

**KANSAS ASSET SEIZURE/FORFEITURE LAW
UNDER ATTACK:**

REAL ISSUES AND FAKE NEWS

**Presented by Bob Myers
Newton City Manager and Senior Legal Counsel
201 East 6th Street, PO Box 426
Newton KS 67114-0426
bmyers@newtonkansas.com**

Part I. Introduction

Sample headlines:

“Kansas Earns “D” in “Policing for Profit” Report.”

Institute For Justice, March 26, 2010.

“Audit in Kansas proves civil asset forfeiture laws need reform.”

ACLU of Kansas, August 18, 2016.

“Kansas’ laws on seizing money and property too vague, says audit.”

Wichita Eagle, August 27, 2016.

“Kansas’ criminal forfeiture law among nation’s toughest, faces bipartisan effort to change.”

Lawrence Journal World, February 15, 2016.

“Accusations of asset seizure pattern by Kansas Highway Patrol raise concerns.”

Topeka Capitol Journal, January 2, 2017.

“Kansas asset forfeiture legislation creates unlikely allies in support.”

Topeka Capitol Journal, January 24, 2017.

Quotations by Rep. Gail Finney, D-Wichita, sponsor of legislation to reform the Kansas Standard Asset Seizure and Forfeiture Act, including a requirement that no asset forfeiture could be accomplished without a corresponding arrest and conviction on the underlying offense.

“Kansans should be innocent until proven guilty, but with our current civil asset forfeiture act their property is guilty until they prove it innocent.”

“The average person in Kansas has no idea that in the state of Kansas your assets can be seized without you being arrested or convicted of a crime. To me that is horrendous.”

“Kansas’ civil asset forfeiture laws may threaten the constitutional rights and violate the basic rights of property and due process of our citizens.”

Part II. Historical Background

[Attribution note: Much of the history of asset seizure and forfeiture laws, the expansion of their use, and the roots of the current controversy over such laws, is taken from a 2016 Yale Law Journal article, authored by University of Virginia School of Law Professor Caleb Nelson. [Caleb Nelson, *The Constitutionality of Civil Forfeiture*, 125 Yale L.J. 2246 (2016).]

How did asset seizures and forfeitures become part of the law in the U.S.?

- In America, proceedings by which the government could cause the forfeiture of private property predated the American Revolution.
 - The English Parliament used the threat of forfeiture to encourage compliance with its statutes, and in particular with its customs, taxing and shipping laws (e.g., the Navigation Act of 1660 and the Revenue Act of 1764).
- Despite the unpopularity of these provisions with colonists, when the fledgling U.S. Congress convened in 1789 it passed the Collection Act providing for forfeitures to enforce its own customs duties and tonnage duties on ships.
- The original U.S. Constitution did not contain a due process clause, but even after the adoption of the Bill of Rights (and the Fifth Amendment), and the later adoption of the

Fourteenth Amendment, similar forfeiture provisions have continued to be incorporated into federal statutes ever since.

- A cycle of expansion of federal civil forfeiture laws began in the 1970s and accelerated in the 1980s, largely through the expansion of the so-called War On Drugs.
 - The passage of the Comprehensive Crime Control of 1984 (Pub. L. 98-473, S. 1762, 98 Stat. 1976), signed into law by President Reagan, permitted for the first time the sharing of forfeiture proceeds with local law enforcement agencies as a means encouraging cooperation with federal law enforcement agencies in their enforcement actions.
 - Between 1985 and 1993, it was reported that federal forfeitures had netted \$3 billion in cash and other property.
- It has been estimated that today there are over 140 federal statutes which provide for forfeiture of private property.
- Today, all 50 states, plus the federal government, have laws in place which, under varying circumstances, permit law enforcement agencies to seize an individual's property which was used or acquired in connection with some designated criminal activity.
- Some of these laws provide for forfeiture as part of a criminal proceeding, but currently 49 states provide for civil forfeiture in an in rem proceeding.
 - New Mexico recently abolished civil forfeiture proceedings, but continues to provide for forfeitures as part of a civil process.

