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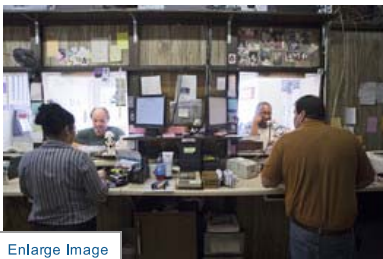
Federal Asset Seizures Rise, Netting Innocent With Guilty

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By JOHN R. EMSWILLER And GARY FIELDS

August 22, 2011

New York businessman James Lieto was an innocent bystander in a fraud investigation last year. Federal agents seized \$392,000 of his cash anyway.



Enlarge Image

James Lieto, far right, fought to recoup \$392,000 seized in a fraud case in which his small business was an innocent bystander. Jason Andrew for The Wall Street Journal

An armored-car firm hired by Mr. Lieto to carry money for his check-cashing company got ensnared in the FBI probe. Agents seized about \$19 million—including Mr. Lieto's money—from vaults belonging to the armored-car firm's parent company.

He is one among thousands of Americans in recent decades who have had a jarring introduction to the federal system of asset seizure. Some 400 federal statutes—a near-doubling, by one count, since the 1990s—empower the government to take assets from convicted criminals as well as people never charged with a crime.

Last year, forfeiture programs confiscated homes, cars, boats and cash in more than 15,000 cases. The total take topped \$2.5 billion, more than doubling in five years, Justice Department statistics show.

The expansion of forfeiture powers is part of a broader growth in recent decades of the federal justice system that has seen hundreds of new criminal laws passed. Some critics have dubbed the pattern as the overcriminalization of American life. The forfeiture system has opponents across the political spectrum, including representatives of groups such as the American Civil Liberties Union on the left and the Heritage Foundation on the right. They argue it represents a widening threat to innocent people.

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"We are paying assistant U.S. attorneys to carry out the theft of property from often the most defenseless citizens," given that people sometimes have limited resources to fight a seizure after their assets are taken, says David Smith, a former Justice Department forfeiture official and now a forfeiture lawyer in Alexandria, Va.

Backers of the system say there are adequate protections for the innocent, and describe the laws as a powerful tool for returning money to crime victims.

The government has recovered for eventual distribution to victims more than \$650 million from imprisoned swindler Bernard Madoff and others who received money from his scheme. Federal officials are in the process of recovering over \$6.5 billion more from the Madoff fraud.

Last year, federal authorities say, some \$293 million of forfeiture proceeds were returned to crime victims nationally, nearly double the amount in 2009. The Justice Department filed about 90,000 criminal cases last year. There were forfeiture actions in a total of about 3,700 criminal cases, double the number of five years earlier.

Supporters further say there should be many more forfeiture actions. Even an imprisoned criminal "can have a smile on his face because he is going to be able to enjoy the proceeds of his crime when he gets out," says Charles Intrigo, a former federal prosecutor and now president of the

International Association for Asset Recovery, a Miami organization for asset-recovery specialists.

Forfeiture law has its roots in the Colonial days, when it was used to battle pirates and smugglers. In the 1970s and 1980s, Congress began giving law-enforcement officials power to go after the assets of other criminals, such as organized-crime figures.

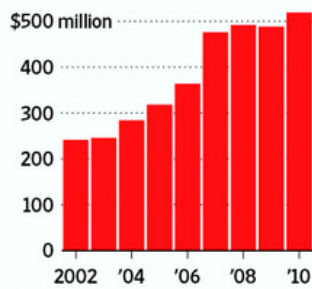
The more than 400 federal statutes allowing for forfeiture range from racketeering and drug-dealing to violations of the Northern Pacific Halibut Act, according to a December 2009 Congressional Research Service report. The report shows that seizure powers were extended to about 200 of those laws in 2000 in a major congressional overhaul of the forfeiture system.

Top federal officials are also pushing for greater use of civil-forfeiture proceedings, in which assets can be taken without criminal charges being filed against the owner. In a civil forfeiture, the asset itself—not the owner of the asset—is technically the defendant. In such a case, the government must show by a preponderance of evidence that the property was connected to illegal activity. In a criminal forfeiture, the government must first win a conviction against an individual, where the burden of proof is higher.

