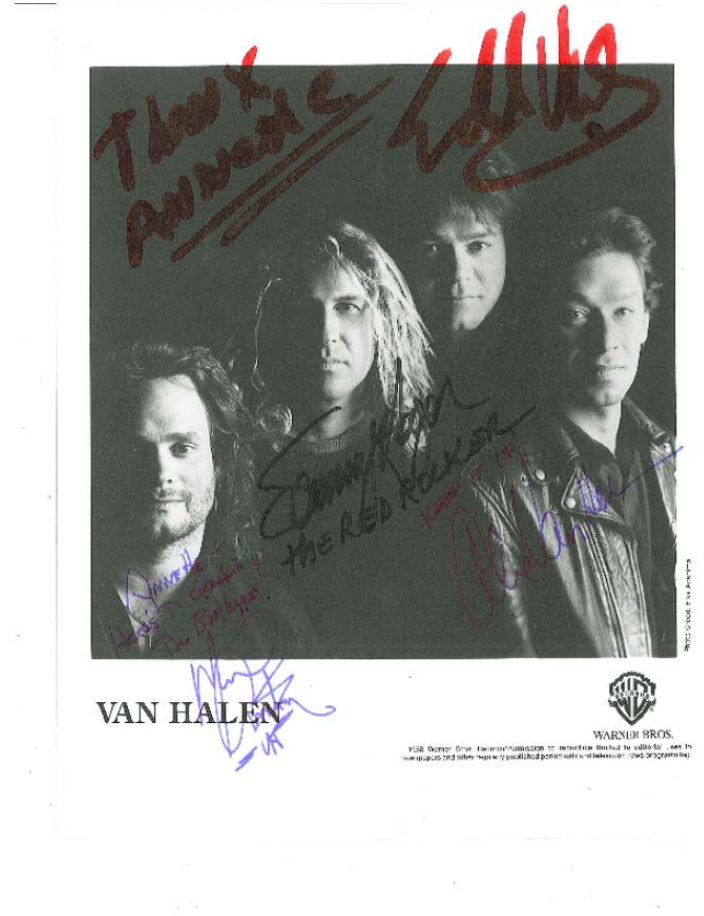


# FORFEITURE 101

# US v. Robert Waddell



# Statutory Authority For Forfeiture

- All forfeitures are governed by statute
- Not one, but hundreds throughout the U.S. code
- Virtually all allow for criminal forfeiture; but some do not allow civil forfeiture
- 28 U.S.C. § 2461(c) – authorizes criminal forfeiture for any offense for which civil forfeiture is authorized

# What Can Be Forfeited?

- Anything of value, including:

- |                         |             |           |
|-------------------------|-------------|-----------|
| • Cash                  | Antiques    | Farms     |
| • Lottery Winnings      | Houses      | Jewelry   |
| • Lien interests        | Guns        | Computers |
| • Boats                 | Airplanes   | Art       |
| • Businesses            | Stocks      | Gold      |
| • Professional Licenses | Cars        | Bonds     |
| • Liquor Licenses       | Real Estate | Condos    |

# US v. Fabiana W, a Hanoverian Mare



# US v. James Butler



# Theories of Forfeiture

- Proceeds of crime and property traceable thereto
- Facilitating property
- Property “involved in” the crime
- RICO violations
- Terrorism

# Proceeds

- Property or interest in property obtained or retained as a consequence of commission of the offense
- Any property traceable to the original proceeds
- “But For” test



# Traceable to

- Most statutes authorize forfeiture of property obtained “directly or indirectly” or “traceable thereto”
- Taint remains with property through a transaction, even to third party

# Appreciated Value

- Interest earned on proceeds is proceeds
- Lottery winnings are proceeds if the ticket was acquired with proceeds
- Insurance proceeds are proceeds
- Increases in value of traceable property are proceeds (precious metals, stock)

# Theories of Forfeiture

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# Facilitating Property

Generally –

- Did the use of the property make the crime easier to commit or harder to detect?
- Property must have a substantial connection to the offense
- Excessive Fines Clause may apply

# Theories of Forfeiture

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# Property “Involved In”

- Title 31 offenses:
  - CTR
  - CMIR
  - Bulk Cash Smuggling
  - Money Transmitting Businesses

Money Laundering, 18 U.S.C. § § 1956 and 1957

# Money Laundering: Forfeitable Property

- Proceeds of the SUA
- The subject or corpus of the money laundering
- Comingled funds
- Appreciation
- Facilitating property
- Property used to conceal or disguise

# Theories of Forfeiture

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# RICO

- 18 USC 1963(a)
  - Any property acquired or maintained through racketeering activity, and
  - Any interest that the defendant has in the racketeering enterprise itself

# Theories of Forfeiture

- Proceeds of crime and property traceable thereto
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# Forfeiture Authority for Terrorism

- All assets, foreign or domestic
  - Of any individual or organization engaged in planning or perpetrating a federal crime of terrorism
  - Acquired or maintained by a person with intent or purpose of supporting, planning, conducting a federal crime of terrorism

# Firearms and Ammunition

- 18 U.S.C. § 924(d)
  - All firearms and ammunition involved in or used in specific crimes, but also “any violation of any other criminal law of the US”

# Forfeiture Processes

- Administrative Forfeiture
- Civil Forfeiture
- Criminal Forfeiture

# Administrative Forfeiture

- Non-judicial proceeding
- No real property
- Any amount of currency
- Personal property valued up to \$500,000

# Administrative Deadlines

- To contest administrative forfeiture
  - File a claim with agency within 35 days of mailing or service of notice
  - If no direct notice received, file a claim within 30 days of last publication of notice
  - Case then referred to U.S. Attorney's Office for civil or criminal proceeding

# Civil Forfeiture

- *In Rem* proceeding; property is the defendant
- Does not require a criminal charge or conviction
- Preponderance of the evidence
- Supplemental Rules For Admiralty or Maritime Claims and Asset Forfeiture Actions



# Criminal Forfeiture

- *In Personam* action against the person/defendant
- Bifurcated proceeding; Preponderance of the evidence
- Court can impose a forfeiture money judgment
- Substitute assets

# Restitution vs. Forfeiture

- Two separate and distinct penalties
- Amounts may differ depending on facts
- One is not an automatic credit against the other

Questions?