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Virtual Justice: The Flawed Prosecution of Crime in America. By H. Richard Uviller. New Haven, Connecticut; London, England: Yale University Press. 1996. Pp. 318. Hardcover.

Over a year after the conclusion of the O.J. Simpson criminal trial, the American criminal justice system remains the focus of great debate. Among the central issues: Does the current criminal justice system properly balance the rights of accused criminals with those of victims and society at large? Does the system provide the proper tools for juries comprised of ordinary citizens to adequately and fairly determine what constitutes justice? Do esoteric procedural rules and judicial precedents ultimately obfuscate the truth or are they a viable method of protecting the wrongly accused from the enormous power of the state?

Add *Virtual Justice, The Flawed Prosecution of Crime in America*, by H. Richard Uviller, to the cacophony of opinions regarding the current state of the American criminal justice system. What sets *Virtual Justice* apart from most of the high profile books addressing the topic is its honest and objective appraisal of the process at the core of the system. Focusing on criminal procedure rather than legislative "get tough on crime" trends or the inevitable problems of bad cops, poor judges and incompetent juries, *Virtual Justice* provides a fresh voice to an old debate. By never directly addressing the Simpson trial, *Virtual Justice* divorces itself from the particular passions (and commercialism) surrounding that trial, offering a more cerebral analysis of American criminal justice.

Many, particularly members of the criminal defense bar, will vigorously dissent from the author's well-argued opinion that the American criminal justice system offers "virtual" justice, palatable to most, most of the time, but ultimately providing less than the "actual" justice it purports to deliver. Uviller believes the current process acquits too many guilty defendants while convicting too many of the innocent. Con-

cluding that despite the good faith intentions of its framers and practitioners, the American criminal justice system is a "sham" that lulls people into a false sense of faith, the author posits that the system must be redesigned to justify the belief that our justice system is the proudest accomplishment of our democratic society.

Arranged into fourteen chapters, each addressing a distinct area of the justice system, *Virtual Justice* is, above all, eminently readable. Most chapters begin with a brief, fictional vignette designed as a paradigm of a discrete issue arising in criminal cases. Following a review of the major legislative, judicial and ethical rules evoked by his paradigm, Uviller applies these rules to his vignette to reach the probable outcome. In the process, the author effectively identifies many of the inconsistencies, non-sequiturs and outright contradictions arising from the application of procedural rules to typical cases. After analyzing the efficacy of the probable result, Uviller concludes with suggested solutions to the conundrums presented.

Among the author's most incisive criticisms are those pertaining to the exclusionary rule, the right to counsel, and jury selection. In chapter four: "The Exclusionary Rule: The Fabled Doctrine, Its Baleful Side Effects, and a Generally Ignored Technological Remedy," Uviller notes that the end result of the exclusionary rule is to deprive juries of probative evidence that might assist them in rendering an accurate verdict. Disheartened by this effect, the author notes approvingly current legislative efforts to codify a true "good faith" exception to the Fourth Amendment's warrant requirement. Such legislation, if accepted by the Supreme Court, would provide that evidence obtained, with or without a warrant, should not be excluded if the officer reasonably believed the search lawful.

The rationale supporting such a broad good faith exception in the absence of a warrant is that the deterrent policy behind the exclusionary rule cannot work when an officer reasonably believes his search is lawful. However, Uviller fails to recognize that, without having to first record for magistrate approval the supporting probable cause, place to be searched, and particular items to be seized, there is nothing to prevent police from engaging in ex-post facto justifications that there was a "reasonable" belief in the lawfulness of a

search. It is much easier to provide (or contrive) a probable cause rationale after definitively knowing what was found than it is before you actually find it, as is currently required.

Aside from enacting a true good-faith requirement, effectively eviscerating the exclusionary rule, the author suggests a more pragmatic solution to alleviate the often harsh result of the exclusionary rule. Observing that the hassle involved in going to the courthouse, typing an affidavit, finding a prosecutor to approve it, and waiting for a judge who has time to read it, is frequently why police officers fail to obtain warrants before conducting searches, the author suggests a technological cure: Eradicate such logistical impediments by instituting a "radio warrant" system. The Fourth Amendment requires a supporting statement "on oath or affirmation" but makes no reference to a written affidavit.

