002
Conveyance	295.60	300.56	230	356.39	320.55	231
Admin	313.86	259.63	109	235.28	253.98	125
Civil	241.31	297.30	112	499.21	332.94	106
Criminal	750.11	413.93	009			
Lab Equipment	253.00	N/A	001	148.00		001
Civil	253.00	N/A	001	148.00		001

Table 24 (cont'd)

DISTRICT	Mean Days	1991 Std. Dev.	N	Mean Days	1992 Std. Dev.	N
Other	611.54	424.63	024	208.86	424.30	038
Admin	303.00	196.60	007	96.32	98.41	028
Civil	732.85	478.12	014	380.12	520.68	008
Criminal	765.33	8.14	003	1099.50	1525.22	002
MICHIGAN	318.67	265.50	456	397.66	388.75	346
Monetary	260.45	234.21	222	383.10	460.44	148
Admin	220.37	198.07	156	346.00	431.74	107
Civil	365.04	285.37	062	491.95	522.27	040
Criminal	202.25	209.87	004	N/A	N/A	001
Real Property	395.93	230.21	075	536.59	292.73	056
Civil	394.57	224.41	071	520.76	280.84	055
Criminal	420.00	362.42	004	701.00		001
Conveyance	360.68	309.53	112	280.12	281.35	085
Admin	291.51	237.89	072	206.30	193.08	052
Civil	422.21	320.37	037	417.87	355.13	031
Criminal	1262.00	15.58	003	64.50	3.53	002
Other	370.23	290.04	047	456.85	350.29	054
Admin	333.38	269.01	031	306.66	370.21	018
Civil	441.62	324.06	016	531.94	319.12	036
CALIFORNIA	383.72	348.45	1666	328.62	363.70	1138
Monetary	327.97	343.42	979	224.68	298.67	592
Admin	299.90	347.19	838	158.37	257.43	469
Civil	494.80	265.44	141	477.51	310.73	123
Real Property	571.69	440.44	026	621.73	378.58	038
Civil	571.69	440.44	026	621.73	378.58	038
Conveyance	440.64	326.18	447	443.06	400.49	366
Admin	407.20	313.12	355	379.30	359.91	266
Civil	569.68	344.73	092	612.66	452.35	100
Lab Equipment	915.80	575.77	005	232.00	N/A	001
Admin	915.80	575.77	005	232.00	N/A	001
Other	486.98	340.63	209	389.63	366.92	141
Admin	483.75	339.37	183	368.24	367.78	116
Civil	509.69	355.33	023	N/A	N/A	N/A

Figures 14 and 15 provide another perspective on time requirement examining the prosecution times by disposition. The results are somewhat unexpected. Of the four districts, only Illinois disposes of non-forfeited assets in less time than forfeited assets. In 1992, Michigan non-forfeitures required over 150 days more time than forfeited assets.

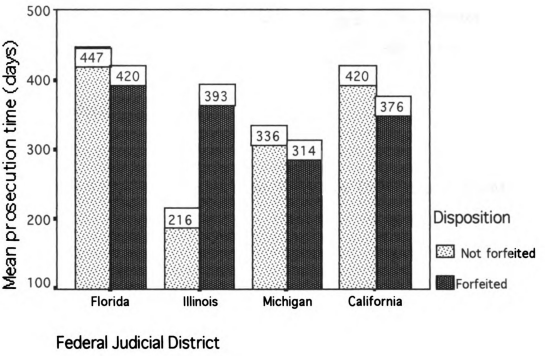


Figure 14 Prosecution Times by District and Asset (1991)

