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Jimmy Gurule

Notre Dame Law School, jimmy.gurule.1@nd.edu

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The Double Jeopardy Dilemma: Does Criminal Prosecution and Civil Forfeiture in Separate Proceedings Violate the Double Jeopardy Clause?

by Jimmy Gurule

Case at a Glance

Jimmy Gurule is associate professor of law at Notre Dame Law School, Notre Dame, IN; (219) 631-5917.

The Double Jeopardy Clause of the Fifth Amendment provides that no "person [shall] be subject for the same offense to be twice put in jeopardy of life or limb." Historically, the Double Jeopardy Clause has been interpreted by the Supreme Court to protect against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishment for the same offense." *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). If a judgment of civil forfeiture following a criminal prosecution constitutes a "second prosecution" or "multiple punishment" for the same offense, the civil action is barred by the Double Jeopardy Clause. (*Forfeiture* occurs when a person loses his or her rights in property as a result of criminal or quasi-criminal wrongdoing.) The forfeited property, regardless of whether it was used to facilitate the commission of a crime or constitutes proceeds derived from illegal activity, must be returned to the owner.

At the same time, if the government obtains a judgment of civil forfeiture, double jeopardy may prohibit the government from subsequently

prosecuting the defendant for the criminal conduct that gave rise to forfeiture. The Double Jeopardy Clause, in effect, immunizes the defendant from criminal liability.

A federal prosecutor thus faces a serious dilemma. If the government initiates a civil forfeiture proceeding and wins a judgment of forfeiture, the government may ultimately lose because the Double Jeopardy Clause may bar any subsequent criminal prosecution based on the same offense. Conversely, if the prosecutor proceeds by filing criminal charges against the defendant, any later attempt to forfeit tainted property may be foreclosed, enabling the defendant to retain his ill-gotten gains.

The federal circuits have struggled with the double jeopardy issue. Divergent views have emerged resulting in disparate application of the Double Jeopardy Clause.

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One of the most divisive and vexing issues confronting the federal courts today is a whether criminal prosecution and a civil forfeiture action filed in separate proceedings but based on the same offense constitute a violation of the Double Jeopardy Clause. The federal circuits remain deeply divided on the issue, and the Supreme Court's ultimate resolution of the matter is certain to have far-reaching legal consequences.

*UNITED STATES V. GUY JEROME
URSERY AND UNITED STATES V.
\$405,089.23, CONSOLIDATED
DOCKET NOS. 95-345 AND 95-346*

ARGUMENT DATE:
APRIL 17, 1996
FROM: THE SIXTH CIRCUIT
(NO. 95-345) AND
THE NINTH CIRCUIT
(NO. 95-346)





Whether the defendant is afforded protection from criminal prosecution or allowed to retain tainted property may depend on the nature of the property sought to be forfeited. Several federal circuits have concluded that forfeiture of proceeds of illegal activity is a remedial sanction, not punishment, and thus does not offend double jeopardy. See *United States v. Tilley*, 18 F.3d 295 (5th Cir. 1994); *United States v. \$184,505.01 in United States Currency*, 72 F.3d 1160 (3d Cir. 1995); *United States v. Salinas*, 65 F.3d 551 (6th Cir. 1995); *Smith v. United States*, 1996 WL 7258, at 3 (7th Cir. 1996); *SEC v. Bilzerian*, 29 F.3d 689 (D.C. Cir. 1994).

This view, however, has not been unanimously embraced by the federal courts as can be seen from the appellate court opinions in these consolidated cases. See also *United States v. 9844 South Titan Court*, 1996 WL 49002, at 15 (10th Cir. 1996).

Whether separate criminal and civil forfeiture proceedings violate double jeopardy also could depend on whether the two proceedings were pursued concurrently, in which case they may be characterized as a "single, coordinated proceeding." *United States v. Millan*, 2 F.3d 17, 18 (2d Cir. 1993); accord *United States v. 18755 North Bay Road*, 13 F.3d 1493, 1499 (11th Cir. 1994); *United States v. Smith*, 1996 WL 34552, at 4 (8th Cir. 1996). Since the Double Jeopardy Clause does not prohibit multiple punishment in the same proceeding, the imposition of criminal and civil sanctions is lawful. However, the Ninth Circuit rejected this approach, 33 F.3d at 1218, as has the Tenth Circuit, *United States v. 9844 South Titan Court*, 1996 WL 49002, at 15.

