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TAKEN

Under civil forfeiture, Americans who haven't been charged with wrongdoing can be stripped of their cash, cars, and even homes. Is that all we're losing?

By Sarah Stillman





Clockwise from left: James Morrow, Javier Flores, Jennifer Boatright and her son Jacob, Dale Agostini, and Nelly Moreira. Many police budgets depend on money from forfeiture.

Photographs by Ashley Gilbertson / VII

On a bright Thursday afternoon in 2007, Jennifer Boatright, a waitress at a Houston bar-and-grill, drove with her two young sons and her boyfriend, Ron Henderson, on U.S. 59 toward Linden, Henderson's home town, near the Texas-Louisiana border. They made the trip every April, at the first signs of spring, to walk the local wildflower trails and spend time with Henderson's father. This year, they'd decided to buy a used car in Linden, which had plenty for sale, and so they bundled their cash savings in their car's center console. Just after dusk, they passed a sign that read "Welcome to Tenaha: A little town with BIG Potential!"

They pulled into a mini-mart for snacks. When they returned to the highway ten minutes later, Boatright, a honey-blond "Texas redneck from Lubbock," by her own reckoning, and Henderson, who is Latino, noticed something strange. The same police car that their eleven-year-old had admired in the mini-mart parking lot was trailing them. Near the city limits, a tall, bull-shouldered officer named Barry Washington pulled them over.

He asked if Henderson knew that he'd been driving in the left lane for more than half a mile without passing.

No, Henderson replied. He said he'd moved into the left lane so that the police car could make its way onto the highway.

Were there any drugs in the car? When Henderson and Boatright said no, the officer asked if he and his partner could search the car.

The officers found the couple's cash and a marbled-glass pipe that Boatright said was a gift for her sister-in-law, and escorted them across town to the police station. In a corner there, two tables were heaped with jewelry, DVD players, cell phones, and the like. According to the police report, Boatright and Henderson fit the profile of drug couriers: they were driving from Houston, "a known point for distribution of illegal narcotics," to Linden, "a known place to receive illegal narcotics." The report describes their children as possible decoys, meant to distract police as the couple breezed down the road, smoking marijuana. (None was found in the car, although Washington claimed to have smelled it.)

The county's district attorney, a fifty-seven-year-old woman with feathered Charlie's Angels hair named Lynda K. Russell, arrived an hour later. Russell, who moonlighted locally as a country singer, told Henderson and Boatright that they had two options. They could face felony charges for "money laundering" and "child endangerment," in which case they would go to jail and their children would be handed over to foster care. Or they could sign over their cash to the city of Tenaha, and get back on the road. "No criminal charges shall be filed," a waiver she drafted read, "and our children shall not be turned over to CPS," or Child Protective Services.

"Where are we?" Boatright remembers thinking. "Is this some kind of foreign country, where they're selling people's kids off?" Holding her sixteen-month-old on her hip, she broke down in tears.

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Later, she learned that cash-for-freedom deals had become a point of pride for Tenaha, and that versions of the tactic were used across the country. “Be safe and keep up the good work,” the city marshal wrote to Washington, following a raft of complaints from out-of-town drivers who claimed that they had been stopped in Tenaha and stripped of cash, valuables, and, in at least one case, an infant child, without clear evidence of contraband.

Outraged by their experience in Tenaha, Jennifer Boatright and Ron Henderson helped to launch a class-action lawsuit challenging the abuse of a legal doctrine known as civil-asset forfeiture. “Have you looked it up?” Boatright asked me when I met her this spring at Houston’s H&H Saloon, where she runs Steak Night every Monday. She was standing at a mattress-size grill outside. “It’ll blow your mind.”

The basic principle behind asset forfeiture is appealing. It enables authorities to confiscate cash or property obtained through illicit means, and, in many states, funnel the proceeds directly into the fight against crime. In Tulsa, Oklahoma, cops drive a Cadillac Escalade stencilled with the words “THIS USED TO BE A DRUG DEALER’S CAR, NOW IT’S OURS!” In Monroe, North Carolina, police recently proposed using forty-four thousand dollars in confiscated drug money to buy a surveillance drone, which might be deployed to catch fleeing suspects, conduct rescue missions, and, perhaps, seize more drug money. Hundreds of state and federal laws authorize forfeiture for cockfighting, drag racing, basement gambling, endangered-fish poaching, securities fraud, and countless other misdeeds.

In general, you needn’t be found guilty to have your assets claimed by law enforcement; in some states, suspicion on a par with “probable cause” is sufficient. Nor must you be charged with a crime, or even be accused of one. Unlike criminal forfeiture, which requires that a person be convicted of an offense before his or her property is confiscated, civil forfeiture amounts to a lawsuit filed directly against a possession, regardless of its owner’s guilt or innocence.

One result is the rise of improbable case names such as *United States v. One Pearl Necklace* and *United States v. Approximately 64,695 Pounds of Shark Fins*. (Jennifer Boatright and Ron Henderson’s forfeiture was slugged *State of Texas v. \$6,037*.) “The protections our Constitution usually affords are out the window,” Louis Rulli, a clinical law professor at the University of Pennsylvania and a leading forfeiture expert, observes. A piece of property does not share the rights of a person. There’s no right to an attorney and, in most states, no presumption of innocence. Owners who wish to contest often find that the cost of hiring a lawyer far exceeds the value of their seized goods. Washington, D.C., charges up to twenty-five hundred dollars simply for the right to challenge a police seizure in court, which can take months or even years to resolve.

The tangled nature of the process became clear when I spoke to Nelly Moreira, a stout, curly-haired custodian who lives in Northwest D.C. Moreira relied on her 2005 Honda Accord to drive from her early-morning job, cleaning Trinity Washington University, to her evening job, cleaning the U.S. Treasury Department. In March, 2012, her son was driving her car when he was pulled over for a minor traffic violation, and, after a pat down, was found to have a handgun. He was arrested, and her car was seized. Moreira, who grew up in El Salvador, explained in Spanish that she received a letter in the mail two months later asking her to pay a bond of one thousand and twenty dollars—which she took to be the fee to get her car back. Desperate, she borrowed cash from friends and family to cover the bond, which is known in D.C. law as a “penal sum.” If she hadn’t, the car would have been auctioned off, or put to use by the police. But all that the money bought her was the right to a complex and slow-moving civil-forfeiture court case.

She was left struggling to make her car payments each month as her Honda sat in a city lot, unused and unsheltered from the elements. The bond, the loans, and the public-transportation costs added up. “There were days I didn’t have a good meal,” she told me in February, sitting beneath her daughter’s *quinceañera* portrait in her narrow fuchsia-painted row house.

The Public Defender Service for the District of Columbia won the release of Moreira’s car last summer, and in May filed a lawsuit against the city on behalf of approximately three hundred and seventy-five car owners like Moreira. Describing the policy as “devastating for hundreds of families who depend on their cars for many of the urgent and important tasks of daily life,” it called for higher standards of proof and the end of penal-sum fees. At a public hearing on July 11th, D.C.’s attorney general, Irvin Nathan, acknowledged “very real problems” relating to due-process rights. But he warned that millions of dollars raised by forfeiture “could very easily be lost” and “an unreasonable burden” placed on his office if the reforms supported by the Public Defender Service were enacted. He proposed more modest changes that would leave the current burden of proof untouched.

