



## How Government Can Grab Your Stuff

Guest: Eapen Thampy

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*Eapen Thampy is executive director of Americans for Forfeiture Reform. This interview originally appeared on the Peter Schiff Show, with Tom as guest host.*

**WOODS:** As a historian, I'm aware of what we might call asset forfeiture from times long past. In the first century B.C. we had the Roman military figure Sulla, who took power in Rome after defeating the forces of Marius. One of the first things he did was to come up with a list of people you could legitimately kill and take all their stuff, and that list kept expanding as his friends would add their own enemies on it. It seemed to be a lot of people who had substantial property, and it seemed like maybe they were being put on the list because people wanted to be able to take their property legally. Now, surely we've come a long way since the days of Sulla, or have we?

**THAMPY:** Not so much, really. Now it's done by the United States government.

**WOODS:** With your Americans for Forfeiture Reform, and your research into this topic, are you looking primarily at what state and local governments are doing? Are you looking at the federal government? Are you looking at everything? And where are the greatest abuses?

**THAMPY:** Well, we're certainly looking at issues at the state and local level, but it's important to realize that the forfeiture issues that we face exist because Congress passed a series of bad laws in the '70s and '80s, and they got replicated at the state and local level. So ultimately the most important issues to deal with are at the federal level. And there's a variety of federal agencies that just have no one overseeing them, no one controlling them. They are uncontrollable, and now that asset forfeiture gives them massive revenue streams, they can also fund themselves without Congress.

**WOODS:** Most of the time asset forfeiture takes place because of what? Because of alleged drug offenses? Is that what the reason is?

**THAMPY:** You know, in the 1970s and 1980s that was the excuse. We passed a lot of statutes to give asset forfeiture as an enforcement power to federal agencies for drug offenses, but

gradually that crept into other arenas. Forfeiture became a big part of chasing after what we call money laundering. Now the government uses it to seize money that people [inaudible] for no good reason. Now the government seizes a variety of property and stuff that have nothing to do with the drug events. Now there's some 280, 400 federal laws with various forfeiture provisions, and it really looks like the Justice Department is working wherever the easy money is. These days the easy money is really going after the assets of large, corporate actors and large individual persons. And they may not have anything to do with drugs at all.

**WOODS:** But let's focus on how the average person might be affected by this, because the average person might say, well, I don't have very substantial holdings, so government officials might not be inclined to come after me. Or they might say, I'm a law-abiding citizen, so there's no chance that any of this could ever apply to me. How do you assure them that in fact they should be concerned?

**THAMPY:** Well, that's pretty easy to do. Everyone, well, most Americans drive on public roads at least somewhat frequently. We've all heard the stories of people being stopped on the open road, being illegally searched, or have the law enforcement agent get a K-9 dog alert which is essentially a way to generate probable cause for a search, and then the cop goes for your belongings, and if you have cash or any kind of valuables, they can take your property. Now, that's one way in which the ordinary American can be affected by asset forfeiture. One of the things that I was trying to get attention to this week is a story that's breaking with the DEA. The Drug Enforcement Administration has a special operations division that interfaces with the National Security Agency, and this little program is designed to feed NSA intercepts to the DEA, and then they lie about where they got their information, and they transmit their information to the field agent, and then they can go out, and they could stop and seize property. This happens apparently on a daily basis. It's been happening for over a decade.

**WOODS:** Give me a couple of horror stories of things that have happened to ordinary people. I just read a story that I think you guys published about people who lost their house because their kids had a small amount of pot or something? Do you remember this story?

**THAMPY:** Oh, yeah, in Contra Costa County in California, I know a grandma who lost her house because the cops—she had a 17-year-old grandchild who was staying with her, and he got into some trouble. The cops came after him. He got caught trying to escape the house out of a window, and they found a couple of crack rocks in his pocket, and they filed a forfeiture motion against the house. Up in Connecticut, we're looking at a live case right now where some guy was growing medical marijuana for his wife. The feds want the house.

