

The Washington Post

February 16, 2012

By Editorial Board

Motel Owner Faces Asset Forfeiture Despite Innocence

THE MOTEL CASWELL, a modest motel just outside of Boston, has been owned by proprietor Russell H. Caswell's family for 60 years. Now he may lose it, if the Justice Department gets its way.

The motel is the target of an asset forfeiture proceeding that entitles the federal government to seize property that has been used in the commission of a crime. This is true even if the owner is not accused of criminal wrongdoing. Local law enforcement groups that team up with the federal government may be awarded up to 80 percent of the proceeds from such seizures. According to the Institute for Justice, which is representing Mr. Caswell, such "equitable sharing" payments from the federal government to states have increased dramatically in recent years, from \$200 million in 2000 to roughly \$400 million in 2008.

A potential windfall is not the only reason local law enforcement organizations join in these proceedings. In many cases the federal law allowing civil asset forfeiture is more relaxed than local laws, which often set much higher bars before an owner may be stripped of his property.

Like many businesses in Tewksbury, the Motel Caswell has experienced its share of

crime, or maybe more than its share. According to court documents and news reports, the Motel Caswell has been the scene of at least 100 drug investigations since 1994, which breaks down to about five per year. The federal government cites seven such cases between 2001 and 2008 as proof that the motel is the locus of criminal activity.

The government has never contended that Mr. Caswell took part in or benefited from these crimes. U.S. law enforcement officials say they have nothing against Mr. Caswell, just his property. In 2009, the Justice Department filed a case titled *United States of America v. 434 Main Street, Tewksbury, Massachusetts*. A government win could force the sale of the motel, which has been assessed at more than \$1 million. The proceeds could be split between the federal government and the Tewksbury Police Department, which helped assemble the case. Mr. Caswell and the Justice Department squared off in court this week and are awaiting a judge's decision on whether the case should proceed.

Federal law enforcement officials say public safety — and not money — is what motivates the move to seize crime-ridden properties such as Motel Caswell. They note that Mr. Caswell and others facing the loss

of property have the opportunity to ward off seizures by showing that they are "innocent owners." But this is problematic: While the federal government bears the burden of proving that the property in question was used "in any manner or part" in criminal activity, the burden then shifts to the owner to prove he had no connection to the crimes and that he took steps to prevent or mitigate against them.

There are better alternatives to address legitimate public safety goals. Most jurisdictions have nuisance laws that can be used to force owners to literally and figuratively clean up their properties. Criminal forfeiture proceedings entitle the federal government to seize property used in the commission of crimes or believed to have been purchased with illicit proceeds. But unlike civil asset forfeiture, criminal forfeiture can take place only if the government wins a conviction against the owner. This approach is by far the fairer process, providing the government with the tools it needs to thwart criminal enterprises while protecting innocent owners from possible exploitation and ruin.