Installing a three-way radio link between police cars, "on duty" magistrates, and prosecutors, removes the logistical impediments to obtaining warrants. The judge could place the officer under oath over the radio and ask questions to ascertain probable cause. The officer would have a blank pad of warrants in his vehicle to use once permission was granted. A recording of the conversation would be made in case the procedure was later challenged in court. The author notes that San Diego is currently the only jurisdiction to have fully implemented such a program, but that courts addressing the issue have unanimously upheld its legality. Uviller believes prosecutors have stymied the widespread adoption of this technique out of fear that it marginalizes their control over the investigative process.

Chapter seven, "The Right to Counsel: Dramatic, Deceitful, and Dilatory Assistance," begins with a vignette in which a Senator is indicted for racketeering. With strong evidence against him and his seat at stake, the Senator seeks the assistance of an attorney he believes can effectively reinstitute his reputation by conducting a media campaign decrying the "false, politically motivated" accusations against the Senator. The attorney, after securing a right of first-refusal for an exclusive book on the case, accepts the Senator as a client. Although she conducts a successful media campaign, the attorney does not have any experience with white collar criminal cases. The attorney elicits evidence damaging to her client and fails to capitalize on several opportunities to make

favorable points for her client. Finally, the Senator's attorney presents a surprise witness that makes the case more sensational (better for the book), but actually hurts what is already a weak case. The obvious result is that the Senator is convicted.

With this vignette as his vehicle, the author persuasively presents the problem of questionable legal ethics and possible ineffective assistance of counsel. Following a review of relevant ethical cannons and judicial decisions, Uviller questions when, if ever, a judge should step in to prevent a defendant from becoming a victim of his own attorney's incompetence. Although in his vignette the book deal was clearly unethical, and the representation obviously deficient, the author notes that *Strickland v. Washington* makes it extremely unlikely that an appellate court will find an attorney's representation inadequate as a matter of law. Bemoaning the fact that judges are loath to relieve obviously ineffective counsel at the trial stage, Uviller presents several theories as to why this is the case. The predominate reason: Judges know that incompetent lawyers frequently win cases because of showmanship. Why should a judge deprive a defendant of an opportunity to win a case by counsel of his own choosing? Overall, Uviller effectively demonstrates that such rationales only contribute to virtual justice. The ultimate result becomes the paramount goal rather than a fair process that reveals the actual truth.

Uviller's criticism of the American criminal process is particularly forceful when he discusses the jury selection process in chapter ten, "Picking the Jury: Stacking the Randomly Drawn Panel." Here the author's vignette depicts a young defense attorney relying on personal biases, untested generalizations, and irrational guesswork in selecting a jury for a racially sensitive case. The author effectively demonstrates how preemptory challenges are incompatible with the notion of a jury comprised of "a randomly drawn panel of citizens of all stripes." Uviller convincingly argues that allowing the judge to excuse jurors "for cause" and providing counsel with one or two preemptory challenges to remove obviously unfit jurors better fits the egalitarian aspirations of our jury system.

Despite its generally critical tone, *Virtual Justice* is not a blanket condemnation of the criminal justice system. Even

Uviller, a former prosecutor and a professor of law at Columbia University, concedes that in at least some instances, the virtual justice he generally decries is preferable to actual justice. For instance, in chapter nine, "Plea-Bargaining: Cheap Crimes, Costly Trials," Uviller reluctantly admits that despite the virtual justice which results from plea-bargains—given that innocent defendant's which face unfavorable evidence may plead guilty—the efficiency, provided by plea-bargaining is a necessary alternative to actual justice. However, such admissions debilitate the author's overall thesis—that "truth" must be the paramount aim of the justice system.

Although the vignettes effectively raise the issues he wishes to cover, Uviller's fictional writing is rigid at best. Readers are unlikely to forget that Uviller is first and foremost an academic, not a novelist. The adage "truth is stranger than fiction," is particularly applicable where criminal cases are concerned. With a little research, Uviller might well have located true stories that effectively, and perhaps more poignantly, illustrate his procedural points. Moreover, those familiar with criminal procedure will find many of the vignettes and much of the background perfunctory. Nevertheless, even seasoned practitioners should find the author's analysis and critique of the application of criminal procedure to his proffered vignettes illuminating. Although many will disagree with his opinions, the author aptly identifies many of the most troublesome areas present in the American justice process.

