Lords may tell police to return haul to ‘Julie’ gang

by Phillip Knightley

In a sensational judgment to be delivered this week, the House of Lords is expected to rule that the authorities must hand back to members of the Operation Julie drug gang, at present serving long terms in jail, all their gains from their criminal activities—a total of more than £750,000 in cash, gold and property.

The Law Lords will say that the authorities had no legal right to seize the assets of 19 members of the gang after they were convicted in 1978 and sentenced to jail terms of up to 13 years for having manufactured LSD on a scale never before known in Britain at least £1 million worth. The ruling will have wide and disturbing repercussions. It means:

- Every similar seizure since 1971, when the relevant Misuse of Drugs Act was passed, has been unlawful, and the offenders can now demand back the money they made out of drugs. This could involve hundreds of claims worth hundreds of thousands of pounds—perhaps millions.

- Unless the law is changed, anyone convicted of conspiracy to commit a drug offence can legally keep not only his criminal profits but even his drug-manufacturing equipment.

- In all drug cases, the court has no power to seize property either already out of the English court's jurisdiction or "intangible property"—money in a bank account. This means a drug offender can safely store his criminal profits in either, say, Scotland, or his account at a local High Street bank.

The case, which has turned into a disaster for drug enforcement began in Bristol Crown Court in March 1978, when the gang was charged with conspiracy to contravene the Misuse of Drugs Act. It was the use of the conspiracy charge that was to reveal the flaw in the law.

Since 1971, forfeiture orders had become almost automatic under the Misuse of Drugs Act, section 27 of which says: "The court by or before which a person is convicted of an offence under this Act may order anything shown to the satisfaction of the court to relate to the offence to be forfeited...."

The courts had believed that this section of the Act was meant to be a penal one: a method of punishing the offender by making certain not only that his drug-making equipment would be seized and destroyed, but also that his profits would be taken away from him.

Three convicted members of the drug gang challenged this interpretation. They were Henry Todd, at the time of the trial aged 32, of Cannon Street Road, Whitechapel, East London; Brian Cuthbertson, then 29, who lived mainly abroad; and Keith McCoy, then 28, of Llanwrin Road, Llanishen, Cardiff. Todd, who was jailed for 13 years, and Cuthbertson, who was jailed for 11, were described at the trial as bright young businessmen who had "fashioned a network of LSD in Britain." McCoy, a small-time trafficker, was jailed for three years.

The three men lost in the Appeal Court, but, granted legal aid, they went on to win the major part of their case in the House of Lords. Their lawyers advanced three main arguments on their behalf.

First, it was argued that they had not been convicted of any offence under the Misuse of Drugs Act but of conspiracy, which is not an offence under that Act. Therefore the phrase in section 27 which empowers courts to make a forfeiture order — "convicted of an offence under this Act" — did not apply. The forfeiture orders were thus not lawful.

Next, they argued that Section 27 could not apply to property situated abroad because the section made no mention of it. In any case, such property was beyond the court's jurisdiction, and it was an established tenet of international law that no state would enforce the penal, revenue, or public law of a foreign state.

Finally, the lawyers argued that the word "anything" in section 27 meant, literally, "any tangible..." that is, something capable of being physically seized. A bank account was a debt owed by the bank to its client, and was not capable of being physically seized, they claimed.