In addition to plaguing the federal courts, the double jeopardy issue has wreaked havoc with the states' efforts to perform their traditional role in prosecuting crime and regulating civil activity. In a friend-of-the-court brief submitted on behalf of 48 state attorneys general, it is argued that double jeopardy issues, as analyzed in the two cases being reviewed here, extend far beyond the civil forfeiture arena. The spectrum of impact includes claims that: professional disciplinary actions bar criminal prosecution and vice versa; prison discipline for violent conduct bars subsequent prosecution for assault and homicide; disqualification from public health benefits because of criminal conduct bars subsequent criminal prosecution; and challenges to the criminal prosecution of drunk driving charges because of prior driver's license suspensions for the same conduct. In these consolidated cases, the Supreme Court is asked to resolve the double jeopardy dilemma.

ISSUES

1. Does the Double Jeopardy Clause prohibit criminal prosecution for manufacturing marijuana because the United States obtained a consent judgment in a civil forfeiture action that sought forfeiture of property on the ground that it had been used to facilitate drug activities?
2. Does the Double Jeopardy Clause prohibit a civil proceeding for the forfeiture of property alleged to be the proceeds of narcotics trafficking and money laundering activity after the owners of the property have been prosecuted and convicted of narcotics and money laundering crimes?

FACTS

U.S. v. Ursery

The Michigan State Police executed a search warrant and found 142 marijuana plants growing on land

just outside the boundaries of respondent Guy Jerome Ursery's property in Perry, Michigan. Inside Ursery's house, the officers found marijuana seeds, stems, and stalks, two loaded firearms, and a grow light. Subsequent evidence disclosed that Ursery had been growing marijuana on his property and the land adjoining it for at least three years.

On September 30, 1992, the United States filed a civil action seeking forfeiture of Ursery's real property under 21 U.S.C. § 881(a)(7) (1994), alleging that the property was used to facilitate the unlawful possession and distribution of marijuana. On May 24, 1993, Ursery and his wife settled the forfeiture action by agreeing to pay \$13,250 in lieu of the forfeiture of the property.

In the meantime, on February 5, 1993, a federal grand jury returned an indictment charging Ursery with a single count of manufacturing marijuana in violation of 21 U.S.C. § 841(a)(1). The indictment charged that the manufacturing offense occurred on July 30, 1992, the date on which Michigan State Police searched Ursery's property. After a jury trial, Ursery was convicted and sentenced to prison for 63 months.

After his conviction on the manufacturing charge, Ursery filed a motion to dismiss the indictment on the ground that the Double Jeopardy Clause barred his criminal conviction following the civil forfeiture of his property. The district court denied the motion, finding that the forfeiture proceeding was not an "adjudication" because it was settled by a consent judgment and that "the forfeiture proceeding and criminal conviction were 'part of a single, coordinated prosecution of persons involved in alleged criminal activity.'" (Quoting *United States v. Millan*, 2 F.3d at 20).



A divided panel of the Sixth Circuit reversed. 59 F.3d 568 (6th Cir. 1995). The two-judge majority concluded that jeopardy had attached in the civil forfeiture proceeding because the "consent judgment in the civil forfeiture action is analogous to a guilty plea entered pursuant to a plea agreement in a criminal case." 59 F.3d at 571. According to the Sixth Circuit majority, jeopardy attaches in a civil forfeiture action when the court accepts the stipulation of forfeiture.