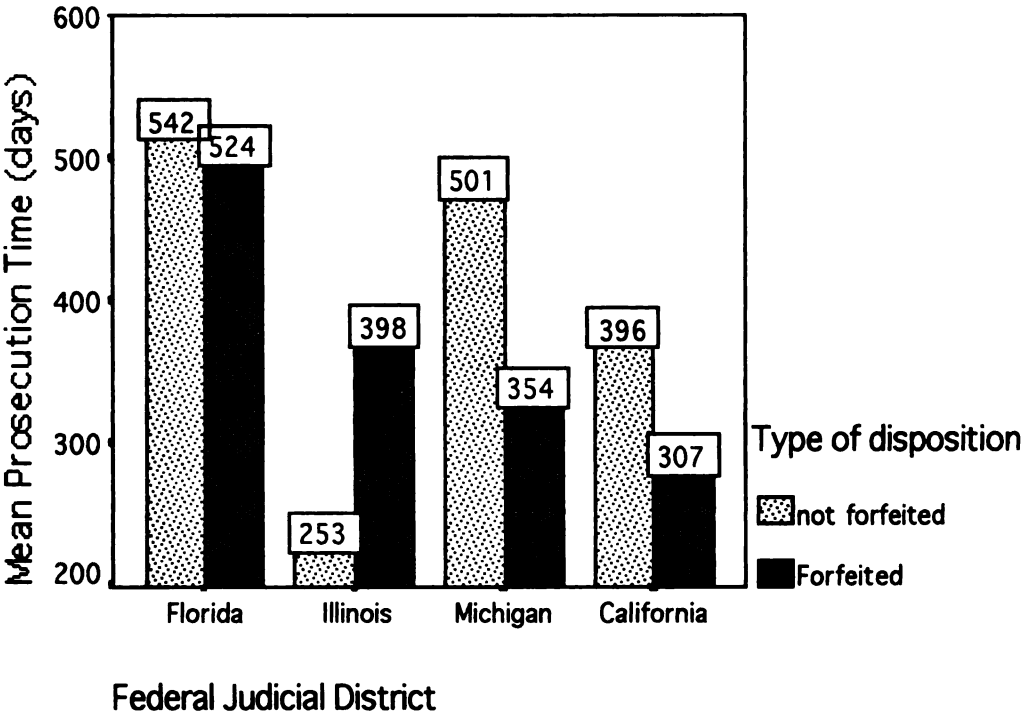


Figure 15 Prosecution Times by District and Asset (1992)

A second analysis of variance tested the same hypothesis with two additional factors: asset type and legal proceeding. These results are in Table 25.

Table 25: Analysis of Variance: Prosecution Time by District, Assets, Forfeiture Proceeding and Outcomes

	1991			1992		
Source of Variation	F. Ratio	DF	p<	F. Ratio	DF	p<
Main Effects:	38.81		.000	82.84		.000
District:	27.90	3	.00	32.84	3	.00
Asset:	35.94	4	.00	37.11	4	.00
Forftype:	51.23	2	.00	160.29	2	.00
Disposition:	27.26	1	.000	39.63	1	.000
Explained	38.81		.000	82.84		.000

This analysis of variance test results includes the additional factor of case disposition, that is, forfeited or not forfeited. The results of the multiple factor analysis of variance confirm the previous results that the four districts are significantly different from one another on all factors for prosecution time.

Examining Forfeiture Case Characteristics in the Districts

The distribution of property types in the four district provides an initial, but limited view of the federal forfeiture program. A more in-depth look at two important characteristics of individual

cases will provide more insight into the operation of this program. These characteristics include the type of legal proceeding - administrative, civil or criminal - and the disposition of the case. Each method has benefits and liabilities influencing the government's ability to meet the program's formal goals. Of the three, criminal forfeiture, though time consuming and costly, best meets the deterrence goal with its ability to both incapacitate the trafficker and his organization. Administrative forfeitures, and to a lesser extent, civil actions have a significant economic advantage for the government. The data revealed that civil and administrative cases can be prosecuted faster and allowing the forfeited assets to be disposed of in a timely manner. They allow law enforcement to proceed directly against the assets without the necessity of the criminal trial.

The disposition of the case also has obvious implications for the government. For the program to be a success, assets must be forfeited. To provide the greatest detail in this analysis, disposition values include not forfeited, forfeited with the asset sold, forfeited with the asset retained by the government for its own use, and forfeited with the owner forfeiting substitute assets for the original seized property.

The data in Tables 26 and 27 on the following page confirm the earlier finding that criminal forfeiture is seldom used by any of the four districts. The emphasis is on the more economically efficient administrative and civil proceedings. While Florida, Illinois and Michigan are quite similar, the Southern District of California again is very distinct with its high percentage (82.9%) of administrative forfeitures. It also shows minimal use of civil proceedings. Additionally, the four districts are remarkably similar to one another on this variable for both years. The results of the chi-square test further indicate that the results are statistically significant.

