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## FORFEITURE PROCEEDINGS—IN NEED OF DUE PROCESS

Government taking of property without just compensation is expressly prohibited by the fifth amendment.<sup>1</sup> Nevertheless, in some situations the government may still confiscate a citizen's possessions without reimbursement through the legal device of forfeiture.<sup>2</sup> At common law all property of convicted felons was automatically forfeited to the state.<sup>3</sup> The United States government discontinued this practice,<sup>4</sup> but retained the statutory power to forfeit the instrumentalities of wrongdoing.<sup>5</sup> In short, the state may proceed against "things,"<sup>6</sup> typically automobiles, used in criminal activities.

The United States Supreme Court recently upheld this type of forfeiture of instrumentalities,<sup>7</sup> but did not directly consider the due process questions raised by the federal forfeiture statutes as they are written.<sup>8</sup> This Note will analyze the possible remaining constitutional challenges.

The Customs Duties Law<sup>9</sup> and its companion administrative reg-

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1. "[N]or shall private property be taken for public use without just compensation." U.S. CONST. amend. V.

2. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974); 19 U.S.C. §§ 1602-18 (1970).

3. See 3 W. HOLDSWORTH, *HISTORY OF ENGLISH LAW* 68-71 (3d ed. 1927); 1 F. POLLACK & F. MAITLAND, *HISTORY OF ENGLISH LAW* 351 (2d ed. 1909).

4. U.S. CONST. art. III, § 3; 18 U.S.C. § 3563 (1970).

5. 19 U.S.C. §§ 1594-1618 (1970).

6. See *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965); *Bramble v. Richardson*, 498 F.2d 968 (10th Cir. 1974); *Menkarell v. Bureau of Narcotics*, 463 F.2d 88 (3d Cir. 1972); *United States v. One 1971 Opel G.T.*, 360 F. Supp. 638 (C.D. Cal. 1973); *Jaekel v. United States*, 304 F. Supp. 993 (S.D.N.Y. 1969).

7. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974).

8. *Id.*

9. 19 U.S.C. §§ 1602-18 (1970). The statutes provide in pertinent part: "It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure . . . . [I]t shall be the duty of the appropriate customs officer to report such seizure or violation to the United States attorney for the district in which such violation has occurred . . . ." *Id.* §§ 1602-03. "The appropriate customs officer

ulations<sup>10</sup> authorize the seizure and forfeiture of goods used in viola-

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shall determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, merchandise, or baggage seized under the customs laws." *Id.* § 1606. "If such value of such vessel, vehicle, merchandise, or baggage does not exceed \$2,500, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 1610 and 1612 of this title merchandise the importation of which is prohibited shall be held not to exceed \$2,500 in value." *Id.* § 1607. "Any person claiming such vessel, vehicle, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of \$250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond . . . to the United States attorney . . . who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law." *Id.* § 1608. "If no such claim is filed or bond given . . . the appropriate customs officer shall declare the vessel, vehicle, merchandise, or baggage forfeited . . ." *Id.* § 1609. "If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than \$2,500, the appropriate customs officer shall transmit a report of the case . . . to the United States attorney . . . for the institution of the proper proceedings for the condemnation of such property." *Id.* § 1610. "If no application for such remission or restoration is made within three months after such sale . . . the proceeds of sale shall be disposed of as follows: (1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of . . . the costs as taxed by the court . . . In all suits or actions brought for the forfeiture of any . . . [property] seized under the provisions of . . . [the customs laws], where the property is claimed by any person, the burden of proof shall lie upon such claimant . . ." *Id.* §§ 1613, 1615. "Whenever any person interested in any . . . [property] seized under the provisions of this chapter . . . files with the Secretary of the Treasury . . . a petition for the remission or mitigation of such . . . forfeiture, the Secretary of the Treasury, if he finds that such . . . forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law . . . may remit or mitigate the same upon such terms and conditions as he deems reasonable and just . . ." *Id.* § 1618.

