

# Asset Forfeiture Reform is Long Overdue

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By David B. Kopel

**Summary:** This Issue Backgrounder details the two Colorado forfeiture statutes and Denver property confiscation ordinances. The Backgrounder explains how the Colorado statutes violate basic norms for due process and fairness. The Denver ordinances are even worse.

## Part I. Denver's Property Confiscation Ordinances

**"Public Nuisance" Criminal Ordinance:** Denver makes various "public nuisances" into a crime for which a person can be fined or jailed, and his property confiscated. According to the definition of "public nuisance," such a nuisance includes the mere possession of a so-called "assault weapon" or the unlawful carrying/transportation of any firearm.<sup>[1]</sup>

Thus, if a person keeps a self-loading M1 rifle in a safe in his home, and never even uses the rifle, the home can be confiscated. It is Orwellian to call private possession of a firearm a "public nuisance."

Under section 37-51 of the ordinance, there is a *mandatory* fine of \$500 *per day* for violation of the ordinance. Under the current ordinance, simple possession in the home of one unregistered gun for one year would result in a *mandatory* criminal penalty of more than \$180,000. This violates state law, which limits the amount of criminal fines which Denver can impose to \$1,000.<sup>[2]</sup> The City Attorney argues out that if a fine grew too high, a defendant could invoke the U.S. Constitution's prohibition against cruel and unusual punishment. This claim ignores the fact that the U.S. Supreme Court has refused to apply the Eighth Amendment in any cases where prison sentences or monetary fines were challenged as being disproportionate to the underlying crime.<sup>[3]</sup>

Under section 37-53(c)(1) of the criminal ordinance, the mandatory fines may be suspended *only if* the defendant is evicted from his home. Thus, the punishment for not registering a self-loading rifle becomes eviction from the home.

**"Public Nuisance" Civil Ordinance:** Bad as the criminal ordinance is, it is a paragon of scrupulous fairness, compared to the civil ordinance. The first section of the civil ordinance, the "Policy for Civil Abatement," sets the tone, demanding confiscation and loss of property rights "without regard to...the culpability or innocence of those who hold these rights."<sup>[4]</sup>

The section dealing with "Civil Procedure" is astonishing. The property owner is not allowed to raise equitable defense, or to assert cross claims, or third-party claims. The ordinance even declares that the property owner is *not* an

indispensable party to a court proceeding for the confiscation of the property!  
[\[5\]](#)

Another "Civil Procedure" provision states that it is no defense to confiscation that the property owner, after receiving notice that a nuisance existed on his property, took steps to abate nuisance.[\[6\]](#)

**Automobile Seizures:** Seizure of a vehicle is allowed *without* a prior court hearing.[\[7\]](#) This is a huge hardship to impose on people who may lose their only mode of getting to work or to a doctor. Once the vehicle is taken, the City Attorney has 30 days to wait to act.[\[8\]](#)

**Hearsay Evidence:** In contravention of normal American rules of evidence, courts are *required* to admit hearsay evidence.[\[9\]](#)

Hearsay evidence is second-hand evidence. An example might be "John said that he heard from somebody that there is an unregistered gun at Smith's house."

The Colorado Rules of Evidence forbid the use of hearsay because it is by definition unreliable and untrustworthy. The Rules of Evidence also create certain exceptions, and allow use of hearsay evidence when there are special circumstances which would make it more reliable (e.g., the hearsay is contained in an official church record; the hearsay is contained in a medical record). The Colorado Rules of Evidence also allow the courts to admit hearsay evidence which is not covered by one of the specific exceptions to the rule against hearsay, when certain safeguards are met.[\[10\]](#)

The Denver ordinance does not come remotely close to qualifying for the exception under Colorado Rules of Evidence 803.

- [ First, the ordinance requires the admission of hearsay in general, rather than only when special circumstances exist.
- [ Second, the ordinance contradicts the Colorado Rules of Evidence by requiring the admission of hearsay even when the hearsay lacks the "circumstantial guarantees of trustworthiness" which the Colorado Rules of Evidence demand.
- [ Third, the ordinance shifts the burden of persuasion on evidentiary issues. Normally, the proponent of questionable evidence (such as hearsay) must show to the court why the evidence should be admitted. But the ordinance forces the admission of hearsay evidence, unless the property owner can prove that the hearsay is unreliable or untrustworthy.