“We all know the way things are right now—budgets are tight,” Steve Westbrook, the executive director of the Sheriffs’ Association of Texas, says. “It’s definitely a valuable asset to law enforcement, for purchasing equipment and getting

things you normally wouldn't be able to get to fight crime." Many officers contend that their departments would collapse if the practice were too heavily regulated, and that a valuable public-safety measure would be lost.

But a system that proved successful at wringing profits from drug cartels and white-collar fraudsters has also given rise to corruption and violations of civil liberties. Over the past year, I spoke with more than a hundred police officers, defense attorneys, prosecutors, judges, and forfeiture plaintiffs from across the country. Many expressed concern that state laws designed to go after high-flying crime lords are routinely targeting the workaday homes, cars, cash savings, and other belongings of innocent people who are never charged with a crime.

When Jennifer Boatright and Ron Henderson complained to the county in the hope of retrieving their savings, they got another surprise. Lynda Russell, the district attorney, told them she had warned "repeatedly" that they did not have to sign the waiver, but, if they continued to contest it, they could be indicted on felony charges. "I will contact you and give you an opportunity to turn yourself in without having an officer come to your door," she wrote in a letter mentioning the prospect of a grand jury. Once again, their custody of the kids was threatened. Boatright and Henderson decided to fight anyway.

When out-of-town drivers who felt victimized by a Tenaha forfeiture called local lawyers for help, their business wasn't always welcomed. "That'd be like kicking a basket of rattlesnakes," one defense lawyer warned a forfeiture target. Often they were referred to a defense attorney named David Guillory, in nearby Nacogdoches. Guillory is a broad-faced man with blue eyes and the gregarious, cheerful disposition of a Scoutmaster. (He is, in fact, an assistant Scoutmaster of local Troop 100, and keeps the "Handbook of Knots" by his desk, near heaps of legal briefs.) He moved to Nacogdoches seventeen years ago and set up shop as a small-town civil-rights lawyer. He specialized in cases around the state that made neither friends nor profits: mostly, suing policemen for misconduct.

By the time Boatright and Henderson spoke with Guillory, he was already acquainted with what he refers to as "the Tenaha operation." Several months earlier, he'd received a call from a plump-cheeked twenty-seven-year-old man named James Morrow, who worked at a Tyson plant in Pine Bluff, Arkansas, slicing chicken strips for prepared foods.

“He told me a pretty startling story,” Guillory recalls. In August, 2007, Tenaha police pulled Morrow over for “driving too close to the white line,” and took thirty-nine hundred dollars from him. Morrow told Guillory that he was on his way to get dental work done at a Houston mall. (The arresting officers said that his “stories of travel” were inconsistent, as was his account of how much money he had; they also said they detected the “odor of burned marijuana,” although no contraband was found in the car.) Morrow, who is black, was taken to jail, where he pleaded with authorities to call his bank to see proof of his recent cash withdrawal. They declined.

“They impounded my car, and they impounded me, too,” Morrow told me, recalling the night he spent in jail. When he finally agreed to sign away his property, he was released on the side of the road with no money, no vehicle, and no phone. “I had to go to Wal-Mart and borrow someone’s phone to call my mama,” he recounted. “She had to take out a rental car to come pick me up.” For weeks, Morrow said he felt “crippled,” unsure of what to do. He says that a Tenaha officer told him, “Don’t even bother getting a lawyer. The money always stays here.” But finally he decided “to shine a big ol’ light on them.”

After Morrow was steered to Guillory, he took a day off from his job and arrived at Nacogdoches with stacks of old bank files to prove where his money came from. “He knew how hard he’d worked for that money,” Guillory told me, “and every dime was taken from him.” Guillory decided to find out if what had happened to Morrow was more than a fluke. He was taken aback by the scale of what he uncovered. It was a baroque small-town scandal, but it was also a story with national reach. He wondered how many people across the country felt “crippled,” as Morrow did, by statutes so little known yet so widely used.

In West Philadelphia last August, an elderly couple named Mary and Leon Adams were finishing breakfast when several vans filled with heavily armed police pulled up to their red brick home. An officer announced, “We’ll give you ten minutes to get your things and vacate the property.” The men surrounding their home had been authorized to enter, seize, and seal the premises, without any prior notice.

“I was almost numb,” Mary Adams, a sixty-eight-year-old grandmother with warm brown eyes and wavy russet hair, recalled. When I visited her this spring, she sat beside her seventy-year-old husband, who was being treated for pancreatic cancer, and was slumped with exhaustion. A little earlier, he had struggled to put on his embroidered blue-and-yellow guayabera shirt; his wife, looking fit for church in a green jacket, tank top, and slacks, watched him attentively as he shuffled over on a carved-wood cane to greet me. Leon explained his attachment to their home in numerical terms. “1966,” he said. “It’s been our home since 1966.”

Mary had been working as a truck-stop cook in segregated South Carolina when she met and married Leon—a man from “way out in the woods, just a fireplace and a lamp”—and followed him north. Leon had been hired as a cook at the Valley Forge Music Fair, outside Philadelphia, where James Brown, Aretha Franklin, and the Kingston Trio would one day perform. After renting a room in the city, the Adamses found a sweet little two-story house within their budget, five miles from Philadelphia’s Liberty Bell. It had a narrow covered porch that reminded Mary Adams of the country.

The home served the Adams family well over the next half century, as Leon took a job as a steel-plant worker, and later as an elementary-school janitor, and Mary worked as a saleswoman at Woolworth and, eventually, as a patients’ care assistant at Bryn Mawr hospital. (“I treated every patient as a V.I.P., whether you were in a coma or not!”) More recently, the home has helped the couple ease into their retirement. “I love digging in the dirt,” she said, referring to their modest, marigold-lined front yard, and “sitting on the porch, talking to neighbors.”

Their home also proved a comfortable place to raise their only son, Leon, Jr.—so comfortable, in fact, that the young man never quite flew the nest. At thirty-one, slender and goateed, Leon, Jr., occupied a small bedroom on the second floor. When his father, who had already suffered a stroke, fell ill with cancer, he was around to help out. But, according to a report by the Philadelphia Police Department, the younger Leon had a sideline: on the afternoon of July 10, 2012, he allegedly sold twenty dollars’ worth of marijuana to a confidential informant, on the porch of his parents’ home. When the informant requested two more deals the next week, the report said, he made the same arrangements. Both were for twenty dollars, purchased with marked bills provided by police.

Around 5 p.m. on July 19th, Leon, Sr., was in his bedroom recovering from surgery when he was startled by a loud noise. “I thought the house was blowing up,” he recalls. The police “had some sort of big, long club and four guys hit the door with it, and knocked the whole door right down.” SWAT-team officers in riot gear were raiding his home. One of the officers placed Leon, Jr., in handcuffs and said, “Apologize to your father for what you’ve done.” Leon, Jr., was taken off to jail, where he remains, awaiting trial.

The police returned about a month after the raid. Owing to the allegations against Leon, Jr., the state was now seeking to take the Adamses’ home and to sell it at a biannual city auction, with the proceeds split between the district attorney’s office and the police department. All of this could occur even if Leon, Jr., was acquitted in criminal court; in fact, the process could be completed even before he stood trial.