Part III. Civil Asset Seizure and Forfeiture in Kansas

How does civil asset seizure and forfeiture work in Kansas?

- The Kansas Standard Asset Seizure and Forfeiture Act is set forth in K.S.A. 60-4101 through 60-4126.
- In general, the Kansas Act permits law enforcement agencies to seize an individual's property based upon probable cause the property was used or was acquired in connection with the commission of one a list of enumerated offenses.
- Seizure is permitted regardless of whether the owner is criminally charged or convicted.

- Forfeiture, or transfer of ownership of the property, can then occur in one of three ways:
 - Through automatic forfeiture – which applies only to controlled substances and contraband (any property the possession of which is illegal); or
 - Through a civil proceeding brought in District Court, with notice to all parties with an interest in the property (ownership or a lien interest), and with the law enforcement agency having the burden to prove the property legally qualified for forfeiture; or
 - Through a settlement agreement negotiated between the law enforcement agency and the owner/lienholder, provided it is approved by the District Court judge.

What kind of conduct triggers the possibility of an asset seizure and forfeiture?

- A long list of criminal offenses, such as:
 - Drug offenses
 - Human trafficking
 - Theft
 - Forgery or counterfeiting
 - Identity theft
 - Sex offenses involving minors
 - Prostitution
 - Racketeering
 - Terrorism
 - Illegal gambling
 - Dog fighting or cock fighting

How can property be seized?

- Property can be seized with by:
 - Obtaining a seizure warrant from District Court under an affidavit establishing that probable cause exists for the property’s forfeiture; or
 - Without a warrant upon a law enforcement officer’s believe that such probable cause exists; or
 - Constructively by posting a notice of seizure for forfeiture.
- And, in any such event:
 - Reasonable efforts must be made to give written notice thereof within 30 days to the owners/lienholders; and
 - Civil forfeiture proceedings must be begun within 90 days.

What property is subject to forfeiture?

- Property, including land, which:
 - Is part of an exchange involved in the commission of a listed offense; or
 - Is used to facilitate commission of a listed offense; or
 - Constitutes proceeds from the commission of a listed offense; or
 - Is derived from proceeds obtained directly or indirectly from the commission of a listed offense; or
 - Constitutes contraband; or
 - Constitutes controlled substances or substances related to the manufacture, distribution, etc., of controlled substances or counterfeit substances.

- Subject, however, to the following exemptions:
 - If the property is land, it is exempt from forfeiture if the associated conduct is not a felony.
 - Vehicles constituting “common carriers” are exempt if the owner or person in charge of the vehicle is not a consenting party or otherwise privy to commission of the offense.
 - Property acquired before or during the offending conduct is exempt if the owner did not know or reasonably could not have known that this conduct was likely to occur, or if the person acted reasonably to prevent the conduct from occurring.
 - Property acquired after the offending conduct is exempt if the owner acquired it in good faith, for value and was not knowingly taking part in an illegal transaction.

- If at the time of any ordered forfeiture the original property cannot be located, or has been transferred to an innocent party for full value, or has become substantially diminished in value, or has been commingled with other property where division is not feasible, or is subject to an interest which is exempt from forfeiture, or is otherwise exempt from forfeiture, the District Court may order the forfeiture of substitute property.

How is forfeiture accomplished?

- The law enforcement agency must commence civil forfeiture proceedings in District court and give notice thereof to all owners/lienholders.

- Owners/lienholders must file an answer within 20 days of receiving notice in order to contest the forfeiture or prove the existence of a lien which would survive forfeiture.

- Trial is to the court (no right to a jury trial).

