

Civil Forfeiture: Public Management Case Analysis and Recommendations

By Jasmine Adams

The following options memo was written as a theoretical response to the unjust civil forfeitures that took place in Shelby County, Texas in the mid-2000s. The purpose of the assignment was to recommend public management solutions to local policymakers until more robust legislative solutions passed.

Introduction and Background

In accordance with its duty to oversee operations for all law enforcement agencies operating in Shelby County, Texas, the Shelby County Commissioners Court must address the contentions in the class-action lawsuit filed against selected government officials in 2008. The lawsuit contends that leaders of local law enforcement agencies implemented a drug interdiction strategy to pressure out-of-state minority and low-income drivers stopped on U.S. 59 into forfeiting “cash, valuables, and, in at least one case, an infant child,” by threatening them with unsubstantiated criminal charges (Stillman, 2013). Agency leaders who directly benefitted from forfeiture proceeds exploited the fact that most individuals hoping to retrieve their belongings would incur attorney fees exceeding the value of their forfeited assets, if not least encounter significant administrative burdens. To limit the extent to which civil forfeiture encourages discriminatory and unethical policing, the Commissioners Court should demand greater operational transparency and accountability from law enforcement by imposing more comprehensive auditing and public reporting standards.

Evaluation of the Case

With the objective of maximizing civil forfeiture revenue, agency leaders used predatory policing and litigation tactics to generate proceeds from civil forfeiture that exceeded the agencies’ organizational needs. Despite a clear conflict of interest, law enforcement leaders maintained complete discretion over all forfeiture funds. Rather than allocate the funds to maximize social welfare, officials spent surplus funds on frivolous and personal expenditures, including “credit-card late fees, poultry-festival supplies, [and] a popcorn machine” (Stillman, 2013). With minimal reporting requirements, agency leaders’ control over forfeiture revenues created a moral hazard by allowing officials to reward their own perverse behaviors with large, forfeiture-funded bonuses worth tens of thousands of dollars.

Law enforcement’s strategy to maximize civil forfeiture proceeds focused on preventing citizens from contesting roadside seizures. Tactics to discourage contestations included (1) targeting low-income black and brown drivers with limited resources, (2) threatening criminal charges, retaliation, and revoking child custody, (3) and misrepresenting

citizens' rights and reclamation options. Government officials sought to keep these practices confidential by preventing outside entities from accessing relevant information. To subvert the class-action lawyers' request to review traffic stop footage, officers ignored the request for several months, removed or failed to record footage of select traffic stops, and increased the lawyers' administrative burden by sending the footage on separate disks that were tedious and time-consuming to review. Law enforcement's gatekeeping of information delayed public awareness of civil forfeiture abuse and the circulation of anonymous tips, which were critical to the class-action lawyers' case.

Law enforcement officials' ethical judgment originated from misguided heuristics and an erroneous understanding of the law. Heuristics for assessing the virtue of civil forfeiture included (1) the ubiquity of civil forfeiture and its lax regulation, (2) the large portion of seizures that went uncontested (which some officers interpreted as admissions of guilt), (3) the consensus among police that proceeds were vital to their budgets, and (4) the logical fallacy that the interdiction program's "pretextual indicators" significantly predicted criminal activity. Furthermore, law enforcement officers' misunderstanding of forfeiture and civil rights law led them to commit and unknowingly disclose violations of both. The district attorney rashly abandoned her obligation to fight crime, going so far as to document how she used a couple's custody over their child as a bargaining chip in a "cash-for-freedom deal." Officers still operating on Reagan-era crime policy did not understand that seizures were contingent on probable cause and the illegality of using race as an indicator for pretextual traffic stops. Law enforcement officials ultimately lost sight of their primary duty to protect human rights and uphold the law.

Management Options

Require a neutral third party to manage the proceeds from civil forfeitures.

The financial incentive to maximize roadside seizures was the primary driving force behind law enforcement's predatory over-policing and obstructions of justice. Requiring an independent agency to manage civil forfeiture revenue would increase efficiency and reduce moral hazard by removing the incentive to distribute surplus funds to law enforcement officials at the expense of other public services. States with this fund management structure are more likely to avoid civil forfeiture scandals by allocating funds to other public resources, such as education.

Shortcomings

The effectiveness of a third-party fund manager is hindered by the Espionage Act – a federal law that allows local police departments supporting a federal investigation to retain most of the funds from any seized assets. This loophole allows law enforcement to circumvent local funding controls, therefore leaving the broader incentive to abuse civil forfeiture intact.

Enforce more comprehensive auditing and public reporting standards.

The lack of transparency and accountability around law enforcement's actions hindered the public's ability to detect and combat discriminatory policing and administrative practices. Requiring agencies to publicly report expenditures from civil forfeiture funds would incentivize agency leaders to spend the funds more efficiently and responsibly.

Requiring police officers to document comprehensive details about forfeiture incidents in an organized database that auditors could access would ensure that officers' reasons for seizures met the standards of probable cause and did not exhibit any patterns of bias (*Morrow v. City of Tenaha Deputy City Marshal Washington*, 2011). Moreover, mandating that officers communicate with drivers about their rights during traffic stops and provide a comprehensive overview of the reclamation process on their website would help to hold officers accountable for honoring those rights and processes (Civil Asset Forfeiture, U.S. House of Representatives Subcommittee on Crime, Terrorism, Homeland Security and Investigations, 2015).

Shortcomings

Relying on public scrutiny to influence behavior is a weaker enforcement mechanism than formal regulations. Information transparency may mitigate, rather than completely remove law enforcement leaders' incentive to engage in inappropriate and biased practices.

Recommendation

The Shelby County Commissioners Court should require law enforcement to comply with comprehensive auditing and public reporting requirements. The Espionage Act loophole significantly undermines the effectiveness of any formal local controls on forfeiture expenditures. Mandating more transparent communication and reporting would be more effective in pressuring officials to allocate funds in line with public interests. Additionally, this strategy would encourage leaders to promote fair law enforcement practices and would aid property owners in retaining and reclaiming their assets.

References

Civil Asset Forfeiture, U.S. House of Representatives Subcommittee on Crime, Terrorism, Homeland Security and Investigations, 114th Cong. (2015) (written testimony of David B. Smith). <https://davidbsmithpllc.com/wp-content/uploads/2015/03/gngf-b1-congressional-testimony-20150211.pdf>.

Morrow v. City of Tenaha Deputy City Marshal Washington, 277 F.R.D. 172, pg. 185. (2011). <https://cite.case.law/frd/277/172/#p185>.

Stillman, S. (2013). *The Rise of Civil Forfeiture*. Taken. The New Yorker.