

POLICING FOR PROFITS

Guilty or not, RICO victims lose millions.

By Mark Flatten
Tribune writer

Police and prosecutors say racketeering and forfeiture laws are being used to break the financial back of organized crime. They say the laws target "high level" drug lords, making them pay for their crimes and the costs of catching them. They say the innocent do not get hurt.

But a seven-month *Tribune* investigation shows drug kingpins are rarely targeted in state racketeering and forfeiture actions.

At best, the investigation — based on a computer analysis of more than 4,000 court cases — shows the laws are used to target small-time drug peddlers and users. At worst, they are being used against the innocent.

But the laws, generically called RICO after the federal Racketeer Influenced and Corrupt Organizations Act, have accomplished one thing. They have become a gold mine for law enforcement. Statewide, police and prosecutors rake in an average of more than \$21 million per year through forfeitures.

They take the money through laws that are skewed in their favor.

And the people they take it from find they are not afforded the same constitutional and legal protections given to criminals.

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Policing

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The *Tribune's* analysis of virtually every RICO case filed by nine local agencies since Jan. 1, 1990, found:

■ Nearly three-fourths of the people who lose property in forfeiture cases are never charged with a crime.

■ About two-thirds of the people who had property seized had no criminal records in Maricopa County.

■ One of every six people whose property was seized was an uninvolved third party who was not even present when the property was taken.

Typically, these were parents, siblings, boyfriends or girlfriends who entrusted their cars or other property to someone who was arrested on a narcotics-related charge.

■ More than \$4 million in cash — 54.8 percent of that taken — was seized from people who were never charged with a crime.

■ More than 800 cars — 72 percent of those taken — were seized from people who were never charged with a crime.

■ More than 500 guns — 65.6 percent of those taken — were seized from people who were never charged with a crime.

■ Of the more than 2,400 people whose property was seized, only one in five was ultimately convicted.

■ Only one in 20 went to prison.

■ One in 40 went to prison for five years or more, even though those are the people most likely to be the kingpins at which the law is aimed.

■ For every person imprisoned five years or more, six uninvolved third parties lost property to forfeitures.

■ Despite the law's stated aim of breaking wealthy crime organizations, the average cash seizure is \$3,063.

"The magnitude of the statistics amazes me, the fact that it happened doesn't surprise me," said Phoenix attorney Michael Black, who has extensive experience in forfeiture cases. "It shows what a moneymaking deal it is."

But prosecutors said the statistics are irrelevant because it is not important whether a property owner was involved in a crime, but rather whether the property itself was involved.

Richard Mesh, who handles RICO cases as head of the organized crime division of the Maricopa County Attorney's Office, says he does not believe innocent people get hurt by RICO. He says innocent people have no trouble accounting for their money — where they got it and how they spent it.

"Innocent people come in and they have lots of stuff," Mesh said. "They have really legitimate-sounding reasons, and I can figure out in five or six minutes if they are telling the truth."

The power of RICO, as defined in a

forfeiture adopted by prosecutors statewide, is that it "destroys the economic base necessary for the continuation of illegal enterprises and attacks the economic incentive to engage in organized criminal activity."

Yet the *Tribune's* study supports the conclusion of the state Auditor General's Office, which issued a six-page opinion in January stating that forfeiture laws do not target major criminals because they are too broad and include too few protections.

Because police and prosecutors keep the profits of all forfeitures, the laws encourage the filing of marginal cases, particularly those with the potential for large cash seizures, the report said.

"Not only are the current laws broad, but there are few, if any, controls over the process," the auditor general said. "Because law enforcement agencies may now benefit directly, there is a danger they will target suspects based on the value of the suspect's assets and/or target assets for seizure before an investigation is begun or charges are filed. The current laws as written and applied can result in abuse and unfairness."

The auditor general has joined a growing number of critics questioning whether the goals of RICO laws have simply become a means of raising money through the confiscation of private property.

"If you talk to law enforcement people on an informal basis — they won't say this formally — they are more interested in money than they are in getting drugs off the street," said Larry Debus, a private attorney and former Phoenix police officer. "So if they have a choice between getting \$100,000 or getting a half-pound of cocaine, they'll go after the money."

Chandler police, for instance, took no drugs off the street when they seized \$12,000 from Apostolos Dimitriou in May 1992.

Dimitriou, owner of a Greek restaurant, was never accused of anything illegal.

His son, Alex, and an acquaintance, Porfirio Velasco, had arranged to buy a kilogram of cocaine while Dimitriou was away, according to court records. It turned out the supplier was undercover Chandler police officer Jess Boggs.

When the deal was complete, officers burst in. They arrested Alex and Velasco. They took the money that was to be used to buy the cocaine.

Then they searched Dimitriou's home and found a safe in his bedroom. It contained \$12,000 and several vintage baseball cards.

Dimitriou has asked a judge to order the \$12,000 returned. He says the money was earned from the restaurant he has owned for 15 years.

Chandler police say the money is the profit of his son's drug trade — profit

Dimitriou's claim did not include his son's Nolan Ryan rookie baseball card worth about \$1,300, a 1956 Mickey Mantle baseball card worth about \$1,500 or a 1984 Michael Jordan card worth as much as \$4,500, all of which were forfeited.

Dimitriou did not respond to requests for an interview.

His lawyer, Greg Clark of Phoenix, said his case shows it is not just the bad guys who get hurt by RICO.

"Parents are the ones that get burned a lot of the times," he said.

Statewide, RICO laws are being used to funnel money directly into the coffers of the police and prosecutors who seize it, according to disclosure reports examined by the *Tribune*.

Those who lose property quickly learn they are not innocent until proven guilty because RICO actions are civil, not criminal.

Indeed, RICO laws are like none other in the American judicial system.

It is the defendant — the owner of seized property — who must prove innocence in a RICO case. And the owner must meet a higher standard of proof than the prosecution.

To seize your property, the prosecutor need only show probable cause to believe it was involved in a crime.

To get it back, you must prove you are innocent or that no crime was committed.

And the standard you must use is "a preponderance of evidence" — a more rigorous standard than the prosecution's probable cause.

But prosecutors say innocence and guilt are irrelevant in RICO cases.

Cameron Holmes, the assistant attorney general who drafted most of the state's racketeering and forfeiture laws, said RICO cases are civil and independent of criminal actions.

The intent of RICO laws is to compensate society for the ills caused by drugs and other types of crime, not to punish people, Holmes said.

"We have social damages," Holmes said. "Somebody has to pay for it. Is that most fairly placed on the taxpayers or is it more fairly placed on people that have — not criminally and not necessarily intentionally or maliciously — but have allowed their property to be a contributor to the cost?"

Holmes objected to the *Tribune's* study because he said it does not adequately take into account the fact that someone might be charged under a different name, or that charges might not be filed against someone who completes a drug treatment program.

Holmes also said it is inaccurate to track the cases of property owners whose assets were taken rather than the person who was arrested when the property was seized.

The *Tribune* based its study on

documents. People who were not indicted because they completed a diversion program were not listed as having been charged. Those who were indicted and later had charges dropped after completing a diversion program were listed as having been indicted.

Private attorneys who handle RICO cases say Holmes' arguments are an attempt to ignore the shortcomings of RICO and amount to playing word games with people's lives.

When the government takes a person's cash, car or house, it is indeed punishment, said Tonya McMath, a Phoenix lawyer with extensive experience in forfeiture cases.

Forfeiture allows the government to exact punishment in civil cases even though it does not have enough evidence to justify punishment in criminal court, she said.

"Beyond a doubt it's punitive toward the property owner," McMath said.

"When the state is the one that is seeking to bring its sanctions to bear, be it criminal or civil, they should bear the ultimate burden of proof. Probable cause is a small showing. At a minimum the state should have the ultimate burden of persuasion by preponderance of the evidence."

Regardless of whether punishment is a motive in forfeitures, it is clear there is a profit motive in the law.

Once an agency obtains a forfeiture order, it can use the property or sell it for profit. Typically forfeiture profits are divided among the agencies that contributed to the case.

RICO has proved especially lucrative for the nine agencies the *Tribune* studied. They raised \$26.5 million since mid-1991, according to disclosure statements.

Chandler police alone profited by \$1.7 million, a hefty supplement to the department's \$10.2 million annual budget.

"What they want is money," said defense attorney Debus, who has handled numerous RICO cases. "They get to keep the cars and drive them. They get to keep the money within the police department and they don't have to account for it."

Prosecutors moved to blunt RICO criticisms in September, when they adopted a code of ethics for forfeitures, Maricopa County Attorney Richard Romley said.

If prosecutors do not apply the statutes ethically, there is a risk the Legislature will repeal them, he said.

"The purpose behind the forfeiture laws was to get the ill-gotten gains of certain individuals," Romley said. "I truly believe it was mainly geared toward the high level dealers. Innocent third parties, even with some knowledge, doesn't necessarily mean you should be making them be penalized as well. I have a problem with that."

	ALL AGENCIES STUDIED	ARIZONA ATTORNEY GENERAL'S OFFICE	CHANDLER	DEPARTMENT PUBLIC SAFETY	GILBERT	MARICOPA COUNTY ATTORNEY'S OFFICE	MESA	PHOENIX	SCOTTSDALE	TEMPE
PROPERTY OWNERS INDICTED*	2,417 property owners 28% INDICTED 72% NOT INDICTED	69 property owners 52.2% INDICTED 47.8% NOT INDICTED	135 property owners 37.7% INDICTED 62.3% NOT INDICTED	139 property owners 14.8% INDICTED 85.2% NOT INDICTED	13 property owners 15.4% INDICTED 84.6% NOT INDICTED	390 property owners 29.2% INDICTED 70.8% NOT INDICTED	63 property owners 47.6% INDICTED 52.4% NOT INDICTED	1,249 property owners 28.5% INDICTED 71.5% NOT INDICTED	44 property owners 29.6% INDICTED 70.4% NOT INDICTED	304 property owners 17.5% INDICTED 82.5% NOT INDICTED
CASH SEIZED	\$7,401,458 total cash seized 54.8% NOT INDICTED 45.2% INDICTED 3.2% RETURNED	\$279,194 total cash seized 5% NOT INDICTED 95% INDICTED 0% RETURNED	\$2,808,733 total cash seized 56.7% NOT INDICTED 41.3% INDICTED 4.1% RETURNED	\$423,045 total cash seized 84.8% NOT INDICTED 15.2% INDICTED 1.2% RETURNED	\$57,072 total cash seized 99% NOT INDICTED 1% INDICTED 0% RETURNED	\$708,981 total cash seized 58.6% NOT INDICTED 41.3% INDICTED 4.1% RETURNED	\$930,099 total cash seized 64.2% NOT INDICTED 35.8% INDICTED Less than 1% RETURNED	\$1,752,387 total cash seized 57.3% NOT INDICTED 42.7% INDICTED 3.7% RETURNED	\$120,388 total cash seized 99% NOT INDICTED 1% INDICTED 0% RETURNED	\$302,430 total cash seized 81.2% NOT INDICTED 18.7% INDICTED 7.3% RETURNED
CARS SEIZED	1,147 total cars seized 72.1% NOT INDICTED 27.9% INDICTED 10.6% RETURNED	60 total cars seized 27% NOT INDICTED 73% INDICTED 0.3% RETURNED	45 total cars seized 82.3% NOT INDICTED 17.7% INDICTED 6% RETURNED	57 total cars seized 87.7% NOT INDICTED 12.3% INDICTED 8.7% RETURNED	11 total cars seized 73% NOT INDICTED 27% INDICTED 45% RETURNED	183 total cars seized 71% NOT INDICTED 29% INDICTED 12% RETURNED	32 total cars seized 66% NOT INDICTED 34% INDICTED 8.25% RETURNED	608 total cars seized 75.4% NOT INDICTED 24.6% INDICTED 20.8% RETURNED	29 total cars seized 68% NOT INDICTED 31% INDICTED 0% RETURNED	116 total cars seized 79.4% NOT INDICTED 20.6% INDICTED 18.9% RETURNED
GUNS SEIZED	907 total guns seized 65.6% NOT INDICTED 34.4% INDICTED 3.3% RETURNED	NOTE: Due to the complexity of attorney general's case, there was inadequate space in the reporting form used by the Tribune to list all property. Since larger properties typically are seized in attorney general's cases, no accurate figure for the number of guns was tabulated.	72 total guns seized 75% NOT INDICTED 25% INDICTED 0% RETURNED	62 total guns seized 88.7% NOT INDICTED 11.3% INDICTED	0 total guns seized	133 total guns seized 62.4% NOT INDICTED 37.6% INDICTED 7.5% RETURNED	24 total guns seized 54.2% NOT INDICTED 45.8% INDICTED 0% RETURNED	422 total guns seized 60% NOT INDICTED 40% INDICTED 1.4% RETURNED	13 total guns seized 61.5% NOT INDICTED 38.5% INDICTED	80 total guns seized 81.25% NOT INDICTED 18.75% INDICTED 6.25% RETURNED

* Property owners are those people whom property is registered, who are identified as the owners in the court file, who are able to show sufficient standing to file a claim in court or, if no other means of identifying true owners exist, are in possession of the property and were served with a notice of seizure. Excluded from the category are registered vehicle owners who, according to court files, sold the vehicle to a defendant who then failed to properly register the transaction. Many cases result in indictments being issued against people other than property owners.