- The law enforcement agency must prove entitlement to forfeiture by a preponderance of the evidence; provided, however, that the burden of proof is on the owner/lienholder to as to any assertion that an exemption applies.
- Impacts of criminal proceedings as to the underlying conduct:
 - A claimant who has been convicted for the underlying criminal conduct may not within the forfeiture proceedings deny the commission of that conduct.
 - Acquittal from or dismissal of the charges serving as the basis of the forfeiture does not preclude forfeiture or give rise to any presumption adverse or contrary to any fact alleged by the seizing agency.

What protective provisions are included in the forfeiture proceedings?

- The seized property must be stored in a manner to assure the condition and value of the property is protected.
- Seized property can only be used or liquidated after issuance of a court order of forfeiture.
- A criminal defendant with no other means to pay for his/her defense may petition for release of enough of forfeited property for use in paying defense counsel.
- A claimant may seek an early determination of existence of probable cause for property seized without a warrant, and seek release of the property.
- Rights of innocent lienholders are protected throughout, either by preservation of their lien interest in forfeited property or by priority rights in the sale proceeds.
- Negotiated settlements cannot include any agreements related to the underlying criminal charges or proceedings.
- Employees of the agency are not allowed to purchase forfeited items.

If ordered forfeited, what can the law enforcement agency do with the forfeited property?

- If the property is a controlled substance or contraband, it can be used for investigative or training purposes, or else it must be destroyed.
- If the property is a firearm, it may be destroyed, used for official purposes, or traded to another law enforcement agency for their use.

- All other property can either be:
 - Retained by the law enforcement agency for official use; or
 - Transferred to another local, state or federal agency; or
 - Sold (subject to rules of sale) with the proceeds retained for allowed uses; or
 - Salvaged.

What restrictions apply to a law enforcement agency’s use of the proceeds?

- All proceeds are to be deposited to special law enforcement trust fund.
- The proceeds:
 - Shall not be used “to meet normal operating expenses.”
 - Must be expended through the normal city or county appropriation system.
 - Shall be used “for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate.”

What other requirements apply?

- “Neither future forfeitures nor the proceeds from forfeitures shall be used in planning or adopting a law enforcement agency’s budget.”
- The agency must compile and annually submit a special law enforcement trust fund report to the entity which has budgetary authority over the agency, which report shall specify:
 - The type and approximate value of the forfeited property received;
 - The amount of any forfeiture proceeds received; and
 - How any of those proceeds were expended.

Part IV. The Controversy

Is this strictly a Kansas controversy?

- No. Beginning in the 1990s concerns have been voiced nationally, and now in many states, about deemed abuses allowed through such laws. Concerns have come from both the right and the left, and include:
 - Concerns about the impact on “innocent” owners who were not themselves responsible for the misuse of their property;

- The invitation for abuse which arises out of a growing dependency by law enforcement on the proceeds of such actions; and
 - The deemed need for more procedural safeguards.
- In response to some of these concerns, Congress enacted the Civil Asset Forfeiture Reform Act of 2000 (Pub. L. No. 106-185, 114 Stat. 202) which sought to enhance safeguards in the federal laws, including:
 - Putting the burden of proof on the government “to establish, by a preponderance of the evidence, that the property is subject to forfeiture,” rather than requiring claimants to prove the property is not subject to forfeiture;
 - Creating an “innocent owner defense”;
 - To recognize more situations in which federal agents must obtain warrants before seizing property; and
 - Imposing special procedural restrictions on the forfeiture of real property.
 - In 2015 Attorney General Eric Holder announced new restrictions on when the Department of Justice will seek forfeitures, as a result of a review of its asset forfeiture program.
 - Many states have been facing challenges to their asset seizure and forfeiture laws, with some enacting significant restrictions. In 2015 a bill was enacted in New Mexico which ended all civil forfeitures (although keeping intact forfeitures as part of criminal proceedings).

What is the basis for the assertion that Kansas has one of the worst and most abusive civil forfeiture laws?

