

ATF Training Program 24 August 2010

1. Administrative Seizures: There is no such thing. Please banish this from your memory.
 - A. Warrantless Seizures pursuant to Fed.R.Crim.P. 41. Authorized by AG only when:
 - (1) Probable Cause exists: May want to have supervisor verify PC exists; and
 - (2) Exigent circumstances require rapid action. Note: Cannot plan to have exigent circumstances; cannot ask me to authorize "exigent circumstances."
 - B. Bivens Actions: Must be found to be acting within the scope of your employment by supervisor and DOJ or Agency must agree to represent you:
 - (1) May provide an attorney;
 - (2) May pay judgment if plaintiff wins.
 - (3) If not, you are on your own and, if not insured, may face a huge economic loss.
2. Share with us all of your evidence. Then disclose what it is that you want to avoid disclosing.
 - A. We will work with you to try to protect sensitive evidence. However if bad things happen, we are allowed to produce later this evidence known at the time of the filing of the complaint, but not disclosed within the complaint.
 - B. *United States v. \$493,850 in U.S. Currency*, 518 F.3d 1159 (9th Cir. 2008); all our evidence was suppressed, but we pressed on based upon knowledge the government had of a grand jury investigation in Florida. Were able to prevail on that evidence, but only because it was demonstrable in the file at the time the complaint was filed.
 - C. *United States v. \$133,420.00 in U.S. Currency* (9th Cir. 2010?) The holding of \$493,850 is in conflict with three opinions by other panels of the Ninth Circuit, specifically including *United States v. Real Property Located at 5208 Los Franciscos Way*, 385 F.3d 1187, 1193 (9th Cir. 2004) At best, there is a conflict between two panels and this Court must decide which holding is the most well reasoned. Will be addressed on appeal in this case.
3. Delay Notice of Administrative Seizure Deadlines.
 - A. To protect the life of a CI. Talk with us early before time period runs. Headquarters grants the first 30 day period. After that crooks know something is up.
 - B. There is time to be creative, if we are included in conversations before the deadline is about to expire.

- C. May be able to do creative service with Court Approval.
4. *U.S. v. CV 09-00243-PHX-MHB*, ___ F.Supp. _____ (Dist. AZ, 2010)
- A. Use of tape recording made this case.
 - B. Straw Party purchase.
 - C. Goofy story.
 - D. Rule G, special interrogatories regarding standing.
 - (1) Article III standing: Claim or controversy;
 - (2) Claim standing pursuant to Admiralty Rules;
 - (3) Prudential standing: Denial of ownership removes the declarant from zone of protection provided by the statute.
5. *Bentley v. BATF* C.A. No. 09–16111 opinion due soon. Case argued in April.
- A. Suite for damages for failing to follow provisions of 18 USC § 983.
 - B. Failed to comply with the requirements of the statute by seeking to set aside the judgment in the Administrative Forfeiture Action. District Court dismissed suit.
 - C. As set forth in *United States v. Felici*, 208 F.3d 667, 669 (8th Cir. 2000) and *United States v. Howell*, 425 F.3d 971, 976-77 (11th Cir. 2005), the seized firearms are now plainly contraband. Firearms are not "per se" contraband, that is illegal to possess or own, but become derivative contraband as the result of use or intended use, or as in this case, the conviction of Steve Bentley of a felony crime. A hearing is not required.

When it is apparent the person seeking a return of the property, the district court need not hold an evidentiary hearing.

Felici, at 670. *Felici* stands for the proposition that a convicted felon has no rights in firearms and neither possess nor convey/direct the disposition of the firearms after the conviction. Not presently 9th Circuit law. But is squarely before the Court as the result of this appeal.

- D. The 9th Circuit has applied the principles of "derivative contraband" and "unclean hands" when considering a Rule 41(e) motion filed by the Unabomber to recover some of his personal property, which had been identified by the FBI as bombing making materials. This Court relied upon *Felici*, and *Howell* to affirm a District Court Order which not only rejected Kaczynski's effort to retrieve the materials or direct them to his designee, but ordered the items destroyed. *Kaczynski* at 1129-30.
- E. Thomas' alleged security interest in the firearms, as well as his alleged possession of the property, occurred only after Steve's first felony conviction. Thomas is not

an "owner" of the firearms as that term is defined in 18 U.S.C. § 983(d)(6) and, therefore, lacks standing to contest the civil forfeiture of the firearms and to demand their return. He is not within the "zone of interest" defined by the statute and lacks prudential standing. *United States v. \$39,557.00*, ___ F. Supp. 2d ___, 2010 WL 475279, p. 2 (D. N.J., February 9, 2010) citing *U.S. v. Real Property located at 730 Glen-Mady Way*, 590 F.Supp. 2d 1295, 1302 (E.D. Cal. 2008). Thomas also admitted, either in the complaint or through allegations of his attorney in the pleadings, actual knowledge of that conviction and the legal fact Steve could not own or possess the firearms. Therefore, Thomas is not an "innocent owner" of the firearms as that term is defined in 18 U.S.C. § 983(d)(3)(A) and could never prevail in a civil forfeiture action. Neither Plaintiff can claim an interest in the firearms pursuant to 18 U.S.C. § 983(d)(4).