**WOODS:** I know that you are also involved in NORML, which is an organization dealing with laws against marijuana possession and sale, so I think this is relevant. It seems to me that anytime you make arguments against the drug war in general, you think, well, I've got all these excellent arguments, so surely I should win. But you realize that you're not really dealing with a purely intellectual argument, are you? You're dealing with entrenched interests at all these various levels—the police departments, the law enforcement agencies. More generally, they all

want the bigger and better power that they get. They all want the big vehicles. They want the intrusiveness. They want all this stuff, and they want the asset forfeiture. So you can have all the arguments in the world against the drug war, and yet it carries on. Am I right?

**THAMPY:** Absolutely. At the end of the day it comes down to money and power.

**WOODS:** There's another angle on this now, because of the NSA stuff. We've been assured that the NSA is no threat to anybody. The NSA is just there to protect us from terrorists, and it's not going to listen into your conversation unless you're calling up Osama bin Laden or something. Yet you've been talking recently about the way this is actually a threat to the average person, and that the president is, well, let's say, being misleading when he says that we don't have a domestic spying program. Can you elaborate on this?

**THAMPY:** Oh, absolutely. We now know that's not true. Like I said, this week Reuters broke a really stunning story that says essentially the NSA feeds interception information to domestic law enforcement agencies who have been instructed to cover up the source of that information. The National Association of Criminal Defense Attorneys or Criminal Defense Lawyers, when that story broke, came out and said this violates our constitutional rights to a fair trial because the government is essentially cooking up information, cooking up investigations, hiding the source of that, hiding information that started that investigation, and that puts people—anyone who the government comes after—in a very bad position of not being able to challenge the reason why they are the target of an investigation. It denies them their rights to due process.

**WOODS:** So what are you guys doing? Is there any low-hanging fruit when dealing with this issue? Is there any easier aspect of it to go after that you guys specifically are targeting? Is it really just an education of the public? Is that the emphasis, where if the public sees how egregious this is, we can build up some kind of public support for reform or repeal?

**THAMPY:** Yeah, we'd like to see civil forfeiture in the United States completely abolished. You know, we think the justice system, the legal system, can run quite fine without federal agencies being able to profit from seizing property. The low-hanging fruit for us, I suppose, would be to get state and municipal governments to pass ordinances or laws that abolish civil forfeiture for law enforcement agencies, and most importantly, prevent federal agencies from coming in and saying, hey, let's split the profit from the seizure if you guys work together with us. So that's the low-hanging fruit for us right now. But what we'd like to see also happen is most importantly in Congress. We think of the DEA, NSA spy story as incredibly important, and it also comes at a time when the DEA has had at least two or three other major scandals.

Let me quickly discuss one of them. There is a DEA informant named Andrew Chambers. In 2002 he was fired by the DEA after it was revealed that he had lied under oath in federal court 16 times. And during his tenure for the DEA before he was fired in 2002, he had, of course, participated in dozens of investigations in which tens of millions of dollars were seized, but of course, if you were lying and falsifying evidence, you know, and lying in federal court, there's

some kind of punishment. So he was fired. And in 2008, when the DEA administrator, Michelle Leonhart, who was his handler in St. Louis back in the day, got appointed to be a DEA administrator, she brings him back. That's really quite stunning. Someone who's been caught lying under oath in federal court. The DEA was relying on him to create investigations that generate seizures, massive, massive seizures. And this was a big deal because the government shouldn't be in a position where it's working with people who are known perjurers to generate profit. But that's exactly what they're doing. So that's a big scandal. What we're trying to do is get Congress to exercise its oversight capacity and for the first time give the DEA a top-down oversight review. Take a good, solid look at all the discretionary powers that they've assigned to the DEA. We especially want Congress to come to the realization that it's time to abolish civil forfeiture as a discretionary tool for the DEA and other federal agencies. And if you're not prepared to go that far, at least begin discussing the issue and maybe limiting those powers meaningfully.