- In 2015 the Institute for Justice issued a report entitled “Policing for Profit: The Abuse of Civil Asset Forfeiture” in which it “graded” the civil asset forfeiture laws of all States plus that of the federal government.
- The grades issued were based upon three points of analysis:
 - **Financial incentive:** agencies are said to have the greatest incentive to use (and abuse) civil forfeiture laws if they are also the recipient of the proceeds.
 - Kansas is one of 24 states (plus the federal government) where law enforcement agencies retain 100% of the proceeds.
 - 8 states divert 100% of the proceeds to other uses (e.g., all proceeds in Missouri go to education).
 - Others states divert from 10% to 55% of the proceeds to other uses.

- **Standard of proof to support forfeiture:** the assertion is that the lower the standard of proof required for forfeiture the more likely it is that injustice can occur.
 - Kansas is one of 31 states, plus the federal government, which uses a “preponderance of evidence” standard – the basic civil standard of proof.
 - Two states (Massachusetts and North Dakota) have a lesser standard, requiring only that probable cause civil forfeiture be established.
 - Some states require “clear and convincing evidence.”
 - Some states require proof “beyond a reasonable doubt” – the same standard as in a criminal proceeding.
 - A few states require either that criminal charges have been filed as to the underlying conduct or that a conviction has been obtained.
- **Innocent owner burden:** the assertion is that unfairness is more likely to occur if the owner of the property in question is presumed to have been involved in the underlying criminal conduct and bears the burden to prove otherwise.
 - Kansas is one of 35 states, plus the federal government, which places the burden of proof on the property owner to prove they had nothing to do with the underlying criminal conduct.
 - 10 states require the government to prove the owners were involved in the underlying criminal conduct.
 - In the other states, who has the burden of proof depends upon the type of property involved.
- Under the Institute for Justice’s tabulation:
 - New Mexico got an A- (this being prior to their repeal of civil forfeiture)
 - 4 states (plus DC) got a B+
 - 2 states got a B
 - 2 states got a C+
 - 5 states got a C
 - 1 state got a C-
 - 5 states got a D+
 - 28 states, plus the federal government, got a D-, including Kansas
 - 2 states got an F
- Conclusion: yes, under this analysis Kansas has one of the worst civil forfeiture laws, although by this criteria the same can be said for 70% of the all of the states, plus the federal government.

- The Institute for Justice also criticizes the lack of transparency in many states through their reporting requirements, or lack thereof.
 - 17 states do not require any particular record keeping as to forfeitures.
 - 7 states required only that the law enforcement agency maintain forfeited property inventory records.
 - 2 states (including Kansas) require reporting only to the law enforcement agency's budgetary authority (i.e., city or county government).
 - 8 states require reporting to a state agency, but no aggregate statewide report is then required.
 - 15 states and DC require reporting to a state agency which compiles an aggregate record of forfeitures throughout the state, with a trend developing that those aggregate reports be posted online.
 - As to such reporting, the Institute for Justice complains about:
 - The lack of accessibility to much of this reporting.
 - The lack of enough detail in most such reporting to permit much analysis.
 - The lack of reporting as to what uses are made of forfeiture proceeds.

What are the facts about civil forfeiture laws?

- As noted, asset seizure and forfeiture laws have been a part of our nation since its birth.
- Such laws have been used for a variety of purposes, including:
 - Fighting piracy and bootleggers;
 - Fighting the War On Drugs; and
 - Combatting combat threats to national security.
- Civil forfeiture laws have also allowed the recovery of large sums of money from corrupt politicians and criminals engaged in fraud and swindling, including such Wall Street scammers as Bernie Madoff who defrauded investors out of billions of dollars.
- Kansas' civil forfeiture law largely mirrors the federal civil forfeiture laws, including:
 - Placing the initial burden of proof on the government to establish that the property is subject to forfeiture.
 - Using the preponderance of the evidence standard for the burden of proof.
 - Placing the burden on an owner or other party in interest to establish the existence of an exemption in order to avoid forfeiture of their interests.
 - Providing for an "innocent owner" exemption.
 - This requires the claimant prove that he or she did not know and could not have reasonably known of the act or omission giving rise to the forfeiture

or that it was likely to occur, or alternatively prove that he or she acted reasonably to prevent the conduct giving rise to the forfeiture.