A person's right to the possession of her guns, her car, and her home should not be violated based on rumors or third-hand denunciations. Hearsay evidence which does not meet the standards of the Colorado Rules of Evidence should never be allowed in Colorado courts. There is no reason that

public nuisance cases should be based on evidentiary rules different from those applicable every day in Colorado court.

**Affirmative Defenses Don't Count:** The ordinance specifies: "In determining whether there is probable cause, the Court shall not consider whether any affirmative defenses exist."[\[11\]](#) Thus, when the property owner finally gets a court hearing, he is not allowed to tell the court that his conduct was lawful!

The City Attorney's office has explained the rationale for this provision:

1. Consideration of affirmative defenses would slow down the proceedings, and make case preparation more difficult for the City Attorney.

This claim is certainly plausible, but it is unpersuasive. Any recognition of the legitimate property rights of people who behave lawfully will slow down administrative seizures of property. But ensuring due process is more important than maximizing convenience of the property-seizing staff.

2. The City Attorney claims to always voluntarily release the cars of people who have legitimate affirmative defenses.

But there is no guarantee that the next City Attorney, or the next Administration, will follow this voluntary policy. The City government has the authority to go as far as the text of the law allows. Besides, why should property be confiscated in the first place, when the owner was obeying the law?

Now suppose that the innocent citizen finally gets his property back. But he has been trashed while in the City of Denver's custody. The citizen has no remedy, since the ordinance requires that even an innocent owner, in order to get his property back, must unconditionally release the City from all damage claims before return of the property.[\[12\]](#)

**Can the ordinance be fixed in Denver?** In August 1998, the Denver government's Sunset Committee heard extensive testimony about whether the confiscation ordinances should be renewed,[\[13\]](#) and whether they should be modified. In response to statements from attorneys and citizens about the egregiously unfair provisions of the ordinances, the standard response of the representative from the Denver City Attorney was to claim that he enforced the law reasonably. Nevertheless, the City Attorney's office insisted on the retention of every single one of the powers which it claimed never to use.

The City of Denver, at taxpayer expense, sent out alerts to various neighborhood groups urging them to show up to testify against the swarm of "NRA lobbyists" who would be present. (Actually, there were no NRA employees or contract lobbyists even in the State of Colorado on the day of the hearing.) Although greatly outnumbered by opponents of the ordinances, some citizens who liked the ordinances testified about how the ordinance had been used to shut down various nuisances (such as crack houses) in their neighborhoods, which had been problems for years. In response to questions

from the Sunset Committee, none of the citizens were able to explain why the City Attorney or the District Attorney had not used the statewide Public Nuisance Forfeiture laws to address these problems. The statewide laws are powerful and severe, and were drafted specifically for the types of problems about which the citizens testified.

When the Sunset Committee next met, several members, a City Councilwoman who had not attended the hearing, and who had often been absent from earlier committee meetings, showed up, and insisted that the Committee refuse to consider *any* changes in the ordinance.

The same process took place when the ordinances were re-enacted by the Denver City Council. Citizens were ignored, and the City Council made the ordinances permanent, rejecting all suggestions about at least putting some due process in the ordinances. The only changes made were those drafted by the City Attorney, to make the ordinances even more severe.

The City of Denver's government is under the uncontested control of the Webb administration. The same administration that takes so much property through the confiscation ordinances is not going to allow even small reforms in the ordinances.

Fortunately, there is a remedy. City and county governments are mere creatures of the state government, created for the convenience of the state government. When local governments assault the rights of the citizens of Colorado, it is the duty of the State Government of Colorado, acting through the legislature, to stop those abuses.

## **II. Colorado Forfeiture Law**

"THE MOMENT THE IDEA IS ADMITTED INTO SOCIETY THAT PROPERTY IS NOT AS SACRED AS THE LAWS OF GOD...ANARCHY AND TYRANNY COMMENCE." PRESIDENT JOHN ADAMS.

