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Aggressive police take hundreds of millions of dollars from motorists not charged with crimes

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Aggressive police take hundreds of millions of dollars from motorists not charged with crimes



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After the terror attacks on Sept. 11, 2001, the government called on police to become the eyes and ears of homeland security on America's highways.

Local officers, county deputies and state troopers were encouraged to act more aggressively in searching for suspicious people, drugs and other contraband. The departments of Homeland Security and Justice spent millions on police training.

ABOVE: : Video images from YouTube, Humboldt County Sheriff's Office and Seward County Sheriff's Office.

The effort succeeded, but it had an impact that has been largely hidden from public view: the spread of an aggressive brand of policing that has spurred the seizure of hundreds of millions of dollars in cash from motorists and others not charged with crimes, a Washington Post investigation found. Thousands of people have been forced to fight legal battles that can last more than a year to get their money back.

Stop and Seize: In recent years, thousands of people have had cash confiscated by police without being charged with crimes. The Post looks at the police culture behind the seizures and the people who were forced to fight the government to get their money back.

Part 2: One training firm started a private intelligence-sharing network and helped shape law enforcement nationwide.

Part 3: Motorists caught up in the seizures talk about the experience and the legal battles that sometimes took more than a year.

Part 4: Police agencies nationwide routinely buy vehicles and weapons with money and property seized under federal civil forfeiture law from people who were not charged with a crime.

Part 5: Highway seizure in Iowa fuels debate about asset-forfeiture laws.

Part 6: D.C. police plan for future seizure proceeds years in advance in city budget documents.

Chat transcript: The reporters behind “Stop and Seize” answered your readers’ about the investigative series.

Behind the rise in seizures is a little-known cottage industry of private police-training firms that teach the techniques of “highway interdiction” to departments across the country.

One of those firms created a private intelligence network known as Black Asphalt Electronic Networking & Notification System that enabled police nationwide to share detailed reports about American motorists — criminals and the innocent alike — including their Social Security numbers, addresses and identifying tattoos, as well as hunches about which drivers to stop.

Many of the reports have been funneled to federal agencies and fusion centers as part of the government’s burgeoning law enforcement intelligence systems — despite warnings from state and federal authorities that the information could violate privacy and constitutional protections.

A thriving subculture of road officers on the network now competes to see who can seize the most cash and contraband, describing their exploits in the network’s chat rooms and sharing “trophy shots” of money and drugs. Some police advocate highway interdiction as a way of raising revenue for cash-strapped municipalities.

“All of our home towns are sitting on a tax-liberating gold mine,” Deputy Ron Hain of Kane County, Ill., wrote in a [self-published book](#) under a pseudonym. Hain is a marketing specialist for Desert Snow, a leading interdiction training firm based in Guthrie, Okla., whose founders also created Black Asphalt.

Hain's book calls for "turning our police forces into present-day Robin Hoods."

Cash seizures can be made under state or federal civil law. One of the primary ways police departments are able to seize money and share in the proceeds at the federal level is through a long-standing Justice Department civil asset forfeiture program known as [Equitable Sharing](#). Asset forfeiture is an extraordinarily powerful law enforcement tool that allows the government to take cash and property without pressing criminal charges and then requires the owners to prove their possessions were legally acquired.

The practice has been controversial since its inception at the height of the drug war more than three decades ago, and its abuses have been the subject of journalistic exposés and congressional hearings. But unexplored until now is the role of the federal government and the private police trainers in encouraging officers to target cash on the nation's highways since 9/11.

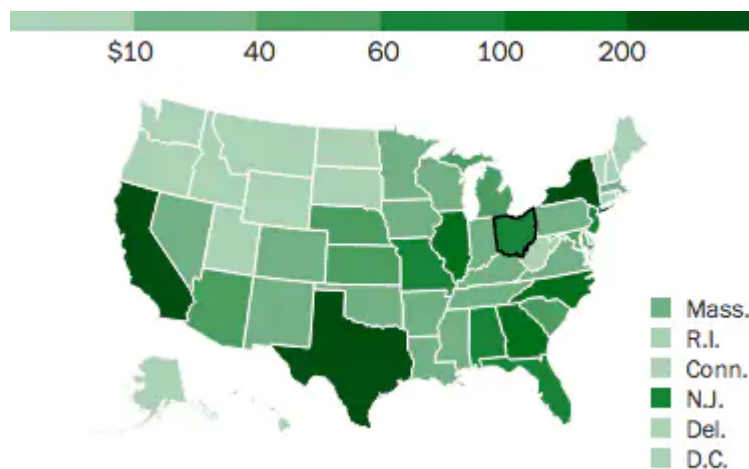
"Those laws were meant to take a guy out for selling \$1 million in cocaine or who was trying to launder large amounts of money," said Mark Overton, the police chief in Bal Harbour, Fla., who once oversaw a federal drug task force in South Florida. "It was never meant for a street cop to take a few thousand dollars from a driver by the side of the road."

To examine the scope of asset forfeiture since the terror attacks, The Post analyzed a database of hundreds of thousands of seizure records at the Justice Department, reviewed hundreds of federal court cases, obtained internal records from training firms and interviewed scores of police officers, prosecutors and motorists.

Civil forfeiture cash seizures

Under the federal Equitable Sharing Program, police have seized **\$2.5 billion** since 2001 from people who were not charged with a crime and without a warrant being issued. Police reasoned that the money was crime-related. About **\$1.7 billion** was sent back to law enforcement agencies for their use.

Amount seized by all agencies (in millions)



Select a state to see local agency rebates

Scroll for more

New York City Police

Participated in 2,167 seizures

\$27 million

of \$134.2 million

Los Angeles County Sheriff, Calif.

Participated in 2,564 seizures

\$24.3 million

of \$126 million

Los Angeles Police, Calif.

Participated in 2,375 seizures

\$18.4 million

of \$86.1 million

Houston Police, Tex.

Participated in 798 seizures

\$14.7 million

of \$63.3 million

Wayne County Sheriff, Mich.

Participated in 530 seizures

\$13.4 million

of \$31.6 million

St. Louis County Police, Mo.

Participated in 644 seizures

\$11.5 million

of \$42.1 million

Douglas County Sheriff, Neb.

Participated in 159 seizures

\$11.5 million

of \$16.2 million

Anaheim Police, Calif.

Participated in 174 seizures

\$11.4 million

of \$32.4 million

Atlanta Police, Ga.

Participated in 827 seizures

\$9.3 million

of \$74.6 million

North Miami Beach Police, Fla.

Participated in 64 seizures

\$9.1 million

of \$30.3 million

Laredo Police, Tex.

Participated in 149 seizures

\$8.5 million

of \$20.1 million

Pomona Police, Calif.

Participated in 120 seizures

\$8.1 million

of \$36.9 million

Amtrak Police, Pa.

Participated in 894 seizures

\$7.9 million

of \$53.2 million

Chicago Police, Ill.

Participated in 634 seizures

\$7.9 million

of \$56.3 million

Milwaukee Police, Wis.

Participated in 1,223 seizures

\$7.9 million

of \$19 million

St. Charles County Sheriff, Mo.

Participated in 329 seizures

\$7.6 million

of \$17.1 million

Las Vegas Metropolitan Police., Nev.

Participated in 243 seizures

\$7.3 million

of \$18 million

Baltimore Police, Md.

Participated in 1,528 seizures

\$7.1 million

of \$18.5 million

Baltimore County Police, Md.

Participated in 981 seizures

\$6.8 million

of \$19 million

San Diego Police, Calif.

Participated in 1,498 seizures

\$6.8 million

of \$31.6 million

Jefferson County Sheriff, Ala.

Participated in 71 seizures

\$6.7 million

of \$11.4 million

DeKalb County Police, Ga.

Participated in 408 seizures

\$6.5 million

of \$41 million

Port Authority Of N.Y. and N.J. Police

Participated in 380 seizures

\$6.3 million

of \$30.5 million

San Diego County Sheriff, Calif.

Participated in 1,511 seizures

\$6.3 million

of \$33.2 million

City Of Phoenix Police, Ariz.

Participated in 483 seizures

\$6 million

of \$15.8 million

Note: Table does not include statewide agencies or task forces and only includes local agencies who received more than \$250,000.

Source: A Washington Post analysis of Department of Justice data.

The Post found:

- There have been 61,998 cash seizures made on highways and elsewhere since 9/11 without search warrants or indictments through the Equitable Sharing Program, totaling more than \$2.5 billion. State and local authorities kept more than \$1.7 billion of that while Justice, Homeland Security and other federal agencies received \$800 million. Half of the seizures were below \$8,800.
- Only a sixth of the seizures were legally challenged, in part because of the costs of legal action against the government. But in 41 percent of cases — 4,455 — where there was a challenge, the government agreed to return money. The appeals process took more than a year in 40 percent of those cases and often required owners of the cash to sign agreements not to sue police over the seizures.
- Hundreds of state and local departments and drug task forces appear to rely on seized cash, despite a federal ban on the money to pay salaries or otherwise support budgets. The Post found that 298 departments and 210 task forces have seized the equivalent of 20 percent or more of their annual budgets since 2008.
- Agencies with police known to be participating in the Black Asphalt intelligence network have seen a 32 percent jump in seizures beginning in 2005, three times the rate of other police departments. Desert Snow-trained officers reported more than \$427 million in cash seizures during highway stops in just one five-year period, according to company officials. More than 25,000 police have belonged to Black Asphalt, company officials said.
- State law enforcement officials in Iowa and Kansas prohibited the use of the Black Asphalt network because of concerns that it might not be a legal law enforcement tool. A federal prosecutor in Nebraska warned that Black Asphalt reports could violate laws governing civil liberties, the handling of sensitive law enforcement information and the disclosure of pretrial information to defendants. But officials at Justice and Homeland Security continued to use it.

Justice spokesman Peter Carr said the department had no comment on The Post's overall findings. But he said the department has a compliance review process in place for the Equitable Sharing Program and attorneys for federal agencies must review the seizures before they are "adopted" for inclusion in the program.

“Adoptions of state and local seizures — when a state and local law enforcement agency requests a federal seizing agency to adopt a state and local seizure for federal forfeiture — represent an average of only 3 percent of the total forfeiture amount since 2007,” Carr said.

The Justice Department data released to The Post does not contain information about race. Carr said the department prohibits racial profiling. But in 400 federal court cases examined by The Post where people who challenged seizures and received some money back, the majority were black, Hispanic or another minority.

A 55-year-old Chinese American restaurateur from Georgia was pulled over for minor speeding on Interstate 10 in Alabama and detained for nearly two hours. He was carrying \$75,000 raised from relatives to buy a Chinese restaurant in Lake Charles, La. He got back his money 10 months later but only after spending thousands of dollars on a lawyer and losing out on the restaurant deal.

A 40-year-old Hispanic carpenter from New Jersey was stopped on Interstate 95 in Virginia for having tinted windows. Police said he appeared nervous and consented to a search. They took \$18,000 that he said was meant to buy a used car. He had to hire a lawyer to get back his money.

Mandrel Stuart, a 35-year-old African American owner of a small barbecue restaurant in Staunton, Va., was stunned when police took \$17,550 from him during a stop in 2012 for a minor traffic infraction on Interstate 66 in Fairfax. He rejected a settlement with the government for half of his money and demanded a jury trial. He eventually got his money back but lost his business because he didn't have the cash to pay his overhead.

“I paid taxes on that money. I worked for that money,” Stuart said. “Why should I give them my money?”



Mandrel Stuart talks about being stopped by Fairfax County police last year and having \$17,550 confiscated under a civil forfeiture law, while sitting in his former restaurant, now known as the Shack in Staunton, Va. Stuart was never charged with a crime and, as a result of having the money taken, lost his restaurant, the Smoking Roosters. Stuart recently won a court case giving him back the \$17,550. (Norm Shafer for The Washington Post)

In defense of seizures

Steven Peterson, a former U.S. Drug Enforcement Administration agent who arranged highway interdiction training through a company called the 4:20 Group, said that patrol officers used to try to make their names with large drug busts. He said he saw that change when agency leaders realized that cash seizures could help their departments during lean times.

“They saw this as a way to provide equipment and training for their guys,” Peterson said. “If you seized large amounts of cash, that’s the gift that keeps on giving.”

There is no question that state and federal forfeiture programs have crippled powerful drug-trafficking organizations, thwarted an assortment of criminals and brought millions of dollars to financially stressed police departments.

Advocates of highway interdiction say it plays an important role in protecting the public and that officers take care to respect the rights of citizens.

“We don’t go hunting for money in general,” said Sandy Springs, Ga., Officer Mike DeWald, who has served as a trainer for 4:20. “I never have been pressured to go after money. We are in pursuit of the criminal element.”