Mary Adams was at a loss. She and her husband were accused of no crime. Instead, the civil case was titled Commonwealth of Pennsylvania v. The Real Property and Improvements Known as [their address]. For years, Mary had volunteered for the Philadelphia More Beautiful Committee, and as a block captain she always thought that civil forfeiture was reserved for crack houses and abandoned eyesores. Now her own carefully maintained residence was the target.

The Adamses had a lucky break on the morning of their eviction notice: when an officer observed Leon’s frail condition, he told them that they could stay in the house while the forfeiture proceedings advanced. This gave them some time to figure out how to fight. “We had no money,” Mary told me, so they couldn’t hire a lawyer. But they learned of a free “Civil Practice” clinic at the University of Pennsylvania Law School, run by Louis Rulli, where students help indigent homeowners challenge civil-forfeiture claims.

“It was an area of the law that was under the radar and very prone to abuse,” Rulli told me when we met at his clinic, in a wing of the law school with a separate entrance and an air of potted-plant competence reminiscent of a doctor’s office. Beside him sat Susanna Greenberg, a colleague, and Julia Simon-Mishel, who had worked on the Adamses’ case as a law student. Rulli noted that the system is designed to defeat anyone who isn’t an expert in navigating its

intricacies. “These are affirmative defenses—you lose them if you don’t raise them,” he said. “Even lawyers don’t know about these defenses unless they’ve worked on forfeiture specifically.”

The public records I reviewed support Rulli’s assertion that homes in Philadelphia are routinely seized for unproved minor drug crimes, often involving children or grandchildren who don’t own the home. “For real-estate forfeitures, it’s overwhelmingly African-Americans and Hispanics,” Rulli told me. “It has a very disparate race and class impact.” He went on to talk about Andy Reid, the former coach of the Philadelphia Eagles, whose two sons were convicted of drug crimes in 2007 while living at the family’s suburban mansion in Villanova. “Do you know what the headline read? It said, ‘THE HOME WAS AN “EMPORIUM OF DRUGS.” ’ An emporium of drugs!” The phrase, Rulli explained, came directly from a local judge. “And here’s the question: Do you think they seized it?”

Beth Grossman, the chief of the city’s Public Nuisance Task Force, which includes the forfeiture unit, says she’s seen the statute used to transform drug-ridden communities that had few other means of recourse against dangerous local dealers. “Our mission is not to take houses and to auction them,” she told me. Although the city auctioneer reports that about a hundred properties are successfully seized and sold each year, Grossman says the city prefers to work out settlements that would allow families to stay in their homes. “Our mission comes from a place of public safety and providing a good quality of life for our law-abiding citizens in Philadelphia.” The Philadelphia D.A.’s office has declined to comment on the specifics of the Adamses’ case, but Tasha Jamerson, its spokesperson, told me, “It’s not us making decisions, willy-nilly. . . . It’s the law. We’re following the law.”

Whether this should be the law—whether, in the absence of a judicial finding of guilt, the state should be able to take possession of your property—has been debated since before American independence. In the Colonial period, the English Crown issued “writs of assistance” that permitted customs officials to enter homes or vessels and seize whatever they deemed contraband. As the legal scholars Eric Blumenson and Eva Nilsen have noted, these writs were “among the key grievances that triggered the American Revolution.” The new nation’s Bill of Rights would expressly forbid “unreasonable searches and seizures” and promise that no one would be deprived of “life, liberty, or property, without due process.” Nonetheless, Congress soon authorized the use of civil-forfeiture actions against pirates

and smugglers. It was easier to prosecute a vessel and seize its cargo than to try to prosecute its owner, who might be an ocean away. In the ensuing decades, the practice fell into disuse and, aside from a few brief revivals, remained mostly dormant for the next two centuries.

Forfeiture in its modern form began with federal statutes enacted in the nineteen-seventies and aimed not at waitresses and janitors but at organized-crime bosses and drug lords. Law-enforcement officers were empowered to seize money and goods tied to the production of illegal drugs. Later amendments allowed the seizure of anything thought to have been purchased with tainted funds, whether or not it was connected to the commission of a crime. Even then, forfeiture remained an infrequent resort until 1984, when Congress passed the Comprehensive Crime Control Act. It established a special fund that turned over proceeds from forfeitures to the law-enforcement agencies responsible for them. Local police who provided federal assistance were rewarded with a large percentage of the proceeds, through a program called Equitable Sharing. Soon states were crafting their own forfeiture laws.

Revenue gains were staggering. At the Justice Department, proceeds from forfeiture soared from twenty-seven million dollars in 1985 to five hundred and fifty-six million in 1993. (Last year, the department took in nearly \$4.2 billion in forfeitures, a record.) The strategy helped reconcile President Reagan's call for government action in fighting crime with his call to reduce public spending. In 1989, Attorney General Richard Thornburgh boasted, "It's now possible for a drug dealer to serve time in a forfeiture-financed prison after being arrested by agents driving a forfeiture-provided automobile while working in a forfeiture-funded sting operation."

There were high-profile success stories. The federal government seized a four-hundred-acre Montana ranch tied to the Colombian drug kingpin Pablo Escobar, and laid claim to the bank accounts of assorted Wall Street con men. But tales of abuse also emerged. In 1992, a California drug task force shot and killed a reclusive millionaire named Donald Scott during a raid of his Malibu ranch; by some accounts, police were searching for marijuana plants (none were found) as a pretext to seize Scott's two-hundred-acre property. "Unfortunately, I think I can say that our civil-asset-forfeiture laws are being used in terribly unjust ways," Henry Hyde, the Republican chairman of the House Judiciary Committee, declared in 1997, "and are depriving innocent citizens of their property with nothing that can be called due process."

Three years later, Congress passed the Civil Asset Forfeiture Reform Act (CAFRA), requiring that federal prosecutors prove “a substantial connection between the property and the offense,” and allowing people who can prove themselves “innocent owners” to keep their property.

But civil-forfeiture statutes continued to proliferate, and at the state and local level controls have often been lax. Many states, facing fiscal crises, have expanded the reach of their forfeiture statutes, and made it easier for law enforcement to use the revenue however they see fit. In some Texas counties, nearly forty per cent of police budgets comes from forfeiture. (Only one state, North Carolina, bans the practice, requiring a criminal conviction before a person’s property can be seized.) Often, it’s hard for people to fight back. They are too poor; their immigration status is in question; they just can’t sustain the logistical burden of taking on unyielding bureaucracies.

Victor Ramos Guzman, a Pentecostal Church secretary from El Salvador, who lives in the U.S. under temporary protected status, is typical in all these respects. A year and a half ago, he and his brother-in-law were driving along Interstate 95 near Emporia, Virginia, en route, documents show, to buy a parcel of land for their church. When a state trooper pulled them over for speeding, Guzman and his brother-in-law disclosed that they were carrying twenty-eight thousand five hundred dollars in parishioners’ donations. Although the trooper found no contraband, he seized the cash. By reporting the case to Immigration and Customs Enforcement (Guzman was in the country legally, but he spoke little English), the state police could gain up to eighty per cent of the seizure through the federal Equitable Sharing program.

“We could prove beyond a reasonable doubt that the money was church money from parishioners’ donations,” David Smith, who was a deputy chief of the Justice Department’s Asset Forfeiture Office during the Reagan Administration and now defends the policy’s targets pro bono, told me last January. Only after he intervened were the funds returned. “But these were people who didn’t have the means to fight back. They weren’t well-to-do. They didn’t know any senators or congressmen, they weren’t citizens. They had no voice.” For the people who hoped to take on the Tenaha operation, the challenge was to bring claims like these into public view.

