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The Complex Process of Civil Forfeiture

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ABSTRACT

This study examines the backgrounds, experiences, and perceptions of people who have lost property through the controversial policy and practice of civil forfeiture. We analyze survey data from more than 400 people and interview data from 16 respondents who had property seized or forfeited in Philadelphia. Results indicate the forfeiture process is far more complex and difficult to navigate than forfeiture proponents suggest. It creates a disincentive to fight for seized property's return, particularly because the value of seized property is often small. Moreover, the challenges forfeiture poses are not borne equally across communities. Instead, those subjected to forfeiture are more likely to be racial/ethnic minorities, people with lower income, and people with less education, the same groups who often lack the resources necessary to navigate complex legal processes or hire someone who can. These problems may be mitigated by pursuing forfeiture only through criminal procedures and eliminating the financial incentives law enforcement enjoys in forfeiture.

Introduction

This study examines the backgrounds, experiences, and perceptions of people who have lost property through the controversial policy and practice of civil forfeiture. Through civil forfeiture, law enforcement can seize and permanently keep property allegedly connected to a crime (Chi, 2002). Unlike *criminal* forfeiture, in which a criminal conviction precedes the retention of property, *civil* forfeiture is used by law enforcement to take property from people never charged or convicted of a crime. Up to 80% of owners of seized property at local, state, and federal levels are never charged with a crime (Blumenson & Nilsen, 1998; Brazil & Berry, 1992; Lee et al., 2019; Schneider & Flaherty, 1991).

Through a legal fiction that property can commit crime, civil forfeiture enables the government to charge and convict property directly rather than a property owner. Rooted in 17th-century English maritime law, America's early forfeiture laws allowed the government to

take property when it was effectively impossible to charge and convict law-breaking owners, such as pirates (Boudreaux & Pritchard, 1996). Although civil forfeiture remained mostly moribund in American law for many years, it saw increasing use during the early 1980s and the War on Drugs. Today civil forfeiture is routinely used by law enforcement (Rainbolt & Reif, 1997).

It is so routine, in fact, that forfeiture revenue in recent decades has grown substantially. Federal forfeitures grew from \$27.2 million in 1985 to almost \$650 million by 1994 (Jensen & Gerber, 1996). By 2014, these figures reached \$4.5 billion (Carpenter et al., 2015). When federal forfeiture revenues are combined with state forfeiture numbers, the numbers are even larger. Between 2000 and 2019, 45 states, the U.S. Department of Justice, and the U.S. Department of the Treasury forfeited more than \$68.8 billion, approximately \$23 billion under state law and almost \$46 billion under federal (Knepper et al., 2020).

Proponents assert civil forfeiture fights crime, both by removing the assets required for certain criminal activities and by reducing the profitability of crime (U.S. Department of Justice Office of the Inspector General Audit Division, 2008).

The primary purpose of the [federal forfeiture program] is to employ the federal asset forfeiture authorities in a manner that enhances public safety and security. This is accomplished by removing the proceeds of crime and other assets relied upon by criminals and their associates to perpetuate criminal activity against our society. (U.S. Department of Justice Criminal Division Money Laundering and Asset Recovery Section, 2019, p. 21)

Proponents further argue forfeiture proceeds flow back into fighting more crime.

A secondary benefit of forfeiture laws is that forfeited property, or the proceeds of its sale, has been turned over to law enforcement and is used to fight against crime. While the purpose of forfeiture and the evaluation of a forfeiture law or program should never be based solely on the generation of revenue, it is only fitting that forfeited property be used to combat those who seek to profit from crime. (State of Hawaii Department of the Attorney General, para. 4)

Speaking in 2017, former Attorney General Jeff Sessions lauded the resources forfeiture generates for law enforcement:

[C]ivil asset forfeiture is a key tool that helps law enforcement defund organized crime, take back ill-gotten gains, and prevent new crimes from being committed, and it weakens the criminals and the cartels. . . . Civil asset forfeiture takes the material support of the criminals and instead makes it the material support of law enforcement, funding priorities like new vehicles, bulletproof vests, opioid overdose reversal kits, and better training. In departments across the country,

funds that were once used to take lives are now being used to save lives. (U.S. Department of Justice Office of Public Affairs, 2017, para. 6)

From this point of view, forfeiture gives law enforcement resources with which to fight more crime and make the public safer. Historically, courts have found this reasoning persuasive, frequently citing the government's interests in funding and promoting law enforcement as outweighing constitutional protections (*Caplin & Drysdale, Chartered v. United States*, 1989; *Kaley v. United States*, 2014; *United States v. Monsanto*, 1989).

But civil forfeiture can itself be profitable. Most forfeiture laws allow law enforcement agencies to keep a portion, and sometimes all, of the property they seize for agency use, and the laws in some jurisdictions allow for seized property to be used for the direct benefit of law enforcement personnel in the form of salaries and benefits. According to critics, this “built-in conflict of interest” (Ross, 2000/2001, p. 270) can distort law enforcement priorities, shifting the focus to revenue generation and away from other activities (Chi, 2002).

Moreover, because the process is civil, rather than criminal, property owners lack the same due process rights they would enjoy in a criminal procedure, such as the right to counsel (Ross, 2000/2001). In addition, the government usually faces a lower evidentiary threshold to forfeit property civilly than it does to convict a person of a crime. Even people who had nothing to do with an alleged crime—commonly called third-party (or joint) innocent owners—can lose their property through civil forfeiture unless they can prove their innocence. Critics charge this flips the American legal tradition of innocent until proven guilty on its head (Knepper et al., 2020).

Forfeiture proponents describe the civil forfeiture process as “straightforward” (Cassella, 2013, p. 100), implying it is not overly burdensome to understand or navigate. Critics dispute that notion. Ford (2015) describes the process property owners must navigate, which includes multiple pretrial deadlines and legal filings followed by “a potentially long, expensive trial” (p. 462). The Heritage Foundation (2015) created a flowchart to illustrate just the federal forfeiture process (each state has its own process), which appears prohibitively complex. A criminal defense firm maintains a webpage outlining the complexities of the process and drily ends by recommending property owners “[f]ind a top lawyer for your civil forfeiture claim” (Criminal Lawyer Group, n.d.).

