

Spring 5-19-2017

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Recommended Citation

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The Civil Asset Forfeiture Program

An Analysis of the Actual Use, Racial Subjectivity, and Unfairness to Lower Earning Individuals

ECF 880: Integrated Capstone

Economic Crime Forensics

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Being able to seize property without a criminal conviction has become a hot button topic in periodical and academic papers. The Civil Asset Forfeiture program gave law enforcement the ability to seize “guilty” property, which can be defined as contraband, proceeds from criminal activity, or tools and instrumentalities used in the commission of a crime, without a criminal conviction on the part of the owner. Numerous academic authors and journalists have called for reform, racial unfairness, and targeting of lower earning communities. However, the majority of data regarding the Civil Asset Forfeiture program is qualitative in nature with few quantitative data sets existing. This paper not only examines and critiques current literature but also looks to utilize available economic, census, traffic, and crime data to prove that the Civil Asset Forfeiture program is not being used for what it was originally intended as well as minority and lower earning individuals being more susceptible and likely to have their assets seized.

I. Introduction

Currently, Civil Asset Forfeiture, a legal practice in which law enforcement may seize a person's property without a criminal conviction, has been garnering much attention in the media. With no criminal conviction necessary money, vehicles, homes, and other various forms of property can be seized and used by federal, state, and local law enforcement agencies. Some critics have gone so far as to call the practice "Policing for Profit" or profit incentivized policing and deem such practices as unconstitutional, unfair, and avenues for corruption, while others believe it to be a necessary practice to further empower law enforcement in the national War on Drugs (Steigerwald, 2013). The real issue, however, is the lack of data available for proper analysis and evaluation. Little to no empirical data exists which would provide researchers with the necessary tools to make academic conclusions about civil asset forfeiture and its impact on society. There are no statutory requirements for counties or states to maintain data on the individuals who have their assets seized, only requirements for net amounts seized. Said data provides little to no insight into whose assets are being seized, under what potential criminal statute, the area in which the seizure was initiated, or simple statistics such as race, gender, or socio economic status. Fortunately for academia, there are ways to establish hypothesis about legislative, racial, and socio-economic impacts. By using current crime data, available asset forfeiture data, and associating racial crime and socio-economic data one can postulate if the Civil Asset Forfeiture program is being used as it was originally intended (to take down large criminal enterprises), which racial group the program impacts, and which socio-economic groups are being affected. This approach will not only indicate the faults in the Asset Forfeiture program, but will also illustrate the ability to use peripheral data to academically draw conclusions about a program that has little data available to use.

II. Literature Review

As previously mentioned, there is limited data available that truly sheds light on the Civil Asset Forfeiture program. Current literature primarily focuses on qualitative data and condemnation of the program rather than meaningful quantitative data that illuminates the need for reform. Current attention on the Asset Forfeiture program reached national spotlight when the Washington Post published a series of articles particularly dedicated to the stories of those who have been negatively affected by the Asset Forfeiture program (Sallah, O'Harrow, Rich, & Silverman, 2014). The investigative series introduced the public to a little known program in which law enforcement was given the federal authority to civilly seize property without a criminal conviction. The series describes the creation of the forfeiture program, its intent, and utilizes qualitative data, such as stories and vague "factual" statements, which portrays the forfeiture program as corrupt and racially motivated. Statements, such as "could violate privacy and constitutional rights" coupled with stories such as those of a Chinese male who had \$75,000 seized from his vehicle or the Latino male who had \$18,000 seized under suspicion of drug trafficking in his attempt to buy a used vehicle in Virginia after travelling from New Jersey (Sallah et al., 2014). The article also fails to provide any data that accurately portrays the racial profiling case they attempt to illustrate with the aforementioned stories. Little is said about data, racial data in particular. The report merely mentions that "data released to The Post does not contain information about race" and "court cases examined by the Post where people who challenged seizures and received some money back, the majority were black, Hispanic, or another minority" (Sallah et al., 2014). Continuously relying on qualitative data and failing to utilize available data to establish a hypothesis furthers the informative gap that exists pertaining to Asset Forfeiture.

