



**Forfeiture Endangers American Rights Foundation**  
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20 Sunnyside Suite A-419, Mill Valley, CA 94941

# Forfeiture Endangers American Rights

"Civil asset forfeiture has allowed police to view all of America as some giant national K-Mart, where prices are not just lower, but non-existent — a sort of law enforcement 'pick-and-don't-pay.'"

—U.S. Representative Henry Hyde,  
[\*Forfeiting Our Property Rights:  
Is Your Property Safe from Seizure?\*](#)

"Findings suggest asset forfeiture is a dysfunctional policy. Forfeiture programs, while serving to generate income, prompt drug enforcement to serve functions that are inherently contradictory and often at odds with the demands of justice."

—Mitchell Miller & Lance H. Selva,  
[\*Drug Enforcement's Double Edged Sword:  
An Assessment of Asset Forfeiture Programs\*](#)

(Twelve month empirical examination of the implementation of laws from within the forfeiture program)

See [What's New at FEAR](#)

## Why do we FEAR asset forfeiture?

**Incredible as it sounds, civil asset forfeiture laws allow the government to seize property without charging anyone with a crime.** Until FEAR achieved the nation's first major federal forfeiture law reform at the turn of the millenium, the government was allowed to keep whatever property it seized without ever having to prove a case. Seized property was presumed guilty and could be forfeited based upon mere hearsay—even a tip supplied by by an informant who stood to gain up to 25% of the forfeited assets. Owners were forced into the untenable situation of trying to prove a negative—that something never happened, even though no proof of any illegal act had been offered at trial.

**Newspapers and television stories across the nation documented hundreds of cases of innocent citizens wrongfully deprived of their homes, businesses and livelihoods.** Eighty percent of property forfeited to the US during the previous decade was seized from owners who were never even charged with a crime! Over \$7 billion has been forfeited to the federal government since 1985. Until

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the advent of FEAR law enforcement officials promoting expanded forfeiture laws comprised the overwhelming majority of lobbyists at hearings on forfeiture litigation. Meanwhile, prosecutors complained that police were less available to investigate crimes that did not involve forfeiture.

**Over 200 federal forfeiture laws are attached to non-drug related crimes.** Even a false statement on a loan application can trigger forfeiture. Physicians are subject to forfeiture of their entire assets based on a clerical errors in medicare billing. The government even tried to forfeit a farmer's tractor for allegedly running over an endangered rat. The federal government obtained a judgment of forfeiture against the prized sailboat "Flash II," once owned by the late John F. Kennedy, without bothering to provide notice to the principle owner of the forfeiture proceeding against the sloop. It took several years of expensive litigation before the district court in Massachusetts ruled the historic sailboat had never been legally subject to forfeiture; that the government had no right to seize and then sell the sloop; and that the proceeds of that sale rightfully belong to the innocent owner.

**In April, 2000, FEAR achieved the nation's first major federal forfeiture law reform, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA).** The sponsor of the act, Rep. Henry Hyde, thanked FEAR in the April 11, 2000, congressional record "for their long and dedicated work on behalf of forfeiture reform." Though the final compromised version was stripped of many of the reforms for which we lobbied, for the first time since civil asset forfeiture laws were passed, under CAFRA the government:



*Spectre of Forfeiture* acrylic on canvas by  
[G. Tompkins](#)

[History of quirky forfeiture procedures](#)

- must prove its case;
- is liable for damages to seized property; must return property to owners pending trial when possession would cause substantial hardship;
- may no longer require an owner to pay 10% cost bond just to contest the forfeiture in court;
- can no longer forfeit property from owners who prove their innocence; and
- must appoint counsel to some indigent claimants.

**Further changes are still urgently needed at both federal and state levels.** Many innocent owners still face the untenable situation of having to prove a negative—that their property was not involved in a crime, or that they had no knowledge of criminal activity. Most owners of seized property still lack the financial resources to even bring their cases to court. A final hour amendment to CAFRA won by the Dept. of Justice allows appointed counsel *only* for property owners who have court appointed attorneys in related criminal charges, and for some owners of seized homes.

