Presumed Guilty

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By Andrew Schneider and Mary Pat Flaherty, The Pittsburgh Press

The Law's Victims In The War On Drugs

It's a strange twist of justice in the land of freedom. A law designed to give cops the right to confiscate and keep the luxurious possessions of major drug dealers mostly ensnares the modest homes, cars and cash of ordinary, law-abiding people. They step off a plane or answer their front door and suddenly lose everything they've worked for. They are not arrested or tried for any crime. But there is punishment, and it's severe.

This six-day series chronicles a frightening turn in the war on drugs. Ten months of research across the country reveals that seizure and forfeiture, the legal weapons meant to eradicate the enemy, have done enormous collateral damage to the innocent. The reporters reviewed 25,000 seizures made by the Drug Enforcement Administration. They interviewed 1,600 prosecutors, defense lawyers, cops, federal agents and victims. They examined court documents from 510 cases. What they found defines a new standard of justice in America: You are presumed guilty.

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Willie Jones, a second-generation nursery man in his family's Nashville business, bundles up money from last year's profits and heads off to buy flowers and shrubs in Houston. He makes this trip twice a year using cash, which the small growers prefer.

But this time, as he waits at the American Airlines gate in Nashville Metro Airport, he's flanked by two police officers who escort him into a small office, search him and seize the $9,600 he's carrying. A ticket agent had alerted the officers that a large black man had paid for his ticket in bills, unusual these days. Because of the cash, and the fact that he fit a "profile" of what drug dealers supposedly look like, they believed he was buying or selling drugs.

He's free to go, he's told. But they keep his money—his livelihood—and give him a receipt in its place.

No evidence of wrongdoing was ever produced. No charges were ever filed. As far as anyone knows, Willie Jones neither uses drugs nor buys or sells them. He is a gardening contractor who bought an airplane ticket. Who lost his hard-earned money to the cops. And can't get it back.

That same day, an ocean away in Hawaii, federal drug agents arrive at the Maui home of retirees Joseph and Frances Lopes and claim it for the U.S. government.

For 49 years, Lopes worked on a sugar plantation, living in its camp housing before buying a modest home for himself, his wife, and their adult, mentally disturbed son, Thomas.

For a while, Thomas grew marijuana in the back yard and threatened to kill himself every time his parents tried to cut it down. In 1987, the police caught Thomas, then 28. He pleaded guilty, got probation for his first offense and was ordered to see a psychologist once a week. He has, and never again has grown dope or been arrested. The family thought the episode was behind them.

But earlier this year, a detective scouring old arrest records for forfeiture opportunities realized the Lopes house could be taken away because they had admitted they knew about the marijuana.

The police department stands to make a bundle. If the house is sold, the police get the proceeds.

Jones and the Lopes family are among the thousands of Americans each year victimized by the federal seizure law—a law meant to curb drugs by causing financial hardship to dealers.

A 10-month study by *The Pittsburgh Press* shows the law has run amok. In their zeal to curb drugs and sometimes to fill their coffers with the proceeds of what they take, local cops, federal agents and the courts have curbed innocent Americans' civil rights. From Maine to Hawaii, people who are never charged with a crime have had cars, boats, money and homes taken away.

In fact, 80 percent of the people who lost property to the federal government were never charged. And most of the seized items weren't the luxurious playthings of drug barons, but modest homes and simple cars and hard-earned savings of ordinary people.

But those goods generated $2 billion for the police departments that took them.

The owners' only crime in many of these cases: They "looked" like drug dealers. They were black, Hispanic or flashily dressed.

Others, like the Lopeses, have been connected to a crime by circumstances beyond their control.

Says Eric Sterling, who helped write the law a decade ago as a lawyer on a congressional committee:

"The innocent-until-proven guilty concept is gone out the window."

The Law: Guilt Doesn't Matter

Rooted in English common law, forfeiture has surfaced just twice in the United States since Colonial times.

In 1862, Congress permitted the president to seize estates of Confederate soldiers. Then, in 1970, it resurrected forfeiture for the civil war on drugs with the passage of racketeering laws that targeted the assets of convicted criminals.

In 1984, however, the nature of the law was radically changed to allow the government to take possessions without first charging, let alone convicting, the owner. That was done in an effort to make it easier to strike at the heart of the major drug dealers. Cops knew that drug dealers consider prison time an inevitable cost of doing business. It rarely deters them. Profits and playthings, though, are their passions. Losing them hurts.

And there was a bonus in the law. The proceeds would flow back to law enforcement to finance more investigations. It was to be the ultimate poetic justice, with criminals financing their own undoing.

But eliminating the necessity of charging or proving a crime has moved most of the action to civil court, where the government accuses the item—not the owner—of being tainted by crime.

This oddity has court dockets looking like purchase orders: United States of America vs. 9.6 acres of land and lake; U.S. vs. 667 bottles of wine. But it's more than just a labeling change. Because money and property are at stake instead of life and liberty, the constitutional safeguards in criminal proceedings do not apply.

The result is that "jury trials can be refused; illegal searches condoned; rules of evidence ignored," says Louisville, Ky., defense lawyer Donald Heavrin. The "frenzied quest for cash," he says, is "destroying the judicial system."

Every crime package passed since 1984 has expanded the uses of forfeiture, and now there are more than 100 Statutes in place at the state and federal level. Not just for drug cases anymore, forfeiture covers the likes of money laundering, fraud, gambling, importing tainted meats and carrying intoxicants onto Indian land.

The White House, Justice Department and Drug Enforcement Administration say they've made the most of the expanded law in getting the big-time criminals, and they boast of seizing mansions, planes and millions in cash. But *The Pittsburgh Press* in just 10 months was able to document 510 current cases that involved innocent people—or those possessing a very small amount of drugs—who lost their possessions.

And DEA's own database contradicts the official line. It showed that big-ticket items, valued at more than $50,000, were only 17 percent of the total 25,297 items seized by DEA during the 18 months that ended last December.

"If you want to use that 'war on drugs' analogy, then forfeiture is like giving the troops permission to loot," says Thomas Lorenzi, president-elect of the Louisiana Association of Criminal Defense Lawyers.

The near-obsession with forfeiture continues without any proof that it curbs drug crime—its original target.

"The reality is, it's very difficult to tell what the impact of drug seizure and forfeiture is," says Stanley Morris, deputy director of the federal drug czar's office.

Police Forces Keep The Take

The "loot" that's coming back to police forces all over the nation has redefined law-enforcement success. It now has a dollar sign in front of it.

For nearly 18 months, undercover Arizona state troopers worked as drug couriers driving nearly 13 tons of marijuana from the Mexican border to stash houses around Tucson. They hoped to catch the Mexican suppliers and distributors on the American side before the dope got on the streets.

But they overestimated their ability to control the distribution. Almost every ounce was sold the minute they dropped it at the houses.

Even though the troopers were responsible for tons of drugs getting loose in Tucson, the man who supervised the setup still believes it was worthwhile. It was "a success from a cost-benefit standpoint," says former assistant attorney general John Davis. His reasoning: It netted 20 arrests and at least $3 million for the state forfeiture fund.

"That kind of thinking is what frightens me," says Steve Sherick, a Tucson attorney. "The government's thirst for dollars is overcoming any long-range view of what it is supposed to be doing, which is fighting crime."

George Terwilliger III, associate deputy attorney general in charge of the U.S. Justice Department's program, emphasizes that forfeiture does fight crime, and "we're not at all apologetic about the fact that we do benefit (financially) from it."

In fact, Terwilliger wrote about how the forfeiture program financially benefits police departments in the 1991 Police Buyer's Guide of Police Chief Magazine.

Between 1986 and 1990, the U.S. Justice Department generated $1.5 billion from forfeiture and estimates that it will take in $500 million this year, five times the amount it collected in 1986.

District attorney's offices throughout Pennsylvania handled $4.5 million in forfeitures last year; Allegheny County, $218,000; and the city of Pittsburgh, $191,000—up from $9,000 four years ago.

Forfeiture pads the smallest towns' coffers. In Lenexa, Kan., a Kansas City suburb of 29,000, "we've got about $250,000 moving in court right now," says narcotics Detective Don Crohn.

Despite the huge amounts flowing to police departments, there are few public accounting procedures. Police who get a cut of the federal forfeiture funds must sign a form saying merely they will use it for "law enforcement purposes."

To Philadelphia police that meant new air conditioning. In Warren County, N.J., it meant use of a forfeited yellow Corvette for the chief assistant prosecutor.

Looking Like A Criminal

Ethel Hylton of New York City has yet to regain her financial independence after losing $39,110 in a search nearly three years ago in Hobby Airport in Houston.

Shortly after she arrived from New York, a Houston officer and Drug Enforcement Administration agent stopped the 46-year-old woman in the baggage area and told her she was under arrest because a drug dog had scratched at her luggage. The dog wasn't with them, and when Miss Hylton asked to see it, the officers refused to bring it out.

The agents searched her bags, and ordered a strip search of Miss Hylton, but found no contraband.

In her purse, they found the cash Miss Hylton carried because she planned to buy a house to escape the New York winters which exacerbated her diabetes. It was the settlement from an insurance claim and her life's savings, gathered through more than 20 years of work as a hotel housekeeper and hospital night janitor.

The police seized all but $10 of the cash and sent Miss Hylton on her way, keeping the money because of its alleged drug connection. But they never charged her with a crime.

The Pittsburgh Press verified her jobs, reviewed her bank statements and substantiated her claim she had $18,000 from an insurance settlement. It also found no criminal record for her in New York City.

With the mix of outrage and resignation voiced by other victims of searches, she says: "The money they took was mine. I'm allowed to have it, I earned it."

Miss Hylton became a U.S. citizen six years ago. She asks, "Why did they stop me? Is it because I'm black or because I'm Jamaican?"

Probably, both—although Houston police haven't said.

Drug teams interviewed in dozens of airports, train stations and bus terminals and along major highways repeatedly said they didn't stop travelers based on race. But a Pittsburgh Press examination of 121 travelers' cases in which police found no dope, made no arrest, but seized money anyway, showed that 77 percent of the people stopped were black, Hispanic or Asian.

In April 1989, deputies from Jefferson Davis Parish, Louisiana, seized $23,000 from Johnny Sotello, a Mexican-American whose truck overheated on a highway.

They offered help, he accepted. They asked to search his truck, he agreed. They asked if he was carrying cash. He said he was because he was scouting heavy equipment auctions.

They then pulled a door panel from the truck, said the space behind it could have hidden drugs, and seized the money and the truck, court records show. Police did not arrest Sotello but told him he would have to go to court to recover his property.

Sotello sent auctioneers' receipts to police which showed that he was a licensed buyer. The sheriff offered to settle the case, and with his legal bills mounting after two years, Sotello accepted. In a deal cut last March, he got his truck but only half his money. The cops kept $11,500.

"I was more afraid of the banks than anything—that's one reason I carry cash," says Sotello. "But a lot of places won't take checks, only cash or cashier's cheeks for the exact amount. I never heard of anybody saying you couldn't carry cash."

Affidavits show the same deputy who stopped Sotello routinely stopped the cars of black and Hispanic drivers, exacting "donations" from some.

After another of the deputy's stops, two black men from Atlanta handed over $1,000 for a "drug fund" after being detained for hours, according to a handwritten receipt reviewed by *The Pittsburgh Press*.

The driver got a ticket for "following to (sic) close." Back home, they got a lawyer.

Their attorney, in a letter to the sheriff's department, said deputies had made the men "fear for their safety, and in direct exploitation of that fear a purported donation of $1,000 was extracted . . . "

If they "were kind enough to give the money to the sheriff's office," the letter said, "then you can be kind enough to give it back." If they gave the money "under other circumstances, then give the money back so we can avoid litigation."

Six days later, the sheriff's department mailed the men a $1,000 cheek.

Last year, the 72 deputies of Jefferson Davis Parish led the state in forfeitures, gathering $1 million more than their colleagues in New Orleans, a city 17 times larger than the parish.

Like most states, Louisiana returns the money to law enforcement agencies, but it has one of the more unusual distributions: 60 percent goes to the police bringing a case' 20 percent to the district attorney's office prosecuting it and 20 percent to the court fund of the judge signing the forfeiture order.

"The highway stops aren't much different from a smash-and-grab ring," says Lorenzi, of the Louisiana Defense Lawyers Association.

Paying For Your Innocence

The Justice Department's Terwilliger says that in some cases "dumb judgment" may occasionally create problems, but he believes there is an adequate solution. "That's why we have courts."

But the notion that courts are a safeguard for citizens wrongly accused "is way off," says Thomas Kemer, a forfeiture lawyer in Boston. "Compared to forfeiture, David and Goliath was a fair fight."

Starting from the moment the government serves notice that it intends to take an item, until any court challenge is completed, "the government gets all the breaks," says Kemer.

The government need only show probable cause for a seizure, a standard no greater than what is needed to get a search warrant. The lower standard means that the government can take a home without any more evidence than it normally needs to take a look inside.

Clients who challenge the government, says attorney Edward Hinson of Charlotte, N.C., "have the choice of fighting the full resources of the U.S. Treasury or caving in." Barry Kolin caved in.

Kolin watched Portland, Ore., police padlock the doors of Harvey's, his bar and restaurant, for bookmaking on March 2.

Earlier that day, eight police officers and Amy Holmes Hehn, the Multnomah County deputy district attorney, had swept into the bar, shooed out waitresses and customers and arrested Mike Kolin, Barry's brother and bartender, on suspicion of bookmaking.

Nothing in the police documents mentioned Barry Kolin, and so the 40-year-old was stunned when authorities took his business, saying they believe he knew about the betting. He denied it.

Hehn concedes she did not have the evidence to press a criminal case against Barry Kolin, "so we seized the business civilly."

During a recess in a hearing on the seizure weeks later, "the deputy DA says if I paid them $30,000 I could open up again," Kolin recalls. When the deal dropped to $10,000, Kolin took it.

Kolin's lawyer, Jenny Cooke, calls the seizure "extortion." She says: "There is no difference between what the police did to Barry Kolin or what Al Capone did in Chicago when he walked in and said, 'This is a nice little bar and it's mine.' The only difference is today they call this civil forfeiture."

Minor Crimes, Major Penalties

Forfeiture's tremendous clout helps make it "one of the most effective tools that we have," says Terwilliger.

The clout, though, puts property owners at risk of losing more under forfeiture than they would in a criminal case in the same circumstances.

Criminal charges in federal and many state courts have maximum sentences. But there's no dollar cap on forfeiture, leaving citizens open to punishment that far exceeds the crime.

Robert Brewer of Irwin, Idaho, is dying of prostate cancer, and uses marijuana to ease the pain and nausea that comes with radiation treatments.

Last Oct. 10, a dozen deputies and Idaho tax agents walked into the Brewers' living room with guns drawn and said they had a warrant to search.

The Brewers, Robert, 61, and Bonita, 44, both retired from the postal service, moved from Kansas City, Mo., to the tranquil, wooded valley of Irwin in 1989. Six months later, he was diagnosed.

According to police reports, an informant told authorities Brewer ran a major marijuana operation.

The drug SWAT team found eight plants in the basement under a grow light and a half-pound of marijuana. The Brewers were charged with two felony narcotics counts and two charges for failing to buy state tax stamps for the dope.