The most frustrating aspect of *Virtual Justice* is the author's failure to support his analysis with source notation. The author defends this omission by asserting that he does not intend *Virtual Justice* to be a scholarly work. But by not including footnotes or even a bibliography, Uviller marginalizes his own arguments and frequently misses opportunities to bolster his assertions with statistical cites and verifiable real world examples. This weakness is especially glaring in the frequently encountered segments where the author asserts that statistics support his claim. The matter could have been cured through the inclusion of endnotes without discouraging casual readers who could skip over such notes at their leisure.

One area where Uviller's assertions could be strengthened by citation is his claim that "in as many as ten percent

of the cases" a judge faces the dilemma of sentencing an individual who the judge believes may be innocent, despite a jury's conviction. The author's solution to this unsupported assertion is to allow the judge to participate in fact finding. But without citing a single real example, Uviller's entire argument looses steam. Furthermore, Uviller offers little evidence—beyond his own vignette depicting a judge confronting just such a situation—that in such situations a judge's conclusion of innocence is stronger than twelve jurors unanimous determination of guilt.

True, in chapter twelve, "Of Witnesses and Jurors: A Tale of Confidence and Error", the author sets forth his belief that rules of evidence, especially those relating to credibility and impeachment, serve more often to confuse juries than to reveal the truth. His point is that while the confrontational system may serve the process of determining actual guilt or innocence well where skilled and scrupulous attorneys represent the parties, more often than not one or both attorneys are not competent or scrupulous. It is in these all too typical situations that the author laments that judges are not allowed a more active role. The author believes a disinterested magistrate could impartially uncover evidence for both sides and examine witnesses to better illustrate the truth for the jury.

In advocating an inquisitorial justice system, with the judge as the primary fact finder, no "coaching" of witnesses prior to testimony, and few procedural rules excluding probative evidence, the author reveals his distrust of the current confrontational system's ability to lead jurors to the truth. However, again Uviller is unable to offer any indication that "correct" results are reached any more frequently under the adapted continental inquisitorial model he advocates. Indeed, all the author can claim (again without citation), is that "those who use a modified inquisitorial method say the innocent are rarely prosecuted at the end of a fair trial, and of those that are, no more are convicted than under an adversary system." Although Uviller asserts that such claims "should not be lightly dismissed," without more, how are we to conclude that a different system would provide any more actual justice?

The conclusion to *Virtual Justice* concedes that many of the author's proposals are unlikely to be embraced by an

American society with deep political, historical and cultural ties to the confrontational jury system. But the author succeeds in his larger goal: Illuminating some of the major flaws present in the American justice system. Although many of the solutions Uviller proposes are not viable alternatives, others, such as simplifying warrant procedures and limiting the use of preemptory challenges, are workable solutions whose adoption would bring America's virtual justice closer to actual justice.

Despite its weaknesses, *Virtual Justice* admirably explicates and critiques many of the nuances of the criminal justice system. At the same time, the book is often relegated to the "legal" section of bookstores and libraries, and one must wonder whether it will ever reach its best audience, the general public. This is unfortunate because, although this reader disagrees with many of the book's arguments, it is rare that such an insightful explication and critique of the American criminal justice system is made so accessible.

A License to Steal: The Forfeiture of Property. By Leonard W. Levy. Chapel Hill, North Carolina; London England: The University of North Carolina Press. 1996. Pp. 272. Hardcover.

In Hamden, Connecticut, an elderly couple's house is seized after the government finds drugs in the grandson's room. A retiree from Ventura, Iowa is convicted and fined for illegal fishing. Not satisfied, state wildlife agents proceed to seize the retiree's $6,000 boat. In Portland, Oregon, a man loses a $40,000 car to the government following his arrest for soliciting a prostitute. If caught on foot, the statute authorized only a $100 fine.