Police trainers said that their work has helped make the country safer by teaching police to be more vigilant in identifying drug smugglers and terrorists.

“9/11 caused a lot of officers to realize they should be out there looking for those kind of people,” said David Frye, a part-time Nebraska county deputy sheriff who serves as chief instructor at Desert Snow and was operations director of Black Asphalt. “When money is taken from an organization, it hurts them more than when they lose the drugs.”



These screen grabs were taken from a promotional video for Desert Snow posted on YouTube by user InRoadsBook. (YouTube)

Frye and Desert Snow's founder, a former California highway patrolman named Joe David, defended Black Asphalt, which David started in 2004. They said they have taken steps in recent years to ensure that the informal police network complies with state and federal laws. David declined to speak to The Post.

"The Black Asphalt is not flawless, however the intent behind it is," David and Frye wrote in a letter in 2012 sent to police and obtained by The Post. "The information being moved through the system has proven itself reliable on hundreds of occasions. Much more reliable than any criminal informant. The results have been staggering. It has proven itself an extremely valuable tool for law enforcement."

Hain, Desert Snow's marketing official, said "the operational and software platforms of the Desert Snow site and Black Asphalt site are completely separate." He said Black Asphalt is "a secure system for intelligence sharing" and does not store information.

"No personal identifying information from seizure reports have ever been collected or stored by the Black Asphalt," Hain said. "The Black Asphalt software is simply a pass-through system that allows the user to input data, which is then sent directly, via e-mail, to a select group of law enforcement (i.e. local investigators, ICE Bulk Cash Smuggling Center, DEA agents, etc.). Again, none of the personal information is held within the system, only the summary of the seizure. And then the seizure narratives are only maintained for 21 days before they get purged."

The Post obtained hundreds of Black Asphalt records from law enforcement sources with access to the system.

Among Black Asphalt's features is a section called BOLO, or "be on the lookout," where police who join the network can post tips and hunches. In April, Aurora, Colo., police Officer James Waselkow pulled over a white Ford pickup for tinted windows. Waselkow said he thought the driver, a Mexican national, was suspicious in part because he wore a University of Wyoming cap.

"He had no idea where he was going, what hotel he was staying in or who with," Waselkow wrote. The officer searched the vehicle with the driver's consent but found no contraband. But he was still suspicious, so he posted the driver's license plate on Black Asphalt. "Released so someone else can locate the contraband," he wrote. "Happy hunting!"

Waselkow's department did not respond to a request for an interview.

The Post's review of 400 court cases, which encompassed seizures in 17 states, provided insights into stops and seizures.

In case after case, highway interdictors appeared to follow a similar script. Police set up what amounted to rolling checkpoints on busy highways and pulled over motorists for minor violations, such as following too closely or improper signaling. They quickly issued warnings or tickets. They studied drivers for signs of nervousness, including pulsing carotid arteries, clenched jaws and perspiration. They also looked for supposed “indicators” of criminal activity, which can include such things as trash on the floor of a vehicle, abundant energy drinks or air fresheners hanging from rearview mirrors.

One recent stop shows how the process can work in the field.

In December 2012, Frye was working in his capacity as a part-time deputy in Seward County, Neb. He pulled over John Anderson of San Clemente, Calif., who was driving a BMW on Interstate 80 near Lincoln. Frye issued a warning ticket within 13 minutes for failing to signal promptly when changing lanes.

“The results have been staggering. It has proven itself an extremely valuable tool for law enforcement.”

—David Frye and Joe David, talking about the Black Asphalt network in a 2012 letter to police

He told Anderson he was finished with the stop. But Frye later noted in court papers that he found several indicators of possible suspicious activity: an air freshener, a radar detector and inconsistencies in the driver’s description of his travels.

The officer then asked whether the driver had any cocaine, methamphetamine, heroin or large amounts of cash and sought permission to search the BMW, according to a video of the stop. Anderson denied having drugs or large amounts of cash in his car. He declined to give permission for a search. Frye then radioed for a drug-sniffing dog, and the driver had to wait another 36 minutes for the dog to arrive.

“I’m just going to, basically, have you wait here,” Frye told Anderson.

The dog arrived and the handler said it indicated the presence of drugs. But when they searched the car, none was found. They did find money: \$25,180.

Frye handcuffed Anderson and told him he was placing him under arrest.

“In Nebraska, drug currency is illegal,” Frye said. “Let me tell you something, I’ve seized millions out here. When I say that, I mean millions. . . . This is what I do.”

Frye suggested to Anderson that he might not have been aware of the money in his vehicle and began pressing him to sign a waiver relinquishing the cash, mentioning it at least five times over the next hour, the video shows.

“You’re going to be given an opportunity to disclaim the currency,” Frye told Anderson. “To sign a form that says, ‘That is not my money. I don’t know anything about it. I don’t want to know anything about it. I don’t want to come back to court.’ ”

Frye said that unless the driver agreed to give up the money, a prosecutor would “want to charge” him with a crime, “so that means you’ll go to jail.”

An hour and six minutes into the stop, Frye read Anderson his Miranda rights.

A Roadside Seizure

On Dec. 14, 2012, John Anderson of San Clemente, Calif., was pulled over on I-80 in Nebraska by David Frye, a part-time deputy with the Seward County Sheriff’s Office.

Frye’s full-time job is as lead trainer with Desert Snow, a top interdiction training firm for police based in Guthrie, Okla. Frye was accompanied by a criminal justice student riding as an observer.

This video was recorded by a dashboard camera.

Anderson, who told Frye he worked as a self-employed debt counselor, said the money was not illicit and he was carrying it to pay off a gambling debt. He would later say it was from investors and meant to buy silver bullion and coins. More than two hours after the stop had begun, he finally agreed to give up the cash and Frye let him go. Now Anderson has gone to court to get the money back, saying he signed the waiver and mentioned the gambling debt only because he felt intimidated by Frye.

A magistrate has ruled at a preliminary step in the case that Frye had reasonable suspicion to detain Anderson. Frye said he always follows the law and has never had a seizure overturned.

Legal scholars who viewed the video of the stop told The Post that such practices push constitutional limits. Officers often are taught not to tell the driver they have a right to leave at any time after a traffic stop is concluded. But extended stops in which the officer uses psychological pressure on the driver without charges or Miranda warnings can cross the line.

“Encouraging police to initiate searches for the purpose of seizing cash or other assets, rather than to seize evidence to be used in a prosecution, is a dangerous development,” said Clifford Fishman, a law professor at Catholic University and former New York City prosecutor. “It is particularly troubling if police officers are trained to manipulate the suspect into forfeiting the assets or waiving the right to contest the search.”

David A. Harris, a University of Pittsburgh law professor, said Frye’s stop crossed the line when he detained the driver while summoning a canine.

“You cannot elongate the stop to bring in the dogs,” he said. “In doing that, you’re detaining the person without probable cause. That ain’t kosher.”

4:13-cv-03103-JMG-CRZ Doc # 2 Filed: 05/23/13 Page 1 of 2 - Page ID # 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

\$25,180.00 IN UNITED STATES
CURRENCY,

Defendant.

4:13CV3103

NOTICE OF COMPLAINT
FOR FORFEITURE

Court filing from John Anderson's case in which his seized cash is named as the defendant. (Court documents)

A tool in the drug war

Civil asset forfeiture law is among the more unusual areas of American jurisprudence. It does not involve evidence of a crime or criminal charges. It is a civil action against an object, such as currency or a boat, rather than a person. It has its basis in British admiralty law, which allowed the taking of a ship to recover damages.

In 1970, Congress turned the federal civil asset forfeiture law into a weapon against the illegal drug trade, allowing for the seizure of aircraft, boats and vehicles used to transport drugs. The federal law was eventually expanded to include cash tied to drug trafficking and to allow the money to be shared with local and state police, who could keep up to 80 percent of the seized assets. When police make a seizure, a federal agency must approve or "adopt" it for inclusion in Justice's Equitable Sharing Program.

It was a much more effective tool for federal prosecutors than criminal forfeiture, which required the conviction of a defendant with proof beyond a reasonable doubt. Most significantly, the law places the burden of proof on the property owner to demonstrate that an object is not tied to criminal activity.

As the drug trade ramped up throughout the 1980s, money deposited into Justice's federal forfeitures fund increased from \$27 million in 1985 to \$556 million in 1993. (It reached \$2.6 billion in 2007.) Some of that increase was driven by Operation Pipeline, a nationwide DEA program launched in 1986 that promoted highway interdiction training for state and local police.

Several newspapers later wrote exposés about innocent people being caught up in the forfeiture net and police spending on luxuries. [The Orlando Sentinel won a Pulitzer Prize](#) in 1993 for pointing out that the Volusia County Sheriff's Office had used state seizure laws to take \$8 million from motorists, nine out of 10 of them minorities.

The attention prompted Congress to reform federal seizure laws in 2000, allowing owners to be reimbursed for their legal fees after successful lawsuits. But a key reform was cut. It would have removed what some lawmakers called the “perverse incentive” to target cash — the sharing of money between the feds and locals. It died after police and Justice waged a “voracious lobbying” campaign, according to former representative Barney Frank (D-Mass.).

“We didn’t have the votes,” said Frank, who is still an ardent critic of asset forfeiture. “There is this terrible unfairness. It is about as fundamental a denial of their constitutional rights as I can think of.”

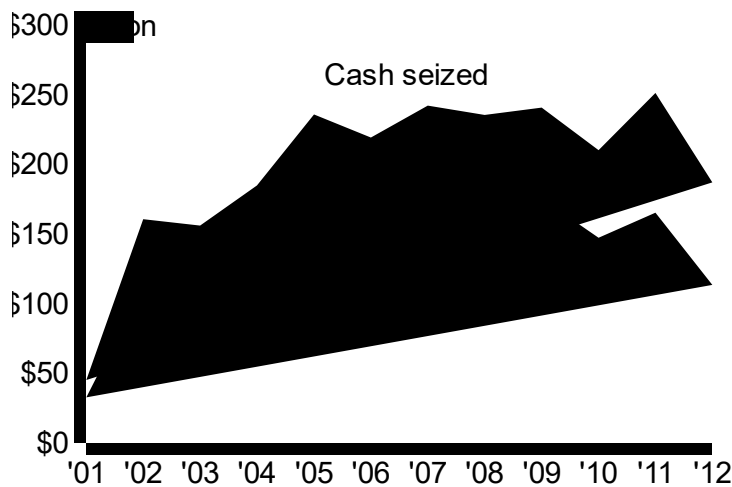
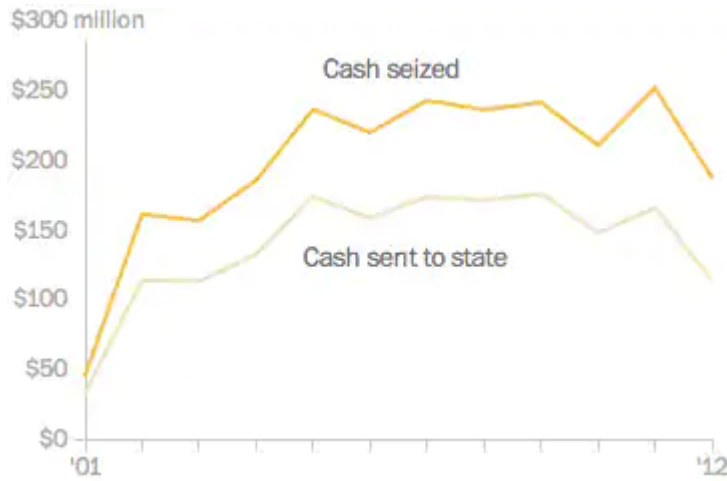
After Sept. 11, 2001, civil forfeiture and the war on drugs became entwined with efforts to improve homeland security. Smugglers of all kinds turned away from airports because of the tightened security and took to the nation’s interstate highway system. With federal encouragement, police from small towns, rural counties and big cities sought specialized training.

Among those that met the demand was Desert Snow, a family-owned company founded in 1989 by Joe David, a California highway patrolman. Other firms also stepped up, including the 4:20 Group, Caltraps, Hits, Diamondback Training, and Global Counter-Smuggling Training Consultants. Soon more than a dozen companies were competing for millions in state and federal grants and contracts, along with fees from local departments across the country.

The training had an immediate effect in some areas.

After the Kansas Highway Patrol arranged sessions through Desert Snow for state and local police in 2005 and 2006, the amount of cash flowing into police budgets from seizures nearly doubled, from an average of \$2.6 million a year between 2000 and 2006 to \$4.9 million a year after 2007.

Amount seized increases over time



Note: Partial data for 2001 and 2012.

Source: A Washington Post analysis of Department of Justice data.