Relying on *United States v. Halper*, 490 U.S. 435 (1989), and *Austin v. United States*, 113 S. Ct. 2801 (1993), the majority next held that "any civil forfeiture under 21 U.S.C. § 881(a)(7) constitutes punishment for double jeopardy purposes." 59 F.3d at 573. The majority rejected the United State's argument that Ursery's criminal conviction and the civil forfeiture of his property did not constitute punishment for the same offense within the meaning of the Double Jeopardy Clause. The majority reasoned that the criminal offense is a species of the lesser included offense of forfeiture, explaining that "the criminal offense is in essence subsumed by the forfeiture statute and thus does not require an element of proof that is not required by the forfeiture action." 59 F.3d at 574.

Finally, while acknowledging that the Double Jeopardy Clause does not prohibit imposing multiple punishments for the same offense in a single proceeding, the court declined to find that the parallel civil forfeiture and criminal actions constitute a "single, coordinated proceeding" for double jeopardy purposes, because the actions proceeded before different judges and because there was no communication between the lawyers assigned to the civil and criminal proceedings.

U.S. v. \$405,089.23

Respondents Charles Wesley Arlt and James Wren were indicted on various counts involving narcotics trafficking and money laundering in violation of federal law. A jury convicted Arlt and Wren on all counts, and they were sentenced to lengthy prison terms.

Five days after indictment, the United States filed a complaint seeking civil forfeiture under 21 U.S.C. § 881(a)(6) and 18 U.S.C. § 981(a)(1)(A) of several hundred thousand dollars of property, including currency, automobiles, vessels, silver bars, and an aircraft. The United States also sought forfeiture of a corporation controlled by respondent Arlt. By agreement of the parties, litigation of the forfeiture action was deferred during the pendency of the criminal prosecution.

After Arlt and Wren were convicted, the United States sought summary judgment in the parallel civil forfeiture action. (Refer to Glossary for the definition of summary judgment.) The Government argued that the property was forfeitable on two independent grounds, first, as proceeds of illicit drug trafficking, and, second, as property "involved in" or "traceable to" properties involved in money laundering.

The district court agreed, finding that all of the assets were subject to forfeiture as proceeds of illegal narcotics activity. Alternatively, the court held that, except for the silver bars, the property was subject to forfeiture under the money laundering theory.

The Ninth Circuit reversed the forfeiture judgment, holding that the forfeiture of the property constitutes punishment for the same offenses that had formed the basis for the criminal convictions of Arlt and Wren. The court advanced two prin-

cipal grounds for its holding. First, the court posited that civil forfeiture and criminal prosecutions constitute separate proceedings for double jeopardy purposes. The Ninth Circuit explicitly rejected the "single, coordinated proceeding" theory formulated in *United States v. Millan*, 2 F.3d at 20, and embraced by the Eleventh Circuit in *United States v. 18755 North Bay Road*, 13 F.3d at 1499. In the Ninth Circuit's view, "we fail to see how two separate actions, one civil and one criminal, instituted at different times, tried before different fact finders, presided over by different district judges, and resolved by separate judgments, constitutes the same proceeding. 33 F.3d at 1216. According to the Ninth Circuit, "a forfeiture case and a criminal prosecution would constitute the same proceeding only if they were brought in the same indictment and tried at the same time." 33 F.3d at 1216.

The Ninth Circuit also rejected the ruling in *United States v. Tilley*, 18 F.3d at 300, a case in which the Fifth Circuit held that the forfeiture of drug proceeds is a remedial sanction and not punishment. The Ninth Circuit construed *Austin*, 113 S. Ct. at 2801, which held that civil forfeiture of property used to facilitate a drug crime constitutes punishment and, accordingly, is limited by the Excessive Fines Clause of the Eighth Amendment, as mandating an abstract, categorical approach to determining whether civil forfeiture is punitive. The Ninth Circuit declared: "Under *Austin*, in order to determine whether a forfeiture constitutes 'punishment,' we must look to the entire scope of the statute which the government seeks to employ, rather than to the characteristics of the specific property the government seeks to forfeit . . . to determine whether a

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forfeiture constitutes punishment.’” 33 F.3d at 1220.