### **Introduction: There Go Your Property Rights**

Imagine a forfeiture law that looked like this:

(1) Whenever a police officer is permitted, with or without judicial approval, to conduct a search to investigate a potential crime, the officer may seize and keep as much property associated with the alleged criminal as the police officer considers appropriate

(2) For purposes of subsection (1), the amount of proof necessary to authorize a forfeiture shall be the same amount of proof necessary to procure a search warrant.

(3) Although forfeiture is predicated on the property being used in a crime, there shall be no requirement that the owner be convicted of a crime. It shall be irrelevant that the person was

acquitted of the crime on which the seizure was based, or was never charged with any offense.

(4) Normal procedural protections of the Colorado Rules of Civil Procedure shall not be applicable:

(5) Although this section is intended for the punishment of criminals, none of the Constitutional protections relevant to criminal cases shall be applicable. Further, there shall be no right to a jury trial.

Does the above statute seem more appropriate to North Korea than Colorado? The above statute is *currently* law in Colorado. In the 1980s, Colorado enacted forfeiture laws along the model above. Although the actual phrasing of the statutes is a little more elegant, the effect is the same as the "model" statute above. In 1992 and 1993, some of the worst aspects of Colorado's forfeiture laws were reformed through bills which passed the General Assembly unanimously. But there is much that remains undone in securing the private property of the people of Colorado from laws which invite abuse. This Issue Backgrounder takes the reader on a guided tour of Colorado's two forfeiture statutes, the public nuisance law,[\[14\]](#) and the Contraband Forfeiture Act.[\[15\]](#)

### **Seizures without Court Approval**

Under existing Colorado law, prior court approval is not necessary for a forfeiture. All that is required is that the police officer seize the property pursuant to a lawful search: "Any peace officer or agent of a seizing agency may seize and hold such property or articles if there is probable cause to believe that such property or articles are contraband and the seizure is incident to a lawful search."[\[16\]](#) Because there are many situations where searches without a warrant are lawful, there are just as many situations where forfeiture without prior court approval is lawful.[\[17\]](#)

And significantly, when the government presents its claim of "probable cause," the only party presenting evidence is the government. There is no requirement that property be owner be notified, or have an opportunity to present evidence to the court. Notification comes only *after* the court has determined that there is probable cause. At that point--when the property is already in the government's hands--the property owner is finally notified and given an opportunity to resist the forfeiture; the owner is ordered to "show cause" why the property should not be forfeited.[\[18\]](#)

### **Never Being Charged with a Crime, or Being Acquitted, is Irrelevant**

Many persons may believe that since they do not engage in illegal conduct with their property, and do not knowingly allow anyone else to use their

property illegally, the property is safe from forfeiture. Those persons are wrong.

First of all, while forfeiture is based on the defendant's allegedly using the property in a crime, the fact that a person may be charged with the crime and found "not guilty" is no bar to forfeiture.<sup>[19]</sup> Indeed, nowhere in Colorado's forfeiture laws is there even a requirement that a person be actually charged with the criminal offenses which are the pretext for the seizure of property.

The pretext for ignoring acquittal is the claim that the goal of forfeiture is not punishment, but remediation of the public nuisance. To the person who property has been confiscated by the government, it is a distinction without a difference.

It is true that there may be special situations where a criminal conviction cannot be obtained (as when the defendant flees the jurisdiction). Provisions can be made to allow forfeiture without conviction when the government proves that a special situation exists. But in the vast majority of cases, it is unfair for persons to lose their property for supposedly criminal conduct when they have never been found guilty of criminal conduct.

The idea that forfeitures based on criminal conduct should be preceded by a criminal conviction is not unknown to Colorado. For forfeitures based on liquor code violations, it is already the law.<sup>[20]</sup> It might be wondered why other Colorado business owners do not deserve the same protection enjoyed by liquor licensees.

