

# Seizure Fever: The War on Property Rights

by James Bovard

Mass confiscation has become politically fashionable. Politicians and the courts have created an overwhelming presumption in favor of the government's right to seize control over private land, private homes, boats, and cars, and even the cash in people's wallets. While the dispute over property rights is often portrayed as merely an economic contest, the power of government officials to seize private property directly subjugates citizens to the capricious will of those officials.

Once upon a time, possession was nine-tenths of the law. Nowadays, gossip is sometimes nine-tenths of possession. Thousands of American citizens are being stripped of their property on the basis of rumors and unsubstantiated assertions made by the government's confidential informants.

Beginning in 1970, Congress enacted legislation to permit government to seize property of Mafia organizations and big-time drug smugglers.<sup>1</sup> In succeeding decades, other forfeiture laws were enacted, and federal agents can now seize private property under more than 200 different statutes.<sup>2</sup> From 1985 to 1991, the number of federal seizures of property under asset forfeiture laws increased by 1500 percent—reaching a total of \$644 million.<sup>3</sup> State and local

governments have also seized hundreds of millions of dollars of property in recent years.<sup>4</sup> According to Steven Kessler, a New York lawyer who authored a three-volume 1993 study on federal and state forfeiture, "The use of forfeiture has probably increased a hundred-fold in the last ten years."<sup>5</sup> Thousands of Americans have had their property confiscated thanks to the forfeiture laws.

Unfortunately, the more forfeiture laws legislatures enacted, the less attention police seem to pay to major criminals. Representative Henry Hyde of Illinois noted in June 1993 that 80 percent of the people whose property is seized by the federal government under drug laws are never formally charged with any crime.<sup>6</sup> Representative John Conyers of Michigan declared at a June 1993 congressional hearing: "A law designed to give cops the right to confiscate and keep the luxury possessions of major drug dealers mostly ensnares the modest homes, cars and hard-earned cash of ordinary, law-abiding people."<sup>7</sup>

## Legalized Theft

Willie Jones of Nashville was flying to Houston on February 27, 1991, to purchase plants for his landscaping business. Because Jones was black and paid cash for his plane ticket, the ticket clerk reported him to nearby Drug Enforcement Agency officers,

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who presumed Jones was a drug courier. DEA officers at the Nashville airport approached Jones, checked his identification, and asked permission to search him. Although Jones refused to grant permission, the officers searched him anyway and found \$9,000 in cash. The DEA agents then announced that they were “detaining” the money. Jones observed: “They said I was going to buy drugs with it, that their dog sniffed it and said it had drugs on it.” (A 1989 study found that 70 percent of all the currency in the United States had cocaine residue on it.)<sup>8</sup> Jones never saw the dog. The officers didn’t arrest Jones, but they kept the money. When Jones asked the officers for a receipt for his money, they handed him a receipt for an “undetermined amount of U.S. currency.” Jones objected and asked the officers to count the money out, but the officers refused, claiming that such an action would violate DEA policy.

Federal judge Thomas Wiseman, in an April 1993 decision, concluded that “the officers’ behavior at this point was casual and sarcastic . . . they believed that the seizure of the currency was all but a *fait accompli* . . . they cared little for Mr. Jones’s feelings of insecurity.”<sup>9</sup> Judge Wiseman concluded that the DEA officials’ testimony on the seizure was “misleading,” “unconvincing,” and “inconsistent” and ordered the money returned—after a two-year legal battle. Jones observed: “I didn’t know it was against the law for a 42-year-old black man to have money in his pocket.”<sup>10</sup>

A married couple in Ottsville, Pennsylvania, had their \$250,000 home confiscated after police found marijuana plants inside the house; the couple and their three children were effectively evicted from their own home. District Attorney Gary Gambardella, who filed the motion to confiscate the home, observed: “People say that selling drugs is a victimless crime, but the children are the real losers here.”<sup>11</sup>

Asset forfeiture increases the power of local policemen over people they do not like. In Washington, D.C., police routinely stop black citizens and “confiscate small amounts of cash and jewelry on the streets

and in parks—even when no drugs are found or charges filed.”<sup>12</sup> Ben Davis, a resident of Washington, complained, “I’ve got money in both pockets, but I don’t know how much. The assumption is, if I can’t tell you exactly how much I have, it must be from criminal enterprise.”<sup>13</sup>

Increasingly, the mere suspicion of a government official is sufficient proof to nullify all claims that a citizen legitimately owns his property. The Volusia County, Florida, sheriff’s department set up a “forfeiture trap” to stop motorists traveling Interstate 95 and seized an average of over \$5,000 a day from motorists between 1989 and 1992—over \$8 million dollars total. In three-quarters of the seizures, no criminal charges were filed. An investigation by the *Orlando Sentinel* revealed 90 percent of those seizure victims were black or Hispanic.<sup>14</sup> When confronted with this statistic, Volusia County Sheriff Bob Vogel said, “What this data tells me is that the majority of money being transported for drug activity involves blacks and Hispanics.”