Under this categorical approach, the Ninth Circuit emphasized that it must look at the characteristics of the forfeiture statute rather than the characteristics of the property forfeited. In examining, Section 881(a)(6) as a whole, the court observed that the statute is not limited to forfeiture of illicit proceeds, which arguably is remedial, but, instead, encompasses all money “furnished or *intended to be furnished* by any person in exchange of a controlled substance” as well as to any money “used or *intended to be used* to facilitate” a federal drug felony.

According to the Ninth Circuit, “rather than rendering only the profits of drug dealers subject to forfeiture, the statute applies to nearly any money that is involved in a narcotics transaction in some fashion.” 33 F.3d at 1221. Thus, the court concluded that the forfeiture statute does not serve solely a remedial purpose, but, in the abstract, permits the imposition of punishment which is barred by the Double Jeopardy Clause.

The Supreme Court reviews the decisions of the Sixth Circuit and the Ninth Circuit, having granted the Government’s petition for a writ of certiorari filed in each case. The cases have been consolidated for argument and decision. 116 S. Ct. 762 (1996).

CASE ANALYSIS

In concluding that civil forfeitures always impose punishment, both the Sixth Circuit and the Ninth Circuit relied principally on *Halper*, 490 U.S. at 435, and *Austin*, 113 S. Ct. at 2801. In *Halper*, the Supreme Court, for the first time, held that a civil penalty may constitute punish-

ment for the purposes of double jeopardy.

Halper was criminally prosecuted and convicted of violating the false claims statute, 18 U.S.C. § 287 (1994), for submitting 65 inflated Medicare claims that each charged \$12 per claim, for what was really a \$3 procedure. Halper was convicted on all 65 counts and received a two-year prison term and a \$5,000 fine.

Following conviction, the United States brought a civil action against Halper under the Civil False Claims Act, 31 U.S.C. § 3729 (1994), seeking the statutory sanction of \$2,000 for each of the 65 violations for which Halper was convicted, an amount equal to two hundred times the Government’s losses and the costs of the civil action. Although granting the Government’s motion for summary judgment on the issue of liability, the district court concluded that the aggregate sanction of \$130,000 bore no “rational relation” to the Government’s actual harm. The district court ruled that to impose this civil remedy would constitute a second punishment in violation of the Double Jeopardy Clause. To avoid the constitutional proscription, the district court approximated the Government’s actual loss and expenses at \$16,000 and entered summary judgment in that amount.

The Supreme Court on review framed the issue as whether in “a particular case a civil penalty . . . may be so extreme and so divorced from the Government’s damages and expenses as to constitute punishment.” 490 U.S. at 442. The Court rejected the Government’s argument that the Double Jeopardy Clause is limited to punishment meted out in criminal proceedings, asserting that the legislature’s description of the statute as either criminal or civil is not dispositive of the issue. The

Court observed that civil proceedings have commonly been understood to advance both punitive as well as remedial goals. Instead, the determination of whether a civil sanction constitutes punishment requires an assessment of the penalty imposed and the purpose the penalty may be said to serve.

The Court stated that it would consider a civil penalty punishment if aimed at the traditional goals of punishment such as retribution and deterrence. Thus, the Court held that “a civil sanction that cannot be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes is punishment, as we have come to understand the term.” *Halper*, 490 U.S. at 448. According, to the Court in *Halper*, the central inquiry is whether the civil sanction bears a “rational relation” to a remedial purpose such as compensating the Government for its losses. Thus, the Court did not hold that a civil sanction may never be imposed following a criminal prosecution based on the same conduct. Instead, only those civil sanctions that do not bear a “rational relation” to a remedial purpose are proscribed by the Double Jeopardy Clause.

Additionally, the Court in *Halper* was concerned with preventing the prosecution from pursuing a civil remedy because it is dissatisfied with the penalty imposed in the criminal action and posited that “when the Government already has imposed a criminal penalty and seeks to impose additional punishment in a second proceeding, the Double Jeopardy Clause protects against the possibility that the Government is seeking the second punishment because it is dissatisfied with the sanction obtained in the first proceeding.” 490 U.S. at 451 n.10.