After 25 Wisconsin State Patrol officers received training from Desert Snow in 2010, the agency’s cash seizures the following year more than doubled to \$585,657. “It creates a surge period,” said Sgt. Nate Clarke, a state patrol supervisor. “These guys get all fired up because they’re seeing photo after photo of seizures on the PowerPoints.”

The number of agencies participating yearly under Equitable Sharing went up 22 percent to 2,842 between 2003 and 2007, while cash seizures without search warrants or indictments during that period rose more than 50 percent, to \$242 million. Under the Obama administration, police have made more than 22,000 such seizures worth about \$1 billion through the Justice Department program.

Federal support helped drive the surge. In Florida, Indiana, Oklahoma, Tennessee and Wisconsin alone, police spent a total of at least \$1 million during the last decade in Justice and Homeland Security grants for Desert Snow training. The DEA, Customs and Border Protection, Immigration and Customs Enforcement and others spent an additional \$2.5 million in contracts on Desert Snow training for police, records show. The DEA also paid

more than \$2 million for training from the 4:20 Group. Individual local and state police forces across the country paid millions more for the training using seized cash, one of the uses permitted by Equitable Sharing rules.

The police trainers estimate they have taught more than 50,000 police officers in the more aggressive techniques during the last decade.

Some trainers say they worry that an overemphasis on seizing money has distorted policing.

“Over a period of a single decade, the culture was now totally changed,” said Shawn Pardazi, a detective in Pearl, Miss., and owner of Global Counter-Smuggling Training Consultants and a former Desert Snow trainer.

As the demand for training grew, the competition among the firms for business became fierce.

“It’s all about the money,” said James Eagleson, owner of the 4:20 Group, who also once worked at Desert Snow.



David Smith is an Alexandria, Va., attorney and a former federal prosecutor. He has tried to reform asset forfeiture laws and represented Benjamin Molina, who had \$18,000 confiscated from him during a traffic stop in Emporia, Va. (Nikki Kahn/The Washington Post)

Getting the money back

Decisions that police make during brief roadway stops take motorists who challenge the seizures a year on average to resolve, according to a Post analysis. For 350 owners, it took more than two years to get their money back.

Last year, Ming Tong Liu, 55, a Chinese-born American from Newnan, Ga., was stopped on I-10 in Alabama for driving 10 miles over the speed limit while heading to Louisiana to buy the Hong Kong Chinese restaurant in Lake Charles for himself and his investors — two daughters and another relative.

A Mobile County sheriff's deputy gave Liu a ticket for speeding and asked for permission to search the car. The deputy found \$75,195 in a suitcase in the back seat, neatly wrapped in white napkins and placed in a black plastic bag and then took the money after the deputy said Liu gave conflicting accounts of his travel plans.

The deputy took Liu to a sheriff's department office and called for an officer from U.S. Customs and Border Protection, which stood to share in the money.

Liu's attorney, Rebecca Ding-Lee, said the officers overstepped their authority, held Liu for nearly two hours and searched his car unlawfully without a warrant. "He cannot speak English," she said. "He didn't understand what the police said."

Ten months after the cash was seized, customs officials agreed to return the money, documents show.

Police often rely on drug-sniffing dogs to justify warrantless searches when a driver refuses to give consent. In 48 cases examined by The Post, dogs alerted to the presence of drugs but the officers found only money.

In October 2008, Benjamin Molina, 40, a permanent resident from El Salvador, was traveling through Virginia on I-95 when an Emporia police officer pulled him over for tinted windows. A carpenter, Molina was going from North Carolina to his home in Perth Amboy, N.J. The officer wrote him a warning ticket and began asking him questions, including whether he had cash in the car.

Molina told the officer that he was shopping for a used car and had \$18,000 in his pockets. Molina's face began to tremble, which police said they took as a sign of possible wrongdoing. Molina said his cheek twitched from medication he was taking for a health condition that included kidney disease. Molina also had duct tape in his car, which police said is "commonly used by traffickers."

Know your rights: During traffic stops on the nation's highways, the U.S. Constitution's Fourth Amendment protects motorists "against unreasonable searches and seizures." The law also gives police the power to investigate and act on their suspicions.

1. Police have a long-established authority to stop motorists for traffic infractions. They can use traffic violations as a pretext for a deeper inquiry as long as the stop is based on an identifiable infraction.

2. An officer may detain a driver only as long as it takes to deal with the reason for the stop. After that, police have the authority to request further conversation. A motorist has the right to

decline and ask whether the stop is concluded. If so, the motorist can leave.

3. The officer also has the authority to briefly detain and question a person as long as the officer has a reasonable suspicion that the person is involved in criminal activity. Reasonable suspicion is based on specific and articulable facts but falls short of the legal standard for making an arrest.

4. A traffic infraction or reasonable suspicion alone do not give police authority to search a vehicle or a closed container, such as luggage. Police may ask for permission to search; drivers may decline. Police do not have to tell drivers that they have a right to refuse.

5. An officer may expand a roadside investigation if the driver's responses and other circumstances justify a belief that it is more likely than not that criminal activity is occurring. Under this standard, known as probable cause, an officer can make an arrest or search a vehicle without permission. An alert by a drug-sniffing dog can provide probable cause, as can the smell of marijuana.

6. Police can seize cash that they find if they have probable cause to suspect that it is related to criminal activity. The seizure happens through a civil action known as asset forfeiture. Police do not need to charge a person with a crime. The burden of proof is then on the driver to show that the cash is not related to a crime by a legal standard known as preponderance of the evidence.

Sources: Jon Norris, criminal defense attorney; David A. Harris, University of Pittsburgh law professor; Scott Bullock, civil liberties lawyer, Institute for Justice; Department of Homeland Security.

The officer asked Molina, who had no criminal history, to hand over the cash. The officer placed the money in an envelope, which he set down on the ground alongside two empty envelopes.

A dog called to the scene sat down next to the envelope with the cash, indicating the presence of drugs, according to police.

The police took the money, but Molina took steps to get it back.

He hired David Smith, an Alexandria attorney and former federal prosecutor who once headed the federal government's forfeiture program in the Eastern District of Virginia.

After Molina appealed, a federal prosecutor refunded the money. It took four months.

Smith said the Molina case is an example of the kind of overreach that the civil asset forfeiture reforms passed by Congress in 2000 were aimed at preventing.

"This type of police bounty hunting is antithetical to everything our criminal justice system is supposed to stand for," said Smith, who helped craft the reform legislation.

Among the indicators police look for are rental cars, which are often used by smugglers.

On Nov. 1, 2011, Jose Jeronimo Sorto and his brother-in-law, Victor Ramos Guzman, were driving a rented sedan on I-95 south of Richmond when a Virginia state trooper stopped them. Both were lay leaders of the Pentecostal Nuevo Renacer church in Baltimore. They were carrying \$28,500 in church funds meant for the purchase of land to build a church in El Salvador and a trailer for a new congregation in North Carolina.

Their experience has been cited as a case study in civil forfeiture abuse by The Post's [editorial page](#), the [New Yorker magazine](#) and others. Unknown until now in the public debate is the fact that the trooper who made the stop, C.L. Murphy, is a top interdiction trainer for Virginia State Police and Desert Snow, as well as a member of Black Asphalt.

Murphy told Sorto and Guzman that they were speeding and following too closely. Murphy said Guzman told him about the cash and consented to a search of the car.

Guzman, 39, of Sterling, Va., said he showed the trooper documents indicating that he belonged to a tax-exempt church, and he said the cash had been collected from congregation members. But Murphy disregarded their explanations, saying they contained inconsistencies. He called Immigration and Customs Enforcement, which accepted the seizure for the Equitable Sharing Program, and he escorted the men to a nearby police station. He did not issue a ticket but seized the cash after Guzman signed a waiver.

Three lawyers agreed to represent the church members for free. Three months later, they received a check from ICE for \$28,500.

Virginia State Police spokeswoman Corinne Geller would only say, "The facts of the stop speak for themselves."

ICE spokeswoman Marsha Catron defended the seizure, saying in a statement "the situation was indicative of bulk cash smuggling" and that Guzman consented by signing a waiver for the money.

"Both the male driver and passenger disclaimed ownership of the money and provided inconsistent and contradictory statements," Catron said. She added: "Money was ultimately returned to Mr. Ramos Guzman after he provided documentation that the cash belonged to his church."

Guzman told The Post he was truthful to the trooper the entire time. The experience left him shaken.

"They didn't give me a chance to explain," Guzman said. "There was no way out."

Alice Crites contributed to this report. Also contributing were Alexia Campbell, Cathaleen Chen, Hoai-Tran Bui, Nagwa Abdallah and Justin Warren, who were attached to The Washington Post's Investigative Unit through a partnership with the Investigative Reporting Workshop at American University.

About this story

The Washington Post relied on an array of materials to explore the rise of civil seizures in recent years, with a particular focus on highway seizures made by state and local police. For details about seizures and the techniques employed by police, reporters reviewed more than 400 federal court cases in which owners of cash filed legal appeals to get it back. The Post also examined some seizures made under state forfeiture laws.

Through Freedom of Information Act requests, The Post obtained a database from the Justice Department containing details about 212,000 seizures since 1996 through the Equitable Sharing Program, the federal government's largest asset forfeiture effort.

Justice officials did not release data that pinpointed the geographic location of each seizure, so it is impossible to identify precisely how many seizures occur during traffic stops. To focus on roadside stops, The Post looked at cases that were not made at businesses and that occurred without warrants or indictments: 61,998 seizures have met those criteria since Sept. 11, 2001. That group of cases was then compared to a list obtained by The Post of 1,654 departments and agencies with officers who are members of an unofficial police intelligence network known as the Black Asphalt Electronic Networking & Notification System that is focused on highway stops and seizures.

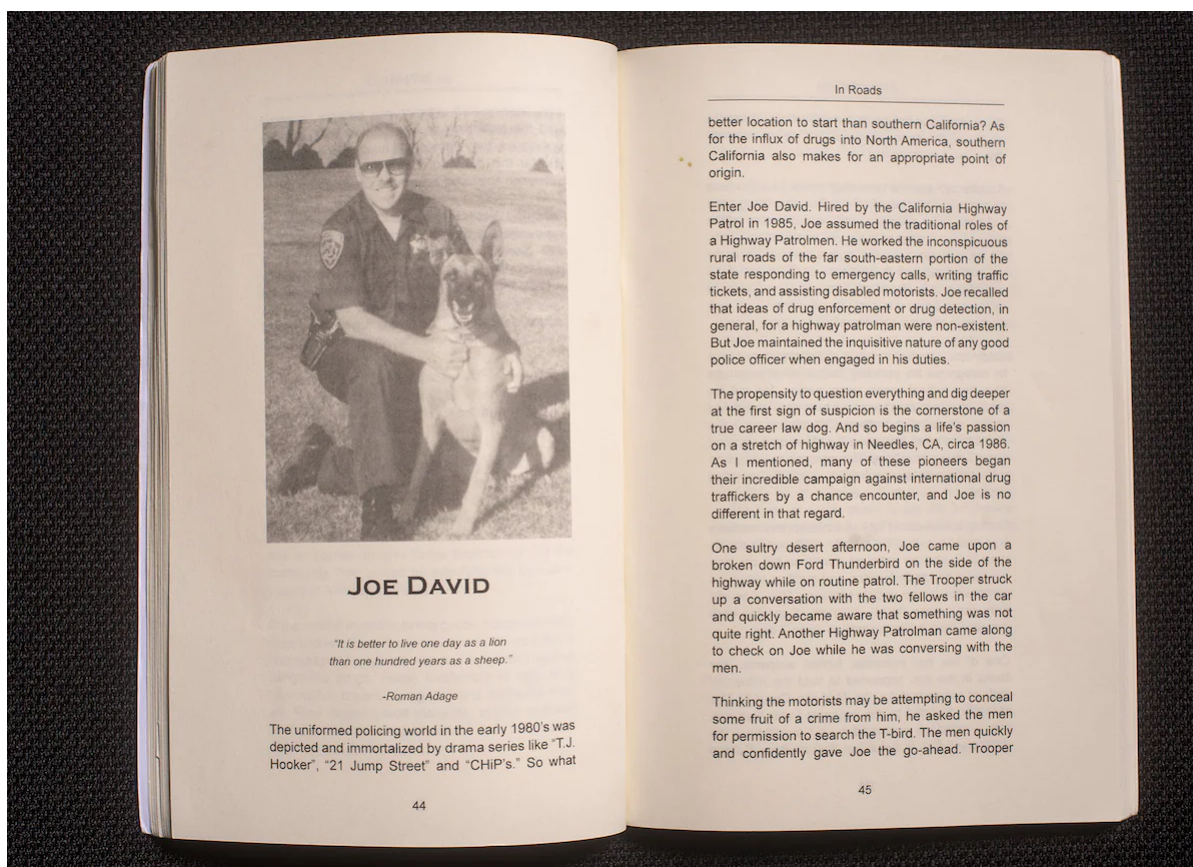
The Post also obtained more than 43,000 Justice Department reports from state and local police departments across the country that participated in Equitable Sharing, along with records provided by the Institute for Justice, a nonprofit civil liberties group, to assess how seizures contribute to department budgets.

www.washingtonpost.com/sf/investigative/2014/09/07/police-intelligence-targets-cash/

Police training firm's teaching helps fuel rise in cash seizures on U.S. highways

Story by : 35-44 minutes

Reports on drivers, training by firm fueled law enforcement aggressiveness



Robert O'Harrow Jr., Michael Sallah, Steven Rich

Published on September 7, 2014

During the rush to improve homeland security a decade ago, an invitation went out from Congress to a newly retired California highway patrolman named Joe David. A lawmaker asked him to brief the Senate on how highway police could keep "our communities safe from terrorists and drug dealers."