People whose cash was seized by the deputies received scant due process of law; as the *Sentinel* noted, one deputy told two blacks from whom he had just confiscated \$19,000: “You have the right to follow us back to the station and get a receipt.” Even citizens who provided proof that their money was honestly acquired (including a lottery winner’s proof of his lottery receipts) were treated like drug dealers. Volusia County officials routinely offered “settlements” to drivers whose cash they seized, offering to return a percentage of the seized cash if the drivers would sign a form promising not to sue.

Asset forfeiture laws are turning some federal agents into the modern-day equivalent of horse thieves. Ranchers are being victimized by seizures based on allegations of violations of environmental laws. On March 10, 1992, U.S. Fish and Wildlife Service and state agents trespassed 15 miles onto Richard Smith’s Texas ranch, accused him of poisoning eagles, and seized his pickup truck. The agents later tracked down Smith’s 75-year-old father, W.B. Smith, and

seized his pickup truck—threatening to leave an old man who had had five heart bypass operations ten miles out of town with no transportation.<sup>15</sup> The agents produced no evidence to support their accusation and returned the trucks nine months later without filing charges.<sup>16</sup> W.B. Smith complained: “The Fish and Wildlife Service is out of control, and the Endangered Species Act has given them the tools to destroy the ranching industry.”<sup>17</sup>

Lawyer Nancy Hollander told the House Government Operations Committee in June 1993: “All too often, in my practice back in Albuquerque, I see cases where someone loses the family pick-up truck at the time of arrest for a non-money related, non-drug federal crime. These persons frequently give up the criminal case, even when the prosecution has little merit, to negotiate the release of a vehicle which provides their livelihood.”<sup>18</sup>

Confiscation based on mere suspicion is the essence of contemporary asset forfeiture. In Adair County, Missouri, local police seized Sheri and Matthew Farrell’s 60-acre farm based on an unsubstantiated tip from a paid drug informant who claimed that Farrell had a vast field of marijuana and used tractors outfitted with special lights to harvest it at night. Police made no effort to investigate the allegations before seizing Farrell’s farm. The case against Farrell and 34 other local defendants collapsed when the informant refused to testify in court—first because he claimed he had laryngitis, and then because he claimed a total loss of memory.<sup>19</sup> Despite the collapse of the prosecution’s case, the police refused to return Farrell’s farm. They had a change of heart after the *Pittsburgh Press* exposed the case, although they required that the Farrells sign an agreement promising not to sue before giving back the farm. The case cost the Farrells over \$5,600 in legal fees.

## Distorted Law Enforcement Priorities

Asset forfeiture distorts law enforcement priorities; instead of chasing violent crimi-

nals, some police target wealthy citizens. Early in the morning of October 2, 1992, a small army of 31 people from eight law enforcement agencies smashed their way into 61-year-old Donald Scott’s home on his 200-acre Trail’s End Ranch in Malibu, California. The raiders were equipped with automatic weapons, flak jackets, and a battering ram.<sup>20</sup> Scott’s wife screamed when she saw the intruders, Scott came out of the bedroom with a pistol in his hands, and police gunned him down. After killing Scott, the agents thoroughly searched his house and ranch but failed to find any illicit drugs.