The term "indicted" refers to individuals who were charged with a felony or misdemeanor in court. It includes people charged either through an indictment or through a direct complaint filed by the prosecutor. Indictments are based on records maintained by the Clerk of the Superior Court of Maricopa County. In cases that involve any federal agency, property owners also are checked for federal indictments in the U.S. District Court.

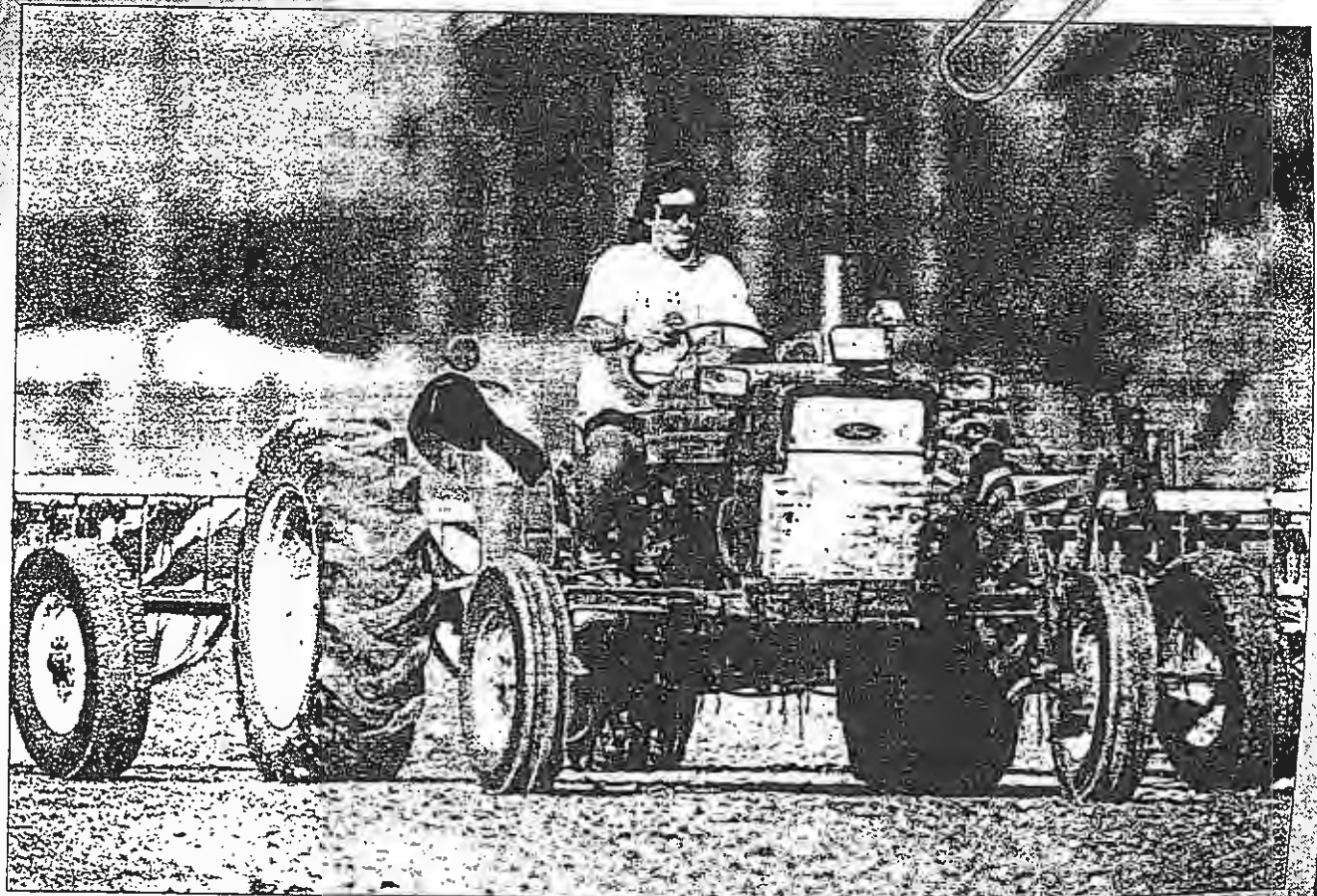
** Cases from the Arizona Attorney General's Office involve only those filed in Maricopa County. The state Department of Public Safety's internal forfeiture unit handles only Maricopa County cases. DPS cases in the state's other 14 counties are handled by local county attorneys.

* Includes negotiated settlements in which the property owner had to pay the prosecuting agency to have the property returned as well as property returned voluntarily by the agency or through a court

** \$54,980 of the cash seized by Gilbert was found in an abandoned storage locker with a large amount of marijuana. Because no one attempted to claim the cash, no one would show up as the indicted property owner. If this case is deducted from the sample, Gilbert seized \$2,092 in cash, about 16.6 percent from individuals who were later indicted.

Analysis of Scottsdale's cases is based on files made available to the Tribune through the city prosecutor's office. Most of Scottsdale's RICO money comes through federal funds as a result of participation in multi-agency task forces. The figure that 99 percent of the cash seized in Scottsdale may be stemming since virtually all of it stemmed from one case.

THE RICO FILES:
GREG RIVERA



DAVE CRUZ / Tribune

Greg Rivera, a 28-year-old Glendale man, works on a farm that has been in his family for 15 years. He also runs a side business, an emissions and auto-body garage. And for the last 16 months he's been working to get his assets back after they were seized on the unsubstantiated word of an informant. Story / A9

Farmer had too many 'toys'

DPS seizes man's property on suspicions

By Mark Flatten
Tribune writer

Greg Rivera works hard for a living. The 28-year-old Glendale man grows, cuts and sells hay from the farm that has been in his family for 15 years. He also runs a side business, an emissions and auto-body garage. In his spare time, Rivera buys old cars, fixes them up and sells them at a profit.

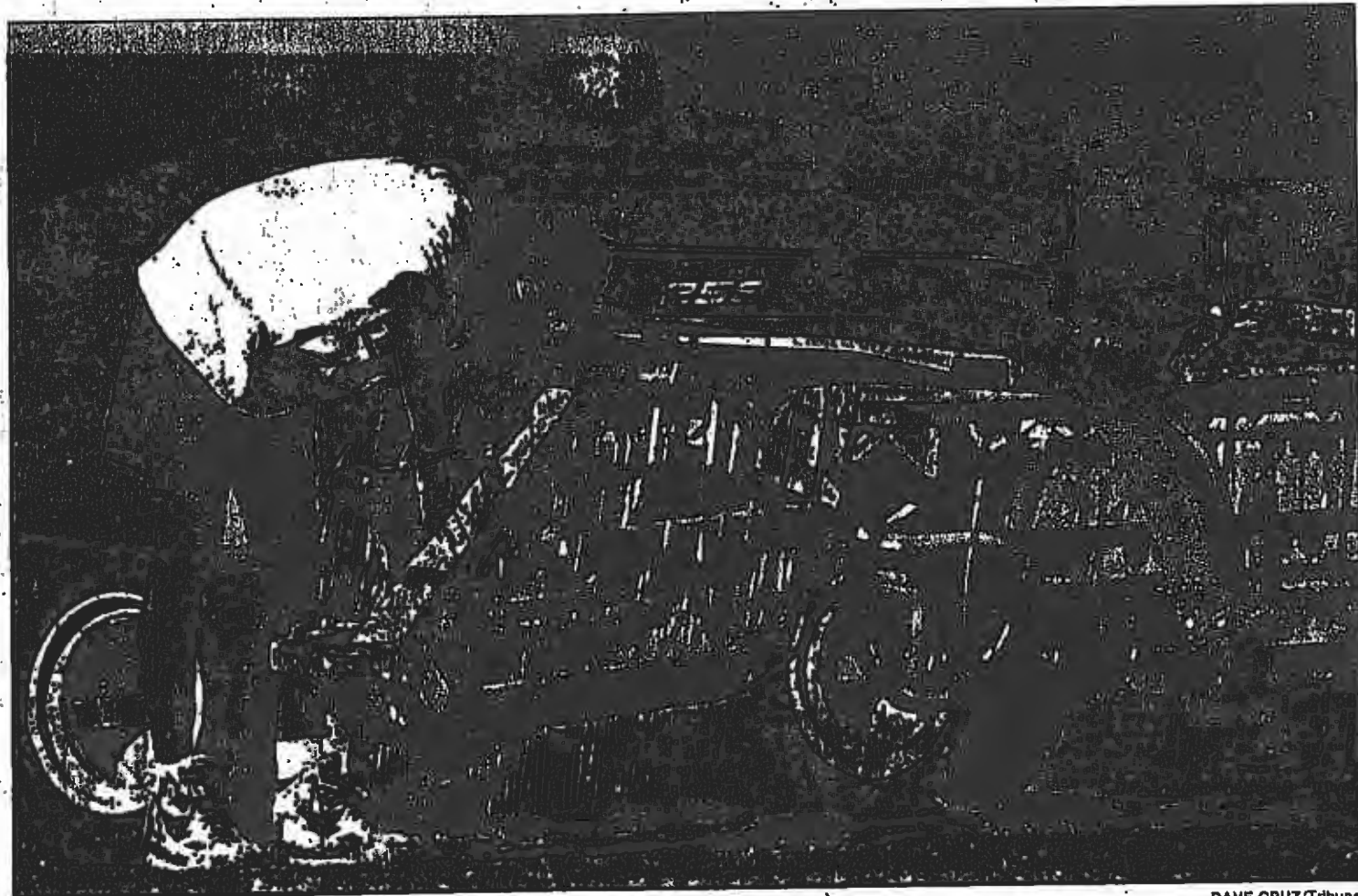
He has no criminal record.

But the unsubstantiated word of an informant and the fact that Rivera seemed to have more property than he could pay for led the state Department of Public Safety to believe he is a drug dealer and seize his assets.

Rivera has spent 17 months trying to get them back.

"It's unreal," is all Rivera will say about his case. He fears that if he says more, it will jeopardize his chances of recovering his property.

The *Tribune* was able to track Rivera's case through court records, police reports and affidavits obtained under the Arizona Public Records law.



Greg Rivera lost his truck, boats, investments and jewelry after a seizure under state RICO laws.

DAVE CRUZ/Tribune

According to the records, DPS attorneys say Rivera is a major marijuana smuggler. Their case is based on statements by Woodrow Robbins, a drug dealer turned informant.

But according to the agency's records, Robbins admits he merely has suspicions about Rivera, and that he never actually saw him selling or supplying drugs.

Even so, DPS officers used Robbins' word to lay claim to Rivera's truck, car, boats, investments, jewelry and even a limousine he built himself out of an old Toyota truck frame. The property was all seized under state RICO laws even though Rivera was not charged with any crime.

No drugs or evidence of drug dealing were found at his home during a five-hour search on June 17, 1992.

Rivera's name first came up in the DPS investigation of Michael LaQuay, who peddled methamphetamine, cocaine and marijuana, according to an affidavit filed by DPS Officer Robert Holley, the lead investigator in the case.

Holley declined to comment on the Rivera case.

According to his affidavit, which was used to obtain a search warrant for Rivera's home, Holley was working undercover in July 1991 and arranged to buy a half-pound of methamphetamine for \$8,000. LaQuay was arrested after delivering the drugs.

In January 1992, Holley learned through an informant that LaQuay was still selling drugs. A second undercover purchase was arranged. Robbins, the informant, was the middleman in that deal.

He was paid \$3,400 for cooperating with DPS in the investigation, according to Deborah Griffith, lead attorney in DPS' asset forfeiture unit.

On Feb. 12, 1992, Robbins gave DPS a business card with a company name of "LaQuay Hay Sales" on it. Robbins said LaQuay had gotten the idea from Rivera.

Robbins "stated that he believed that LaQuay was getting his marijuana from Greg Rivera," according to court records.

"He stated that he had never seen LaQuay purchase marijuana from Rivera. However, LaQuay told Woody (Robbins) sometime in February 1992 that LaQuay had to make a payment to Rivera. Woody did not know what the payment was for, but assumed it was for the purchase of marijuana," court records show.

Robbins also told Holley that Rivera seemed to be very wealthy, had a lot of expensive "toys" and that he had once seen Rivera with marijuana.