ABOVE: "In Roads" was written under a pseudonym by Ron Hain, a marketing official for Desert Snow, and talks about the company's founder, Joe David.

David had developed an uncanny talent for finding cocaine and cash in cars and trucks, beginning along the remote highways of the Mojave Desert. His reputation had spread among police officers after he started a training firm in 1989 to teach his homegrown stop-and-seizure techniques. He called it Desert Snow.

Stop and Seize: In recent years, thousands of people have had cash confiscated by police without being charged with crimes. The Post looks at the police culture behind the seizures and the people who were forced to fight the government to get their money back.

Part 1: After Sept. 11, 2001, a cottage industry of private police trainers emerged to teach aggressive techniques of highway interdiction to thousands of local and state police.

Part 3: Motorists caught up in the seizures talk about the experience and the legal battles that could take over a year.

Part 4: Police agencies nationwide routinely buy vehicles and weapons with money and property seized under federal civil forfeiture law from people who were not charged with a crime.

Part 5: Highway seizure in Iowa fuels debate about asset-forfeiture laws.

Part 6: D.C. police plan for future seizure proceeds years in advance in city budget documents.

Chat transcript: The reporters behind "Stop and Seize" answered readers' questions about the investigative series.

The demonstration he gave on Capitol Hill in November 2003 startled onlookers with the many ways smugglers and terrorists can hide contraband, cash and even weapons of mass destruction in vehicles. It also made David's name in Washington and launched his firm into the fast-expanding marketplace for homeland security, where it would thrive in an atmosphere of fear and help shape law enforcement on highways in every corner of the country.

Over the next decade, David's tiny family firm would brand itself as a counterterrorism specialist and work with the departments of Homeland Security and Justice. It would receive millions from federal contracts and grants as the leader of a cottage industry of firms teaching aggressive methods for highway interdiction. Along the way, working in near obscurity, the firm would press the limits of the law and raise new questions about police power, domestic intelligence and the rights of American citizens.

In 2004, David started a private intelligence network for police known as the Black Asphalt Electronic Networking & Notification System. It enabled officers and federal authorities to share reports and chat online. In recent years, the network had more than 25,000 individual members, David said.

"Throughout history law enforcement investigations have been stymied because of law enforcement's inability to move information and because enforcement entities refuse to work together," David wrote in a 2012 letter to Black Asphalt members that was obtained by The Post. "This website allows all of us to do that."

Operating in collaboration with the U.S. Drug Enforcement Administration, Immigration and Customs Enforcement and other federal entities, Black Asphalt members exchanged tens of thousands of reports about American motorists, many of whom had not been charged with any crimes, according to a company official and hundreds of internal documents obtained by The Post. For years, it received no oversight by government, even though its reports contained law enforcement sensitive information about traffic stops and seizures, along with hunches and personal data about drivers, including Social Security numbers and identifying tattoos.

Black Asphalt also has served as a social hub for a new brand of highway interdictors, a group that one Desert Snow official has called "a brotherhood." Among other things, the site hosts an annual competition to honor police who seize the most contraband and cash on the highways. As part of the contest, Desert Snow encouraged state and local patrol officers to post seizure data along with photos of themselves with stacks of currency and drugs. Some of the photos appear in a [rousing hard-rock video](#) that the Guthrie, Okla.-based Desert Snow uses to promote its training courses.

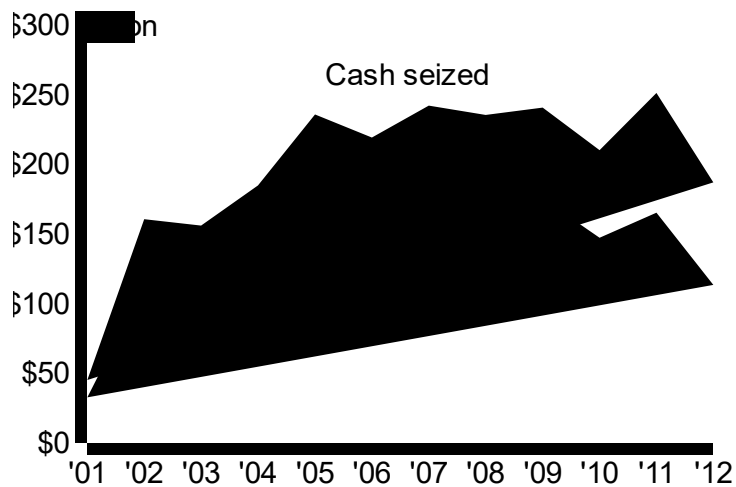
Annual winners receive Desert Snow's top honorific: Royal Knight. The next Royal Knight will be named at a national conference hosted in Virginia Beach next year in collaboration with Virginia State Police.

In just one five-year stretch, Desert Snow-trained officers reported taking \$427 million during highway encounters, according to company officials. A Post analysis found the training has helped fuel a rise in cash seizures in the Justice Department's main asset forfeiture program.

In January last year, David hired himself and his top trainers out as a roving private interdiction unit for the district attorney's office in rural Caddo County, Okla. Working with local police, Desert Snow contract employees took in more than \$1 million over six months from drivers on the state's highways, including Interstate 40 west of Oklahoma City. Under its contract, the firm was allowed to keep 25 percent of the cash.

Amount seized increases over time





Note: Partial data for 2001 and 2012.

Source: A Washington Post analysis of Department of Justice data.

When Caddo County District Court Judge David A. Stephens learned that Desert Snow employees were not sworn law enforcement officers in Oklahoma, he denounced the arrangement as “shocking,” and he threatened to put David in jail if it continued.

The state’s American Civil Liberties Union chapter called for an investigation of the district attorney and criminal charges against Desert Snow employees for impersonating law enforcement officers.

“Desert Snow. It sounds like a covert military operation or a street name for designer cocaine. Truth be told, it’s something much more sinister in my modest opinion,” Oklahoma defense attorney Adam Banner wrote in a [legal blog](#), adding that it “seems to amount to little more than a free-for-all cash grab.”

District Attorney Jason Hicks set aside more than a dozen convictions relating to the seizures and promised a review. He said he was just trying to offset the loss of federal funding for a drug task force.

“I fully believe we are in compliance with state law and, at the time the program was formed, my intent was to see that my investigators received top-notch training and to ensure that we could continue the operation of the drug and violent crime task force,” Hicks said.

David A. Harris, a professor at the University of Pittsburgh Law School, said highway interdiction now “works just like all the drug interdiction efforts” in the 1990s. “But the focus is on money,” he said. “That makes it all the more insidious.”

Desert Snow officials in interviews disclaimed the practice of targeting drivers for money, sometimes known as “policing for profit.” They said that seizing cash is a proven tool for hurting drug and crime organizations.

But privately, they promote a book that extols the quest for cash. Ron Hain, a marketing official with Desert Snow and a full-time deputy sheriff in Kane County, Ill., has urged police to use cash seizures to bolster municipal coffers. "[In Roads: A Working Solution to America's War on Drugs](#)," a book Hain self-published under the pen name Charles Haines in 2011, states that departments can "pull in expendable cash hand over fist."

The firm defends its training as first-rate, and David once likened the firm's students to special forces operators. "Like the SEAL team, Army Rangers or any other top notch outfit it requires commitment and perseverance to be part of 'the team,'" David wrote in a sales pitch posted on Black Asphalt.

Desert Snow officials have taken pains to ensure that Black Asphalt complies with all laws and that its site is securely encrypted, David wrote in his 2012 letter to the membership. He said the system does not store any sensitive information about drivers but only passes it along to law enforcement. Only "certified peace officers" can access the system. After questions arose several years ago about the system's private ownership, David transferred authority to the sheriff's office in Logan County, just north of Oklahoma City.

David said that more than 16,000 "major incidents" had been reported through the system, leading to hundreds of follow-up investigations, arrests and seized assets.

"Over the years I have also received phone calls and letters of gratitude from all levels," David wrote in 2012. "I have even met with federal people in both Washington D.C. and elsewhere regarding the website and have even received financial contributions for the Black Asphalt from District Attorneys, agencies and federal entities."

DHS spokeswoman Marsha Catron downplayed the department's involvement, saying in a statement that it has awarded "Desert Snow less than 20 contracts since 2008 for specialized law enforcement training and educational services." That includes three contracts this year worth more than \$268,000 with Customs and Border Protection, one of them in August.

Catron defended the use of Black Asphalt. "The network simply allows law enforcement officers to alert fellow agencies about seizures that have been made," her statement said. "Participation in this network by state, local or federal agencies is voluntary. This kind of networking allows law enforcement agencies to develop leads, corroborate investigative information and aids in the pursuit of criminal enterprises."

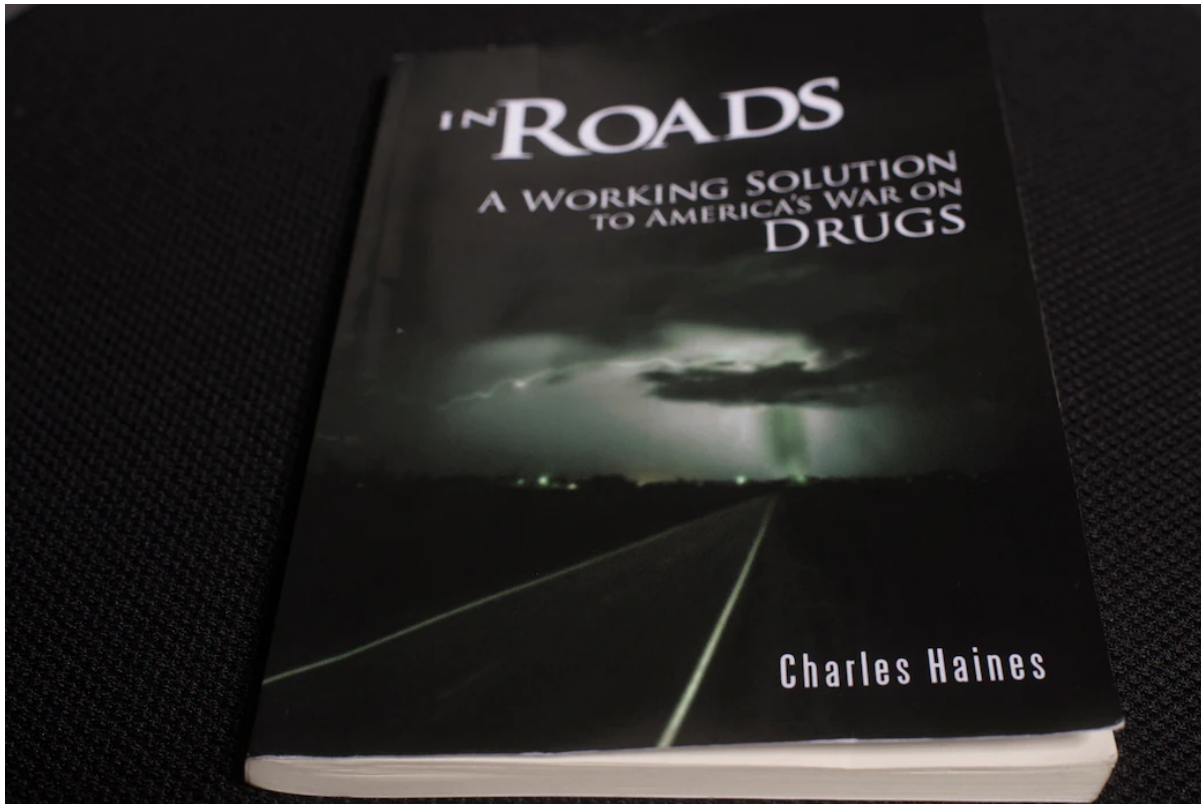
She said that Black Asphalt reports no longer contain any personally identifiable information about drivers.