Ventura County district attorney Michael Bradbury investigated the raid and issued a report in 1993 that concluded that a “primary purpose of the raid was a land grab by the [Los Angeles County] Sheriff’s Department.”<sup>21</sup> Bradbury revealed that at a briefing before the raid took place, government agents were informed that the ranch had been appraised at \$1.1 million and that “80 acres sold for \$800,000 in 1991 in the same area.”<sup>22</sup> The law officers at the briefing were told that if they discovered as few as “14 marijuana plants” on the ranch, the entire property could be seized.<sup>23</sup> Bradbury also concluded that a Los Angeles sheriff’s deputy had lied to obtain a search warrant and declared: “This search warrant became Donald Scott’s death warrant. This guy should not be dead.”<sup>24</sup> Los Angeles officials claimed that a confidential informant told them that marijuana was being grown on Scott’s ranch, but the informant denied ever making such a statement.<sup>25</sup>

In Pittsburgh, federal prosecutors last year devastated Jane Ward after she had fully cooperated with them in testifying to help solve the murder of her husband, John Ward. Prosecutors decided that John Ward had been a drug dealer and that all of his previous income was drug-related. They proceeded to confiscate almost all of the assets of the widow (who had her own legitimate business); federal officials arrived with a truck at the Ward’s home and carted off all the family’s furniture. Prosecutors even sought to confiscate all the proceeds from Ward’s life insurance; Jane Ward and

her three children were forced to go on welfare, according to Terrance Reed, Ms. Ward's lawyer and one of the nation's leading authorities on forfeiture law.

Asset forfeiture property grabs are sparking fights across the nation—even in states known for giving government a long leash, such as Maryland. In Frederick, Maryland, police seized a 1988 Toyota pickup truck from a local resident after he bought \$40 worth of a drug placebo from an undercover cop at an open-air drug market. Under Maryland law, local police and prosecutors have effectively unlimited power to confiscate any vehicle they suspect was involved, or that the owner intended to be involved, in transporting drugs. Maryland police have confiscated thousands of autos and trucks in recent years, often based on mere accusations.

After Maryland Delegate John Arnick proposed a law to reform the forfeiture procedure to shore up defendants' rights, state officials went berserk. Harford County State's attorney Joseph Cassilly denounced Arnick's proposal: "It's a crazy law. Absolutely crazy. . . . It's just going to inconvenience the hell out of everybody" by requiring police officials to testify in court to explain why cars were confiscated.<sup>26</sup> Frank Charles Meyer, an assistant state's attorney in Baltimore County, justified the existing law: "It hurts the bad guy, it benefits the good guy and it doesn't really cost."<sup>27</sup> Police sometimes "settle" the forfeiture cases by allowing the auto owners to buy back their car for half the car's value.

## Government by Gossip

The Justice Department's 1992 annual report on asset seizures declared, "No property may be seized unless the government has probable cause to believe that it is subject to forfeiture."<sup>28</sup> In reality, government officials are seizing people's property based solely on "hearsay"—rumor and gossip—from anonymous informants.<sup>29</sup> (Hearsay evidence is held in such low esteem in the American judicial system that it cannot be introduced into court in criminal pro-

ceedings.) Police routinely refuse to reveal their source of a rumor about the forfeiture target; some policemen have likely invented anonymous informants to give them a pretext to take private property they covet. In Fort Lauderdale, Florida, police seized the \$250,000 home of a dead man from his heirs who had cared for him while he was dying of cancer. The justification for the seizure? A "confidential informant told police that [two years earlier] the owner . . . 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,'" as the *Pittsburgh Press* reported.<sup>30</sup> Although the police had no evidence that the deceased homeowner was involved in drug dealing, an informant's vague, uncorroborated assertion was sufficient to evict the owners and seize the property. While government agents can use hearsay evidence to justify a seizure, property owners are usually prohibited from offering hearsay evidence to support their claims.

Law enforcement officials are also seizing apartment buildings to punish the landlords for not eradicating drug dealing in the apartments. (If the same standard were applied to inner-city public housing projects, almost every public housing project in the country could be seized *from* the government; in 1993 Baltimore Mayor Kurt Schmoke blamed maintenance problems at one public housing project on drug dealers who refused to let city workers enter the buildings.)<sup>31</sup>

In Florida, the Dade County Commission revised county laws in 1989 to allow county officials "to demolish a nuisance building within 30 days after the police report drug activity at the property. Proof of drug activity is defined in the ordinance as one arrest."<sup>32</sup> The owner of a 36-unit apartment building in Milwaukee sought to placate the police by evicting ten tenants suspected of drug use, giving a master key to local beat cops, forwarding tips to the police, and hiring two security firms to patrol the build-

ing. The city still seized the building because, as Milwaukee city attorney David Stanosz declared, "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."

The owner had encouraged the police to send undercover agents into the building—but the police claimed they were too short of officers.<sup>33</sup> In July 1992, several Cleveland landlords informed the police of drug dealing in their buildings; the city responded by quickly seizing the buildings and evicting all tenants, even in a building where drug-dealing occurred in a single apartment.<sup>34</sup> Apparently, the worse the police fail to control crime, the more power police acquire to seize law-biding citizens' property.

