



U. S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

November 3, 1994

Robert Wasserman
Chief of Staff
Office of National Drug Control Policy
Washington, D.C. 20500

Dear Mr. Wasserman:

Thank you for your letter of October 31, 1994, concerning the Justice Department's plan to reorganize its asset forfeiture responsibilities by combining the Executive Office for Asset Forfeiture with the Criminal Division's Asset Forfeiture Office.

I want to emphasize that this reorganization is purely a matter of internal administration. It implicates no change in our policies toward asset forfeiture, in our relationships with other federal agencies, or in our critically important partnership with state and local law enforcement. It will have no effect on the amount of money available to the Assets Forfeiture Fund or to the Office of National Drug Control Policy (ONDCP). Asset forfeiture is, and will remain, a vital tool in combatting criminal activity of all sorts -- including, but certainly not limited to, the scourge of narcotics trafficking.

The reorganization is part of the Department's larger response to the National Performance Review, fulfilling the Vice President's request that we review our existing management structure, strive for greater management efficiency and, in particular, eliminate duplicative structures. As part of that process, I have moved three other operational offices out of the Office of the Deputy, and into the operational divisions where they belong. The Executive Office for Asset Forfeiture is the only such office remaining in the Office of the Deputy, and as a consequence the Department's asset forfeiture responsibilities currently are being carried out from two separate locations -- my office and the Criminal Division. We have concluded that combining those functions into one office will help ensure accountability and efficiency.

The following are answers to the specific questions you posed in your letter. I understand that many of these points were discussed with your staff during the briefing they were given by Department of Justice officials on October 26, 1994. I am happy to provide further amplification here.

1. **What are the advantages of the proposed changes for (1) the Federal government (Justice, Treasury, ONDCP, etc.,) and (2) State and local governments?**

(1) The principal advantage of the change from the standpoint of the Federal government is that the reorganization will enable the Department to achieve efficiencies through the elimination of duplication, and the centralization of asset forfeiture policy and oversight responsibilities in the Criminal Division's Asset Forfeiture Section. There should be no other effects on other federal agencies, including Treasury and ONDCP.

The change also will permit the streamlining of the Office of the Deputy Attorney General, and thereby facilitate the execution of its important staff and leadership functions. To ensure appropriate supervision and accountability, operational functions should not be placed within staff offices, except under extraordinary circumstances. Over the past five years, the asset forfeiture program has made great strides under the leadership of the Executive Office. It no longer is necessary or wise for such operational functions to continue to reside in the Office of the Deputy Attorney General.

(2) With respect to State and local governments, the reorganization will eliminate the confusion which has sometimes arisen because the Department has had two offices with broad asset forfeiture responsibilities: an Executive Office for Asset Forfeiture located in the Office of the Deputy Attorney General, and an Asset Forfeiture Office in the Criminal Division which also has broad asset forfeiture responsibilities. Creating a single point of contact within the Department of Justice for all State and local asset forfeiture issues will make it easier for us to be responsive to all the concerns of State and local officials. (Those administrative matters for which responsibility will be located within the Justice Management Division (JMD) do not affect the interests of State and local agencies. Moreover, those administrative responsibilities will be handled by basically the same personnel as under the current organization; these are primarily employees of JMD who originally were detailed to EOAF and will now return to JMD).

2. **Has the Department received any complaints regarding how the program is currently operated? If so, what has been the nature of most complaints?**

The reorganization is not premised upon the need to correct any particular deficiencies in the current operation of the asset forfeiture program, other than to provide better oversight and consolidate duplicative functions.

3. What percentage of forfeiture cases handles by DOJ are actually reviewed by the Deputy Attorney General's Office and what is the length of time that this review process takes?

Although a relatively small number of forfeiture cases are reviewed by my Office, they include all equitable sharing decisions in cases involving \$1 million or more, settlement of forfeiture cases releasing more than \$2 million or more in assets, and multi-district cases. Although detailed statistics are not available, these particularly large cases probably represent in excess of 10% of the value of all sharing decisions. Review by my Office, including time for inter-office transmittal and logging of correspondence by our central Executive Secretariat system, consumes approximately two weeks per action. This time can be reduced significantly through the proposed reorganization. Substantial time is also spent on policy matters.

4. What will be the method for dispute resolution under the new proposal?

Dispute resolution under the new organizational structure will be the same for asset forfeiture as for all other operational areas. The components will resolve matters where possible, and my Office will move quickly to address disputes that cannot be resolved at a lower level. I will continue to be involved in the establishment of policy in this area.