10. 19 C.F.R. §§ 162.21-.51 (1974), *as amended*, §§ 162.44(a), (b)(1), 39 Fed. Reg. 37633 (1974). The regulations provide in pertinent part: "Any

tion of the customs laws.<sup>11</sup> Once goods have been seized the statute directs that they be appraised.<sup>12</sup> Procedural distinctions are then made on the basis of the value of the goods.<sup>13</sup> If the seized property is valued at over \$2,500, the statute requires that the case be reported to the United States attorney for the institution of judicial condemnation proceedings.<sup>14</sup> Service of process under the Federal Rules of Civil Procedure would then be mandatory.<sup>15</sup> If the goods are valued at \$2,500 or less,<sup>16</sup> however, the customs officer is only required to publish notice of the seizure and the intention to forfeit.<sup>17</sup> The Secretary of the Treasury is empowered to prescribe the type of notification which will be given in these cases.<sup>18</sup> Regulations published in the Code of Federal Regulations make further value related procedural distinctions.<sup>19</sup> When the appraised value of any property in one seizure from one person exceeds \$250,<sup>20</sup> notice must be published for at least three successive weeks in a newspaper of general circulation in the customs and judicial districts in which the

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Customs officer having reasonable cause to believe that any law . . . has been violated by reason of which any property has become subject to forfeiture, shall seize such property if available." *Id.* § 162.21(a). "Written notice of . . . any liability to forfeiture shall be given to each party that the facts of record indicate has an interest in the claim or seized property." *Id.* § 162.31(a). "When the appraised value . . . exceeds \$250, the notice shall be published in a newspaper . . . for at least 3 successive weeks. In all other cases, the notice shall be published by posting in a conspicuous place accessible to the public . . ." *Id.* § 162.45(b).

11. It should be noted that under 21 U.S.C. § 881(d) (1970), *as amended*, (Supp. III, 1973), the forfeiture section of the Food and Drug Law (Drug Abuse) provides that forfeiture proceedings are to be governed by the customs laws.

12. 19 U.S.C. § 1606 (1970).

13. *Id.* §§ 1607, 1610.

14. *Id.* § 1610.

15. FED. R. CIV. P. 4.

16. In addition to goods actually worth \$2,500 or less, 19 U.S.C. § 1607 (1970) specifies that illegally imported merchandise, such as drugs, be held not to exceed \$2,500 and thereby subjects it to summary forfeiture.

17. *Id.*

18. *Id.*

19. 19 C.F.R. § 162.45 (1974).

20. The estimated value of narcotics and dangerous drugs is not included in the appraised value. *Id.* § 162.45(b).

property was seized.<sup>21</sup> For property worth \$250 or less, notice must be posted for three successive weeks in a customs house nearest the place of the seizure, in a place accessible to the public.<sup>22</sup>

Parties having an interest in seized goods worth \$2,500 or less must file a notice of claim with the United States Customs District Director within twenty days of the government's first publication of notice.<sup>23</sup> Furthermore, such interested parties must give a bond to the United States in the "penal" sum of \$250, which can be used to pay all costs and expenses of judicial proceedings if condemnation results.<sup>24</sup> When these conditions are fulfilled, the interested party is entitled to the same treatment as parties claiming property worth more than \$2,500,<sup>25</sup> and the case is transferred to the United States attorney for judicial proceedings.<sup>26</sup> Failure to post bond or to file a claim within twenty days results in a declaration of forfeiture by a customs officer, and the goods are sold.<sup>27</sup>

The leading case on forfeiture is *Calero-Toledo v. Pearson Yacht Leasing Co.*<sup>28</sup> In *Calero*, a \$19,000 pleasure yacht was seized and forfeited after authorities found marijuana on board.<sup>29</sup> At the time

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21. *Id.* This language has been interpreted to require one publication per week for three successive weeks. *Menkarell v. Bureau of Narcotics*, 463 F.2d 88, 91 (3d Cir. 1972).

22. 19 C.F.R. § 162.45(b) (1974).

23. *Id.* § 162.47(a); 19 U.S.C. § 1608 (1970).

24. 19 U.S.C. § 1608 (1970).