## The Long Arm of Legal Plunder

Asset forfeiture is spreading like wildfire through the statute books. Some Islamic countries impose draconian penalties on men who approach and talk to women in public. In Washington, D.C., Portland, Oregon, and Hartford, Connecticut, police confiscate the cars of men who drive up and suggest a "capitalist act between consenting adults" to streetwalkers. Customs Service officials in Texas seized a \$138,000 Lear jet after discovering that the owner had made a typographical error on paperwork he submitted to the Federal Aviation Administration.<sup>35</sup> (The FAA's usual response to such a mistake is to require the owner to correct the form.)

The Immigration and Naturalization Service has seized over 30,000 cars and trucks since 1990 from either people helping illegal immigrants enter the United States or construction companies transporting illegal immigrants to job sites.<sup>36</sup> Customs agents confiscated the \$113,000 that a Vietnamese mother had collected from 20 families in the Seattle area to take back to Vietnam for humanitarian relief for their relatives.<sup>37</sup> (Customs officials pronounced the woman

guilty of violating the Trading with the Enemy Act.)

A New Jersey mother's Oldsmobile was confiscated by police after they alleged that her son had used it to drive to a store where he shoplifted a pair of pants.<sup>38</sup> One New York businessman was forced to forfeit all of his gas stations because of a failure to pay New York sales tax.<sup>39</sup> A New Jersey construction company had all its equipment seized after state officials decided that the company was technically ineligible to bid on three municipal projects that it had already completed.<sup>40</sup> Suffolk County, New York, legislators considered a law in 1993 to allow local officials to confiscate the "cars, boats and planes used in connection with any misdemeanor."<sup>41</sup>

Asset confiscation programs are creating thousands of new police informants. The Justice Department routinely gives monetary rewards to individuals who report information or make accusations that lead to a seizure. The forfeiture program thus turns many airline ticket agents into conspirators with the government, since anyone who pays cash for an airline ticket stands a chance of being reported as a suspected drug dealer or an accomplice to drug dealing.

## Perverse Incentives

Forfeiture is the biggest growth area in law enforcement partly because federal and local police agencies usually keep a large amount of the booty they seize. Federal Judge Richard Arnold noted in 1992 that some observers were questioning "whether we are seeing fair and effective law enforcement or an insatiable appetite for a source for increased agency revenue."<sup>42</sup> In Nueces County, Texas, Sheriff James Hickey used assets from a federal drug forfeiture fund to grant himself a retroactive \$48,000 salary increase just before retirement (\$400 a month for the previous ten years). The sheriff was indicted for embezzlement by a federal grand jury in August 1993.<sup>43</sup> Even internal government documents concede that federal agents have gone overboard: a September 1992 Justice Department news-

letter noted, "Like children in a candy shop, the law enforcement community chose all manner and method of seizing and forfeiting property, gorging ourselves in an effort which soon came to resemble one designed to raise revenues."<sup>44</sup>

Prosecutors and legislators stack the deck against property rights. A 1990 Justice Department directive declared, "It is the Department's position that no advance notice or opportunity for an adversary hearing is statutorily or constitutionally required prior to the seizure of property, including real property."<sup>45</sup>

Professor Claudio Riedi noted in 1992 in the *University of Miami Law Review*, "Frequently, the government can meet its burden of proof by simply qualifying one of its detectives as an expert, who then testifies that a particular way of bundling money is typical for drug dealers. Standing alone, such testimony may be enough for a showing of probable cause, and may therefore entitle the government to forfeiture. In contrast, an innocent owner must adduce massive evidence to prove her case."<sup>46</sup>

The *Orlando Sentinel* noted, "Deputies routinely said bills in denominations of \$1, \$5, \$10, \$20, \$50, and \$100 were suspicious because they are typical of what dealers carry. But that leaves few alternatives for others."<sup>47</sup>

In most forfeiture court proceedings, it is up to the owner to prove that his house, his car, or the cash in his wallet was legally obtained—the government has no obligation to prove that the property is guilty. The fact that a government official makes an unsubstantiated assertion that a piece of property was somehow involved in illicit activity effectively transfers the ownership of that property to the government.