Although the arguments of both proponents and opponents can be compelling, largely missing from the debate are the voices and perspectives of property owners who have

experienced civil forfeiture. Periodically, owners will appear in public fora to tell their stories, but systematic study of property owners' experiences is entirely absent. What do property owners face in the process? Is it as straightforward as forfeiture proponents assert, or is it a "stacked deck" against property owners as critics charge (Rulli, 2015)? Are the experiences of those who publicly tell their stories idiosyncratic or, instead, representative of the experiences of the many owners who have lost their property through civil forfeiture? To date, we do not know.

A Review of the Forfeiture Process and Relevant Literature

Although states and the federal government all have different civil forfeiture procedures, they share some common features. First, property is seized by law enforcement officers under a standard of "probable cause," defined as a belief that a crime was in the process of being committed, had been committed, or was going to be committed. This is a significantly lower standard than required to convict a person of a crime (i.e., beyond a reasonable doubt). Prosecutors then move to forfeit, or permanently keep, the property. This commonly includes publishing a forfeiture notice so any parties with an interest in the seized property may file a claim for the seized assets.

Civil forfeiture cases are typically perfected through either administrative or civil-judicial proceedings. Administrative forfeitures allow agencies to forfeit seized assets by default if no one properly files a claim for the assets' return. Administrative forfeitures rarely see judicial review. Civil-judicial forfeiture procedures involve judicial review and are typically invoked when a property owner or other interested party files a claim for the seized property. In these proceedings, the government must argue a connection between the property in question and alleged criminal activity, but it is often required to prove this relationship by only "a preponderance of evidence," defined as a greater than 50% chance of criminal activity. Sometimes the connection need only be made by a standard of probable cause. Failure to do so can result in the return of property to its owner.

In the case of third-party (or joint) innocent owners, to win their property back, these owners must, in most states and at the federal level, prove their innocence and lack of knowledge of the alleged crime that gave rise to their property's seizure (Knepper et al., 2020). This circumstance occurs when property owners loan or lease property to a third party, the party allegedly commits a crime—without the owner's involvement or knowledge—while in possession of the property, and the property is seized. The quintessential example of this can be found in the Michigan Supreme Court case

Bennis v. Michigan (1996), where a man—unbeknownst to his wife—used the family’s car to solicit a prostitute, resulting in the car’s seizure by police. The wife fought for the return of the jointly owned car, arguing she was demonstrably innocent of the alleged crime. In theory, successfully mounting such a defense should result in the return of property, but in *Bennis* the court ultimately found against the wife and in favor of the forfeiture. The same outcome often occurs in third-party innocent owner cases.

The preceding description runs the risk of suggesting the process is indeed “straightforward” as Cassella (2013) asserts, but throughout civil forfeiture proceedings, property owners and claimants face numerous challenges. Most substantially, because civil forfeiture targets property and not individuals, owners are not extended constitutional protections applied in criminal proceedings, particularly the right to counsel (Chi, 2002). Previous studies contend up to 90% of civil forfeitures are never accompanied by criminal prosecutions (Hyde, 1995).

Logistical barriers also prove challenging. In some jurisdictions, government agencies give affected parties just 10 days to file a claim for seized assets (Knepper et al., 2020); failure to file properly within this window allows for government forfeiture by default (Jensen & Gerber, 1996). Yet state agencies and departments have been known to fail to issue notices properly or provide guidance on how to file claims. Between 2011 and 2013, the Philadelphia District Attorney’s Office, for example, failed to issue legally mandated notices across 34% of a randomized selection of cash forfeiture cases (American Civil Liberties Union of Pennsylvania, 2015b).

Owners or other interested parties may have as little as 10 days to file a claim, but the civil forfeiture process can stretch over many months. Warchol and Johnson (1996) found civil forfeiture processes can take between 215 and 340 days from the original case filing until a final ruling. Lee et al. (2019) found it took South Carolina state prosecutors an average of 304 days from the initial date of seizure just to file forfeiture paperwork. And in examining hundreds of thousands of U.S. Department of Justice seizure records, Sallah et al. (2014) found the appeals process lasted more than a year in 40% of cases.

Throughout the process, owners or other interested parties typically must make multiple court appearances. According to Vallas et al. (2016), claimants face a minimum of four court appearances in pursuing the return of property, but the number can be much greater. For example, in 2010, the Philadelphia District Attorney’s Office notified sisters Tracy and Sheila Clements of its intent to forfeit their home after police

pursued their brother to the residence and the DA charged him with drug-related crimes. Despite having no connection with the alleged crime or drugs, the women were required to attend 17 different court dates to successfully defend against Philadelphia's attempt to forfeit their home. According to their attorney, "Had I charged [them] a reasonable fee, it would have cost them more than the house is worth" (Thompson, 2013, para. 37).

Indeed, the direct and indirect financial costs associated with the civil forfeiture process can be severe (Worrall, 2001). Attending multiple court appearances often means missing work, resulting in missed wages for hourly workers (American Civil Liberties Union of Pennsylvania, 2015b). Added to that are attorney costs. According to Knepper et al. (2020), conservatively estimated, hiring an attorney to fight a simple state forfeiture case costs at least \$3,000. Given the average value of seized assets can often be as low as a few hundred dollars (American Civil Liberties Union of Pennsylvania, 2015b; Carpenter & McGrath, 2013), many property owners likely find it unreasonable or financially foolish to hire legal counsel in pursuit of small sums (Knepper et al., 2020).