Not only are news outlets failing to address and utilize available data to illustrate the Asset forfeiture programs faults, but reputable research institutions as well. The Institute for Justice releases their Policing for Profit report which looks to address Civil Asset Forfeiture by grading states on current Asset Forfeiture legislation and policies. The Policing for Profit report condemns the practice of Asset Forfeiture and grades states' policies pertaining to the legal standard of proof required to seize assets, total amount of assets seized by state, and percentage amounts of assets seized which law enforcement can keep as a result of the seizure (Carpenter, Knepper, Erickson, & McDonald, 2015, p. 5). The Institute for Justice's report does a fantastic job of analyzing the data made available by the government, particularly the Department of Justice Asset Seizure Fund's increasing rate of deposits and value over the past 14 years (10). The Policing for Profit report also establishes a sound argument in regards to the various states and the grades that were given to them pertaining to Asset Forfeiture policy particularly, the percentage of proceeds law enforcement agencies are allowed to keep as a result of a seizure (14). The percentages range from 0-100% of proceeds and all states are included within the report, which makes a valid argument as to why states such as North Carolina and Maine are allowed 0% of proceeds while New Jersey, New York, and Pennsylvania keep 100% of proceeds (14). Finally, the Policing for Profit report successfully illuminates and attacks the lack of transparency required by law in reporting seized assets. Their research showed that 17 states require no documentation to be reported when assets are seized, 2 states are required to submit reports to a local budgetary council, 15 states and the District of Columbia require reports to be sent to the state for an aggregate report to be published, 8 states require reporting to the state but no centralized report is made available, and the remaining states submit asset seizure data into a centralized database (33).

However detailed the Institute for Justice's report may be, the Policing for Profit report does little to address the racial and socio-economic implications of the Asset Forfeiture program. It also does little to utilize available data to prove that the Asset Forfeiture program is not being used as originally intended. The report includes a "Best Practices" section for Asset Forfeiture reporting. Included in the section are tips such as "date of forfeiture", "estimated value of property", and "whether or not criminal actions were committed and if so what offense" (42). Not once in the best practices section does it mention the area/location the property was seized or the gender or race of the individual subjected to the seizure. Simple data such as this would paint a more elaborate picture of who is being subjected to asset forfeiture the most. Even knowing the area where assets are forfeited/seized the most can provide insight into the socio-economic condition of the area, crime trends, and could therein help target police efforts in utilizing the Asset Forfeiture program to its fullest potential.

As stated prior, academic and research institutions are currently in a publishing frenzy to villainize the Asset Forfeiture program. The reports that are published do address the majority of issues the program poses, but do so in a narrative and qualitative way rather than a quantitative and data driven one. The Center for American Progress published a report titled, *Forfeiting the American Dream: How Civil Asset Forfeiture Exacerbates Hardship for Low-income Communities and Communities of Color* in 2016. Rebecca Vallas and her associates focus in on the same topics this paper looks to address; whether or not the Asset Forfeiture program is inadvertently harming those of a particular race or socio-economic status while also addressing the intended use versus the actual use of the Asset Forfeiture program to date. Vallas and her colleagues explain the creation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Comprehensive Crime Control Act of 1984 and its intended use "to disrupt

criminal organizations by seizing cash or other property obtained through illicit means or used to commit crimes” (Vallas, Ross, Cox, Hagler, & Corriher, 2016, p. 3). However, the report does not use any specific data to further the claim that the Asset Forfeiture program is not being used as intended. This is not to say that it is not, but without specific data to back up a particular point, they become statements rather than theory or fact.

Despite the intended versus actual use argument lacking statistical support, the report does a better job at providing the statistics on the racial targeting theory of the report but does not include the entirety of its cited materials. Specifically the report cites an Oklahoma study which found “that nearly two-thirds of seizures came from African Americans, Latinos, and other racial and ethnic minorities, despite the fact that 75 percent of the state’s population is white” (5). However upon further review, this particular Oklahoma Watch study, which will be discussed and used as an example later in this paper, was cited via the Atlanta Black Star newspaper. The Oklahoma Watch study concluded that African Americans comprised of 31% of the seizures, Hispanics accounted for 29%, and people of Caucasian status accounted for 31% of seizures, with the 8% remaining being those of Asian, Native American, and mixed backgrounds (Adcock, Fenwick, Stepik, 2015). The study also illustrated the variance in percentages by dividing it amongst the counties involved in the study and failed to include current crime statistics per county, population density, or ethnic makeup of each county. Merely stating percentages without consideration of other contributing factors paints a picture far worse than the situation really. By highlighting certain aspects of the report, like the total percentage of minorities who were subjected to asset seizures (69%), rather than differentiating the percentages among the racial groups (31%, 31%, 29%, 9%), further vilifies the Asset Forfeiture program as a racial targeting program instead of elaborating on the even diversification between races in regards to asset

seizures. Furthermore the report fails to take in account racial makeup of the population being studied.