5. Currently, personnel costs associated with the EOAF are funded through direct appropriations. The Department indicates that when EOAF's administrative function is reassigned to the JMD, those 7 FTEs currently funded by appropriation will be funded through the Working Capital Fund which will be reimbursed from the Asset Forfeiture Fund. When ONDCP staff inquired about what the funding currently used for those FTEs will now be used for, we were informed that five of those positions were already cut during the budget process. Please explain whether the cut in FTEs was specifically directed toward EOAF, or did it relate to general cuts in the FTE level.

The cut in FTEs discussed at the staff-level meeting related to general cuts in FTEs. The FTE level used to manage the asset forfeiture program will not be cut.

6. Please provide a detailed explanation of the categories of cost for Asset Forfeiture Fund program operational

expenses, particularly, those treated as mandatory and discretionary expenses. How will you determine the justification of the various amounts deposited into those accounts?

These issues are independent of the question of where the asset forfeiture function is placed in the Department's organizational chart. All Assets Forfeiture Fund expenditures other than "awards, purchase of evidence, and equipping of conveyances" are regarded as "mandatory" expenses and have no statutory dollar caps. Subsection 524(c) of title 28, United States Code, defines what expenses are eligible for payment from the Department of Justice Assets Forfeiture Fund and defines which of those expenses are subject to annual appropriations. Over 80% of payments made annually are considered mandatory costs. The largest single category of "mandatory expenses" is equitable sharing with State and local law enforcement agencies, which has exceeded \$200 million per year for the past several years. Historically, the Department has conducted an internal budget process in which participating agencies justified unmet funding requirements. To the extent funds are available, we attempt to fund the most critical needs. This process will not be changed by the reorganization.

- 7. What is the difference in overhead expenses (money supporting administrative and coordinating costs, not available for distribution to other entities) between the current program and the reorganized program?**

There should be no increase in overhead from the reorganization. The only difference between monies available for distribution from the Assets Forfeiture Fund under the current and proposed program is the cost of the salaries and benefits of the Asset Forfeiture Management Staff in the Justice Management Division. This previously was funded from appropriated monies and -- without regard to where the function is located -- will now be paid from the Working Capital Fund and reimbursed from the Assets Forfeiture Fund. This is a permissible expense of the Forfeiture Fund, and is expected to amount to approximately \$850,000, which is less than 1/5th of 1% of total Assets Forfeiture Fund receipts. This issue is independent of the question of where the asset forfeiture function is placed in the Department's organizational chart.

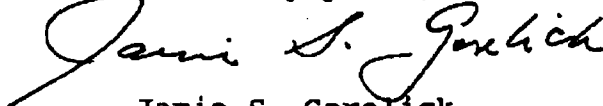
- 8. How will DOJ convince Fund constituencies of the advantages of the proposed changes? How will interested members of Congress be convinced these changes are not a re-visit of the Byrne proposals?**

5

I have personally met with representatives of all national law enforcement organizations to explain the rationale for, and advantages of this reorganization. Those meetings have been preceded, and followed, by additional meetings at the staff level with members of the federal, state and local asset forfeiture constituencies. As discussed in this letter, we have explained that the reorganization is purely a matter of internal administration, that it is expected to yield greater management efficiency and accountability, and that the Department is committed to ensuring that it will result in no change in the nature or quality of the partnership between the Department and its constituency groups. I have further committed to re-visit the reorganization decision expeditiously if any diminution of effectiveness in Department performance is detected. Finally, we have established an on-going working group with representatives of state and local law enforcement to provide a forum for ensuring that the program continues to work effectively.

I hope this letter is responsive to your questions. It is important for the Department, and for the law enforcement community, to move forward on this reorganization as quickly as possible. Please do not hesitate to contact my staff if you have any additional questions.

Sincerely yours,



Jamie S. Gorelick
Deputy Attorney General

MEMORANDUM TO DIRECTOR LEE BROWN

FROM: ROBERT WASSERMAN

SUBJECT: Department of Justice's -- Reorganization of Executive Office of Asset Forfeiture

BACKGROUND

The Executive Office of Asset Forfeiture (EOAF) was established in late 1989 to oversee all aspects of the Justice Department's asset forfeiture program. Because of the high profile of the program, the EOAF was specifically placed in the Office of the Deputy Attorney General so that coordination of the program could be facilitated at the highest levels of the Department.

Prior to its establishment, the various Justice components involved in the asset forfeiture program essentially operated independently -- only loosely coordinated by a single individual in the Deputy Attorney General's office.