25. 19 U.S.C. section 1608 paraphrases section 1610 in prescribing the procedure to be followed when the bond and petition are filed. *Id.*

26. *Id.*

27. *Id.* § 1609. Exceptions to these rules are for perishable goods worth \$2,500 or less for which notice of sale need only be for a "reasonable time." *Id.* § 1612; 19 C.F.R. § 162.48 (1974). And more important, there is an exception for common carriers. 19 U.S.C. § 1594 (1970). Under this provision owners and drivers are exempted from forfeiture and seizure unless they actually consented to the alleged illegal acts. This provision raises serious questions of equal protection, but a discussion of the common carrier exception is beyond the scope of this Note.

28. 416 U.S. 663 (1974).

29. In his dissenting opinion, Justice Douglas stated that a showing that the use of the boat for smuggling was notorious might change the equities of the situation: "But no such showing was made; and so far as we know only one marihuana cigarette was found on the yacht." *Id.* at 693 (Douglas, J., dissenting).

of the seizure, lessees were in possession of the boat.<sup>30</sup> The appellee lessor, Pearson Yacht Leasing Co., was neither involved in nor aware of the lessee's wrongful use of the yacht.<sup>31</sup> The Supreme Court upheld the forfeiture of the yacht despite the lessor's acknowledged innocence<sup>32</sup> and the lack of pre-seizure notice.<sup>33</sup> The Court in *Calero* concluded that suits against the instrumentalities of crime serve legitimate punitive and deterrent purposes "both by preventing further illicit use . . . and by imposing an economic penalty, thereby rendering illegal behavior unprofitable."<sup>34</sup> In reaching its conclusion the Court employed the fiction of an in rem proceeding<sup>35</sup> and the time-honored tradition of the "deodand,"<sup>36</sup> a legal concept stemming from the religious sacrifice of instrumentalities of wrongdoing. The Court further observed that confiscation may induce innocent owners and bailors to exercise greater care in transferring possession of their property.<sup>37</sup>

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30. *Id.* at 665.

31. *Id.* at 668.

32. *Id.*

33. *Id.* at 679-80. In dealing with the issue of pre-seizure notice the Court held: "[T]his case presents an 'extraordinary' situation in which postponement of notice and hearing until after seizure did not deny due process." *Id.* (footnote omitted).

34. *Id.* at 687.

35. *Id.* at 683.

36. *Id.* at 681. "The origins of the deodand are traceable to Biblical and pre-Judeo-Christian practices, which reflected the view that the instrument of death was accused [*sic*] and that religious expiation was required." *Id.* (footnote omitted). The Court noted: "Deodand derives from the latin *Deo dandum*, 'to be given to God.'" *Id.* at 681 n.16; see *Exodus* 21:28: "If an ox gore a man or a woman, and they die, he shall be stoned, and his flesh not eaten . . . ." In plain English, a deodand is the thing which was the immediate cause of the wrong. Under old English law it was sold by the King and its proceeds applied to pious works. The innocence of the owner of the deodand was considered immaterial to the requirement that instruments causing wrongs be forfeited. See Comment, *Due Process in Automobile Forfeiture Proceedings*, 3 U. BALT. L. REV. 270, 271-76 (1974).

37. 416 U.S. at 688. This is so despite the fact as noted in Justice Douglas' dissenting opinion that: "[T]he owner had included in the lease a prohibition against use of the yacht for an unlawful project." *Id.* at 693 (Douglas, J., dissenting).

The *Calero* Court acknowledged the possible constitutional claim of an owner who could show that he was innocent of wrongdoing and had done "all that reasonably could be expected to prevent the proscribed use of his property; for, in that circumstance, it would be difficult to conclude that forfeiture . . . was not unduly oppressive."<sup>38</sup> The facts of *Calero* appear to fit this description; nevertheless, the Court upheld the forfeiture.<sup>39</sup>

The *Calero* decision, moreover, severely limited the reach of a previous case<sup>40</sup> which attacked the constitutional validity of forfeitures.<sup>41</sup> In *United States v. United States Coin and Currency*,<sup>42</sup> respondent was convicted of failure to pay taxes on his gambling winnings;<sup>43</sup> the money used in his bookmaking operation thereby became subject to forfeiture.<sup>44</sup> The Supreme Court had remanded the tax conviction for reconsideration in light of the rule that gamblers may assert the fifth amendment as a defense to a prosecution for failure to file a tax return on their winnings.<sup>45</sup> On appeal of the forfeiture, the Supreme Court held that the fifth amendment would also preclude a forfeiture of the funds not reported, despite the fact that a forfeiture is a civil proceeding against the winnings themselves.<sup>46</sup> The Court observed that "[w]hen the forfeiture statutes

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38. *Id.* at 689-90 (footnote omitted).