The implication of allowing forfeiture without conviction is that property rights are unimportant. While the government must secure a criminal conviction to punish a person by depriving him of his "liberty" (by putting him in jail), the government need not obtain any conviction to punish him by depriving him of his property. The disrespectful treatment of property--as being less deserving of protection than liberty--ignores the United States and Colorado Constitutions, which insist that "life, liberty, *and property*," all deserve the full spectrum of protection from arbitrary government action.<sup>[21]</sup>

In short, the cornerstone of a fair forfeiture law is that a person's property cannot be taken away based on allegations of crime unless the person is actually found guilty of crime. According to a 1992 Talmey-Drake poll, by a two to one margin Coloradans favor criminal conviction as a requirement for forfeiture.

### **Carrying Cash as "Proof" of a Crime**

In earlier days, carrying a large roll of cash was considered nothing more than a crime against good taste if the money were flashed ostentatiously. But today, many persons are legitimately afraid of carrying large sums of money through transportation hubs, or on automobile trips. They know that if they are stopped by the police, a police dog may sniff them, and "discover" that their money is "tainted" by drugs. In fact, *96% of currency in the United*

*States bears traces of cocaine residues.*[\[22\]](#) Incredibly, the forfeited "tainted" money is put back into circulation--perhaps to be seized and forfeited again one day![\[23\]](#) The only solution to this problem is to outlaw forfeitures (and any other adverse government action) against a person simply on the basis of residue traces on currency.

### **Criminal Procedure Protections Not Applicable**

Although forfeiture laws amount to severe, drastic punishments for criminal offenses, forfeiture cases are labeled as "civil." As a result, none of the Constitutional protections required in criminal prosecutions are applicable.[\[24\]](#) There is no right to counsel for persons who cannot afford an attorney, no rules against the introduction of illegally seized evidence or coerced confessions, no right to confront government witnesses, and no protection against compelled self-incrimination. And of course there is no right to a jury trial.

### **Civil Procedure Protections Not Applicable**

Stripped of the Constitutional protections applicable to criminal cases, property owners in forfeiture cases are not even allowed the normal protections granted to litigants in civil cases. A defendant in a slip-and-fall case enjoys broader protections of his property rights than does a person whose property has been seized by the government.

Although under the Colorado Constitution there is no right to a civil jury,[\[25\]](#) Colorado practice provides for a jury in almost all civil cases, especially ones involving large sums of money or property. Persons whose property has been seized by the government, however, are denied any right to trial by a jury.[\[26\]](#) Since one of the jury's historic functions has been to provide a common-sense citizens'check on government excesses and abuses of rights, it is particularly unfortunate that juries are forbidden to hear cases that may involve government violations of property rights.

In civil cases, each side is allowed to engage in broad "discovery" to interview the other side's witnesses,[\[27\]](#) and to review documents possessed by the other side.[\[28\]](#) In contrast, discovery rights in criminal cases are much narrower; for example, there is no right to take the deposition of an adverse criminal witness.[\[29\]](#) The forfeiture laws specify that for discovery, the rules of criminal procedure shall apply.[\[30\]](#) So having made forfeiture into a "civil" action--to strip the property owner of the Constitutional provisions applicable to criminal cases, the forfeiture law turns around and declares that discovery shall be according to the rules of criminal procedure--to strip the property owner of the discovery rights applicable to all civil cases.

In civil cases, a witness for one side may refuse to answer questions or produce documents if the witness believes that answering the question or providing the document would violate a privilege (such as doctor-patient privilege). When there is a dispute about whether a particular answer or

document actually falls within the scope of the privilege, the court may, if it chooses, examine the witness or document *in camera* (in private, with no attorneys present), to determine if the answer or document actually is privileged. The *in camera* review allows the allegedly privileged material to be protected from public disclosure (since only the judge sees it), and at the same time makes sure that someone other than the person claiming the privilege will check to see if the material really is privileged.

The *in camera* system applies in all normal civil cases, but not in forfeitures. Government witnesses can withhold information based solely on their own "good faith" determination, rather than having the court review the basis for those determinations *in camera*.<sup>[31]</sup>

Normally, when a person's property is being held by the government, the person can bring a "replevin" action to recover the property. But according to the judicial interpretation, the Colorado forfeiture statutes provide the exclusive remedy for a forfeiture victim; replevin is unavailable.<sup>[32]</sup>

Contesting a forfeiture obviously requires a heavy legal expenditure on the part of the property owner. Thus, a poor person whose car is worth \$3,000 may find it economically impossible to spend the necessary money (several thousand dollars at least) in legal fees necessary to get her property back. This problem could be remedied by allowing persons whose property has been improperly taken to recover reasonable attorney's fees. The statutory language might state, "If the owner of property contests a forfeiture action, and the court determines that none of property belonging to the owner is subject to forfeiture, the owner may recover his or her reasonable attorney's fees for contesting the forfeiture action."