The backdrop against which the EOAF was created included the forfeiture program being designated as a "material weakness" in the 1989 Annual Report to the President and Congress pursuant to the Federal Managers' Financial Integrity Act. OMB had designated the Federal Asset Forfeiture Program as one of its "high risk" programs requiring OMB oversight. The GAO designated the management of seized assets, as one of 14 program areas in the Executive Branch warranting special audit and review. EOAF's responsibilities include policy, management, oversight and strategic planning for all aspects of the domestic and international forfeiture programs.

The creation of EOAF was directly in response to OMB and GAO concerns that central coordination and management was required to improve Asset Forfeiture Fund program operations. Since its creation EOAF has managed the Department's program and by all accounts has improved the administrative procedures and accountability of the program. The EOAF has also worked toward developing and implementing a Consolidated Asset Tracking System and has acted as a central point of contact for Members of Congress, and other Federal, State and local agencies regarding the asset forfeiture program. Many State and local law enforcement and prosecutorial officials believe that the timeliness of the equitable sharing process has improved due to policy and program changes implemented by EOAF.

Since its inception the EOAF has:

- reduced the backlog of forfeiture cases;
- reduced the average processing time of administrative forfeitures;
- developed and instituted multi-component training programs -- including one specifically designed for State and local law enforcement;
- conducted and maintained a physical inventory of all seized assets in the custody of the U.S. Marshal's Service;
- completed a memorandum of understanding for asset consolidation between the U.S. Marshal's Service and the U.S. Customs Service;
- created a new accounting structure to improve the control of funds;
- streamlined procedures to expedite domestic and international forfeiture and asset sharing;
- created a policy encouraging the Federal adoption of seizures made by State and local law enforcement agencies to assist them in their anti-crime efforts and encourage cooperation;
- developed quality assurance standards to ensure that the program is carried out in an ethical and prudent manner.

DEPARTMENT OF JUSTICE PROPOSED REORGANIZATION

On October 4, 1994, DOJ notified OMB that Justice intended to abolish the EOAF and reassign the administrative, policy and oversight functions to other components within the Department. Under this proposal, policy and oversight functions will be reassigned into the Asset Forfeiture Office of the Criminal Division. The Administrative function, including management of the Asset Forfeiture Fund, will be reassigned into the Justice Management Division.

DEPARTMENT OF JUSTICE POSITION

The Department of Justice believes that reassigning the policy and oversight function of the EOAF into the Criminal Division (Asset Forfeiture Office) and the administrative function into the Justice Management Division will improve the efficiency of the program. Justice has stated that, "[t]he previous bifurcation of the forfeiture program in the Department between the Criminal Division and the EOAF tended to create unnecessary confusion and wasteful duplication of effort. A single point of contact will serve law enforcement's aims as well as the Administration's demands for greater efficiency through streamlining." Additionally, the Department further states that by consolidating most of EOAF's functions within the Criminal Division and its Asset Forfeiture Office, the Department recognizes the close connection between the development of policies and their implementation in actual cases (October 25,

1994 letter to Director Brown from Jo Ann Harris, Assistant Attorney General).

- The Department states that the primary reason for the reorganization is to minimize confusion and duplication of effort. Additionally, it is their position that by abolishing EOAF, forfeitures would be shared more expeditiously with State and local agencies, because a review step in the forfeiture process would be eliminated.
- The Department believes that separating administrative from the policy and oversight functions, the appropriate responsibilities will be placed into the appropriate Justice components (i.e. money management into JMD).
- Justice has created an advisory group to address issues related to forfeiture. If this reorganization has a negative impact on the efficiency of the program, the Deputy Attorney General has promised to change the program again.

ISSUES FOR ONDCP CONSIDERATION

By law (21 USC 1503(b)), the Director of ONDCP must certify that proposed drug program changes are consistent with the National Drug Control Strategy. This reorganization could have significant impact on DOJ's international and domestic asset forfeiture program. Based on the information provided by the Department, there is no indication that this proposed reorganization will improve either the management or operation of the asset forfeiture program. DEA and other Federal agencies have very grave concerns over this reorganization -- although they may not voice this opinion. The State and local law enforcement groups that have contacted us have expressed concern over this reorganization. These organizations have also written letters to the Attorney General expressing their concern.

The asset forfeiture program is a critical aspect of this Nation's domestic and international drug program. The equitable sharing component of the program encourages cooperative efforts between Federal, State, and local law enforcement -- a priority of the National Drug Control Strategy. Over the last ten years, approx. \$2 billion has been shared with State and local agencies.