"I didn't like the idea of the marijuana, but it was the only thing that controlled his pain," Mrs. Brewer says.

The government seized the couple's five-year-old Ford van that allowed him to lie down during his twice-a-month taps for cancer treatment at a Salt Lake City hospital, 270 miles away. Now they must go by car.

"That's a long painful ride for him. His testicles would sometimes swell up to the size of cantaloupes, and he had to lie down because of the pain. He needed that van, and the government took it," Mrs. Brewer says.

"It looks like the government can punish people any way it sees fit."

The Brewers know nothing about the informant who turned them in, but informants play a big role in forfeiture. Many of them are paid, targeting property in return for a cut of anything that is taken.

The Justice Department's asset forfeiture fund paid $24 million to informants in 1990 and has $22 million allocated this year.

Private citizens who snitch for a fee are everywhere. Some airline counter clerks receive cash awards for alerting drug agents to "suspicious" travelers. The practice netted Melissa Funner, a Continental Airlines clerk in Denver, at least $5,800 between 1989 and 1990, photocopies of the checks show.

Increased surveillance, recruitment of citizen-cops, and expansion of forfeiture sweeps are all part of the take-now, litigate-later syndrome that builds prosecutors' careers, says a former federal prosecutor.

"Federal law enforcement people are the most ambitious I've ever met, and to get ahead they need visible results. Visible results are convictions and, now, forfeitures," says Don Lewis of Meadville, Crawford County.

Lewis spent 17 years as a prosecutor, serving as an assistant U.S. attorney in Tampa as recently as 1988. He became a defense lawyer when "I found myself tempted to do things I wouldn't have thought about doing years ago."

Terwilliger insists U.S. attorneys would never be evaluated on "something as unprofessional as dollars."

Which is not to say Justice doesn't watch the bottom line.

Gary Copeland, director of the department's Executive Office for Asset Forfeiture, said they tried to "squeeze the pipeline" in 1990 when the amount forfeited lagged behind Justice's budget projections.

He said this was done by speeding up the process, not by doing "a whole lot of seizures."

Ending The Abuse

While defense lawyers talk of reforming the law, agencies that initiate forfeitures scarcely talk at all.

DEA headquarters makes a spectacle of busts like the seizure of fraternity houses at the University of Virginia in March. But it refuses to supply detailed information on the small cases that account for most of its activity.

Local prosecutors are just as tight-lipped.

Thomas Corbett, U.S. Attorney for Western Pennsylvania, seals court documents on forfeitures because "there just are some things I don't want to publicize. The person whose assets we seize will eventually know, and who else has to?"

Although some investigations need to be protected, there is an "inappropriate secrecy" spreading through the country, says Jeffrey Weiner, president-elect of the 25,000-member National Association of Criminal Defense Lawyers.

"The Justice Department boasts over the few big fish they catch. But they throw a cloak of secrecy over the information on how many innocent people are getting swept up in the same seizure net, so no one can see the enormity of this atrocity."

Terwilliger says the net catches the right people: "bad guys" as he calls them.

But a 1990 Justice report on drug task forces in 15 states found they stayed away from the in-depth financial investigations needed to cripple major traffickers. Instead, "they're going for the easy stuff," says James "Chip" Coldren Jr., executive director of the Bureau of Justice Assistance, a research arm of the federal Justice Department.

Lawyers who say the law needs to be changed start with the basics: The government shouldn't be allowed to take property until after it proves the owner guilty of a crime.

But they go on to list other improvements, including having police abide by their state laws, which often don't give police as much latitude as the federal law. Now they can use federal courts to circumvent the state.

Tracy Thomas is caught in that very bind.

A jurisprudence version of the shell game hides roughly $13,000 taken from Thomas, a resident of Chester, near Philadelphia.

Thomas was visiting in his godson's home on Memorial Day, 1990, when local police entered looking for drugs allegedly sold by the godson. They found none and didn't file a criminal charge in the incident. But They seized $13,000 from Thomas, who works as a $70,000-a-year engineer, says his attorney, Clinton Johnson.

The cash was left over from a sheriff's sale he'd attended a few days before, court records show. The sale required cash much like the government's own auctions.

During a hearing over the seized money, Thomas presented a withdrawal slip showing he'd removed money from his credit union shortly before the trip and a receipt showing how much he had paid for the property he'd bought at the sale. The balance was $13,000.

On June 22, 1990, a state judge ordered Chester police to return Thomas' cash. They haven't.

Just before the court order was issued, the police turned over the cash to the DEA for processing as a federal case, forcing Thomas to fight another level of government. Thomas now is suing the Chester police, the arresting officer and the DEA.

"When DEA took over that money, what they in effect told a local police department is that it's OK to break the law," says Clinton Johnson, attorney for Thomas.

Police manipulate the courts not only to make it harder on owners to recover property, but to make it easier for police to get a hefty share of any forfeited goods. In federal court, local police are guaranteed up to 80 percent of the take, a percentage that may be more than they would receive under state law. Pennsylvania's leading police agency the state police and the state's lead prosecutor, the Attorney General, bickered for two years over state police taking cases to federal court, an arrangement that cut the Attorney General out of the sharing.

The two state agencies now have a written agreement on how to divvy the take.

The same debate is heard around the nation.

The hallways outside Cleveland courtrooms ring with arguments over who will get what, says Jay Milano, a Cleveland criminal defense attorney. "It's causing a feeding frenzy."

Government Seized Home Of Man Who Was Going Blind

James Burton says he loves America and wants to come home.

But he can't. If he does, he'll wind up in prison, go blind, or both.

Burton and his wife, Linda, live in an austere, concrete-slab apartment furnished with lawn chairs near Rotterdam in the Netherlands. It is a home much different from the large house and 90-acre farm they owned near Bowling Green, Ky., before the government seized both.

For Burton, who has glaucoma, home-grown marijuana provided his relief and his undoing.

Since 1972, federal health secretaries have reported to Congress that marijuana is beneficial in the treatment of glaucoma and several other medical conditions.

Yet while some officials within the Drug Enforcement Administration have acknowledged the medical value of marijuana, drug agents continue to seize property where chronically ill people grow it.

"Because of the emotional rhetoric connected with the marijuana issue, a doctor who can prescribe cocaine, morphine, amphetamines and barbiturates cannot prescribe marijuana, which is the safest therapeutically active drug known to man," Francis Young, administrative law judge for DEA, was quoted as saying in Burton's trial.

In an interview this past July 4, Burton said, "We don't really have any choice right now but to stay" in the Netherlands, where they moved after he completed a one-year jail term for three counts of marijuana possession. "I can buy or grow marijuana here legally, and if I don't have the marijuana, I'll go blind."

Burton, a 43-year-old Vietnam War veteran, has a rare form of hereditary, low-tension glaucoma. All of the men on his mother's side of the family have the disease, and several already are blind. It does not respond to traditional medications.

At the time of Burton's arrest, North Carolina ophthalmologist Dr. John Merritt was the only physician authorized by the government to test marijuana in the treatment of glaucoma patients. Merritt testified at Burton's trial that marijuana was "the only medication" that could keep him from going blind.

On July 7, 1987, Kentucky State Police raided Burton's farm and found 138 marijuana plants and two pounds of raw marijuana. "It was the kickoff of Kentucky Drug Awareness Month, and I was their special kickoff feature. It was all over television," Burton said.

Burton admitted growing enough marijuana to produce about a pound a month for the 10 to 15 cigarettes he uses each day to reduce pressure in his eye.

A jury decided he grew the dope for his own use—not to sell, as the government contended—and in March 1988 found him guilty of three counts of simple possession.

The presentence report on Burton shows he had no previous arrests. The judge sentenced him to a year in a federal maximum security prison, with no parole.

On top of that, the government took his farm: 90 rolling, wooded acres in Warren County purchased for $34,701 in 1980 and assessed at twice that amount when it was taken.

On March 27,1989, U.S. District Judge Ronald Meredith, without hearing any witnesses and without allowing Burton to testify in his own behalf, ordered the farm forfeited and gave the Burtons 10 days to get off the land. When owners of property live at a site while marijuana is growing in their presence, "there is no defense to forfeiture," Meredith ruled.

"I never got to say two words in defense of keeping my home, something we worked and saved for for 18 years," said Burton, who was a master electrical technician. Linda, 41, worked for an insurance company. "On a serious matter like taking a person's home, you'd think the government would give you a chance to defend it."

Joe Whittle, the U.S. Attorney who prosecuted the Burton case, says he didn't know about the glaucoma until Burton's lawyer raised the issue in court. His office has "taken a lot of heat on this case and what happened to that poor guy," Whittle says. But "we did nothing improper.

"Congress passes these laws, and we have to follow them. If the American people wanted to exempt certain marijuana activity—these mom and pop or personal use or medical cases—they should speak through their duly elected officials and change the laws. Until those laws are changed, we must enforce them to the full extent of our resources."

The action was "an unequaled and outrageous example of government abuse," says Louisville lawyer Donald Heavrin who failed to get the U.S. Supreme Court to hear the case.

"To send a man trying to save his vision to prison, and steal the home and land that he and his wife had worked decades for, should have the authors of the Constitution spinning in their graves."

Drug Agents More Likely To Stop Minorities
Part Two: *The Way You Look*

Look around carefully the next time you're at any of the nation's big airports, bus stations, train terminals or on a major highway, because there may be a government agent watching you. If You're black, Hispanic, Asian or look like a "hippie" you can almost count on it.

The men and women doing the spying are drug agents, the front line troops in the government's war on narcotics. They count their victories in the number of people they stop because they suspect they're carrying drugs or drug money.

But each year in the hunt for suspects, thousands of guiltless citizens are stopped, most often because of their skin color.

A 10-month Pittsburgh Press investigation of drug seizure and forfeiture included an examination of court records on 121 "drug courier" stops where money was seized and no drugs were discovered. *The Pittsburgh Press* found that black, Hispanic and Asian people accounted for 77 percent of the cases.

In making stops, drug agents use a profile, a set of speculative behavioral traits that gauge the suspect's appearance, demeanor and willingness to look a police officer in the eye.

For years, the drug courier profile counted race as a principal indicator of the likelihood of a person's carrying drugs. But today the word "profile" isn't officially mentioned by police. Seeing the word scrawled in a police report or hearing it from a witness chair instantly unnerves prosecutors and makes defense lawyers giddy. Both sides know the racial implications can raise constitutional challenges.

Even so, far away from the courtrooms, the practice persists.

Stereotypes Trigger Stops

In Memphis, Tenn., in 1989, drug officers have testified, about 75 percent of the people they stopped in the airport were black. The latest figures available from the Air Transport Association show that for that year only [??] percent of the flying public was black.

In Eagle County, Colo., the 60-mile-long strip of Interstate 70 that winds and dips past Vail and other ski areas is the setting of a class-action suit that charges race was the main element of the profile used in drug stops.

According to court documents in one of the cases that led to the suit, the sheriff and two deputies testified that "being black or Hispanic was and is a factor" in their drug courier profile.

Lawyer David Lane says that 500 people, primarily Hispanic and black motorists, were stopped and searched by Eagle County's High Country Drug Task Force during 1989 and 1990. Each time, Lane charged, the task force used an unconstitutional profile based on race, ethnicity and out-of-state license plates.

Byron Boudreaux was one of those stopped.

Boudreaux was driving from Oklahoma to a new job in Canada when Sgt. James Perry and three other task force officers pulled him over.

"Sgt. Perry told me that I was stopped because my car fit the description of someone trafficking drugs in the area," Boudreaux says. He let the officers search his car.

"Listen, I was a black man traveling alone up in the mountains of Eagle County and surrounded by four police officers. I was going to be as cooperative as I could," he recalls.

For almost an hour the officers unloaded and searched the suitcases, laundry baskets and boxes that were wedged into Boudreaux's car. Nothing was found.

"I was stopped because I was black, and that's not a great testament to our law enforcement system," says Boudreaux, who is now an assistant basketball coach at Queens College in Charlotte, N.C.

In a federal trial stemming from another stop Perry made on the same road a few months later, he testified that because of "astigmatism and color blindness" he was unable to distinguish among black, Hispanic and white people.

U.S. District Court Judge Jim Carrigan didn't buy it and called the sergeant's testimony "incredible."

"If this nation were to win its war on drugs at the cost of sacrificing its citizens' constitutional rights, it would be a Pyrrhic victory indeed," Carrigan wrote in a court opinion. "If the rule of law rather than the rule of man is to prevail, there cannot be one set of search and seizure rules applicable to some and a different set applicable to others."

Livelihood In Jeopardy

In Nashville, Tenn., Willie Jones has no doubt that police still use a profile based on race.

Jones, owner of a landscaping service, thought the ticket agent at the American Airlines counter in Nashville Metro Airport reacted strangely when he paid cash Feb. 27 for his round-trip ticket to Houston. "She said no one ever paid in cash anymore and she'd have to go in the back and check on what to do," Jones says.

What Jones didn't know is that in Nashville—as in other airports—many airport employees double as paid informers for the police.

The Drug Enforcement Administration usually pays them 10 percent of any money seized, says Capt. Judy Bawcum, head of the Nashville police division that runs the airport unit.

Jones got his ticket. Ten minutes later, as he waited for his plane, two drug team members stopped him.

"They flashed their badges and asked if I was carrying drugs or a large amount of money. I told them I didn't have anything to do with drugs, but I had money on me to go buy some plants for my business," Jones says.

They searched his overnight bag and found nothing. They patted him down and felt a bulge. Jones pulled out a black plastic wallet hidden under his shirt. It held $9,600.

"I explained that I was going to Houston to order some shrubbery for my nursery. I do it twice a year and pay cash because that's the way the growers want it," says the father of three girls. The drug agents took his money.

"They said I was going to buy drugs with it, that their dog sniffed it and said it had drugs on it," Jones says. He never saw the dog.

The officers didn't arrest Jones, but they kept the money. They gave him a DEA receipt for the cash. But under the heading of amount and description, Sgt. Claude Byrum wrote, "Unspecified amount of U.S. currency."

Jones says losing the money almost put him out of business.

"That was to buy my stock. I'm known for having a good selection of unusual plants. That's why I go South twice a year to buy them. Now I've got to do it piecemeal, run out after I'm paid for a job and buy plants for the next one," he says.

Jones has receipts for three years showing that each fall and spring he buys plants from nurseries in other states.

"I just don't understand the government. I don't smoke. I don't drink. I don't wear gold chains and jewelry, and I don't get into trouble with the police," he says. "I didn't know it was against the law for a 42-year-old black man to have money in his pocket."

Tennessee police records confirm that the only charge ever filed against Jones was for drag racing 15 years ago.

"DEA says I have to pay $900, 10 percent of the money they took from me, just to have the right to try to get it back," Jones says.

His lawyer, E. E. "Bo" Edwards filled out government forms documenting that his client couldn't afford the $900 bond.

"If I'm going to feed my children, I need my truck, and the only way I can get that $900 is to sell it," Jones says.

It's been more than five months, and the only thing Jones has received from DEA are letters saying that his application to proceed without paying the $900 bond was deficient. "But they never told us what those deficiencies were," says Edwards.

Jones is nearly resigned to losing the money. "I don't think I'll ever get it back. But I think the only reason they thought I was a drug dealer was because I'm black, and that bothers me."