The attorney's fees could be paid from the revenues which the seizing agency has garnered from other forfeitures.

The attorney's fee provision will also help deter bad-faith seizures, just as laws allowing attorney's fee awards for frivolous lawsuits help deter bad-faith litigation.

Notably, under current law, when seizing agencies win a forfeiture, they get *their* attorney's fees paid.<sup>[33]</sup> It is hardly unreasonable that seizing agencies make whole the innocent people whose property has been improperly taken.

### **Proportionality**

To "make the punishment fit the crime" has been the long-standing objective of every rational criminal justice system. Colorado's criminal drug laws reflect the common-sense principle, by imposing progressively more severe penalties for selling larger and larger quantities of drugs.

In contrast, the forfeiture statutes contain no requirements for proportionality, for any relationship between the gravity of the offense and



the value of the property forfeited. For example, *any* possession of controlled substances (except for less than eight ounces of marijuana), for any period of time, no matter how short, in an automobile requires forfeiture of car.

[34] Thus, if a teenage son takes a single marijuana cigarette to his friend's house to sell (and is thus no longer engaged in mere possession), and the son drives his mother's car, the mother's car is forfeit.

In all civil cases, property owners enjoy the benefit of the homestead exemption. [35] Even a person prosecuted and given a large civil fine for violations of the law (such as environmental law violations) still may keep a shred of her property, through the homestead exemption. The homestead exemption does not apply in forfeiture cases. [36]

The courts have correctly noted that they do not have the authority to address or mitigate unduly harsh applications of the statute. [37] The current forfeiture laws give the courts no discretion to refuse to validate a forfeiture, no matter how severe or unjust.

### **The Future of Forfeiture**

Since the wave of massive forfeiture use began in the "big government" states of the urban northeast, it is important to monitor forfeiture trends in these states. Brags a New Jersey county prosecutor about his aggressive use of forfeiture laws in environmental cases:

We punish companies by taking everything--garbage trucks, business records, mutual funds, telephone systems, goldfish bowls, everything...Everything is in line when we hit a place...When we grab a guy's checkbook we take it all. [Noting his office's meticulous advance planning:] If we intend to take a bulldozer, we have to have somebody who knows how to drive it. [38]

Missing from the prosecutor's enthusiastic treasure-hunting is a recognition that the legislature has enacted stiff penalties for environmental offenses--such as fines of \$25,000 per day--but has required that those fines be imposed with due process, and has not authorized the confiscation of an entire business based on a probable cause determination that an environmental offense has occurred.

There is a different future for forfeiture than the New Jersey vision of government agents taking goldfish bowls, telephones, and bulldozers from persons who are *suspected* of having violated an environmental regulation. In August 1994, the California legislature passed, and Governor Pete Wilson (not generally considered "soft" on crime) signed a forfeiture reform bill which included the following provisions:

- [ Except in special circumstances, the government cannot take property until it proves that the property is subject to forfeiture.

- [ In accordance with the new Supreme Court ruling, real property can only be forfeited after a contested hearing in which the property owner can take part. If real property is owned by two or more individuals, the property is not forfeitable if one person "had no knowledge of its unlawful use."
- [ Family homes and family cars may not be seized.
- [ Government agencies which seize property may not keep it; the property must be sold. Of the revenues, 50% goes to the seizing agency, 15% to community anti-drug or anti-gang programs, 24% to the state general fund, and 1% to a special fund to train government employees in the "ethics and proper use" of forfeiture.
- [ Any government agency which wishes to engage in forfeiture must have a department forfeiture practice manual; government employees performing forfeitures must receive special training.
- [ Vehicles may not be forfeited simply because they contained drugs. Vehicles carrying drugs for sale (or for possession for sale) may be forfeited if they contained more than 10 pounds of marijuana, peyote, or mushrooms, or 14.25 grams of heroin or cocaine.

