

Federal seizures anger right and left

By Stewart Powell, Hearst Newspapers

A nationwide network of agents and attorneys is working around the clock to seize cash, stocks, real estate, vehicles and other valuables from people and businesses.

In 2012, their average daily take was almost \$13 million – for a total of more than \$4.7 billion.

The vast money-harvesting machine they work for? The federal government.

Federal asset forfeiture is both an effective crime-fighting tool and a civil-liberties nightmare, a Hearst Newspapers investigation has found. It has retrieved millions of dollars stolen from victims of complex financial crimes. But it has also victimized innocent citizens who have lost their property without criminal charges or even a courtroom hearing.

Fifteen federal agencies have the power to seize assets. Over the past dozen years, those agencies have taken more than \$20 billion in cash, securities and other property from scruffy drug dealers, pinstriped Wall Street tycoons – and ordinary Americans who have not been accused of a crime, much less convicted.

“The government is going seizure crazy,” said attorney Philip Hilder, former head of the Houston field office of the Justice Department’s organized crime strike force. “Law enforcement budgets are shrinking. ... The government is counting on budgets being supplemented by these seizures.”

In 2001, seizures totaled \$640 million. In the next decade, the total increased by 641 percent.

Once used mainly against mobsters and drug dealers, forfeiture is now employed in many contexts. About a dozen recent mega-cases – each taking \$100 million or more – involved assets forfeited by cybercrime rings, offshore gambling scams, and banking and corporate miscreants.

The expansion of forfeiture has brought criticism from civil-rights advocates on the left and libertarian, anti-big-government activists on the right. But there is little impetus to change the system because of the enormous cash flow it generates for seizing agencies.

Federal agents often pursue forfeiture through sealed documents – or avoid the court system entirely by seizing assets without charging the owners with any crime, a procedure called administrative forfeiture. The result: thousands of cases each year where the feds take cash, guns or other items from U.S. citizens without fact-finding by a jury or oversight by a judge.

When seizure cases do reach the courts, they have often been criticized by judges as examples of government intrusion and overreaching.

Nowhere has the federal government's formidable asset-seizure operation been on more prominent display than across California, where four U.S. attorneys appointed by President Obama are threatening landlords who lease space to medical marijuana dispensaries. California is among the 18 states and the District of Columbia that have legalized medical marijuana; the federal government has considered it a controlled substance since 1970.

The unprecedented campaign has closed hundreds of dispensaries across the state, leaving about 1,000 still in operation, according to advocacy organizations.

One of the largest targeted is Oakland's Harborside Health Center, a large operation that provides more than \$20 million

worth of products a year to almost 108,000 patients. The case is heading toward trial after U.S. Chief Magistrate Judge Maria-Elena James rejected an attempt by the city of Oakland to protect the community enterprise from the Justice Department onslaught.

The practice has ensnared more than dispensary landlords.

Russ and Pat Caswell have owned their mom-and-pop motel in Tewksbury, Mass., for three decades. They live next door, and the motel with \$56-a-night rooms is both their livelihood and their life savings. The Caswells own it outright, with no mortgage.

That made it all the more attractive to the federal government.

The couple were shocked when the feds filed papers to seize the motel in 2009, based on an assertion that frequent drug activity occurred there.

Veteran Drug Enforcement Administration agent Vincent Kelly testified that his job as the asset-forfeiture specialist in the DEA's Boston office was to locate properties allegedly being used for criminal purposes that carried little or no debt, making them lucrative forfeiture targets. So he singled out the Caswells' motel.

After years of legal fighting, U.S. Magistrate Judge Judith Gail Dein heard testimony that only 15 low-level drug cases had been recorded at the motel over a seven-year period, during which the Caswells logged 196,000 room rentals.

The motel, valued at between \$1.5 million and \$1.8 million, would have been a bonanza for the Tewksbury Police Department, which stood to gain 80 percent of the proceeds under its arrangement with the DEA.

In denying the forfeiture this year, Dein rebuked federal

prosecutors. "Having failed to notify Mr. Caswell that he had a significant problem, and having failed to take any steps to advise him on what to do, the government's resolution of the crime problem should not be to simply take his property," she concluded.