David Guillory started his research by driving his cluttered red Volkswagen Jetta to the Shelby County courthouse, in Center, Texas, where he examined the ledgers that listed the past two years of the county's legal cases. He wanted to see "any case styled 'The State of Texas versus' anything that sounds like a piece of property." The clerk began hauling out one bulging accordion file after another.

"The eye-opening event was pulling those files," Guillory told me. One of the first cases that caught his attention was titled State of Texas vs. One Gold Crucifix. The police had confiscated a simple gold cross that a woman wore around her neck after pulling her over for a minor traffic violation. No contraband was reported, no criminal charges were filed, and no traffic ticket was issued. That's how it went in dozens more cases involving cash, cars, and jewelry. A number of files contained slips of paper of a sort he'd never seen before. These were roadside property waivers, improvised by the district attorney, which threatened criminal charges unless drivers agreed to hand over valuables.

Guillory eventually found the deal threatening to take Jennifer Boatright and Ron Henderson's children unless the couple signed away their money to Shelby County. "It's like they were memorializing the fact that they were abdicating their responsibility to fight crime," Guillory said. "If you believe children are in sufficient danger that they should be removed from their parents—don't trade that for money!" Usually, police and prosecutors are careful about how they broker such exchanges. But Shelby County officials were so brazen about their swap-meet approach to law enforcement, he says, "they put it in the damn document!"

Patterns began to emerge. Nearly all the targets had been pulled over for routine traffic stops. Many drove rental cars and came from out of state. None appeared to have been issued tickets. And the targets were disproportionately black or Latino. A finding of discrimination could bring judicial scrutiny. "It was a highway-piracy operation," Guillory said, and, he thought, material for a class-action lawsuit.

But that was a daunting prospect. "Class actions involving race discrimination are extremely hard to win," Guillory said. "Most of them go down in flames." What's more, the Tenaha case wasn't against a private concern. It involved, in Guillory's analysis, "a government entity that enjoys the benefit of most doubts, and a D.A. who enjoyed the most

gold-plated kind of immunity there is: absolute prosecutorial immunity.” That was why, he thinks, authorities in Tenaha had managed to keep their dirty work largely obscured from public view—“shitting in high cotton,” he calls it.

Still, Guillory liked the idea that the case could shed light on broader public-policy issues. At the University of Texas, in Austin, where Guillory attended college and law school during the nineteen-eighties, he had been eager to get involved in electoral politics; his roommate was Paul Begala, who became a prominent Democratic political consultant. Guillory worked where he felt his labors were needed, far from the public eye. But he was drawn to litigation that could help spark reform, even if the odds were not in his favor.

Guillory began exchanging notes with his weekly lunch buddy, a slender, scruffy-bearded fellow civil-rights lawyer named Tim Garrigan. Garrigan, who is taller, grayer, and less salty than Guillory, suspected that Tenaha’s roadside deals reflected a broader trend of “policing for profit.” Over Szechuan chicken, he agreed to join Guillory in bringing a lawsuit, and, on July 24, 2008, the two men filed a class action against Shelby County and Tenaha authorities, with James Morrow listed as the lead plaintiff.

Within a few weeks, the lawyers had received calls from other Tenaha forfeiture victims. In addition to Jennifer Boatright and Ron Henderson, the suit was joined by a handful of others—among them an African-American woman from Akron, Ohio, named Linda Dorman, who had forty-five hundred dollars taken from her and a passenger; and a young Mexican-American, Javier Flores, who turned over twenty-four hundred dollars. The suit accused the mayor of Tenaha and other town and Shelby County officials of operating “an illegal practice of stopping, detaining, searching, and often seizing property from citizens,” and doing so “not for any legitimate law enforcement purpose but to enrich their offices and perhaps themselves.” The practice was discriminatory, the suit alleged, and in violation of the Fourth and Fourteenth Amendments of the Constitution, “at least.”

Tenaha, population 1,170, is a sleepy stretch of East Texas that smells of its three main industries: cattle, timber, and poultry. The only sit-down restaurant for miles, the Whistle Stop, has a Texas Narcotics Officers’ Association sticker on the front door, along with a sign that reads “We Reserve the Right to Refuse Service to Anyone.” Inside,

when a newcomer sits down to order lunch on a workday afternoon, locals crane their necks to get a better look. Next door is the town's main tourist attraction, the Tenaha Antique Mall, where a cashier spends her days staring at a rusty "Barry Goldwater for President" sign and stacks of vintage Coca-Cola bottles; she sells her own tea cakes on the side, in small ziplock bags.

The town's racial geography feels like a throwback, too. White residents live in homes that range from sturdy brick façades to ramshackle trailers; black residents tend to live in "the Quarters," where the roads are a lumpy mess of silt and rocks, and some houses have limited access to the sewage system. For years, young people of both races have been emptying out of Tenaha.

"There's not much for our children to do but leave," Marie Crawford, a genteel former city councilwoman, told me recently, as we drove around town in her burgundy van. She has a silver-straight bob and wore a graceful maroon shawl. When we reached the stretch of U.S. 59 that runs into Main Street, we found ourselves trailing a truck stuffed with chickens, which shed tiny white feathers on Crawford's windshield like a sudden snowfall. "I take it that's abandoned?" I asked, pointing to a shack with splintery boards for windows.

"People live there," she said. "That's what kills me."

Tenaha's mayor and city marshal were understandably receptive when, in the fall of 2006, Barry Washington, a former state trooper from Carthage, Texas, arrived and told them that his drug-interdiction skills could be put to good use along its section of Highway 59. As he later explained at a town-hall meeting, money from thugs could pay the town's bills. Handsome and imposing in cattle-rancher boots, Washington was, at age fifty, among the most decorated officers in state history. One of the first black troopers to rise to prominence, he had helped pioneer drug-interdiction programs along Texas highways in the nineteen-nineties, earning grip-and-grin photos with George W. Bush and other politicians, and a congressional tribute in 1996.

It wasn't immediately obvious why a man so accomplished—a two-decade veteran of the Department of Public Safety—was interested in taking a sleepy job in a sleepy town. His explanation was simple. He'd been lying in bed one night

in Carthage, soon after leaving his old job, when he looked up to see a light burst through his bedroom ceiling. “And it’s like I’m in a trance,” he later recalled. “And God tells me, ‘Go to Tenaha, Texas.’ And I get up the next day, and I laugh about it, until I find out that God may be serious, so I end up in Tenaha.”

The town was well placed for an interdiction program. Although U.S. 59 hardly seems like a highway when it goes through Tenaha (the speed limit changes from seventy to thirty-five), the route connects Laredo, on the U.S. border with Mexico, to Houston, and then stretches fifteen hundred miles to the Minnesota border with Canada. Each year, millions of pounds of drugs make their way north, and millions more flow back down in cash. Much of this goes to support Mexico’s brutal drug cartels—the sort of organized criminal networks known to decapitate innocents and dissolve rivals in vats of lye. At the Texas Department of Public Safety, Washington was among the first officers in America to use new techniques to sniff out cash, which resourceful smugglers were concealing inside dolls, bowling balls, piles of rotting fish, and all manner of cunningly hidden compartments.