## **Conclusion**

Colorado's forfeiture laws are wide open to abuse of private property rights. Many of Colorado's sheriffs, police chiefs, and prosecutors have, to their great credit, not attempted to push the current forfeiture laws to their furthest limits. The right to private property, the cornerstone of democratic society, deserves firmer protection than reliance on the good judgment of government officials not to abuse a law which is made for abuse.

The first item in Colorado's Constitution delineates the boundaries of the state. Immediately thereafter, and before any enumeration of governmental powers, comes the Bill of Rights. Before freedom of speech, or free exercise of religion, or the right to assemble, comes the recognition of the inalienable right to possess property: "All persons have certain natural, essential, and inalienable rights, among which may be reckoned the right...of acquiring, possessing and protecting property."[\[39\]](#) Statutes which make it easy for the government to take private property erode the foundation of our society.

The present forfeiture laws pay no regard to the pre-eminent role of private property under the Colorado Constitution. The laws are an alien presence in our statutes, being based on "model" laws conceived by persons with no connection to our state. Colorado's current public nuisance and forfeiture laws are themselves a public nuisance, and a threat to the peaceful possession of private property by the good citizens of Colorado.

[\[1\]](#). Denver Revised Municipal Code, § 37-50(c)9. State law prevents use of the ordinance against law-abiding people who carry guns in their car while

driving inter-county. The Denver ordinances still apply to all intra-Denver travel, as well as non-auto travel.

[2]. The fines in the Denver zoning laws are similarly structured, and the State Legislature should take steps to correct these illegal fines as well.

[3]. *E.g.*, Harmelin v. Michigan, 501 U.S. 957 (1991).

[4]. Denver R.M.C. § 37-70(a).

[5]. Denver R.M.C. § 37-72.

[6]. Denver R.M.C. § 37-72.

[7]. Denver R.M.C. § 37-73.

[8]. Denver R.M.C. § 37-73(c). The City Attorney's office states that it usually acts in a few weeks; but there is no legal requirement that future City Attorneys take one day less than 30 days.

[9]. The court must admit the evidence "unless the court finds that it is not reasonably reliable and trustworthy." 37-76(b)(5); 37-77(c)(6).

[10]. Colorado Rules of Evidence 803(24):

Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

[11]. Denver R.M.C. § 37-77(b)(5) & 37-77(c)(6).

[12]. Denver R.M.C. § 37-78(a)(1) & (2).

[13]. The ordinances were originally enacted to apply for a trial period only. My father, former State Representative Jerry Kopel, was chair of the Committee.

[14]. § 16-13-301, et seq., (C.R.S.).

[15]. § 16-13-501, et seq., C.R.S. This 1984 statute was sponsored by former Representative David Bath.

This Issue Backgrounder memo discusses provisions in both laws, since seizing agencies may choose to proceed under the public nuisance laws or the Contraband Forfeiture Act depending on their determination of tactical advantage. § 16-13-508, C.R.S.: "this part 5 shall be an additional remedy in those situations where an action could be brought under part 3 of this article."

[16]. § 16-13-504(1), C.R.S.

[17]. For a listing of the many cases involving searches and seizures without a warrant, see the "United States and Colorado Constitution" volume in *West's Colorado Revised Statutes Annotated*. Among the situations allowing a search (and hence a forfeiture) without a warrant are:

\* Searches of automobiles. *Cowdinv. People*, 176 Colo. 466, 491 P.2d 569 (1971).

\* Protective searches for weapons. *Peoplev. Ratcliff*, 778 P.2d 1284 (Colo. 1983).

\* Situations where the police fear evidence may be destroyed. *Peoplev. Turner*, 660 P.2d 1284 (Colo. 1983).

\* "Exigent circumstances." *Peoplev. Arnold*, 186 Colo. 372, 527 P.2d 806 (1974).