Table 26 Legal Proceeding by Federal Judicial District (1991)

	DISTRICT			
PROCEEDING	Florida	Illinois	Michigan	California
Administrative	56.2% (463)	50.6 (242)	56.8 (260)	82.9 (1381)
Civil	43.2 (357)	46.2 (221)	40.8 (187)	17.1 (285)
Criminal	0.5 (005)	3.1 (015)	2.4 (011)	0.0 (000)
Cramer's V = .225	Chi-square = 350.00		df = 6	p < .0000

Table 27 Legal Proceeding by Federal Judicial District (1992)

	DISTRICT			
PROCEEDING	Florida	Illinois	Michigan	California
Administrative	55.2% (461)	53.8 (290)	51.4 (177)	74.9 (852)
Civil	44.0 (369)	44.5 (240)	47.4 (165)	25.1 (286)
Criminal	00.8 (007)	01.7 (009)	01.2 (004)	00.0 (000)
Cramer's V = .219	Chi-square = 137.569		df = 6	p < .0000

While type of asset and legal proceeding provide information about the nature of forfeiture cases, of even more concern is the relationship between district and disposition. Based on the data in Tables 29 and 30, the four districts are similar in the sense that they all have more forfeitures than non-forfeitures. They are also similar in terms of the low percentages of retained assets and the forfeiture of substitute assets. Retained assets accounted for less than 8% for both years for all districts. However, the Southern District of California is again distinct. California forfeited at least 75% of all seized assets for both years. This district also has the lowest percentage of non-forfeitures for each year.

Table 28 Disposition Types by Federal Judicial District (1991)

	DISTRICT			
DISPOSITION	Florida	Illinois	Michigan	Calif
Not Forfeited	29.2% (241)	34.3 (164)	21.4 (098)	17.0 (283)
Forfeited/Sold	69.8 (576)	59.4 (284)	65.3 (299)	71.4 (1189)
Forfeited/Retained	00.8 (007)	03.8 (018)	07.4 (034)	11.6 (194)
Forfeited-Substitute Assets	00.1 (001)	02.5 (012)	05.9 (027)	00.0 (000)
Cramer's V = .169	Chi-square = 295.429		df = 9	p <= .001

Table 29 Disposition Types by Federal Judicial District (1992)

	DISTRICT			
DISPOSITION	Florida	Illinois	Michigan	Calif
Not Forfeited	26.3% (220)	28.6 (154)	29.5 (102)	23.9 (272)
Forfeited/Sold	71.1 (595)	61.0 (329)	57.5 (199)	69.4 (790)
Forfeited/Retained	02.4 (020)	07.6 (041)	07.8 (027)	06.7 (076)
Forfeited-Substitute Assets	00.2 (002)	02.8 (015)	05.2 (018)	00.0 (000)
Cramer's V = .116	Chi-square = 115.477		df = 9	p < .0000

The above-tables allow for a comparison of the four districts in terms forfeiture proceeding and disposition, however, the use of elaboration analysis will provide a more precise picture of this program by controlling for individual judicial district. This will allow for an identification of the use of legal proceedings and individual property dispositions by district. Of note is that even given the large sample size, the results of this analysis left several tables with expected frequencies too low to produce a valid Chi-

square statistic. When this is the case, it is not reported with the table. Additionally, due to the very low number of criminal forfeitures, the analysis also resulted in tables with fewer than 5 cases. Therefore, they have not been presented with the following results.

The final part of this analysis controls for judicial district with partial tables. While the insufficient expected frequencies prevented the calculation of Chi-square tests on all but one table, the results suggest a relationship between asset and proceeding in the individual districts. Tables 30 through 37 describe the relationship between asset type and legal proceeding for each district for each year.

Table 30 Florida Asset Seizures by Proceeding (1991)

	ASSET			
PROCEEDING	Monetary	Real Prop.	Conveyance	Other
Administrative	68.5%	00.0	68.3	41.0
Civil	31.2	96.8	31.7	59.0
Criminal	00.3	03.2	00.0	00.0

Cramer's V = .35

Table 31 Florida Asset Seizures by Proceeding (1992)

	ASSET			
PROCEEDING	Monetary	Real Prop.	Conveyance	Other
Administrative	63.6%	00.0	67.2	70.5
Civil	36.1	98.5	32.1	26.2
Criminal	00.3	01.5	00.7	03.3

Cramer's V = .35

The Florida data show the extensive use of administrative proceedings for most categories of assets. Again, one finds a very limited use of criminal forfeiture in this border district.