In Tenaha, Washington quickly began bringing in drug money. According to a former colleague, he made heavy use of “pretextual traffic stops,” focussing on out-of-state rental cars. Early on, he caught a man driving a sleek motor home filled with five hundred pounds of pot. The district attorney confiscated the vehicle, and the town auctioned it off for twenty thousand dollars.

Locals still describe with awe a stop Washington made nine days before Christmas in 2006. He pulled over a blue Nissan driven by a droopy-faced, curly-haired woman with big brown eyes, for “following too closely” behind a large truck. “She talked slow,” Washington jotted in his police report, “and . . . batted her eyes very sleepy like.” She also seemed, in the face of interrogation, “very nervous.” Washington noticed that festive red-and-green Christmas packages sat stacked on the back seat. “Children’s toys,” the woman said. But, when the gifts were unwrapped, Washington found an early holiday present for the city: more than six hundred and twenty thousand dollars in cash.

Within six months, the program had amassed almost \$1.3 million in seized profits, some of it taken from so-called “smurfs”—often well-dressed, friendly-looking people who carry money for cartels, depositing it at banks in small

amounts to avoid detection. A profit-sharing agreement was drawn up to split the proceeds among the district attorney's office, the Tenaha marshal's office, and the county constable.

But Marie Crawford, the councilwoman, had begun to notice a few things that didn't sit right with her. "The lady with the Christmas packages, she was in jail for one night, and then they let her right out," Crawford told me. It affronted her sense of justice that someone who appeared to be a major money launderer was swiftly released and never hit with criminal charges. Something similar happened with a Nashville man found to be transporting more than eighty-one thousand dollars and a large stash of cocaine in the trunk of his Chevrolet, and another mule hauling ninety-five thousand dollars.

"Hey, I've got kids and grandkids, I want drugs off the street," Crawford said. "But all we were doing was taking their money and sending them on down the road." At the same time, the new forfeiture corridor seemed also to ensnare people who had no involvement with the drug trade. After speaking to a local judge, Crawford learned that letters of complaint had been arriving from drivers across the country. She sent copies along to Tim Garrigan and David Guillory, whose class-action lawsuit was well on its way.

"Dear Honorable Mayor," wrote an Arkansas man who described having his car torn apart on the roadside in a futile search for drugs. "I felt humiliated, helpless, and painful for the way I was treated." He enclosed photographs showing his car's ravaged interior. A man described how, on his way back from a grandchild's preschool graduation in Louisiana, he "had been violated, stripped of my dignity before my daughter and grandchildren." Another driver said that he was stopped so often on his monthly drive through Tenaha to visit a sick relative across state lines that he kept a tape recorder in the car, hoping to capture police misconduct.

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Briefly



The lawyers figured that such misconduct had already been recorded. In Tenaha, the police station and cars were outfitted with video-surveillance equipment. And Boatright, for one, said that on the night of her detention Washington told her that the whole thing was being captured on film. Garrigan had requested footage of traffic stops made by Washington and his partner, along with related video from the station, but got nowhere. Then, after the Tenaha lawsuit caught the attention of the national media, the Civil Rights Division of the U.S. Department of Justice launched its own criminal investigation into the alleged abuses. Several months later, in October, 2009, large stacks of optical disks were finally turned over. Garrigan and Guillory now had hundreds of hours of digital footage to sort through. Garrigan hired a colleague's adult son to sit at a large oval wood-veneer table with a laptop and a supply of Starbucks, sorting through it all. (He's still at it.)

Curiously, most of Barry Washington's traffic stops were absent from the record. In those instances where Washington had turned on his dashboard camera, the video was often of such poor quality as to be "useless," Garrigan says. There was hardly any footage of his clients, including Jennifer Boatright and Ron Henderson.

In James Morrow's case, a sliver of video was identified from Constable Randy Whatley's camera feed, which captured part of the man's detention by the side of the road. Washington could be heard instructing Whatley, "Would you take your K-9? If he alerts on the vehicle, I'm gonna take his mama's vehicle away from him, and I'm gonna take his money."

"Oh, yeah," Whatley replied. "O.K."

“I’m gonna take his stuff from him,” Washington repeated.

The rest of the video was mostly muted, and a judge later deemed it “somewhat obscured by the placement of Washington’s car between the camera and Morrow’s car.”

Some useful footage turned up that involved one of their original plaintiffs, a soft-spoken man named Dale Agostini, who was born in Guyana and was the co-owner of an award-winning Caribbean restaurant in Washington, D.C., called Sweet Mango. In September, 2007, he and his fiancée had had their infant son taken from them hours after Barry Washington pulled them over for “traveling in left lane marked for passing only,” according to the police report. No evidence of drugs or other contraband was found, and neither parent had a criminal record. Even so, Washington seized a large sum of cash that Agostini, who has family in the area, said he’d brought with him to buy restaurant equipment at a local auction. Lynda Russell, the district attorney, then arrived at the scene, sending Agostini and his fiancée, a nursing student at the University of Maryland, to jail for the night.

In police surveillance footage, Agostini can be heard pleading with Russell, “Can I kiss my son goodbye?”

Afterward, Russell dryly recounted to a colleague, “I said no, kiss me.”

“I hope you won’t paint it like it’s all bad,” Simon Porter, a former East Texas narcotics officer based in Titus County, implored when we spoke. More than seventy per cent of seizures in Texas are “administrative” cases, which means that they are never contested by the owner—owing to guilt, Porter maintains, more than to the difficulties of fighting back. “When it’s done right, civil forfeiture is one of our most valuable tools,” he said.

The rise of civil forfeiture has, in some areas, proved of great value. It allows the government to extract swift penalties from white-collar criminals and offer restitution to victims of fraud; since 2012, the Department of Justice has turned over more than \$1.5 billion in forfeited assets to four hundred thousand crime victims, often in cases of corporate criminality. Federal agents have also used forfeiture to go after ruthless migrant smugglers, organized-crime tycoons, and endangered-species poachers, stripping them of their illicit gains. Global Witness, the anti-corruption group,

recently cheered the Justice Department's civil-forfeiture action targeting the son of Equatorial Guinea's dictator, which sought his Malibu mansion, Gulfstream jet, and some two million dollars' worth of Michael Jackson memorabilia, including a bejewelled white glove.

Yet only a small portion of state and local forfeiture cases target powerful entities. "There's this myth that they're cracking down on drug cartels and kingpins," Lee McGrath, of the Institute for Justice, who recently co-wrote a paper on Georgia's aggressive use of forfeiture, says. "In reality, it's small amounts, where people aren't entitled to a public defender, and can't afford a lawyer, and the only rational response is to walk away from your property, because of the infeasibility of getting your money back." In 2011, he reports, fifty-eight local, county, and statewide police forces in Georgia brought in \$2.76 million in forfeitures; more than half the items taken were worth less than six hundred and fifty dollars. With minimal oversight, police can then spend nearly all those proceeds, often without reporting where the money has gone.

"When you allow the profit incentive, that's when you start getting problems," Porter said. "It's like the difference between serving in the Army and working for Blackwater." The Blackwater model wasn't endemic just in Tenaha. In Oklahoma, a Caddo County district attorney hired a private company, Desert Snow L.L.C., to train a local drug-interdiction task force. Although the company's contractors were not certified law officers, they reportedly interrogated drivers and took up to twenty-five per cent of the seized cash, even in cases where no contraband was present. Last month, after a county judge denounced the contractors' role as "shocking," the district attorney suspended the practice.