39. As Justice Douglas makes clear in his dissenting opinion, the corporate owner did not know of the wrongful use of its property, was not notified of the seizure, and had prohibited unlawful projects. *Id.* at 693 (Douglas, J., dissenting).

40. *United States v. United States Coin & Currency*, 401 U.S. 715 (1971).

41. 416 U.S. at 680. The District Court of Puerto Rico held that *United States v. United States Coin & Currency*, 401 U.S. 715 (1971) stood for the demise of forfeiture statutes as a deprivation without just compensation. *Pearson Yacht Leasing Co. v. Massa*, 363 F. Supp. 1337 (D.P.R. 1973), *rev'd. sub nom. Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974). The Supreme Court flatly rejected this interpretation on appeal. 416 U.S. at 680; *see Bramble v. Richardson*, 498 F.2d 968, 973 (10th Cir. 1973), *cert. denied*, 95 S. Ct. 656 (1974).

42. 401 U.S. 715 (1971).

43. *Id.* at 716.

44. *Id.*

45. *Id.* at 716-17; *see Angelini v. United States*, 390 U.S. 204 (1968).

46. 401 U.S. at 722.

are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise."<sup>47</sup> Nevertheless, in *Bramble v. Richardson*,<sup>48</sup> the Court of Appeals for the Tenth Circuit flatly rejected the assertion that *Coin and Currency* had held the forfeiture statutes to be criminal in nature,<sup>49</sup> and the Supreme Court in *Calero* indicated that *Coin and Currency* did not require the reasonable doubt standard in forfeiture proceedings.<sup>50</sup>

### Notice Provisions

Under the forfeiture statutes and regulations, the type of notice a person receives is determined by the appraised value of the property seized.<sup>51</sup> According to the standards for notice established in *Mullane v. Central Hanover Bank & Trust Co.*,<sup>52</sup> only owners of forfeited property worth over \$2,500 are afforded due process. *Mullane* held that due process requires that notice be reasonably calculated to reach interested parties.<sup>53</sup> The type of notice prescribed for property worth \$2,500 or less—publishing—falls short of that standard. In fact, the type of notice required for property worth \$250 or less, posting in the customs house, would seem to be among the least effective forms of notice, and therefore clearly unacceptable under the *Mullane* standard. The Court, in *Mullane*, did acknowledge that publication may be the best notice possible under some circumstances, but those circumstances must involve either unknown parties or unobtainable addresses.<sup>54</sup> In forfeiture proceedings, it is unlikely that an owner will be unknown or that his

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47. *Id.* at 721-22 (footnote omitted).

48. 498 F.2d 698 (10th Cir. 1973), *cert. denied*, 95 S. Ct. 656 (1974).

49. *Id.* at 973.

50. 416 U.S. at 680.

51. See text accompanying notes 9-27 *supra*.

52. 339 U.S. 306 (1950).

53. *Id.* at 314. *Mullane* considered the question of notice to claimant beneficiaries on the judicial settlement of accounts of a common trust fund. Under the requirements of the New York Banking Law, the trust company in *Mullane* was only required to notify claimants by newspaper publication, and the Court held that such notice was a denial of due process to known claimants. *Id.* at 320.