The report does also make mention of a Pennsylvania ACLU report that indicated 71% of all individuals in Philadelphia who had assets seized without a criminal conviction were African American (Vallas et al., 2016, p. 5). It also stated that African Americans accounted for merely 44% of the city's population. These numbers seem to be more in line with use in an academic and research approach to uncovering those who are truly being affected by the Asset Forfeiture program. The report finally mentioned the socio-economic impact on impoverished communities. Citing President Obama's preferential treatment for Philadelphia to receive federal funding for housing, \$30 million was set aside for low income families to find proper housing. The report makes the argument that the averaged \$1 million seized in Philadelphia directly affects the Obama administrations housing efforts in Philadelphia, in turn effecting socio-economic progress in impoverished cities or neighborhoods (9). Not only is this an outrageous allegation, but also scientifically unfounded. Had there been proof that the \$1 million seized by law enforcement was directly correlated with the funding for housing, the report would have proven its case. But mere accusations without the proper data to back up the claim merely lead to further stalling in achieving some sort of reform.

Academic journals are a keystone in achieving political milestones and introducing the public to new and interesting ideas. New theories in science, mathematics, and history are published almost daily. Unfortunately, when it comes to Asset Forfeiture literature, the academic community is lacking in regards to scientific approaches that will help further the case for reform to the program. The majority of Asset Forfeiture literature is geared towards qualitative approaches towards reformation and critique of the Civil Asset Forfeiture Reform Act, passed in

2000. It is also used in analyzing incentive variables that are hypothesized to indicate that Law Enforcement are using Asset Seizure as an incentive to line their pockets and not take down criminal enterprises. None of these approaches look at the victim demographic of Civil Asset Forfeiture and the impact it may have on those demographics. Eric Moores, a doctorate student, had an article published in the *Arizona Law Review* titled, *Reforming the Civil Asset Forfeiture Reform Act*. Despite a very in depth historical background of Asset Forfeiture, which dates back to the time of the Old Testament, the paper merely seeks reform with minimal statistical backing and relevance (Moores, 2009, p. 780). Moores focuses on reform by stating, “Annual forfeitures continue to rise, along with stories of police abuse and corruption. Procedural protections are also vitally needed, as property owners only contest about 20% of seizures instituted under civil asset forfeiture. Further, 80% of owners who have property seized are never charged with a crime” (783). Although the use of statistical data is a step in the right direction, the impact this data was intended to provide is lacking. Moores further illustrates the need for reform by elaborating on the case of Donald Scott, a rancher, who was killed during a search warrant that was being executed under the assumption that Donald Scott was growing marijuana. Hearing his wife scream, he confronted the officers with a revolver and was subsequently killed. Moores dictates that an appraisal of the ranch at \$5 million, which was included in the pre-raid planning meeting, the previous attempts by the government to purchase the land from Scott, and the pre-raid statement that the property would be seized if any marijuana was found on the property, were incentivizing law enforcement to act upon the property to seize rather than enforcing the law and in turn led to Donald Scott’s unfortunate death (789). This specific event is tragic and unfortunate to say the least, and a proper investigation was conducted and punishment was distributed accordingly. However, rare cases such as this are included in an attempt to gain

sympathy rather than using fact telling data coupled with sympathetic stories to motivate readers and lawmakers into action.

As stated prior, Moores focused on a qualitative analysis of the Civil Asset Forfeiture Reform Act while including little quantitative data to further his argument. In Civil Asset Forfeiture literature, that is common place, but when quantitative data analysis regarding Asset forfeiture is finally published, the focus is out to villainize law enforcement. Holcomb, Kovandzic, and Williams wrote an article titled *Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States* published in *Journal of Criminal Justice*. This particular article openly acknowledges profit motive as an influence to conduct asset forfeiture has been “subjected to only a limited number of empirical studies (Holcomb, Kovandzic, & Williams, 2011, p. 273). This could be said for the entire topic of Asset Forfeiture, but the study utilized annual forfeiture amounts, financial incentives for law enforcement, and the burden of proof required to seize assets as variables in determining how profit incentive drives law enforcement to conduct Asset seizures and forfeitures. The paper found, according to their censored regression, that law enforcement agencies who operate in a state with strict asset forfeiture laws, use the equitable sharing program, by which federal authorities share the proceeds from the seizure with their local counterparts (283). This tells the reader that law enforcement, who suffer from low budgets, will be resourceful in attempting to bolster their budgetary capabilities through asset forfeiture. The authors then state further that, “profit seeking found within current forfeiture law is criticized as encouraging inappropriate enforcement activities” (283).