It also bothers his lawyer.

"Of course he was stopped because he was black. No cop in his right mind would try that with a white businessman. These seizure laws give law enforcement a license to hunt, and the target of choice for many cops is those they believe are least capable of protecting themselves: blacks, Hispanics and poor whites," Edwards says.

Money Still Held

In Buffalo, N.Y., on Oct. 9, Juana Lopez, a dark-skinned Dominican, had just gotten off a bus from New York City when she was stopped in the terminal by drug agents who wanted to search her luggage.

They found no drugs, but DEA Agent Bruce Johnson found $4,750 in cash wrapped with rubber bands in her purse. The money, the 28-year-old woman said, was to pay legal fees or bail for her common-law husband. After he began questioning her, Johnson realized that he had arrested the husband for drugs two months earlier in the same bus station.

Johnson called the office of attorney Mark Mahoney, where Ms. Lopez said she was heading, and verified her appointment.

Johnson then told the woman she was free to go, but her money would stay with him because a drug dog had reacted to it.

Ms. Lopez has receipts showing the money was obtained legally - a third of it was borrowed, another third came from the sale of jewelry that belonged to her and her husband, and the rest from her savings as a hair stylist in the Bronx.

It has been more than nine months since the money was taken, and Assistant U.S. Attorney Richard Kaufman says the investigation is continuing.

Robert Clark, a Mobile, Ala., lawyer who has defended many travelers, says profile stops are the new form of racism.

"In the South in the '30s, we used to hang black folks. Now, given any excuse at all, even legal money in their pockets, we just seize them to death," he says.

Trivial Pursuit

"If you took all the racial elements out of profiles," you'd be left with nothing, says Nashville lawyer Edwards, who heads a new National Association of Criminal Defense Lawyers task force to investigate forfeiture law abuses.

"It would outrage the public to learn the trivial indicators that police officers use as the basis for interfering with the rights of the innocent."

Examination of more than 310 affidavits for seizure and profiles used by 28 different agencies reveals a conflicting collection of traits that agents say they use to hunt down traffickers.

Guidelines for DEA drug task force agents in three adjacent states give conflicting advice on when officers are supposed to become suspicious.

Agents in Illinois are told it's suspicious if their subjects are among the first people off a plane, because it shows they're in a hurry. In Michigan, the DEA says that being the last off the plane is suspicious because the suspect is trying to appear unconcerned.

And in Ohio, agents are told suspicion should surface when suspects deplane in the middle of a group because they may be trying to lose themselves in the crowd.

One of the most often mentioned indicators is that suspects were traveling to or from a source city for drugs.

But a list of cities favored by drug couriers gleaned from the DEA affidavits amounts to a compendium of every major community in the United States.

Seeming to be nervous, looking around, pacing, looking at a watch, making a phone call—all things that business travelers routinely do, especially those who are late or don't like to fly—sound alarms to waiting drug agents.

Some agents change their mind about what makes them suspicious.

In Tennessee, an agent told a judge he was leery of a man because he "walked quickly through the airport." Six weeks later, in another affidavit, the same agent said his suspicions were aroused because the suspect "walked with intentional slowness after getting off the bus."

In Albuquerque, N.M., people have been stopped because they were standing on the train platform watching people.

Whether you look at a police officer can be construed to be a suspicious sign. One Maryland state trooper said he was wary because the subject "deliberately did not look at me when he drove by my position." Yet, another Maryland trooper testified that he stopped a man because the "driver stared at me when he passed."

Too much baggage or not enough will draw the attention of the law.

You could be in trouble with drug agents if you're sitting in first class and don't look as if you belong there.

DEA Agent Paul Markonni who is considered the "father" of the drug courier profile, testified in a Florida court about why he stopped a man.

"We do see some real slimeballs, you know, some real dirt bags, that obviously could not afford, unless they were doing something, to fly first class," he told the court.

The newest extension of the drug courier profile are pagers and cellular telephones.

Based on the few cases that have reached the courts, the communication devices—which are carried by business people, nervous parents and patients waiting for a transplant as well as drug couriers—are primarily suspicious when they are found on the belts or in the suitcases of minorities or long-haired whites.

For police intent on stopping someone, any reason will do.

"If they're black, Hispanic, Asian or look like a hippie, that's a stereotype, and the police will find some way to stop them if that's their intent," says San Antonio lawyer Gerald Goldstein.

The Perfect Profile

A DEA agent thought that former New York Giants center Kevin Belcher matched his profile. When Belcher got off a flight from Detroit March 2, he was stopped by DEA's Dallas/Fort Worth Airport Narcotics Task Force.

The Texas officers had been called a short while earlier by a DEA agent at Detroit's Metro Airport. A security screener had spotted a big, black man carrying a large amount of money in his jacket pocket, the Detroit agent reported to his Southern colleagues.

Belcher was questioned about the purpose of the trip and was asked whether he had any money. He gave the agents $18,265.

Belcher explained that he was going to El Paso to buy some classic old cars "1968 or '69 Camaros are what I'm looking for." Belcher, whose professional football career ended after a near-fatal traffic accident in New Jersey, told the agents he owned four Victory Lane Quick Oil Change outlets in Michigan. The money came from sales, he said, and cash was what auctioneers demanded.

A drug-sniffing dog was called, it reacted, and the money was seized.

Agent Rick Watson told Belcher he was free to go "but that I was going to detain the monies to determine the origin of them."

In his seizure affidavit, Watson listed the matches he made between Belcher and the profile of "other narcotic currency couriers encountered at DFW airport."

Included in Watson's profile was that Belcher had bought a one-way ticket on the date of travel; was traveling to a "source" city, El Paso, "where drug dealers have long been known to be exporting large amounts of marijuana to other parts of the country"; and was carrying $100, $50, $20, $10 and $5 bills, "which is consistent with drug asset seizures."

Watson made no mention as to what denomination other than $1 bills was left for non-drug traffickers to carry. "The drug courier profile can be absolutely anything that the police officer decides it is at that moment," says Albuquerque defense lawyer Nancy Hollander, one of the nation's leading authorities on profile stops.

Wide Net Cast

Officials are reluctant to reveal how many innocent people are ensnared each day by profile stops. Most police departments say they don't keep that information. Those that do are reluctant to discuss it.

"We don't like to talk much about what we seize at the (Nashville) air port because it might stir up the public and make the airport officials unhappy because we are somehow harassing people. It would be great if we could keep the whole operation secret," says Capt. Bawcum, in charge of the airport's drug team.

Capt. Rudy Sandoval, commander of Denver's vice bureau, says he doesn't keep the airport numbers but estimated his police searched more than 2,000 people in 1990, but arrested only 49 and seized money from fewer than 50.

At Pittsburgh's airport, numbers are kept. The team searched 527 people last year, and arrested 49.

A federal court judge in Buffalo, N.Y., says police stop too many innocent people to catch too few crooks.

Judge George Pratt said he was shocked that police charged only 10 of the 600 people stopped in 1989 in the Buffalo airport and decreed encroaching on the constitutional rights of the 590 innocent people.

In his opinion in the case, Pratt said that by conducting unreasonable searches: "It appears that they have sacrificed the Fourth Amendment by detaining 590 innocent people in order to arrest 10 who are not—all in the name of the 'war on drugs.' When, pray tell, will it end? Where are we going?"

Drugs Contaminate Nearly All The Money In America

Police seize money from thousands of people each year because a dog with a badge sniffs, barks or paws to show that bills are tainted with drugs.

If a police officer picks you out as a likely drug courier, the dog is used to confirm that your money has the smell of drugs.

But scientists say the test the police rely on is no test at all because drugs contaminate virtually all the currency in America.

Over a seven-year period, Dr. Jay Poupko and his colleagues at Toxicology Consultants Inc. in Miami have repeatedly tested currency in Austin, Dallas, Los Angeles, Memphis, Miami, Milwaukee, New York City, Pittsburgh, Seattle and Syracuse. He also tested American bills in London.

"An average of 96 percent of all the bills we analyzed from the 11 cities tested positive for cocaine. I don't think any rational thinking person can dispute that almost all the currency in this country is tainted with drugs," Poupko says.

Scientists at National Medical Services, in Willow Grove, Pa., who tested money from banks and other legal sources more than a dozen times, consistently found cocaine on more than 80 percent of the bills.

"Cocaine is very adhesive and easily transferable," says Vincent Cordova, director of criminalistics for the private lab. "A police officer, pharmacist, toxicologist or anyone else who handles cocaine, including drug traffickers, can shake hands with someone, who eventually touches money, and the contamination process begins."

Cordova and other scientists use gas chromatography and mass spectroscopy, precise alcohol washes and a dozen other sophisticated techniques to identify the presence of narcotics down to the nanogram level one billionth of a gram. That measure, which is far less than a pin point, is the same level a dog can detect with a sniff.

What a drug dog cannot do, which the scientists can, is quantify the amount of drugs on the bills.

Half of the money Cordova examined had levels of cocaine at or above 9 nanograms. This level means the bills were either near a source of cocaine or were handled by someone who touched the drug, he says.

Another 30 percent of the bills he examined show levels below 9 nanograms, which indicates "the bills were probably in a cash drawer, wallet or some place where they came in contact with money previously contaminated."

The lab's research found $20 bills are most highly contaminated, with $10 and $5 bills next. The $1, $50 and $100 bill usually have the lowest cocaine levels.

Cordova urges restraint in linking possession of contaminated money to a criminal act.

"Police and prosecutors have got to use caution in how far they go. The presence of cocaine on bills cannot be used as valid proof that the holder of the money, or the bills themselves, have ever been in direct contact with drugs," says Cordova, who spent 11 years directing the Philadelphia Police crime laboratory.

Nevertheless, more and more drug dogs are being put to work.

Some agencies, like the U.S. Customs Service, are using passive dogs that don't rip into an item or person when the dogs find something during a search. These dogs just sit and wag their tails. German shepherds with names like Killer and Rambo are being replaced by Labradors named Bruce or Memphis' "Chocolate Mousse."

Marijuana presents its own problems for dogs since its very pungent smell is long-lasting. Trainers have testified that drug dogs can react to clothing, containers or cars months after marijuana has been removed.

A 1989 case in Richmond, Va., addressed the issue of how reliable dogs are in marijuana searches.

Jack Adams, a special agent with the Virginia State Police, supervised training of drug dogs for the state.

He said the odor from a single suitcase filled with marijuana and placed with 100 other bags in a closed Amtrak baggage car in Miami could permeate all the other bags in the car by the time the train reached Richmond.

And what happens to the mountain of "drug-contaminated" dollars the government seizes each year? The bills aren't burned, cleaned, or stored in a well-guarded warehouse.

Twenty-one seizing agencies questioned all said the tainted money was deposited in a local bank which means it's back in circulation.

Police Profit By Seizing Homes Of Innocent
Part Three: *Innocent Owners*

The second time police came to the Hawaii home of Joseph and Frances Lopes, they came to take it.

"They were in a car and a van. I was in the garage. They said, 'Mrs. Lopes, let's go into the house, and we will explain things to you.' They sat in the dining room and told me they were taking the house. It made my heart beat very fast."

For the rest of the day, 60-year-old Frances Lopes and her 65-year-old husband, Joseph, trailed federal agents as they walked through every room of the Maui house, the agents recording the position of each piece of furniture on a videotape that serves as the government's inventory.

Four years after their mentally unstable adult son pleaded guilty to growing marijuana in their back yard for his own use, the Lopeses face the loss of their home. A Maui detective trolling for missed forfeiture opportunities spotted the old case. He recognized that the law allowed him to take away their property because they knew their son had committed a crime on it.

A forfeiture law intended to strip drug traffickers of ill-gotten gains often is turned on people, like the Lopeses, who have not committed a crime. The incentive for the police to do that is financial, since the federal government and most states let the police departments keep the proceeds from what they take. The law tries to temper money-making temptations with protections for innocent owners, including lien holders, landlords whose tenants misuse property, or people unaware of their spouse's misdeeds. The protection is supposed to cover anyone with an interest in a property who can prove he did not know about the alleged illegal activity, did not consent to it, or took all reasonable steps to prevent it.

But a Pittsburgh Press investigation found that those supposed safe-guards do not come into play until after the government takes an asset, forcing innocent owners to hire attorneys to get their property back—if they ever do. "As if the law weren't bad enough, they just clobber you financially," says Wayne Davis, an attorney from Little Rock, Ark.

Feared For Their Son

In 1987, Thomas Lopes, who was then 28 and living in his parents' home, pleaded guilty to growing marijuana in their back yard. Officers spotted it from a helicopter.

Because it was his first offense, Thomas received probation and an order to see a psychologist. From the time he was young, mental problems tormented Thomas, and though he visited a psychologist as a teen, he had refused to continue as he grew older, his parents say.

Instead, he cloistered himself in his bedroom, leaving only to tend the garden.

His parents concede they knew he grew the marijuana.

"We did ask him to stop, and he would say, 'Don't touch it,' or he would do something to himself," says the elder Lopes, who worked for 49 years on a sugar plantation and lived in its rented camp housing for 30 years while he saved to buy his own home.

Given Thomas' history and a family history of mental problems that caused a grandparent and an uncle to be committed to institutions, the threats stymied his parents.

The Lopeses, says their attorney Matthew Menzer, "were under duress. Everyone who has been diagnosed in this family ended up being taken away. They could not conceive of any way to get rid of the dope without getting rid of their son or losing him forever."

When police arrived to arrest Thomas, "I was so happy because I knew he would get care," says his mother. He did, and he continues weekly doctor's visits. His mood is better, Mrs. Lopes says, and he has never again grown marijuana or been arrested. But his guilty plea haunts his family.

Because his parents admitted they knew what he was doing, their home was vulnerable to forfeiture.

Back when Thomas was arrested, police rarely took homes. But since, agencies have learned how to use the law and have seen the financial payoff, says Assistant U.S. Attorney Marshall Silverberg of Honolulu.

They also carefully review old cases for overlooked forfeiture possibilities, he says. The detective who uncovered the Lopes case started a forfeiture action in February—just under the five-year deadline for staking such a claim.

"I concede the time lapse on this case is longer than most, but there was a violation of the law, and that makes this appropriate, not money-grubbing," says Silverberg. "The other way to took at this, you know, is that the Lopeses could be happy we let them live there as long as we did." They don't see it that way.

Neither does their attorney, who says his firm now has about eight similar forfeiture cases, all of them stemming from small-time crimes that occurred years ago but were resurrected. "Digging these cases out now is a business proposition, not law enforcement," Menzer says.

"We thought it was all behind us," says Lopes. Now, "there isn't a day I don't think about what will happen to us."

They remain in the house, paying taxes and the mortgage, until the forfeiture case is resolved. Given court backlogs, that likely won't be until the middle of next year, Menzer says.

They've been warned to leave everything as it was when the videotape was shot.

"When they were going out the door," Mrs. Lopes says of the police, "they told me to take good care of the yard. They said they would be coming back one day."

"Dumb Judgment"

"Protections for innocent owners are a neglected issue in federal and state forfeiture law," concluded the Police Executive Research Forum in its March bulletin.

But a chief policy maker on forfeiture maintains that the system is actively interested in protecting the rights of the innocent.