The scope of the Court's holding in *Halper* is admittedly narrow. "What we announce now is a rule for the rare case, the case such as the one before us, where a fixed-penalty provision subjects a prolific but small-gauge offender to a sanction overwhelmingly disproportionate to the damages he has caused." 490 U.S. at 449. Thus, under *Halper* the issue of whether the civil sanction is limited to that amount necessary to compensate the Government for its losses must be determined on a case-by-case basis.

The second case relied on by the courts below is *Austin*. 113 S. Ct. at 2801. In *Austin*, the Supreme Court held that, at least as to 21 U.S.C. §§ 881(a)(4) and (a)(7) involving forfeiture of conveyances and real property, civil forfeiture is punitive and, as such, is limited by the Excessive Fines Clause of the Eighth Amendment. Unlike the decision in *Halper*, *Austin* did not focus on the individualized application of the civil penalty in deciding if civil forfeiture could be characterized as remedial or punitive. Instead, the Court considered the two statutory provisions in the abstract and concluded that forfeiture under either of them is punitive.

The *Austin* Court distinguished *Halper*, reasoning that "*Halper* involved a small, fixed-penalty provision, which 'in the ordinary case . . . can be said to do no more than make the Government whole.' The value of the conveyances and real property forfeited under Sections 881(a)(4) and (a)(7), on the other hand, can vary so dramatically that any relationship between the Government's actual cost and the amount of the sanction is merely coincidental." 113 S. Ct. at 2812 n. 14. Consequently, the Court adopted a categorical approach to forfeiture under Sections 881(a)(4) and (a)(7), finding that they always impose punishment.

The respondents in these cases read *Halper* and *Austin*, in combination, to require the conclusion that the forfeitures in question constitute impermissible punishment. They maintain that *Austin* modified *Halper* and precludes a case-by-case analysis in favor of a categorical approach. In real property cases, the respondents contend that *Austin* mandates a finding that forfeiture is punitive per se. Because any relationship between the actual costs incurred by the United States in prosecuting and investigating a case and the value of the property sought to be forfeited is merely coincidental, the rational relationship requirement is not satisfied.

The United States counters by arguing that the forfeiture of facilitating property in *Urserly's* case is not punishment. Under *Halper*, the issue whether a particular civil sanction amounts to punishment within the meaning of the Double Jeopardy Clause turns on an analysis of the sanction's purposes. The Government asserts that the proper inquiry in multiple punishment cases is whether, as applied in the particular case, the sanction is rationally related to legitimate remedial aims. Under the holding in *Halper*, a dominant remedial purpose renders a sanction nonpunitive, even if the sanction could also be said, in some respects, to act as a deterrent.

Applying *Halper*, the United States maintains that the appropriate case-by-case inquiry in the context of forfeitures of property used to facilitate narcotics crimes is whether the nexus between the particular property and the crimes committed or intended is so close that the forfeiture may be rationally related to further one or more of the remedial purposes that traditionally have justified the remedy, purposes such as inducing owners to exercise all reasonable care in managing their prop-

erty; abating a nuisance or wrong; and insuring indemnity to the injured party. The last objective — compensating an injured party — extends as well to the Government and should be applied to require that each person whose property contributes to the harms caused by drug trafficking also contribute to defraying the Government's costs of enforcement and societal harms created by that activity.

While the United States concedes that some language in *Halper* may be read to suggest that a civil sanction with any deterrent purpose should be viewed as punishment, the Government maintains that such a formulation would sweep too broadly. There are few, if any, civil sanctions that do not serve, in part, to deter. Thus, if *Halper* were construed to prohibit imposition of a civil sanction that has any incidental or collateral deterrent effect, every civil sanction would constitute punishment for double jeopardy purposes. This view would be inconsistent with *Halper's* own emphasis on the limited scope of its ruling.

As for *Austin*, while not expressly stating so, the United States seeks to modify that decision insofar as it holds that civil forfeiture of real property and conveyances is per se punitive. In other words, the Government asks the Supreme Court to limit the holding in *Austin* to the extent that it deviates from the case-by-case analysis required in *Halper*.