Based on Robbins' information,



DAVE CRUZ/Tribune

Deborah Griffith, lead attorney in DPS' asset forfeiture unit, says informant Woodrow Robbins was paid \$3,400 for cooperating with DPS in the investigation.

Holley obtained a search warrant for Rivera's home, according to DPS documents. For five hours investigators searched Rivera's home, but found no drugs, no drug ledgers, no large amounts of cash or anything else that would link him to the drug trade, according to officers' reports.

Before they left, the police took Rivera's 1985 Mercedes-Benz sedan, a 1980 GMC pickup and a 30-foot boat. They also took all the financial records and jewelry they could find, five guns, photographs, videotapes, a videotape recorder, a refrigerator, a microwave oven, a sofa and even "miscellaneous school paper work" located in one of the bedrooms, according to DPS reports.

Rivera's 1988 Chevrolet pickup and 20-foot ski boat, which he was trying to sell, were later seized from a garage where they were being repaired.

Using financial records seized during the search and banking records obtained later, DPS financial analyst Fred Cannon concluded Rivera could not have paid for his luxury items with the income he reported on his taxes, according to DPS.

Cannon concluded Rivera's unexplained income from 1990 to 1992 was more than \$137,000. That, along with Robbins' statements, make up the basis of the DPS case, according to disclosure statements outlining the agency's assertions.

Rivera's attorney, Tonya McMath, declined comment. So did DPS' Griffith. Both cited concerns they might violate ethical guidelines for lawyers if they talk to the media.

In court documents, however, McMath claims Rivera is far from being a wealthy drug dealer. In fact, they describe Rivera as heavily in debt as he tries to pay for the items seized by DPS officers. According to Rivera's claim, the value of the luxury vehicles must be balanced against the loans and other financial arrangements he made to pay for them. They include:

- A \$10,000 loan Rivera obtained from JACL Credit Union to pay for the 1988 pickup, which he bought wrecked with the intention of rebuilding it.

- The joint purchase of the truck Rivera converted to a limousine with Mark Rodriguez, a friend who also has filed a claim for his interest in the vehicle. Rivera and Rodriguez bought the truck in April 1990 for \$13,674. They intended to sell the limousine for a profit, according to Rivera's claim. Rivera said he got the money through hay sales and from his mother, Geraldine Rivera, who also is a claimant in the case.

- A \$19,000 loan from the credit union for the Mercedes sedan. Rivera claims payments are often made by his parents. At the time of the seizure, Rivera was selling the car for \$17,500 but payments stopped when the car was seized.

- A \$37,000 loan to pay for a 30-foot boat, which Rivera bought jointly with Rodriguez for \$56,000 in January 1991. The balance was paid through a loan Rivera obtained from LaQuay, according to his claim. The loan was repaid through the delivery of hay, the claim states. Rivera and Rodriguez continue making payments on the boat.

- A \$25,000 loan from the former Valley National Bank to buy a 20-foot ski boat, purchased jointly with Rodriguez. They continue to make the \$400 monthly payments together, according to the claim. About a year after buying the boat, Rivera and Rodriguez agreed to sell it to a man who made payments until the boat was seized, the claim states.

Other items seized were bought in partnerships with Rodriguez and others with the intent of fixing or reselling them, according to the claim.

Much of the money identified by analyst Cannon through Rivera's financial records represents payments by Rodriguez and others, which were pooled with his own funds to repay loans, according to Rivera.

In his disclosure statement, Rivera said he is a legitimate businessman

who "at no time supplied marijuana, cocaine or any other illegal substance to LaQuay or anyone else."

While Robbins was the only witness claiming Rivera was supplying drugs, Holley continued searching for others to corroborate the story, according to DPS reports.

LaQuay, who is in prison for drug dealing, refused to cooperate with investigators.

People who knew Rivera told investigators he did not sell marijuana, according to DPS reports.

One of those was Rivera's former girlfriend, Ashlynn LeBlanc, who corroborated Rivera's accounts of how he obtained the vehicles.

LeBlanc told Holley that in the years she lived with Rivera, she "never saw him use dope, ever."

A transcript of the tape-recorded interview obtained from court records shows Holley and an officer identified as "unknown DOJ agent" told LeBlanc she could face criminal charges if she did not implicate Rivera as a drug dealer.

Holley also told LeBlanc the Internal Revenue Service would investigate her for conspiracy. The unidentified agent explained she could face 20 years in prison if she violated conspiracy laws and did not cooperate.

LeBlanc stuck by her story, the transcript shows.

In October, 16 months after Rivera's property was seized, Holley found a witness to back up Robbins. The witness is in jail, according to a disclosure statement filed after the *Tribune* began making inquiries about the case.

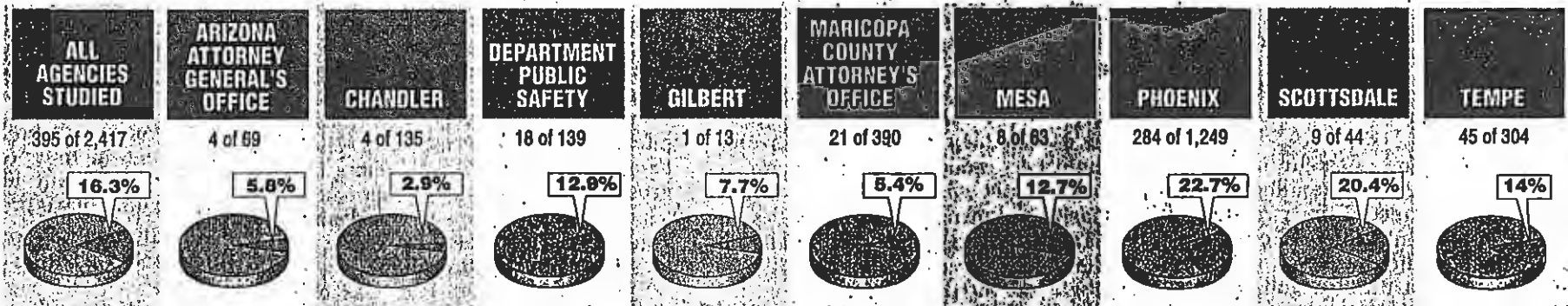
Though she is not identified in documents obtained by the *Tribune*, the woman says she carried on a secret affair with Rivera for nine months. She told Holley that Rivera gave LaQuay large amounts of cash to invest in drugs.

The woman claims Rivera told her the only reason he is fighting the forfeiture is because he fears jail and does not want to "look guilty."

Griffith said in a response to a public-records request that the woman was not promised money for her cooperation. However, Griffith refused to comment on whether any deals were made on pending criminal charges in exchange for her statements.

Griffith said the information gathered by DPS against Rivera, his friends and family was referred earlier this month to the Maricopa County Attorney's Office for possible criminal charges.

THIRD PARTY OWNERS*



* A third-party owner is identified as the owner of the property that was seized while in the possession or control of another person. Excluded from the category are spouses and registered property owners who told investigators they had sold or renounced their claims to the property. The most common exclusion is of people who bought a car and did not reregister the title. The most common third-party property owners are parents, siblings, girlfriends and boyfriends.

THE CHOICE: CROOKS OR CASH



This week the *Tribune* is examining Arizona's seizure and forfeiture statutes, commonly known as RICO laws. Today's installment, the second in a series, looks at how the police and prosecutors spend the money they seize from people, most of whom are never charged with crimes.

Tribune reporter Mark Flatten spent seven months examining thousands of court records and conducting hundreds of interviews. He compiled the information in a computer data base, which formed the basis for this investigative series.

Push for money competes with push for arrests

By Mark Flatten
Tribune writer

Mesa police used about \$350,000 of RICO money to buy a new computer.

The Department of Public Safety used RICO money to buy the governor a new airplane and pay \$4,200 per year to lease him a new Chevrolet Suburban.

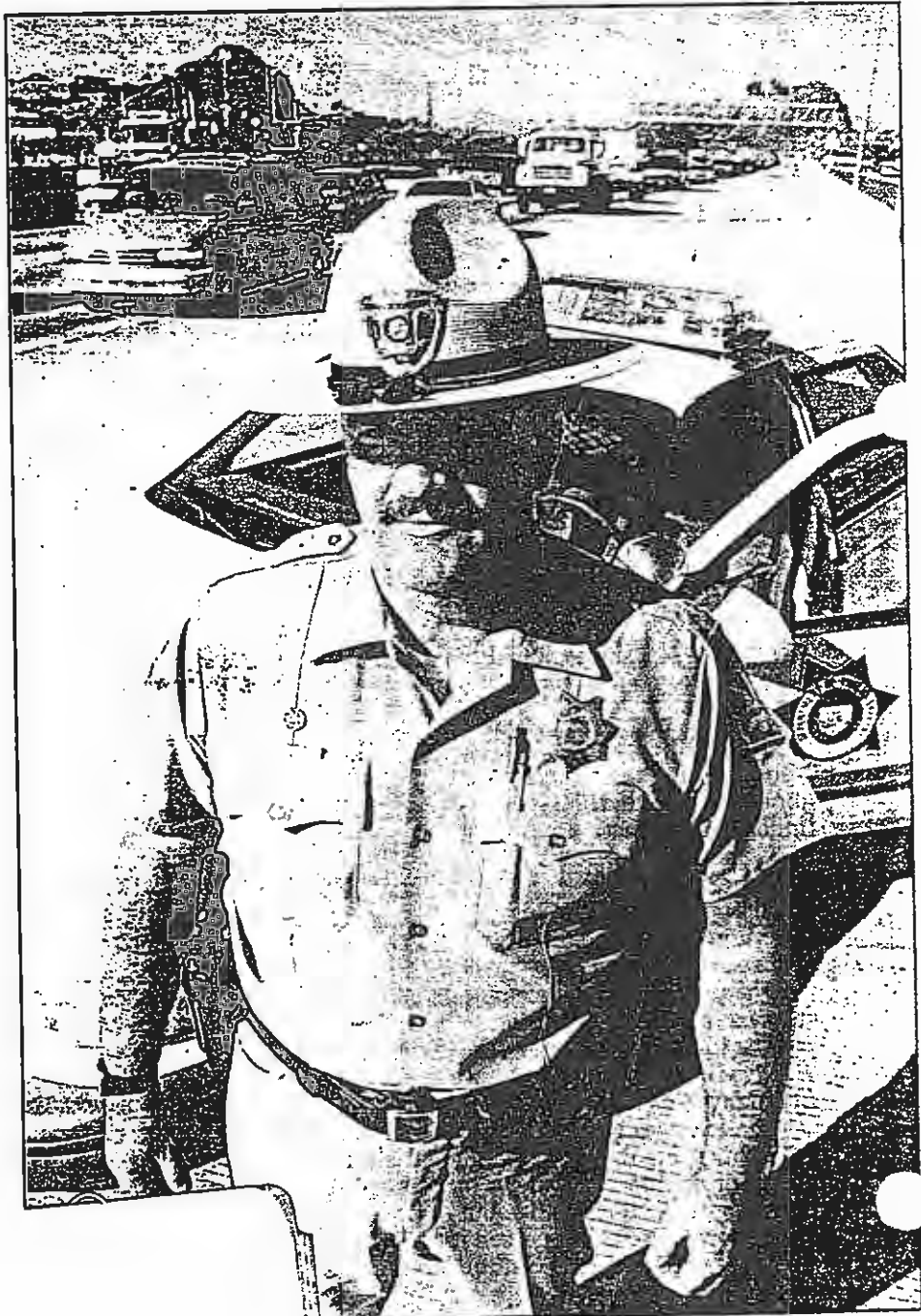
The Arizona Attorney General's Office gave all of its 53 investigators \$1,000 year-end equipment allowances out of its RICO fund.

Chandler police used more than \$120,000 of its RICO money on office furniture.

State racketeering and forfeiture laws, generally called RICO, started out as a tool to take away the profits of crime.

What the Racketeer Influenced and Corrupt Organizations Act and its state-level counterparts have become are important sources of revenue for police agencies. And they have raised a thorny question: Are law enforcement agencies policing for public safety or policing for profit?

"It's big business, that's what it's meant to be," said Skip Fink, a DPS officer, former head of the Arizona



DAVE CRUZ / Tribune

DPS Officer Skip Fink: "Do you go after the extra bucks? You're damned right you do, especially to keep in operation."

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Highway Patrolman's Association and a RICO supporter. "If you catch a bad guy, you can go outside of your budget, here's some extra bucks. What does that make on the other end? Do you go after the extra bucks? You're damned right you do, especially to keep in operation."

Sgt. John Blaisdell, head of the Tempe Police narcotics and forfeiture unit, said, however, that his officers are scrupulous with RICO cases.

"I have yet to see a case where we go out and take something maliciously, knowing that we can't get criminal charges," he said.

Regardless, agencies like Blaisdell's typically get to keep what they seize.

