

Civil Asset Forfeiture, Policing for Profit



By Paul Engel

October 13, 2023

- In Athens, TN during the 1940s, Sheriff's Deputies used to rob citizens under the guise of fines for crimes, whether they were guilty or not.
- Today, law enforcement steals innocent people's property, claiming it was the profit of crime.
- There's a name for modern day robbery committed by law enforcement. Civil Asset Forfeiture

The more things change, the more they stay the same. Several years ago I wrote an article about the [Battle of Athens](#), TN. In the article I showed the corruption in the McMinn County Sheriff's Department, where the Sheriff and his deputies did not receive a salary, but were paid for everyone they booked, incarcerated, and released. This perverse incentive led to deputies routinely boarding buses to "fine" and jail the passengers for any alleged violations they could come up with. When subject to this corruption, many GIs returning from World War II were led to challenge the corrupt county Sheriff and other county office holders. This challenge led not only to an embattled election, but an armed uprising in an attempt to restore the rule of law.

If you don't find this story of corruption compelling, consider this. The same basic system of corruption in the McMinn County Sheriff's Department exists across the country

today. While the McMinn County process did not have a name, the 21st century version does: Civil Asset Forfeiture!

Every so often I see another article about the evil practice of civil asset forfeiture. I call it evil because it not only violates the rights of the American people, but common sense as well.

Civil Asset Forfeiture

What is civil asset forfeiture?

Civil forfeiture allows the government (typically the police) to seize – and then keep or sell – any property that is allegedly involved in a crime or illegal activity.

[civil forfeiture – Wex Legal Dictionary, Cornell Law School](#)

Did you notice the word “allegedly”? I’ll have more on that later.

An apparent holdover from English law, civil forfeiture was used during prohibition to seize the property of bootleggers. However, during the 1980s and the war on drugs, Congress passed the [Comprehensive Forfeiture Act of 1984](#) (Title II, Chapter 3).

Comprehensive Forfeiture Act of 1984 – Amends the Racketeer Influenced and Corrupt Organizations Statute (RICO) to specify that property subject to forfeiture for racketeering activity includes: (1) all proceeds obtained directly or indirectly from racketeering activity; and (2) real and tangible and intangible personal property.

[Comprehensive Forfeiture Act of 1984](#) (Title II, Chapter 3).

The stated goal of the act was to prevent drug cartels from using their vast ill gotten gains in their legal defense. While the idea of preventing criminals from benefiting from their crimes seems laudable, as is so often the case, the

consequences can be terrible.

The Comprehensive Forfeiture Act also included the [Equitable Sharing Program](#) whereby state, local, and tribal law enforcement agencies could receive a share of the proceeds from federal civil forfeitures. Is this really any different than the McMinn County Sheriff's Department paying deputies for arrests and bookings? In both cases, law enforcement has a financial interest in finding crime. This perverse incentive led McMinn County Sheriff's Deputies to shakedown anyone they thought could pay the fines they imposed. During 1945 and 1946, thousands of GIs returning home from the war were stopped by law enforcement and fined, with no due process. Today, we see examples of law enforcement seizing cash simply because they think carrying large amounts of it is a sign of criminal behavior. It's not just cash though, since law enforcement has seized cars and homes because a child was selling drugs without the owner's knowledge or consent. While many of these egregious abuses of our rights happened under state civil asset forfeiture laws, others use federal law and the Equitable Sharing Program to line their own pockets.

Legalized Theft

To understand just how evil civil asset forfeiture is, let's look at how it is described by the Wex dictionary from Cornell Law School. As I've already quoted, civil forfeiture is the government seizing property they allege was involved in a crime or criminal activity. The Wex dictionary goes on.

Owners need not ever be arrested or convicted of a crime for their cash, cars, or even real estate to be taken away permanently by the government. The government does not have to charge the property owner with any specific crime in order to seize the property, and must prove only by a preponderance of the evidence that the property is legally forfeitable.

[civil forfeiture – Wex Legal Dictionary, Cornell Law School](#)

That's right, under this perversion of justice, not only can government seize the property of an innocent person, they do not even have to charge you with a crime. This is a blatant violation of the Due Process Clauses of both the Fifth and Fourteenth Amendments.

No person shall ... be deprived of life, liberty, or property, without due process of law;

[U.S. Constitution, Amendment V](#)

nor shall any State deprive any person of life, liberty, or property, without due process of law;

[U.S. Constitution, Amendment XIV](#)

What's this due process that the Fifth and Fourteenth Amendments are talking about?

An established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of the individual.

[Due Process – The Free Legal Dictionary](#)

(If you are wondering why I used the Free Legal Dictionary for this definition rather than the Wex Dictionary I've used in the rest of the article, the answer is simple. The Wex Dictionary does not define the term "due process", only how the courts have interpreted it over the years.)

Since in most civil asset forfeiture cases property is seized in a manner that is not designed to safeguard the legal rights of the individual, the actions of those involved violate due process. How do they get away with such a blatant violation of the Constitution? By charging the property, not the person.

Such a proceeding is conducted in rem (against the property itself) rather than in personam (against the owner of the property). For this reason, civil forfeiture case names often

appear strange, such as *United States v. Eight Rhodesian Stone Statues* because the property is the defendant.

[civil forfeiture – Wex Legal Dictionary, Cornell Law School](#)

That's right, the government doesn't charge you, but your property, as if it had done something illegal. To show you just how ridiculous this is, the Free Legal Dictionary defines a defendant as:

The party against which an action is brought.