On the issue of forfeiture of drug proceeds, Arlt and Wren attempt to move the Court in just the opposite direction. They argue that the categorical approach applied in *Austin* should be extended to encompass drug proceeds. They repeat the reasoning of the Ninth Circuit that because the statute authorizes for-

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feiture of money furnished or *intended to be furnished* by a person in exchange for a controlled substance, the sanction is not solely remedial (limited to forfeiture of illicit proceeds) and, thus, constitutes punishment.

In these cases, respondents' argument elevates form over substance. Even if the evidence clearly establishes that the money was entirely derived from drug trafficking, because the statute might in some future case be applied to forfeit funds merely *intended* to be used to purchase drugs, that does not necessarily mean that the statute as a whole should be construed as punitive.

The Government, on the other hand, argues that *Austin* is not controlling in forfeiture cases involving drug proceeds. First, the Government correctly states that the holding in *Austin* was limited to forfeiture of facilitating real property. The question of whether forfeiture of proceeds is punitive and, thus, limited by the Excessive Fines Clause of the Eighth Amendment was not before the Court.

Second, forfeiture of illicit proceeds is a recent development in forfeiture law; indeed, forfeiture of proceeds was not authorized by statute until 1978. Thus, the *Austin* Court's historical analysis of forfeitures as being in part punitive is not applicable to forfeiture of drug proceeds. The Government, however, omits that *Austin* also looked to the legislative history and to the statutory innocent owner defense (which is also available in drug proceeds cases) to support its conclusion that forfeiture of facilitating property was intended, at least in part, to punish. This reasoning would be equally applicable to the forfeiture of drug proceeds.

The stronger argument advanced by the United States is that, unlike facilitating property, there is a rational relationship between drug proceeds and the loss suffered by the Government and society. As the Seventh Circuit recently recognized, "proceeds forfeitures can never be out of proportion to the 'loss' suffered by the Government or society." *Smith v. United States*, 1996 WL 72858, at 3. Moreover, when the Government seeks forfeiture of illegal profits, it does no more than prevent unjust enrichment, a plainly remedial goal.

The United States also argues that forfeiture is not the same offense as the crimes for which the respondents were prosecuted. As previously noted, the Double Jeopardy Clause prohibits multiple punishments or successive prosecutions only for the same offense. The test for determining whether two offenses are the same for double jeopardy purposes is the statutory elements test set forth in *Blockburger v. United States*, 284 U.S. 299, 304 (1932): "The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Accordingly, if each statute at issue "requires proof of a fact that the other does not, the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes." *Iannelli v. United States*, 420 U.S. 770, 785 n.17 (1975).

The United States maintains that if civil forfeiture amounts to an offense that triggers double jeopardy protections, the offense punished in the forfeiture proceedings at issue is not the same offense as any of the criminal offenses on which respon-

dents were convicted. Each of the forfeiture statutes requires proof that each of the respondents' property played some role in the commission of the crime. For example, Section 881(a)(6) authorizes forfeiture of money "furnished or intended to be furnished" in a drug trafficking crime. Similarly, Section 881(a)(7) requires proof that the real property was "used, or intended to be used" to commit a drug crime. Each of the respondents was convicted of a drug or money laundering crime. Use of the forfeited property is not an element of any of these criminal offenses.

At the same time, each of the criminal statutes requires proof of at least one element not found in the forfeiture statutes. For example, conviction on the criminal charges required proof that respondents participated in a conspiracy, possessed a controlled substance with the intent to distribute it, or engaged in unlawful money laundering transactions. In contrast, a person can lose his or her property under a judgment of forfeiture without having been convicted of a crime.

Respondents counter by arguing that the Double Jeopardy Clause also precludes separate prosecution and multiple punishments for the greater and lesser-included offense. See *Brown v. Ohio*, 432 U.S. 161 (1977). An offense is a lesser-included offense of another if every violation of the statute defining the greater offense necessarily entails a violation of the statute defining the lesser offense. The respondents argue that the forfeitures constitute "a species of greater offenses with respect to the lesser offenses that form the bases of the forfeitures." *United States v. One 1978 Piper Cherokee Aircraft*, 37 F.3d 489, 495 (9th Cir. 1994).