During my time in East Texas, a police officer told me that if I ventured beyond Shelby County I'd learn that Tenaha was far from an outlier in the region. When I looked through courthouse records and talked with local interdiction officers in nearby counties, I saw what he meant. In Hunt County, Texas, I found officers scoring personal bonuses of up to twenty-six thousand dollars a year, straight from the forfeiture fund. In Titus County, forfeiture pays the assistant district attorney's entire salary. Farther south, in Johnson County, I came upon a sheriff's office that had confiscated an out-of-state driver's cash, in the absence of contraband, in exchange for a handwritten receipt that gave the traveller no information about who had just taken his money, why, or how he might get it back.

If the war on drugs was an immense boost to forfeiture programs, the post-9/11 era has also seen the practice—and the profits—reach into the domestic war on terror. One of the lesser-known provisions of the Patriot Act was a section overturning several of CAFRA's protections for property owners when they are the subject of terror investigations, however preliminary. Local jurisdictions followed suit. Shamoon Yousif, an Iraqi-American grocery-store owner in Maricopa County, Arizona, knows what this can mean, having had the contents of his life seized as “substitute assets” for shoplifting and related crimes initiated by his brother, after an investigation started by the F.B.I. Joint Terrorism Task Force.

A Coptic Christian who left Iraq at the age of nineteen, Shamoon Yousif thought he was living a classic American immigrant story: after years of saving, he managed to open a grocery store, in Mesa, Arizona, and then a second, in a rougher neighborhood. When his wife learned that she had metastatic breast cancer, he asked his brother Sami to take charge of the second store. According to investigators, his brother, who had a gambling habit, took to shelving goods purchased at a steep discount from “boosters,” mostly addicts who shoplifted liquor, cigarettes, and clothing like jeans and sweaters from big-box stores.

Early one morning in May, 2008, police charged into Shamoon's house, and began the government seizure of most significant items the family owned—Shamoon's home, his car, his two stores, his bank accounts, the jewelry of his recently deceased wife, his children's cell phones, and more. The fact that the dirty money in Sami's store was “co-mingling” with clean money from legitimate sales justified the charge of “money laundering.” What's more, reliance on a steady group of boosters and Sami's stashing of several bottles of liquor in the house elevated the case to “racketeering,” which opened up Shamoon's home to civil forfeiture under the Arizona Racketeering Act. Because civil suits do not come with the right to a lawyer, Shamoon would have no money with which to defend himself.

Did he know what his brother was up to? “I thought it possible Shamoon Yousif was being deceived,” the lead officer on the case, Sarah Thrower, of the Phoenix Police Department's Homeland Defense Bureau, conceded. But she and her colleagues concluded that, because Shamoon was a competent businessman who, as she wrote in a police report,

“took all legal responsibility” for the income generated by both stores, he “knew or had reason to know” about his brother’s dealings.

Eventually, a recent law-school graduate named Jean-Jacques Cabou heard about the case, found the details galling, and offered his services. “Forfeiture cases like these are almost impossible to fight,” he told me earlier this year, after he’d devoted hundred of hours to the case. “It’s the Guantánamo Bay of the legal system.” As he sorted through Shamoon Yousif’s case records, Cabou noticed something odd. The investigation had drawn on resources from the Arizona Counter Terrorism Information Center—a so-called “fusion center” in Maricopa County meant to integrate mundane local crime data with federal intelligence streams, in search of clues about terrorism plots. Homeland Security Secretary Janet Napolitano once hailed the fusion-center initiative as “one of the centerpieces of our counterterrorism strategy.” It has since lost lustre. Last fall, a Senate report concluded that these centers have produced mostly “irrelevant, useless or inappropriate intelligence reporting.” A Senate aide involved in the report told me that investigations prompted by the local centers often veer toward prospects with lucrative cash-seizure potential.

This may be how a case that involved petty thefts of sweaters, jeans, and bottles of Jack Daniels gained the aura of a counterterrorism investigation. Shamoon Yousif, with Cabou’s help, finally reached a settlement with the state attorney general, which allowed him to keep his home and stores as a debtor to the state. Shamoon says, “Why’d we settle? Because I’ve got no money left. I owe thousands and thousands to my cousins, to my friends, to the bank.” Today, he works fourteen-hour days, and turns over the bulk of his monthly salary to a RICO fund. In recent years, Maricopa County’s fund has been censured for its controversial outlays. It sponsored an anti-immigrant radio host’s book tour promoting “Another Man’s Sombrero: A Conservative Broadcaster’s Undercover Journey Across the Mexican Border.” It also helped to support Christian evangelist programs like the “Missionettes,” which aims to “win girls to Jesus Christ . . . to teach them to obey everything Jesus commanded.”

About a year after the Tenaha suit was filed, its lawyers got a major break. On a quiet July afternoon in 2009, a woman entered the foyer of Garrigan’s one-story law office, which was situated beside a liquor store and a car

wash touting “Good Looking Girls for a Good Cause.” She held an unmarked manila envelope in her hand and asked to speak with Garrigan. When he came out, moments later, the woman was gone, but she’d left behind the envelope.

Over the previous year, Garrigan—a vintage-motorcycle enthusiast who can be found wearing New Balance sneakers, Levi’s, and soft old T-shirts on days when he has no court appearances—had received a handful of letters from tipsters with pen names like A Concerned Citizen and A Pissed-Off Voter. “I am just a citizen who knows right from wrong,” one note began, accompanied by seventeen pages of documents about the forfeiture program. “People don’t have the money, or are afraid to fight [Lynda Russell] because they will be put in jail and lose their jobs,” another read. But Garrigan was particularly struck by the contents of the unmarked manila envelope. It included chain e-mails that Russell had forwarded. “Be proud to be white! It’s not a crime YET . . . but getting very close!” one read. A second joked, “Danger: you are entering a no Obama Zone. Mention his name and I’ll drop you where you stand!” More revelatory was a nine-page spreadsheet listing items funded by Tenaha’s roadside seizures. Among them were Halloween costumes, Doo Dah Parade decorations, “Have a Nice Day” banners, credit-card late fees, poultry-festival supplies, a popcorn machine, and a thousand-dollar donation to a Baptist congregation that was said to be important to Lynda Russell’s reelection. Barry Washington, as deputy city marshal, received a ten-thousand-dollar personal bonus from the fund. (His base salary was about thirty thousand dollars; Garrigan later confirmed reports that Washington had received a total of forty thousand dollars in bonuses.) This material could provide crucial background as the lawyers prepared to depose Washington.

What was happening in Texas was consistent with a larger pattern. States that place seized funds in a neutral account, like Maine, Missouri (where proceeds go to a public education fund), North Dakota, and Vermont, have generally avoided major forfeiture-abuse scandals. Problems seem to arise in states—such as Texas, Georgia, and Virginia—with few restrictions on how police can use the proceeds. Scandals, too, emerge from the federal Equitable Sharing program, which allows local police to skirt state restrictions on the use of funds. In Bal Harbour, Florida, an upscale seaside village of thirty-three-hundred residents, a small vice squad ran a forfeiture network that brought in nearly fifty million dollars in just three years. The squad travelled around the country, helped to arrange money-laundering stings in far-flung cities, then divided the cash with the federal agencies involved. Last year, the Department of Justice shut down

the operation, ordering the village to return millions in cash. But much of it had already been spent: on luxury-car rentals and first-class plane tickets to pursue stings in New York, New Jersey, California, and elsewhere; on a hundred-thousand-dollar police boat; and on a twenty-one-thousand-dollar drug-prevention beach party.