Raul Stio, a New Jersey businessman, is caught up in the civil-forfeiture world. Last October, the Internal Revenue Service, suspicious of Mr. Stio's bank deposits, seized more than \$157,000 from his account. Mr. Stio hasn't been charged with a crime.

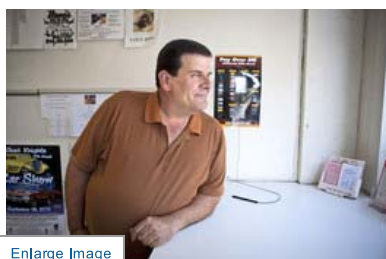
Sharing the Assets

Payouts to states of 'equitable sharing' funds from federal asset seizures are growing.



Sources: Justice and Treasury departments

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James Lieto fought to recoup \$392,000 seized in a fraud case in which his small business was an innocent bystander. Jason Andrew for *The Wall Street Journal*

In a court filing in his pending civil case, the Justice Department alleges that Mr. Stio's deposits were structured to illegally avoid an anti-money-laundering rule that requires a cash transaction of more than \$10,000 to be reported to federal authorities. Mr. Stio made 21 deposits over a four-month period, each \$10,000 or less, the filing said.

Steven L. Kessler, Mr. Stio's attorney, says there was no attempt to evade the law and that the deposits merely reflected the amount of cash his client's businesses, a security firm and bar, had produced. Mr. Stio was saving to buy a house, he says.

A Justice Department spokeswoman declined to comment on the case.

Speaking about civil forfeiture broadly, another Justice Department official called it a tool of "critical" importance in taking away the ill-gotten gains of international criminal organizations operating in the U.S. Otherwise, participants in criminal operations such as these might often be beyond federal

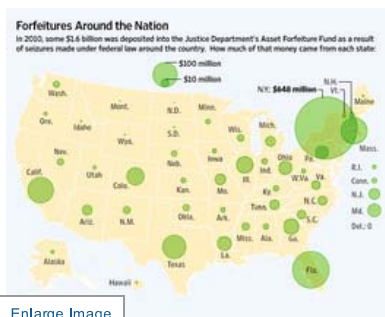
authorities' reach, leaving asset seizure as one of the ways authorities can target an operation.

In fiscal year 2010, there were more than 11,000 noncriminal forfeiture cases, according to available federal statistics. That figure has held fairly steady the past five years.

It's tough to know how many innocent parties may be improperly pulled into the forfeiture system. Last year, claimants challenged more than 1,800 civil-forfeiture actions in federal court, Justice Department figures show.

Justice Department officials say they rarely lose such cases, a fact they cite as evidence the system is working properly. Forfeiture attorneys counter that the government often settles cases, returning at least part of the seized assets, if it thinks it might lose.

Part of the debate over seizures involves a potential conflict of interest: Under a 1984 federal law, state and local law-enforcement agencies that work with Uncle Sam on seizures get to keep up to 80% of the proceeds.



Enlarge Image

Last year, under this "equitable-sharing" program, the federal government paid out more than \$500 million, up about 75% from a decade ago.

The payments give authorities an "improper profit incentive" to seize assets, says Scott Bullock of the Institute for Justice, a libertarian public-interest law firm in Arlington, Va. It's a particular concern amid current state and local government budget problems, he contends.

Justice Department officials say the 8,000 state and local agencies in the equitable-sharing program have greatly expanded the federal government's ability to go after criminal activities, particularly the movement of drugs and drug cash along the nation's highways. The program is monitored to ensure seizures are handled properly, they add.

Seeming abuses occasionally emerge. In 2008, federal Judge Joseph Bataillon ordered the return of \$20,000 taken from a man during a traffic stop in Douglas County, Neb. Judge Bataillon quoted from a recording of the seizure, in which a sheriff's deputy complained about the man's attitude and suggested "we take his money and, um, count it as a drug seizure."

The judge's order said the case produced "overwhelming evidence" that the funds were clean.

Douglas County Sheriff Tim Dunning said the remarks made by his officers on the recording were "uncalled for" and "had a potential for tainting the case." But overall, he says, the seizure was handled properly. Since 2002, he says, his department has earned \$11 million in equitable-sharing money.

A spokesman for the U.S. Attorney's office in Nebraska said the deputy's remarks were "a rare and isolated event."