The money goes directly into special police accounts over which local governments have virtually no control.

The only catch is that it must be used to target racketeering offenses. That means forfeiture money is to be used only for tasks likely to bring in more forfeiture money.

That has made the push for dollars as important in some agencies as the push for crooks, according to some front-line investigators.

One former narcotics investigator tells the story of how he built a case against a small-time cocaine peddler. After he purchased several small amounts of the drug from her, he wanted to go after her supplier.

When he pitched the case to his supervisor, the response was enough to sour the officer on police work.

"Does he have anything that we can RICO?" was all the supervisor asked.

The investigation ended with the arrest of the woman.

The investigator asked that his name not be used because he fears the agency will attempt to discredit him if he speaks publicly about what the push for money has done to police work.

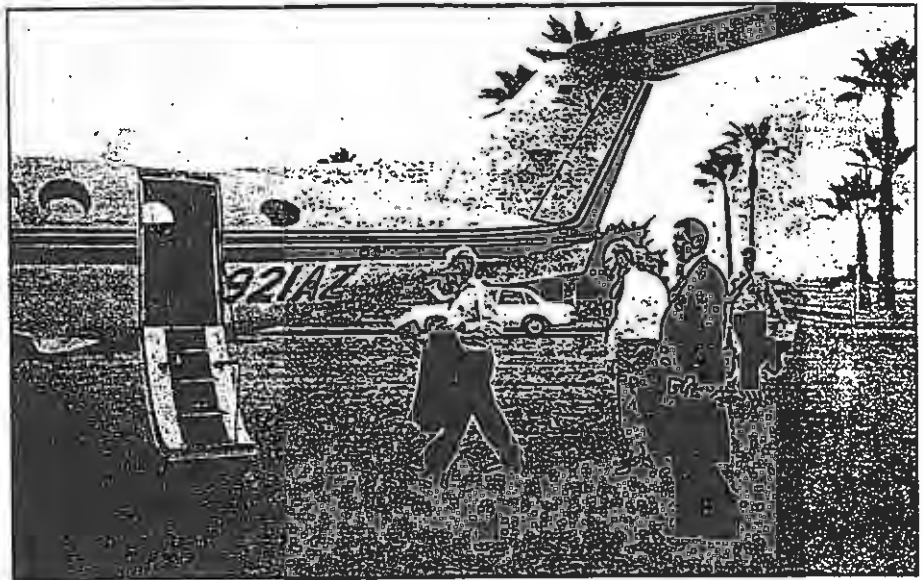
"I'd rather be considered a cop of some sort who's done a good job of putting people in jail more so than a revenue source for an agency," the investigator said. "Keep in mind our job is to get these people off the street. People might think taking their resources does that. I know that prison does that."

According to case files and interviews with prosecutors and police administrators, discussions about assets are common at the outset of an investigation.

Examples can be found in their own reports.

When a woman named Karen Mongold contacted the DPS about a methamphetamine lab she believed was being run by a man named Donald Mayfield, the thrust of questioning from Officer John Parkey did not focus on making arrests, according to

The spoils of RICO



DAVE CRUZ/Tribune



Gov. Fife Symington's airplane, above, was bought and his Chevrolet Suburban, left, was leased by the Department of Public Safety with RICO money. The DPS says the moves are consistent with the agency's duty to provide the chief executive with protection.

Parkey's affidavit.

The affidavit said he questioned Mongold as to whether Mayfield "made any statements to her about property he owned."

In another case, a memorandum written at the onset of an investigation notes a particular business "has many assets and would be an excellent target for a continued conspiracy investigation."

State Auditor General Douglas Norton cited the memo when he raised the concern that police work had taken on a profit motive. His office declined to identify the agency.

In a brief report of RICO laws in January, Norton concluded the profit motive could lead to abuse.

"Because law enforcement agencies may now benefit directly, there is a danger they will target suspects based on the value of the suspect's assets. . ." Norton said in the report.

The *Tribune's* computer analysis of more than 4,000 civil and criminal cases shows RICO has gone beyond its original purpose of breaking the financial empires of drug barons and

organized crime. Consider:

■ Of more than 2,400 property owners who lost assets, only 14 were ultimately convicted of either leading organized crime or maintaining illegal control of an enterprise.

■ Fewer than 5 percent went to prison, and about 2.5 percent were sent to prison for five years or more.

■ The average amount of cash seized was \$3,063.

■ One-third of all cases that result in forfeitures began as routine traffic stops, according to the study.

Police acknowledge they are not targeting big-time drug dealers in forfeiture cases, but not because of the lure of easy RICO money.

City police departments are not geared toward large-scale drug investigations, which can take months and involve thousands of hours of officers' time, said Tempe's Sgt. Blaisdell.

"We as a municipality have to spread our resources thin with basically the street-level dope dealer and do what we can to eliminate the larger dealers," Blaisdell said. "Can I pull all of my

dealer for a year or two? The answer is no, I can't do that."

Even the Phoenix Police Department, the Valley's largest police agency, does not have enough resources to target major dealers unless it joins a task force, said David Brewster, assistant Phoenix police chief for investigations. He added that busting front-line dealers often has a more immediate impact on the community.

"The average individual doesn't complain 'my neighbor is bringing 1-ton quantities across the border,'" Brewster said. "What they complain about is 'I've got this house down the road from me and they have traffic all day and night and my 14-year-old kid says he's got a buddy that buys crack down there.' . . . We've got to be responsive to something like that. Not to say we ignore the major dealers, but it's one of the things that we usually work out in a task force operation."

Brewster and Blaisdell, like every other police supervisor interviewed, said the lure of money is not driving their drug cases.

No police agency bases personnel evaluations on assets seized, and no one interviewed could remember an officer being disciplined for not going after forfeitures.

Nevertheless, the law enforcement community is concerned about the perception that seizures are the motive behind some investigations.

The concern is so strong that the first rule in a code of ethics adopted by virtually every police and prosecuting agency states: "Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses . . . or the due process rights of citizens."

As for the profits the police have realized from RICO, agency representatives said the way it is spent is consistent with the intent of the law.

Mesa's computer system is for scheduling officers and producing duty rosters, according to spokesman Sgt. Earle Lloyd.

The airplane and car for the governor are consistent with the agency's duty to provide the chief executive with protection and transportation, according to DPS spokesman Sgt. Rick Knight.

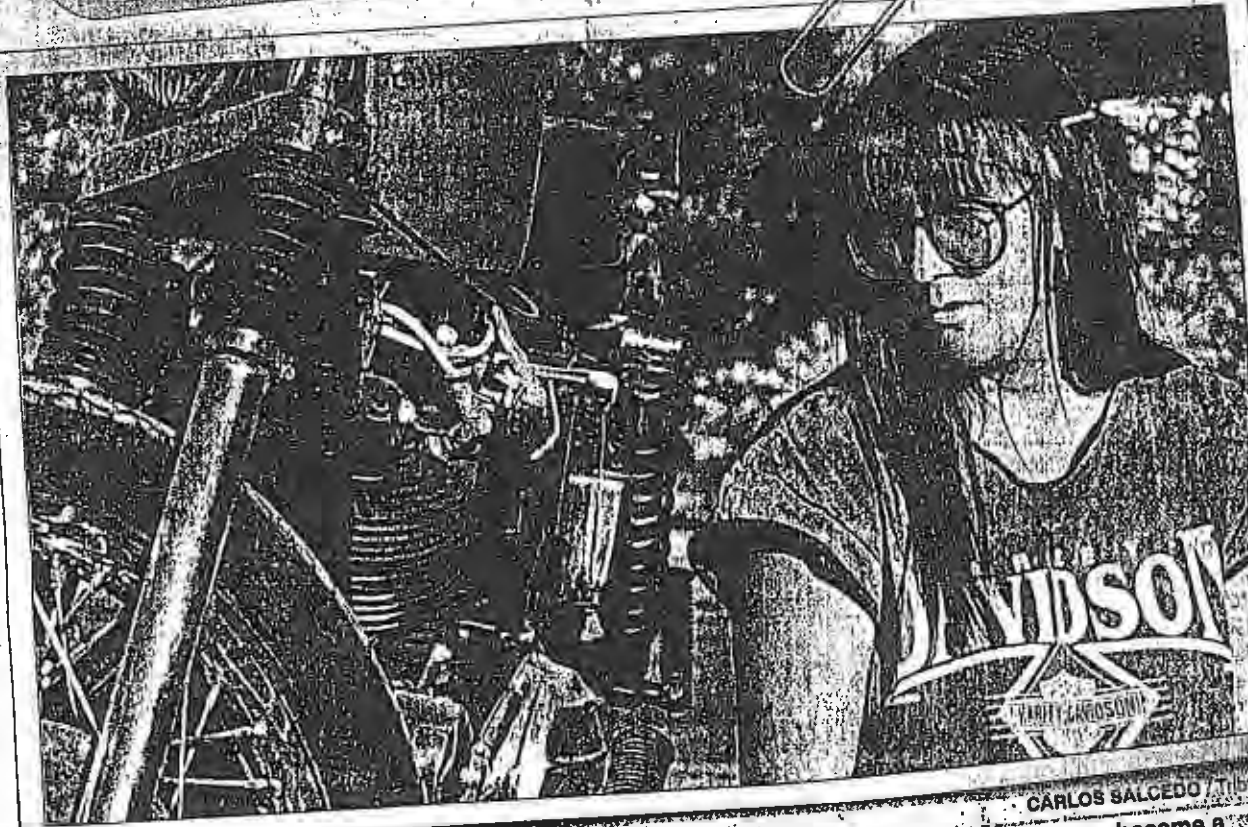
The equipment allowances for Attorney General's Office investigators were to compensate them for having to buy their own guns and body armor in the past, said Michael Cudahy, head of the office's criminal division. The agency now provides that equipment, he said.

Chandler's furniture was used to accommodate the addition of detectives to the department's criminal-investigations bureau, Capt. Roger Nash said.

Chandler police are cashing in on

REVERSE STINGS

THE RICO FILES:
SUSAN HANNIGAN



CARLOS SALCEDO/Tribune

Susan Hannigan owned the motorcycle of her dreams, a 1958 Harley-Davidson. But the dream became a nightmare when an order of forfeiture forced her to turn part of the engine over to state police. Story / A7

By Mark Flatten
Tribune writer

Chandler police thought they would see the big payoff when they were introduced to "Luis" by a confidential informant.

Luis told them he could move large amounts of marijuana and pay top dollar for it, according to a description of the case in court records.

Undercover officers played along, telling him they could supply him with as much marijuana as he needed.

Luis asked for a sample. The investigators quickly provided it. A few days later, Luis approached investigators again and told them the first sample was gone and he wanted to buy a pound of marijuana. Police sold it to him for \$950.

Luis returned a third time, asking for another sample, which investigators supplied.

That was the last time they saw Luis.

To Chandler police, selling a little marijuana is a cost of doing business. For the past 2½ years, Chandler has focused most of its anti-narcotics efforts on "reverse stings," according to a review of the department's cases

Please see **Stings / A6**

■ The question of where police should draw the line is one that has been asked many times in the wake of a Department of Public Safety investigation that has become known

Stings

From page A1

by the *Tribune*.

And these reverse stings have been big moneymakers for the city.

Chandler has seized \$2.95 million in cash since January 1990, according to a *Tribune* computer analysis of more than 4,000 cases involving forfeitures.

That amount of cash is more than any other city studied and more than the combined take of Phoenix and Mesa, the Valley's two largest cities.

Two-thirds of the 135 people who lost property to Chandler police in forfeiture cases were caught in reverse stings, the *Tribune* study shows.

In a reverse sting, undercover officers set up a drug deal in which they provide the narcotics. The person targeted in the deal, which typically is set up through a confidential informant, is to show up with the cash.

When the deal is completed, police raid the room and seize the cash.

About 90 percent of the cash taken by Chandler police is seized in reverse stings.

In comparison to the \$2.95 million seized, Chandler police's regular budget for the current fiscal year is \$10.24 million.

The cash seizure is pure profit for the department, but it does nothing to take drugs off the streets, according to prosecutors critical of the strategy.

"Law enforcement has been concerned that Chandler has been using it (forfeiture) to supplant their budget," said one source in the Maricopa County Attorney's Office, who requested anonymity.

That prosecutor's boss, County Attorney Richard Romley, said Chandler's use of reverse stings "causes a real concern," but he was reluctant to criticize the department.

"There should be very limited times that you would be utilizing that particular enforcement technique," Romley said when asked about Chandler's anti-drug practices. "It should not be something that is done on a regular basis. I've heard that Chandler does a lot of reverse stings and, although it causes a real concern, I don't know the specifics of whether they are appropriate or not."

