

## U.S. asset forfeitures skyrocket

Innocent citizens among those targeted by "seizure crazy" federal agencies

By: Stewart Powell – May 26, 2013

---

A nationwide network of agents and attorneys is working around the clock to seize cash, stocks, real estate, vehicles and other valuables from people and businesses.

In 2012, their average daily take was nearly \$13 million — for a total of more than \$4.7 billion.

The vast money-harvesting machine they work for? The federal government.

Federal asset forfeiture is both an effective crime-fighting tool and a civil-liberties nightmare, a Hearst Newspapers investigation has found. It has retrieved millions of dollars stolen from victims of complex financial crimes. But it has also victimized innocent citizens who have lost their property without criminal charges or even a courtroom hearing.

Fifteen federal agencies have the power to seize assets. Over the past dozen years, those agencies have taken more than \$20 billion in cash, securities and other property from scruffy drug dealers, pinstriped Wall Street tycoons — and ordinary Americans who have not been accused of a crime, much less convicted.

"The government is going seizure crazy," says attorney Philip Hilder, who formerly led the busy Houston field office of the Justice Department's organized crime strike force. "Law enforcement budgets are shrinking ... The government is counting on budgets being supplemented by these seizures."

The volume and growth of the agencies' takings is staggering. In 2001, seizures totaled \$640 million. In the next decade, the total increased by 641 percent.

Once used mainly against mobsters and drug dealers, forfeiture is now employed in many contexts. About a dozen recent mega-cases — each taking \$100 million or more — involved assets forfeited by cybercrime rings, offshore gambling scams, and banking and corporate miscreants.

The expansion of forfeiture has brought criticism from civil-rights advocates on the left and libertarian, anti-big-government activists on the right. But there is little impetus to change the system because of the enormous cash flow it generates for seizing agencies.

Trumpeted by the Justice and Treasury departments as a crucial tool to "combat major criminal activity by stripping criminals of their ill-gotten gains," asset forfeiture is conducted largely beyond public scrutiny. Though basic annual reports are provided to Congress, forfeiture budgets are not overseen by lawmakers.

"There are three things you want to do if you are pursuing people who are the bad guys: Arrest the individuals, take away the contraband they might have, and cripple their organization by taking away the profitability of their criminal activity," said Joe D. Whitley, a former U.S. Attorney in Georgia who was both acting associate attorney general under President George H.W. Bush and the first general counsel for the Department of Homeland Security, under George W. Bush.

At the same time, Whitley said, "There are going to be cases where there is arguably overreaching ... If you abuse this important tool and resource, there is always the potential for Congress to modify the law. There's also the potential for public concern about how asset forfeiture is used."

Federal agents often pursue forfeiture through sealed documents — or avoid the court system entirely by seizing assets without charging the owners with any crime, a procedure called "administrative forfeiture." (See accompanying story). The result: Thousands of cases each year where the feds take cash, guns or other items from U.S. citizens without fact-finding by a jury or oversight by a judge.

When seizure cases do reach the courts, they have often been criticized by judges as examples of government intrusion and overreaching.

The motel fiasco

Russ and Pat Caswell have owned their mom-and-pop motel in Tewksbury, Mass., for three decades. They live next door, and the bare-bones motel (rooms are \$56 a night) is both their livelihood and their life savings. The Caswells own it outright, with no mortgage.

That made it all the more attractive to the federal government.

The couple was shocked when the feds filed papers to seize the motel in 2009, based on an assertion that frequent drug activity occurred there.

Veteran Drug Enforcement Administration agent Vincent Kelly testified that his job as the asset-forfeiture specialist in DEA's Boston office was to locate properties allegedly being used for criminal purposes that carried little or no debt, making them lucrative forfeiture targets. So he targeted the Caswells' motel.

The Caswells fought back, with the help of the non-profit libertarian law firm, Institute for Justice. After years of legal infighting, U.S. Magistrate Judge Judith Gail Dein heard testimony that only 15 low-level drug cases had been recorded at the motel over a seven-year period, during which the Caswells logged 196,000 room rentals.

The motel, valued between \$1.5 and \$1.8 million, would have been a bonanza for the Tewksbury Police Department, which stood to gain 80 percent of the proceeds under its arrangement with the DEA.

In denying the forfeiture earlier this year, Dein rebuked federal prosecutors. "Having failed to notify Mr. Caswell that he had a significant problem, and having failed to take any steps to advise him on what to do, the government's resolution of the crime problem should not be to simply take his property," she concluded.

Scott Bullock, senior attorney with the Institute for Justice, welcomed the ruling, saying, "No one in the United States should lose his or her property without being convicted of a crime, let alone never even being charged with a crime."