Forfeitures provide agencies a self-sustaining source of money for a variety of law-enforcement expenses, including running the forfeiture programs themselves, without relying on Congress to appropriate taxpayers' money.

"Asset forfeiture can be a valuable tool, but it can also be abused," said Sen. Charles Grassley of Iowa, the ranking Republican on the Senate Judiciary Committee. "It seems like there are places where we can take a hard look to improve the program instead of simply providing a slush fund for the federal government."

Some seized assets, such as vehicles and electronic equipment, are directly transferred to law-enforcement use. Others are sold, the proceeds often shared among federal agencies and local or regional law-enforcement entities.

A portion of the take has been handed off to victims of the crimes, including families swindled out of savings by financial wheeler-dealers such as Allen Stanford, serving a 110-year prison sentence for running a Ponzi scheme, and Bernard Madoff, serving a 150-year sentence for bilking investors out of at least \$18 billion.

Justice Department records show it has distributed an average of \$300 million a year to victims over the last decade – and \$1.5 billion to more than 400,000 victims over the past 16 months, much of it seized from Wall Street scammers. Among the latest beneficiaries: 8,727 victims of the Adelphia Communications fraud who divvied up \$729 million and 128,200 victims of the Enron securities fraud, who received shares of \$65 million.

Little scrutiny of seizures

Attorney General Eric Holder, whose department has booked the largest increase in seized funds, said federal forfeiture “has been transformed from a collection of centuries-old laws designed to fight pirates, enforce customs laws and fight illegal contraband into an array of modern law-enforcement tools designed to combat 21st century criminals both at home and abroad.”

The Justice Department released limited data about the past three years of asset-forfeiture cases in response to a public records request by Hearst Newspapers. The department declined to link the data to court cases with the docket numbers needed to track individual cases. The Treasury Department refused to release any data for the five law enforcement agencies that report to the Treasury Forfeiture Fund. Follow-up requests to the individual agencies under Treasury resulted in only one – the Secret Service – releasing data.

The federal agencies also often actively undermine tough state laws designed to prevent agencies from policing for profits.

Eight states bar the use of forfeiture proceeds by law-enforcement agencies. In the 42 other states, at least 50 percent of forfeiture proceeds can go to the seizing agencies – including 26 states that allow 100 percent of the proceeds to go to law enforcement. California allows 65 percent.

But even the states with tough laws can do nothing when the federal government decides to award proceeds from federal cases – often as much as 80 percent of the take – directly to local agencies. Therefore, agencies in those states frequently seek out the feds’ assistance in forfeiture cases.

That happened to Steven Skinner and Jonathan Breasher, a father and son, who were headed to Las Vegas in September 2010 when they were stopped by a New Mexico state trooper for driving 5 mph over the limit. The trooper issued a written

warning for speeding, got permission to search their rental car, and found \$16,925 in cash in their luggage. He notified the Drug Enforcement Administration and other federal agencies, then released the pair.

When the father and son got to Albuquerque about 230 miles later, local police pulled them over, saying they had made an improper lane change. The police officer summoned an officer from U.S. Customs and Border Protection, who seized the cash and the car. Neither Skinner nor Breasher was charged with a crime.

Turning the case over to the federal officers bypassed New Mexico's stringent restrictions on policing for profit, which require seized assets to be deposited in the state's general fund rather than in the coffers of the seizing agency.

The New Mexico chapter of the American Civil Liberties Union intervened to win back the seized cash after a two-year battle.

Despite controversy over aspects of the federal forfeiture machinery, there is little push within the federal government to revamp the process.

Justice and Treasury department forfeiture officials have said only that they are willing to "study" Government Accountability Office recommendations to streamline operations, without committing to consolidation that the agency first sought in 1990.

"The forfeiture system is running itself," said Brenda Grantland, a prominent forfeiture defense attorney in Mill Valley. "I don't think it matters who is president. Prosecutors have so much autonomy, they're free to seize whatever they want."