The use of reverse stings is defended by Bobby Joe Harris, acting police chief in Chandler. Harris replaced Ron Danielson, under whose tenure most of the seizures the *Tribune* studied took place.

Waging a war on drugs means going after both the drugs and the money that drives the drug trade, Harris said. By taking money away from potential dealers, Chandler is taking some of the profit motive out of the drug-dealing business and making it riskier for those seeking to buy drugs, he said.

Going after drugs alone is ineffective because the profits of the trade will always lure new dealers, Harris said. The other benefit of doing reverse stings is that it makes the bad guys pay for law enforcement, he said.

"Me as a taxpayer, I don't think it's right for the doper over here to have all the money, not pay a dime in taxes, then go down and buy all this stuff with illegal proceeds," Harris said. "They won't be buying drugs with that (seized) money."

Defense lawyers who handle forfeiture cases said there are problems with reverse stings beyond the obvious concern that police are using them for profit.

Michael Piccarreta, a Tucson lawyer who is considered one of the state's top forfeiture attorneys, said a person's intent to commit a crime is clear when he shows up with the drugs. When the person shows up in a meeting with police carrying only cash, there is a good chance he is an innocent person enticed into an illegal act, he said.

Another problem with reverse stings is the use of paid informants, who typically set up the deals outside the supervision of police and who are paid a percentage of the take, he said.

Chandler police are generous with their informants, according to documents obtained by the *Tribune*. The top informant in Chandler has been paid \$184,121 since 1990, according to the department's accounting of informant payments from its RICO fund.

That same informant made \$98,161 in 1990 alone by setting up drug deals.

Chandler paid informants \$365,200 since 1990, often basing the payment on a percentage of the cash seized, according to Harris.

By comparison, Phoenix paid \$179,206 to informants in the same time period. The state Attorney General's Office paid informants \$46,812 since January 1990, and Tempe has paid \$4,140 to informants in that same time period.

The only other city with comparable informant payments was Mesa, which paid \$320,731 since 1990.

With that kind of profit motive, informants have become recruiters for police, talking people into drug deals and taking their cut, Piccarreta said.

"There is a danger because informants are the lowest class of human being that walks the earth," Piccarreta said. "They are not only criminals, they are criminals with no scruples. So you get the lowest level criminal and you tell them any money or property you seize, we will give you 10 percent. On top of that, they are for

the most part unregulated when they do the initial contacts with the individuals. They don't tape record these meetings. They don't have law enforcement officers with them. The way they choose their target, law enforcement isn't privy to that."

Harris said the department guards against the greed of informants by working them out of the negotiations on drug sales as quickly as possible. The informant typically handles introductions, but negotiations for the

transfer of drugs are done by the officers, Harris said.

Negotiations sometimes involve giving would-be drug buyers samples, such as was done with Luis, Harris said. The department will allow no more than a pound of marijuana to go out as a sample. No hard drugs, such as cocaine or heroin, can be given as samples, Harris said.

Not all of the samples go out on the streets of Chandler, according to the *Tribune's* review of the department's cases. Chandler police have set up drug deals as far away as Tucson, where they set up a trio of marijuana buyers and eventually collected \$141,524. That forfeiture case had to be filed in Pima County Superior Court.

Harris said the department does go outside its city boundaries, but only in investigations that began in Chandler.

Although reverse stings have proven lucrative in the past, Harris said the department is moving away from them. Dealers are less willing to make big deals, and the narcotics supervisors who ran aggressive reverse stings have been transferred, he said.

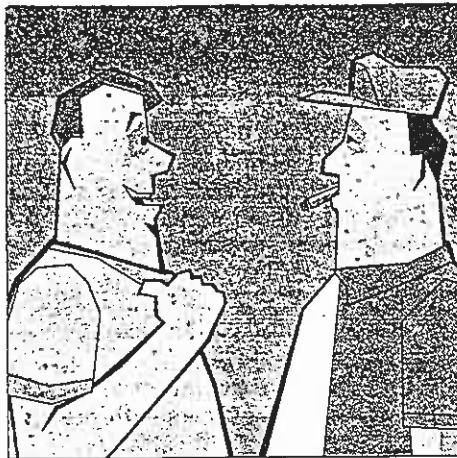
The transfers were routine, Harris said. Department policy requires the transfers of narcotics investigators every two years. It is a safeguard to protect the officers from burnout and the public from police who become too accustomed to the drug culture, Harris said.

The change in policy already has had an impact. Police notified the Chandler City Council earlier this year that income to the forfeiture account would be down substantially this year.

How a reverse sting operates



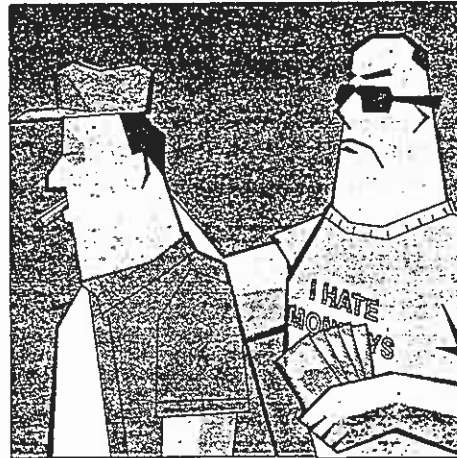
1 An informant tells police he has information that someone wants to buy illegal drugs.



2 Informant tells suspect that he knows where illegal drugs can be purchased. A meeting is arranged.



3 At the meeting, police supply the drugs and the suspect supplies the money.



4 When the transaction is complete, police raid the location and seize the money.

MARK WATERS/Tribune

The price of informants



The following is a list of what was paid to the 20 highest paid informants who led police to seizures of cash or property in forfeiture cases since 1990.

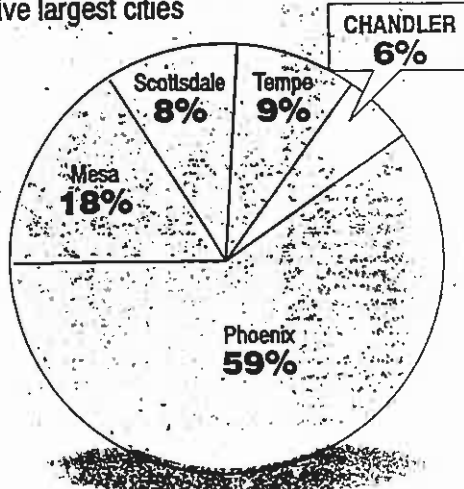
AGENCY	AMOUNT PAID
1. Mesa *	\$222,798
2. Chandler **	184,121
3. Chandler	45,486
4. Mesa	45,100
5. Chandler	25,200
6. Department Public Safety	20,050
7. Chandler	20,000
8. Chandler	18,800
9. Department Public Safety	18,620
10. Department Public Safety	15,250
11. Attorney General	14,270
12. Department Public Safety	13,150
13. Department Public Safety	13,050
14. Attorney General	12,500
15. Department Public Safety	11,550
16. Department Public Safety	11,175
17. Mesa	10,750
18. Department Public Safety	10,600
19. Chandler	10,506
20. Department Public Safety	10,111

* Second-highest single-year earnings of \$96,852 for 1991.
 ** Highest single-year earnings of \$98,161 for 1990. Chandler also paid this individual \$58,060 in 1991 and \$26,900 in 1992.

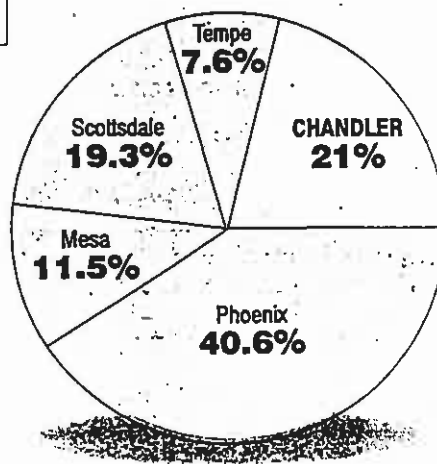
Source: Individual agencies MARK WATERS/Tribune

Chandler's slice of the pie

Chandler's population as a percentage of the total population of the Valley's five largest cities



Chandler's RICO income as a percentage of the total intake of the Valley's five largest cities



Source: 1990 Census report; individual agencies

Tribune

“ Me as a taxpayer, I don't think it's right for the doper over here to have all the money, not pay a dime in taxes, then go down and buy all this stuff with illegal proceeds. They won't be buying drugs with that (seized) money. ”

— Bobby Joe Harris
Chandler police chief



CARLOS SALCEDO / Tribune



Tribune file photo

“ I've heard that Chandler does a lot of reverse stings and, although it causes a real concern, I don't know the specifics of whether they are appropriate or not. ”

— Richard Romley,
county attorney

Want it back? It's going to cost you

By Mark Flatten
Tribune writer

If the police want your car, they can take it. They don't have to charge you with a crime. And what's more, you probably would let them keep it because it would cost you more to get it back than it is worth.

That's what defense lawyers like Michael Piccarreta say about state racketeering and forfeiture laws, commonly known as RICO.

Just fighting a simple RICO case will cost about \$3,500 in legal fees alone, Piccarreta said.

Such was the case with Janice Herd, who could not afford to hire a lawyer when her 1981 Buick Regal was seized by Phoenix police in February 1991.

Herd loaned her car to her brother, who loaned it to a man named Dale Chambers. When Chambers was stopped driving the car, police found 1.9 grams of cocaine in his possession, according to court records.

Herd attempted to get her car back by writing a letter to the court, saying she used it to take her mother on errands and her kids to the zoo, to the park and to get pizza.

"It didn't cost that much," she wrote. "It don't mean that much to you I know, but it's all I got."

The judge declined to consider the letter.

The car was forfeited. Herd was not charged with any crime.

Even more troubling than the cost of fighting RICO seizures, according to Piccarreta and his colleagues, is that those who do try to fight find the basic constitutional protections do not apply.

Please see Cost / A6

Cost

From page A1

"The government punishes people without having to go through the things that usually stand between the government and you," Piccarreta said. "Most people don't care until it happens to them or their family, then they come to me and they are aghast when I explain it to them."

For instance, if you are picked up with a small amount of marijuana in your car, you will have constitutional rights to a lawyer and a trial by jury, Piccarreta explained.

You will be presumed innocent, and the prosecutor will have to prove beyond a reasonable doubt that the marijuana belonged to you. Any evidence against you would have to be legally obtained. You could not be forced to testify against yourself, and you would be protected from an unreasonably stiff sentence.

But at the same time you could lose your car, your cash, your home and all of your belongings, Piccarreta said.

RICO statutes allow police to use evidence gathered illegally against you. Prosecutors would not have to prove the marijuana belonged to you. In fact, the law allows them to take your car, your cash or other property even if they do not find any drugs.

Denise King learned about RICO when she was stopped by Tempe police on Rio Salado Parkway near Arizona State University's Sun Devil Stadium. Though police found no drugs on her or in her car, they did find \$2,000 cash. She challenged the seizure and, as the result of a negotiated settlement, gave half up to get the other half back.

In RICO, you have no right to a jury trial or lawyer if you cannot afford one.

You would have to prove your innocence using a higher standard of proof than that required of the prosecutor.



DAVE CRUZ/Tribune

Phoenix attorney Tonya McMath: "There comes a time when you're not going to lay out three times to your attorney what your car is worth if you get it back."

Dick Mesh, who heads the organized crime division of the Maricopa County Attorney's Office: "So your figure is that 70 percent of the people were never indicted? That's true because there is not enough evidence to prove that they committed a crime. But there's more than enough evidence that the items involved were involved in criminal activities."

And there is virtually no limit on what they could take.

That's because forfeiture in Arizona is not considered punishment for illegal activity, said Cameron Holmes, the assistant state attorney general who authored Arizona's racketeering and forfeiture laws.

"You don't have to be guilty of criminal activity to be liable for the use of the property," Holmes said. "We have social damages. Somebody has to pay for it. Should it be up to the taxpayers? Or is it more fairly placed on people that have, not criminally, not necessarily intentionally, not maliciously, but have allowed their property to be a contributor to the costs?"

The state's version of RICO was passed with the stated objective of breaking organized crime and drug cartels, according to its prime sponsor, former state Rep. Jim Skelly, a Scottsdale Republican.

Backup documents attached to a code of ethics adopted in September by prosecutors who handle forfeiture cases say the value of the law is that it "destroys the economic base necessary for continuation of criminal enterprises and attacks the economic incentive to engage in criminal activity."

But a *Tribune* study of virtually every RICO case filed in Maricopa County since January 1990 shows that almost three-fourths of the people who lose property to RICO are not charged with any crime. Less than 5 percent go to prison, and about 2.5 percent are sentenced to five or more years of prison.

Most of the seizures are not challenged, which prosecutors like Holmes said is a good indication of guilt.