One key reform that I think should happen and needs to happen is that Congress needs to take away these federal agencies' ability to keep their own bank accounts for forfeiture activity. In 1984 Congress gave the Department of Justice the ability to seize property and have their own bank accounts opened through what Congress gave them in appropriations. That was a very dangerous thing, because now the agency has no reason to go to Congress when they want to fund something that they could fund through seizing Americans' property. So if we could take that back but reassert the power of the purse, that would be a huge step at the federal level.

**WOODS:** Eapen, we've got about six minutes. So I want to do a lightning round here. I've got a bunch of questions here for you. For example, the Supreme Court apparently ruled recently that dogs are able to determine, as you indicated, when probable cause exists for searches of property. Can we rely on these dogs to avoid false positives? How reliable are they really?

**THAMPY:** Well, dogs are very reliable, depending on what you are using them for, but in cases where law enforcement is using dogs to sniff out contraband, they are relied on if only if they are very suspect. And that's not because dogs are not good at smelling out things, it's because they are very good at responding to humans. Essentially that the dogs are often cueing in response to their handler and not to any kind of other stimulus. And law enforcement knows this, and a lot of law enforcement agencies that use K-9s to search for drugs or contraband know this, so you can think of a dog as kind of a black box, probable cause generator for law enforcement. They know that if they can stop you, and they can bring a dog out, then the dog will alert if its handler wants it to. And really, they can say, oh, hey, he swiped his paw, or he made a signal, or whatever, and it can be whatever they want it to say. And like you said, unfortunately, the Supreme Court has decided to give great deference to law enforcement in their use of K-9s, in the case of *Florida v. Jardines*, which is very unfortunate.

**WOODS:** Am I understanding this right that there have actually been a number of stories where people who are pulled over and found to have a large amount of cash have had that cash taken by the police? Is that true? Or if that's true, why does that happen?

**THAMPY:** Oh, that happens all the time. Under civil asset forfeiture, you don't have to be charged with a crime or even convicted of a crime for them to seize your cash or your property. So if they stop you on the highway, and they get a dog to alert on your vehicle, they say you must have had some kind of connection or a nexus between this vehicle and illegal drug activity. That gives us all the justification we need to seize any valuable property in the vehicle. So if you have \$100,000, or \$200,000, or \$5,000 in your pocket, or in your trunk, whatever, they say, well, we're going to seize that, and they seize it under the restriction that the property itself is a person. The legal process begins with the property getting named as if it were a person in court, so that the lawsuit is going to be *United States v. \$10,000 in United States Currency*, which is the defendant. You're not the defendant.

**WOODS:** It seems to me if people knew more about this, there would be more than the zero outrage that appears to exist now. Is there any kind of outreach—a book that you guys are working on or videos you can do? How do you convey this to the public? Property as a person? What's going on here?

**THAMPY:** Yeah, it's completely bizarre, and this is a great way for the government to take constitutional rights away from people and profit from it. You know, we'd like to have the resources to publish more literature and create video. We work with other organizations and journalists directing them to particularly outrageous stories. We try to publicize the issue through social media. It's kind of an obscure issue, but it's at the heart of a lot of bigger topics like the drug war and the overgrowth of the federal government. So we try to insert the issue into those discussions when it's appropriate. It's a long process. I won't deny it. In 1992, Representative Henry Hyde from Illinois introduced a reform bill in Congress. It took him five years to get a hearing, and another three years to get it voted on and signed. And the Department of Justice spawned a bunch of victories that negated the impact of that legislation anyway. So past history tells me that any attempt at reform will be a long, slow process and we'll have powerful adversaries against us.

**WOODS:** Especially when you're talking about taking away money. Especially when you're talking about taking away a source of revenue from them, it is going to be an uphill battle, but we're very glad you're fighting it.