**Innocent owners who are never charged with a crime still must prove their innocence in complex proceedings, where many cases are lost before even coming to trial.** Most forfeiture cases are never contested, in part because contesting the proceedings can cost more than the value of what's been confiscated. "The average vehicle seized is worth about \$4,000," states FEAR president Brenda Grantland, Esq. "To defend a case, especially when you're out of state, they've pretty much made it cost prohibitive." Under civil asset forfeiture laws, the simple possession of

cash, with no drugs or other contraband, can be considered evidence of criminal activity.

FEAR is a non-profit organization dedicated to stopping the drift into tyranny that unfair forfeiture laws encourage. FEAR membership is \$35 per year. Because our focus is on legal reform, membership dues are not tax deductible. However, donations made to FEAR Foundation will be used to educate the public about forfeiture law, and are fully tax deductible.

## Civil asset forfeiture laws pervert law enforcement priorities at your expense.

"Even if you're a law-abiding citizen who's never been convicted of a crime, local police are allowed to confiscate your property and money and keep up to 80 percent of it for themselves, with the legal stipulation that this windfall be spent only on programs likely to result in additional confiscations where the police can keep up to 80 percent of the booty for themselves," wrote Jennifer Abel in an October, 2007, article published by the [Hartford Advocate](#).

The Spring 2007 edition of [Justice Policy Journal](#) features a 31 page treatise, [Civil Asset Forfeiture: Why Law Enforcement Has Changed its Motto from "To Serve and Protect" to "Show Me the Money,"](#) in which Jared Shoemaker examines the negative impact on law enforcement goals and practices when police agencies aggressively pursue civil



***History of forfeiture's quirky procedures:***

[\*Drug Control and Asset Seizures: A Review of the History of Forfeiture in England and Colonial America\*](#), by



asset forfeitures as a means of supplementing their budgets, as well as how police agencies' addiction to forfeiture revenue leads to disregard for individual due process rights, sometimes with tragic and life-altering consequences for innocent individuals.

The perversion of law enforcement priorities was also the subject of an empirical study published thirteen years ago. Sociologists Mitchell Miller (University of Tennessee) and Lance H. Selva (Middle Tennessee State University) received the 1994 Academy of Criminal Justice Sciences Award for their undercover study and critical analysis of asset forfeiture's impact on police procedure. Based on twelve months of covert observation from within narcotics enforcement agencies, [\*Drug Enforcement's Double-Edged Sword: An Assessment of Asset Forfeiture Programs\*](#) described forfeiture as a "dysfunctional policy" that forces law enforcement agencies to subordinate justice to profit.

The *Double-Edged Sword* undercover researcher observed agencies abandon investigations of suspects they knew were trafficking large amounts of contraband simply because the case was not profitable. Agents routinely targeted low level dealers rather than big traffickers, who are better able to insulate themselves and their assets from reverse sting operations. The [report](#) states: "Efficiency is measured by the amount of money seized rather than impact on drug trafficking."

A reverse sting operation, where the officer becomes the seller who encourages the suspect to commit a crime, "was the preferred strategy of every agency and department with which the researcher was associated because it allowed

Cecil Greek, Ph.D., 1992, *Drugs, Crime, and Social Policy: Research, Issues, and Concerns* (T. Mieczkowski, Ed.), Boston: Allyn and Bacon. pp. 109-137.

[\*Policing for Profit: The Drug War's Hidden Economic Agenda\*](#) (PDF document), by Eric Blumenson & Eva Nilsen, 1998, Suffolk University Law School Faculty Publications

[\*Reforming Property Forfeiture Laws to Protect Citizen's Rights\*](#) (PDF document), by Donald J. Kochan, J.D. 1998, MKackinac Center for Public Policy, Michigan.

agents to gauge potential profit prior to investing a great deal of time and effort." More importantly, the narcotics units studied preferred seizing cash intended for purchase of drugs supplied by the police, rather than confiscating drugs already on the street. When asked why a search warrant would not be served on a suspect known to have resale quantities of contraband, one officer responded:

"Because that would just give us a bunch of dope and the hassle of having to book him (the suspect). We've got all the dope we need in the property room, just stick to rounding up cases with big money and stay away from warrants."

