

PRESUMED GUILTY

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It's a strange twist of justice in the land of freedom. A law designed to give the cops the right to confiscate and keep the luxurious possessions of major drug dealers mostly ensnares the modest homes, care 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 DEA. They interviewed 1,500 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.

Part One: The Overview

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Willie Jones, a second-generation nursery man on 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 the 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 of 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 1964 has expanded the use 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 intent.

"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 set-up 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, emphasized 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 Jamaican?" Probably both - but the 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 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 the 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 checks 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 them "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 check.

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 the 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 case "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 Kerner, 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 Kerner.

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 Hahn, the Multnomah County deputy district attorney, had swept into the bar, shoed 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 believed 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 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 he 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 carry 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 used 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 Brewer's living room with guns drawn and said they had a warrant to search.

The Brewers, Robert, 61 and Bonita, 44, both retired for 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 trips 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 Furtner, a Continental Airlines clerk in Denver, at least \$5800 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, Drawford County.

Lewis spent 17 years as a prosecutor, serving as an assistant U.S. attorney in Tampa as recently as 1988. He left the Tampa job -- and 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.

Cary 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 \$13,00 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's 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 officers 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 recover 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"

TOMORROW: "The Way You Look"

The following is a side box on Part One:

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 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 that 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, N.C. 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 pre-sentence 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 passed 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 unequalled 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."

George Terwilliger, who helps set Justice Department's forfeiture policy,

calls the law "effective".