54. *Id.* at 319.



address will be unobtainable.<sup>55</sup>

The federal courts have considered the applicability of *Mullane* to the forfeiture situation in two significant cases. In *Robinson v. Hanrahan*,<sup>56</sup> the Supreme Court found that notice by certified mail to the plaintiff's home, as directed by the Illinois forfeiture statute, was inadequate where plaintiff was in jail for the activities which had resulted in the seizure.<sup>57</sup> The Court stated that "it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the forfeiture proceedings."<sup>58</sup>

In *Menkarell v. Bureau of Narcotics*,<sup>59</sup> the Third Circuit found the federal notice provisions unconstitutional in their operation, but did not invalidate the forfeiture statute or its notice provisions. After seizing the plaintiff's car for alleged narcotics violations, the District Supervisor of the Bureau of Narcotics caused notice of forfeiture to be published in a newspaper, despite the fact that he had knowledge of Menkarell's address.<sup>60</sup> Plaintiff, unaware of the notice, failed to make a timely petition for the return of the vehicle and it was summarily forfeited.<sup>61</sup> In holding that such forfeiture did not comport with due process,<sup>62</sup> the court stated:

This kind of summary forfeiture proceeding is entirely too summary. Due process may not demand actual notice in every case, but it forbids the use of a method of notice which is not reasonably calculated to reach those who could easily be informed . . . .<sup>63</sup>

The court in *Menkarell* did not rule on the constitutionality of the statutory notice provisions themselves, but it did hold that the statutory notice was not adequate in the situation before it.<sup>64</sup> *Wuchter*

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55. Where valuable property is seized, it is often registered with a licensing authority, or actually taken from the owner himself. See, e.g., *Robinson v. Hanrahan*, 409 U.S. 38 (1972).

56. 409 U.S. 38 (1972).

57. *Id.* at 40.

58. *Id.* (footnote omitted).

59. 463 F.2d 88 (3d Cir. 1972).

60. *Id.* at 92.

61. *Id.*

62. *Id.*

63. *Id.* at 94.

64. *Id.*

*v. Pizzuti*,<sup>65</sup> however, indicates that notice provisions similar to those in the forfeiture statutes render the statutes unconstitutional.<sup>66</sup> *Wuchter* held that a statute which can cause deprivation of property must specifically require proper notice. Actual notice, without such a statutory requirement does not insulate the statute from constitutional attack.<sup>67</sup> Both *Robinson* and *Menkarell* show the reluctance of the courts to invalidate completely the forfeiture statutes because of deficient notice provisions. Taken together, *Mullane* and *Wuchter*<sup>68</sup> provide an argument that the statutes are unconstitutional either where notice is given by publishing or where actual notice is given despite the lack of such a statutory requirement.<sup>69</sup> Until a challenge is made to the notice provisions themselves, the Court will probably leave the statutes intact and decide each case on the adequacy of the notice actually received.

### The Bond Requirement

In addition to the notice provisions, the \$250 bond requirement to obtain a judicial disposition of seized property worth \$2,500 or less also poses serious constitutional questions. *Calero* held that due process does not require a hearing before the seizure of instrumentalities of crimes.<sup>70</sup> The Court found extraordinary circumstances which put such seizures outside the traditional pre-seizure hearing requirements.<sup>71</sup> Nevertheless, the right to a hearing before final dis-

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65. 276 U.S. 13 (1928).

66. *Id.* at 24.

67. *Id.* at 24-25. *Wuchter*, a Pennsylvania driver, collided with a New Jersey resident in New Jersey. Under the law in question the Secretary of State was designated to receive process for nonresident drivers. The statute did not require service on *Wuchter*, but actual notice was mailed to him anyway. The Court held that the statute was unconstitutional, and stated that actual notice "can not, therefore, supply constitutional validity to the statute or to service under it." *Id.* at 24. Likewise, in *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915), where a statute providing for execution on corporate property did not require notice to the shareholders, the Court held that the fact of actual notice did not deny plaintiff standing as a person " 'who may justly complain.' " *Id.* at 423.

68. See text accompanying notes 53-67 *supra*.

69. *Wuchter v. Pizzuti*, 276 U.S. 13, 24-25 (1928).

70. 416 U.S. at 679-80.