EOAF's Location in Deputy Attorney General's Office Facilitates Coordination

In a briefing to State and local law enforcement organizations, the Deputy Attorney General stated EOAF was being abolished, in part, because having it as a part of her office distracted her from coordinating the activities of all Justice components. We

fail to understand her reasoning. One of the primary functions of EOAF is to coordinate the activities of the eleven Justice and non-Justice components involved in the asset forfeiture program. This would suggest that EOAF would assist the Deputy in carrying out her functions -- not detract from it.

State and local entities have expressed the belief that EOAF was able to make improvements in the asset forfeiture program because it was located in the office of the Deputy Attorney General. Arguably, placing EOAF at this high level, gave it the necessary authority to facilitate the coordination of the administrative, law enforcement and prosecutorial components which participated in the program.

During the same briefing the Deputy Attorney General stated that the elimination of the EOAF was consistent with the Department's plan to move away from "executive offices" and centralization of program management. She indicated that Justice intends to place program management into the individual components. This statement is contradicted by the Department's recent action creating the Executive Office of National Security as part of the Office of the Deputy Attorney General. This office will coordinate the various components of the Department involved in national security matters.

Reorganization Will Have No Impact on Case Review Time

The Department argues that this reorganization will improve efficiency of the program and will improve the speed in which forfeitures are shared with State and local agencies. They argue, that abolishing EOAF, will create a single point of operational contact and will eliminate a unnecessary level of case review.

This position seems flawed. First, it is unclear how reassigning the responsibilities of single, high-level policy, administrative, and oversight office into two separate subordinate components constitutes the creation of a "single operational point of contact." Secondly, current Department policy precludes this reorganization from having any impact on the review process that Justice is allegedly trying to change. The Guide to Equitable Sharing, requires forfeiture cases to be reviewed as follows: administrative forfeiture cases involving less than \$1 million, are reviewed by the head of the Federal investigative agency; judicial forfeiture cases involving less than \$1 million are reviewed by the appropriate United States Attorney; cases involving \$1 million or more and multi-district cases are reviewed by the Office of Deputy Attorney General. Thus, the Deputy Attorney General/EOAF reviews only a small number of cases. Furthermore, these guidelines will still require the Deputy Attorney General to review the same number of cases currently reviewed by the EOAF. This would suggest that abolishing EOAF will have no impact on the time it takes for

Justice to review forfeiture cases.

EOAF's Role as Neutral Arbiter

Another function of the EOAF is to act as an impartial decision authority for policy disputes which arise between the various Federal, State and local law enforcement and prosecutorial components which are involved in the asset forfeiture program. In the case of a disagreement between an entity and the criminal division on an issue involving a specific forfeiture issue, the EOAF can also act as a neutral arbiter of the dispute. Abolishing the EOAF will put that role into the Criminal Division, which in the past has been a party in some of these disputes. Inevitably, the Criminal Division, may be asked to resolve a dispute in which they have a vested interest.

Federal, State and Local Law Enforcement Oppose Proposal

Federal, State, and local law enforcement organizations almost universally oppose this reorganization and believe it will negate the improvements to the program realized over the last several years. This proposal is not simply an internal management decision. If in fact the program becomes less efficient (as many believe it will), it will adversely impact the Nation's anti-drug efforts. Presently, the asset forfeiture program is a mechanism which greatly encourages cooperation between Federal, State, and local law enforcement -- a priority of the National Drug Control Strategy. If the program becomes less efficient, cooperation will decrease. Therefore, since reorganization may work to reduce this level of cooperation, the proposal may be inconsistent with the National Drug Strategy.

CONCLUSION

Several recent proposals (DEA/FBI merger, elimination of the Byrne Grant) have caused State and local law enforcement organizations to become more organized and vocal in speaking out about Administration actions. In this environment, programmatic changes should be justified by a showing of benefit to the federal government's customers or by objective data supporting the change. At present, the Department's proposal meets neither of these standards. The proposed reorganization will likely return the program to its previous structure when it was identified as a "material weakness" and "high risk" program by both OMB and GAO.

Based on comments made by the Department both publicly and in our briefing, this reorganization seems to have originated because the Deputy Attorney General does not want to have the program in her office. Basically, Justice is proposing to abolish an office which has a proven record of effectively -- and with increasing efficiency -- managing a critical anti-drug program. IACP, FOP, PERF, The National Troopers Coalition and other law enforcement organizations have expressed opposition to the Justice proposal.