\* Any situation where the property owner consents to the search, even if he does not know that he has a right to refuse to consent, and is not told that he had a right to refuse consent. *Peoplev. Helm*, 633 P.2d 1071 (Colo. 1981); *Peoplev. Bowman*, 669 P.2d 1369 (Colo. 1983) (no need to advise of right to refuse); *Peoplev. Carlson*, 677 P.2d 316 (Colo. 1984)(person may still Aconsent" even if he did not know that he could refuse).

[18]. § 16-13-505(2)(b), C.R.S.: AIf the court finds from the petition and the supporting affidavit that probable cause exists to believe that the seized property is contraband property as defined in this part 5, it shall, without delay, issue a citation directed to interested parties to show cause why the property should not be forfeited."

[19]. *Peoplev. Milton*, 732 P.2d 1199, 1203-4 (Colo. 1989), citing *One Assortment of 89 Firearms*, 465 U.S. 354, 362-66.

[20]. *Walker v. Denver*, 720 P.2d 619 (Colo. App. 1986); § 12-47-133, C.R.S. (while property can be seized and held before conviction, final forfeiture can occur only after conviction).

As described in a subsequent civil suit brought by the victim bar owner in the *Walker* case, twenty-five police officers arrived at his tavern at 12:35 a.m. one morning. While executing a warrant (which had been procured on the allegations of a single officer), "Several of the officers drank beer...they placed a sign in the window which read 'closed for remodeling.'...[the officers] further exceeded the scope of the warrant by destroying a bar affixed to the real property when they cut it into pieces and used an axe and crowbar to remove it, by removing bar stools bolted into the concrete floor, and by removing other permanently attached fixtures such as overhead lights, booths, recessed lighting fixtures, and plumbing fixtures."

[21]. U.S. Const., Amend. XIV ("nor shall any state deprive any person of life, liberty, or property without due process of law"); Colo. Const., Art. II, § 25 ("No person shall be deprived of life, liberty, or property without due process of law.")

[22]. "Nosy, Drug-sniffing Pooch Can Land an Innocent Person in the Doghouse," *Rocky Mountain News*, Aug. 12, 1991.

[23]. *Id.*

[24]. *Peoplev. Allen*, 767 P.2d 798, 799 (Colo. App. 1988)

[25]. *Gleasonv. Guzman*, 623 P.2d 378 (1981).

[26]. *Peoplev. Allen*, 767 P.2d 798 (Colo. App. 1988); ‘ 16-13-307(7), C.R.S.

[27]. Colo. R. Civ. Pro. 30(a) (depositions allowed by any party, for any reason; no need for court approval).

[28]. Colo. R. Civ. Pro. 34(a).

[29]. Colo. R. Crim. Pro. 15 (depositions allowed only after court order finding that special circumstances exist).

[30]. § 16-13-505(4), C.R.S.: "The discovery phase of such action shall be governed by the Colorado rules of criminal procedure."

[31]. § 16-13-307(6), C.R.S.: "During all discovery procedures in actions brought pursuant to this part 3, a witness or party may refuse to answer any question if said witness or party makes a good faith assertion that the disclosure would tend to identify, directly or indirectly, a confidential informant for a law enforcement agency, unless the district attorney intends to call said informant as a witness at any adversarial hearing."

[32]. *Peoplev. Merrill*, 816 P.2d 958 (Colo. App. 1991).

[33]. § 16-13-311(3)(A)(III), C.R.S.

[34]. § 16-13-303(1)(c)(III); *Peoplev. One 1967 Ford*, 781 P.2d 186, 187 (Colo. App. 1989).

[35]. § 38-41-201, C.R.S., et seq. (A...shall be exempt from attachment arising from *any* debt, contract, or civil obligation not exceeding the sum of thirty thousand dollars...")(emphasis added).

[36]. *Peoplev. Allen*, 767 P.2d 798 (Colo. App.). The court first declared that there was no jury trial right, because forfeiture was not a criminal action, and *also* declared that the homestead exemption was inapplicable, because the homestead exemption only applied in civil cases!

[37]. *Ruedav. District Court*, 575 P.2d 370 (Colo. 1977).

[38]. "Strike Forces Bolster Enforcement Efforts," *Environment Today*, May 1991, p. 21.

[39]. Colo. Const., Art. II, § 3.

*Prepared by David B. Kopel, Research Director, Independence Institute*