The Government's argument breaks down when the prosecution charges



a defendant with a particular offense and then brings a subsequent forfeiture action based on that same statutory crime. For example, if a defendant is prosecuted for a single drug sale and later that same drug transaction is relied on to support forfeiture of the profits derived from the sale of drugs, in order to prove that the money was furnished in exchange for a controlled substance the prosecution must prove the commission of the underlying drug offense that generated the funds. While the standard of proof in the forfeiture case is the lesser civil standard, that does not change the fact that in order to prove the greater forfeiture offense, the prosecution is required to prove each and every element of the drug offense.

Finally, the Government construes the multiple punishments doctrine as limited to protecting a defendant's legitimate "expectation of finality in the original sentence." *United States v DiFrancesco*, 449 U.S. 117, 139 (1980). A proceeding is impermissibly successive for purposes of the multiple punishment doctrine only when it is commenced after that expectation of finality has ripened.

The United States reasons that *Halper* specifically contemplated that the government could seek both civil and criminal penalties. Since the respondents were well aware that the Government intended to seek both criminal and civil remedies that were basically contemporaneous, they could not reasonably have formed any expectation to the contrary. For that reason, the facts do not implicate *Halper's* basic concern that the Government is seeking to disturb an otherwise final criminal judgment because it is dissatisfied with the criminal sentence received by the defendant.

SIGNIFICANCE

The current status of double jeopardy jurisprudence is muddled, to say the least. Confusion in this area has created a situation in which a defendant in one jurisdiction may escape criminal liability because of a prior judgment of civil forfeiture, while, in another jurisdiction, the criminal and civil sanctions imposed in separate proceedings based on the same criminal offense may be permitted to stand. Furthermore, in the case of a prior criminal prosecution, some defendants may be permitted to retain their ill-gotten gains while other defendants must forfeit their property to the government. Moreover, it has become glaringly apparent that the legal standards, tests, principles, and doctrines that have emerged from the long history of Supreme Court cases on double jeopardy have become so complex as to become almost impossible to apply in any consistent and coherent manner.

Perhaps the time has come to give up trying to reconcile these cases and instead adopt a radically new approach to the subject. These consolidated cases provide the Supreme Court with the opportunity to do just that.

ATTORNEYS OF THE PARTIES

For the United States (Drew S. Days, III, Solicitor General; Department of Justice; (202) 514-2217).

For Guy Jerome Ursery (Lawrence Emery; (517) 337-4866).

For Charles Wesley Arlt (David Michael; (415) 986-5571).

For James Wren (Jeffrey K. Finer; (509) 455-3700).

AMICUS BRIEFS

In support of the United States

Joint brief of Advocates for Highway and Auto Safety and Mothers Against Drunk Driving (Counsel of Record: Henry M. Jasný; Advocates for Highway and Auto Safety; (202) 408-1711);

Joint brief of Americans for Effective Law Enforcement, Inc., International Association of Chiefs of Police, Inc., and the National Sheriff's Association (Counsel of Record: James P. Manak; (708) 858-6392);

Joint brief of the State of Connecticut and 47 other states, joined by the Commonwealth of Puerto Rico (Counsel of Record: Mary H. Lesser, Assistant State's Attorney of the State of Connecticut; (860) 258-5800);

Joint brief of the State's Attorney of Cook County, Illinois, and the National District Attorneys Association, Inc. (Counsel of Record: Renee Goldfarb, Assistant State's Attorney of Cook County, Illinois; (312) 443-5496);

Joint brief of the Counties of San Bernardino, Alameda, San Joaquin, and Kern, California (Counsel of Record: Dee R. Edgeworth; Deputy District Attorney of San Bernardino County, California; (909) 387-6478);

Joint brief of 39 Counties of the State of Washington (Counsel of Record: Barbara A. Mack, Senior Deputy Prosecuting Attorney of King County, Washington; (206) 296-9010).