Asset forfeiture is proliferating in part because of a technicality in the law that allows the government to claim that it is suing only the item of property, not the property's owner. This is why forfeiture cases often have peculiar titles such as "*U.S. v. 1960 bags of coffee*," "*U.S. vs. 9.6 acres of land and lake*," or "*U.S. vs. 667 bottles of wine*." And since the Bill of Rights

recognizes the rights only of citizens and state governments, not the rights of chunks of land or bottles of wine, there are almost no due process restrictions on government's attacks on property. A federal appeals court recognized this when it announced in August 1992: "We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes."<sup>48</sup> The citizen must show vastly more evidence to reclaim his property than the government did to seize it in the first place.

Government officials routinely refuse to return seized property even after an accused person has been tried and found innocent. The costs of suing the government to recover property are extremely high, routinely exceeding \$10,000, and citizens must post a bond of up to \$5,000 before filing suit. (The bond is required to cover the government's legal costs in having to defend against a property owner's efforts to reclaim his property.) The legal battles required to recover wrongfully seized property often take two, three, or more years. If the property seized is only worth a few hundred dollars, the person cannot possibly break even by suing the government. Most forfeiture statutes deny a private citizen any compensation for his attorney's fees when he successfully reclaims forfeited property.

## No End in Sight

Although the number of asset forfeiture actions has skyrocketed in recent years, Justice Department officials apparently believe that the seizure bull market has only just begun. Cary H. Copeland, director of the Department of Justice's Executive Office for Asset Forfeiture, declared at a June 1993 congressional hearing: "Asset forfeiture is still in its relative infancy as a law enforcement program."<sup>49</sup> The Federal Bureau of Investigation announced in 1992 that it anticipated that its total seizures of private property would increase 25 percent each year for the following three years.<sup>50</sup> The Supreme Court marginally limited govern-

ment forfeiture powers in several 1993 decisions, but Justice Department spokesman Mark Sakaley indicated that the decisions were not expected to have a major impact on forfeiture programs.

Mr. Copeland declared that asset forfeiture "is to the drug war what smart bombs and air power are to modern warfare."<sup>51</sup> Asset forfeiture basically allows government agencies to carpet bomb the rights of the American people. The Federal Eighth Circuit Court of Appeals complained in 1992 that it was "troubled by the government's view that any property, whether it be a hobo's hovel or the Empire State Building, can be seized by the government because the owner, regardless of his or her past criminal record, engages in a single drug transaction."<sup>52</sup>

## Conclusions and Implications

Law enforcement in the United States is reverting back toward conditions existing in England before the Magna Carta, when rulers almost automatically seized all the property of any person convicted of a felony. Such seizures spurred English barons to force King John to limit his powers in 1215.<sup>53</sup> Unfortunately, some federal officials appear to cherish a pre-thirteenth century philosophy of government power. (A 1992 U.S. Solicitor General's brief quoted the Old Testament and praised forfeiture as an "ancient punishment.")<sup>54</sup> Asset forfeiture provisions presume that government officials should have the power to inflict economic capital punishment on private citizens for the breaking of scores of laws.

Many civil libertarians believed that the liberal Clinton administration and Attorney General Janet Reno would correct some of the most overt abuses in the forfeiture program. However, Reno has continually postponed substantive reform and even derailed a bipartisan liberal-conservative congressional effort to reform the forfeiture law. Instead, Reno's Justice Department has put forward its own "reform" proposal that has been derided as a "prosecutor's wish list" by forfeiture expert David Smith.

The asset seizure controversy redefines the relation between the State and the citizen: what pretext does the State need to claim that a citizen's property actually belongs to the State? Do people have a right to their property only until some "secret informant" tells police something bad about the citizen's use of his property? If Congress proposed to forcibly alter all private deeds and titles in the United States by adding a clause stating that the government acquires automatic ownership rights if any law enforcement official hears a rumor about a property's possible illicit use, the public backlash would raze Capitol Hill. But, increasingly, that is the law of the land. □

1. The federal government had possessed limited seizure powers since 1789, but these were limited to areas such as smuggling and customs evasion.

2. Cary Copeland, "Civil Forfeiture for the Non-Lawyer," U.S. Department of Justice, Bureau of Justice Assistance Forfeiture Project, Spring 1992.

3. Brief of the Institute for Justice in the case of *U.S. vs. James Daniel Good Real Property, et al.*, No. 92-1180.

4. In California alone, more than \$180 million worth of property has been forfeited since 1989 under a state forfeiture law. Gary Webb, "Police lobbying to save state asset forfeiture law," *San Jose Mercury News*, September 7, 1993.