Another case involves a monthly social event that had been hosted by the Contemporary Art Institute of Detroit. In the midst of festivities one evening in late May, 2008, forty-odd officers in black commando gear stormed the gallery and its rear patio, ordering the guests to the ground. Some in attendance thought that they were the victims of an armed robbery. One young woman who had fallen only to her knees told me that a masked figure screamed at her, “Bitch, you think you’re too pretty to get in the mud?” A boot from behind kicked her to the ground. The officers, including members of the Detroit Police Department’s vice squad and mobile tactical unit, placed the guests under arrest. According to police records, the gallery lacked proper city permits for after-hours dancing and drinking, and an old ordinance aimed at “blind pigs” (speakeasies) and other places of “illegal occupation” made it a crime to patronize such a place, knowingly or not.

After lining the guests on their knees before a “prisoner processing table” and searching them, the officers asked for everyone’s car keys. Then the raid team seized every vehicle it could find, even venturing to the driveway of a young man’s friend nearly a mile away to retrieve his car. Forty-four cars were taken to government-contracted lots.

Most of those detained had to pay more than a thousand dollars for the return of their cars; if payment wasn’t made promptly, the car would become city property. The proceeds were divided among the offices of the prosecutors, police, and towing companies. After the A.C.L.U. filed a suit against the city, a district court ruled that the raid was unconstitutional, and noted that it reflected “a widespread practice” by the police in the area. (The city is appealing the ruling.) Vice statutes have lent themselves to such forfeiture efforts; in previous years, an initiative targeted gay men for forfeiture, under Detroit’s “annoying persons” ordinance. Before local lawyers challenged such practices, known informally as “Bag a Fag,” undercover officers would arrest gay men who simply returned their glances or gestures, if the signals were deemed to have sexual connotations, and then, citing “nuisance abatement,” seize their vehicles.

Detroit Police Department officials have said that raids like the one on the Contemporary Art Institute are aimed at improving “quality of life.” The raids certainly help address the department’s substantial budgetary shortfalls. Last year, Detroit, which has since filed for bankruptcy, cut the annual police budget by nearly a fifth. Today, “blind pig” raids around the city routinely result in the confiscation of dozens, sometimes hundreds, of cars.

Because forfeiture actions tend to affect people who cannot easily fight back, even those who feel wronged seldom contest the seizures or seek public notice. “There’s no telling how many Tenahas there are,” Vanita Gupta, a deputy legal director of the American Civil Liberties Union, told me. Early on, she took an interest in the suit that Guillory and Garrigan were putting together, and her office joined in the effort. “It’s very hard to document,” she said, noting that many people targeted by the practice are too intimidated to talk. “These cases tend to stay in the dark.”

The deposition of Barry Washington was scheduled for May 3, 2010, at the Nacogdoches County Courthouse, a squat, red-roofed building with all the grandeur of a budget motel. Tim Garrigan would be handling it. In the grand-jury room, Washington was flanked by a team of defense lawyers whom Garrigan and Guillory had confronted dozens of times, often in cases involving prisoner abuse.

The deposition was critical for the case, but Garrigan had no confidence that it would go well. The previous night, preparing in his office surrounded by large stacks of pretrial exhibits, he had felt encouraged by the evidence they had. But he and Guillory knew, from decades of suing police for alleged misconduct, that evidence could be hard to deploy. On the witness stand, Garrigan felt, law-enforcement officers tended to “look like choirboys, Boy Scouts.” He’d compiled a basic outline of questions he wished to ask, but his main goal was to remain fluid, adaptive and attentive to Washington’s testimony.

Things started out on a friendly note. Washington, who wore his Tenaha deputy city marshal’s uniform—faded bluejeans, a khaki Western shirt, a silver belt buckle, and a glittering badge—spoke of his twenty-four years of service with the Department of Public Safety, and his long-term work as a mentor of high-school youth. When asked about the many awards he’d won as a state trooper, Washington said, “Do I have to name them all?” Soon, he was listing

accolades; over the years, he'd received letters of praise from Senator Phil Gramm, Senator Kay Bailey Hutchison, Janet Reno, and others.

But, as the morning wound on, the deposition turned a corner. "God didn't make me a piece of junk," Washington said. "He made me to go out there and do my job." He explained his interdiction strategy, which relied on pulling over out-of-state cars for minor traffic violations, then looking for indicators of drug trafficking.

"And what are these indicators?" Garrigan asked.

"Well, there could be several things," Washington explained. "The No. 1 thing is you may have two guys stopped, and these two guys are from New York. They're two Puerto Ricans. They're driving a car that has a Baptist Church symbol on the back, says 'First Baptist Church of New York.' They're travelling during the week, when most people are working and children are in school. They've borrowed this car from their aunt, and their aunt is back in New York." Profile factors like these, Washington explained, could help justify the conclusion that the two men's money was likely tainted by crime. But also, he said, "we go on smells, odors, fresh paint." In many cases, he said he smelled pot. In other cases, things smelled too fresh and clean, perhaps because of the suspicious deployment of air fresheners.

Later, the discussion turned to specific traffic stops. Garrigan asked about Dale Agostini, the Guyanese restaurateur who wanted to kiss his infant son goodbye before being taken to jail for money laundering. Why did Washington think he was entitled to seize the Agostini family's cash?

"It's no more theirs than a man on the moon," Washington said. "It belongs to an organization of people that are narcotics traffickers."

"Do you have any evidence, any rational basis to tell us that this money belonged to an organization of narcotics traffickers?" Garrigan asked. "Or is that more speculation?"

"I don't have any evidence today," Washington said.

Garrigan asked about an iPod that was also taken from Agostini's car. "What was your basis for taking that away from them?"

"Well, it's in the car, and all those things can be looked at," Washington explained. "Because if they're using any of those items in the process of travelling to do something that's illegal, then you can take all of those things. Even if it's a pillow that they lay their head on."

"Is there any limit?"

"No. President Reagan says there's no limit. It's time to get serious about this thing. And I think that's how some of our laws are the way they are, is because it's time to fight the war on drugs and say, 'Let's fight them,' instead of just saying we're going to do it."

Garrigan was relieved. Washington, rather than hiding behind legalistic justifications, proudly outlined his vision of forfeiture: that its scope was boundless, that mere "indicators" were enough to trigger it, and that warfare was an apt analogy for the pursuit of cash, cars, and even iPods from drivers whom he deemed suspicious. If that were a fair characterization of Texas policy, a judge's sympathy for the plaintiffs seemed likely. So did a public outcry for reform.

"Did you find any drugs?" Garrigan asked.

"No."

"Is there any evidence that they were buying drugs, instead of looking at restaurants in Houston?"

"No, not yet."

"Do you, for some reason, think people driving up and down 59 owe you an explanation for why they might have money?"

“Sure they do.”

After the deposition, Garrigan was elated. “If I could bottle up the feeling I had when I left, and use it for bad days?” he told me. “That would be great.”