DEA spokesman Rusty Payne said that computers at the agency's El Paso Intelligence Center (EPIC) once housed Black Asphalt. In a subsequent e-mail, Payne said that agents only used it as a source of information. "We would go in there to grab information," he said.

Payne also told The Post that the DEA had recently stopped using Black Asphalt reports because of concerns that they “would never hold up in court.”

Payne said officials at Justice and DEA are now reviewing their use of the system. However, as recently as May, internal Black Asphalt records continued to list officials at the agency, along with officials at DHS, CBP and ICE, as members.

The start of Desert Snow



(Marvin Joseph/The Washington Post)

Joe David, 61, did not respond to multiple requests for an interview. This account is based on interviews with two Desert Snow officials and more than a dozen current and former members of the Black Asphalt network, along with hundreds of internal documents, legal records and the account given by Hain in “In Roads.”

David married as a teenager, started a family and worked his way up from the road patrol. He was smart and gregarious, with a close-cropped haircut and a special way with the drivers he encountered.

His career began on the hard-baked desert highways of southeast California, where he was assigned soon after joining the California Highway Patrol in 1985. From the start, he was intrigued by the cat-and-mouse game with smugglers. One day, he was driving through Needles, Calif., not far from the Arizona border, when he saw a Ford Thunderbird on the side of the road. The driver and passenger struck David as suspicious. Though he had no evidence of a crime, he asked whether he could search the car.

The driver agreed but David's search was turning up blank — until an old school acquaintance drove up and stopped to watch. The classmate happened to be an automobile upholsterer. David asked him to look at the car and see if anything was amiss in the interior. The classmate spotted an irregularity in the sewing on the seats. Hidden underneath was 44 pounds of cocaine.

David was hooked on interdiction. Year after year, he made big seizures. He once found 2,500 pounds of cocaine in a box truck, worth more than \$22 million. "Trooper David became a one-man wrecking ball, and terrorized members of drug cartels for years to come," Hain wrote.

David earned the nickname "Canine," and he claimed that he could smell cocaine concealed among other odors, like detergent, court records show.

He began moonlighting as a personal instructor for police who found the prospect of highway interdiction exciting and useful. He started in the late 1980s with informal tutorials over backyard barbecues and later moved the sessions into the family garage.

Today, Desert Snow is still a family business that employs his wife and children.

From the beginning, David lectured about the damage drugs do to communities and portrayed his students as soldiers on the front lines of a war.

"These pioneers realized there is one vital course of action for the local police officer to begin conquering our nation's continuing battle: knowledge, training in profiles, and the relentless pursuit of narcotics smugglers," Hain wrote.

Facing scrutiny

In the early 1990s, as he took on teaching assignments during breaks from his day job, David's reputation grew. Soon, he was teaching local police for the DEA's El Paso Intelligence Center, a clearinghouse for information about drug smugglers and their associates. He also taught for the Drug Interdiction Assistance Program at the Department of Transportation, which focuses on commercial vehicle safety.

But his methods came under scrutiny in court. In July 1993, David stopped a man driving a half-ton pickup with tinted windows on Interstate 40 near the California-Arizona border. He asked the driver, a Hispanic man, to roll down the window and hand over his license and registration.

David said he thought the driver was suspiciously nervous and he thought he smelled cocaine through the open window, according to court records. David was by now a canine officer, but he didn't have his dog with him that day.

He told the driver to stand on the side of the road and began conversing with him.

David eventually told the driver that he was convinced there was a large amount of cocaine in the truck and asked for permission to search. The driver was reluctant, but he eventually signed a bilingual form giving consent. David found more than 40 pounds of the drug.

At a court hearing, the driver's attorney unsuccessfully argued that the evidence should be suppressed because it was obtained through intimidation. David responded that he behaved appropriately. Prosecutors said he spoke "without coercion in a low-key conversational tone."

But a three-member federal appeals court ordered a new trial for the driver, saying David overstepped his authority to obtain approval for a warrantless search.

"Officer David persisted in his 'low key' questioning until he got the answer he sought," the court's ruling said. "Such persistent questioning is characteristic of a stationhouse interrogation."

The court ruled that David had improperly detained the driver without arresting him. The court did not specify how long he kept the driver on the roadside, but it said David should have given the driver a Miranda warning that he had a right to remain silent after David concluded he was going to arrest him.

"Miranda warnings are intended to deter precisely the sort of conduct engaged in by Officer David: isolation, psychological pressure, and relentless pursuit of a confession."

—Court statement

"It takes 30 seconds to give Miranda warnings," the court said. "Officer David delayed giving Miranda warnings in order to subject [the driver] to psychological pressure to make incriminating statements. That was a blatant Miranda violation."

"Miranda warnings are intended to deter precisely the sort of conduct engaged in by Officer David: isolation, psychological pressure, and relentless pursuit of a confession," the court said.

Desert Snow would adopt "Relentless Pursuit" as the firm's motto.

By the late 1990s, David also participated as an instructor in Operation Pipeline, a highway interdiction program run by the DEA that trained nearly 27,000 police in 48 states over more than a decade. The program encouraged the same sorts of techniques that David had long employed on his own: high volumes of stops for minor traffic infractions and conversations with drivers to look for inconsistencies and obtain permission for warrantless searches.

David received acclaim for a Pipeline stop of a truck-trailer in 1998. Pulling the vehicle over on a minor infraction — straddling two lanes — David and his partner found 720 pounds of marijuana.

About the same time, Democrats in the California statehouse formed a task force to investigate claims that Operation Pipeline was profiling Hispanic drivers.

"Pipeline teams are able to pull over a great many cars to find drivers who fit established 'profiles,'" the task force report said. "If a motorist 'fits' the profile, then the officer's goal becomes to conduct a warrantless search of the car and its occupants, in the hope of finding drugs, cash and/or guns."

The ACLU found that the majority of those stopped nationwide by interdiction programs such as Operation Pipeline were minorities, according to a 1999 report titled "[Driving While Black](#)."

"All the evidence to date suggests that using traffic laws for non-traffic purposes has been a disaster for people of color," said the report, written by Harris, the University of Pittsburgh law scholar. "Law enforcement decisions based on hunches rather than evidence are going to suffer from racial stereotyping, whether conscious or unconscious."

The ACLU filed a class-action lawsuit over such stops, and in 2003 the California Highway Patrol settled, paying \$875,000 and agreeing to provide additional training for officers but admitting to no wrongdoing.

That year, David retired and began ramping up Desert Snow. The new Department of Homeland Security was forming and a new market was opening up in the wake of the Sept. 11, 2001, attacks.





Carl Mauger of Desert Snow explains how terrorists can hide explosives to Capitol Police Officer Michael Howde in 2002. He also explains how a Molotov cocktail works. A year later, Desert Snow founder Joe David would make a name for himself with a similar presentation on Capitol Hill.

The invitation from Sen. Charles E. Grassley (R-Iowa) in the fall of 2003 paved the way for David and Desert Snow. David took a tractor-trailer to Capitol Hill, where he surprised lawmakers and Capitol Police by revealing myriad cubbyholes for hiding contraband. Once he would have focused on drugs and money. Now he emphasized that the hiding places could be used by terrorists.

Funding for Desert Snow soon came from DHS, which provided a grant to help the firm tailor its instruction to counterterrorism. Over the years, the firm has received scores of contracts from DHS, Justice and other federal agencies worth more than \$2.5 million. States and localities also have used homeland security grants and seized cash to pay for classes from Desert Snow and its competitors.

In 2004, one of the main thrusts of the homeland security efforts was to connect the dots of potential threats through information-sharing. Officials at ICE also began working with the DEA on an initiative to fight cash smuggling through better intelligence and collaboration with local and state police. The effort was framed as a fight against terror financing.

“To address this increasing threat, the DEA, IRS [Criminal Investigation] and ICE are working together to initiate a bulk currency program to coordinate all U.S. highway interdiction money seizures,” DEA Administrator Karen Tandy told a Senate panel.

That year, David launched Black Asphalt.

Run as a private adjunct to the for-profit Desert Snow, Black Asphalt's goal was to enable highway patrolmen in different states to informally share information about drivers as quickly as possible. David has said he saw the need for such a system when he was a Pipeline instructor and noticed that only a quarter of the highway stops were being reported to anyone. Such information could be valuable to the DEA's El Paso Intelligence Center and the 28 federally supported High Intensity Drug Trafficking Areas (HIDTA) task forces across the nation.

"The Black Asphalt was designed to support EPIC, HIDTA and other government programs," David wrote in his 2012 letter to the membership.

Black Asphalt soon attracted thousands of members from across the country. One lauded feature of the site is an extensive "concealment database" of hiding places in vehicles. By 2011, it had more than 30,000 members, according to Hain. Any sworn officer can join after filling out a membership application online for a \$19.95 processing fee. State and federal officials who assist in interdiction, such as intelligence analysts, can also be members.

"It was built by cops for cops," David Frye, Desert Snow's chief trainer and former director of operations at Black Asphalt, told The Post. "It's a specialized culture."

Using a template developed by Desert Snow, police filed thousands of automated reports through the secure Web site, whether or not the drivers had been charged, documents show. Details included the location of the stop, the vehicle identification number, the names, addresses, Social Security numbers and descriptions of the drivers.



In 2005, Pennsylvania State Police Commissioner Col. Jeffery B. Miller, left, and Lt. Col. Ralph Periandi listen to the pitch from a tire struck with a wrench to identify the presence of something concealed within it. More than 100 Pennsylvania State Police troopers were being trained by Desert Snow to spot everything from drugs to dirty bombs hidden inside commercial vehicles.

Documents and interviews obtained by The Post show that reports were funneled to the DEA, ICE, CBP and other federal agencies. In 2009, the DEA paid \$6,700 to Black Asphalt for an improved user interface with the system.. In its law enforcement-only newsletter, the National Bulk Cash Smuggling Center, a part of ICE, describes Black Asphalt as one of “its valuable law enforcement partnerships.”

In another part of Black Asphalt, users posted “be on the lookout” reports, also known as BOLOs, to single out certain drivers for police attention in other jurisdictions. The private BOLO reports generally rely on police intuition rather than hard evidence or probable cause.

In April, a California Highway Patrol officer stopped a woman driving in a Kentucky car that was littered with food wrappers and energy drinks. He did not believe her statement that she was driving to a funeral and asked her why she didn't fly. She did not have good answer, he said. So he posted her driver's license number and urged other police to be on the lookout. “She will be loaded coming back for sure,” he wrote.

C-Note

Newsletter of the National Bulk Cash Smuggling Center

Homeland Security
Investigations

Phone: 1 (866) 981-5332
Email: BCSC@hhs.gov
NLETS: VTIIC1900

July 1, 2011



The information contained in this newsletter is collected from multiple sources that are cited when possible. When seizures or investigations are detailed, the identities of suspects and law enforcement officials are minimized in order to protect potentially active or sensitive investigations or other law enforcement operations. For further information, please contact the center at BCSC@hhs.gov or 1 (866) 981-5332.

SEIZURES

ON THE ROADS

On June 30, 2011, at 1400 HRS, Officers from the Indianapolis, Indiana Metro Police Department seized \$248,930 USD from a commercial truck which was stopped for a lawful reason within the Indianapolis city limits. The driver stated that his company was hired to pick up household goods at a local self-storage facility in Indianapolis and deliver the goods to Chula Vista, California. The driver stated that he thought the load was suspicious because the items were worth less than the cost to ship them to California. A K-9 alerted on several of the household items including a freezer. A probable cause search of the freezer revealed a safe inside of it. A search warrant was obtained for the safe and once opened, Officers discovered the currency. [Indiana Metropolitan Police Department]



Photos: Indiana Metropolitan Police Department

On June 29, 2011, at approximately 1300 HRS, Deputies from the Douglas County, Nebraska Sheriff's Office seized \$251,520 USD from two male subjects traveling westbound on Interstate 80 near Ralston, Nebraska. The two subjects were driving a gray 2010 Honda Accord Coupe en route from Atlanta, Georgia to Santa Clara, California when they were stopped for a lawful reason. The occupants, one a Lawful Permanent Resident of the U.S. and the other, a naturalized U.S. citizen provided conflicting statements to the interdicting officers. A consensual search led to the discovery of several bundles of U.S. currency, wrapped in vacuum sealed packaging and secreted in the natural voids behind the rear armrests and accessible through the cup holders. The subjects were released; the vehicle and the currency were seized. [Douglas County Sheriff's Office]

On June 29, 2011, at approximately 1300 HRS, the Kent County, Maryland Sheriff's Department seized \$127,694 USD, \$11,450 CAD, and approximately \$15,730 in gold from a 33-year-old, male citizen of Pakistan and Lawful Permanent Resident of the U.S. traveling northbound on Route 301 near Chestertown. The subject, a resident of Brooklyn, New York, was traveling in a New York registered taxi cab with another citizen of Pakistan and Lawful Permanent Resident of the U.S. and claimed ownership of the proceeds. HSI SAC Baltimore Special Agents responded to further the investigation. [Seizure No. 2011SZ008966401]

On June 29, 2011, at approximately 2000 HRS, the Roma, Texas Police Department seized \$102,692 from a 30-year-old, male citizen of Mexico and a 27-year-old, female citizen of Mexico traveling on U.S. Highway 53. The subjects, residents of Miguel Aleman, Tamaulipas, Mexico, were driving a vehicle registered in Tamaulipas. HSI Special Agents and CBP Officers were requested to respond and assist with a K9 search of the subject's vehicle. Subsequent to a positive alert, the vehicle was taken to the Roma Port of Entry and scanned through a non-intrusive inspection, which returned positive results. Agents and Officers ultimately discovered 4 electrical-taped packages, and 5 vacuum-sealed packages of U.S. currency concealed in the dashboard, behind the glove box, and from within the door panel. [Seizure No. 2011SZ008991801]

On June 27, 2011 at approximately 1250 HRS, Troopers from the Iowa State Patrol seized \$51,000 USD from a male subject traveling westbound on Interstate 80 near mile marker 196. The subject was traveling in a Honda Accord bearing New Hampshire registration and en route from an undisclosed

LAW ENFORCEMENT SENSITIVE

Page 1



The July 2011 newsletter of the National Bulk Cash Smuggling Center, a part of U.S. Immigrations and Customs Enforcement.

