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BENNIS V. MICHIGAN: CONTRASTING VIEWS

The United States Supreme Court startled the nation with its decision in Bennis v. Michigan. The State of Michigan had seized Ms. Bennis' legal interest in the family car. An arrest of her husband for illicit acts with a prostitute in the car supposedly justified the State's action. Ms. Bennis asserted an innocent owner defense against the seizure, but to no avail. The Court held that the State had violated neither the Takings Clause nor the Due Process Clause. The decision generated a response of outrage from most of the nation's media and the average citizen as well. With near predictability, the Court relied on the "guilty property" doctrine and decided the case in Michigan's favor. It is an ancient doctrine: the property itself is deemed the guilty actor, and thus, the focus is not on the citizen's constitutional rights but on the "wrongdoing" of the property itself.

The South Carolina Law Review is very pleased and excited to present two opposing views of this controversial issue. Professor George M. Dery III argues that the Court misinterpreted precedent and applied this ancient doctrine without regard to its reduced usefulness in the modern world. Professor Dery gives thorough treatment to the cases relied upon by the Court and shows how those precedents have lost their significance through the passage of time. Finally, he proposes an alternative to the guilty property fiction. Professor Richard H. Seamon brings a first-hand perspective to the controversy. He served in the Department of Justice as an Assistant to the Solicitor General of the United States. In that capacity, he presented oral argument for the United States as Amicus Curiae in the Bennis case. While not defending the Court's decision, Professor Seamon argues that a decision for Ms. Bennis would have cast doubt on other doctrines underlying the government's taking of property. The South Carolina Law Review feels confident that these contrasting views will be a positive contribution to the scholarly debate and analysis of the future viability of Bennis v. Michigan.