For example, in Philadelphia between 2011 and 2013, half of all cash forfeiture incidents involved sums of less than \$192 (American Civil Liberties Union of Pennsylvania, 2015b). Knepper et al. (2020) found across 21 states with available data, the median value of forfeited currency was \$1,276 between 2015 and 2019. Lee et al. (2019) found 55% of cash seizures in South Carolina involved amounts less than \$1,000. Honchariw's (2017) study of civil forfeiture in Las Vegas concluded 56% of forfeitures involved cash or other property worth less than \$1,000, and the median value of all forfeitures was \$873. The Alabama Appleseed Center for Law and Justice and the Southern Poverty Law Center (2018) reported half of forfeiture cases across 14 Alabama counties involved \$1,372 or less. Carpenter, McGrath, and Erickson (2013) found the average value of forfeited property in Minnesota was approximately \$1,000 —"less than the annual cost of a daily 'venti' latte at Starbucks (not including tip)" (p. 7).

Consequently, owners either navigate the forfeiture process alone or choose not to fight for their property's return (Knepper et al., 2020). In the late 1980s, almost 90% of federal cash seizures greater than \$100,000 went uncontested, resulting in forfeiture by default (Dodaro 1989), while in the late 1990s, 80% of all federal forfeitures were perfected using administrative procedures because no one filed a claim for property's return (Oversight of Federal Asset Forfeiture, 1999). Sallah et al.'s

(2014) analysis of U.S. Department of Justice data also concluded just one-sixth of examined DOJ cases were challenged by claimants.

The preceding illustrates how property owners face a difficult process to win the return of their seized property; data on forfeiture outcomes suggest likewise. Studies examining court cases show government authorities win the vast majority of forfeiture challenges. Between 2008 and 2012, the Philadelphia District Attorney's Office won 98% of its 2,000 civil forfeiture cases (Thompson, 2013). Additionally, civil forfeiture data from Cumberland County, Pennsylvania, indicated prosecutors returned just 6% of the money seized from individuals who were never convicted of a crime between 2011 and 2013 (American Civil Liberties Union of Pennsylvania, 2015a). At the federal level, research examining 193 U.S. Court of Appeals cases related to civil forfeiture found property owners succeeded in regaining their seized assets in only 30% of cases (Gabbidon et al., 2011).

To date, little is known about predictors of return of property. In a rare study that has examined such a question, Gabbidon et al. (2011) concluded individuals are less likely to win assets back in civil forfeiture cases when cash is seized. Assets seized in a criminal, as opposed to a civil, forfeiture case were 2.51 times more likely to be returned. Assets belonging to corporations, as compared to individuals, were 2.20 times more likely to be returned.

Altogether, this literature suggests property owners subjected to civil forfeiture face significant structural and practical challenges to win back seized property. Fiscal and opportunity costs can be high, and historical outcomes portend a likely failure to regain property. We say "suggests" because what we know about the process is largely derived from a review of legal processes, descriptive outcomes, and random anecdotes, not from systematic analyses of the lived experiences of those subjected to civil forfeiture. We present below the results from just that.

Study Context: Philadelphia's Forfeiture Program

The context for our study is the city and county of Philadelphia. For many years, Philadelphia ran an aggressive forfeiture program (Ingraham, 2015). After property was seized by police, it was processed for forfeiture in Courtroom 478 (Ciaramella, 2014; Quinn, 2015). Unlike a regular courtroom, this one was run exclusively by prosecutors and city staff, not judges (Ciaramella, 2014). The only court official in attendance was typically the "trial commissioner," who bore the responsibility of

scheduling hearings (Quinn, 2015). There was not even a court reporter present to transcribe the proceedings.

Courtroom 478 operated efficiently, with automatic approval for many cases. When property owners failed to attend court on their appointed hearing date, prosecutors marked the case for default judgment without any determination, judicial or otherwise, as to the reason the owners did not appear. And property owners would frequently appear in Courtroom 478 only to have prosecutors postpone the hearing until the following month without explanation. Called “relisting,” this would often occur multiple months in a row, forcing owners to return to court on multiple occasions or lose their property automatically. Some cases were relisted as many as a dozen times, drawing them out for years and increasing the likelihood owners would miss a court date and thereby lose their property by default (Third Amended Class-Action Complaint, 2018).

Often, the property seized was low in value. For example, Philadelphia’s average cash forfeiture was so small one observer referred to it as “pocket change” (Ingraham, 2015). In rational economics, low-value property might not ordinarily provide much incentive for seizure or forfeiture by law enforcement, but the city made up for the low values in volume: Philadelphia conducted thousands of forfeitures each year. In 2011 alone, Philadelphia filed 6,560 civil forfeiture petitions. From 2002 to 2014, Philadelphia seized and forfeited more than \$50 million in cash, along with 1,248 homes and other real properties and 3,531 automobiles and other vehicles (Institute for Justice, n. d.). Those figures do not include numerous personal items forfeited, such as cell phones, jewelry, clothing, or legally registered firearms.

The Philadelphia District Attorney’s Office frequently spent the millions it garnered in forfeiture proceeds on the salaries of the prosecutors who ran Courtroom 478. Between 2002 and 2014, the Philadelphia DA’s spending from forfeiture funds on salaries was almost twice that of all other Pennsylvania district attorneys combined (Second Amended Class-Action Complaint, 2016).

In 2014, four individuals filed a class action lawsuit against Philadelphia, arguing the forfeiture system violated their constitutional rights and those of the class they represented (University of Michigan Law School, n. d.) as the system provided few due process protections for property owners and gave city police and prosecutors a strong financial motive to pursue forfeiture revenue over public safety or justice (Class Action Complaint, 2014). After a multiyear legal battle in federal court, the city agreed to reform—not eliminate—its forfeiture program (Palmer, 2018) and pay \$3 million in

restitution to the 30,000 class members (or, more specifically, for those members who filed for restitution) (Wimer, 2019). The case was fully settled in 2021, and as part of the settlement, the city produced the names and contact information of the class members.