To meet the growing demand for training, Desert Snow each year has cultivated up to 75 of the most successful and aggressive interdiction police officers from around the country. A part-time job at the firm's seminars was considered prestigious. Among the trainers are Royal Knights, the stars of the interdiction world.

Desert Snow charges as little as \$590 for an individual for its three- and four-day workshop of lectures and hands-on training in such subjects as "roadside conversational skills" and "when and how to seize currency." The firm often sets up its training in hotel conference rooms. The firm's three-day "Advanced Commercial Vehicle, Criminal & Terrorist Identification & Apprehension Workshop" cost 88 students a total of \$145,000, according to a price list posted by the state of New Jersey.

Police are taught the techniques that David had refined over the years, including how to assess the driver for signs of nervousness. "As a general rule, the innocent motoring public doesn't lie to you," Frye, Desert Snow's chief trainer and a part-time deputy in Nebraska, said in an interview.

If asked in court if it is normal for drivers to be nervous after being stopped by police, they are instructed to say: "While it is true that most people are nervous when stopped by law

enforcement, my training and experience has shown that once persons who are not engaged in serious criminal activities learn what type of enforcement action is being taken, their nervousness subsides.”

Black Asphalt: The Black Asphalt Electronic Networking & Notification System is used to share reports of traffic stops, most related to drug enforcement, among member law enforcement officers and agencies across the country. Indicators that made police suspicious have included:

- Dark window tinting
- Air fresheners or their smell
- Trash littering a vehicle
- An inconsistent or unlikely travel story
- A vehicle on a long trip that is clean or lacks baggage
- A profusion of energy drinks
- A driver who is too talkative, or too quiet
- Signs of nervousness, such as sweating, swallowing or redness of face
- Designer apparel or other clothing that seems inappropriate
- Multiple cellphones

Frye said the firm does not teach racial profiling. “We never have and we never will!” BlackAsphalt.org proclaims on its Web site. “We teach officers to conduct legal traffic stops and how to identify major criminal activity by taking into account the totality of the circumstances on each and every traffic stop.”

Frye, who was also a former Nebraska state trooper, said Desert Snow instructors look for “indicators” of criminal activity. Indicators cited in Desert Snow training materials obtained by The Post include air fresheners hanging from rearview mirrors, trash on the floor and the driver’s demeanor, such as being too talkative or too quiet.

“Indicators are seemingly innocent things heard, smelled and/or observed during an enforcement encounter, including the contents of the vehicle, what was said, and the manner in which it was said, which when taken in their totality and compared with the innocent motoring public and traffic patterns of that geographic area, along with the officer’s training and experience, show reasonable suspicion or probable cause that criminal activity was, is, or will be taking place,” the material states.

A cornerstone of Desert Snow’s instruction rests upon two 1996 U.S. Supreme Court decisions that bolstered aggressive highway patrolling. One decision affirmed the police practice of using minor traffic infractions as pretexts to stop drivers. The other permits officers to seek consent for searches without alerting the drivers that they can refuse and leave at any time.

“Police Officers Are Not Required To Inform A Motorist At The End Of A Traffic Stop That He Or She Is ‘Free To Go’ Before Seeking Permission to Search The Motorist’s Car,” the training

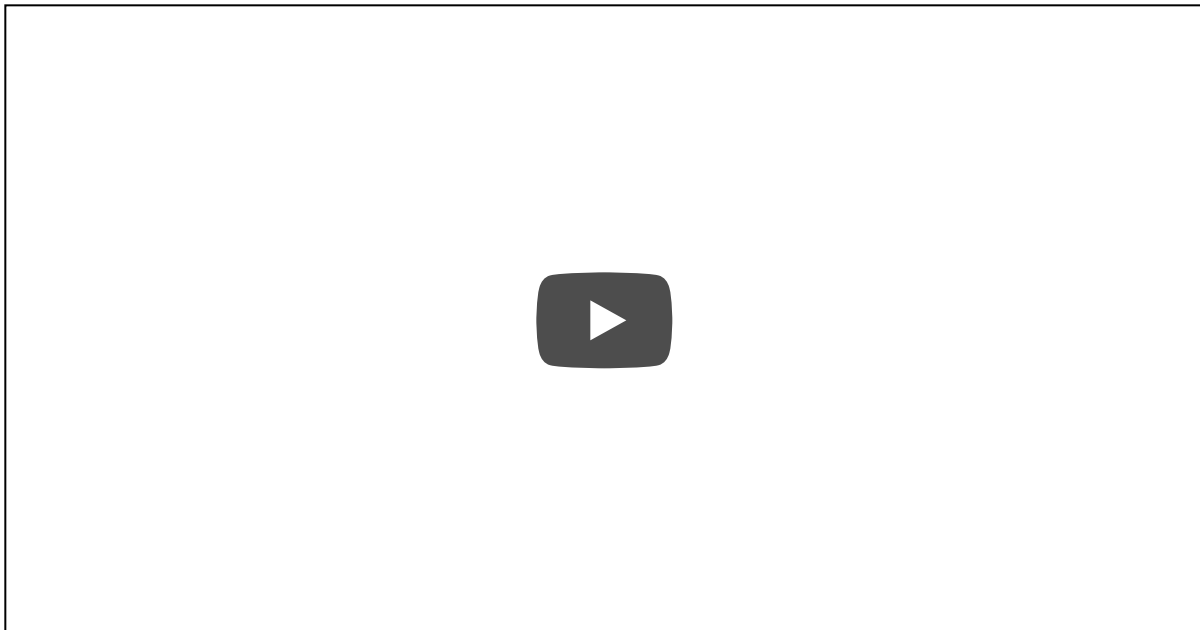
material says.

Desert Snow urges police to work toward what are known as a “consensual encounters” — beginning with asking drivers whether they mind chatting after a warning ticket has been issued. The consensual chat gives police more time to look for indicators and mitigates later questions in court about unreasonably long traffic stops.

They're also instructed in how to make their stops and seizures more defensible to judges. “One Of The Most Critical Areas Scrutinized By The Courts Is The Reason For And The Length Of Any Detention,” the material says.

As business boomed, David bought a yacht and a condo in Cabo San Lucas, Mexico, and invited associates down for fishing trips, interviews and documents show. Starting in 2010, the firm began spending tens of thousands each quarter on the lobbying firm Brandon Associates to stoke interest in interdiction training in Washington — almost \$200,000 in all through last year. Brandon Associates has arranged meetings with senior officials at DHS, documents show.

Success has not shielded the company from criticism. Some of it has come from current and former Black Asphalt users who felt the site tolerated unprofessional behavior in its secure chat rooms. “We have to start policing ourselves and remembering that we are professionals,” wrote DEA Agent Donald Bailey, now retired, in a chat room. “I have seen some postings and language on here that have made me cringe and can't believe that it was ever posted.”



Computer-generated animations made by a Desert Snow marketing official featuring a cartoon cop called Larry the Interdictor have drawn especially ribald commentary. One is set in a courtroom where Larry insinuates that the defense lawyer questioning him is gay. He testifies that he disdains “Rastafarian douchebags who do nothing all day but smoke weed, live with their mom, and beat off to kiddie porn.”

The video prompted hoots from Black Asphalt users online.

"omg i'm still rolling!!!! this has got to be the funniest stuff ive ever heard!" one user wrote.

"DUUUUUUUUUUUUDE! That crap is HILARIOUS!" said another.

"Thanks for the video laughs," Joe David wrote. "It was great."

Larry the Interdictor was created by Hain, the Kane County deputy and author of "In Roads."

Hain told The Post said he made some of the videos as a hobby, on his own time. Others were part of a monthly marketing initiative at Desert Snow "to deliver information and statistics in an entertaining format," he said. He said he did not write all the scripts but declined to detail who did.

The Black Asphalt report narratives sometimes went on for 400 words or more, and included an officer's intent and attitude toward defendants. Some of them were meant to be humorous and earthy. This one, about a \$2.5 million cash seizure, went out to 18 DEA agents:

"The driver starred [sic] blankly to the ditch, more than likely with visions of himself running through it," one Black Asphalt report said. "But as he was fantasizing about freedom, it gave me another good look at his carotid and he was thumping. Crazy thing, but my mouth went dry. I could see that this guy was truly scared, and all I could think was 'oh boy this is going be good.'"

Law enforcement authorities in several states began cautioning that Black Asphalt might run afoul of laws requiring prosecutors to disclose any relevant case information to criminal defendants. In several interviews with The Post, Black Asphalt members said they did not share the reports with their superiors or prosecutors because they did not think they had to.

In 2012, Kurt F. Schmid, executive director of the federal HIDTA task force in Chicago, wrote in a letter to the International Association of Chiefs of Police that such reports are "outside the bounds of [law enforcement] information flow" and so would not be made available to defendants.

"Courts around the country are extremely vigilant at ensuring appropriate disclosures are made to defense counsels at criminal trials," said the letter, a copy of which was obtained by The Post.

Frye has recently said in a posting on Black Asphalt that officers can address any disclosure issues by sharing Black Asphalt reports with their prosecutors. "The whole discovery argument is BS and ultimately comes down to the officer working with their prosecutors to determine what they need for each case," he wrote.

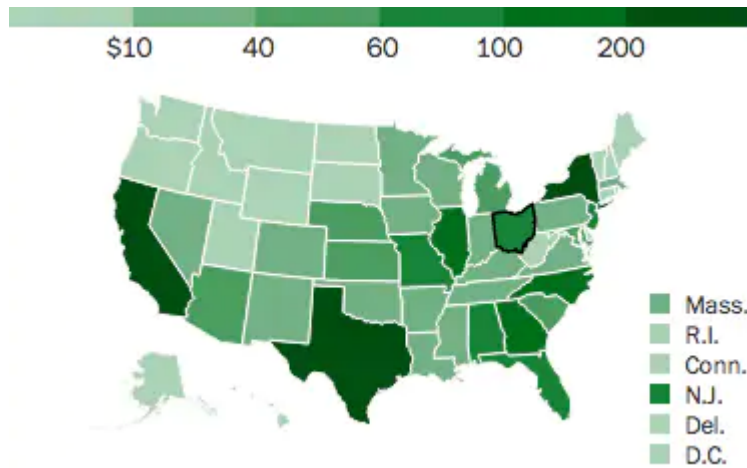
Iowa and Kansas prohibited police from filing reports into the system. Kevin Frampton, director of investigative operations at the Iowa Department of Public Safety, wrote on March

1, 2012, that the state attorney general determined that state police “sharing intelligence or investigative information with a private company creates an increased risk for civil and criminal liability for officers and the department.”

Civil forfeiture cash seizures

Under the federal Equitable Sharing Program, police have seized **\$2.5 billion** since 2001 from people who were not charged with a crime and without a warrant being issued. Police reasoned that the money was crime-related. About **\$1.7 billion** was sent back to law enforcement agencies for their use.

Amount seized by all agencies (in millions)



Select a state to see local agency rebates

Scroll for more

New York City Police

Participated in 2,167 seizures

\$27 million

of \$134.2 million

Los Angeles County Sheriff, Calif.

Participated in 2,564 seizures

\$24.3 million

of \$126 million

Los Angeles Police, Calif.