Table 32 Illinois Asset Seizures by Proceeding (1991)

PROCEEDING	ASSET Monetary	Real Prop.	Conveyance	Lab	Other
Administrative	74.6%	00.0	47.4	00.0	29.2
Civil	24.3	98.1	48.7	100	58.3
Criminal	01.2	01.9	03.9	00.0	12.5

Cramer's V = .33

Table 33 Illinois Asset Seizures by Proceeding (1992)

PROCEEDING	ASSET Monetary	Real Prop.	Conveyance	Lab	Other
Administrative	73.1%	00.0	54.1	100	73.7
Civil	24.2	97.6	45.9	00.0	21.1
Criminal	02.7	02.4	00.0	00.0	05.3

Cramer's V = .36

Table 34 Michigan Asset Seizures by Proceeding (1991)

PROCEEDING	ASSET Monetary	Real Prop.	Conveyance	Other
Administrative	70.1%	00.0	64.3	66.0
Civil	28.1	94.7	33.0	34.0
Criminal	01.8	05.3	02.7	00.0

Cramer's V = .36

Table 35 Michigan Asset Seizures by Proceeding (1992)

PROCEEDING	ASSET Monetary	Real Prop.	Convync.	Lab	Other
Administrative	72.3%	00.0	61.2	00.0	33.3
Civil	27.0	98.2	36.5	100	66.7
Criminal	00.7	01.8	02.4	00.0	00.0

Cramer's V = .38

The results from the Illinois and Michigan data analysis are quite similar to one another and to Florida. Administrative forfeiture is the perfered method followed by civil then criminal. The measure of association indicate a moderate relationship between asset type and legal proceeding.

Table 36 California Asset Seizures by Proceeding (1991)

	ASSET				
PROCEEDING	Monetary	Real Prop.	Convync.	Lab	Other
Administrative	85.6%	00.0	79.4	100	87.6
Civil	14.4	100	20.0	00.0	12.4
Cramer's V = .28					

Table 37 California Asset Seizures by Proceeding (1992)

	ASSET				
PROCEEDING	Monetary	Real Prop.	Convync.	Lab	Other
Administrative	79.2%	00.0	72.7	100	82.3
Civil	20.8	100	27.3	00.0	17.7
Cramer's V = .33	Chi-square = 124.54		df = 4		p < .0000

One sees the preference for administrative forfeiture especially in the Southern District of California with 82.9% in 1991 and 74.9% in 1992 of all assets following the administrative route. Criminal proceedings accounted for the lowest percentage of all types in all districts with California having no criminal forfeitures for either year. A surprising finding is high percentage of civil forfeitures of personal property (other) in Florida and Illinois in 1991 and Michigan in 1992. While not considered a high-impact asset, nor of great value, more than 50% of these seizures were contested resulted in a more time consuming judicial proceeding in these districts. This may support the argument to avoid seizing this type of assets.

In addition to examining legal proceeding, disposition was analyzed by asset and district. These results reported in Tables 38 through 45 show a weak to moderate association between asset and disposition for both years. However, with the exception of the 1991 California table, all the results are significant at the .0000 level.

Table 38 Florida Asset Seizures by Disposition (1991)

DISPOSITION	ASSET Monetary	Real Prop.	Conveyance	Other
Not Forfeited	15.6%	37.9	44.2	37.7
Forfeited	84.4	62.1	55.8	62.3

Cramer's V = .28 Chi-square = 68.65 df = 3 p < .0000

Table 39 Florida Asset Seizure by Disposition (1992)

DISPOSITION	ASSET Monetary	Real Prop.	Conveyance	Other
Not Forfeited	17.6%	49.3	25.2	27.9
Forfeited	82.4	50.7	74.8	72.1

Cramer's V = .24 Chi-square = 50.32 df = 3 p < .0000

The Florida data in Tables 38 and 39 for both years reveal that this district is very successful with monetary assets. However, real property had about a forfeiture rate of approximately only 50% in 1992. Conveyance seizures, a low-impact asset also had a rather low forfeiture rate in 1991. It is similar to the Illinois data in 1991 in Table 40.

Table 40 Illinois Asset Seizures by Disposition (1991)

DISPOSITION	ASSET Monetary	Real Prop.	Conveyance	Lab	Other
Not Forfeited	11.8%	44.4	50.0	00.0	20.8
Forfeited	88.2	55.6	50.0	100	79.2
Cramer's V = .37	Chi-square = 67.91		df = 4		p < .0000

Table 41 Illinois Asset Seizures by Disposition (1992)

DISPOSITION	ASSET Monetary	Real Prop.	Conveyance	Lab Eqpmt	Other
Not Forfeited	10.8%	27.7	39.0	00.0	55.3
Forfeited	89.2	72.3	61.0	100	44.7
Cramer's V = .31	Chi-square = 54.85		df = 4		p < .0000

Table 42 Michigan Asset Seizures by Disposition (1991)

	ASSET			
DISPOSITION	Monetary	Real Prop.	Conveyance	Other
Not Forfeited	12.5%	18.7	38.4	27.7
Forfeited	87.5	81.3	61.6	72.3
Cramer's V = .26	Chi-square = 31.20		df = 3	p < .0000

Table 43 Michigan Asset Seizures by Disposition (1992)

	ASSET				
DISPOSITION	Monetary	Real Prop.	Conveyance	Lab Eqpmt	Other
Not Forfeited	17.6%	31.6	47.1	00.0	33.3
Forfeited	82.4	68.4	52.9	100	66.7
Cramer's V = .26	Chi-square = 24.07		df = 4	p < .0000	

Michigan also shows percent differences from 1991 to 1992 in its forfeitures of real property and conveyances. The data in Tables 42 and 43 illustrate that during this one year period, it forfeited a lower percentage of both types of these assets.

