



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 179  
July 13, 1993

## FEDERAL SEIZURE OF REAL PROPERTY FOR ADMINISTRATIVE FORFEITURE

Reference: Richard Lyle Austin  
v.  
United States

United States Supreme Court  
61 LW 4811 (No. 92-6073)  
June 28, 1993

### FACTS:

An undercover police officer contacted Austin at Austin's body shop and arranged to buy some cocaine. The officer watched Austin leave the shop and go to his mobile home. When Austin returned to the body shop, he had two grams of cocaine which he sold to the officer. The following day, search warrants were served for the body shop and mobile home. Small amounts of cocaine, marijuana, drug paraphernalia, a .22-caliber revolver and \$4,700.00 in cash were seized.

Austin ultimately pleaded guilty to one count of possessing cocaine with intent to distribute (State charges) and was sentenced to seven years imprisonment. About a month later, the Federal Government filed a court action under 21 U.S.C. ss881(a)(4) and (a)(7) seeking forfeiture of Austin's mobile home and body shop. The government alleged that the home and body shop were used to facilitate the distribution of drugs. Austin appealed the seizure based on the Excessive Fines Clause under the Eighth Amendment.

### ISSUE:

Does the Excessive Fines Clause of the Eighth Amendment apply to forfeiture of property under 21 U.S.C. ss881(a)(4) and (a)(7)?

HELD: Yes.

### REASONING:

1. A review of English and American law before, at the time of, and following the ratification of the Eighth Amendment demonstrates that forfeiture generally and statutory "in rem" forfeiture (against the property) in particular historically have been understood, at least in part, as punishment.
2. The purpose of the Eighth Amendment, putting the Bail Clause to

one side, was to limit governmental power to punish. (emphasis added)

NOTES:

The court addressed the facts of this case only and declined to establish a test for determining whether a forfeiture is constitutionally excessive, since prudence dictates that the lower courts be allowed to consider that question in the first instance.

It would appear the court is suggesting that forfeiture laws, when used as punishment, should be directed toward the "big dealers" and not so much toward the small or part-time dealers. It would be helpful to articulate whether or not an individual's sole source of income is drug-related. You then can establish that the real property--such as homes, vehicles, airplanes, boats, jewelry, etc.--was purchased with profits made from drug sales.

Review of Johnson v. Johnson, Legal Bulletin No. 176, is recommended.

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