Over the next year, legal proceedings taking place far from Shelby County were threatening the case. The Texas district judge presiding over the suit said that he wouldn’t certify the class of plaintiffs until the United States Supreme Court had announced its decision in the case of *Wal-Mart v. Dukes*, a class-action suit pressing claims of sex discrimination on behalf of the retail chain’s 1.5 million current and former female employees. Wal-Mart’s position was that the class of plaintiffs was impractically broad. In June, 2011, the Supreme Court agreed, tossing the class of plaintiffs out of court. Two months later, the Texas district judge issued a fifty-six-page ruling that certified the Tenaha plaintiffs after all. In light of the Wal-Mart decision, the judge would not allow the plaintiffs as a class to ask for money: compensatory or punitive damages were out. But the plaintiffs could at least seek “declaratory and injunctive relief”—a legal finding of fact in their favor, and a reform of the forfeiture program.

Garrigan remembers beginning to read the opinion, then jumping up in excitement, pacing around his big oval table, laughing, and reading more. “I couldn’t sit still. I had to read a paragraph, walk around with a crazy grin on my face, and then sit down and read another paragraph.” It wasn’t just that the judge had certified the plaintiffs; his description of the facts indicated that he would be receptive to their complaints.

Facing the prospect of a long, arduous trial, Tenaha and Shelby County officials agreed to settle, though they denied wrongdoing. Earlier this month, the settlement was examined for fairness by a district judge, and upheld. “What we’ve asked the court to approve is a deal that requires the defendants to basically clean up their act,” Guillory told me, and have “better training in place to insure people’s Fourth and Fourteenth Amendment rights.” Recently, I met with Guillory at his new office, at Lone Star Legal Aid, a nonprofit run out of an old clapboard house that used to be a bordello, and he took me through the settlement’s details. The town and the county have agreed to twenty-one policy changes, including using video and audio recordings to capture “all traffic stops,” allowing canine sniffs only “when a

police officer has reasonable suspicion of criminal activity,” and training police in “compliance with racial profiling laws.”

Inspired in part by the class action, Texas legislators banned the use of roadside waivers and modestly restricted the use of forfeiture funds: no more poultry-festival supplies, unapproved bonuses, or popcorn machines. Still, neither the settlement nor the law reduces the formidable obstacles for owners who want their property returned, or changes the fact that law-enforcement budgets can depend upon forfeiture revenue. The victory was distinctly partial. “As soon as the news hoopla died down, so did the debate,” Guillory told me.

“What stands out to me is the nature of how pervasive and dependent police really are on civil-asset forfeiture—it’s their bread and butter—and, therefore, how difficult it is to engage in systemic reform,” Vanita Gupta, of the A.C.L.U., says.

As plaintiffs from around the country waited to learn whether the settlement was to be upheld, they travelled back to East Texas to offer depositions and make individual claims. Some returned simply to watch Barry Washington give his own account of what took place on Highway 59.

Earlier in the spring, Dale Agostini, the restaurant owner, flew in from D.C. to hear Washington being deposed in an action to decide whether he would enjoy immunity from individual lawsuits. “It was the most heart-wrenching thing,” he told me, of his travels back to East Texas. “I had to pay for a friend to fly down and drive me there. I just don’t want to be driving there alone.” James Morrow, the poultry-plant worker, drove over from Arkansas. “I feel kind of proud,” Morrow told me. “After I got started, there wasn’t any stopping. It’s been long and tedious. But now they can’t go around doing that to people.”

Today, Barry Washington works as a safety supervisor for Shell Oil. He is building a chapel on his own time, and plans to launch a ministry camp for kids there. He seems to have no regrets about any of his roadside seizures. A friend and drug-interdiction colleague named Cleve Williams told me, “With everything that I know about Barry as a person, what he stands for, I don’t believe for a minute that he’s done anything wrong.” Although Washington declined to be

interviewed at any length for this story, he did say that he “provided a great service to this nation,” and stressed the importance of taking drug trafficking seriously. “There’s a good side and a bad side, and the good side will always win,” he told me. “Jesus knows who’s done what, and what was fair and what was unfair. And I would never do anything to embarrass Him. And that’s it. That’s the end of the story.”

Lynda Russell, meanwhile, has consistently refused to testify, pleading the Fifth, and declined to be interviewed. Her faith in the power of forfeiture, too, appears unshaken. After the county and the state decided not to provide her with legal representation, she asked to use the county’s forfeiture fund to finance her own defense.

Earlier this summer, in Philadelphia, I joined Louis Rulli and Susanna Greenberg in the high-ceilinged corridor outside Courtroom 478 of City Hall, as they prepared to make their case for the Adamses’ home. Gradually, respondents filed in, almost all without lawyers: a mother fighting for her property, with two young girls playing hushed clapping games beside her; a teen-age boy trying to recover the cash taken from his car. When the assistant D.A. assigned to the Adams case arrived in court, he discovered he had the wrong set of folders; he’d confused their home with another one being forfeited on the same street. Rulli and Greenberg would have to return next month. “These cases often take years,” Rulli said, shrugging.

For Mary and Leon Adams, the lengthy process has taken a toll. “With this hanging over our head, it’s devastating,” Mary Adams had told me earlier. Her husband’s health has turned into something of a full-time job for her—she now prepares him dishes of carrots and spinach, instead of the soul food she used to make, and, in between court appointments and legal meetings, she brings him to the hospital for blood transfusions. The lawyers are hopeful that they will reach a resolution with prosecutors soon. Still, she took up selling Avon products door to door to help pay the bills and prepare for the worst-case scenario of being evicted while her husband is in the advanced stages of pancreatic cancer. She wasn’t going to sit around feeling sorry for herself, she told me. “I’m good to go,” she said. “I’m not six feet under.”

“I don’t even know what I’d do, being without a home in my condition,” Leon Adams said later, his voice a raw whisper. “It’s scary, just even thinking about it.”

In Houston, Jennifer Boatright still has anxious flashes of that night by the side of the road, and she can no longer drive the corridor without noticing that her stomach “does a flip.” I joined her one evening as she cleaned up after a Steak Night. She put foil-wrapped potatoes into a cooler beside a stack of glinting cook-off trophies while recounting the details of her evening in detention in Tenaha. She marvelled at the “banquet tables in the room filled with phones, Playstations, watches . . . stuff they stole from people like us,” and her voice tightened when she described the moment when her older son, Jonathan, feared he was going to be sent to foster care.

“For a long time, Jonathan had this mentality about cops: they’re not good, they’re all bad,” she said. “I don’t want him to have that perspective.” Sometime last year, she stopped showing up at events tied to the lawsuit—she didn’t want her kids to get the wrong idea about police, whom she considers heroes in every other context. Jonathan remains “terrified” when he sees police, so an officer friend comes over sometimes in uniform and drives Jonathan around in his squad car. She has also insisted that the family keep up the tradition of visiting wildflower trails—this year, Boatright took pictures of her younger son, Jacob, now seven, romping around in a field of bluebonnets.

But she’s not sure that the campaign is working. As I prepared for a return trip to Tenaha, Jacob, who’d followed us throughout the night, tapped me on the hip and handed me a drawing that he’d made with a black felt-tipped marker. It featured a ship helmed by two bandits, brandishing a skull-and-bones flag, a sword, and wide smiles, with two faceless captives aboard. “Pirates,” he said. ♦



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