George J. Terwilliger III, associate deputy attorney general in the Justice Department, admits that there may be instances of "dumb judgment." And says if there's a "systemic" problem, he'd like to know about it.

But attorneys who battle forfeiture cases say dumb judgment is the systemic problem. And they point to some of Terwilliger's own decisions as examples.

The forfeiture policy that Terwilliger crafts in the nation's capital he puts to use in his other federal job: U.S. attorney for Vermont.

A coalition of Vermont residents, outraged by Terwilliger's forfeitures of homes in which small children live, launched a grass-roots movement called "Stop Forfeiture of Children's Homes." Three months old, the group has about 70 members, from school principals to local medical societies.

Forfeitures are a particularly sensitive issue in Vermont where state law forbids talking a person's primary home. That restriction appears nowhere in federal law, which means Vermont police departments can circumvent the state constraint by taking forfeiture cases through federal courts.

The playmaker for that end-run: Terwilliger.

"It's government-sponsored child abuse that's destroying the future of children all over this state in the name of fighting the drug war," says Dr. Kathleen DePierro, a family practitioner who works at Vermont State Hospital, a psychiatric facility in Waterbury.

The children of Karen and Reggie Lavallee, ages 6, 9 and 11, are precisely the type of victims over which the Vermonters agonize. Reggie Lavallee is serving a 10-year sentence in a federal prison in Minnesota for cocaine possession.

Because police said he had been involved with drug trafficking, his conviction cost his family their ranch house on 2 acres in a small village 20 miles east of Burlington. For the first time, the family is on welfare, in a rented duplex.

"I don't condone what my husband did, but why victimize my children because of his actions? That house wasn't much, but it was ours. It was a home for the children, with rabbits, chicken, turkeys and a vegetable garden. Their friends were there, and they liked the school, " says Mrs. Lavallee, 29.

After the eviction, "every night for months, Amber cried because she couldn't see her friends. I'd like to see the government tell this 9-year-old that this isn't cruel and unusual punishment."

Terwilliger's dual role particularly troubles DePierro. "It's horrifying to know he is setting policy that could expand this type of terror and abuse to kids in every state in the nation."

Terwilliger calls the group's allegations absurd. "If there was someone to blame, it would be the parents and not the government."

Lawyers like John MacFadyen, a defense attorney in Providence, R.I., find it harder to fix blame.

"The flaw with the innocent owner thing is that life doesn't paint itself in black and white. It's oftentimes gray, and there is no room for gray in these laws," MacFadyen says. As a consequence, prosecutors presume everyone guilty and leave it to them to show otherwise. "That's not good judgment. In fact, it defies common sense."

Proving Innocence

Innocent owners who defend their interests expose themselves to questioning that bores deep into their private affairs. Because the forfeiture law is civil, they also have no protection against self-incrimination, which means that they risk having anything they say used against them later.

The documentation required of innocent owner Loretta Steams illustrates how deeply the government plumbs.

The Connecticut woman lent her adult son $40,000 in 1988 to buy a home in Tequesta, Fla., court documents show. Unlike many parents who treat such transactions informally, she had the foresight to record the loan as a mortgage with Palm Beach County. Her action ultimately protected her interest in the house after the federal government seized it, claiming her son stored cocaine there. He has not been charged criminally.

The seizure occurred in November 1989, and it took until last May before Mrs. Steams convinced the government she had a legitimate interest in the house.

To prove herself an innocent owner, Mrs. Steams met 14 requests for information, including providing "all documents of any kind whatsoever pertaining to your mortgage, including but not limited to loan application, credit reports, record of mortgages and mortgage payments, title reports, appraisal reports, closing documents, records of any liens, attachments on the defendant property, records of payments, canceled checks, internal correspondence or notes (handwritten or typed) relating to any of the above and opinion letter from borrower's or lender's counsel relating to any of the above."

And that was just question No. 1.

Landlord As A Cop

Innocent owners are supposed to be shielded in forfeitures, but at times they've been expected to become virtual cops in order to protect their property from seizure.

T. T. Masonry Inc. owns a 36-unit apartment building in Milwaukee, Wis., that's plagued by dope dealing. Between January 1990, when it bought the building, and July 1990, when the city formally warned it about problems, the landlord evicted 10 tenants suspected of drug use, gave a master key to local beat and vice cops, forwarded tips to police and hired two security firms—including an off-duty city police officer—to patrol the building.

Despite that effort, the city seized the property.

Assistant City Attorney David Stanosz says "once a property develops a reputation as a place to buy drugs, the only way to fix that is to leave it totally vacant for a number of months. This landlord doesn't want to do that."

Correct, says Jerome Buting, attorney for Tom Torp of Masonry.

"If this building is such a target for dealers, use that fact," says Buting. "Let undercover people go in. But when I raised that, the answer was they were short of officers and resources."

It Looks Like Coke

Grady McClendon, 53, his wife, two of their adult children and two grand-children, 7 and 8, were in a rented car headed to their Florida home in August 1989. They were returning from a family reunion in Dublin, Ga.

In Fitzgerald, Ga., McClendon made a wrong turn on a one-way street. Local police stopped him, checked his identification and asked permission to search the car. He agreed.

Within minutes, police pulled open suitcases and purses, emptying out jewelry and about 10 Florida state lottery tickets. They also found a registered handgun.

Then, says McClendon, the police "started waving a little stick they said was cocaine. They told me to put on MY glasses and take a good look. I told them I'd never seen cocaine for real but that it didn't look like TV." For about six hours, police detained the McClendon family at the police station where officers seized $2,300 in cash and other items as "instruments of drug activity and gambling paraphernalia" a reference to the lottery tickets.

Finally, they gave McClendon a traffic ticket and released them, but kept the family's possessions.

For 11 months, McClendon's attorney argued with the state, finally forcing it to produce lab test results on the "cocaine."

James E. Turk, the prosecutor who handled the case will say only "it came back negative."

"That's because it was bubble gum," says Jerry Froelich, McClendon's attorney. A judge returned the McClendons' items.

Turk considers the search "a good stop. They had no proof of where they lived beyond drivers' licenses. They had jewelry that could have been contraband, but we couldn't prove it was stolen. And they had more cash than I would expect them to carry."

McClendon says: "I didn't see anything wrong with them asking me to search. That's their job. But the rest of it was wrong, wrong, wrong."

Seller, Beware

Owners who press the government for damages are rare. Those who do are often helped by attorneys who forego their usual fees because of their own indignation over the law.

For nearly a decade, the lives of Carl and Mary Shelden of Moraga, Calif., have been intertwined with the life of a convicted criminal who happened to buy their house.

The complex litigation began when the Sheldens sold their home in 1979, but took back a deed of trust from the buyer—an arrangement that made the Sheldens a mortgage holder on the house.

Four years later, the buyer was arrested and later convicted of running an interstate prostitution ring. His property, including the home on which the Sheldens held the mortgage, was forfeited. The criminal, pending his appeal, went to jail, but the government allowed his family to live in the home rent-free.

Panicked when they read about the arrest in the newspaper, the Sheldens discovered they couldn't foreclose against the government and couldn't collect mortgage payments from the criminal.

After tortuous court appearances, the Sheldens got back the home in 1987, but discovered it was so severely damaged while in government control that they can now stick their hand between the bricks near the front door.

The home the Sheldens sold in 1979 for $289,000 was valued at $115,500 in 1987 and now needs nearly $500,000 in repairs, the Sheldens say, chiefly from uncorrected drainage problems that caused a retaining wall to let loose and twist apart the main house.

Disgusted, they returned to court, saying their Fifth Amendment rights had been violated. The amendment prohibits the taking of private property for public use without just compensation. Their attorney, Brenda Grantland of Washington, D.C., argues that when the government seized the property but failed to sell it promptly and pay off the Sheldens, it violated their rights.

Between 1983 and today, the Sheldens have defended their mortgage through every type of court: foreclosures, U.S. District Court, Bankruptcy, U.S. Claims.

In January 1990, a federal judge issued an opinion agreeing the Sheldens' rights had been violated. The government asked the judge to reconsider, and he agreed. A final opinion has not been issued.

"It's been a roller coaster," says Mrs. Shelden, 46. A secretary, she is the family's bread-winner. Shelden, 50, was permanently disabled when he broke his back in 1976 while repairing the house. Because he was unable to work, the couple couldn't afford the house, so they sold it—the act that pitched them into their decade-long legal quagmire.

They've tried to rent the damaged home to a family—a real estate agent showed it 27 times with no takers—then resorted to renting to college students, then room-by-room boarders.

Finally, they and their children, ages 21 and 16, moved back in.

"We owe Brenda (Grantland) thousands at this point, but she's really been a doll," says Shelden. "Without people like her, people like us wouldn't stand a chance."

Civil Forfeitures Can Threaten A Company's Existence

For businesses, civil forfeitures can be a big, big stick. Bad judgment, lack of knowledge or outright wrongdoing by one executive can put the company itself in jeopardy.

A San Antonio bank faces a $1 million loss and may close because it didn't know how to handle a huge cash transaction and got bad advice from government banking authorities, the bank says. The government says the bank knowingly laundered money for an alleged Mexican drug dealer.

The problems began when Mexican nationals came to Stone Oak National Bank about 150 miles north of the border, to buy certificates of deposits with $300,000 in cash. The Mexicans planned to start an American business, they said. They had drivers' licenses and passports.

Bank officers, who wanted guidance about the cash, called the Internal Revenue Service, Secret Service, Office of the Comptroller of the Currency, the Federal Reserve, and the Department of Treasury.

Federal banking regulators require banks to file CTRs - currency transaction reports - for cash deposits greater than $10,000.

That paper trail was created to develop leads about suspicious cash. Once the government was alerted, the thinking went, it could track the cash, put depositors under surveillance or set up a sting.

A tape-recorded phone line that Stone Oak, like many banks, uses for sensitive transactions captured a conversation between a Treasury official and then-bank president Herbert Pounds. According to transcripts, Pounds said:

"We're a small bank. I've never had a transaction like that.... I talked to several of my banking friends. They've never had anybody bring in that much cash, and the guys say they've got a lot more where that came from."

Pounds asked for advice and was told to go through with the transaction. "That's fine ... as long as you send the CTR," the Treasury official said. "That's all you're responsible for. "

The bank took the money and filed the form.

Between that first transaction in March 1987 and the government's March 1989 seizure of $850,000 in certificates of deposit, bank officials continued to file reports, according to photocopies reviewed by *The Pittsburgh Press*.

"The government had two years to come in and say, 'Hey, something smells bad here,' but it never did," says Sam Bayless, the bank's attorney.

But the government now charges that the bank customers were front men for Mario Alberto Salinas Trevino, who was indicted for drug trafficking in March 1989. Fourteen months later, the bank president and vice president were added to the indictment and charged with money laundering.

The bank never was criminally charged, and the officers' indictments were dismissed May 29.

The U.S. attorneys office in San Antonio said it would not discuss the case.

Because the Mexicans used their certificates as collateral for $1 million in loans from Stone Oak, the bank is worried it will lose the money. In addition, according to banking regulations, it must keep $1 million in reserve to cover that potential loss. For those reasons, it has asked the government for a hearing and has spent nearly $250,000 for lawyers' fees.

But the bank can't get a hearing because the forfeiture case is on hold pending the outcome of the criminal charges. And the criminal case has been indefinitely delayed because Salinas escaped six weeks after he was arrested.

Because the bank is so small, the $1 million set-aside puts it below capital requirements., meaning "regulatory authorities could well require Stone Oak National Bank to close before ever having the opportunity for its case to heard," says its court brief.

To brace for a loss, Stone Oak closed one of its branches. "For the life of me," says Bayless, "I can't understand why the government would want to sink a bank. And, to boot, why would the government want another Texas bank?"

Bayless, who says, "I'm very conservative, I'm a bank lawyer, for heaven's sake," derides the federal action as "narco-McCarthyism."

Problems with paperwork also led to the seizure of $227,000 from a Colombian computer company.

The saga started in January 1990 when Ricardo Alberto Camacho arrived in Miami with about $296,000 in cash to pay for an order of computers.

Camacho is a representative of Tandem Limitada, the authorized dealer in Colombia and Venezuela for VeriFone products, says VeriFone spokesman Tod Bottari. The cash covered a previously placed order for about 1,600 terminals.

Both the government and Camacho agree that when he arrived in Miami, he declared the amount he was carrying with Customs. They also agree that the breakdown of the amount, cash vs. other monetary instruments, such as checks, was incorrect on his declaration form.

Camacho and the government disagree about whether the incorrect entry was intentional—the government's position—or a mistake made by an airport employee.

The airport employee, in a deposition, said he had filled out the form and handed it to Camacho for him to initial, which he did. "Mr. Camacho assumed the agent had correctly written down the information provided to him," says Camacho's court filings over the subsequent seizure of the money. The government says Camacho deliberately misstated the facts to hide cash made from drug sales.

Camacho brought in the suitcase full of U.S. cash, which he had purchased at a Bogota bank, because he thought it would speed delivery of his order, he told federal agents.

VeriFone's lawyers directed Camacho to deposit the money in their account in Marietta, Ga., says Bottari. The final bill for the computers was $227,000.

VeriFone arranged for an employee to meet Camacho at the bank and told the bank he was coming, Bottari says. The bank notified U.S. Customs agents that it was expecting a large deposit. When Camacho arrived, federal agents were waiting with a drug-sniffing dog.

The agents asked Camacho if he would answer "a few questions about the currency." Camacho agreed.

The handler walked the dog past a row of boxes, including one containing some of Camacho's money. The dog reacted to that box.

At that point, the agents said they were taking the money to the local Customs office, where they retrieved information from the report Camacho had filed in Miami.

The reporting discrepancy, and the dog's reaction, prompted the government to take the cash.

Although the computer deal went through several weeks later when Tandem wired another $227,000, that wasn't enough to convince Albert L. Kemp Jr., the assistant U.S. attorney on the case, that the first order was real.

After the seizure, Kemp says, the government checked Camacho's background. He is a naturalized American citizen who went to business school in California and then returned to help run several family businesses in Colombia.

He travels to the United States "four or five times a year," says Kemp. "He has filled out the currency reports correctly in the past, but now he says there was a mistake and he didn't know about it.

"C'mon," says Kemp. "In total, his whole story doesn't wash with me.

"We believe the money is traceable to drugs, but we don't have the evidence. So instead of taking it for drugs, we're using a currency reporting violation to grab it."

Crime Pays Big For Informants In Forfeiture Drug Cases
Part Four: *The Informants*

They snitch at all levels, from the Hell's Angel whose testimony across the country has made him a millionaire, to the Firksville, Mo., informant who worked for the equivalent of a fast-food joint's hourly wage.

They snitch for all reasons, from criminals who do it in return for lighter sentences to private citizens motivated by civic-mindedness.

But it's only with the recent boom in forfeiture that paid informants began snitching for a hefty cut of the take.

With the spread of forfeiture actions has come a new, and some say, problematic, practice: guaranteeing police informants that if their tips result in a forfeiture, the informant will get a percentage of the proceeds. And that makes crime pay. Big.

The Asset Forfeiture Fund of the U.S. Justice Department last year gave $24 million to informants as their share of forfeited items. It has $22 million earmarked this year.