5. Interview with Steven Kessler, September 21, 1993. Kessler's study on forfeiture is titled *Civil and Criminal Forfeiture: Federal and State Practice* (New York: Clark, Boardman and Callaghan, 1993).

6. Lynne Marek, "Hyde Seeks to Curb Property Seizures by U.S.," *Chicago Tribune*, June 16, 1993.

7. Paul Kirby, "S.C. Woman: Criminal Asset Forfeiture Program Needs Reforms," *States News Service*, June 22, 1993.

8. Paul Finkelman, "The Latest Front in the War on Drugs: The First Amendment," *Drug Law Report*, March-April 1991.

9. *Willie Jones v. U.S. Drug Enforcement Administration*, 1993 U.S. Dist. LEXIS 5409 (April 23, 1993).

10. Andrew Schneider and Mary Pat Flaherty, "Police Profit by Seizing Homes of Innocent," *Pittsburgh Press*, August 12, 1991.

11. Christopher Elser, "Two Admit Growing in Marijuana at Home," *Allentown (Pa.) Morning Call*, March 16, 1995.

12. Gary Fields, "'Robbery with a Badge' in the Nation's Capital," *USA Today*, May 18, 1992.

13. *Ibid.*

14. Jeff Brazil and Steve Berry, "Tainted cash or easy money?" *Orlando Sentinel*, various dates, 1992. The series of articles won the 1993 Pulitzer Prize.

15. "Weeks After Seizing Pickups, Feds Still Mum About Charges," *Livestock Weekly*, May 21, 1992.

16. Interview with Anthony Nicholas, counsel for the Smiths, July 31, 1993.

17. Written statement of W. B. Smith, December 1992.

18. U.S. Congress, House Government Operations Committee, *Asset Forfeiture*, June 22, 1993. Written statement submitted by Nancy Hollander, p. 9.

19. Andrew Schneider and Mary Pat Flaherty, "Government Seizures Victimize Innocent," *Pittsburgh Press*, August 11, 1991.