In one case an agency instructed the researcher to observe the suspect's daily transactions reselling a large shipment of cocaine so that officers could postpone making the bust until after the majority of the drug shipment was converted to cash. This case was only one of many in which the goal was profit rather than reducing the supply of drugs reaching the street.

Thirteen additional years of policing for profit have now entrenched agencies in a dependency on forfeiture revenue that continues to subordinate the pursuit of justice to the pursuit of profit.

**"A conflict of interest between effective crime control and creative fiscal management will persist so long as law enforcement agencies remain dependent on civil asset forfeiture."**

—John L. Worrall, Department of Criminal Justice,  
California State University, San Bernardino, *Addicted  
to the drug war: The role of civil asset forfeiture as a  
budgetary necessity in contemporary law  
enforcement*, [Journal of Criminal Justice Volume 29,  
Issue 3](#), May-June 2001, Pages 171-187.

### Now is the time to:

- Establish the right to trial by jury with assistance of counsel in *all* forfeiture cases;
- Require criminal conviction of the owner before property may be forfeited;
- Limit excessive forfeitures for minor crimes;
- Eliminate the fiscal incentives that corrupt law enforcement priorities; and
- Reform state laws that were modeled after the old draconian federal laws.

To volunteer send an Email to FEAR at [volunteers@fear.org](mailto:volunteers@fear.org).  
We also encourage forfeiture victims to send us Email at [victims@fear.org](mailto:victims@fear.org).

See [What's New at FEAR](#)

**FEAR's "[Gideon Project](#)" — to increase the availability of counsel for forfeiture victims**

**Victims of federal forfeiture cases whose homes were seized are eligible for court appointed counsel under the Civil Asset Forfeiture Act of 2000 (CAFRA).** Civil forfeiture victims frequently contact FEAR



complaining that they can't afford to hire counsel because all of their assets were seized. For those financially unable to hire forfeiture counsel, CAFRA *requires* the court to appoint counsel when the claimant's primary residence is seized. Where the claimant has a court appointed attorney in a related federal criminal case, CAFRA *permits* the court to appoint that attorney for any other type of civil forfeiture case as well.

**Unfortunately, many federal judges apparently do not know about these provisions.** In one case, the pro se claimant and his wife actually asked for counsel to be appointed to defend their residence and the judge denied it. He was forced to defend against summary judgment pro se, while incarcerated -- and he lost. Then he contacted FEAR. He followed our advice and argued that the summary judgment ruling was void because he and his wife had been denied their statutory right to counsel under CAFRA. The judge vacated the ruling, and appointed counsel.

FEAR has been trying to determine the extent to which CAFRA's Right to Counsel provisions are being implemented. It appears from our preliminary research that court appointments are rare. FEAR is seeking funding to embark on a project to address this problem. We have named it "The [Gideon Project](#)" (after *Gideon v. Wainwright*, the Supreme Court case that established the constitutional right to counsel in criminal cases). The plan includes three components:

- research and compile statistics on the appointment of counsel in federal courts nationwide
- educate judges, court clerks, and public defenders about the right to counsel provisions; and
- [create a forfeiture training program](#) for court appointed criminal defense attorneys.

Please consider making a charitable donation to help fund FEAR's new Gideon Project, whose aim is to implement the right to counsel provisions of the Civil Asset Forfeiture Reform Act, and to expand the pool of qualified forfeiture lawyers nationwide. This [slide show explains the goals of the Gideon Project in greater detail](#). (This presentation is best viewed using Internet Explorer 4 or higher. For a better fit on the page, select "full screen" from the "view" menu.)

Tax-deductible donations can be made online at the FEAR website, using Paypal, or by mailing checks to FEAR Foundation, 20 Sunnyside Suite A-419, Mill Valley, CA 94941. Write "Gideon project" in the memo line of your check to earmark the funds for this project.

Please click here to save and print FEAR's tri-fold *Gideon Project* brochure (PDF file).