While plenty of those payments go to informants who match the stereotype of a shady, sinister opportunist, many are average people you could meet on any given day in an airport, bus terminal or train station.

In fact, if you travel often, you likely have met them whether you knew it or not.

Counter clerks notice how people buy tickets. Cash? A one-way trip?

Operators of X-ray machines watch for "suspicious" shadows and not only for outlines of weapons, which is what signs at checkpoints say they're scanning. They look for money, "suspicious" amounts that can be called to the attention of law enforcement and maybe net a reward for the operator.

Police affidavits and court testimony in several cities show clerks for large package handlers, including United Parcel Service and Continental Airlines' Quik Pak, open "suspicious" packages and alert police to what they find. To do the same thing, police would need a search warrant.

Underground Economy

At 16 major airports, drug agents, counter and baggage personnel, and management reveal an underground economy running off seizures and forfeitures.

All but one of the airports' drug interdiction teams reward private employees who pass along reports about suspicious activity. Typically, they get 10 percent of the value of whatever is found.

The Greater Pittsburgh International Airport team does not and questions the propriety of the practice. Under federal and most states' laws, forfeiture proceeds return to the law enforcement agency that builds the case. Those agencies also control the rewards of informants.

The arrangement means both police and the informants on whom they rely now have a financial incentive to seize a person's goods—a mix that may be too intoxicating, says Lt. Norbert Kowalski.

He runs Greater Pitt's joint 11-person Allegheny County Police-Pennsylvania State Police interdiction team.

"Obviously, we want all the help we can get in stopping these drug traffickers. But having a publicized program that pays airport or airline employees to in effect, be whistle-blowers, may be pushing what's proper law enforcement to the limit," he says.

He worries that the system might encourage unnecessary random searches.

His team checked passengers arriving from 4,230 flights last year. Yet even with its avowed cautious approach, the team stopped 527 people but netted only 49 arrests.

At Denver's Stapleton Airport, where most of the drug team's cases start with informant tips, officers also made 49 arrests last year. But they stopped about 2,000 people for questioning, estimates Capt. Rudy Sandoval, commander of the city's Vice and Drug Control Bureau.

As Kowalski sees it, the public vests authority in police with the expectation they will use it legally and judiciously. The public can't get those same assurances with police-designees, like counter clerks, says Kowalski.

With money as an inducement, "you run the risk of distorting the system, and that can infringe on the rights of innocent travelers. If someone knows they can get a good bit of money by turning someone in, then they may imagine seeing or hearing things that aren't there. What happens when you get to court?"

In Nashville, that's not much of an issue. Juries rarely get to hear from informants.

Police who work the airport deliberately delay paying informants until a case has been resolved "because we don't want these tipsters to have to testify. If we don't pay them until the case is closed they don't have to risk going to court," says Capt. Judy Bawcum, commander of the vice division for the Nashville Police Department.

That means their motivation can't be questioned.

Bawcum says it may appear that airport informants are working solely for the money, but she believes there's more to it. "I admit these (X-ray) guards are getting paid less than burger flippers at McDonald's and the promise of 10 percent of $50,000 or whatever is attractive. But to refuse to help us is not a progressive way of thinking," says Bawcum. "This is a public service."

But not all companies share the view that their employees should be public servants. Package handling companies and Wackenhut, the X-ray checkpoint security firm, refuse to allow Nashville police to use their workers as informants.

"They're so fearful a promise of a reward will prompt their people to concentrate on looking for drugs and money instead of looking for weapons," says Bawcum.

Far from being uncomfortable with the notion of citizen-cops, Bawcum says her department relies on them. "We need airport employees working for us because we've only got a very small handful of officers" at the airport, she says.

For her, the challenge comes in sustaining enthusiasm, especially when federal agencies like the DEA are "way too slow paying out." Civic duty carries only so far. "It's hard to keep them watching when they have to wait for those rewards. We can't lose that incentive."

The Deals

Most drug teams hold tight the details of how their system works and how much individual informants earn, preferring to keep their public service private.

But in a Denver court case, attorney Alexander DeSalvo obtained photocopies of police affidavits about tipsters and copies of three checks payable to a Continental airline clerk, Melissa Funner. The cheeks, from the U.S. Treasury and Denver County, total $5,834 for the period from September 1989 to August 1990.

Ms. Furtner, reached by phone at her home, was flustered by questions about the checks.

"What do you want to know about the rewards? I can't talk about any of it. It's not something I'm supposed to talk about. I don't feel comfortable with this at all." She then hung up.

As hefty as the payments to private citizens can be, they are pin money compared to the paychecks drawn by professional informants.

Among the best paid of all: convicted drug dealers and self-confessed users.

Anthony Tait, a Hell's Angel and admitted drug user who has been a cooperating witness for the FBI since 1985, earned nearly $1 million for information he provided between 1985 and 1988, according to a copy of Tait's payment schedule and FBI contract obtained by *The Pittsburgh Press*.

Of his $1 million, $250,000 was his share of the value of assets forfeited as a result of his cooperation. His money came from four sources. FBI offices in Anchorage and San Francisco; the state of California and the federal forfeiture fund.

Likewise, in a November 1990 case in Pittsburgh, the government paid a former drug kingpin handsomely.

Testimony shows that Edward Vaughn of suburban San Francisco earned $40,000 in salary and expenses between August 1989 and October 1990 working for DEA, drew an additional $500 a month from the U.S. Marshal Service and was promised a 25 percent cut of any forfeited goods.

Vaughn had run a multimillion-dollar, international drug smuggling ring, been a federal fugitive, and twice served prison time before arranging an early parole and paid informant deal with the government, he said in court.

As an informant, he said, he preferred arranging deals for drug agents that are known as reverse stings: the law enforcement agents pose as sellers and the targets bring cash for a buy. Those deals take cash, but not dope, directly off the streets. In those stings, he said, the cash would be forfeited and Vaughn would get his prearranged quarter-share.

His testimony in Pittsburgh resulted in one man being found guilty of conspiracy to distribute marijuana. The jury acquitted the other defendant saying they believed Vaughn had entrapped him by pursuing him so aggressively to make a dope deal.

To Pay Or Not To Pay

The practice of giving informants a share of forfeited proceeds goes on so discreetly that Richard Wintory, an Oklahoma prosecutor and forfeiture proponent who until recently headed the National Drug Prosecution Center in Alexandria, Va., says, "I'm not aware of any agency that pays commissions on forfeited items to informants."

Although the federal forfeiture program funnels millions of dollars to informants, it does not set policy at the top about how—or how much—to pay.

"Decisions about how to pursue investigations within the guidelines of appropriate and legal behavior are best left to people in the field," says George Terwilliger III, the deputy attorney general who heads the Justice Department's forfeiture program.

That hands-off approach filters to local offices, such as Pittsburgh, where U.S. Attorney Thomas Corbett says the discussion of whether to give informants a cut of any take "is a philosophical argument. I won't put myself in the middle of it."

The absence of regulations spawns "privateers and junior Gmen," says Steven Sherick, a defense attorney in Tucson, Ariz., who recently recovered $9,000 for John P. Gray of Rutland, Vt., after a UPS employee found it in a package and called police.

Gray, says Sherick, is "an eccentric older guy who doesn't use anything but cash." In March 1990, Gray mailed a friend hand-money for a piece of Arizona retirement property Gray had scouted during an earlier trip West, say court records. The court ordered the money returned because the state couldn't prove the cash was gained illegally.

Expanding payments to private citizens, particularly on a sliding scale rather than a fixed fee, raises unsavory possibilities, says Eric E. Sterling, head of the Criminal Justice Policy Foundation, a think tank in Washington, D.C.

Major racketeers and criminal enterprises were the initial targets of forfeiture, but its use has steadily expanded until now it catches people who never have been accused of a crime but lose their property anyway.

"You can win a forfeiture case without charging someone," says Sterling. "You can win even after they've been acquitted. And now, on top of that, you can have informants tailoring their tips to the quality of the thing that will be seized.

"What paid informant in their right mind is going to turn over a crack house, which may be destroying an inner city neighborhood, when he can turn over information about a nice, suburban spread that will pay off big when it comes time to get his share?" asks Sterling.

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35 Arrested Despite Bumbling Ways Of Informant

The undercover operation was called BAD. The main informant was named Mudd.

And the entire affair was ... a bust.

The prosecutor in Adair County in Missouri's northeast comer chuckles now about the "bumbled" investigation.

But Sheri and Matthew Farrell, whose 60-acre farm remains tied up in a federal forfeiture action due to the bumbling, can't see the humor.

A paid police informant named Steve R. Mudd, who went undercover for $4.65 an hour in a marijuana investigation near Kirksville, Mo., accused Farrell of selling and cultivating marijuana on his land. Mudd was the only witness in the joint city-county drug investigation called Operation BAD - Bust a Dealer.

For a year starting in November 1989, Mudd worked for city and county police identifying alleged dealers around Firksville, population 17,000. He received "buy money" and would return after his deals—minus the money and with what he said were drugs.

Mudd went to supposed traffickers' homes "but didn't wear a wire(tap) and didn't take any undercover officer with him. He said he was in a rut and didn't want a lot of supervision," says prosecutor Tom Hensley. When he came back to the office, Mudd would write reports—but the dates and times often didn't match what he would say later in depositions.

Mudd himself had gone through drug rehabilitation, and had drug sales and possession on his criminal record, says Hensley. Mudd also had a history of passing bad checks and was always near broke, working odd jobs.

Nevertheless, Mudd became the linchpin of Operation BAD.

Based on his word, police arrested 35 people in Adair County, including Farrell. As Mudd told it, Farrell had sold him marijuana and confided he used tractors outfitted with special night lights to harvest fields of dope.

He "whipped up quite the story. He had us out there at night banging around, renting big trucks to carry dope. There's no receipts, nothing to show that. And wouldn't someone have seen us?" asks Mrs. Farrell. Hensley confirms that Farrell has no criminal record, yet on Mudd's allegation, the county sheriff first arrested Farrell then ordered his house and farm seized in November.

"They came out and searched everything. They took away tea, birdseed, they vacuumed our ashtrays in the truck and didn't find anything. Then they told us the house was seized and in governmental control. They told us to keep paying the taxes, but not to do anything else to the land," says Mrs. Farrell, 36, a U.S. Postal Service worker in Kirksville. Her husband, 38, runs a metal working shop out of his home.

Of the 35 cases initiated by Mudd, only Farrell's involved seized land.

Adair County kept the criminal cases in local court.

But to make the most of the seizure, the county turned the Farrell forfeiture case over to the federal government. Missouri state law directs that forfeiture proceeds go to the general fund where they are earmarked for public school support. Under federal regulations, though, the local police who bring a forfeiture case get back up to 80 percent of any proceeds.

"The federal sharing plan is what affected how the case was brought, sure," says Hensley. "Seizures are kind of like bounties anyway, so why shouldn't you take it to the feds so it comes back to the local law enforcement effort? "

With the forfeiture case firmly lodged in federal court, the county criminal cases began to be heard and promptly fell apart.

All 35 cases "went down the tubes," says Hensley. At the first hearing, which included Farrell's case, Mudd failed to appear due to strep throat. It took him two months to regain his voice, says Hensley, and then he couldn't regain his memory.

"The dates he was saying didn't mesh with what he'd put down on reports. And I couldn't go out on the street without someone stopping to tell me a Mudd bad-cheek story. I decided my only witness was not worth a great deal, especially if he was having trouble with his recall."

The case crumbled into powder when the powder turned out to be Tylenol 3. Hensley said lab tests showed Mudd had brought back fake drugs as evidence.

Hensley withdrew the criminal charges against Farrell and the others.

Says Hensley of his star witness, "My honest impression is the guy is just dumb and watched too much 'Miami Vice. 'You never see Miami Vice' guys write anything down, do you?"

The prosecutor doesn't feel Mudd "scammed us that bad. He took us once to a patch of dope growing along a country road across the state line in Iowa. It was out of the way, so he had to know something. But he couldn't say for sure who was growing it."

Although Mudd was less than an ideal informant, local police relied on him "because there is marijuana use here and we had to get somebody. We don't get big enough cases to get the state police here to do an investigation up right."

Hensley says he "couldn't say how" Mudd might have come up with Farrell's name, but Mrs. Farrell has a theory. Several years ago, Mike Farrell, Matthew's brother, received probation for a marijuana possession charge—his only arrest. Hensley confirms that.

"I think he figured he could say 'Farrell' and it would stick," says Mrs. Farrell.

Though the criminal case has faded, the Farrell's forfeiture case rolls on.

Philosophically, Hensley agrees with the notion "that if you're not guilty or charges are dismissed then you ought to be off the hook on the forfeiture since no one could prove the case against you. But that isn't the way it works with the federal government."

He is not inclined "to call down to St. Louis and tell the U.S. attorney to drop it. I've got other things to do with my time. I don't want to sound malicious but this will all work out."

So far, it is merely working its way through federal court.

The prosecutor on the Farrell case verifies that the state case was adopted by the federal government which means "the facts of their criminal case are the same facts that underlie the forfeiture action," says Daniel Meuleman, assistant U.S. attorney. "But that doesn't mean we can't go ahead because there are different standards of proof involved."

Different is lower. To get a criminal conviction, prosecutors need proof beyond a reasonable doubt. To pursue a federal forfeiture, they need only show probable cause.

Meuleman refuses to say whether he will use Mudd as a witness.

Meanwhile, the Farrells wait.

Their attorney's bills already are $5,600 "and that put a crimp in our style. We were in shock for a good two months. Every day we thought something else might happen and we were scared in our own home.

"That's gotten a little better," says Mrs. Farrell, "but in a town this small there's still a lot of talk, you know."

With Sketchy Data, Government Seizes House From Man's Heirs

In Fort Lauderdale, Fla., last summer, forfeiture reached beyond the grave, seizing the $250,000 home of a dead man.

A confidential informant told police that in 1988 the owner, George Gerhardt, took a $10,000 payment from drug dealers who used a dock at the house along a canal to unload cocaine.

The informant can't recall the exact date, the boat's name or the dealers names, and the government candidly says in its court brief it "does not possess the facts necessary to be any more specific."

But its sketchy information convinced a judge to remove the house from heirs, who now must prove the police wrong.

"I was flabbergasted. I didn't think something like this could happen in this country," said Gerhardt's cousin, Jeanne Horgan of Hartsdale, N.J. She, a friend of Gerhardt's from high school, and a home health aide who cared for Gerhardt while he was dying of cancer, are his heirs.

Gerhardt, who died at the age of 49, was an only child who inherited "substantial amounts" from his parents and lived in a home that had been in his family for 20 years, says Mare H. Gold, attorney for the heirs.

Gerhardt ran a marina until he was 38, then retired and lived off the estate left him by his parents.

"I've gone back through his tax returns and every penny is accounted for. I can't find an indication he ever was arrested or charged with anything in his life," says Gold.

The heirs have filed a motion to have the case dismissed.

While that request is pending, the government is renting the house to other tenants for roughly $2,200 a month which the government keeps.

Although the government had its tip six months before Gerhardt's death, it didn't file a charge against him. It also didn't seize his house until three months after he died.

The notice the government was taking the home came with a sharp rap on the door and a piece of paper handed to Brad Marema, the heir who had cared for Gerhardt and moved into the house. The notice gave Marema a few days to pack up before the government changed the locks.

