OBJECTIVES OF FORFEITURE

- To take the criminal’s profits
- To take the facilitating property that make the crimes possible
- To break the criminal organizations
- Return property to crime victims
U.S. FORFEITURE PROCESSES

- Civil (non-conviction based) Forfeiture
- Criminal Forfeiture
JUDICIAL FORFEITURE PROCESSES IN THE U.S.

Non-Conviction

In Rem Proceeding

- Judicial
- Executive/Administrative (law enforcement agency)
- No conviction required
- May forfeit third party interests
- Property must be linked to the crime

Criminal

In Personam Proceeding

- Judicial
- Must be conviction
- Forfeits only defendant’s interest
- May forfeit substitute assets
Difference between civil (in rem) and criminal forfeiture in U.S. legal system

- Criminal forfeiture is a proceeding against the defendant as part of a criminal prosecution [*in personam* action]. The forfeiture order is made part of the sentence. May not forfeit legitimate third party interests.

- *In Rem* (civil) forfeiture is a proceeding against the property itself – under U.S. civil & admiralty procedures. Judgment is enforceable against all property owners.
Due Process for Property Owners

- **CIVIL FORFEITURE:**
  Rule G of Supp. Admiralty Rules provides deadlines for filing Claims & Answers to challenge forfeiture;
  If deadlines not met, default judgment may enter
  If party has standing, must prove either: (1) property NOT forfeitable; OR (2) is “innocent owner” (18 U.S.C. § 983(d))

- **CRIMINAL FORFEITURE:**
  Defendant may challenge forfeiture at trial
  Third Parties must assert claim in Ancillary proceeding (Fed. R. Crim. P. 32.2(c)) & establish superior or BFP rights in property under 21 U.S.C. § 853(n))
  No ancillary proceeding for money judgments
Standing to Intervene

• Categories of Individuals with Standing to Challenge
  – Criminal
  – Civil
Common Litigation Issues Affecting Recovery

• Delays in Acquiring Evidence

• Uncontrollable Pace of Litigation

• Expense

• Defense of Filed Claims (Some Frivolous)

• Communication Challenges (Attorney-Client Issues)
Relation Back

• Legal Doctrine Governing When Government’s Interest in Property Vests
  – Civil Statute-18 U.S.C. 983(d)
  – Criminal Statute- 21 U.S.C. 853(n)(6)

• What Third Parties Must Overcome to Defeat Doctrine
Strategies for Minimizing Litigation Delays

- Effective Intergovernmental Coordination and Cooperation, Where Possible, at All Stages of Recovery.

- Consideration and consultation with litigating State Party on Unintended Consequences of Third Party Intervention.

- Consideration of Alternative Third Party Recovery Mechanisms
QUESTIONS?

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