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OPINION | COMMENTARY

Cops and Robbers, All Rolled Into One

Law-enforcement agencies seize billions a year without filing charges. Even burglars take less.



PHOTO: GETTY IMAGES

By *Tony Lima*

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There aren't many things government can claim to do more efficiently than the private sector. Taking people's property is one. In 2014 the federal government seized about \$4.5 billion from people who hadn't been charged with crimes. That exceeds the private-sector equivalent, burglary. According to an analysis by Armstrong Economics, perpetrators absconded with only \$3.9 billion that year.

Since 2007 the Drug Enforcement Administration alone has seized more than \$3 billion in currency from individuals in civil actions under which legal protections for criminal charges do not apply. Criminal asset forfeiture requires an indictment against both an individual and the property in question. With civil asset forfeiture only the property is charged before being seized.

Last week Attorney General Jeff Sessions stated his intention to increase the volume of these asset forfeitures. Contrary to published reports, the Sessions directive does not extend asset forfeiture to states that have outlawed the practice. It clarifies that federal asset forfeiture can only be applied to violations of federal law.

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But there's no doubt Mr. Sessions is putting himself in bad company. As California attorney general, Kamala Harris opposed a 2011 law restraining the practice of civil asset forfeiture. In 2015 she sponsored a bill to allow authorities to seize suspects' assets before filing charges. That year California forfeitures totaled \$50 million. Ms. Harris is now a U.S. senator in the midst of a 2020 presidential boomlet.

Civil asset forfeiture has become a profit center for law enforcement. Any law-enforcement official can seize assets, and anyone suspected of a crime can be a target. In 2016 half of all forfeitures in Connecticut were valued at less than

\$570, casting doubt on the claims of many government agencies that civil asset forfeiture is used only against big-time thieves and drug dealers. Many states allow law-enforcement agencies to keep all or part of what they seize.

It's impossible to know how many instances of federal asset forfeiture lead to criminal convictions, because the Justice Department doesn't keep such data. "Although the Department of Justice's forfeiture database tracks more than 1,300 variables about cash and property seizures, not one indicates whether a criminal charge or conviction accompanied a forfeiture," according to a 2015 report from the Institute of Justice, a free-market legal group. "The DOJ carefully tracks and reports forfeiture revenue, but fails to publicly report whether forfeitures target proven criminals."

In 2013 the Internal Revenue Service seized \$33,000 from Carole Hinder. It was the entire balance in her restaurant's checking account. Ms. Hinder had operated her business for more than 40 years, accepting only cash. The agency then got a warrant to seize another \$150,000. Ms. Hinder's crime? Making deposits of less than \$10,000, the threshold above which banks must report transactions to the IRS.

Ms. Hinder's mother had advised her to make smaller deposits because it would be more convenient for the bank—the required IRS Form 8300 is long, complicated and time-consuming for banks to fill out. The IRS alleged that Ms. Hinder's deposits were "related and excessive." Thankfully, sanity eventually prevailed. The IRS dismissed her case in late 2014.

In 2012 Bi-County Distributors, a small family-owned business on Long Island, watched the federal government yank \$446,000 from its account. Three different banks had stopped doing business with Bi-County because of the reporting requirements triggered by its frequent large cash deposits. Bi-County's accountant advised the company to stay below the \$10,000 limit, which, of course, drew the IRS's attention.

In January 2015, Loretta Lynch, then U.S. attorney for New York's Eastern District, signed a settlement returning the \$446,000 to the company. Bi-County survived because its vendors allowed it to postpone paying bills. At one point, Bi-County owed a supplier almost \$300,000.

Asset forfeiture imposes costs on the broader economy as well as individual businesses. Capital that is tied up in court proceedings or accounts payable is not available to finance productive enterprise. Instead of expanding this practice, Mr. Sessions should reform it. His recent directive took a tiny step in this direction by expediting both the notification and appeal processes.

But he should do more. The Justice Department should start keeping track of forfeitures that do not lead to charges and urge Congress and the states to pass reforms, especially an end to the practice of using the proceeds as a source of revenue for the government.

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