[Defendant – The Free Legal Dictionary](#)

Furthermore, The Free Legal Dictionary defines a "party" in this context as a "person". Yet the government isn't charging a person, but an inanimate object, so there is not party to a bring legal action against. The abuses of civil asset forfeiture continue, since even the burden of proof, the preponderance of evidence, is in fact a fraud.

Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

[preponderance of the evidence – Wex Legal Dictionary, Cornell Law School](#)

In many of the cases I've reviewed, the evidence is nothing more than the word of the officer vs the defendant. For example, in one case a U.S. citizen and retired Marine, was stopped for a minor traffic infringement. When the officer searched the vehicle, with the owner's consent, he found over \$10,000 in cash. When asked why he had so much cash on him, the person the officer had stopped stated he did not trust banks. However, the officer claimed to believe that the reason the person was carrying so much cash was for illegal activities. It was literally the word of the officer vs. the word of the owner, and guess whose word was given more

credence? If you guessed the officer, you'd be right. This doesn't even meet the preponderance of evidence standard, since no evidence of criminal activity was discovered by the seizing officer. Without a warrant, an exigent circumstance, any real probable cause, or evidence other than the officers "gut", the victim of the traffic stop was robbed of over \$10,000. How is this not a violation of the Fourth Amendment's Unreasonable Search and Seizure Clause?

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

[U.S. Constitution, Amendment IV](#)

I wish I could say this was an unusual event in America today. Numerous groups fighting civil asset forfeiture list hundreds, if not thousands, of examples of this legalized theft every year. While the officer may not have directly and personally benefited from the crime, his department most likely did, whether because the seizure was made under state law or because of the federal Equitable Sharing Policy. From the victim's point of view, how is this any different than the McMinn County Sheriff's Deputies simply charging and fining them without evidence.

Sadly, the criminal abuses of civil asset forfeiture do not stop with the seizure itself.

After property has been seized, the burden of proof shifts to the owner, who must prove that the property was not involved in nor obtained as a result of illegal activity.

[civil forfeiture – Wex Legal Dictionary, Cornell Law School](#)

Now that you have been deprived of your property without any due process, the government expects you to prove that the property was not involved in or obtained from illegal activity. This twisted bit of logic is called "proving a

negative". Let's look at this in another context. Say you are accused of beating your spouse. How do you "prove" that you've never beaten your spouse? Most likely, you can't, because without having evidence of your entire life from the time you've met your spouse until today, there will always be a shadow of a doubt that it happened when others were not looking. That is why, in America, you are supposed to be considered innocent until proven guilty. Yet here we have a simple allegation of wrongdoing turning the entire justice system against the "defendant" by simply claiming they are now accusing law enforcement of criminal activity. Imagine any other situation where, without any real proof, you are considered guilty and now must prove your innocence. This was seen during the Reign of Terror after the French Revolution, where a mere denunciation was enough to convict someone unless they could prove they were innocent.

Conclusion

What was the outcome of the McMinn County Sheriff's Department policies around deputy pay?

Deputies routinely boarded buses passing through and dragged sleepy-eyed passengers to the jail to pay their \$16.50 fine for drunkenness, whether they were guilty or not. Arrests ran as high as 115 per weekend. The fee system was profitable, but record-keeping was required, and the money could be traced. It was less troublesome to collect kickbacks for allowing roadhouses to operate openly. Cooperative owners would point out influential patrons. They were not bothered, but the rest were subject to shakedowns. Prostitution, liquor, and gambling grew so prevalent that it became common knowledge in Tennessee that Athens was "wide open."

[The Battle of Athens, American Heritage Magazine, Volume 36, Issue 2](#)

As I stated previously, when the GIs returned they were

subject to this corruption. In response, they began running for county office. The campaigns were heated, the rhetoric caustic, and the election was manipulated. Legally appointed voting monitors were arrested, legal voters were turned away while illegal voters were allowed to vote. Ballot boxes were confiscated, then taken to be secretly counted by the very election officials accused of fraud. This led to an armed group of veterans demanding an open count of the votes. After a significant battle, including both firefights and the use of explosives by the GIs, fraudulent tally sheets were discovered where the ballots were being counted.

What can we expect from the criminal funding of law enforcement via civil asset forfeitures? I would hope we would see the light before people are compelled to defend their right with arms. Recent events would suggest otherwise. Did the illegal fines McMinn County Deputies collected cause the election interference? Not directly, but the interference was to elect officials willing to continue the shakedown of Americans by law enforcement. Have the criminal abuse of civil asset forfeiture led to the election interference we've seen over the past several years? Again, not directly, though it has been used to keep government actors who support not only civil asset forfeiture, but a myriad of illegal government actions and programs, in office.

Since the corruption in McMinn County Tennessee in 1940s was overthrown by a group of armed citizens bent on protecting their rights, does that mean it will take another group of armed citizens in the 21st century to restore rights to the American people? I hope not. The problems in McMinn Country did not start in 1945, but in 1936, possibly earlier, with the election of a corrupt Sheriff and other county officials. The corruption metastasized over the years through a combination of neglect and an expectation that someone else should fix the problem. Only when a group of Americans who decided that their liberty, and that of their families, was worth the fight. As

the people of the United States continue down a similar road as the citizens of McMinn County did over seventy years ago, I have to wonder, will we realize what our neglect and apathy may cost before it is too late?

Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? –Patrick Henry

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