

Asset Forfeiture Defense Manual

Review by Thomas Daly

Retired Publisher of the El Dorado Gazette, Georgetown Gazette & Town Crier

We all know what fear is and, in these trying times, we're finding more to fear every day. Then there's the good FEAR and they have just published a must read book, a textbook or as they so aptly title it, a manual.

F.E.A.R. stands for Forfeiture Endangers American Rights and the book I'm writing about is Asset Forfeiture Defense Manual, Volume 1, by Brenda Grantland and Judy Osburn with Susan Raffanti.

In a postscript to the book's introduction written by S. Leon Felkins after September 11, he ends with a sentence that every man, woman and child in America should seriously think about: "If all the terrorists are eliminated tomorrow, in view of this opportunistic furtherance of the government's obsession with increasing restrictions and reducing independence of the citizens, the only rational conclusion that we can come to is: *the terrorists have already won.*"

I met Grantland about 10 years ago as the result of the government's attempt to seize the assets of a 70 year old man who lived in Georgetown, California where I published the local community newspaper. He admitted to growing marijuana and gave excellent medical reasons why he and his female companion used this controversial drug. The federal government immediately seized his home where he had grown indoor plants, and El Dorado County seized practically everything else that he owned while they held him in jail. The prosecutor badgered his companion to the point that she committed suicide rather than be compelled to testify. In the end, thanks to lots of pressure from the media and the public, along with both good and bad legal advice, he received back from El Dorado County almost \$500,000 in seized assets. He received that check on the day he was released from the County Jail after serving a very taxing sentence for a 70 year old man who had never had so much as a traffic ticket before.

This case was the first asset forfeiture case that I

had reported on and the issue presented a steep learning curve. If the Asset Forfeiture Defense Manual had been available then, my job would have been much easier and the victim would have been able to present a much better defense.

When Brenda asked if I would review the book, I somewhat reluctantly said yes, expecting another extremely difficult-to-read legal tome written so that one needed a law degree to understand. Having devoured all 499 pages of this marvelous 8 1/2 x 11 book, I must confess that my fears were unfounded. Grantland, Osburn and Raffanti have somehow been able to tackle an extremely complicated subject and make it understandable to the average person.

This book is well indexed and contains more than 2600 footnotes with reference to numerous case laws covering asset forfeiture. Governments have been using asset forfeiture for thousands of years, but it was not until the United States declared a "War on Drugs" that asset forfeiture became legalized property theft. As new laws were hurriedly passed, agencies came out of the woodwork to use and abuse this powerful new tool. They realized that they could add millions to their operating budgets by the means of simply seizing assets - often without ever filing any criminal charges against the people from whom assets were seized.

In *United States v. Russell*, there is a paragraph which talks about outrageous government conduct - "we may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." Before September 11, it appeared that real reform was taking place in asset forfeiture laws. In 1999 the House Judiciary Committee stated, "[A] number of years ago, as forfeiture revenues were approaching their peaks, some disquieting rumblings were heard. The Second Circuit stated that [w]e continue to be enor-

mously troubled by the government's increasing and virtually unchecked use of civil forfeiture statutes and the disregard for due process that is buried in those statutes."

It was increasingly evident that innocent owners were having their property taken by federal and local law enforcement officers with nothing that could be called "due process." Newspaper and television coverage grew as more people were victimized by government agents whose goal was not to stop crime, but raise millions of dollars for off-budget expenditures.

With all of this attention and heavy lobbying by F.E.A.R., the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") was passed and signed into law by President Clinton. This was the only significant federal forfeiture reform law since Congress enacted the draconian "Comprehensive Crime Control Act of 1984." All other forfeiture laws enacted in the past 15 years expanded forfeiture powers and decreased due process protections for property owners. Some of the important reforms in the 2000 Act were:

It abolishes the cost bond in most forfeiture cases. CAFRA put the burden of proof on the government.

It allows the court to appoint counsel for some indigent claimants.

Homeowners defending their primary residence against forfeiture have an actual right to counsel. Forfeiture victims who can afford counsel can count on getting their attorney's fees reimbursed if they win.

CAFRA allows property to be returned to the owner pending trial on a substantial showing of hardship. It allows suits for damages to property while detained.

It lengthened claimant's deadlines and (finally!) imposes some deadlines on the government.

That's the good news. On the other side of the coin, Congress substantially watered down the original proposed legislation and in fact expanded forfeiture powers for law enforcement. It added new penalties and relaxed the government's statute of limitations. It also failed to address the issue of police agencies abuse of the forfeiture laws because of the conflict of interest created by allowing the seizing agency to keep the revenue it generates in

forfeiture cases. It left them hooked on forfeiture revenue.

One of the reforms that F.E.A.R. wanted (and still wants) is a requirement that the government prove the property owner guilty before forfeiting his property - or better yet, abolish civil forfeiture and require all forfeitures to be conducted pursuant to criminal forfeiture laws and procedures. This would force the government to focus their awesome seizure powers on the property of actual criminals and criminal enterprises, instead of the weak and helpless landlords, parents, children, finance companies, business partners, and other innocent third parties who are often victimized twice - first by the criminal defendant, and then by the government.

With the passage of the "USA Patriot Act," signed into law on October 26, 2001, Congress greatly expanded forfeiture and law enforcement powers. They did this while acting in a wave of hysteria, with little or no time to reflect, little debate, and reportedly very few Congressmen actually reading it. To add insult to injury President Bush and his administration have made it abundantly clear that anyone who disagrees with their new war faces serious problems when it comes to freedom of speech. Congress and the media are walking on eggshells because they fear they may suddenly become the victim of arbitrary or discriminatory actions by the government.

Asset forfeiture greatly affects the use and abuse of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution. All of this and more is clearly explained in the Asset Forfeiture Defense Manual. In addition to forfeiture issues the book goes into great detail about numerous laws which can affect all types of criminal and civil investigations and defenses. For instance it points out that *Miranda* (mandatory warnings which must be given in cases of custodial interrogation) does not apply to questioning by undercover agents, even those posing as inmates in order to elicit incriminating statements from a prisoner. This book discusses everyone's rights when and if they become ensnared in the ever more complex system of laws governing the U.S. There is information on I.N.S and Customs cases. In short this book is probably the best investment that anyone can make

who is accused of a crime or victimized by asset forfeiture. Grantland's information and advice can make the difference in the ultimate outcome of a case. To top it off there is an excellent Guide For Pro Se Litigants in an appendix. It is a crash course for pro se claimants on how to read legal citations and conduct legal research. Parts of this chapter may also be useful for lawyers. Additionally there is an appendix which digests CAFRA by key words and a comprehensive glossary which the authors thoughtfully included to help the reader understand this book.

Asset Forfeiture Defense Manual should be the first tool used by anyone who is facing the prospect of property forfeiture or who has already been vic-

timized. It should be mandatory reading for every crime reporter and a copy should be in every criminal law office, law library, and editorial library in the country. Legal educators may want to take a long, hard look at this book as it is written in a form not often seen in law schools. Rather than put everything in legalese, Asset Forfeiture Defense Manual covers complex legal issues in language that is a joy for this retired publisher to read. Volume 1 covers Substantive Law and Administrative Procedures. Cost of this book is \$119 plus \$12 shipping and handling. It may be ordered online at the F.E.A.R. website - www.fear.org.

Volume 2 (Civil and Criminal Judicial Procedure) is well underway and will be released in a few months.