

Civil asset forfeiture needs stricter rules

When police seize property on criminal suspicion, onus of proving innocence shouldn't be on the owner

By Ronald Fraser

If a dangerous street hoodlum demands and then flees with your wallet, the police will call that robbery.

But, if a police officer seizes your cash, car or other property on the mere suspicion that it is somehow connected to criminal activity — and without ever convicting or even charging you with a crime — the police will call that a legal civil asset seizure.

According to FBI statistics, the combined value of street, highway, convenience store and bank robberies in Texas in 2013 topped \$37.2 million. Texas police departments, however, had a much better year — netting more than \$101.6 million in proceeds from forfeited private property.

Let's take a closer look at this \$101.6 million "money-from-heaven" enjoyed by the Texas law enforcement agencies. According to the Institute for Justice, a Washington-based public-interest law firm, Texas state and local law enforcement agencies, on their own, enforcing state and local laws, took in forfeited proceeds totaling \$62.9 million in 2013.

In addition, in partnership with federal agencies enforcing federal civil forfeiture statutes, the share of proceeds from private property seized in Texas going to state and local police agencies totaled \$5.0 million from the U.S. Department of the Treasury and \$33.7 million from the U.S. Department of Justice.

This backdoor money flow is a blueprint for property rights abuse. Since Texas laws allow up to 70 percent of these forfeited proceeds to go directly into local law enforcement budgets, police have a huge, built-in incentive to aggressively target forfeitable assets rather than pursue justice.

How civil forfeiture works

Criminal forfeiture laws, but not civil forfeiture laws, require a criminal con-

viction to deprive people of their property. Under civil laws, however, the seized property itself, not the owner, is simply presumed to be "guilty." To get one's property back, property owners in all states — even if they are not charged or convicted of a crime — are then up against a short time limit to file a claim.

But the procedures for proving your property has no connection to a crime are so convoluted, one needs to hire a lawyer for any chance of success. And, in many states, failure to register a claim — often within 30-90 days — allows the government to permanently take the property by administrative actions.

If the property owner can't afford a lawyer or if the value of the property is less than expected legal costs, property owners walk away.

Between 1997 and 2013, 88 percent of all federal Department of Justice civil forfeitures of private property never saw a courtroom.

See the system in action

While on a five month, 19-city, U.S. tour to raise money for a Thai orphanage, Eh Wah, the manager of the Burmese Christian rock band Klo & Kweh Music Team, was pulled over in Oklahoma in February for a broken tail light on his car.

A sheriff's deputy searched the car and found \$53,000 in cash in separate envelopes containing the orphanage donations collected in each city. Suspecting drug trafficking, Eh Wah was charged for being in the possession of "drug proceeds."

Attorneys from the Institute for Justice took the case and, after substantial effort and expenses, eventually recovered the seized money.

Zaher El-Ali, a small businessman living in Houston for more than 30 years, did not fare so well. In 2009 another person driving El-Ali's pickup was stopped by Harris County police for driving while intoxicated, and the truck was seized.



The driver was in the process of buying the vehicle from El-Ali but the truck was still titled in El-Ali's name.

The driver, found guilty of his third DWI, was sentenced to six years in prison and the County issued civil forfeiture actions against the truck.

El-Ali filed a counterclaim as the innocent owner of the truck. Under Texas law, it is El-Ali's, not the government's, responsibility to prove in court that the truck was not connected to the crime and that he, El-Ali, had no prior knowledge of the crime.

But in the end, the court ruled against El-Ali and the truck was forfeited.

To end this shady practice, federal and state civil asset forfeiture laws need to

adopt the same standards now applied in criminal forfeiture cases and also to prohibit law enforcement agencies from benefiting from forfeited proceeds. It is as simple as that.

Only then will property owners in Texas and elsewhere no longer wonder if their law enforcement officials are following even-handed, due-process procedures, or padding their agency's budgets at citizens' expense.

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