Welcome to the confusing world of asset forfeiture. Are such government seizures an effective deterrent to crime and proper restitution to a victimized society, or are they a fundamentally unfair abuse of civil liberty and property rights? Professor Leonard Levy maintains the latter in his book, *A License to Steal: The Forfeiture of Property.* As its title implies, *A License to Steal* emphatically argues that, at least in the area of forfeiture, America has gone too far in its never-ending battle against crime. Pointing to cases such as those described above, Levy concludes that the results of current

forfeiture laws are not only frequently unjust, but by diminishing established constitutional rights they undermine society as a whole.

Well-researched and meticulously documented, *A License to Steal* is an excellent scholarly exposé. Levy outlines the historical and legal underpinnings of criminal and civil forfeiture laws, buttressed with examples of their historical application. Presenting arguments from opponents and proponents alike, Levy effectively demonstrates why our forfeiture laws require reform. The author's concluding evaluation of competing forfeiture reform proposals currently under congressional consideration suggests possible solutions, while further illuminating the complexities of the issue.

Following some of the more egregious examples of government reliance on civil forfeiture to seize the personal and real property of citizens, *A License to Steal* begins with a review of the historical antecedents to civil forfeiture. Levy first discusses the ancient doctrine of deodands. Stemming from the Latin phrase "deo dandum" ("given to God"), the doctrine was first utilized by English monarchs as a method of augmenting the Crown's treasury. Where an object was the instrument of a wrong, deodands made that object the property of the Crown, divesting the old owner of any property rights in the object.

Although the practice of deodands and later, civil forfeiture, was frequently justified by Biblical references, Levy aptly demonstrates the fallacy of such analogies. We learn that Biblical "forfeiture" was quite different from deodands and today's civil forfeiture. Exodus 21:28 commands that "If an ox gore a man or a woman that they die, the ox shall be surely stoned and its flesh shall not be eaten." Yet, in the Bible, the object is deemed possessed and is destroyed rather than forfeited to another, while under deodands and civil forfeiture the sovereign is the beneficiary of the value of the wrong-doing object. Levy aptly points out that today seized property is not destroyed and its value is not returned to the people but is retained by those in authority. Although Levy fails to address the argument that under a democracy the government *is* the people, he does demonstrate that the result of today's civil forfeiture is nevertheless nearly opposite civil forfeiture's Biblical predecessor.

The premise of deodands and civil forfeiture is the fiction that inanimate objects can themselves be guilty of a wrong. Such civil proceedings are termed "*in rem*" as opposed to "*in personam*" since the property itself is prosecuted. Thus, although the property must be shown to be connected to criminal activity, no such showing is required against the owner. Beyond leading to bizarre case names such as *United States v. One 1963 Cadillac Coupe de Ville Two Door*,[1] Levy laments that this fiction has the unfortunate result of removing most constitutional safeguards to civil forfeitures of property.

In civil forfeiture, the owner is frequently not charged with a crime, let alone adjudged guilty. Owners thus receive few constitutional protections in civil forfeiture proceedings because *in rem* actions do not determine the guilt of an individual—they do not technically constitute a punishment which would trigger most constitutional protections. Moreover, in civil forfeiture cases the government is relieved of "proof beyond a reasonable doubt" and need only establish a reasonable connection between the property and the commission of a crime. The treatment of civil forfeitures as regulatory actions on the behalf of the public means that "the innocent owner of property [is] deprived of [the property] without a semblance of fair procedure."

Criminal forfeiture confiscates property used in or acquired through the criminal activity for which an individual is convicted. Unlike its *in rem* civil counterpart, a necessary precursor to *in personam* criminal forfeiture is the conviction of the person whose property is to be seized. Criminal forfeiture is not directed against the seized property itself, but is part of the punishment of a person convicted of a crime. Accordingly, all constitutional protections afforded a criminal defendant are present in criminal forfeiture proceedings.

Not surprisingly, we learn that criminal forfeiture was traditionally disfavored by law enforcement, who preferred the more lenient standards of civil forfeiture to seize property. Moreover, although criminal forfeiture had a long and established history in England, the fledging American colonies were loath to apply criminal forfeiture against their citizens. It was feared that strong forfeiture laws would induce settlers to leave for competing colonies where forfeiture laws

1. 250 F.Supp. 183 (1966).

were less severe. Compounding this inclination was the concern that strong criminal forfeiture laws would deprive the heirs of criminals of needed inheritance, forcing entire families to become wards of the state.