The point of trying to take the house, "is not so much to punish at this stage. The motivation really is to use the proceeds from the sale of the property to prevent other drug offenses," says Robyn Hermann, assistant chief of the civil section for the U.S. attorneys office in the Southern District of Florida.

The government's case depends on the informant's tip, says Ms. Hermann. "Even if I knew more about him (Gerhardt) I wouldn't say, but I don't think we do."

The answer to how heirs counter allegations against a dead man "is real easy," she says. "Answers are acquired through discovery," a procedure in which both sides respond to questions from the other. "We'll take depositions, they'll take depositions. That's when they get their answers."

But that isn't how the law is supposed to work counters Gold.

"Who am I suppose to subpoena? Where do I send an investigator? The government is supposed to have a case, a reason for kicking someone out of their home. It's not supposed to remove them, then build a case."

Crimes Are Small But Justice Takes All
Part Five: *Crime And Punishment*

A Vermont man was found guilty of growing six marijuana plants. He received a suspended sentence and was ordered to do 50 hours of community work. But there was an added penalty: He and his family nearly lost their 49-acre farm.

In Washington, where the maximum criminal penalty could have been a $10,000 fine, an elderly couple served 60 days for growing 35 marijuana plants—and lost their $100,000 house.

In Bismarck, N.D., a young couple received suspended sentences after pleading guilty to growing marijuana. The judge who ordered them to forfeit the three-bedroom house where they lived with their three children worried from the bench that he might be throwing them onto the welfare rolls. But he says he had no choice.

All three families are the victims of a federal law that allows the government to take homes, lands, vehicles and other possessions from Americans convicted of possessing drugs or violating a host of other statutes.

The law was intended to penalize major drug dealers and organized crime figures by taking their property, selling it and returning the proceeds to the cops for other investigations. But the dollar return to the cops has been so great that it's now being used for scores of crimes, some no more than misdemeanors by first-time law-breakers.

Because of the law, more and more people are losing their property. For many, the punishment no longer fits the crime.

Town: Back Off

Community outrage helped Robert Machin and Joann Lidell keep their farm in South Washington, Vt., after the federal government tried to seize it in 1989.

Signs decrying "Cruel and unusual punishment - remember the Eighth Amendment" were posted along local roads. Lawmakers and politicians got involved. Nearly all their neighbors signed petitions.

Machin and Lidell, advocates of the back-to-nature movement, support themselves and their three children off their 49 acres. They boil maple sap into syrup, press apples into cider and educate their children in the rustic, gas-lit rooms of their eight-sided wooden house.

Their trouble began in September 1988, when a teenager busted for a traffic violation traded his way out of a ticket by telling state police he could show them 200 marijuana plants growing on Machin's farm.

Police raided the property and found only six plants, which Machin admitted to growing.

He received a suspended sentence and spent 50 hours doing community service. Tranquility returned to the Machin farm, but the government wasn't through.

On Aug. 12, 1989, U.S. Attorney George Terwilliger III filed action to seize the Machin house and property. Vermont state law does not permit the seizure of a home, so the case was pursued through federal courts.

But the political pressure and the outpouring of concern from the community forced Terwilliger, who also runs the Justice Department's forfeiture fund, to back off.

"The Machin case is one where public scrutiny forced the government to do it right. What about all the others where no one is watching?" Machin's lawyer, Richard Rubin, asks.

Let The Feds Do It

There was little public scrutiny in November 1989 after Robert and Brenda Schmalz pleaded guilty to marijuana charges in Bismarck, N.D., and got probation.

North Dakota state law does not allow the forfeiture of real estate involved in crimes. So, in order to seize the house, prosecutors took the Schmalz case to federal court, says federal Judge Patrick Conmy, who got the case.

Conmy said at the hearing that the couple had grown marijuana in their basement for their own use. Even so, because they used their house in the crime, Conmy says, he had no choice but to order them to forfeit their home.

"I don't really care if somebody loses their Cadillac, or their coin collection, the cash that's with the drugs. That's fine. It's looked on as a hazard of doing business," the federal judge says.

"But you get a husband, wife and several children in a three-bedroom home and the husband raises marijuana in the basement with some grow lights, and you take their house for that. That, to me, is different."

Headaches

The marijuana Jack Blahnik grew in his yard controlled severe pain from his cluster headaches, he says.

Blahnik completed 68 years of his life without a single brush with the police. But in his 69th year, he and his 61-year-old wife, Patricia, were arrested, convicted and jailed for 60 days for growing 35 marijuana plants. On March 6, 1990, the state of Washington also seized the couple's three-bedroom home and the five acres it sat on.

Blahnik admits he was growing the dope.

"I showed it to the police, I took them out to the shed in the back yard and told them that I was growing the stuff for my own use, to try to control the pain from these cluster headaches that I have," Blahnik says.

Blahnik heard that marijuana helps such headaches, and his doctor confirmed its value.

"My wife was against my growing the stuff, but she went to jail because she copied some growing instructions for me," Blahnik says.

The statute under which the Blahnik's house was seized requires the state to provide "evidence which demonstrates the offender's intent to engage in commercial activity." The police never made that link, affidavits show.

The Blahnik's $100,000 property in Woodland, about 130 miles south of Seattle, was their nest egg.

"It was our life savings," Blahnik says. "Everything we had went into that house and land."

Police charged that drug sales financed the house.

"They knew that wasn't true," Mrs. Blahnik says. "Our bank statements and tax forms show that everything we ever put into buying that house, and everything else we have, came from money that we worked hard 40 years to save."

The Blahnik's lawyer, Michael Mclean, calls the seizure unconstitutional and punitive.

"The maximum fine for this crime in the state of Washington is $10,000. The Blahnik's property was worth 10 times that amount."

Blahnik does not question that he should be punished for breaking the law. However, he questions the manner in which it was done.

"The prosecuting attorney went on television, putting our mug shots on and claiming they had made the biggest seizure ever made in either Washington or Oregon and we could possibly be connected to a nationwide drug ring," Blahnik says.

"They failed to mention that their big seizure was our retirement money," Blahnik says.

A Costly Catch

Sometimes the government's push to seize property drives it to spend far more than it makes. For example, it's estimated that the state of Iowa spent more than $100,000 defending the seizure of a $6,000 fishing boat.

It has been three years since the Iowa Department of Natural Resources agents charged Dickey Kaster with having three illegally caught fish.

The officers stopped Kaster, a 63-year-old retired gas company foreman, leaving Clear Lake. In the back of his truck the fish cops found a silver bass, a northern pike and a muskie, and said they had "net marks" on them. Kaster was charged with gillnetting, a misdemeanor in Iowa punishable at the time by up to 30 days in jail and a $100 fine for each fish. Altogether, he paid about $500 in fines.

But the officers also seized Kaster's 16-foot boat, 40-hp motor and trailer worth about $6,000.

"No doubt they had net marks on them, but so do 75 percent of the fish in the lake, I caught them with a rod and night crawlers," Kaster says.

District Court Judge Stephen Carroll said the seizure was unconstitutional and ordered the boat, motor and trailer returned.

But Cerro Gordo County Attorney Paul Martin appealed to the Iowa Supreme Court, which ruled the property could be seized.

Kaster's saga of the three fish has been on local court dockets four times and before the Iowa Supreme Court twice.

A court clerk in Mason City estimated that "probably a lot more than $100,000" was spent in pursuit of justice for those fish.

Kaster says he knows exactly what the ordeal cost him.

"Just about everything I own. I auctioned off the inventory of my bait and tackle shop at about a dime on the dollar and sold my house to pay the legal bills and keep the bank happy," he says.

"I didn't get my boat back, but I'm still trying," he says. "You can't let the government ignore the Constitution. I'm fighting this over a boat that shouldn't have been taken, but it really deals with how fair our government is supposed to be."

Mixed Crop

And fairness is what is worrying Don and Ruth Churchill, who are fighting to keep their family farm in Indiana.

"Salt of the earth" and "good, God-fearing people" are how some neighbors in the southern Indiana farming community describe the 54-year-old couple.

In 1987, Churchill had found some marijuana plants mixed in with his corn and immediately notified state police.

Farmers in the area were aware that a group called "the Cornbread Mafia" was planting marijuana in other people's cornfields throughout nine Midwestern states.

The cops destroyed the crop, and the Churchills thought they were done with marijuana.

But two years later, while they were watching a TV newscast about thousands of marijuana plants being found on farmland, they recognized the land as theirs.

The next morning, the Churchills went to the sheriff to say it was their land. Ten days later, state police arrived at their door to arrest Churchill and his 34-year-old son, David, charging them with numerous felony counts, including possession of and cultivating marijuana.

An informant had reported that he saw Churchill, his son and a third, unidentified man tending marijuana crops on land they own in Harrison County. The informant later reported that dope was also growing on other Churchill land in Crawford County, court affidavits show.

In February, four months before their first criminal trial, the federal government—prodded by state police who would get the bulk of any forfeiture proceeds—seized the 149 acres the Churchills own in both counties.

They are awaiting the outcome of the cases.

While the Churchills anguish over the possible loss of their property, they don't dispute that police found thousands of marijuana plants growing on their two tracts.

What Churchill disputes is that he or anyone else in his family grew it.

"I farm part time. We plant in the spring and harvest in the fall and don't mess with the corn in between." Before the large cache of marijuana was discovered, "we hadn't been out there for weeks," says Churchill, who leaves for work at 4 a.m. to get to the Ford truck plant 43 miles away in Louisville, where he has worked for 27 years.

Planting of "no-till" crops is very common in the area as a way to make extra money.

The farmland, especially valuable because it contains the largest natural spring in Indiana, has been in Mrs. Churchill's family for generations.

Standing on the steps of a wood-frame chapel in the midst of some of the land the government is trying to take, Mrs. Churchill expressed her disillusionment.

"This church is built on my family's land. I was baptized here, and Don and I were married here. This used to be a place of peace and happiness," Mrs. Churchill says. "Now, this place, our community, our lives, our faith in government, everything has changed.

"If they take our land, I'm going to lose faith in everything," she says.

Ron Simpson, the state's primary prosecutor of the criminal charges, questions the fairness of the federal government's seizure of the Churchills' land when most of it was inherited from the wife's family.

"Under our system, if someone is punished, they should have been charged with something, and we've brought no charges against Mrs. Churchill. We have no evidence that she knew anything about the marijuana that was growing," Simpson says. "You just have to wonder about how fair this seizure is." Churchill says:

"We assumed the legal system was fair, that if we were innocent, we had nothing to worry about. Now I'm in one court defending myself and MY son against drug charges, and in another court, they're trying to take MY land away. I'm worrying about a lot of things now."

A Handful Of Trouble

The issues of proportionality and fairness pose challenges for even strong supporters of forfeiture laws, including Gwen Holden, a director of the National Criminal Justice Association in Washington, D.C., a group that represents state law enforcement interests.

"If an individual is clearly a major trafficker and everything he ever bought is dirty, no one has major heartburn. If someone owns 200 acres of land and there's drugs on a comer and the guy never knew it was there, then the rule of reason should kick in," Ms. Holden says. "You shouldn't be taking the whole farm if he didn't know it was there."

Taking Bradshaw Bowman's whole farm is exactly what the government is trying to do.

The 80-year-old man was arrested for growing marijuana, and the local sheriff has seized his 160-acre ranch in the breathtaking high desert area of Southern Utah.

A convicted drug dealer-turned-sheriff's informant blew the whistle on a handful of marijuana plants growing on Bowman's property.

Bowman's "Calf Creek Ranch" is 300 miles south of Salt Lake City, at the entrance to a National Scenic Vista area of stunning canyons.

The marijuana was found on a hiking trail far from Bowman's house.

"I've had this property for almost 20 years, and it's absolute heaven. I love this place. My wife's buried here," Bowman says. "I can't believe they're trying to take it away from me, and I didn't even know the stuff was growing there.

"I used to serve on jury duty, but at 70 they make you stop. In all my time sitting in the jury box, I never heard of the Constitution treated this way."

Garfield County Attorney Wallace Lee, who is prosecuting both the criminal charges and the civil effort to seize Bowman's house, says, "He's getting his day in court."

"The fact that he's 80 years old has no bearing on the case at all and certainly not with me," Lee says. "I'm out to prosecute a criminal case here, and it doesn't matter whose house it is."

Bowman's lawyer, Marcus Taylor, says:

"This is the classic example of the absurdity, injustice and almost immoral nature of forfeiture.

"You could hold that entire bundle of 67 plants in one hand."

Jet Seized, Trashed, Offered Back For $66,000

With more than 9,000 flights under his belt, Billy Munnerlyn has survived lots of choppy air. But it took only one flight into a government forfeiture action to send his small air charter service crashing to the ground.

Munnerlyn and his wife, Karon, both 53, worked for years building their Las Vegas business. Their four planes - a jet and three props - flew businessmen, air freight, air ambulance runs and Grand Canyon tours.

"It wasn't a big operation, but it was ours," Mrs. Munnerlyn says.

Today, Munnerlyn is making 22 cents a mile trucking watermelons and frozen carrots across the country in an 18-wheeler.

He has filed for bankruptcy. He sold off his three smaller planes and office equipment to pay $80,000 in legal fees. His 1969 Lear Jet, his pride and joy, is being held by the federal government at a storage hangar in Texas.

Munnerlyn's life went into a tailspin the afternoon of Oct. 2, 1989, when he flew an old man and four padlocked, blue plastic boxes to the Ontario International Airport, outside Los Angeles.

His passenger was 74-year-old Albert Wright, a convicted cocaine trafficker. The plastic boxes contained $2,795,685 in cash.

But Munnerlyn says he didn't know that until three hours after they landed and Drug Enforcement Administration agents handcuffed him and took him to the Cucamonga County Jail. Munnerlyn was charged with drug trafficking and ordered to pay $1 million bail. Seventy-one hours later, he was released without being charged.

When he went to get his plane, a drug agent told him "it belongs to the government now"—a simple statement that launched a devastating legal battle that continues today. An informant had told Ontario Airport police that Wright would arrive Oct. 2 with a large amount of currency to purchase narcotics.

Police were waiting when the Lear landed. They watched Wright get off the plane. For the next three hours, agents followed him as he met two other people, picked up a rented van, returned to the airport and unloaded the plastic containers from Munnerlyn's jet.

Police followed the van to a residence about 20 miles away. They surrounded the van and four people nearby. All were identified as being major cocaine traffickers.

A search of the plastic boxes found $2,795,685.

At the airport, agents told Munnerlyn he was in trouble. They searched the jet. No drugs were found, but they seized $8,500 in cash that he had been paid for the charter.

"I guessed they would figure out I had nothing to do with that guy and his drug money, and give me my plane and $8,500 back," Munnerlyn says. He was wrong.

Two weeks later, drug agents showed up at Munnerlyn's Las Vegas home and office and carried off seven boxes of documents and flight logs.

It was just the beginning of the government's efforts to prove he was a drug trafficker and had flown for Wright for years. Munnerlyn says he didn't even know Wright was the man's name.

Several days before the seizure, Munnerlyn was contacted by a man identifying himself as "Randy Sullivan," a banker, who was willing to discuss financing a new aircraft that Munnerlyn had been telling business contacts he wanted to buy.