Philadelphia's civil forfeiture program was made possible by Pennsylvania's civil forfeiture laws. Pennsylvania's laws make it easy to forfeit property, requiring prosecutors to prove a seized property's connection to a crime by only a low standard of proof, "clear and convincing evidence" (until 2017, it was even lower—a preponderance of the evidence) (42 Pa. Cons. Stat. § 5805(j)(3); *Commonwealth v. Teeter*, 2017; *Commonwealth v. 1992 Volkswagen Passat*, 2016; Carpenter et al., 2015; *Commonwealth v. \$6,425*, 2005; *Commonwealth v. 2314 Tasker St.*, 2013; S.B. 8, 2017 Gen. Assemb., Reg. Sess. (Pa. 2017)). If owners fail to contest forfeiture of their property in time, Pennsylvania law allows the government to forfeit it automatically (42 Pa. Cons. Stat. § 5805(e)). Pennsylvania's laws also allow police and prosecutors to keep 100% of forfeiture proceeds (42 Pa. Cons. Stat. § 5803(f)–(i)).

Pennsylvania's laws are not idiosyncratic. Most states and the federal government enforce civil forfeiture laws similar to Pennsylvania's with respect to standards for seizure (probable cause), standards for forfeiture (the mode is a preponderance of the evidence), third-party (or joint) innocent owners' being required to prove their own innocence, and law enforcement's retaining forfeiture proceeds (Knepper et al., 2020). Thus, our findings have important implications for civil forfeiture extending far beyond Philadelphia.

Methods

This study was guided by one primary question: What are the experiences of property owners subjected to civil forfeiture? To answer this question, we surveyed almost 13,000 people and interviewed 16, all of whom had property seized by Philadelphia law enforcement. The survey enabled us to understand the forfeiture experience across a large sample of people, while the interviews provided greater and intimate detail about respondents' experiences and perceptions.

Sample

Survey. Study respondents were recruited using records maintained by Philadelphia, specifically the list of 30,000 individuals who had property seized as part of Philadelphia's civil forfeiture system. We used the list to construct a sample and deploy

a survey asking questions about their experiences. Ideally, we would have surveyed the entire list of 30,000, but the data cleaning process revealed many on the list were not reachable due to death, institutionalization, incapacitation, or simply incorrect contact information provided by the city. Thus, the final number of potential participants was 12,808. All the potential participants were contacted to complete a telephone survey (described below) by a national research firm (TechnoMetrica) between September 2020 and February 2021. Respondents were paid \$50 for participation. The final sample size was 407, yielding a 3% response rate. Ordinarily, descriptive statistics for the sample would be provided here, but the disaggregation of the sample demographics proved particularly revealing. Thus, we elected to report and discuss those statistics in the results below.

Interviews. Among the survey respondents, we identified a subsample of 15% to contact for interviews. Sixteen participants agreed to and completed interviews (see Table 1). Of those, 81% were persons of color, 44% were females, 44% earned \$50,000 per year or less, and 69% had less than a college degree. The mean age of respondents was 48, 75% owned their homes, and 56% were employed either full or part time. Six of the respondents had money seized; four lost firearms; three had vehicles seized; two lost personal property; and one had her home seized.

Table 1

Demographics of Interview Respondents

Pseudonym	Age	Race/ Ethnicity	Highest Education	Income	Employment Status	Home Ownership Status	Gender
Amara	54	Black	Some HS	< \$20K	Unable	Live w/family	Female
Amir	42	Black	Some college	\$30K-40K	Unemployed	Own	Male
Anthony	52	Black	Some college	NA	Unemployed	Own	Male
Caleb	48	Black	HS	\$100K-200K	FT	Own	Male

Duc	60	Asian	NA	< \$20K	Unemploy ed	Own	Female
Jada	40	Black	BA	\$40K-50K	FT	Rent	Female
Jayden	46	Black	HS	\$50K-75K	NA	Own	Male
Laila	55	Black	BA	NA	FT	Own	Female
Lisa	42	White	Some college	\$50K-75K	FT	Own	Female
London	57	Black	HS	\$30K-40K	FT	Own	Female
Malik	34	Black	Some college	\$20K-30K	PT	Live w/family	Male
Marcus	41	White	HS	NA	FT	Rent	Male
Mateo	40	Hispanic	BA	\$75K- 100K	FT	Own	Male
Travis	59	White	Some HS	< \$20K	Unemploy ed	Own	Male
Zachary	41	Mixed	Some HS	NA	Unemploy ed	Own	Male
Zuri	52	Black	BA	NA	FT	Own	Female

Note: HS = high school; FT = full time; PT = part time

Survey Instrument

We created the survey instrument in 2020. It included almost 50 content questions and eight demographic questions: age, sex, race/ethnicity, education level, work status, income, number of children under 18 at home, and home ownership status. Prior research suggests forfeiture may not be experienced equally by different subgroups (Brazil & Barry, 1992; Honchariw, 2017; Lee et al., 2019; Nicholson-Crotty et al., 2021; Schneider & Flaherty, 1991), which led us to ask about personal characteristics. And because the forfeiture process requires claimants to appear in court, among other things, we asked demographic questions that may interact with opportunity costs. For

example, we asked about, among other things, respondents' work status because those working full time may not have the time necessary to navigate a complex forfeiture process, which may more often result in the forfeiture of property.

Content questions focused on three broad constructs: circumstances around the seizure, events post seizure, and any accompanying criminal case. Questions about circumstances around the seizure were designed to measure the type and value of property seized, the circumstances of the seizure (where did it occur, what happened, was property seized from the respondent or was it in someone else's possession), whether the respondent was arrested, and whether police provided any paperwork at the time of seizure (e.g., ticket, citation, receipt). Questions about events post seizure measured whether the respondent attempted to win their property back, the process the respondent went through to try to regain their property, whether the respondent hired an attorney (and related questions), and whether and why the respondent ultimately succeeded or not.