Table 44 California Asset Seizures by Disposition (1991)

	ASSET				
DISPOSITION	Monetary	Real Prop.	Conveyance	Lab Eqpmt	Other
Not Forfeited	05.8%	61.5	31.1	20.0	33.5
Forfeited	94.2	38.5	68.9	80.0	66.5
Cramer's V = .36					

Table 45 California Asset Seizures by Disposition (1992)

	ASSET				
DISPOSITION	Monetary	Real Prop.	Conveyance	Lab Eqpmt	Other
Not Forfeited	10.0%	50.0	35.0	00.0	46.8
Forfeited	90.0	50.0	65.0	100	53.2
Cramer's V = .35	Chi-square = 143.09		df = 4		p < .0000

These partial tables reveal that most types of property seized results in a forfeiture. The districts are most successful with monetary assets. The percentage of monetary assets forfeited ranges from a low of 82.4% in Florida (1992) and Michigan (1992) to a high of 94.2% in California in 1991. However, when examining assets in the Southern District of California in more detail, real estate has the lowest forfeiture percentage - 38.5% in 1991 and

50.0% in 1992. Illinois and Florida in 1992 also showed a high percentage of non-forfeited real property assets at 44.4% and 49.3%. These findings may explain the low frequency of real property seizures across the four districts.

The data shows another potential drawback with conveyance seizures. Illinois forfeited the lowest percentage of all its conveyance seizures - 50% in 1991 and 61% in 1992. While conveyances comprise a considerable portion of all asset types, the percentage of conveyance forfeitures is well under that of monetary assets for all districts. Finally, most districts are forfeiting the majority of the personal property seized. While this represents an economic gain, its impact on the drug trafficker is questionable.

Table 46 on the following pages provides a brief summary of the main highlights of the findings for each research question.

Table 46: Summary of Findings

Research Question	Finding
What are the historical origins of federal forfeiture law?	Patterned after English Common Law, initially used in the U.S. to enforce federal custom's laws during the American Revolution. Subsequently used during American Civil War and Prohibition. 1970 RICO Act first in a series of recent legislation that tranformed forfeiture into a modern organized crime and drug control tool. Now used to economically disable criminal enterprises
How is the program structured and how are cases processed?	Multi-level federal organization including administrative branch, most major federal enforcement agencies, and USMS as property custodian. Cases can be proceeded against in one of three manners - administrative, civil or criminal. Each has its own benefits and liabilities for both the government and the property owner.
How has the program performed over time?	Highly successful from a financial viewpoint generating over $1 billion in forfeited assets. Many states developing their own capabilities. Impact of forfeiture on overall drug trafficking problem in doubt. Current government data shows drug prices stable or declining while drug production increasing.
What types of assets are most frequently seized?	Monetary instruments and conveyances comprise the majority of all seized assets across the four districts.

Table 46 (cont'd)

How valuable are the seized assets?	The average estimated value of a seized asset was $35,982 in 1991 and $41,684 in 1992 with the government depositing about one-half of that amount into the federal Asset Forfeiture Fund. The Southern District of Florida had the highest value of seized assets while the Southern District of California had the lowest value of seized assets.
How much time is required to prosecute a forfeiture case?	Averaging all four districts, it requires approximately one year to prosecute a forfeiture case. Monetary instruments require the least time while real property requires the most.
What legal proceeding and outcome is most common among the seizure cases?	Administrative forfeiture is most frequently used followed by civil. Criminal forfeiture is seldom employed in any of the four districts. Across the four districts, over 70% of all seized assets are forfeited to the federal government.
Are the border districts unique from the central districts?	The four districts are relatively similar to one another on most characteristics of the forfeiture cases. One minor exception is California. The main source of variation between districts is in the dollar values of the seized and forfeited assets.