Defense lawyers argue the cost of fighting a RICO case, coupled with the built-in advantages prosecutors have, makes it difficult to successfully challenge the seizure of property.

According to a number of lawyers interviewed by the *Tribune*, a complicated RICO case can cost tens of thousands of dollars. Tonya McMath, a Phoenix attorney, said people who lose property typically do not fight it because they cannot afford it.

"In my practice I certainly see people just letting it go because the economics of the situation don't permit them to litigate their claim," McMath said. "There comes a time when you're not going to lay out three times to your attorney what your car is worth if you get it back."

RICO is so difficult to fight because of the legal premise on which it is based, McMath said.

RICO is a civil action even though it

is tied to criminal statutes.

People are not defendants in RICO — property is. For instance, if police take \$5,000 and a car from a person, the civil case will be titled "In the Matter of \$5,000, et. al." People who want to claim ownership of the items seized are merely "interested parties," under the law.

John and Silvana Roma found out they were "interested parties" in an action brought by the state Attorney General's Office titled "In the Matter of One Residence."

It was their residence.

Prosecutors claimed the Romas were "straw owners" of the house and that it had in fact been bought by a drug trafficker.

The Romas eventually paid the Attorney General's Office \$14,500 to have the lien on the property dropped.

Another aspect that makes RICO difficult to fight is that a person cannot challenge a seizure without first proving ownership, according to court opinions.

Vehicle registration records are not enough to prove ownership in a forfeiture action, according to cases studied by the *Tribune*. People were routinely required to supply loan agreements, financial statements, insurance and maintenance records to prove ownership.

Even all of that wasn't enough for James Hernandez, whose son was stopped for speeding by police while driving the family's 1983 Buick in January 1992.

Officers found about \$30 worth of marijuana when they searched the car, according to court records.

The elder Hernandez supplied receipts for payments, a credit application, insurance bills and the car's title in claiming it belonged to him when he challenged the action. However, prosecutors convinced the judge that the son was the true owner and the car was forfeited.

Listing the property as the defendant also means constitutional protections not apply, according to Holmes. "People have rights, property doesn't,

he said.

"The question is do you want property to have more rights than people?" Holmes said. "You have a right to due process, a process by which you will be divested of your property. But we don't have absolute property rights."

But even due process rights are skewed in RICO cases, according to defense lawyers who have tried to get property returned.

To succeed in a forfeiture case, a prosecutor needs to show probable cause to believe property was either involved in a crime or was the proceeds of a crime.

Probable cause is a low standard of proof, the same standard required for police to get a search warrant to gather evidence.

Ron Dunham, an assistant Tempe city prosecutor who handles forfeiture cases for the city, said that once probable cause is established, "the burden of proof definitely shifts. I'm basically done with the case and they have to prove the property we are trying to forfeit is property they got through legal activity of some kind."

There are two ways for the property owner to win a RICO case, according to defense lawyers.

The first is to prove the owner was not involved in a crime and did not buy the property with the profits of a crime.

The second is to show no crime occurred, McMath said. That is difficult because at that point the prosecutor has already shown probable cause that one has.

The property owner must prove innocence by a preponderance of the evidence, a much higher standard of proof than probable cause.

That fact also makes it difficult to win RICO cases, Piccarreta said.

In addition, the state can use illegally obtained evidence and hearsay testimony to show probable cause, Piccarreta said.

"They can use evidence that would never be admitted except in some

Cost

From page A6

kangaroo court to bolster their case," Piccarreta said. "We have to play by the rules and they don't."

Holmes denied the prosecutors have any advantages in forfeiture cases. There is no difference in either the burden or standard of proof than there is in any other civil case, he said. The showing of probable cause merely lets the action go forward. Once the case gets in front of a judge, the side with the most evidence wins, Holmes said.

Dick Mesh, who heads the organized

crime division of the Maricopa County Attorney's Office, said the different standards of proof is not what decides most RICO cases. Typically there is ample proof to show property was used in a crime. No criminal charges are brought because there may not be enough proof that an individual committed a crime, he said.

Mesh used the hypothetical example of an abandoned car found with marijuana in the back seat. Prosecutors would be able to prove the car was used to facilitate a crime, but would not be able to prove beyond a reasonable doubt that the registered owner is the one who violated the law, he said.

There was only one such case in the 2,400 civil files the *Tribune* reviewed.

"So your figure is that 70 percent of the people were never indicted? That's true because there is not enough evidence to prove that they committed a crime," Mesh said. "But there's more than enough evidence that the items involved were involved in criminal activities. It's the item that was used in the criminal activity that is being forfeited."

Having a civil procedure so closely linked with criminal statutes has created oddities in the law.

For instance, if you are convicted of a crime you can't deny the crime.

occurred or deny that you were involved during the RICO proceedings, under the law.

Yet if you are acquitted, that is considered irrelevant in RICO because it is a civil action.

Frank Armenta found that out when he was acquitted of charges that he tried to sell 84 grams of cocaine in July 1992.

Prosecutors from the Maricopa County Attorney's Office were unable to prove Armenta committed a crime when they presented their case to the jury. They were more successful when their RICO case went to a civil judge.

Armenta's car was forfeited.

RICO attacks spur wrath of 'the Hats'

Lobby carries 10-gallon clout at Legislature

By Mark Flatten
Tribune writer

At the Legislature, they are called "the Hats."

They are the prosecutors, sheriffs and police chiefs from throughout the state. They are called the Hats because of the western attire favored by those from rural areas.

If you want to see them at the Capitol, mention RICO. They'll be there.

RICO is their law. They wrote it. They benefit from it. They protect it.

They are so successful at protecting the racketeering and forfeiture laws, commonly called RICO, that virtually every attempt to either add protections for innocent people or force better accountings of how the money is spent has been stifled.

Lawmakers interviewed by the *Tribune* said the Hats are the most effective lobbying group at the Capitol. And the thing they lobby the most feverishly about is RICO, according to legislators from both parties.

Please see Hats / A8

■ Constitutional protections associated with a criminal case won't help you with Arizona's racketeering laws / A9

Hats

From page A1

After former Sen. Armando Ruiz, D-Phoenix, tried to direct some RICO money to gang and drug prevention, he said the Hats "would look at me like I was somehow a traitor, like I was somehow soft on crime, like I was a pansy on crime, like I had done something wrong.

"I literally had one person bowl me out in front of a whole group of sheriffs. He got in my face and was telling me they were going to take me out politically. It was very intimidating. They try to put the spin on it that you are not against crime, that you are on the side of the drug dealer, and it couldn't be further from the truth."

Former Rep. Bill Mundell, R-Chandler, was another who crossed the Hats when he tried to require more complete disclosure of where RICO money was coming from and how it was being spent. He said that in his six years in the Legislature, he never saw so much pressure and intimidation over a bill. The only thing he could liken it to was the pressure he got in 1988 when the House weighed the impeachment of then-Gov. Evan Mecham, he said.

"I got an extreme amount of pressure," Mundell said. "It was a full-court press. No one wants to be weak on crime, but the fact that you want accountability? It does not equate to that."

Even Gov. Fife Symington complained about the pressure he got from the Hats as they were trying to get him to veto a RICO disclosure bill in 1992. Symington said a meeting in which 20 prosecutors lobbied him in his office was "inappropriate" and likened it to "the storming of the Bastille."

Despite his protests, Symington vetoed the bill.

The Hats make no apologies for playing hardball.

"I hope that's the case and I think it says a lot for Arizona if it is the case," said former Rep. Jim Skelly, R-Scottsdale, who now lobbies for the Arizona County Attorneys' and Sheriffs' Association. "What it says is that the Legislature by and large realizes that the obligation of government is the protection of the lives and property of its citizens. The Legislature collectively puts a great deal of stock in their obligation to promote law enforcement."

Skelly headed the House Judiciary Committee during his tenure in the Legislature. He was law enforcement's chief backer and ushered through virtually all of Arizona's racketeering and forfeiture laws.

The racketeering and forfeiture statutes for the most part became law in 1988. They were authored by Cameron Holmes, an assistant state attorney general. Though racketeering and forfeiture laws were on the books before that, they were not widely used because they were unclear, according to several prosecutors interviewed by the *Tribune*.

The stated intent of Arizona's RICO laws, which are modeled after the federal Racketeer Influenced and Corrupt Organizations Act, is to break the financial organizations built by drug lords and organized crime.

However, they are written so broadly that property can be seized if it can be linked with any one of more than 80 different offenses ranging from murder to theft, according to a six-page report issued by the state Auditor General's Office in January.

"Forfeiture statutes do not necessarily target serious offenders," the auditor general concluded in the report. "Further, no pattern of criminal activity must occur. A prosecutor has only to establish that a single crime occurred."

The *Tribune's* study of the way the law is being applied shows forfeitures resulting from simple possession of illegal drugs are common.

The *Tribune* found two separate cases in which vehicles were seized and forfeited after their owners used them to get away after stealing two 12-packs of beer from convenience stores.

The auditor general recommended the state's RICO laws be reviewed by the Legislature. The agency's report said forfeitures often are more severe than any criminal penalty a defendant could face from the same incident.

But the chance for a major overhaul of RICO laws is nonexistent, according to lawmakers interviewed by the *Tribune*. The reason they are so pessimistic is that almost every effort at even minor reform has been killed, they said.

The Hats have seen to that.

There has only been one reform of RICO since 1988. That was approved in the Legislature in 1991 and was sponsored by former Rep. Mike

Palmer, D-Bisbee.

Palmer, chairman of the Cochise County Board of Supervisors, became involved in attempts to reform RICO laws after a constituent had his apartment house seized because he regularly held a poker game there.

The building and computers that were seized from LeRoy Smith ultimately were returned, but not before he had spent two years and about \$15,000 fighting the forfeiture, he said.

Under the old law, a person who lost property had no opportunity to seek its return until the case wound its way through the courts. The person who wrongly lost property had to prove prosecutors acted maliciously to recover attorney's fees, under the old statute.

Palmer's bill allowed people to request a hearing, to be held within 10 days of the seizure, to determine if there was sufficient reason to proceed with the forfeiture. It also allowed people whose property was wrongly taken to recover legal costs.

Palmer's bill was opposed by police and prosecutors, who argued it was unnecessary because there was already ample protection in the law for innocent people.

"They testified it would have a chilling effect on RICO seizures," Palmer said. "But guess what? That was one of the intentions of it, to slow down the unchecked phenomenon of RICO seizures.

"There was overwhelming opposition, even though it was an effort to legitimize what they did. If you have a reasonable means of redress if you have been unfairly treated, it actually lends credibility to the law enforcement agency. If you have no reasonable means of redress, people are going to be suspicious when law enforcement is out there seizing property with no consequence."

The changes in the law passed in Palmer's bill have had little effect on RICO cases, according to private defense lawyers interviewed by the *Tribune*. Most said they don't even bother with the 10-day hearing and none has been awarded attorney's fees in cases they win.

Of the more than \$26 million seized since 1990, agencies studied by the

Tribune paid out \$71,242 in civil penalties, according to spending reports.

The rest of the changes that have been attempted have been aimed at RICO money — how it is spent and how it is accounted for.

The push for better disclosure began after a prosecutors' conference at the Los Abrigados resort in Sedona, according to Rep. Debbie McCune-Davis, D-Phoenix, assistant House minority leader. Media reports about lavish spending by the prosecutors started legislators asking whether there were enough controls on special accounts they maintain.

That conference was put on by the Arizona Prosecuting Attorneys' Advisory Council at a cost of about \$30,000, according to legislative documents. The council is a state agency funded by surcharges on traffic tickets and criminal fines. It serves as an educational and lobbying agency.

Like RICO funds, there are almost no disclosure requirements for the way the council spends its money.

Because of the similarities between the funds used to finance the council and the RICO accounts, some lawmakers began introducing bills seeking better disclosure of both.

Their efforts got a boost in 1990, when Al Heinze, then executive director of the council, was accused of sexual harassment by three women working in the agency. One of the women claimed she was raped by Heinze at the Sedona conference.

Heinze, who lobbied heavily on behalf of prosecutors, resigned in 1990. He was replaced by William Holohan, a retired chief justice of the Arizona Supreme Court.

Heinze was not charged in the Sedona incident because there was not enough evidence to obtain a conviction, according to police. The woman filed suit in civil court and was awarded \$2.38 million in damages, at least half of which the state was ordered to pay.

Fueled by the scandal, McCune-Davis and Mundell drafted a bill that would have required police and prosecutors to more fully disclose their RICO accounts. Despite the political damage caused by the charges against Heinze, police and prosecutors

were able to stop the legislation.

"The law boys would come in and say it would be a detriment to investigations," Mundell said. "We always got defeated by Heinze and all the law boys. They were very powerful because they always raised the specter of you're not being tough on crime, that somehow you were weak on crime if you want some accountability."