Questions about any accompanying criminal case enabled us to determine the extent to which respondents were charged and convicted in a parallel criminal case, whether they had an attorney (private or public defender), and the specific charge. Note, the existence of an accompanying criminal case does not mean a forfeiture was a criminal forfeiture. With criminal forfeiture, the forfeiture is perfected as part of a criminal case. Meanwhile, with civil forfeiture, any accompanying criminal case proceeds parallel to a civil forfeiture case. That means a property owner can be acquitted in a criminal case but still lose property in an accompanying civil forfeiture case.

Interview Protocol

The semi-structured interviews used a 10-question protocol that first asked respondents to describe the circumstances of their property seizures in greater detail. The next few questions asked about the process, particularly the extent to which respondents understood the forfeiture process, how they learned to navigate the process (if, in fact, they did), and what they experienced in court. We then asked about costs they incurred throughout the process, and we clarified that costs were not limited strictly to the monetary type. Finally, we asked respondents how they perceived the relationship between forfeiture and crime fighting. Interviews were conducted by telephone and typically lasted approximately 30 minutes.

Analysis

We analyzed the survey data using descriptive statistics. For many of the demographic variables, we gathered and report below census data about Philadelphia characteristics to provide a comparison. We gathered those data from the U.S. Census Bureau American Community Survey 2019 1-Year Population Profiles and the Bureau of Labor Statistics Monthly Unemployment Statistics for September 2020 through February 2021 (the same period our survey was in the field). We analyzed the interview data by comparing and contrasting the details and perspectives provided by the interviewees to the aggregate results of the survey. The interview data provided rich detail to illustrate the necessarily terse survey data and some unexpected perspectives about forfeiture as a crime-fighting policy and practice.

Limitations

It is important to note our analysis relies on self-reports. Like any self-reported data, there may be some inconsistencies in the events people report and the events that occurred. The results below should be understood to be “as reported” by respondents. Moreover, some respondents’ memories may have been faulty, especially when recalling events from several years in the past. The possibility of some sampling bias also exists: Respondents who took the time to complete the survey or interview may have had particularly bad experiences with Philadelphia police or prosecutors, while those with minor experiences may have opted out in greater numbers.

Results

Who Is Subjected to Forfeiture?

The survey sample’s descriptive statistics enable us to understand the characteristics of people subjected to civil forfeiture. First, most tend to come from disadvantaged communities. The demographic characteristics of survey respondents look quite different from those of Philadelphians overall. Figure 1 disaggregates the racial and ethnic distribution of the survey sample, showing the large majority of respondents were Black. Moreover, as Figure 2 shows, those subjected to forfeiture were more likely to be Black than the general population. They were also more likely to earn lower incomes and be unemployed and less likely to have a college degree or own their homes.

Figure 1

Racial/Ethnic Composition of Sample

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Sample Descriptive Statistics Compared to Philadelphia Population

What Is Seized?

From these residents, Philadelphia police frequently seized small amounts of cash and low-value personal property. The median value of an individual item seized (including cash, which counted as one item in our analysis) was just \$600, and the median value of all items seized during a single incident was only \$1,370. Survey respondents reported having as little as \$25 in cash seized from them, as well as other low-value items, such as a cologne gift set worth \$20. Among our interviewees, Anthony had a jacket seized, and Marcus had work tools taken by police.

Such low-value seizures, including of items like cologne or clothing not plausibly connected to criminal activity, are far from the major drug money busts or financial fraud asset recoveries often touted as evidence that forfeiture programs work to hinder large criminal enterprises (McVeigh & Sutton, 2018; Rosenstein, 2017). In fact, our survey data suggest such large busts are outliers while small-dollar seizures are common (see Figure 3). This is consistent with Knepper et al.'s (2020) finding that the median value of cash forfeited was \$1,276 across 21 states—and that Pennsylvania had the lowest median of those states: \$369.

Figure 3

Value of Items Seized

Cash was by far the most common type of property seized from survey

respo-

ndents: 62% reported having cash seized from them (see Figure 4). Among survey respondents who had cash seized, more than half reported it was seized alongside other items like a car or other personal property. This could mean police often simply seized whatever cash people happened to have with them during a traffic stop or other interaction.

Figure 4

Types of Properties Seized

What Happens After a Seizure?

zure?

Forfeiture proponents often argue processes exist to ensure innocent property owners recover their property quickly and easily (McVeigh & Sutton, 2018; Rosenstein, 2017). The experience of those in Philadelphia, however, suggests otherwise. Overall, most survey respondents—72%—tried to win their property back, but less than half of those—43%—succeeded. Across the entire sample, more than two-thirds (69%) never got their property back. Our results identified several factors that may have made it more difficult for owners to regain seized property.

Police Often Failed to Provide Documentation of the Seized Property

In many cases, police never provided survey respondents with documentation of the property they seized, making it difficult for people to prove ownership. More than half of survey respondents—58%—did not receive a receipt for their property at the time of seizure, and two-thirds never received any information from police about how to begin the process of getting their property back. A receipt may sound trivial as part of the complex civil forfeiture process, but without one, it is exceedingly difficult to prove ownership of many types of seized property, including cash.

For example, when police raided one of our interviewee's (Duc's) business and home in search of small plastic bags commonly used in drug crimes, he reported they seized \$5,000. However, police recorded seizing only a few hundred dollars. As Duc described, "There was no record of [the full amount of money seized]. We did tell a lawyer about it but figured forget it. . . . It's your word against their word. They took our cameras, too, so you have no proof." Without proof of the full amount seized, Duc decided not to fight for his money's return, saying, "What they're doing is like robbery. They took [our money] and didn't report it and there's no one to complain to."

While cash was by far the most common item seized from survey respondents, it was the type of property people were least likely to try to get back. Respondents tried to get seized cars back 82% of the time but seized cash just 63% of the time. Without a receipt, it is much easier to prove ownership of a car—by showing the title or other paperwork—than it is cash. And only 42% of people who had cash seized received a receipt at the time of seizure. Furthermore, being without a car may present particular hardship, possibly motivating owners to fight harder for seized vehicles than for other property.

