

# Virginia trades cash for due process

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By **Antony Davies and James R. Harrigan** February 19

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It has long been axiomatic in American criminal law that, in the words of William Blackstone, “It is better that 10 guilty persons escape than that one innocent suffer.”

But one would have a hard time selling that idea to Virginia, which the Institute for Justice recently awarded a “D-minus” grade for its civil asset forfeiture laws. Rather than buying “Blackstone’s ratio,” Virginia has opted to make a quick buck at the expense of its citizens’ due process rights, selling justice down the river in the bargain.

Civil asset forfeiture laws shift the burden of proof from the accuser to the accused by allowing law enforcement to bring charges against property instead of people. Functionally, the police can arrest your car, your house and even your money — and there is precious little you can do about it.

This makes life easier for law enforcement, as inanimate objects are not protected by the same pesky legal principles that protect human beings.

Unlike people, possessions can be presumed guilty and confiscated without due process. It’s up to the police to decide whether to take someone’s property. If they do, that’s when the Kafkaesque journey truly begins.

Here’s how civil asset forfeiture works: Without trial or even compelling reason, the government takes your property. To get it back, you have to pay a lawyer to provide evidence that your property wasn’t acquired in or used in a crime. The government then decides whether you have provided enough evidence. If the government decides that you haven’t, then the government keeps your property.

Consider the case of Victor Ramos Guzman, a Pentecostal church secretary from El Salvador. He was pulled over for speeding in Virginia. The police did not issue him a citation for speeding, but they did confiscate the \$28,500 he was carrying — money that parishioners had donated to purchase a parcel of land for their church.

Guzman had constitutional protections that prevented the police from arresting him for no reason; his money did not.

Mandrel Stuart was pulled over because the SUV he was driving had tinted windows and a video playing in his line of sight. Police detained him for two hours and relieved him of the \$17,550 that he had earned selling barbecue at his Smoking Roosters restaurant in Staunton. Stuart was not cited for the initial traffic stop. He ultimately got his money back, but not before he lost his business.

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These are not isolated incidents.

Blackstone's dictum is being violated wholesale by a political and legal establishment that simply has no respect for the rights of citizens, rights they are sworn to uphold.

And if you want to know why this keeps happening, follow the money. Law enforcement agencies keep 90 percent of the assets they confiscate through civil asset forfeiture. Virginia's Department of Criminal Justice Services gets the other 10 percent. This is nothing but a revenue-generating scheme for Virginia, never mind the rights of the people.

The Virginia House of Delegates tried to address this problem by overwhelmingly approving a bill that would have required a criminal conviction before property could be forfeited, but the Senate killed the bill, instead referring the matter to the Virginia State Crime Commission for "further study."

Sadly, that's where matters now stand. Virginia has opted for further study of whether its residents, and those unfortunate enough to be passing through, deserve due process. And when politicians have to decide between due process and revenue — well, follow the money.

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