Chapter Five: Summary and Conclusions

This project represents the first major attempt to understand the use of asset forfeiture by the federal government as a drug control policy. The review of the literature revealed that forfeiture is widely used and generates hundreds of millions of dollars in revenue from the sale of forfeited assets for law enforcement. It also showed that the program has ardent proponents and critics. However, to date, there have been no large-scale studies of this program examining the history of forfeiture and its use as a drug enforcement technique. Therefore, the objective of this research was to begin to fill the void in the empirical research. Eight research questions were specified addressing these two issues. This project also used a variety of data sources in order to facilitate a comprehensive analysis of asset forfeiture.

Addressing the first three research questions, the analysis focused on the history and development of forfeiture law and the federal forfeiture program. It illustrated how forfeiture law had its origins in U.S. Custom's law during the time of the American Revolution. However, following this time period, forfeiture was used

as an alternative sanction only sporadically until the passage of the RICO Act 1970. With RICO, thegovernment, in its fight against criminal organizations, now began to see the potential ability of forfeiture to economically disable a criminal enterprise.

This analysis further showed how the early forfeiture laws were subsequently used for drug enforcement by the mid-1980's. The passage of several major legislative acts strengthened and expanded the use of asset forfeiture to include more types of offenses and property. The end result was the transformation of an obscure body of law to a commonly used drug enforcement tool that allowed for the seizure of property from offenders, in some cases without the need to prosecute or even arrest the individual.

This section also examined in detail the three different types of forfeiture proceedings - administrative, civil and criminal - and their benefits and liabilities for drug enforcement. The analysis illustrated that while administrative and civil proceedings are more economically efficient, criminal forfeiture with its ability to incapacitate both the asset and the offender, is a more complete sanction. Additionally, during late 1980's, the U.S. Attorney General and Congress formally defined the goal of the federal asset forfeiture program. The goal of the forfeiture program was to

disable drug trafficking organizations by targeting their economic base.

The aggregate data used to supplement this historical analysis illustrated the rapid economic growth of the program. By 1993, over a billion dollars in assets had been forfeited to the federal government. As the federal program expanded, states also began to pass their own forfeiture legislation to exploit the effectiveness of this technique.

However, this analysis also showed that while forfeiture was expanding, the amount of criticism directed at this program was also increasing. Opponents were frequently questioning the structure of these laws, their use and their effectiveness. Additional aggregate data gives merit to the criticism. The data revealed that drug trafficking has not subsided. While forfeiture should have raised the cost of doing business, the data show that drug prices have remained stable or decreased and drug purity has even increased. The Supreme Court has even begun to pay more attention to these laws. Five major decisions in 1993 altered some of the procedural aspects of the forfeiture laws.

These findings served as the foundation for the second part of the analysis, that is, examining the use and impact of asset

forfeiture as a drug control technique. It also raised the important question of how does one analyze the impact of asset forfeiture. To date, no one has attempted to answer this question. As a result, there was no existing research to serve as a guide. An approach to analyzing the impact of forfeiture had to be developed from zero.

The solution to this problem was found in the literature. A wide variety of literature was examined covering the nature of drug trafficking organizations, the drug business, the assets common to these illegal enterprises, and the essential tenets of the deterrence philosophy. From this literature, it was determined that assets have different values for drug enterprises. That is, certain types of property are critical for the enterprise to function while others are more expendable. Based on these findings, the five main categories of assets were identified and rated as to their impact on the drug enterprise if seized and forfeited. Monetary assets, lab equipment and real property were rated as "high-impact" while conveyances and personal property were considered "low-impact".

The literature further revealed that the value of the assets, the amount of time used to prosecute a case, the legal proceeding, and the case disposition also contribute to the effectiveness of the program. It is of little value to seize asset with no equity.

Furthermore, forfeitures should be done in a timely manner to reduce property management costs to the government, to allow the asset or the proceeds of its sale to be used to further drug enforcement, and to return property to those from whom it was wrongly seized. Additionally, of the three types of legal proceedings, the criminal cases are considered to have the most impact on the organization, while civil and administrative, though economically efficient, are of less value without parallel criminal charges. Finally, for an asset seizure to have the most impact, the asset must be forfeited.

The objective of this second part of the analysis was to examine the use and impact of federal asset forfeiture. This part of the study utilized a large data set consisting of over 6000 property seizures cases in four federal judicial district. These district differ both geographically and in terms of the level of drug trafficking. The Northern District of Illinois and the Eastern District of Michigan are both central districts. The Southern Districts of Florida and California are border districts and have been classified as *high intensity drug trafficking areas* by the government. It is beyond the scope of this paper to make specific assumptions about what *should* be found in these districts, rather the goal is to explore the relationship between district and the use of forfeiture.