The Process to Reclaim Seized Property Was Long and Arduous

Survey respondents found the process of trying to regain seized property exceedingly lengthy and overly complex. Survey responses indicate when people received their property back, the process took an average of nine months. In the extreme, a little more than 2% waited more than three years to see their property returned, and the percentage may have been greater, since not all respondents who saw the return of property reported the wait time.

Navigating Philadelphia's civil forfeiture system was particularly difficult for the working poor. More than one-third of survey respondents reported they chose not to

fight for their property's return, and people's income and employment status appear to have made them more or less likely to get their property back—or to even try. Survey respondents who earned less than \$50,000 a year (63% of the sample) were less likely to try to get their property back than those who earned more. One possible explanation is those who earned higher incomes had more time and money with which to contest forfeiture. Another possible explanation is differences in the value of seized property: It could be those with higher incomes had more valuable property seized such that it made more financial sense to fight for it. In fact, for people who earned more than \$50,000, the median value of an individual item seized was \$1,300, and the median total value of all items seized during a single incident was \$2,050. For those earning less, the median value of an individual item seized was \$800, and the median total value of all items seized during a single incident was \$1,500.

The lower the value of seized property, the less sense it may make to spend the time and money required to try to get it back. Forty-three percent of survey respondents reported hiring an attorney to help them fight the forfeiture of their property, spending a median of \$3,500 on attorney fees. People do sometimes hire attorneys to contest forfeitures of less valuable property, however. For instance, one of our interviewees—Travis—hired an attorney to win back a licensed firearm that was taken from him. By the process's conclusion, Travis had spent \$8,800 on attorney's fees, far more than the handgun was worth.

Lower-income individuals would likely have had substantial difficulty coming up with the money necessary to hire an attorney and thus may have been deterred from trying to fight for the return of their property. Moreover, the amount of the seizure seems to have influenced the decision to hire an attorney: The median value of cash and other property seized from people who did not hire an attorney was \$1,700, while the median value seized from people who did hire an attorney was \$4,765. Furthermore, people who had more than one item seized during a single incident were more likely to get their property back, suggesting the value or quantity of seized property significantly influenced the decision to fight.

As for employment, survey respondents who were employed (whether full or part time) were less likely to try to get their property back (35%) than those who were unemployed, retired, students, homemakers, or unable to work (38%). This may be due, in part, to the number of times property owners had to go to court to fight for their property. People who did not get their property back made a median of two trips to court, while people who did get property back made a median of three. Ten percent

of survey respondents reported having to go to court more than seven times. Several of the respondents we interviewed mentioned the negative effect of court dates on employment. Travis, for example, was self-employed and lost income every time he had to go to court. Anthony, Zuri, and Caleb each described how their forfeiture cases were relisted multiple times, forcing them to either miss work—and income—or use personal or vacation time to make court appearances.

Property Owners' Guilt or Innocence Had Little to Do with Whether They Regained Their Property

Forfeiture proponents often claim the system allows innocent owners to easily reclaim their property while confiscating the proceeds and instrumentalities of crime from wrongdoers (Rosenstein, 2017; Schuppe, 2017). Our results suggest it is much more complicated than that—the majority of survey respondents were never proven guilty of any wrongdoing.

To begin, many survey respondents were never arrested or charged—let alone convicted of anything. Some of these people were not even present when their property was seized; that is to say, some—7% of respondents—were third-party innocent owners. One of our interviewees, Jada, was among them. She loaned her car to a friend, who was caught with marijuana while using the car. The friend was arrested, and the car seized. Unable to navigate the complex forfeiture process, Jada gave up the car. “I went to the first court date, and because the process is so hard to navigate, I let it go,” she said. “I didn’t know how to obtain justice for myself.”

Thirty percent of survey respondents were not arrested at the time of their property’s seizure, suggesting the alleged offense was not egregious enough, or the evidence strong enough, to warrant an arrest. For example, one of our interviewees—Zachary—and his cousin were searched by police in front of Zachary’s house for alleged drug activity. Police found no drugs, and neither man was arrested. Nevertheless, police seized the \$350 Zachary had in his possession, payment he had recently received for helping someone move.

Among the 70% of survey respondents who reported being arrested when their property was seized, 57% were charged and only 35% were found or pleaded guilty to any wrongdoing. That translates to 23% of the overall sample. Meanwhile, only 31% of survey respondents reported getting their cash, wallet, cell phone, or other personal property back. Among the 69% of survey respondents who ultimately lost their property to forfeiture, more than half (56%) were never charged with a crime, and

70% were never found guilty of any wrongdoing—that is, they were not convicted of a crime, nor did they enter into any sort of plea deal with the court.

To the extent there was a connection to a crime, the offenses were minor. Most of the seizures from those in our survey sample were allegedly associated with low-level drug offenses rather than large drug trafficking operations. A plurality of survey respondents had their property seized for an alleged drug offense, representing almost half of all seizures (see Figure 5). Yet, and as discussed above, the relatively low value of seizures suggests Philadelphia’s civil forfeiture program most often netted low-level drug offenders—as well as entirely innocent people, using alleged minor drug offenses as a pretext. Another 10% of seizures occurred in connection to some sort of traffic violation, including unpaid parking tickets, expired vehicle registrations, and minor moving violations.

Figure 5

Alleged Reasons for Seizures

Some of those who lost their money or property without charges or a guilty

plea or conviction may have chosen to walk away because they were indisputably connected to criminal activity, as forfeiture proponents often claim (Rosenstein, 2017; Schuppe, 2017). But many survey respondents said they had entirely innocent reasons

for not trying to get their property back. Among those who did not try to get their property back, the plurality (30%) said they did not know how, followed by 20% who said they simply did not think they would be successful if they tried.