About a decade ago, the forfeiture system got a major overhaul. The 2000 Civil Asset Forfeiture Reform Act, or Cafra, put in protections for individuals, including increasing the government's burden of proof in many proceedings. Cafra also extended forfeiture powers to additional crimes.

Cafra's new safeguards didn't go far enough, critics argue. For instance, reformers failed to win a broad guarantee that poor people would have access to a lawyer. "It isn't much good to say you have the right to get your property back if you can't afford a lawyer," said the late Rep. Henry Hyde (R-Ill.) at a 1999 congressional hearing.

Jorge Jaramillo, a construction worker, says he couldn't afford a lawyer after more than \$16,000 was seized from him last year in a traffic stop. "I had all of \$20 left," he says.

In a Delaware federal-court filing, the Justice Department argued the money was related to drug dealing. It pointed to air fresheners in the car, which could mask the smell of drugs, and a fast-food bag containing cigar tobacco, which the filing said was often a sign that the cigar wrapper had been used to smoke marijuana.

The filing also said a police dog had signaled that the cash carried residue of illegal drugs. Such "dog sniffs" are a common but controversial feature in forfeitures.

Mr. Smith, the Virginia attorney, represented Mr. Jaramillo at no upfront cost. In court documents, Mr. Jaramillo, who wasn't charged with a crime, said he was carrying the money because he was traveling to buy a car from a seller who wanted cash.

The government in May agreed to return Mr. Jaramillo's money, with interest. Mr. Smith was also awarded \$6,000 in attorney's fees. Under Cafra, attorneys' fees in civil-forfeiture cases are at least partially payable if the claimant wins.

The Cafra reforms helped Mr. Jaramillo find a lawyer even though he says he had no money. Still, forfeiture attorneys say this feature of the law is being eroded in some instances. In April, the U.S. Ninth Circuit Court of Appeals found that the Cafra attorney's fee should be paid to the client, not directly to the lawyer. Lawyers say this makes it possible for the government to seize their fees if the client has a tax lien or other obligation.

Mr. Lieto, the New York businessman, discovered the frustrations an innocent party can face as he worked for months to keep open his check-cashing business after federal agents seized his firm's working capital.

For years, according to court filings, Mr. Lieto used an armored-car company to pick up cash from his bank for delivery to his check-cashing outlets. The sealed bank bags were routinely stored overnight in the car company's vault. In February 2010, the FBI raid seized the \$19 million as part of the fraud probe.

Under the law, an innocent third party generally can't seek an asset's return until the underlying criminal case is resolved, which can take time. In this case, two men pleaded guilty last fall to a multi-million-dollar fraud.

An innocent party's money is returnable if it's clearly separate from the fraud. Mr. Lieto's two sealed and marked bank bags with the \$392,000 qualified, his attorney, Mr. Kessler, argued in court filings. Others among the scores of customers made similar claims.

The government countered that the crooks' operation, which included the armored-car service, routinely commingled customers' money. Thus, everyone had to get in line as fraud victims.

Court records indicate that fraud victims might get about 25 cents or less on the dollar. However, in February the government agreed to give Mr. Lieto's money back in full.

Mr. Lieto's lawyer, Mr. Kessler, had filed a deposition from a vault manager who had watched Mr. Lieto's two still-sealed bags being loaded onto the FBI's truck. If the bags were opened and commingled, it was done by authorities, a Lieto court filing argued.

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Corrections & Amplifications

James Lieto's surname was misspelled Leito in photo captions accompanying an earlier version of this story.

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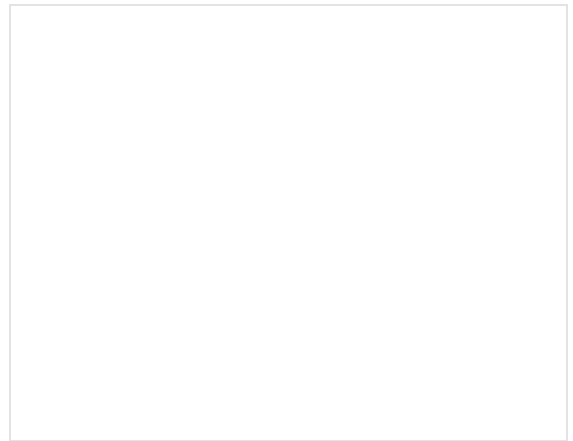
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