Historically, long-standing legislative and judicial rules marginalized the use of criminal forfeiture in the United States. The First Congress enacted a statute prohibiting forfeiture of entire estates and those that would deprive descendants of inheritance. Until 1970 only limited criminal forfeiture provisions remained on the books in the United States, and even these were rarely used. Levy's initial description of criminal forfeiture is less incisive than that of civil forfeiture, but this is not surprising given the strength of the protections against criminal forfeiture compared to those available in civil forfeiture proceedings.

With criminal forfeiture so restricted, why then did civil forfeiture remain prevalent? Levy shows that the answer (or at least the origins) can be found in admiralty law. Early maritime courts adopted civil forfeiture as the preferred method protecting the economic viability of a new nation. Using civil forfeiture, ships along with their cargo could be seized for violating tariff and other revenue laws. The precedent for later expansion of civil forfeiture was thus firmly established. The United States Supreme Court justified such civil forfeitures "as the only adequate means of suppressing the offense or wrong." To Levy however, *in rem* forfeitures of any variety, "like the deodands to which they were analogous, were make-believe prosecutions of property in order to deprive the owners of their constitutional rights, thereby enabling the government to make confiscations not otherwise likely."

However, in relying on and expanding civil forfeiture, courts were eventually forced to concede an important point: civil forfeiture was indeed a form of punishment against the owner. This acknowledgment diminished the make-believe aspect of forfeiture, but created a new problem. Courts now needed to reconcile the paucity of constitutional protections available in civil forfeiture cases with the admission that the procedure has punitive aspects. Through direct citation to numerous court opinions, Levy demonstrates a judicial tendency to downplay or outright ignore this obvious contradiction. Levy believes courts are able to engage in such "intellec-

tual flim-flammery" because numerous Supreme Court decisions afford property rights non-fundamental status. As a result, potential constitutional infirmities of civil forfeiture laws are easily dismissed as being of lesser magnitude than, for example, the rights of accused felons.

Congress reintroduced criminal forfeiture in the 1970's in legislation intended to strengthen law enforcement's' ability to fight organized crime. Levy notes that shortcomings of the 1970's statutes, adverse court rulings, and most importantly, poor leadership by the Justice Department, led to the ultimate failure of the 1970's criminal forfeiture legislation. However, this failure only served as an impetus for further legislation in the 1980's revitalizing criminal forfeiture. Among the central provisions of the 1980's legislation: extending the scope of criminal forfeiture to reach more assets over a broader variety of crimes and allowing law enforcement to seize substitute assets when the criminal assets are not located. Levy concludes that such provisions, in combination with the already potent civil forfeiture laws, gave the government "potentially draconian forfeiture weapons."

Levy wastes no time returning to descriptions of forfeitures exemplifying the government's abuse of its "draconian" powers. Here Levy launches his attack against forfeiture laws in earnest. Following a persuasive litany of questionable seizures, Levy asks why most law enforcement agencies, from local police departments to the FBI, so adamantly support forfeiture laws? At least part of the answer stems from generous provisions of the forfeiture laws allowing law enforcement to retain much of the proceeds from seizures. Although such provisions are intended to benefit the community directly affected by the criminal activity and compensate law enforcement for a job well done, such incentives also lead to abuse.

Most readers will be perturbed to learn that forfeiture assets are being used by police departments to fund banquets, huge fireworks displays, sports cars for police personnel and gold watches for retiring police secretaries. Although much of the proceeds do fund legitimate police activities, numerous documented abuses raise the question of whether police are targeting the most culpable offenders or merely the most profitable. Doubts are only increased when we hear a senior Customs official remark that given the choice between

"a guy with a ton of marijuana and no assets versus a guy with two joints and a Lear jet, I guarantee you they'll bust the guy with the Lear jet."

To Levy however, the most shocking feature of civil and criminal forfeiture laws is their failure to adequately protect the rights of innocent people. The likelihood of innocent people becoming the victims of forfeiture are enhanced by provisions providing informants with 25% of forfeiture proceeds. Naturally, this encourages informants (often accused criminals themselves) to choose the wealthiest targets regardless of their guilt. Examples of individuals shot by police acting on insufficient and inaccurate tips, while exceptional, underline Levy's concern.

