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What civil-asset forfeiture means

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KERRI KALEY was a sales representative for a subsidiary of Johnson & Johnson. She and some of her colleagues sometimes received excess or outdated medical devices from their clients, which they then sold, splitting the proceeds among themselves. The government believed this amounted to theft, and in 2007 Ms Kaley, her husband and Jennifer Gruenstrass were indicted on charges of stealing medical equipment. They contended that their conduct was not criminal, because the material in question was unwanted. Still, they prepared for a long fight; to pay for their legal defence the Kaleys borrowed $500,000. That defence worked well for Ms Gruenstrass: a jury voted to acquit her on all charges in less than three hours after the prosecution could find not a single witness who claimed ownership of the material in question. Things went less smoothly for the Kaleys. After they were charged, prosecutors obtained an order freezing more than $2m of their assets, including the $500,000 they borrowed for their legal defence, claiming those assets constituted "proceeds" of the alleged crimes.

This is a procedure known as "civil-asset forfeiture". Unlike criminal forfeiture, in which prosecutors seize the proceeds of criminal activity as punishment for a crime, civil-asset forfeiture does not require a conviction or even a criminal charge: in fact, a study by Henry Hyde, a Republican former congressman, and the Cato Institute, a libertarian think-tank, found that 80% of people whose property was seized by the federal government were never charged with a crime. Forfeiture proceedings are brought not against people, but against property that law enforcement need only allege is connected to criminal activity. This can give proceedings in which forfeiture orders are contested bizarre names such as *United States v $10,500 in U.S. Currency* or *State of New Jersey v One 1990 Ford Thunderbird*. It also gives property owners fewer constitutional protections than criminal defendants would have; owners often have to prove their innocence to get their property back, rather than the state having to prove their guilt.

Though civil-asset forfeiture has a long history, it took off in America following passage of some amendments to the Comprehensive Drug Abuse and Prevention Act in 1984 that allowed police to keep and spend forfeiture proceeds. This gave law-enforcement agencies a direct financial incentive to take more stuff, and led to what the Institute for Justice (IJ), a libertarian law firm,

calls "policing for profit". In 1986 the federal Asset Forfeiture Fund took in $93.7m; by September 2013 the Fund held more than $2 billion in net assets. Some of those funds are disbursed to local law-enforcement agencies. As Sarah Stillman noted in her outstanding article on forfeiture abuses, many police departments depend on forfeiture funds to fill budget gaps, which further increases the incentive to snatch (for some, this is a feature, not a bug). Agencies can spend funds with relatively little oversight on activities only tenuously related to law-enforcement: in Atlanta's Fulton County, for instance, the district attorney's office is alleged to have spent forfeiture funds on a Christmas party, flowers, a security system for the district attorney's home and assorted yummies including "mini crab cakes in a champagne sauce" (Paul Howard, the district attorney, insists such expenditures have reduced turnover and improved morale).

The IJ's common-sense recommendation for reforms to American forfeiture laws include increasing oversight and reporting requirements on police departments, curbing the financial incentive by directing seized assets into a neutral fund (such as education or drug treatment) or a municipality's general fund and placing the burden of proof on the government rather than property owners. Easier said than done: efforts to reform civil-asset forfeiture have been slow and piecemeal. It turns out police departments rather like being able to supplement their budgets by taking people's stuff. Late last year lawmakers in Utah rolled back some reforms to their asset-forfeiture laws. A proposed reform bill in Georgia won the opposition of the state's sheriffs and in March died in the legislature for the second straight year. Maryland's state police oppose a bill that would require them to report what they seize, why and the results of any criminal charges filed. Prosecutors in Minnesota oppose a bill that would return property to its owners if they are not convicted of a crime (this and two previous examples come from a recent post by the invaluable Radley Balko). As for the Kaleys, on February 25th the United States Supreme Court ruled against them, holding that the government can in fact seize your assets before trial, even if doing so impedes your Sixth Amendment right to the counsel of your choice. John Roberts, the chief justice, dissented from that ruling, calling it "fundamentally at odds with our constitutional tradition and basic notions of fair play."