Participated in 2,375 seizures

\$18.4 million

of \$86.1 million

Houston Police, Tex.

Participated in 798 seizures

\$14.7 million

of \$63.3 million

Wayne County Sheriff, Mich.

Participated in 530 seizures

\$13.4 million

of \$31.6 million

St. Louis County Police, Mo.

Participated in 644 seizures

\$11.5 million

of \$42.1 million

Douglas County Sheriff, Neb.

Participated in 159 seizures

\$11.5 million

of \$16.2 million

Anaheim Police, Calif.

Participated in 174 seizures

\$11.4 million

of \$32.4 million

Atlanta Police, Ga.

Participated in 827 seizures

\$9.3 million

of \$74.6 million

North Miami Beach Police, Fla.

Participated in 64 seizures

\$9.1 million

of \$30.3 million

Laredo Police, Tex.

Participated in 149 seizures

\$8.5 million

of \$20.1 million

Pomona Police, Calif.

Participated in 120 seizures

\$8.1 million

of \$36.9 million

Amtrak Police, Pa.

Participated in 894 seizures

\$7.9 million

of \$53.2 million

Chicago Police, Ill.

Participated in 634 seizures

\$7.9 million

of \$56.3 million

Milwaukee Police, Wis.

Participated in 1,223 seizures

\$7.9 million

of \$19 million

St. Charles County Sheriff, Mo.

Participated in 329 seizures

\$7.6 million

of \$17.1 million

Las Vegas Metropolitan Police., Nev.

Participated in 243 seizures

\$7.3 million

of \$18 million

Baltimore Police, Md.

Participated in 1,528 seizures

\$7.1 million

of \$18.5 million

Baltimore County Police, Md.

Participated in 981 seizures

\$6.8 million

of \$19 million

San Diego Police, Calif.

Participated in 1,498 seizures

\$6.8 million

of \$31.6 million

Jefferson County Sheriff, Ala.

Participated in 71 seizures

\$6.7 million

of \$11.4 million

DeKalb County Police, Ga.

Participated in 408 seizures

\$6.5 million

of \$41 million

Port Authority Of N.Y. and N.J. Police

Participated in 380 seizures

\$6.3 million

of \$30.5 million

San Diego County Sheriff, Calif.

Participated in 1,511 seizures

\$6.3 million

of \$33.2 million

City Of Phoenix Police, Ariz.

Participated in 483 seizures

\$6 million

of \$15.8 million

Note: Table does not include statewide agencies or task forces and only includes local agencies who received more than \$250,000.

Source: A Washington Post analysis of Department of Justice data.

On June 11, 2012, Assistant U.S. Attorney Deborah Gilg in Nebraska warned in a letter to state law enforcement there that such reports “may, in fact, violate state criminal law(s) and citizens’ civil rights and liberties” because they contained law-enforcement sensitive information and personal data on citizens.

Hoping to maintain confidence in the system and provide an official imprimatur, David and Frye in 2012 asked the Logan County Sheriff’s Department in Guthrie, Okla., to take control of the Black Asphalt system.

"Since taking control of Black Asphalt Law Enforcement Network in August of 2012 the entire website has been overhauled, updated, and improved," Logan County Sheriff Jim Bauman wrote in an open letter to police.

In an interview, Frye acknowledged that he and other Desert Snow trainers were on loan to Logan to help run the system. A search of the term Black Asphalt on Google takes computer users to the Desert Snow site.

David and Frye also have sought guidance from the Bureau of Justice Assistance at the Justice Department. David P. Lewis, a senior policy adviser at Justice, said it was "a positive step" that the network had gone under the authority of Logan County, according to a December 2012 letter obtained by The Post. Lewis said the network was then being used by 12,000 officers who accessed the system 1,000 times a day, an apparent decline from previous years.

"We recognize the unique and innovative nature of the Black Asphalt Web site and its efficacy for law enforcement," Lewis wrote. "However, it is not a criminal intelligence system" subject to federal law.

Lewis pointed out it did not meet federal standards for police intelligence systems, which require police to evaluate the information for relevance and a "reasonably suspected" link to criminal activity. It made 11 recommendations for improving the site, including requiring that BOLOs "be limited to situations of 'significant investigative interest'" and "be based on 'credible and reliable' information."

In June, the Logan County Sheriff's Office announced that it was handing over control of Black Asphalt to the sheriff's office in Kane County. The point of contact is Deputy Ron Hain, the author of "In Roads" and the creator of Larry the Interdictor.

www.washingtonpost.com/sf/investigative/2014/09/08/they-fought-the-law-who-won/

They fought the law. Who won?

Story by : 5-7 minutes

Know your rights: During traffic stops on the nation's highways, the U.S. Constitution's Fourth Amendment protects motorists "against unreasonable searches and seizures." The law also gives police the power to investigate and act on their suspicions.

1. Police have a long-established authority to stop motorists for traffic infractions. They can use traffic violations as a pretext for a deeper inquiry as long as the stop is based on an identifiable infraction.

2. An officer may detain a driver only as long as it takes to deal with the reason for the stop. After that, police have the authority to request further conversation. A motorist has the right to decline and ask whether the stop is concluded. If so, the motorist can leave.

3. The officer also has the authority to briefly detain and question a person as long as the officer has a reasonable suspicion that the person is involved in criminal activity. Reasonable suspicion is based on specific and articulable facts but falls short of the legal standard for making an arrest.

4. A traffic infraction or reasonable suspicion alone do not give police authority to search a vehicle or a closed container, such as luggage. Police may ask for permission to search; drivers may decline. Police do not have to tell drivers that they have a right to refuse.

5. An officer may expand a roadside investigation if the driver's responses and other circumstances justify a belief that it is more likely than not that criminal activity is occurring. Under this standard, known as probable cause, an officer can make an arrest or search a vehicle without permission. An alert by a drug-sniffing dog can provide probable cause, as can the smell of marijuana.

6. Police can seize cash that they find if they have probable cause to suspect that it is related to criminal activity. The seizure happens through a civil action known as asset forfeiture. Police do not need to charge a person with a crime. The burden of proof is then on the driver to show that the cash is not related to a crime by a legal standard known as preponderance of the evidence.

Sources: Jon Norris, criminal defense attorney; David A. Harris, University of Pittsburgh law professor; Scott Bullock, civil liberties lawyer, Institute for Justice; Department of Homeland Security.

Guerrero, a Mexican national with permanent resident status in the United States, was a construction foreman who once served as a church deacon. But on this day in July 2005, he was caught up in a drug investigation, according to legal documents and interviews.

DeKalb Officer Mike DeWald had been watching Guerrero's brother's home as a part of an ongoing investigation into one of the tenants. DeWald asked Guerrero a few questions and Guerrero described his family's travel plans and said he was carrying \$13,630, his attorney later said.

Police brought a K-9 unit to the scene, and the dog indicated the presence of drugs. The officers emptied the family's suitcases onto the pavement, court records show. No drugs were found.

When DeWald found the money, he seized it and began processing it through the federal Equitable Sharing Program.

The money represented several years worth of savings and was intended to pay for land in Mexico and bills for Guerrero's extended family there, according to his attorney, Josh Stone.

Federal prosecutors in Atlanta defended seizing the cash "on grounds that it was furnished or intended to be furnished in exchange for controlled substances."

The prosecutors eventually offered to return half the money, but Guerrero refused. Ultimately, prosecutors agreed to return all the money to Guerrero — but only if he signed an agreement that he would not sue the police or prosecutors. He signed and received his \$13,630 in 2008, three years after his money had been seized. The Post found that more than 1,000 people have signed such agreements to get all or part of their money back.

In one respect, Guerrero was lucky. His construction firm paid a small amount to make his legal struggle possible, and Stone had agreed to do much of the work without pay. Given the time involved, the legal bills would have been \$50,000, Stone said. But he agreed not to press for his fee from the government as part of the settlement.

"We didn't take this case to make money," Stone said. "Most people don't have this kind of money to fight these cases."

In a footnote to his court filings, Stone tried to reframe the circumstances to show the authorities why the stop was so wrong.

"This case should be extremely troubling for any red-blooded American. Jose Guerrero is a legal immigrant to this Country with a stable and exceptional employment record," he wrote. "One can only imagine the cries of outrage if Americans were subject to similar treatment by the Mexican authorities."

Sally Quillian Yates, the current U.S. attorney in Atlanta, told The Post that "under our current office practice, we would not have proceeded forward with this case."

DeWald, who now works for the Sandy Springs, Ga., Police Department, said his decision to seize the money was carefully considered and based on the totality of the circumstances. “There was a lot involved in that case,” he said. He added that highway interdiction is an important tool for police, who strive to make lawful seizures.

“We’re not out here trying to violate anybody’s rights,” he said. “The Fourth Amendment is something we have to hold dear to our hearts. We have to operate within the scope of the law.”

www.washingtonpost.com/investigations/highway-seizure-in-iowa-fuels-debate-about-asset-forfeit...

Controversial seizure in Iowa trigger debate about laws

By Robert O'Harrow Jr. : 11-14 minutes : 11/10/2014



Iowa state troopers stop two California men in a rented car on April 15, 2013. The police stop, search of the car and seizure of more than \$100,000 is at the center of a federal civil rights lawsuit in which the motorists claim their rights against unreasonable searches and seizures were violated. (Image from video provided by Iowa State Patrol)

The two men in the rented red Nissan Altima were poker players traveling through Iowa on their way to Las Vegas. The police were state troopers on the hunt for criminals, contraband and cash.

They intersected last year on a rural stretch of Interstate 80, in a seemingly routine traffic stop that would soon raise new questions about laws that allow police to take money and property from people not charged with crimes.

By the time the encounter was over, the gamblers had been detained for more than two hours. Their car was searched without a warrant. And their cellphones, a computer and \$100,020 of their gambling “bankroll” were seized under state civil asset-forfeiture laws. The troopers allowed them to leave, without their money, after issuing a traffic warning and a citation for possession of marijuana paraphernalia that carried a \$65 fine, court records show.

Months later, an attorney for the men obtained a video of the stop. It showed that the motorists were detained for a violation they did not commit — a failure to signal during a lane change — and authorities were compelled to return 90 percent of the money.

Now the men are questioning the police tactics in an unusual [federal civil rights lawsuit](#). In the suit, filed Sept. 29, William Barton Davis, 51, and John Newmerzhycky, 43, both from Humboldt County, Calif., claim their constitutional rights against unreasonable searches and seizures were violated. They also contend the stop was part of a pattern connected to the teachings of a private police-training firm that promotes aggressive tactics.

In the wake of Sept. 11, 2001, an aggressive brand of policing called “highway interdiction,” which involves authorities seizing money and property during traffic stops, has grown in popularity. Thousands of people not charged with crimes are left fighting legal battles to regain their money. (Gabe Silverman/The Washington Post)

Davis is a professional poker player, and Newmerzhycky worked as glass blower, according to court records. In an interview, Davis said the men felt as though they were being “stalked” by the police.

If allowed to proceed, the lawsuit could illuminate the widespread but little-known police practice known as “highway interdiction.” The suit names [Desert Snow, the Oklahoma-based training firm](#), and its founder, Joe David, court records show. It also names the two Iowa State Patrol troopers who participated in the traffic stop and were trained by Desert Snow.

Desert Snow’s lead instructor, David Frye, said the lawsuit has no merit and contains “outrageous” and “inaccurate” accusations.

“The evidence will show that the individuals who had their money seized were involved in drug trafficking and that the vacuum sealed packages of cash they had in their possession were tied to the sale of narcotics,” Frye said in a statement to The Washington Post. “Desert Snow is a top-notch training program which will continue to teach officers how to legally and professionally identify and apprehend persons involved in criminal activity.”

The case has created a stir in Iowa’s political and law enforcement worlds. The [Des Moines Register](#) wrote about the lawsuit and called for legislative reforms in an Oct. 19 editorial that cited the I-80 seizure and a recent investigation by [The Post](#), which found that police nationwide have seized \$2.5 billion in cash from almost 62,000 people without warrants or indictments under federal civil asset-forfeiture laws since 2001. The laws allow police departments to keep up to 80 percent of the cash they seize.

“As long as police agencies know that all or some of the cash they seize will be funneled back into them, the roadside shakedowns are going to continue,” the Register’s Oct. 19 editorial said.

In September, The Post reported that police trained by Desert Snow, along with those who participate in Black Asphalt, an informal police intelligence network started by the firm, said they had seized more than \$427 million in one five-year stretch. Among other things, Black Asphalt enables police to share tips across state lines about drivers who raise their suspicions.

The troopers in the Iowa case, Justin Simmons and Eric Vanderwiel, were both trained by Desert Snow, court documents show. They also were members of Black Asphalt, according to internal documents obtained by The Post. They were also part of a drug interdiction unit in eastern Iowa.