The data selected for this study contained the necessary information identified in the literature. This included asset type, monetary values, prosecution time, legal proceeding and disposition. The analysis used the data to first develop a picture of the types of forfeiture cases in these different regions of the country, then make an assessment about the potential impact of the program based on the types of cases.

The initial findings from the aggregate data revealed several interesting characteristics relevant to the use and potential impact of the program. Of note is that the border districts had the largest number of forfeiture cases for both years. This may be a function of their location as ports of entry and known higher levels of drug trafficking. However, even though California had the greatest number for 1991 and 1992, it had the lowest property values. Florida on the other hand had the highest value assets. These data also showed that while there was a decline in the number of seizures from 1991 to 1992, there was an increase in the amount deposited to the federal Asset Forfeiture Fund. This may suggest more careful case selection and prosecution.

However, the individual data from each of the four judicial districts provides a more detailed picture of the use and potential

impact of forfeiture. The results of the analysis for research question four showed that the four districts are quite similar in terms of the types of assets seized. However, they differ in the percentages seized of these assets Even given their distinctly different locations and level of drug trafficking, there was little variation. The most frequently seized assets were monetary and conveyances for all four districts. Real property, a high-impact asset, accounted for a very low number of all seizures for all districts. Perhaps most striking was that over 70% of all asset seizures resulted in a forfeited disposition. Additionally, administrative procedures are the frequently used forfeiture process by all districts followed by civil. The aggregate data showed that criminal forfeiture is a seldom used alternative.

Certain policy recommendations can be proposed from these findings. The high frequency of monetary instrument seizures is in accordance with the program's objective. They are high-impact assets crucial for the operation of the drug business, require little if any in the way of storage costs and do not have liens. However, the practice of targeting conveyances causes concern. It indicates that law enforcement may be concentrating on the transportation end of the drug trafficking business. However, the value of this

strategy as part of the forfeiture program was questioned earlier in the paper. The literature revealed that conveyances of all types have become increasingly expendable by drug organizations. As a result, they have less impact on the mid and upper-level drug trafficking organizations. However, conveyance seizures may seriously disrupt the operations of those traffickers who are marginally efficient at best. Additionally, conveyance seizures have other drawbacks. They are also costly to store and maintain and they depreciate over time. Furthermore, they have a lower rate of forfeitures compared to monetary assets. Finally, conveyances have less financial return for the government because of these costs. The higher number of conveyance seizures may offset the value of the monetary asset seizures. However, the high number of conveyance seizures may indicate that regional policy focuses on targeting the transportation end of the drug business. A concentrated emphasis on depriving traffickers of the means to move their illegal goods may have long-term benefits not yet apparent in the data on drug control efforts.

The rather low numbers of real property seizures, a high-impact asset, may also be hindering the performance of the program. Although a costly asset to seize, one that generates controversy, and one that requires a judicial forfeiture, the literature reveals that

its seizure can seriously disrupt or disable an illegal enterprise. Real property is commonly used for money laundering operations (commercial establishments), locations to facilitate business, and sources of drug production and packaging.

The fifth research question addressed the relationship between an asset and its values. Three values were identified - the estimated and appraised values and the amount deposited to the Asset Forfeiture Fund. One finds that the monetary and real property assets are most valuable of the five different types. This helps confirm the original view that their seizure can have a greater impact on the drug organization than the other three types. Conveyances also ranked third in value among the five types of assets, but were the second most frequently seized asset. This adds support to the argument that they are not high-value and high-impact assets. The government should consider reviewing the practice of targeting conveyances in large numbers.

While the earlier findings showed that the districts are relatively similar in terms of asset types, the statistically significant results of the analysis showed considerable variation on the asset values between districts. While California had a high frequency of monetary asset seizures, they were of the lowest value

of the four districts. There are some possible explanations for this. First, law enforcement in this district may be seizing more assets than the other three to keep pace in terms of revenue. Second, they may be targeting lower-level dealers which accounts for the lower value of the monetary assets. Third, there may be an over-representation of low or mid-level traffickers in this district. Finally, these values may be a characteristic of this regions with its border with Mexico. However, California had high mean value of real property, but very few seizures of this type. Florida had the most valuable monetary and real property assets.

One important finding was the difference between appraised value and the final amount deposited to the Asset Forfeiture Fund. This represented approximately one-half of the appraised values. Yet, overall the four districts did manage to deposit to the Asset Forfeiture Fund $15,316 in 1991 and $22,248 in 1992 per asset seizure. This difference between values is due in part to the need to pay the claims of innocent lien holders. A reduction in this amount is advocated. It would lead to an improvement in economic efficiency and reduce criticism from innocent lien holders whose asset are frozen by the government. These dollar results also provides a measure of the profitability of this program.