#### Self-sustaining money machine

Forfeitures provide agencies a self-sustaining source of money for a variety of law-enforcement expenses, including running the forfeiture programs themselves, without relying on Congress to appropriate taxpayers' money.

"The Government Accountability Office and now this study by Hearst have shown that the asset-forfeiture program is a big business for the federal government," says Sen. Charles Grassley, R-Iowa, ranking Republican on the Senate Judiciary Committee, which has jurisdiction over the Justice Department.

"Given these funds are not subject to the same restrictions as funds appropriated by Congress, they are in need of serious oversight," Grassley told Hearst Newspapers. "Asset forfeiture can be a valuable tool, but it can also be abused. It seems like there are places where we can take a hard look to improve the program instead of simply providing a slush fund for the federal government."

The Justice Department officially has no full-time staffers assigned to asset-forfeiture duties. But the department spends part of the proceeds to "reimburse" various agencies for 320 government positions, including 20 within the Justice Department's management staff, and some 5,600 state and local law enforcement officers working on Justice Department task forces.

Also, Justice contracts with private firms to do forfeiture work, which is becoming a private-sector cottage industry.

Virginia-based Forfeiture Support Associates, for example, provides Justice Department seizing agencies 1,500 full- and part-time employees at 450 U.S. government locations, and handles all aspects of forfeiture, from identifying targets to closing cases. It recently advertised for 21 full-time staffers nationwide, including eight for administrative jobs in Washington.

Some seized assets, like vehicles and electronic equipment, are directly transferred to law-enforcement use. Others are sold, with the proceeds often shared between federal agencies and local or regional law-enforcement entities that help to carry out the seizures – raising inherent questions about conflict of interest and abuse of power.

A portion of the take has been handed off to victims of the crimes, including families swindled out of savings by financial wheeler dealers such as Allen Stanford, serving a 110-year prison sentence for running a Ponzi scheme, and Bernie Madoff, serving a 150-year sentence for bilking investors out of at least \$18 billion.

Justice Department records show it has distributed an average of \$300 million a year to victims over the last decade – and \$1.5 billion to more than 400,000 victims over the past 16 months, much of it seized from Wall Street scammers. Among the latest beneficiaries: 8,727 victims of the Adelphia Communications fraud who divvied up \$729

million, and 128,200 victims of the Enron securities fraud, who received shares of \$65 million.

Seizures represent "an indispensable tool in federal white-collar crime prosecutions," says Alice Dery, deputy chief of Justice Department asset forfeiture operations. "Without the recovery of funds made possible through the use of asset forfeiture, victims would be left to their own devices in recovering their losses."

But advocates argue more money should go to victims, and less to the agencies that seize assets.

Attorney General Eric Holder, whose Cabinet department has booked the largest-ever increase in seized funds, said federal forfeiture "has been transformed from a collection of centuries-old laws designed to fight pirates, enforce customs laws and fight illegal contraband into an array of modern law-enforcement tools designed to combat 21st century criminals both at home and abroad."

"Nobody has any problem with the feds taking assets from drug dealers and criminals," said Lawrence Brown, a former Justice Department lawyer whose Fort Worth-based practice now helps individuals and corporations combat federal seizures. "But the authority to seize assets coupled with ongoing budget cuts ... increases the potential for abuse."

Houston airport shakedown

The federal district court case was titled "U.S. vs. \$35,131 in U.S. Currency."

Ultimately, the owners of the money won and the U.S. government lost in a case that infuriated a veteran federal judge.

It began when federal customs officers at George Bush Intercontinental Airport in Houston confiscated the funds from Kyle Jones and his wife, Berekti Jones. With their 2-year-old daughter, Soliyana, the Joneses were on their way to Ethiopia in 2011 to visit relatives. They knew they would need cash in Ethiopia, where their bank cards would be useless.

Kyle Jones inaccurately estimated the amount of cash the family was carrying, telling one of the agents he did not know how much they had.

When pressed to guess, he said he thought it was around \$20,000. The agents put that number down on a form and asked Jones to sign it, which he did. The agents then asked the Joneses to put all their currency, including traveler's checks, on the table. They did, and it added up to \$35,131. The agents did not arrest the Joneses or charge them with a crime, but they seized every dollar of the money, and the U.S. Attorney's Office decided to try to keep it.

The federal officers "manipulated the Joneses' confusion into a deliberate failure to report," concluded U.S. District Judge Lynn Hughes, a jurist appointed to the federal bench in 1985 by President Reagan and widely known for rulings with a libertarian bent.