20. Phil Reeves, "Gun Law Claims a Rich Recluse," *The Independent*, October 18, 1992.

21. Editorial, "Thieves with Badges," *Sacramento Bee*, April 2, 1993.
22. Carol Bidwell, "Motives for Raid Questioned," *Houston Chronicle*, April 4, 1993.
23. Michael Fessier, "Trial's End," *Los Angeles Times Magazine*, August 1, 1993.
24. Daryl Kelley, "Block Challenges Critical Report on Malibu Ranch Raid," *Los Angeles Times*, April 9, 1993.
25. Editorial, "Thieves with Badges."
26. Dennis O'Brien, "Prosecutors Want Veto of Forfeiture Bill," *Baltimore Sun*, April 18, 1994.
27. *Ibid.*
28. U.S. Department of Justice, *Annual Report of the Department of Justice Asset Forfeiture Program 1991* (Washington: Government Printing Office, 1992), p. 7.
29. As lawyer Terrance G. Reed noted, "This probable cause standard for seizure allows the government to dispossess property owners based only upon hearsay or innuendo—'evidence' of insufficient reliability to be admissible in a court of law." Terrance G. Reed, "American Forfeiture Law: Property Owners Meet the Prosecutors," *Cato Institute Policy Analysis No. 179*, September 29, 1992.
30. Andrew Schneider and Mary Pat Flaherty, "With Sketchy Data, Government Seizes House From Man's Heirs," *Pittsburgh Press*, August 14, 1991.
31. Mary Pemberton, "Baltimore Public-Housing Tenants Begin a Rent Strike," Associated Press, February 24, 1993.
32. "In War on Narcotics, Tough New Statutes Target Owners of Drug-Ridden Properties," *Wall Street Journal*, March 29, 1989.
33. Andrew Schneider and Mary Pat Flaherty, "Police Profit by Seizing Homes of Innocent."
34. "Landlords Upset with Board-ups," *United Press International*, July 29, 1992.
35. Written statement of Forfeiture Endangers American Rights, Franklin, New Jersey, September 30, 1992.
36. U.S. Department of Justice, *Annual Report* (1991), p. 29.
37. Brazil and Berry.
38. David Kaplan, Bob Cohn, and Karen Springen, "Where the Innocent Lose," *Newsweek*, January 4, 1993, p. 42.
39. Reed, *op. cit.*, p. 12.
40. *Ibid.*, p. 1.
41. Rick Brand and Katti Gray, "DWI? They Might Take Your Car," *Newsday*, May 12, 1993.
42. *U.S. v. Twelve Thousand, Three Hundred Ninety Dollars*, 956 F. 2d 801, 808 (1992).
43. "Sheriff's Own Pay Raise Leads to Indictment," Associated Press, August 19, 1993.
44. U.S. Department of Justice, "Message from the Director: 'Do the Right Thing,'" *Asset Forfeiture News*, September–October 1992, p. 2.
45. U.S. Department of Justice, Executive Office for Asset Forfeiture, "Departmental Policy Regarding Seizure of Occupied Real Property," Directive No. 90-10, October 9, 1990.
46. Claudio Riedi, "To Shift or to Shaft: Attorney Fees for Prevailing Claimants in Civil Forfeiture Suits," *University of Miami Law Review*, Vol. 47, September 1992, pp. 147.
47. Brazil and Berry.
48. *U.S. v. All Assets of Statewide Auto Parts, Inc.*, 971 F. 2d 905 (1992).
49. Statement of Cary H. Copeland before the Subcommittee on Legislation and National Security, Government Operations Committee, U.S. House of Representatives, June 22, 1993, p. 4.
50. U.S. Department of Justice, *Annual Report of the Department of Justice Asset Forfeiture Program 1991* (Washington: Government Printing Office, 1992), p. 27.
51. Dennis Cauchon, "Government Doesn't Have to Prove Guilt," *USA TODAY*, May 18, 1992.
52. *United States v. One Parcel of Property Located at 508 Depot Street*, Docket No. 91-2382SD, May 20, 1992.
53. Brief of American Library Assoc. et al., in *Ferris Alexander v. U.S.*, U.S. Supreme Court, No. 91-1526, September 2, 1992, p. 6. "Criminal forfeiture *in personam* arose in medieval England, where, following a felony conviction, the entire estate of the felon was confiscated and any inheritance from the felon was prohibited. In the Magna Carta, forfeiture on the ground of commission of a felony was sharply curtailed, but survived to an extent in the English common law."
54. Brief for the United States, *Ferris J. Alexander v. U.S.*, No. 91-1526, October 29, 1992, p. 43.

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# Building Code Blues

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by James D. Saltzman

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**T**he authority of government," wrote Henry David Thoreau, "can have no pure right over my person and property but what I concede to it." But the city of Houston has a different view, that individuals have no pure right over their property except what the government concedes to them. Consider the case of Leonard and Betty Leath.

In September of 1990, the Leaths purchased a dilapidated 47-unit apartment complex in Houston. During the next two years, they spent \$260,000 to repair the building, planning to offer affordable housing to the low-income elderly. In early 1992 city inspectors found the Leaths' project "as secure as any other construction in the city."

However, later court evidence indicates that a city councilwoman did not want the low-rent apartment in her district. So in March of 1992, city inspectors issued the Leaths a stop-work order. For the next five months, city officials refused to explain to the Leaths' attorney why the rehabilitation would not be permitted to continue. And six months after the stop-work order, the city tore down the Leaths' building and sent them a demolition bill for \$66,000.<sup>1</sup>

This tale about the Leaths illustrates the monstrous regulation that cities can impose on property owners through building codes, mandates for safety (and sometimes even for comfort) in new or existing construction.

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In other words, dangers flow from the political management of risk. When issuing and enforcing safety regulations, governments find it all too easy to seize more power over private property than is needed to ensure public safety; too easy to exploit this power for political purposes irrelevant to public safety; and much too easy to exercise this power in ways that actually undermine public safety.

## Needlessly Higher Costs

The problem comes from conflicting incentives. Private owners, like the Leaths, benefit financially from improving their property. For the Leaths, that meant restoring the apartments to attract renters. On the other hand, public officials don't own what they control and lose nothing from unnecessarily increasing the cost of maintaining or developing property.

In fact, three federal commissions in the last 30 years have discovered that needless building code provisions have driven up the cost of housing. In 1968 the Kaiser Committee "found that some communities imposed excessive building codes to prevent the construction of low-cost housing, thereby denying local housing opportunities for lower-income groups." Similarly, in 1982 the President's Commission on Housing concluded that "unnecessary regulation of land-use and buildings has increased so much over the past two decades that Americans have begun to feel the undesirable consequences: fewer housing choices, lim-