Two additional dollar value findings contribute to addressing the question of the program's impact. First, the mean value of seized assets increased from 1991 to 1992 as did Asset Forfeiture Fund deposits. This occurred in light of a decrease in overall seizures. This may show that the government is more selective and is targeting higher value assets. Second, there was minimal disparity between the estimated and appraised value of an asset. This indicates that the government is very accurate in identifying the value of assets.

Research question six addressed prosecution times. The analysis of this issue also suggests certain policy implications. The impact of the forfeiture program is also partly a function of the amount of time it takes to prosecute an asset seizure case. Like the property values, the prosecution times also varied between districts. The findings revealed that with the exception of the Southern District of California, prosecution times increased for the districts from 1991 to 1992. Another striking feature is that with the exception of Illinois, the districts required more time for non-forfeitures than forfeitures. Illinois disposed of non-forfeitures in about one-third of the time required for forfeitures. In this situation, these districts are holding and maintaining assets for

long periods of time that will eventually be returned to their owners. This is costly for the government in terms of dollars and increased criticism of the program.

This prosecution time analysis further disclosed that the non-contested administrative forfeitures generally required the least time. However, criminal proceedings, though potentially more effective by prosecuting the person and the asset, are among the most time consuming for all types of assets. This may explain why criminal forfeiture has seen limited use in these districts. Finally, conveyance seizure time for all districts increased from an average of 372 days in 1991 408 days in 1992. This further supports a change in policy away from targeting conveyances.

The seventh research question focused on two principle characteristics of individual forfeiture cases - how the case was proceeded with and its final outcome. The analysis of the legal proceeding and dispositions has additional implications about the use and impact of this program. There is relative parity between Florida, Illinois and Michigan in terms of their selection of legal proceedings. The results show an emphasis on the more economically efficient administrative seizures. Administrative forfeitures accounted for over one-half of all types of proceedings. Additionally,

assets are more likely to be forfeited with this procedure. This also indicates that a large percentage of asset seizures are not contested, at least initially. Administrative forfeitures are most prevalent in the Southern District of California. Their high loss percentages with civil forfeitures may account for this finding. One may conclude that this district has focused on high volume, lower value, administrative cases while disregarding criminal proceedings.

The Southern District of California is again distinct from the other three when examining dispositions. It had the least non-forfeitures for both years. An indication that the extensive use of administrative seizures on lower value assets leads to more favorable outcomes. However, this is not necessarily evidence of success based on the measures derived from the literature. It may just indicate that this district is focusing on low-value, uncontested seizures.

The almost negligible use of criminal forfeiture also is a cause for concern. Of the three types of proceedings, only criminal can effectively incapacitate both the asset and the offender. Given that it provides the full range of constitutional protections inherent in a criminal trial to the defendant, critics are less likely to question a forfeiture when it follows a conviction of the defendant.

While administrative and civil proceedings are more economically efficient, a greatly increased use of criminal forfeiture may allow DOJ to attain the primary goal its has set for its forfeiture program.

Table 47 utilizes specific aspects of the earlier analysis to develop a profile of how forfeiture is used the individual districts. The data reveal that the main sources of variation between districts lie within the asset values and prosecution times. As stated earlier, the four districts are quite similar in terms of asset types, legal proceedings and dispositions.

Table 47 A Profile of the Districts (Averaging 1991 and 1992)

	SDFL	NDIL	EDMI	SDCA
Top Two Most Commonly Seized Assets	Monetary Conveyance	Conveyance Monetary	Monetary Conveyance	Monetary Conveyance
Most Frequently Forfeited Asset	Monetary	Monetary	Monetary	Monetary
Mean Appraised Values for all Assets	$75,123	$34,123	$32,800	$17,036
Mean Prosecution Time	477 days	344 days	357 days	355 days
Most Frequently used Legal Proceeding	Admin. Forf.	Admin. Forf.	Admin Forf.	Admin. Forf.
Most Frequent Disposition Type	Forfeited	Forfeited	Forfeited	Forfeited
Most Frequently Retained Asset	Conveyance	Conveyance	Conveyance	Conveyance
Most Frequently Non-Forfeited Asset	Real Prop.	Conveyance	Conveyance	Real Prop.
Mean AFF Deposits	$43,660	$19,302	$12,684	$5,271

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