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CIVIL AND CRIMINAL FORFEITURE PROCEDURE
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Foreword

In 1992, I began to collect all of the newly decided cases dealing with civil and criminal forfeiture procedure into two outlines, organized topically. At that time, the law regarding civil forfeiture procedure was already well-developed, but it was about to undergo enormous change as a result of the Supreme Court's consideration of no fewer than ten forfeiture cases in the next 7 years. At the same time, the law regarding criminal forfeiture procedure was in its infancy. While criminal forfeiture has been around since 1970, it is no exaggeration to say that virtually all criminal forfeiture cases have been decided since the early 1990s.

These outlines were originally intended only to help me keep track of the rapidly developing law so that I could better assist prosecutors and agents who requested legal advice or who attended law enforcement training conferences. In 1999, the Asset Forfeiture and Money Laundering Section (AFMLS) published the civil and criminal forfeiture outlines for the first time and distributed them to attorneys and investigators in law enforcement agencies. In 2000, we included a compilation of the cases addressing the application of the Excessive Fines Clause of the Eighth Amendment to civil and criminal forfeiture. However, these outlines remain internal law enforcement documents, intended to serve as research tools and guides for federal prosecutors. They reflect my personal effort to collect, organize, and explain the case law, and do not set forth official Department of Justice policy.

Unlike its companion volume, *Federal Money Laundering Cases,* this compilation does not purport to contain all, or nearly all, of the published decisions on the topics covered, but it does contain descriptions of the vast majority ofthe cases that have been decided since 1992, and should provide a useful starting point for legal research into the topics that recur repeatedly in forfeiture litigation.

Of course, civil forfeiture procedure is changing once again. The enactment of the Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. No. 106-185, 114 Stat. 202 (2000), which took effect August 23, 2000, means that much of the old case law is now obsolete. The citations to the "old law" cases continue to appear in this outline because they remain applicable to cases commenced before August 23, 2000, and because they remain applicable in instances where CAFRA simply codified existing case law. Nevertheless, the reader should be careful to note whether a cited case was decided under pre-CAFRA or post-CAFRA law.

Another change in the law occurred with the enactment of the USA Patriot Act on October 26, 2001. References to the newly enacted or amended statutes appear throughout the text.

Criminal forfeiture procedure is also undergoing a dramatic change. Rule 32.2 of the Federal Rules of Criminal Procedure, which took effect on December 1,2000, codified much of the case law that had filled in the gaps under the old rules. But the new rule contains ambiguities of its own, and will no doubt result in a flood of new case law. The criminal forfeiture portion of this book contains the "old law" that will be applicable under the new rule, but again, the reader should consider how a cited case may have been affected by the new rule.

The Publications staff of AFMLS intends to maintain a supply of copies of this book sufficient to satisfy any requests from the U.S. Attorneys' Offices and the federal law enforcement agencies. To request additional copies, please contact the Publications Unit at (202) 514-1263.

Updated electronic copies may be downloaded from Asset Forfeiture and Money Laundering Online, the computer database maintained by AFMLS. All three outlines are updated regularly. These files can be obtained by going to http://l0.173.2.12/criminal/afoml/publications/caseoutlines/outlines.htm, or by clicking on an icon that can be obtained from AFMLS and loaded on the computer desktop.

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