Skelly, who was instrumental in defeating bills opposed by prosecutors while he was in the Legislature, said prosecutors do not object to disclosure of how they spend their money.

Prosecutors would object if disclosure requirements got so specific that the reports would tip criminals about specific investigations, Skelly said.

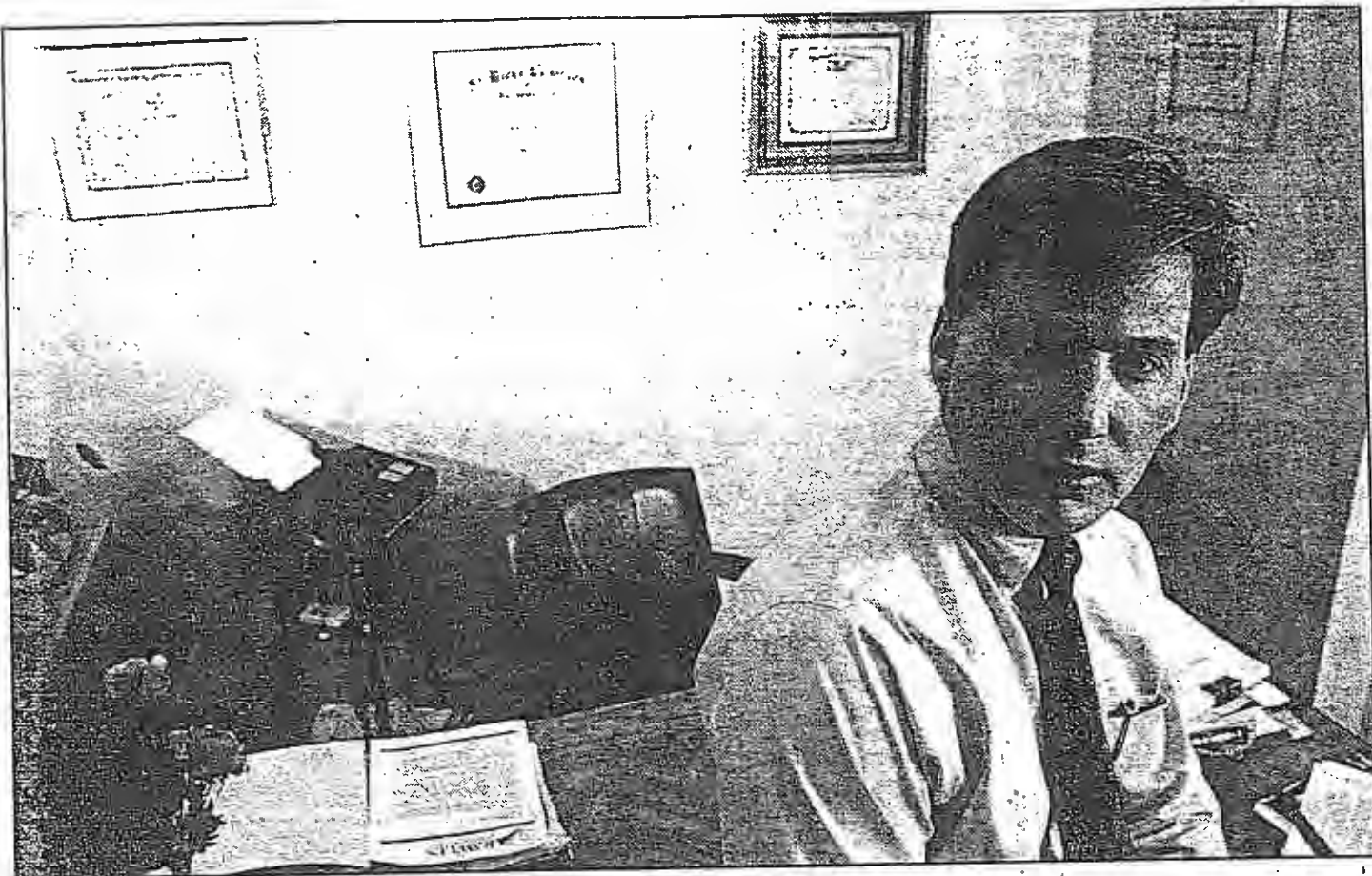
"We have absolutely no hesitation in producing for the Legislature and the governor any auditing that is necessary," Skelly said. "We will come down every afternoon at 4:30 p.m. if you want and tell them what we spent that day out of our forfeiture funds."

But Steve Neely, Pima County prosecutor and one of the most influential Hats, said additional disclosure requirements are not necessary. Current law requires agencies to report how much money comes in and in what categories it is spent.

"Basically the only people that benefits is the newspapers," Neely said when asked about enhanced disclosure requirements. "You guys like to have things in a nice tidy place where you can go and save yourself the trouble of having to research it. Aside from that, what would be the value?"

Sen. Patti Noland, R-Tucson, chairwoman of the Senate Judiciary Committee, said she expects renewed efforts at reform to come in the near future, spurred in part by the auditor general's report and anecdotal stories of abuse that arise occasionally.

"These are very powerful people," Noland said of the Hats. "What you have to decide is, are you going to be intimidated? Are you going to be threatened? Are you going to be beaten down because they might come after you and you might lose an election? Or are you going to do the right thing that's good public policy? That's a decision each individual has to make."



“I got an extreme amount of pressure. It was a full-court press, No one wants to be weak on crime, but the fact that you want accountability? It does not equate to that.”

—Former Rep. Bill Mundell

“What it says is that the Legislature by and large realizes that the obligation of government is the protection of the lives and property of its citizens. The Legislature collectively puts a great deal of stock in their obligation to promote law enforcement.”

— Jim Skelly
Former state representative
now working as a lobbyist
for the Arizona County
Attorney's and Sheriff's
Association

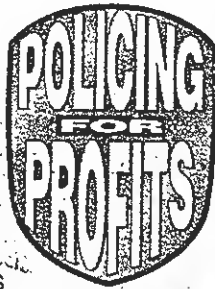


“These are very powerful people. What you have to decide is, are you going to be intimidated? ... Or are you going to do the right thing that's good public policy.”

— Sen. Patti Noland

This week the *Tribune* is examining Arizona's racketeering and forfeiture statutes, commonly known as RICO laws. Today's installment, the last in a series, looks at movements in Congress and in other states aimed at reforming RICO laws.

Tribune reporter Mark Flatten spent seven months examining thousands of court records and conducting hundreds of interviews. He compiled the information in a computer data base, which formed the basis for this investigative series.



RICO reform: A fight for fairness

By Mark Flatten
Tribune writer

When defense lawyers are asked how to reform the state's RICO laws, their answer is simple:

Make both sides play by the same rules.

When prosecutors are asked the same question, their answers are just as simple:

Do nothing.

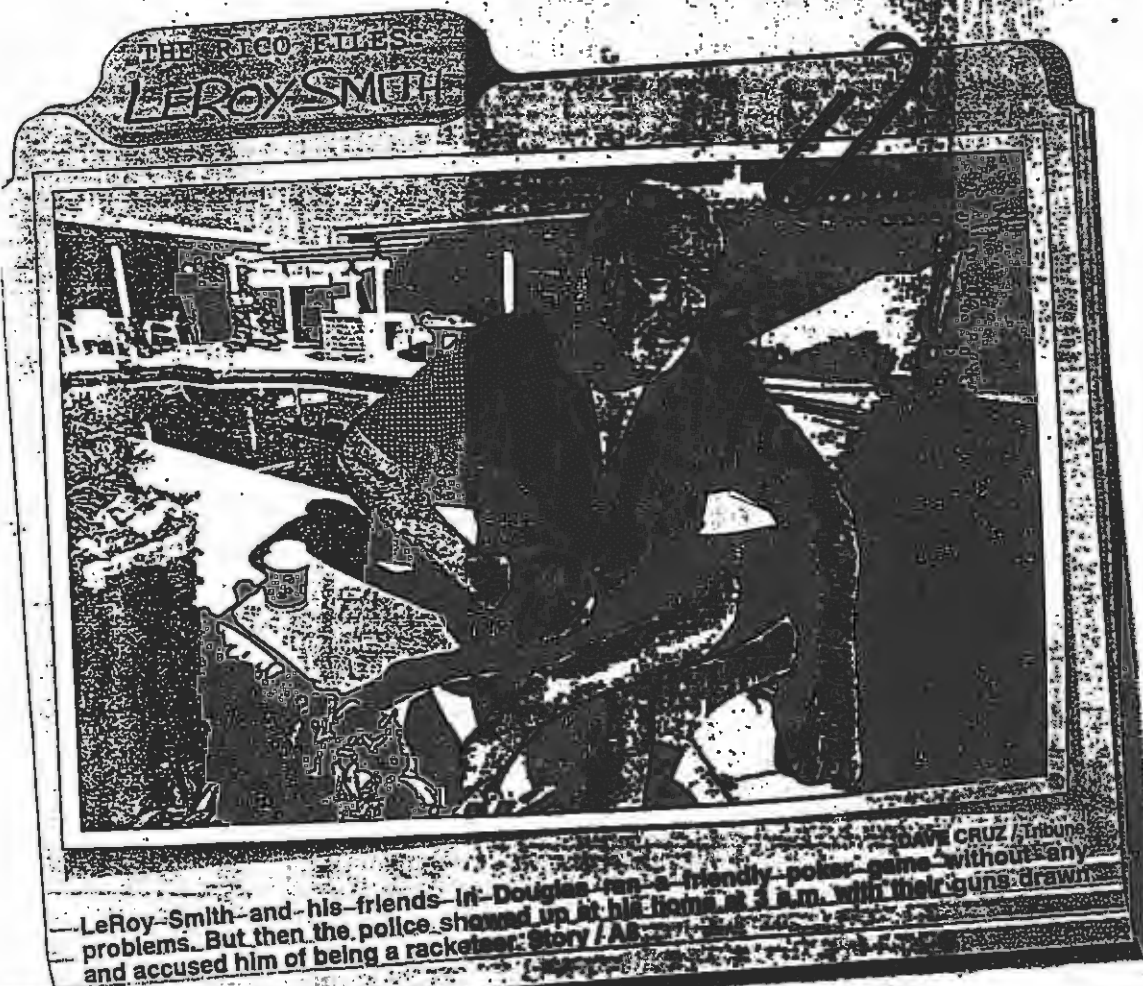
So far, the prosecutors have won the argument at the state Legislature, where changes would have to be made.

But a growing chorus of legislators is joining defense attorneys in questioning the uses and abuses of the state's racketeering and forfeiture laws, according to Sen. Patti Noland, R-Tucson, who heads the Senate Judiciary Committee.

Most of the efforts are concentrated on changing the prosecution's burden of proof to make the laws more equitable for defendants.

Those are the same changes being proposed in other states and in Congress, according to

Please see **Reform** /



LeRoy Smith and his friends in Douglas ran a handy poker game without any problems. But then the police showed up at his home at 3 a.m. with their guns drawn and accused him of being a racketeer. Story / AS

Reform

From page A1

the National Association of Criminal Defense Lawyers.

Rep. Henry Hyde, R-Ill., a conservative Republican, introduced a bill July 15 that would make it tougher for law enforcement agencies to win forfeiture cases under the federal RICO — or Racketeer Influenced and Corrupt Organizations law, the law on which Arizona's forfeiture statutes are based.

Under the federal law and in Arizona as well, prosecutors need only show there was probable cause to believe property was used in a crime or that it was bought with the profits of a crime to win a forfeiture case. Defendants must be proven innocent by a preponderance of evidence — a higher standard of proof than probable cause.

Hyde's bill would require the government to show through "clear and convincing evidence" that seized property is the proceeds of a crime. That is a much higher standard of proof than either probable cause or preponderance of the evidence.

