

Don't Spread Falsehoods on Forfeiture

"Free For All," *Washington Post*, July 29, 2017, p. A15.

When the media is unjustifiably under attack for allegedly poisoning public debate with "fake news" — an attack that undermines the essential role of the free press — one would think that a mainstream publication would be on guard against pouring gasoline on the fire by committing the very offense of which it is accused.

The July 18 news article "Sessions wants to increase seizures of assets by police" said, "Under forfeiture laws in most states and at the federal level, mere suspicion of wrongdoing is enough to allow police to seize items permanently." Wrong. Completely wrong.

Probable cause is sufficient to seize items (as it is sufficient to make an arrest); to forfeit items permanently, however, the government must prove that a crime was committed and that the property is traceable to that crime. The federal statute could not be more clear on that point: Title 18, U.S. Code, Section 983(c)(1), which is entitled "Burden of Proof." And the proof — if the property owner so requests — has to be made to a jury.

There is room for reasonable people to disagree about whether police seizures should be adopted by federal law enforcement for forfeiture under federal law. But for reasoned debate to proceed, we need to understand the law. My advice: Read the law, get it right, don't be the source of the "fake news" that critics accuse The Post of spouting.

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