Munnerlyn agreed to meet him Oct. 2 at Little Rock Airport. "We were going to fly back to Las Vegas, where I was going to show him my operation and talk about him financing my purchase of a larger plane." Munnerlyn picked up "Sullivan" and four boxes of "financial records."

"He was a distinguished-looking, very old man dressed in a dark suit. He looked like a banker is supposed to look," Munnerlyn says.

They stopped in Oklahoma City to refuel. When they took off 45 minutes later headed to Las Vegas, "Sullivan" told Munnerlyn he had made a telephone call and had to go to the Ontario airport instead. They would discuss the loan at a later date, he told the pilot.

While en route, he paid Munnerlyn $8,300, the normal tariff for a jet charter, and gave him a $200 tip.

"I told the DEA that I never saw that man before in my life, and I've never had anything to do with drugs," Munnerlyn says. "All I want is my plane back."

Assistant U.S. Attorney Alejandro Mayorkas is still fighting to prevent that from happening.

In court documents Mayorkas filed, he acknowledged the government "will rely in part on circumstantial evidence and otherwise inadmissible hearsay" to try to justify the forfeiture.

The government "need not establish a substantial connection to illegal activity, but need only establish probable cause," the prosecutor wrote.

Mayorkas says the fact the aircraft flew into Los Angeles, "an area known as a center of illegal drug activity," is probable cause.

The prosecutor faulted Munnerlyn for not knowing what was in the boxes, but government regulations do not require charter pilots to question or examine baggage.

Munnerlyn wanted Wright to testify, but the government said he couldn't.

"He was the only guy other than me who could tell the court that we didn't know each other. But Mayorkas said they couldn't find him," Munnerlyn says.

At a three-day trial that began last Oct. 30, Mayorkas sprang a surprise witness. A ramp worker from Detroit's Willow Run Airport testified that he had seen Munnerlyn and Wright at his airport "in the fall of 1988." The witness, Steven Antuna, described Munnerlyn to a T, right down to the full reddish, gray-streaked "Hemingway-like" beard he had when he was arrested.

The only problem was that Munnerlyn didn't have a beard until the summer of 1989.

Mrs. Munnerlyn and her 31-year-old son took the stand and refuted the statements about the beard.

The six-member jury ruled that the plane should be returned to the pilot and his wife.

In December, Mayorkas asked for another trial - and held on to the plane. He said Munnerlyn's family members had lied.

But Munnerlyn submitted 51 affidavits from FAA and Las Vegas officials, U.S. marshals, bank officers, customers and business contacts swearing he did not have a beard in the fall of 1988.

Photos and a TV news tape of Munnerlyn being interviewed after rescuing a couple from Mexico after a hurricane, both taken that fall, showed him beardless. But the government kept the plane.

Munnerlyn and his wife shuttled between Las Vegas and Los Angeles more than 20 times.

"Each time we went we thought this nightmare would be over, but each time there was some new game that the government wanted to play," Mrs. Munnerlyn says.

First, Mayorkas demanded the pilot pay the government $66,000 for his plane.

"We didn't have any money left and we couldn't figure out why we should have to pay the government anything, when a jury said we were innocent," Munnerlyn says.

Mayorkas lowered the "settlement" to $30,000, still far more then the Munnerlyns could raise.

In April, Munnerlyn went to the U.S. Marshal Service's aircraft storage site in Midland, Texas. He climbed over, under and through his plane, which had been torn apart during the DEA search for drugs.

"The whole thing was a mess," he says. "That plane's going to need about $50,000 worth of work to bring it up to FAA standards again, to make it legal to fly."

In mid-June, Mayorkas made what he called a "final offer."

"We have to pay the government $6,500 to get back my plane, that a jury says shouldn't have been taken in the first place, and they want to keep the $8,500 that I was paid for the flight," Munnerlyn says.

Last month, when asked if the settlement request was fair, Mayorkas said:

"If he was innocent, he would have taken reasonable steps to avoid any involvement in illicit drug activity," Mayorkas says.

But he wouldn't detail what preventive measures Munnerlyn should have taken. The Munnerlyns are trying to borrow the money to get their plane back.

Forfeiture Threatens Constitutional Rights Part Six: *Reforms*

The bottom line in forfeiture ... is the bottom line.

And that, say critics, is the crucial problem.

The billions of dollars that forfeiture brings in to law enforcement agencies is so blinding that it obscures the devastation it causes the innocent.

A 10-month study by *The Pittsburgh Press* found numerous examples of innocent travelers being detained, searched and stripped of cash. Of small-time offenders who grew a little marijuana for their own use and lost their homes because of it. Of people who had to hire attorneys and fight the government for years to get back what was rightfully theirs.

Attorney Harvey Silverglate of Boston says: "There is a game being played with forfeiture. They go after the drug kingpins first, then when everyone stops looking, they turn the law and its infringement of constitutional protections against the average person."

Many people who have watched seizures and forfeitures burgeon as a law-enforcement tool say change must be made quickly if the traditional American system of justice, based on the constitutional rights of its citizenry, is to remain intact.

No Crime, No Penalty

When Nashville defense attorney E. E. "Bo" Edwards cites remedies, he lists first the need to make forfeiture possible only after a criminal conviction. Edwards heads a newly created forfeiture task force for the National Association of Criminal Defense Lawyers.

As the forfeiture law now stands, property owners who never were charged with a crime or were charged and cleared still can lose their assets in a forfeiture proceeding.

Under forfeiture, the government must only show that an item was used in a crime or bought with crime generated money. The government doesn't have to prove the property owner is the criminal.

Changing the law to allow forfeiture only after a property owner's criminal conviction would ensure the government proves its cases beyond a reasonable doubt, Edwards says.

The legal fiction "of property violating the law, that 'property' can do wrong, is ludicrous and offensive to the American scheme of government," says Edwards. "Arresting a plane, for instance, when there is no proof the pilot broke any laws is not only an abuse of our judicial system but a moronic game."

The narrow legal view holds that because forfeiture usually is a civil case, it involves monetary penalties and not punishment, like jail, that takes away personal freedoms.

Taking that narrow view, it seems unnecessary to include the due process protections of criminal court such as the presumption of innocence, because the potential penalties never would be as severe as those in a criminal case.

But prosecutors and appeals courts who say forfeiture is not a punishment are "denying reality," says Thomas Smith, head of the American Bar Association's criminal justice section. "The law was enacted to punish, and if you ask anyone who has lost a house or a bank account to it, they will tell you it is punishment."

Allowing forfeiture only in the event of a conviction also would eliminate the risks owners are exposed to when they face a criminal charge against them in one courtroom and the civil forfeiture case in another.

Under criminal and civil proceedings, the defendant has a constitutional guarantee that he needn't testify to anything that may incriminate him.

But because a person may face two trials on the same issues, it raises the possibility that a civil forfeiture case could be brought in the hope that information divulged there could later shore up an otherwise weak criminal case.

Ill-defined Procedures

The gusto for seizure is weakening the traditional protections that surround police work. The definition of "reasonable search and seizure," for example, has been stretched to include tactics that some believe aren't reasonable at all.

The U.S. Supreme Court this June said it is legal for police—wearing full drug-raid gear and with guns showing—to board buses about to depart a station and ask random passengers if they will consent to a search.

In his dissent, Justice Thurgood Marshall branded the tactic coercive and in violation of the Fourth Amendment. "It is exactly because this 'choice' is no 'choice' at all that police engage in this technique," he wrote.

Training films for state police or drug agents in Arizona, Michigan, Massachusetts, Texas, Louisiana, New Mexico and Indiana show that drug searches involve much more than a visual scan or quick hand search.

Officers in the films obtained by *The Pittsburgh Press* didn't just look. They opened suitcases in car trunks and pulled out back seats, side door panels and roof linings. In several of the films, they went so far as to remove the gas tank. When they're done, they may or may not put the car back together. The owner's ability to collect damages will depend on the protections offered by state law.

Grady McClendon had to fight in court for nearly a year to get back about $2,300 taken by police in Georgia following a highway search. His money was seized after police said they'd found cocaine in the car. Lab tests later showed it was bubble gum, but for 11 months police held McClendon's money without charging him with a crime.

During the search, McClendon says, "they made us stand four car lengths away. If I'd have known that, I wouldn't have said yes, because I couldn't see what they were doing in the dark. That isn't what I expected in a search."

No Accounting For Money

The public is often left in the dark about how the proceeds of forfeiture are spent.

A Georgia legislator who this year drafted a law that added real estate to the items that can be taken in his state, also inserted a "windfall" provision for funds.

Under the provision, once forfeiture proceeds equal one-third of a police department's regular budget, any additional forfeiture money will spill over to the general treasury.

State Rep. Ralph Twiggs says he worried that once police began seizing real estate it would bloat their budgets, especially in Georgia's many small towns. "I was looking at all the money going into the federal program and I was thinking ahead. I don't want gold-plated revolvers showing up."

Gold-plated revolvers may be an extreme worry. But as it now stands, it is very hard to determine how police spend their money.

The money or goods returned to local police departments through the federal forfeiture system do not have to be publicly reported. Congress, in its zeal to pass this feel-good (drug) law," says Philadelphia City Council member Joan Specter, "apparently forgot to require an accounting of the money.

"The happy result for the police is that every year they get what can only be called drug slush funds," says Specter.

A department that receives forfeiture funds from cases it pursued through federal court or with the help of a federal agency is merely required to assure the U.S. attorney in writing that it will use the money for "law enforcement purposes." And even that minimal requirement wasn't met in Philadelphia.

The Philadelphia police didn't file the forms last year, says Specter, and used the money to cover the costs of air conditioning, car washes, emergency postage, office supplies and fringe benefits.

"That would be fine," she says, "except that the intent of the federal law was for the money to go back into the war on drugs."

It also meant Philadelphia city council "made budgetary decisions in the absence of complete information." At a time when $4 million in forfeiture funds was on hand or in the pipeline for Philadelphia, the city's chemical lab, where drugs are analyzed, had a backlog of more than 3,000 cases, she says. The lab bottleneck caused court delays and prolonged jailing of suspects before their trials began, Specter says.

The Philadelphia Police Department had estimated $1.2 million would double the lab's capacity, but the forfeiture funds were spent elsewhere. "Who should be setting the priorities?" she asks.

Sen. Arlen Specter of Pennsylvania echoed his wife's view in an address to colleagues in the U.S. Senate. The absence of public accounting by the police who received federal shared funds, he says, "is a glaring oversight in the law, which ought to be corrected."

What legislators have done, says Chicago defense attorney Stephen Komie, "is emboldened prosecutors and police to create this slush fund of inappropriated money for which nobody votes a budget."

The federal forfeiture fund itself, which has taken in $1.5 billion in the last four years and expects to get another $500 million this year, had its first standard audit only last year.

Circumventing State Law

The relationship between state and federal forfeiture systems is thorny in other respects. Washington, D.C., helps local law enforcement do end runs around state law.

The process is formally known as "adoption" - and U.S. Rep. William Hughes of New Jersey, who devised it, now says he made a mistake that he would like to undo.

In adoption, a U.S. attorney's office will take over prosecution of a case developed entirely by local police. Theoretically, local law enforcement officials go to federal prosecutors because the federal government has more resources available to dissect complicated criminal enterprises and its jurisdiction reaches beyond state lines.

But more often, *The Pittsburgh Press* review of forfeiture found, the cases are passed along because local police find state laws too restrictive in what can be seized and how much money police can make.

If local departments choose to use the federal system, "then it seems to me it's entirely appropriate for us so long as the resources are there and what not - to help in that process," says Associate Deputy Attorney General George Terwilliger III, the head of forfeiture for the Justice Department.

"But I don't know that we'd encourage it."

But his department clearly does. The Justice Department's "Quick Reference to Federal Forfeiture Procedures" says on Page 203 that "adoptive seizures are encouraged." Hughes says including "adoption" in his legislation "was a mistake," because it has become a way for police to game the forfeiture system.

When he introduced legislation that would have ended federal adoption, "it went nowhere, because law enforcement rallied and convinced everyone they needed those cuts of the pie."

Local police have started using the federal courts to do end-runs around state laws that earmark forfeiture money for the likes of schools instead of cops, or else guarantee police less money than they would get in federal court. There, the cut for local law enforcement can be as much as 80 percent of the value of forfeited items. But it's not always money that propels police into federal court. It can also be differences over prosecution.

In Allegheny County, for instance, District Attorney Robert Colville will not pursue a forfeiture unless he first wins a criminal conviction against the property owner on a drug charge. Local police know that and avoid Colville's office and go to federal court when they aim to seize items from owners who aren't even charged with a crime, Colville says.

The departments argue their approach is legal, "but for me, legal isn't necessarily fair," Colville says.

"It was never intended states would be able to use the federal process to avoid state policy. (Former Attorney General Dick) Thornburgh in particular" has supported adoption. "We want to clean that up," Hughes says, adding that "for the chief law enforcement office of the country to permit that process" of end-runs is "absolutely wrong."

Short-sighted Solutions

Colville also believes the law's requirement that the money go for enforcement purposes restricts other, equally beneficial, uses. He would like to use more money for drug prevention and rehabilitation programs uses that are strictly limited under federal sharing rules.

For example, federal guidelines permit forfeiture funds to be used to underwrite classroom drug education programs but only if they're presented by police in uniform, Colville says. He'd like to send in health officials as well, to "get a different, equally important message across.

"I've come to the belief as a prosecutor that aggressive prosecution alone won't solve the problem. Guys I arrested 25 years ago when I was a policeman I still see coming back into the system. We need to address underlying social and economic problems." He has advocated using forfeiture money for the likes of summer jobs programs in drug-plagued neighborhoods, an idea rejected by the federal government.

Hughes, the New Jersey congressman, says he regrets earmarking all the federal forfeiture funds for law enforcement purposes, but cannot find support for changing the stipulation.

He originally thought police would need every dime they took in to pay for complicated investigations and assumed the forfeited goods would just cover the cost. Once the kitty grew, he figured, then money could be set aside for areas such as drug treatment.

But the coffers grew much faster than expected and now it is proving hard to get police to give up the money "we never dreamed we would be seizing $1 billion. Now the coffers are overflowing, but using the money in different ways is a touchy point at Justice."

Not even appeals from Louis Sullivan, secretary of Health and Human Services, compel a change. During an interview in Pittsburgh last week, Sullivan said he has asked that forfeiture funds go partially toward drug rehab but Justice turned him down repeatedly.

Justice recently turned down a proposal from Jackson Memorial Hospital, a cash-poor public hospital in Miami, to use $6 million seized during a south Florida money-laundering case to build a new trauma center.

The hospital is known in the industry as a "knife-and-gun-club" because of the volume of shootings and stabbings it handles. Police investigate nearly 85 percent of the hospital's cases.

In its proposal, Jackson suggested training medical staff to spot injuries that are the result of a crime, adding on-call photographers who would specialize in taking pictures of victims for use during trials and improving preservation of damaged clothing, bullets and other pieces of evidence.

The idea had bipartisan support from Miami's congressional delegation, Metro-Dade police and the U.S. attorney's office in Miami.

The memorandum from Justice rejecting the idea came from Terwilliger, who wrote that seized money must go to official use which "typically, has included activities such as the purchase of vehicles and equipment," including guns and radios.