One of our interviewees—Amara—had her home seized after family members were arrested for drug activity. Amara was not living in the home at the time and did not know of the alleged crimes. Desperate to keep her home, she went to court but was overwhelmed by the process. “I was blindsided when I went to court; I’m not illiterate, but I didn’t understand the legalese,” she said. It was only with pro bono representation from a local law firm that was she able to save her home.

Survey results also indicate property owners’ decision to try to get their property back had little to do with their guilt or innocence. The rate of guilty pleas and convictions differed marginally for people who attempted to get their property back compared to people who did not. For people who did not try to get their property back, 65% were never found guilty. For those who did try, that non-conviction rate was nominally higher (74%). This result suggests other components of the city’s seizure practices and forfeiture system—such as those previously discussed—had more to do with people’s decision to challenge a forfeiture than their criminal culpability.

Finally, third-party innocent owners like Jada also appeared to have a particularly difficult time getting their property back. Survey respondents whose property was seized while in the possession of someone else were less likely to get it back than those whose property was seized directly from them (seized from someone else = 4%; seized from owner = 27%). Innocent owner provisions in forfeiture laws are supposed to provide a way for people who were not present when their property was seized to enter a claim to get it back. Yet our finding suggests making and winning an innocent owner claim is extremely difficult.

The Overall Assessment

Given such results, it is not too surprising that when asked to describe their experience with Philadelphia’s civil forfeiture program in one word, survey respondents most often used words like “frustrating,” “corrupt” and, most of all, “unfair.” Interviewees provided greater insight into such assessments. More than half felt forfeiture did not fight crime and instead was, in Malik’s words, “all about making money for the police department, and fighting drug crime is just their excuse.” Four of the interviewees specifically described civil forfeiture as “corrupt.” Jayden, for

instance, said forfeiture “serves no other purpose than to line the pockets of corrupt cops.”

Yet 44% of interviewees said they believed forfeiture does fight crime but can be unfairly applied, as it was in their case. Zuri, for example, thought forfeiture “does help [fight crime], but I wish there would be better standards used to protect innocent people.” Similarly, Zachary said “the strategy needs to be fitted to target specific criminals,” and Caleb said it was “important not to lump innocent people in with criminals and to have a fair process.” Thus, whether interviewees believed civil forfeiture to be thoroughly corrupt or potentially efficacious, their shared assessment was that it is applied unfairly.

Discussion

This study examined a civil forfeiture program through the experiences of those subjected to it in order to understand better a process that is considered straightforward by proponents and prohibitively complex by critics. From a survey of more than 400 and interviews with 16 property owners who had property seized or forfeited, results indicate Philadelphia’s civil forfeiture program disproportionately affected people from disadvantaged communities, made it difficult for people to gain their property back, and seemingly had little to do with fighting serious crime. Although Philadelphia’s program—particularly Courtroom 478—may seem particularly egregious, the legal incentives that gave rise to these problems are not unique. Thus, the experiences of those subjected to civil forfeiture in Philadelphia hold implications for civil forfeiture more generally.

First, civil forfeiture programs are likely to disproportionately affect the disadvantaged. This finding confirms a small but growing literature about the asymmetric effects of forfeiture (Brazil & Barry, 1992; Honchariw, 2017; Lee et al., 2019; Nicholson-Crotty et al., 2021; Schneider & Flaherty, 1991). Indeed, the demographics of those subjected to forfeiture mirror those of people entangled in the criminal justice system more broadly. Members of disadvantaged communities are more likely to be arrested and incarcerated than the general population (Hayes & Barnhorst, 2020; Kearney et al., 2014; Nellis, 2016; Solomon, 2016). Black Americans are almost three times more likely to be arrested than White Americans for an alleged drug offense despite similar rates of drug use and sales (The Hamilton Project, Brookings Institution, 2016).

The demographics of civil forfeiture and the criminal justice system more broadly align, in large part, because civil forfeiture operates within the criminal justice system—and, indeed, police and prosecutors claim it is a crime-fighting tool—yet it offers property owners only the limited protections of civil procedures. Given that any interaction with police can lead to a person’s property being seized, it makes sense that members of heavily policed communities would be more likely to experience civil forfeiture. And as our survey results illustrate, it is quite easy for police contact—whether entirely innocent or on suspicion of minor offenses—to lead to seizure, a dynamic likely made worse by the financial stake forfeiture gives law enforcement in pursuing property. If civil forfeiture is not only available to law enforcement but carries financial benefit, it should not be surprising if it is used as opportunities arise.

Then, once property is seized, owners face a civil process with few due process protections, and the situation can be particularly difficult to navigate precisely because many owners are economically disadvantaged. With less economic and social capital, navigating Philadelphia’s complex system was likely especially challenging. And because lower-income workers are more likely to hold hourly jobs (U.S. Bureau of Labor Statistics, 2019), they may have found it particularly difficult to take time off to go to court to try to get their property back. Thus, disadvantaged Philadelphians were more likely to have property seized in the first place and less likely to be able to fight for its return (American Civil Liberties Union of Pennsylvania, 2015b).

These findings may help explain previous research that suggests civil forfeiture disproportionately affects communities of color. Building on research that found forfeitures are most often tied to drug arrests, Makowsky et al. (2019) found forfeiture revenues increase at a faster rate with Black and Hispanic drug arrests than with White drug arrests. The same study also found these Black and Hispanic arrests and associated property seizures were most pronounced during periods of local budget deficits, suggesting forfeiture proceeds distort law enforcement behavior—and Black and Hispanic people are more likely to pay the price (Makowsky et al., 2019). Another study found forfeiture revenues are higher for agencies that police majority minority communities, though the relationship is not as strong when the policing agency has a higher share of minority officers (Nicholson-Crotty et al., 2021).

As for our findings about the percentage of people that give up their properties to forfeiture, respondents to our survey offered sensible reasons for failing to fight for their property, such as the low value of property or the high cost of hiring an attorney. These findings may explain why prior research has found people infrequently contest

forfeitures. Among four states that track such data, people sought return of their property in only 22% of cases or fewer (Knepper et al., 2020). Like our survey respondents, people may walk away because it is too hard, is too expensive, or does not make economic sense to fight. Indeed, across 21 states with available data, the median value of forfeited cash is \$1,300. Meanwhile, the estimated cost of hiring an attorney to fight a fairly straightforward state forfeiture case is \$3,000 (Knepper et al., 2020).