The officers "wanted a statistic for their supervisor and they cudged the Joneses to get one," Hughes wrote, adding, "a gang of armed security officers bullied this family ... They played agency games, abused the people they are to serve and violated their oaths to support the Constitution."

Hughes ordered the government to pay the Joneses an additional \$37,845.83 to cover attorney fees and costs.

#### Gigantic 'slush fund' growth

Asset forfeiture started to ramp up in earnest following congressional passage of the Comprehensive Crime Control Act of 1984 during the Reagan administration's escalating war on drugs. The law created the Justice Department's Asset Forfeiture Fund and the Treasury Forfeiture Fund, into which the other seizing agencies contributed. And it laid the foundations for so-called "equitable sharing" by authorizing federal authorities to transfer drug-related forfeited property, including money, to other federal, state or local agencies. It also allowed federal agencies to retain forfeited property for official use.

Ever since, federal agencies have worked to keep their asset-forfeiture operations beyond congressional interference. Congress' Governmental Accountability Office recently criticized the failure of the Justice Department and the Treasury Department to consolidate storage facilities for seized assets as a cost-cutting measure.

The congressional auditors made the recommendations after learning that seized cars, trucks, boats and airplanes are currently stored at 212 contracted land government-owned sites across the country. An estimated 40 percent of seized vehicles are stored at duplicate sites within 20 miles of each other. Consolidation could reduce the overall storage costs of \$68 million per year, the GAO found.

The Justice Department released limited data about the last three years of asset forfeiture cases in response to a public records request by Hearst Newspapers. The department declined to link the data to court cases with the docket numbers needed to track individual cases. The Treasury Department refused to release any data for the five law enforcement agencies that report to the Treasury Forfeiture Fund. Followup requests to the individual agencies under Treasury resulted in only one — the Secret Service — releasing data.

#### Getting around state laws

The federal agencies often actively undermine tough state laws designed to prevent agencies policing for profits.

Eight states bar the use of state forfeiture proceeds by law-enforcement agencies. In the 42 other states, at least 50 percent of forfeiture proceeds can go to the seizing agencies — including 26 states that allow 100 percent of the proceeds to go to law enforcement. Connecticut and New York are at 60 percent. California allows 65 percent and Texas 90 percent.

But even the states with tough laws can do nothing when the federal government decides to award proceeds from federal cases — often as much as 80 percent of the take — directly to local agencies. Therefore, agencies in those states frequently seek out the feds' assistance in forfeiture cases.

## The one-two punch

Steven Skinner and Jonathan Breasher, an African-American father and son, were headed to Las Vegas when they were stopped by a New Mexico state trooper for driving five miles an hour over the limit. The trooper issued a written warning for speeding, got permission to search their rental car and found \$16,925 in cash in their luggage. He notified the Drug Enforcement Administration and other federal agencies, then released the pair.

When the father and son got to Albuquerque some 230 miles later, local police pulled them over, saying they had made an improper lane change. The police officer summoned an officer from U.S. Customs and Border Protection, who seized the cash and the car. Neither Skinner nor Breasher were charged with a crime.

Turning the case over to the federal officers bypassed New Mexico's stringent restrictions on policing for profit — which require seized assets to be deposited in the state's general fund rather than in the coffers of the seizing agency.

The New Mexico chapter of the American Civil Liberties Union intervened to win back the seized cash for the men after a two-year battle.

## No change on the horizon

Despite controversy over aspects of the federal forfeiture machinery, there are no moves afoot within the federal government to revamp the process.

Cabinet departments and congressional oversight committees are clinging to the status quo, which provides independent revenue streams in tough budget times.

For example, Justice and Treasury department forfeiture officials have said only that they are willing to "study" the GAO recommendations to streamline operations, without committing to consolidation that the GAO first sought in 1990.

"It doesn't seem that anyone wants to change the system in any way, shape or form," laments Jimmy Ardoin, a Houston attorney with clients hit by the meltdowns of Enron in 2001 and Allen Stanford's financial empire in 2009. "The federal government and prosecutors like it and states like it."

"There's recognition that we have a real problem," said Bullock. "But ... law-enforcement agencies are going to fight any changes tooth and nail."

A coalition of conservative and liberal interest groups, including the U.S. Chamber of Commerce, Heritage Foundation, the Cato Institute, the National Association of Criminal Defense Lawyers and the ACLU has discussed potential reforms. But the coalition hasn't met for months.

Critics see the forfeiture process as out of control, growing more with every new budget crunch government experiences.

"The forfeiture system is running itself," says Brenda Grantland, a nationally prominent forfeiture defense attorney based in Mill Valley, Calif. "I don't think it matters who is president. Prosecutors have so much autonomy they're free to seize whatever they want."