But, says Hughes, "if the purpose is to deal with the drug problem effectively, Justice's reluctance to consider new ideas—particularly when it comes to treatment programs—seems to me to undercut their ultimate goal."

The Justice Department, which champions forfeiture as the law enforcement tool of the '90s, declines to talk about where the law is headed.

"I don't think it's appropriate in the context of a press interview to discuss potential policy and legislative issues," says Terwilliger.

But in not talking, the government "masks the details of the total emasculation of the Bill of Rights," says John Rion, a Columbus, Ohio, lawyer.

"The taxpayer thinks this forfeiture stuff is wonderful, until he's the one who loses something. Then, he realizes that it's not just the criminal's rights that have been taken away, it's everybody's."

Drug Fighting Sheriff Puts Compassion Before Forfeitures

In Detroit, Wayne County Sheriff Robert Ficano is an unabashed supporter of grabbing the spoils of the war on drugs, but he tempers his fervor for forfeiture with controls.

Ficano appears to be running precisely the type of drug interdiction program authors of forfeiture and seizure legislation envisioned.

It aggressively pursues drug criminals, it has procedures that protect innocent citizens, and it shows compassion—right down to the teddy bears narcotics agents carry to drug raids on homes where children live.

In addition, it turns forfeited money right back into more drug investigations. It can do that, because the confiscated money has allowed it to create a new interdiction team devoted to stopping narcotics.

"We started with two officers out of the Wayne County Jail and we wanted to see if they would be able to seize enough in their raids, for them to pay for their own salaries," he says.

That first year, in 1984, they seized $250,000. "Last year we seized over $4 million. And we've been able to completely fund the narcotic unit out of these forfeited funds," Ficano says.

Today he has 35 officers, 3 drug dogs and all the weapons, surveillance and communication gear needed to equip a modem drug team, with a $2.2 million budget.

"There isn't a dime of it from tax-payers' money that's used. So, in essence, you have the crooks paying for their own busts," he says.

The public's fear of drugs helps win support for forfeiture. "However, we in law enforcement have to ensure that a balance is always kept. You can't violate people's rights.

"Whenever you push a law, a tool, as far as you can go and get up toward the edge, it becomes a difficult balance. There's a responsibility that goes with it.

"In the area of forfeiture and seizure, I think we've probably gone as far as we can and still be accepted by the public and by the courts. I think we're near that edge," the sheriff says.

To maintain balance, Ficano instituted a series of steps that had some of his 900 deputies grumbling at first that he was going soft.

One of his major targets, he says, is closing crack houses, shooting galleries and other residential drug operations.

"We want these properties cleaned up and under the law we can seize them, but a surprising number of owners of drug houses have no idea of the activity, so we make sure they know what's going on," the sheriff says.

Ficano sends owners two written warnings that illegal activities are occurring on their property and that repeated arrests have been made.

"The first time we do it, we tell them what we found on their property and some of the things they can legally do to get these drug traffickers out," Ficano says. "We'll warn them a second time. The third time, we move to seize the house."

He admits he could make more money if he grabbed the property at the first violation, as many other departments do.

"But the motivation shouldn't be just seizing property. If we can get the public, the owners, to stop the trafficking, then we've accomplished an important goal," he says. "The warnings are needed because you just shouldn't wipe someone out, someone who may be innocent, without giving them a chance." He also gives warning to drug buyers driving into the county.

In some crack areas, he says, neighborhood streets that in the middle of the afternoon should be peaceful and tranquil look like the parking lots at the University of Michigan stadium on a football Saturday.

In conjunction with local police apartments, Ficano took out newspaper ads cautioning: "Buyers of Illegal Drugs, Take Notice." The ads listed descriptions of some of the 210 cars that have been seized from recreational drug users and the neighborhoods of their owners - and warned drug buyers to stay out of Wayne County or risk losing their vehicles.

Similarly, he gives a couple of chances to innocent owners of cars used by someone else in drug trafficking. After the first warning, they can claim innocence, that they didn't know that someone else was using the car to buy drugs. The second time the car is stopped, it costs owners $750 to get it back. If there's a third time, it's a seizure.

"A lot of these people need the cars to go to work or school, so we give them every chance we can, but it's got to stop."

He bristles when asked if he's soft on drug traffickers.

"Look at our arrest records—over 300 raids and 1,000 arrests last year—we're not soft at all," Ficano says. "We can enforce the law and be aggressive about it, but we can also do it with some compassion and the common sense that is supposed to come with the badge."

Safeguards and tight controls are a must, he insists.

"We do not want cowboys. We do not want officers who follow the typical stereotype drug cop from 'Miami Vice' and other TV shows. Seizure is an important tool, but we'll lose it unless we keep a heavy emphasis on respecting individual rights."

Sitting atop the TV set in his office is a very un-Miami-Vice prop: an 18-inch, black-and-white speckled teddy bear.

"The biggest deputies we have can be distressed watching a child react to a parent or both parents being arrested after a drug raid. It eats away at you," the sheriff says.

The bears are kept in the trunk of the unit's cars and vans, he says.

"If there is a raid or property is being seized and there are children involved, our deputies can pull the bears out to, hopefully, calm down the children," Ficano says.

It's difficult to envision a brawny SWAT officer, decked out in a helmet and bullet proof vest, carrying a gun in one hand and a teddy bear in the other. But the narcotic unit's weekly search warrant and arrest report has a column headed "Number of Bears."

The reports for the first two weeks of May show that two of nine bears given out were given as officers seized property.

"If there's something that can be done to reduce the pain that accompanies some of the things we have to do, why not do it?" Ficano asks. The one area Ficano was hesitant to discuss in detail was the activity of his men as part of the Drug Enforcement, administration's joint task force at Detroit's Metro airport.

Some lawyers, including the American Civil Liberties Union, have criticized the DEA team for being overzealous in seizing cash from suspected drug dealers.

The sheriff did say safeguards exist to prevent improper stops, but added that DEA directed him not to discuss his airport work.

While his drug unit is among the biggest moneymakers in the country, and the forfeited funds are key to financing that unit, he says there is a "very clear limit" on how far he will go.

"These new laws open all sorts of new areas for seizing the assets of drug traffickers. We'll use accountants, people with business and banking expertise—all sorts of nontraditional police skills to try to track and forfeit every dollar these dealers are making.

"But there's a line that we won't cross," Ficano says.

Unreasonable Seizures
Editorial: Aug. 11, 1991

The "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures" is enshrined in the Fourth Amendment to the Constitution.

For the most part, this bedrock right is so firmly entrenched, so thoroughly borne out by experience, that Americans take it for granted. When we read of an honest family deprived of its savings or its home or farm at the whim of the police, we assume an isolated abuse or think smugly of faraway tyrannies unblessed by our cherished Bill of Rights.

At least we used to. The remarkable series "Presumed Guilty," by Pulitzer Prize-winning reporters Andrew Schneider and Mary Pat Flaherty, now running in this newspaper, paints a startlingly different picture. It documents a rash of unreasonable seizures unintentionally spawned by the war on drugs.

The opening for this corrosion of civil rights was the amendment of the racketeering laws, starting in 1984, to permit authorities to confiscate possessions of suspects never charged with crimes, much less convicted. This radical departure from traditions of law was justified in terms of seizing the assets of drug criminals," as the White House National Drug Strategy put it, and helping "dismantle larger criminal organizations."

So much for intentions. Mr. Schneider and Ms. Flaherty's 10-month investigation documents more than 400 cases of innocent people forced to forfeit money or property to federal authorities. These victims are farmers and factory workers, small-business owners and retirees. Often, their only offense was exhibiting behavior or personal traits considered typical of drug couriers.

But even among people convicted of crimes, some penalties were wildly disproportionate. Should a family be permanently robbed of the farm that is its home and livelihood because six marijuana plants were found growing in a field?

"Presumed Guilty" is a withering indictment of the forfeiture laws. This page will explore its implications in the coming days.

What Price This War?
Editorial: Aug. 14, 1991

In its zealous prosecution of the "war on drugs," the government undeniably and intolerably has trampled the rights of countless innocent people.

Using hundreds of wide-open federal and state seizure laws, police and prosecutors have taken homes, cash and other personal possessions of people whose only offense was being in the wrong place at the wrong time or fitting some officer's or informant's preconceived, and likely racist, notion of what a criminal looks like.

In some localities, government seizures take on the trappings of a criminal enterprise, with prosecutors, police departments, judges and tipsters conspiring to grab someone's property and divvy it up, all without regard to due process of law.

Those on the receiving end of such injustices are to be excused if they come to regard the government itself as a corrupt organization.

The abuses are documented in a continuing series, "Presumed Guilty," by reporters Mary Pat Flaherty and Andrew Schneider of *The Pittsburgh Press*.

The series examines the effect of a 1984 change in the federal racketeering law that allows police to seize the property of those even marginally involved with illegal drug activity. No conviction is required, only a showing of "probable cause." The idea was to deprive drug traders of their trinkets and baubles: the jewelry, cars, boats and real estate bought with illegal proceeds.

The idea was that the assets would revert to the law enforcement agency that seized them, with proceeds going to finance the fight against drugs. Some $2 billion has been generated for police departments, much of which no doubt has been put to good use.

But there are instances - far too many of them - in which financial incentive and lack of safeguards have pushed the "good guys" over the line. in Hawaii, federal prosecutors combed through records of old cases looking for opportunities to seize property. They took the home of Joseph and Frances Lopes, a couple of modest means whose son had pleaded guilty four years earlier to growing marijuana in the backyard for his personal use. "The Lopeses could be happy we let them live there as long as we did," an arrogant G-man snorted.

At some airports, counter clerks spy on customers, looking for those carrying large amounts of cash. They tip off the cops and collect a cut of the loot if there is a seizure.

Police, using dubious "profile" criteria that disproportionately target minorities, stop people like Willie Jones, a landscaper from Nashville. Mr. Jones' "crime" was to be carrying cash on a trip to Houston to buy shrubbery. He was relieved of $9,600 by Drug Enforcement Administration agents.

Like 80 percent of those whose property has been taken, Mr. Jones was not charged with a crime. He's still fighting the government to get his money back.

The reporters' 10-month investigation revealed more than 400 cases from Maine to Hawaii in which the rights of innocent people were steamrollered. Their findings should send a chill up the backs of all citizens - most particularly those in the law enforcement community who must act to salvage the credibility and legitimacy of the war on drugs.

Seizure: Out Of Control
Editorial: Aug. 18, 1991

Less than four months from now, on Dec. 15, to be exact, the 10 original amendments to the U. S.

Constitution - the precious Bill of Rights - will be 200 years old.

For two centuries, these superbly crafted safe-guards have served to protect the individual rights of the American people, withstanding attempt after attempt to erode the liberty guaranteed by the Constitution.

But seven years ago, Congress, in a well-intentioned but poorly executed attempt to step up the war on drugs, twisted some of the guarantees until a crack developed. Since then, money-hungry law enforcement agencies across the country have slammed wedges into the breach, creating a gap of frightening dimensions.

Compromised, indeed, even seriously endangered by the Congressional fervor of the Orwellian year of 1984, are three basic rights.

No longer is an American assured by the Fourth Amendment that he or she will not be subjected to "unreasonable searches and seizures." No longer does the Fifth Amendment assure that private property will not be taken "for public use without just compensation." And no longer does the Eighth Amendment protect anyone from "cruel and unusual punishment."

Blame Congress. By changing the federal forfeiture law, aimed at curbing drugs by causing hardships to dealers, Congress in 1984 gave law enforcement agencies the power - and even an incentive - to abridge these rights.

How the law has run rampant over the rights of individuals since then was startlingly documented during the past week in *The Pittsburgh Press*. Reporters Andrew Schneider and Mary Pat Flaherty, in six chilling installments, documented more than 400 cases of innocent people falling victim to government out of control.

They found that police, using hundreds of federal and state seizure laws, have confiscated $1.5 billion in assets and expect to take in $500,000 more this year. But, it turns out, for every drug lord and dealer who loses his ill-gotten treasures to the government, there are four innocent people who are being victimized - fully 80 percent of the people who lose property to the federal government are never charged with a crime.

They are searched, unreasonably in most cases, and after fitting a profile that is likely racist. Their property is taken with not even a thought of compensation. Their homes, their farms, their very life savings are confiscated in as cruel and as unusual a punishment as one can imagine.

Why? Because the forfeiture law calls for funds derived from seizures to be turned back to law enforcement agencies, to be used to continue the war on drugs.

That’s a cunningly attractive concept - crime paying for its own investigation and prosecution. In practice, though, the theory falls distressingly flat, the victim of human greed.

Law enforcement agencies, on the hunt for dollars, are on a seizure binge, taking property indiscriminantly and without compassion. People only marginally involved with a drug investigation, people who never were charged with a crime, have lost their homes, money and belongings. So have those who were charged and cleared.

Some were even the victims of bounty hunters - those who, for a piece of the seizure pie, become informants. As it stands now, anybody with a finger to point can share in money seized from a person they tab as "suspicious."

But because it doesn’t matter whether their target is guilty or innocent -just whether there is a seizure of property in which they will share - the system is wide open to abuse. And it has been abused, to the point where innocent travelers have been detained, searched and stripped of their money.

Even some police shudder at what is happening. Wayne County (Detroit) Sheriff Robert Ficano, who, while aggressive in leading his drug war, is careful not to wage it at the expense of the rights of individuals. "Seizure is an important tool," he said, "but we'll lose it unless we keep a heavy emphasis on respecting individual fights."

He's right, of course. Seizure has been, is, and should continue to be a big gun in the war on drugs. But it can't be a shotgun, blasting away at innocent people who happen into its path.

The legal massacre uncovered by Mr. Schneider and Ms. Flaherty must stop and only Congress has the necessary remedial power.

The forfeiture law must be overhauled once again, due process restored, the bounty hunters disenfranchised and seizure of property permitted only after an individual has been convicted of a crime.

All we are demanding, after all, is that Congress pay attention to a 200-year-old list of guarantees that was ignored in 1984.

About The Authors:

Pat Flaherty, 36, is a graduate of Northwestern University who has worked for 14 years at *The Pittsburgh Press* where she currently is a special editor/news and a Sunday columnist.

In 1986, she won a Pulitzer Prize for specialized reporting for a series she wrote with Andrew Schneider on the international market in human kidneys. She was the first recipient of the Distinguished Writing Award given by the Pennsylvania Newspaper Publishers Association; twice has won writer of the year awards from Scripps Howard and has received numerous state and regional reporting awards.

Her assignments at The Press have included coverage of the 1988 Olympics in Seoul and a 5-week trip through refugee camps in Africa.

Andrew Schneider, 48, began reporting for *The Pittsburgh Press* in 1984. Since that time, he has won two consecutive Pulitzer Prizes; in 1985 for the series he co-wrote with Mary Pat Flaherty on abuses in the organ transplant system, and in 1986, for a series, with Matthew Brelis, on airline safety, which also won the Roy W. Howard public service award.

His other work includes a series with reporters Lee Bowman and Thomas Buell on safety problems of the nation's railroads and a series with Bowman, exposing deficiencies in Red Cross disaster services.

Before joining, The Press. he worked for UPI, the Associated Press and Newsweek. He is the founder of the National Institute of Advanced Reporting at Indiana University.