A spokesman for the Iowa Department of Public Safety said the troopers declined requests for interviews. In response to inquiries by The Post, spokesman Alex Murphy acknowledged that the troopers were still members of Black Asphalt. But he said they had not submitted any information to the network since 2012, when the department prohibited such reporting because of concerns about civil liberties and “an increased risk for civil and criminal liability for officers and the department.”

An earlier Register analysis last year found that 86 percent of warnings and citations issued by Iowa’s aggressive interdiction units between 2008 to 2012 were given to out-of-state drivers. The newspaper reported that the units seized more than \$18 million in drugs and \$7 million in cash from 2011 to 2013.

The stop of the gamblers in Iowa on April 15, 2013, illustrates some of the highway interdiction methods in use nationwide.

Earlier that morning, an officer in Illinois alerted an Iowa trooper to a suspicious red car with Nevada license plates driving west, court records show. When the Altima appeared in Iowa, Trooper Simmons followed it for several miles before pulling it over. He told the motorists that they had been stopped for failing to signal when they passed a black SUV.

Simmons said he was issuing a warning for the failure to signal. After handing over the paperwork, he said the stop was over. Then he asked the driver, Newmerzhucky, if he had “time for just a couple quick questions.”

Police who specialize in highway interdiction use casual conversations to avoid triggering legal questions about the length of stops. If the conversations are consensual, courts consider the added delay to be legal.

Highway police are trained to use the chats as an opportunity to take stock of alleged “indicators” of criminal activity, including nervous speech patterns, a pulsing carotid artery

and inconsistencies in stories. They are also trained to seek permission for warrantless searches.

“Do you got any drugs?” Simmons asked on the video recording that was later obtained by his lawyer. “Any large amounts of U.S. currency?”

“Absolutely not,” Newmerzhycky said.

“Nothing in there? Could I search your car?”

“I don’t see any reason to. I’m not going to consent to that.”

“Okay. I’m just asking you if I can,” Simmons said.

“No.”

At this point, the stop is supposed to come to an end and the driver allowed to leave, unless during the consensual conversation the officer has developed a suspicion — one that can be articulated — that a crime has occurred.

Scholars of constitutional law said that a refusal to consent cannot count as suspicious behavior. Nervousness on its own also is not sufficient to justify continued detention, they said.

But rather than release the motorists, Simmons told them he wanted to bring in an officer with a drug-sniffing dog.

“Could I just call him? Do you want to wait? I’ll call him and just run a dog around it real quick.”

“I’d prefer to be on my way. I mean, I’m telling you the truth, there’s nothing in my car,” Newmerzhycky said.

“I’m just asking you if you want to wait for me to run a dog around,” Simmons said. “I’d like to.”

“Do I have the right to say ‘no’ to that?”

“You do.”

“I’d prefer to be on my way.”

At that point, the stop had gone on for almost half an hour. Simmons told Newmerzhycky that you “seem like you were really nervous” and that “I’ve seen your pulse running here.”

Minutes later, Trooper Vanderwiel arrived with the dog, which alerted on the back area of the car. That gave Simmons and Vanderwiel probable cause to search the vehicle without a warrant or the driver’s consent. They found more than \$100,000 in cash, most of it shrink-wrapped in plastic. They also found an herb grinder that contained some flakes of marijuana.

“I’ll be honest with you, we didn’t find anything illegal, so you are not arrested, right?” Simmons said on the video. “But you are being detained.”

In a recent interview with The Post, Davis, the passenger in the car, said the men lied because they were concerned the police might take the money.

The troopers took the men to a state highway maintenance facility, where they were joined by two state investigators and continued to question the men about the money and examine the car. Two hours later, they let the men go — without their cash. Newmerzhycky was given a drug-paraphernalia citation for having the grinder, a misdemeanor.

Davis and Newmerzhycky hired a lawyer and challenged the seizure in Iowa, citing the video of the stop. In September 2013, authorities reversed course and cut a deal to give back 90 percent of the money.

That wasn’t the end of it, though. The day of the traffic stop, one of the state investigators had called authorities in Humboldt County, Calif., who raided the men’s homes the next day. They found that each was growing marijuana.

California authorities brought criminal charges against them for unlawful cultivation of marijuana, possession of marijuana with intent to sell, and providing a place for the use, storage, manufacturing of a controlled substance.

But the California prosecutor dropped the charges in April after learning more about the circumstances of the traffic stop.

“We’re moving to dismiss in the interest of justice because the officers that conducted the search warrants here in California were given information from an officer who was out of state,” the prosecutor told a judge in Humboldt County. “The officer who was out of state got it from a traffic stop, but the traffic stop was done without probable cause.”

The prosecutor added: “The People realize that everything else would be fruit of the poisonous tree.”

Their attorney would later note in legal filings that Davis and Newmerzhycky both had permits allowing them to grow marijuana for personal medicinal purposes, court records show.

After the California case was dropped, Davis and Newmerzhycky hired another lawyer, Glen Downey, to pursue the civil rights claims.

Downey said he believes the evidence will demonstrate that the Desert Snow training encourages police to go too far.

“They’re telling these officers how to do it step by step,” Downey said. “They’re giving them a manual on how to violate motorists’ constitutional rights.”

A spokesman for Iowa Attorney General Tom Miller said the office will represent the police in the lawsuit. In a statement, Miller said that “civil forfeiture law is an important tool needed by law enforcement to deny criminals (especially drug dealers) the fruits of their crimes” and that abuses of the law by police are “isolated.”

www.washingtonpost.com/investigations/dc-police-plan-for-future-seizure-proceeds-years-in-adv...

D.C. police make plans for money from civil seizures before they occur

By Robert O'Harrow Jr. and : 9-11 minutes : 11/15/2014



D.C. Police Chief Cathy Lanier, left, said that the city's civil asset seizures are not focused on raising revenue, but on "removing the profit gained from facilitating a crime." (Matt McClain/The Washington Post)

D.C. police have made plans for millions of dollars in anticipated proceeds from future civil seizures of cash and property, even though federal guidelines say "agencies may not commit" to such spending in advance, documents show.

The city's proposed budget and financial plan for fiscal 2015 includes about \$2.7 million for the District police department's "special purpose fund" through 2018. The fund covers payments for informants and rewards.

The financial details emerged Wednesday, when the D.C. Council's judiciary committee unanimously voted to [forward a bill](#) that would overhaul asset forfeiture laws in the nation's capital. The bill would raise the threshold of proof required for a forfeiture, bolster the rights of individuals whose property has been taken and require that proceeds from seizures under

federal law go into the city general fund, rather than directly to the police department. The full council is set to vote on the bill Tuesday.

Council member Tommy Wells, chairman of the Committee on the Judiciary and Public Safety, said police should not have a financial incentive to make seizures. He said the bill addresses problems that are common across the country.

“All across the nation, law enforcement agencies are directly benefiting from forfeiture,” said Wells (D-Ward 6), who is leading the effort to reform asset forfeiture in the District. “In those places, forfeiture proceeds go directly to the law enforcement entity, creating at best the appearance of a conflict of interest, and at worst, an unchecked incentive for slush funds.”

In the wake of Sept. 11, 2001, an aggressive brand of policing called “highway interdiction,” which involves authorities seizing money and property during traffic stops, has grown in popularity. Thousands of people not charged with crimes are left fighting legal battles to regain their money. (Gabe Silverman/The Washington Post)

In the wake of Sept. 11, 2001, an aggressive brand of policing called “highway interdiction,” which involves authorities seizing money and property during traffic stops, has grown in popularity. Thousands of people not charged with crimes are left fighting legal battles to regain their money. (Gabe Silverman/The Washington Post)

Civil forfeiture laws permit local and state police to take cash, cars, homes and other property from people suspected of involvement in drug trafficking or other wrongdoing without proving a crime has occurred. Police can make seizures under state or federal laws.

Since 2009, D.C. officers have made more than 12,000 seizures under city and federal laws, according to records and data obtained from the city by [The Washington Post](#) through the District’s open records law. Half of the more than \$5.5 million in cash seizures were for \$141 or less, with more than a thousand for less than \$20. D.C. police have seized more than 1,000 cars, some for minor offenses allegedly committed by the children or friends of the vehicle owners, documents show.

When D.C. police seize cash or property under District law, the proceeds go into the city’s general fund. But proceeds of seizures made under federal law go directly to the police department through the Justice Department’s [Equitable Sharing Program](#), which allows local departments to join with federal agencies in forfeitures and keep up to 80 percent of the proceeds.

District financial records show that D.C. police receive about \$670,000 annually from the Equitable Sharing Program. About \$30,000 in proceeds from forfeitures under District law go into the general fund.

Justice Department spokesman Peter Carr declined to discuss civil asset forfeiture practices in the District. He said police agencies can participate in the program only if they comply with its guidelines. Among other things, the guidelines say that agencies “should not

‘spend it before you get it’ or budget anticipated receipts. Receiving agencies may not commit to the spending of sharing monies for a certain purpose in advance.”

In a statement, D.C. Police Chief Cathy L. Lanier said the department is not building its budget with the proceeds of civil seizures but is using them “to augment the reward pool of funding and confidential fund programs (witness protection, rewards for information in homicides).”

Lanier said the department’s focus is not on generating revenue but on “removing the profit gained from facilitating a crime. By forfeiting those assets, the expansion of criminal activities can also be reduced.”

The council’s reform effort began last year after the Public Defender Service for the District filed a class action lawsuit against the city, alleging that police violated the constitutional rights of residents in the process of seizing their cars. Among other things, the Public Defender Service focused on a city requirement that vehicle owners post bonds of up to \$2,500 before they were permitted to challenge seizures.

In August 2013, all parties agreed to put the lawsuit on hold as the District worked to modify its forfeiture laws.

Wells said the proposed bill would create a fairer system under District law by scaling back the bond requirement, creating a clearer appeals process and imposing a requirement for notifying property owners within 10 business days of a seizure.

But the bill has been opposed by law enforcement officials, partly for the same reason other reform efforts across the country have been stymied: money. The officials also said it would create an administrative burden. In addition to tightening oversight and the rules for civil seizures, the District proposal would cut back on revenue.

“Enacting this Bill would almost certainly decrease the number of successful forfeiture-cases, which would lead to a loss of significant forfeiture revenues,” D.C. Attorney General Irvin B. Nathan warned in a statement to the council last year.

Nathan, who has resigned effective Monday, did not respond to a request for an interview. But a knowledgeable official who spoke on the condition of anonymity because the negotiations are ongoing said that Nathan was addressing an earlier version of the bill. The official said the attorney general’s office thinks that the current version is an improvement but declined to provide details.

The bill would require that the federal proceeds from seized property go into the city’s general fund rather than to the department. Because the Equitable Sharing Program requires that seizure proceeds go to the department, D.C. police would effectively be blocked from participating in the program and using the federal law. That would force city police to make all seizures under District law, which already requires that seizure proceeds go into the general fund.

Wells said the general fund provision in the bill cannot take effect until fiscal 2019, because the city has already budgeted the anticipated proceeds to that point.

“That is personally offensive to me,” said Wells, whose council term ends in January. “I want to make it fair. There is a financial incentive not to do that.”

In a fiscal impact statement Wednesday, the city’s chief financial officer, Jeffrey S. DeWitt, said that the bill “could reduce federal resources received by the District by approximately \$670,000” each year if the general fund provision takes effect.

Wells and the Public Defender Service contend that the department’s aggressive use of seizure laws — originally intended to fight drug kingpins and deprive them of ill-gotten riches — has had a disproportionate impact on the poor and working class.

One case cited by the [Public Defender Service](#) involves Sharlene Powell, who had worked for three decades as a Postal Service employee. She loaned her car to her son, who was stopped and arrested on a misdemeanor drug offense. Prosecutors dropped the charges, but District police kept the car. To get her car back, Powell had to pay a \$1,772 “penal sum” bond to challenge the seizure, the Public Defender Service said in a statement last year to the judiciary committee.

In response to questions about seizures, the police department directed The Post to a general order signed by Lanier called “Handling and Accounting for Seized and Forfeited Property.” The document, which spelled out procedures police should follow, was released two days before a council hearing in July 2013 about civil asset forfeiture.

“We know this has been getting a lot of attention nationally, and we agree that there have been troubling practices around the country,” Lanier said in her statement. “These programs must have strong oversight and supervision.”

Darpana Sheth, an attorney with the [Institute for Justice](#), a nonprofit public interest law firm that advocates for seizure reform, said the District bill could have a wide impact.

“Short of eliminating civil forfeiture entirely, this bill is a good model to strengthen protections for property owners and remove the profit incentives that have been fueling the District’s aggressive seizing of people’s property,” she said.