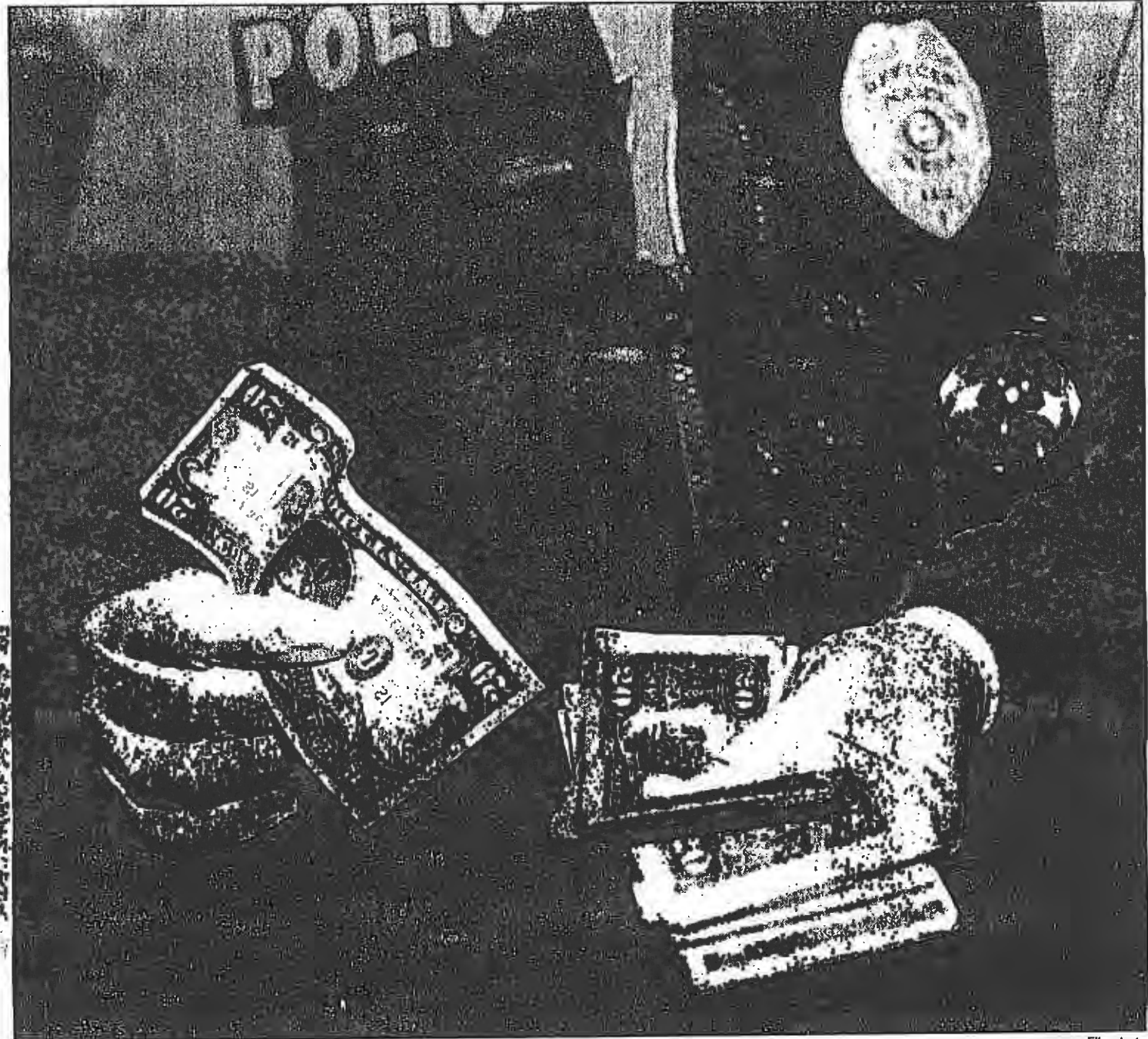
Hyde's bill also would require the government to pay for a lawyer to represent property owners who cannot afford to hire one.

Because RICO laws are civil, Fifth Amendment rights to an attorney do not apply.

"He became convinced something was needed when he saw the number of people being abused by the system," said Hyde's spokesman, Lester Munson.

Munson said Hyde has rallied support from both conservatives and liberals, but that hearings on his bill probably will not come until next year.

Another attempt at reforming the federal RICO law was introduced by Rep. John Conyers, D-Mich. Conyers' bill would require a criminal conviction before property could be forfeited.



File photo

When police seize money in a raid, it's theirs unless defendants can prove their innocence by a preponderance of evidence — a higher standard of proof than necessary for

prosecutors, who need only show there was probable cause to believe property was used in a crime or that it was bought with the profits of a crime.

If that were applied on the state level in Arizona, police and prosecutors would be able to keep only about one-fifth of the \$21 million they take in annually through forfeitures.

With pressure mounting from both conservatives and liberals in Congress, Attorney General Janet Reno last month asked lawmakers to delay any action on reforming asset forfeiture laws until the Justice Department could conduct its own review.

Reno said in an Oct. 18 letter to Rep. Jack Brooks, D-Texas, chairman of the House Judiciary Committee, that her review would be finished within 75 days.

But changes in federal law will not affect Arizona's statute, which is used by prosecutors nationwide as the model of what forfeiture laws should be, said Paul Levine, director of public affairs for the National Association of Criminal Defense Lawyers, which is active in seeking reforms.

Prosecutors are pressing adoption of laws based on Arizona's statute in several state legislatures, he said.

"Arizona's is looked at as being the most aggressive, draconian and most favorable to prosecutors of any state in the country," Levine said.

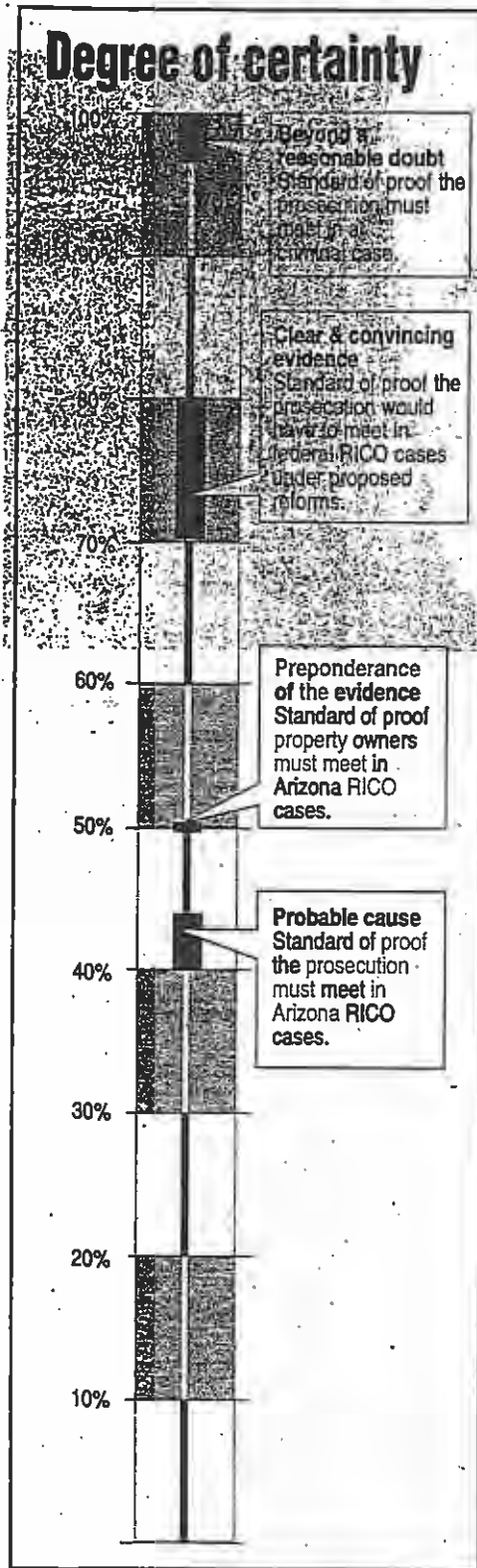
Nevertheless, there are states that are reforming RICO laws.

A statute in California that will go into effect Jan. 1 makes it more difficult for the government to seize property.

The current California law requires police or prosecutors to prove property was involved in a crime through preponderance of the evidence. When the current law expires, the state will have to prove its case through the higher "clear-and-convincing" evidence standard if seizures of more than \$25,000 are involved. In other cases, a criminal conviction will be required before property can be seized.

California also requires prosecutors to prove that people filing claims knew about the criminal activity that led to the seizure of property. That is required both under the current law and under the law that will become effective in January.

The burden in Arizona is on the defendant. Statutes require property owners to prove they did not know about the criminal activity that led to the seizure.



Tribune

Phoenix defense attorney Larry Debus and other defense lawyers say they do not believe the Arizona Legislature will go as far as requiring criminal convictions before forfeiture cases can proceed, but they hope it will increase the state's burden of proof.

The current law requiring the property owner to prove innocence, and prove it by a tougher standard than that required of the state, creates an unfair burden, Debus said.

"Put it on an equal footing with any other civil case," Debus said when asked how to reform RICO. He added that the state "should at least have probable cause to believe they are right, and then when they go into court

the burden should be on them to prove they are right. Sometimes they'll miss. But so what? They would put the public on an even keel."

Tonya McMath, another Phoenix lawyer who handles forfeiture cases, agreed the government should be forced to prove its case through the entire court proceeding.

That requirement is even more reasonable in a forfeiture case than a standard civil case because of the near limitless financial and legal resources of the government, she said.

"At a minimum the state should have the ultimate burden of persuasion by preponderance," McMath said. "I think they should have to meet that burden before there is any shift in the burden of proof because they are the state and

it is a punitive action."

Assistant Attorney General Cameron Holmes, the architect and chief advocate of the state's RICO laws, said the property owner already is on an even keel with the prosecutors when they meet in court. Though the law states the property owner must prove the crime did not occur or that one of the exemptions in the law applies, Holmes said in reality the final hearing on the disposition of the property puts both sides on equal terms. The side that makes the best case will win, he said.

Holmes said he would object to changing the wording in the statute to require the state, rather than the property owner, to prove its case in court.

"The burden of going forward is important to place on the person that has access to the evidence," Holmes said. "Fairness requires the burden of proof be on the person that has the access to the information."

But other prosecutors interviewed by the *Tribune* said requiring them to prove their case throughout the court process would have little effect on the outcomes of their cases. Most forfeiture cases are clear, said Dick Mesh, head of the organized-crime section of the Maricopa County Attorney's Office.

Asked how the change proposed by Debus and other defense lawyers would affect forfeiture programs, Mesh said, "I don't think it would change it one bit."

Meanwhile, another major reform advocated by defense attorneys is that there be some proportional punishment to the crime in forfeiture cases. Current law allows seizure of any vehicle transporting any amount of illegal drugs. The *Tribune* reviewed about 2,400 forfeiture cases filed by the most active agencies in Maricopa County since 1990 and found dozens of cases in which cars were seized for small amounts of illegal drugs, particularly marijuana.

Typical of such cases is a November 1992 incident in which a 1979 Oldsmobile coupe was seized from David Soto. Soto was stopped by a Department of Public Safety officer and arrested for not having a license, according to court files. A search of the vehicle turned up a few marijuana seeds and some cigarette papers with marijuana residue on them. No other drugs were found. The case is pending.

Some police agencies have adopted their own internal guidelines as to a minimum amount that must be found before they will initiate a forfeiture proceeding.

The Phoenix City Prosecutor's Office revised its thresholds about six weeks after that city's forfeiture attorneys were interviewed by the *Tribune*. Michael Hamblin, a deputy city prosecutor, said Phoenix will no longer seek forfeitures in cases involving illegal drugs for personal use. Though the thresholds have yet to be finalized,

the current proposal puts them at 4 grams of cocaine or methamphetamine, or 1 gram of heroin, Hamblin said.

Possession of a small amount of marijuana will not result in forfeiture, even if the defendant has a prior arrest, Hamblin said.

The changes, he said, were to reflect a recent U.S. Supreme Court decision that requires there be some proportion between the crime that is alleged in a forfeiture case and the value of the property taken, he said.

While the lawyers who work the front lines in RICO cases say fundamental changes in the law are needed to bring fairness to the system, efforts at the Legislature have focused almost exclusively on how agencies spend the money.

The push this year probably will be to require disclosure of property seized, according to state Rep. Phillip Hubbard, D-Tucson, who has sponsored several unsuccessful bills to reform RICO.

Current law only requires agencies to list the amount of money they received when they sell a property. They can keep things like cars and boats for their own use indefinitely without reporting them.

Full disclosure of all properties seized, rather than just the cash that goes into the forfeiture accounts, could jeopardize investigations because many agencies retain vehicles for undercover use, Pima County Attorney Steve Neely said.

Less popular among legislators is a proposal raised by some Democratic lawmakers requiring all money raised through RICO to go into the general accounts of the state, counties and cities that initiate the seizures.

Currently, money raised through forfeitures goes into a special account for the police agencies that initiated the proceedings. Elected governing boards, like city councils and county boards of supervisors, have only limited control over how it is spent.

Putting the money into the General Fund would take away the profit motive police agencies have in forfeitures, said Michael Piccarreta, a Tucson lawyer who handles RICO cases.

Noland said she expects a renewed attempt to make reasonable reforms in the RICO laws this session, spurred in part by the six-page report from the state Auditor General's Office that recommended the laws be reviewed.

Piccarreta said lawmakers will have a difficult time standing up to the prosecutors because most of their constituents have little interest in RICO laws.

"No one cares until it comes home," Piccarreta said. "Until it's Joe Sixpack's son driving Joe Sixpack's car that is stopped with a joint in his pocket, and they take Joe Sixpack's car and it takes him six months and \$3,500 to get it back. Then all of the sudden he's offended."