The relation-back doctrine is also a frequent cause of innocent owners' loss of property. Applicable in all forfeiture cases, relation-back allows the government to seize offending property even if it is no longer owned by an individual with knowledge of its criminal nature. In short, the government's interest in such property extends back to the time of the crime, giving the government superior title to the property regardless who owns it at the time of seizure. Several safeguards are in place to protect truly innocent owners, but to the author, the inadequacy of these protections are readily apparent.

Because an owner's guilt or innocence is irrelevant in civil forfeiture cases, innocent owner's are particularly vulnerable to civil forfeitures. All that the government must show is that there is probable cause to believe the property itself is related to a crime. Innocent owners may retain the property, but usually only if they can show, by a preponderance of evidence, that the property is not connected to a crime. Not only does this force a higher burden of proof on the owner than the government, it effectively means the property is guilty until proven innocent. This reversal of the standard burden of proof is possible because *in rem* forfeitures are civil actions, not criminal. Under the majority of civil forfeiture statutes, innocent owners can also prevail if they prove they took all reasonable measures to prevent the misuse of their property.

The high burden placed on owners by the "all reasonable measures" test is emphasized by a United States Supreme Court decision upholding the forfeiture of a yacht after a

renter was caught smoking marijuana on the vessel. The Court found that the owner did not take all reasonably prudent steps to prevent illegal substances from being used on the yacht. Furthermore, the Court felt forfeiture would teach the owner to exercise greater caution before renting "in the future." The Court did not elaborate on what measures would constitute "prudent steps." Congress has lessened the severity of the innocent owner's defense in a few forfeiture statutes by requiring proof only that the owner neither knew of nor agreed to the illegal use, but even this is difficult to prove by a preponderance of evidence.

In criminal forfeiture cases, innocence is a complete defense for the defendant and if established prohibits forfeiture. But what about lien holders, bona fide purchasers and co-owners who have legitimate third-party interests in criminally forfeited property? First, third parties have no standing in criminal forfeiture cases and are unable to petition for a hearing until after a jury has returned a special verdict awarding the property to the government. Since the government has five years after seizure to decide whether to prosecute, the innocent third-party may be deprived of the property for a considerable period. Second, once the third party institutes an action, they can obtain their interest in the property only if they establish by a preponderance of evidence a legal interest in the property *prior* to the commission of the crime leading to forfeiture.

If the third-party in a criminal forfeiture case can only demonstrate an interest existing *after* the commission of the crime, the relation-back doctrine technically gives them no relief. In such cases, innocent third-parties cannot recover even if they prove they had no knowledge of the property's forfeitability. Although some courts have mitigated the harsh effect of the relation-back doctrine by allowing innocent third-parties to recover where they can show they were bona fide purchasers for value and had no knowledge of the crime, Levy poignantly demonstrates the inequity of the general rule.

Levy also finds current forfeiture laws objectionable on constitutional grounds. The Seventh and Eighth Amendments, guaranteeing civil trials in cases involving more than $20 and prohibiting excessive fines respectively, appear violated by summary civil forfeiture proceedings summarily con-

fiscating property based on probable cause alone. In cases where a criminal defendant's assets are seized through civil forfeiture, Levy believes the Fifth Amendment's prohibition against double jeopardy is violated. Additionally, in both civil and criminal forfeiture cases, government custody of a defendant's assets before trial may interfere with the right to be represented by counsel of choice. Levy presents strong arguments on these and other fronts, which most courts have skillfully side-stepped.

Levy is unlikely to be consoled by the Supreme Court's most recent forfeiture decisions, released after the publication of *A License to Steal*. In *United States v. Ursery*,[2] the Supreme Court reaffirmed that civil forfeitures are not punitive unless they cannot reasonably be considered civil sanctions. As a result, the Court found that an individual may usually be prosecuted criminally and also have his assets seized by civil forfeiture without violation of the Fifth Amendment's double jeopardy clause. In another recent decision, *Bennis v. Michigan*,[3] a 5-4 majority of the Court held that an innocent owner's defense is not allowed under either the due process clause of the Fourteenth Amendment or the Fifth Amendment's takings clause.