- Making no provision for a trial by jury.
- Providing that the absence of a conviction on the underlying conduct, or even the fact of an acquittal, does not constitute a bar to a forfeiture.

What are some of the justifications for civil forfeiture laws?

- **Deterrence.**
 - It deters criminal activity by depriving criminals of property used or acquired through illegal activities – “taking the profit out of crime.”
 - This is seen as particularly effective in situations where criminal prosecution may not be possible, e.g.:
 - The perpetrator has absconded or died;
 - As with drug cartels, the perpetrator may never have been in the jurisdiction except through surrogates; or
 - Where issues as to “legal technicalities” make prosecution difficult.
 - It incentivizes cooperation, vigilance and active deterrence by property owners who may otherwise turn a blind eye to criminal activity by those to whom they entrust their property.
- **Revenue for law enforcement.**
 - It produces revenues to strengthen the ability of law enforcement to fight crime – especially important in this era of increasing sophistication in how criminal activity is carried out, and of increasingly constrained law enforcement budgets which are competing for shrinking taxpayer dollars.
 - More revenue for law enforcement means more crime fighting gets done.
- **Enhanced police cooperation.**
 - It enhances cooperation among law enforcement agencies through the sharing of assets recovered.
- **Fraud victim restitution.**
 - Civil forfeiture laws have been instrumental in allowing victims of fraud to recover at least a portion of their losses.

How might one respond to the criticisms against civil forfeiture laws in general?

- Many current critics of civil forfeiture seek to couch their criticisms in constitutionally sounding terminology, using words such as “due process,” “judicial process,” “abuse of process,” “double jeopardy” and the “taking of property of innocent persons.”
 - E.g., the Rep. Finney quotation: “Kansas’ civil asset forfeiture laws may threaten the constitutional rights and violate the basic rights of property and due process of our citizens.”
- There is a well-established body of case law supporting modern civil forfeiture statutes which, as a matter of law, has rejected many of these criticisms.
- **Due process (Fourth Amendment).**
 - While the due process clause of the Fourth Amendment typically requires notice and an opportunity for a hearing before the government takes someone’s property, “seizure for purposes of forfeiture is one of those ‘extraordinary situations that justify postponing notice and opportunity for hearing.’“ *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 667-80 (1974), quoting *Fuentes v. Shevin*, 407 U.S. 67, 90 (1972).
 - However, it has been held that the search and seizure requirements of the Fourth Amendment apply as well to seizures of property for forfeiture as they do to seizures of property for evidence. *United States v. Lasanta*, 978 F.2d 1300 (2d Circuit 1992).
 - The seizure rules are more stringent as to real estate, where notice and an opportunity for a hearing must precede the seizure. *United States v. James Daniel Good Property*, 114 S.Ct. 492 (1993).
- **Double jeopardy and right of confrontation (Sixth Amendment).**
 - The Sixth Amendment applies only to proceedings which are “technically criminal” in nature, and it does not apply to civil in rem forfeiture proceedings. *United States v. Zucker*, 161 U.S. 475, 481 (1896).
 - Civil forfeiture proceedings do not qualify as criminal proceedings for purposes of the Sixth Amendment confrontation clause or for purposes of imposing on such proceedings a higher burden of proof. *Austin v. United States*, 509 U.S. 602, 608 n.4 (1993).
 - The inapplicability of the double jeopardy clause of the Fifth Amendment to civil forfeiture proceedings has long historical standing. See *United States v. Three*

Copper Stills, 47 F. 495, 499 (D. Ky. 1890), *Various Items of Personal Property v. United States*, 282 U.S. 577,581 (1931), and *United States v. Ursery*, 518 U.S. 367 (1996).

- The acquittal of a defendant in a related criminal case does not serve as a bar to or as a defense in a civil forfeiture proceeding. See *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 362 (1984); *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232 (1972).