Moreover, even if people decide to fight, filing a claim may not be as easy as it sounds. For example, at the federal level, more than one-fifth of all claims for property seized by U.S. Department of Justice agencies are rejected before a judge even considers them, often based on mere technicalities like people neglecting to sign their claim forms “under penalty of perjury” (McDonald, 2018). Minnesota provides another example of how difficult civil forfeiture procedures can be to navigate. In Minnesota, when a vehicle is seized due to an alleged driving-while-impaired offense, the owner must initiate a lawsuit within 60 days of the seizure to have any hope of getting their car back (Minn. Stat. § 169A.63). If they miss that deadline, they lose their property by default—even though Minnesota law requires a criminal conviction before property can be forfeited. The Minnesota judicial branch describes the process on its website, including providing copies of the forms that must be filed (Minnesota Judicial Branch, n. d.), but this appears to be little help; almost all forfeitures of vehicles for alleged DWI offenses happen by default (Blaha, 2020).

Added to this, few of the reasons our survey respondents gave for failing to contest forfeitures had much to do with guilt or innocence—nor did success rates in securing the return of seized property. This contradicts claims by forfeiture proponents that low claim rates indicate guilt. In fact, among survey respondents who lost property, 70% were never proven guilty of anything. And truly innocent people whose property was allegedly used by someone else to engage in wrongdoing were less likely to get their property back.

Given how few survey respondents were ever found guilty of anything, it is not too surprising that other research on forfeiture suggests it is a poor crime-fighting tool. Knepper et al. (2020) compared crime rates in New Mexico before and after landmark reform eliminating civil forfeiture and the profit incentive to crime rates in Colorado and Texas, neighboring states with typical forfeiture laws. It concluded New Mexico’s reforms had no effect on crime rates or on law enforcement’s ability to fight crime (Knepper et al., 2020). In two separate studies, Kelly (2019; 2021) examined large

datasets of federal and state forfeitures, as well as crime clearance and drug use rates, and concluded forfeiture does not appear to improve police effectiveness at solving crimes or reducing illegal drug use. Kelly did, however, find as unemployment increases—signaling a downturn in economic conditions—so too does police forfeiture activity, suggesting forfeiture is a way for police to self-fund under austere budgetary conditions.

Forfeiture's fundraising potential was not lost on some we interviewed (a typical sentiment was that forfeiture is "all about making money for the police department, and fighting drug crime is just their excuse"); yet others expressed a belief in the efficacy of civil forfeiture despite their own negative experiences. Given the centrality of fairness in procedural justice (Van Craen & Skogan, 2017) and the role procedural justice plays in citizens' assessments of law enforcement (Tyler, 2001; 2006), a belief in the efficacy of civil forfeiture—a system labeled by our respondents as "unfair"—seems paradoxical. This may be explained, in part, by Tyler's (2001) observation that personal experience and concepts of fairness may be primary in assessing law enforcement, but "outcome issues are not irrelevant to evaluations of legal authorities" (p. 233). Indeed, Tyler's analysis consistently found outcome issues influence public evaluations. Moreover, Hamilton and Black's (In press) findings suggest citizens may evaluate circumstances not just on outcomes but also on intentions or goals. If so, members of the public may give law enforcement a "cushion" for actions that seem unfair but necessary and efficacious (Tyler, 2006).

However, findings by Kelly (2019; 2021) and Knepper et al. (2020) suggest forfeiture is not effective in fighting crime. Additionally, Precadio and Wilson's (Preciado & Wilson, 2017; Wilson & Preciado, 2014) experimental findings strongly suggest the financial incentives present in most forfeiture laws will inevitably produce circumstances like those deemed "unfair" by our respondents. Precadio and Wilson conducted an experiment to test the extent to which the financial incentives inherent in most forfeiture laws altered behavior of those in a law enforcement role. Results showed financial incentives universally distorted helping behaviors into avaricious ones. Importantly, Precadio and Wilson made it a point of implicating the laws, not people: "Civil forfeiture is not a problem of 'bad apples,' but of bad laws that encourage bad conduct" (2017, p. 177). And in fact, when questioned about Philadelphia's profitable civil forfeiture system, law enforcement officials responded "by pointing out that they pursue forfeiture because statute allows them to" (Thompson, 2012, para. 78). Thus, those who hold a belief, or a hope, that civil forfeiture can be fairly implemented and produce an efficacious outcome may be misguided.

Implications

By way of implication, our findings suggest civil forfeiture laws are not straightforward as proponents claim and instead pose significant challenges for property owners, particularly the disadvantaged. The burdens property owners must try to overcome to get their property back likely lead to people losing property not because they have done anything wrong but because they do not have the resources to stop what is happening to them.

Such circumstances can be alleviated by processing seizures through criminal forfeiture channels, where property owners enjoy greater rights, such as the right to counsel and presumption of innocence. In such proceedings, prosecutors bear the burden of first proving a property owner's criminality beyond a reasonable doubt and then connecting their property to that crime. Added to that would be eliminating the apparent financial incentive in forfeiture.

Like Philadelphia (and Pennsylvania as a whole), most states and the federal government allow law enforcement agencies to keep some or all the proceeds from the forfeitures they perfect. As Preciado and Wilson illustrate (Preciado & Wilson, 2017; Wilson & Preciado, 2014), this creates strong financial incentives to which rational actors will predictably respond. A simple reform would be directing all forfeiture proceeds to funds beyond law enforcement control. Although such policy changes might seem unworkable, some states, like New Mexico, have already adopted them with no discernible negative consequences for public safety (Knepper et al., 2020). There is little reason to believe other states and the federal government could not do likewise.

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