71. *Id.*

position of seized property is well established and remains unchanged by *Calero*.<sup>72</sup> Furthermore, the right to a hearing must be more than a theoretical right. *Boddie v. Connecticut*<sup>73</sup> states it must be "meaningful."<sup>74</sup>

In *Boddie*, appellants were unable to pay the \$45 court cost fee necessary for filing a divorce action. Emphasizing that courts are the only forum available for the dissolution of marriage,<sup>75</sup> the Supreme Court held that "due process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages."<sup>76</sup> The Court stated that, at a minimum, due process requires the opportunity for a hearing before deprivation of life, liberty, or property,<sup>77</sup> and held that the court cost fee was unconstitutional in that it denied indigents their right to a hearing.<sup>78</sup>

The Court considered two factors: the relative importance of the constitutional right and the procedural obstacles interposed between the citizen and a hearing to obtain that right.<sup>79</sup> The Court concluded that the dissolution of marriage through the courts was a right which must be afforded without any cost requirement.<sup>80</sup>

In *United States v. Kras*,<sup>81</sup> the Court considered the constitutionality of a \$50 filing fee for bankruptcy adjudications. The Court upheld the fee<sup>82</sup> and distinguished the case from *Boddie* both on the basis of the interest at stake and the size of the obstacle.<sup>83</sup> The Court noted that while resort to the courts was a spouse's only forum for obtaining a divorce, a bankrupt may privately negotiate a settle-

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72. See *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974); *Fuentes v. Shevin*, 407 U.S. 67, 90 (1972); *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 339 (1969).

73. 401 U.S. 371 (1971).

74. *Id.* at 379; see *Armstrong v. Manzo*, 380 U.S. 545 (1965).

75. 401 U.S. at 374.

76. *Id.*

77. *Id.* at 378.

78. *Id.* at 374.

79. *Id.*

80. *Id.*

81. 409 U.S. 434 (1973).

82. *Id.* at 450.

83. *Id.* at 445.

ment with his creditors.<sup>84</sup> Moreover, the Court stated that bankruptcy did not rise to the same level of constitutional importance as divorce.<sup>85</sup> Finally, in upholding the filing fee the Bankruptcy Act permitted time payments of the fee which could be as little as \$1.28 per week, payable after adjudication.<sup>86</sup> In short, the Court concluded that, in light of the constitutional interest at stake, the cost requirement was not unreasonable. Four Justices dissented in *Kras*, however, and Justice Marshall concluded in his dissent that “[w]hen a person raises a claim of right or entitlement under the laws, the only forum in our legal system empowered to determine that claim is a court.”<sup>87</sup>

Another recent case, *Ortwein v. Schwab*,<sup>88</sup> considered the question of a \$25 filing fee for welfare decision appeals, and followed the *Kras* holding. Appellants, whose welfare payments had been reduced, challenged the constitutionality of the \$25 filing fee required in Oregon for judicial review of state welfare decisions. The Court pointed out that due process does not require an appellate hearing and stated that the interest at issue, namely welfare benefits, like the interest in *Kras*, “has far less constitutional significance than the interest of the *Boddie* appellants,”<sup>89</sup> and that administrative hearings which comport with due process satisfy the demands of the United States Constitution even if the state does not provide an appellate system.<sup>90</sup>

*Calero* affirmed the requirement of a hearing in the forfeiture situation, before final disposition of the seized property,<sup>91</sup> but the only due process hearing under the present forfeiture statutes is the judicial condemnation hearing, and the procedural requirement of a \$250 bond effectively denies such a hearing to indigents who by definition cannot post the bond. *Calero* and *Boddie* require elimination of this requirement.

As yet, no case has squarely put to the Supreme Court the ques-

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84. *Id.* at 444-45.

85. *Id.* at 445.

86. *Id.* at 449.

87. *Id.* at 462 (Marshall, J., dissenting).

88. 410 U.S. 656 (1973).

89. *Id.* at 659.

90. *Id.* at 660.

91. *Id.* at 656-58.

tion of the constitutionality of the notice provisions or the bond requirement. If a rejection of the forfeiture statutes is desirable, these issues would seem to be the last remaining ground for litigation. Invalidation of the forfeiture statutes by the Court on procedural grounds would present an opportune incentive for legislative reconsideration.

*Edward Wallace*