- **Excessive punishment (Eighth Amendment).**

- While earliest case law unequivocally recognized civil forfeitures as being true civil proceedings and “do not touch the person of the offender,” [*United States v. La Vengeance*, 3 U.S. (3 Dall.) 297, 299 (1796)], the courts have acknowledged that civil forfeitures can serve at least in part as “punishment” and, in recognition of that history, it has been held that the excessive fines clause of the Eighth Amendment can apply if the loss created is clearly excessive in relation to the offending conduct giving rise to the forfeiture. *Austin v. United States*, supra at 622.

How might one respond in particular to the criticisms about the unfairness of the burdens on “innocent owners” to have to prove their innocence?

- It should first be noted that early federal customs statutes put the entire burden of proof on claimants who they wished to contest seizures or deny the application of forfeiture laws, as did many federal forfeiture laws since. [See *Nelson*, supra at 2484.]
- This rule stood for over 200 years until the enactment of the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, 114 Stat. 202, enacting 18 U.S.C. § 983(c), which established the rule that in federal civil forfeiture actions the initial burden of proof is on the government to establish by a preponderance of the evidence that the property is subject to forfeiture. But, if that burden is sustained, it is then up to a claimant to prove the application of an exemption which would serve to avoid the exemption.
- This shifting burden of proof, and the preponderance of the evidence standard to which each party is held in making that proof, are the same rules as apply to virtually all civil litigation affecting competing property rights.
- In *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683 (1974), the Supreme Court noted that throughout the history of jurisprudence as to civil forfeiture proceedings “the innocence of the owner of property subject to forfeiture has almost uniformly been

rejected as a defense.” See also, *J.W. Goldsmith, Jr. Grant Co. v. United States*, 254 U.S. 505 (1921), rejecting a Fifth Amendment due process challenge to forfeiture action by an innocent owner.

- Likewise in *Bennis v. Michigan*, 517 U.S. 1163 (1996), the Court rejected the “innocent owner” objections to civil forfeiture, based upon this long history of case law rejecting such a proposition.
 - The *Bennis* case involved a contest over a car owned by a wife who was ignorant of her husband’s use of her car for illegal purposes, that being sexual activity with a prostitute.
 - One of the cases cited in *Bennis* was *Van Oster v. Kansas*, 272 U.S. 465 (1926), where the owner of a car left it entrusted with a car dealer, who then allowed its use by an associate, who then used it for illegal transportation of alcoholic liquor.
- It should be noted that not all “innocent owners” are innocent.
 - Many instances cited by critics on this basis do not involve owners of property which was entrusted to or otherwise in the hands of others who may have committed some misconduct. Rather they involve persons from whom the property was directly seized who were not then subsequently prosecuted for any offense.
 - There are many reasons why a criminal prosecution may not be pursued which have nothing to do with the guilt or innocence of the person from whom the property was seized.
 - Even in entrustment cases, the issue still exists as to whether the property owner was complicit in some manner with the use of the property for illegal purposes.

What about the argument that the ability of law enforcement to use civil forfeiture serves to motivate police misconduct?

- It is said by some that the system incentivizes abuse by police officials; e.g., the allure of accumulating revenue may become more motivating than the desire to deter crime, and the limited ability of some persons to contest forfeiture proceedings can result in forfeitures being made under increasingly marginal circumstances.
- Should the mere possibility of misconduct justify the elimination or substantial restriction of a proven, valuable law enforcement tool? Are there reforms which would address this issue without gutting its usefulness?

What about the argument that civil forfeitures have a disproportionate impact on poor and politically weak persons?

- In all candor it should be acknowledged that this can be a concern. Efforts to find ways in which to minimize such impacts are certainly deserving of consideration.

What about the concerns over lack of transparency in the reporting requirements related to forfeitures, lack of meaningful content in such reporting to permit meaningful analysis and oversight, and the lack of public accessibility to such reporting?

