



Attorney General Sessions Calls for Even More Civil Asset Forfeiture

Attorney General Jeff Sessions went before the National District Attorneys Association in Minneapolis earlier this week and responded to the national effort to end civil asset forfeiture (CAF): He intends to issue a new directive to *increase* the number of police seizures of cash and property from individuals not convicted of any crime.



His comments were met with thunderous applause from prosecutors and other law-enforcement officials inside the Minneapolis Convention Center. Many prosecutors and members of local law enforcement argue that they need the money to run their offices and conduct their operations.

Under CAF, a person does not have to be convicted of any crime before his property can be taken. It is used by both federal government officials and state and local law-enforcement officers to seize property that they suspect has been used in wrongdoing — without even having to charge the person with any crime. In cases of *criminal* asset forfeiture, on the other hand, the accused is afforded all the constitutional and statutory procedural safeguards available under criminal law. With criminal forfeiture, the accused must be found guilty beyond a reasonable doubt before property is forfeited.

Civil asset forfeiture is an assault upon the very concept of private property and the legal position that an accused person is innocent until found guilty beyond a reasonable doubt.

CAF is so common now that in 2014 federal law-enforcement officers actually seized more property from citizens than did burglars. A few years ago, a Michigan woman who was suspected of not complying with the state's medical marijuana law lost tools, a bicycle, and even her daughter's birthday money.

This has led many states to rein in the practice. Robert Johnson, with the Institute for Justice, noted, "Thirteen states now allow forfeiture only in cases where there's been a criminal conviction."

In response to this effort to end or curtail the practice of civil asset forfeiture in several states, Sessions told the district attorneys, "With care and professionalism, we plan to develop policies to increase forfeitures. No criminal should be allowed to keep the proceeds of their crime. Adoptive forfeitures are appropriate as is sharing with our partners."

Adoptive forfeiture, or "equitable sharing" is the practice in which local law enforcement can circumvent state laws against CAF by "sharing" part of their seized cash or property with federal authorities.

Johnson disagreed with Sessions, contending, "This is a federalism issue. Any return to federal adoptive forfeitures would circumvent limitations on civil forfeiture that are imposed by state legislatures.... The



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Department of Justice is saying ‘we’re going to help state and local law enforcement to get around those reforms.’”

Sessions encouraged the prosecutors to get tough on drug offenders, because “drug offenses are not nonviolent crimes, as most of you all know.”

This is typical of supporters of CAF: the contention that they are fighting illegal drugs, and that those who oppose CAF are just favoring drug kingpins over law enforcement. The drug problem is so severe, they argue, that law enforcement simply must have the “tools” to combat the drug lords. But it is unfair to charge those who wish to rein in CAF abuse as favoring criminals, just as it would be unfair to charge those who argue for due process for accused murderers as supporting homicide.

Doing wrong to “do right” is still wrong. Even in horrific murder, rape, and armed robbery cases, the accused is still afforded due process of law. One provision of the English Bill of Rights, adopted in 1689 in the aftermath of the Glorious Revolution in England, was crystal clear: “Forfeitures before conviction are void.”

The late Congressman Henry Hyde contended that CAF is also a violation of the Eighth Amendment, which prohibits “excessive fines.” He wrote, “There is little or no proportionality between the crimes alleged and the punishment imposed” in most cases, citing examples of entire hotels being taken from the owners simply because gangs used a room for drug transactions, or apartment houses being confiscated because of drug deals allegedly taking place in some of the units.

One would think that Sessions would respect the English Bill of Rights, due process of law, private property, and the prohibition of “excessive fines.” But if none of that matters to him, he should at least heed the Seventh Commandment: “Thou shalt not steal.”



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