Despite his criticisms, Levy believes forfeiture laws are frequently desirable, stating that "a critic of forfeiture laws would be irrational to advocate their abolition . . . no criminal should be able to profit from crime." But Levy strongly feels that fairness requires forfeiture laws be reformed. Levy is not alone in this belief, and *A License to Steal* concludes with a summary of several reform proposals currently being considered by Congress. All the proposals purportedly bring greater fairness to forfeiture proceedings, but Levy differs in his evaluation of each.

Levy considers Michigan Congressman John Conyers' proposal ideal. Conyers' bill would abolish civil forfeiture altogether, protecting innocent owners by securing proof beyond a reasonable doubt as the forfeiture standard. Conyers would also prevent excessive punishment by requiring the government to prove forfeitures are commensurate with the crime. To avoid the abuse spawned by incentive programs, Conyers would require state forfeiture proceeds be returned

2. 64 U.S.L.W. 4565 (1996).
3. 116 S. Ct. 994 (1996).

to state treasuries rather than directly to police departments. At least 50% of federal forfeiture proceeds would be dedicated to community-based crime-control programs. To provide greater protection to innocent owners, the bill would abolish the relation-back doctrine. Finally, Conyers' bill would enhance defendant's ability to pay for counsel and would open the government to damage suits for wrongful seizures. However, Levy admits that Conyers bill is probably too radical and concludes that its chances of passing are as unlikely as "snow in the Tropics."

Meanwhile, Levy considers the proposal submitted by the Department of Justice ("DOJ") as worse than no reform at all. Simply put, the DOJ proposal "takes away more than it offers." For instance, although the DOJ bill has the virtue of establishing a standardized innocent owner's defense applicable in both civil and criminal forfeiture proceedings, the test the DOJ proposes is the most stringent possible. The DOJ innocent owner defense would enact the burdensome test of proving that one "did everything that reasonably could be expected" to prevent or terminate the illegal use of the property before allowing an individual to retain seized property. The DOJ also agrees that the government should bear the burden of proof in civil forfeiture cases, but unlike other reform proposals, suggests preponderance of evidence rather than clear and convincing evidence as the appropriate standard. Furthermore, the DOJ proposal would simultaneously reduce the government's burden of proof in criminal forfeiture actions to a preponderance of evidence standard.

The reform proposal most likely to pass is that submitted by Illinois Representative Henry Hyde. However, Levy finds Hyde's bill mostly cosmetic. The farthest reaching reforms Hyde proposes are easing the burden of proof under the innocent owner's defense, a higher clear and convincing evidence standard for government civil forfeitures, and opening the government to damage claims stemming from faulty seizures. Although Levy is disappointed that extensive reforms such as those proposed by Conyers are unlikely, he concludes that real, if modest reform is possible. Levy foresees reform in which every interest gains something and none is utterly defeated. However, Levy also predicts that the Judiciary Committee's occupation with a slew of other legislation could indefinitely delay reform.

Although tempered by the author's acknowledgment that the extraordinary cases are the exception rather than the rule in forfeiture actions, *A License to Steal* at times seems sensationalistic. The author seldom discusses the procedural intricacies or court-room battles involved in the numerous forfeiture cases he cites beyond the ultimate, usually questionable, outcome. Rarely are instances of appropriate forfeitures discussed, even though the author admits these comprise the majority of cases. Where such cases are mentioned, such as the Bank of Credit and Commerce International ("BCCI") forfeiture of $550 million in assets or Michael Milken's plea-bargained forfeiture of $600 million, they are given relatively little attention. By delving deeper into both egregious and proper forfeiture cases, Levy might have enhanced his arguments and provided greater perspective into the complexities of the issue.

Despite its minor shortcomings, *A License to Steal* provides an account of forfeiture laws which is as engrossing as it is disturbing. Whatever one's view on the issue, it is difficult to come away from this book without a better understanding of how forfeiture laws operate in the United States along with a belief that at least some modicum of reform is required to bring fundamental fairness to this powerful law enforcement tool. As Congress considers forfeiture reform, analyses such as Professor Levy's are sure to play a substantial role. This book is highly recommended for anyone with an interest in how the government can lawfully take property from its citizens without providing full constitutional protections.

Andrew R. Hull