- This is another legitimate issue. Kansas civil seizure and forfeiture laws are unquestionably weak in this regard/

What are the specific criticisms as to the Kansas forfeiture law which were raised by Legislative Post Audit?

- A Legislative Post Audit Committee report issued in July 2016, based upon their review of the forfeiture practices by 6 Kansas law enforcement agencies (Sedgwick County, Salina, Iola, Coffeyville, the Kansas Highway Patrol and the KBI), resulted in the following findings and recommendations:
 - They found few significant and systemic problems, but were critical that in some instances best accounting practices were not being followed, e.g.:
 - None of the agencies reviewed conducted periodic checks to be sure all forfeiture proceeds were property deposited, and that all deposits could be related back to specific forfeiture cases.
 - Most of the agencies comingled forfeiture funds with drug tax proceeds, which is not a good accounting practice.
 - Two of the agencies allowed verbal approvals to be given to the expenditure of forfeiture proceeds, which made it difficult to determine whether the law was being followed that the agency head must approve all such expenditures.
 - Both of the state agencies complied with the reporting requirements, but none of the local agencies did.
 - Agency internal policies and procedures for handling forfeitures and proceeds are largely nonexistent.
 - They feel the Kansas seizure and forfeiture process is highly decentralized, unlike other states which provide for a central repository for forfeiture information.
 - Uses allowed to be made of forfeiture proceeds are not well defined, resulting in agency heads having very broad discretion in such matters.

How might all of these various concerns be addressed?

- **First, realize some concerns are simply not supported by established law.**
- **Civil forfeiture laws do serve very real and important purposes.**
 - Those who advocate repeal of civil forfeiture laws always focus on instances of seemingly “innocent” owners of seized property who lost that property but were never charged with having committed any crime.
 - They never mention Bernie Madoff or suggest he should have been allowed to keep the fruits of his fraud.
 - They never mention seizures of expensive boats, airplanes, etc., which have been used by foreign drug cartels to transport drugs into the United States.
 - Civil forfeiture laws are really no different than other civil laws such as the ones which allowed the families of Nicole Simpson and Ron Goldman to file and prevail in a civil suit against OJ for damages arising from the murders of Nicole and Ron, even though OJ was found not guilty of the charges.
- **Not having been charged with a crime is not the same thing as being “innocent.”**
 - Persons cannot be convicted of a crime unless there is proof “beyond a reasonable doubt” – the most difficult legal standard.
 - How many people get upset over persons prevailing or even avoiding prosecution based upon technicalities or other evidentiary problems.
 - But those same persons can at least be deprived of the fruits of their conduct through civil forfeiture proceedings.
- **There are some legitimate issues.**
 - **Clearly there have been some very questionable seizures and forfeitures.**

Solution: Increase oversight and perhaps impose penalties for abuse rather than repeal or imposing new rules which will in turn make legitimate use of civil forfeiture more difficult.
 - **Clearly the reporting requirements are too sparse, have been too often ignored, and the reporting requirements lack public accessibility.**

Solution: Beef up reporting requirements, establish a central repository, and provide some penalty for failure to comply with those requirements.

- **Clearly there is not enough clarity as to what are and are not allowable uses of forfeiture proceeds.**

Solution: Some balance should be sought between the concept that law enforcement agencies should not be able to fund basic operating expenses out of forfeiture proceeds, and the difficulties in taxpayers to be able to adequately fund specialized law enforcement activities such as drug investigations and fighting human trafficking, identity theft, serious sex offenses, etc.

Diverting proceeds to other agencies should be avoided, as specialized law enforcement activities are in need of significantly more funding, not less.

- **Clearly not enough law enforcement agencies have adopted effective internal policies and procedures for handling property seizures and forfeitures, or followed accounting best practices.**

Solution: Give state law enforcement agency associations time to develop and disseminate model policies and best practices, with their promise that further legislative action in this area can be avoided if they are successful.