Whether or not the criticisms are encouraging inappropriate enforcement activities, asset forfeiture is merely another avenue to generate additional monies to fund an expensive arm of the public good. According to the Bureau of Justice Statistics, the average number of full time

officers for a local town is 10 while the average budget is a mere \$4.4 million (Bureau of Justice Statistics, 2011, p. 9). Out of 770 police chiefs, 40% stated that Asset Forfeiture operations were a budgetary necessity (Holcomb et al., 2011, p. 275). Based on these statistics alone, incentive driven Asset Forfeiture operations are a part of our police culture, but as a necessity to pay for what the departments are not being given by their budgetary providers. There is no data to infer that Asset Forfeiture activities are meant to be instigated by malice or greed. There is also no data to indicate whether or not goals or specific quotas are set by departments in terms of dollar amount of assets seized. There have been instances by which law enforcement agencies were using forfeiture funds inappropriately. Running gear was purchased for an Austin, Texas police department, Mooresville Police Department in North Carolina used \$5,000 for a youth group's trip to New York, and a Lieutenant of South Tucson, Arizona was charged with embezzling \$500,000 from the Asset Forfeiture fund (Moore, 2009, p. 790). Not to be misleading, there are officers who abuse the Asset Forfeiture program and those caught are punished and often fired from the jobs. However, seizing to fill budgetary gaps versus seizing because one has the authority to seize are two different incentive driven propositions.

Despite a lack of sufficient data available that can accurately portray the Asset Forfeiture program as fair or damaging, there are a couple of reports that have begun to focus on the intended, or non-intended, victims of Asset Forfeiture. As stated previously Oklahoma Watch, a non-profit investigative journalist corporation whose mission is to publish stories pertaining to public policy and quality of life issues that threaten the state of Oklahoma, published a story examining the Asset Forfeiture Program's effect on racial communities within Oklahoma. The 2015 report performed by Adcock, Fenwick, and Stepick evaluated 401 Asset Forfeiture cases in which over \$5,000 of assets were seized. Adcock, Fenwick, and Stepick utilized public record

requests for Civil Asset Forfeiture cases, and accessed public record or used surname identification to establish race/ethnicity (Adcock et al., 2015). According to the data that was collected, African Americans consisted of 31% for asset forfeiture cases, Caucasians 31%, and Hispanics 29%, the remaining 9% consisted of people of Asian, Middle Eastern, and Native American ethnicities. Amongst the 10 counties that were involved in the study, the statistics varied when it came to the racial and ethnic makeup of those who had their assets seized. In Oklahoma County, 75% of the asset forfeiture cases involved either an African American or Hispanic defendant while in Tulsa County, 35% of asset forfeiture cases involved African Americans, 29% involved Hispanics, and 33% involved Caucasians (Adcock et al. 2015).

Currently this is the most effective tool for examining the Civil Asset Forfeiture program and its effect/potential targeting of the minority community. Had there been some form of organized data collection process and subsequent system for analysis, the labor required for this type of study would be significantly decreased. However, under present forfeiture reporting circumstances, analyzing on a case by case basis, is the best route for understanding who is having their assets seized the most. Despite proper data collection, Oklahoma Watch's report leaves much to be desired. First, the report does not take into account the racial makeup of each county that was studied. It merely focuses on the race factor in each case rather than forming a ratio of proportionality based on racial make-up of the county and the racial percentage of asset victims.

The Oklahoma Watch article sets the standard for how asset forfeiture data should be collected at the present time. Merely focusing on legislative reform without statistical data to back it up weakens the argument. Mary Murphy authored a paper titled *Race and Civil Asset Forfeiture: A Disparate Hypothesis* published in the *Texas Journal for Civil Liberties and Civil*

Rights. This article focuses on the Civil Asset Forfeiture program and hypothesizes that racial minorities will be the intended or unintended target of the program (Murphy, 2010, p. 90). As this paper will postulate, racial minorities will be unintentionally targeted in accordance with this program, as Murphy's paper hypothesizes, however this paper will focus on the proof and data that minorities will unintentionally be victims of the Civil Asset Forfeiture Act.

Ronald Helms and S.E. Costanza penned a study in which all future forfeiture analyses should follow. Titled *Race, Politics, and Drug Enforcement: An Analysis of Civil Asset Forfeiture across U.S. Counties*, Helms and Costanza used statistical regression to prove their hypotheses. Helms and Costanza were able to find statistical significance in variables that proved African American communities were less likely to have their assets seized, lower income neighborhoods would see variance in police discretion in conducting asset seizures, and areas in which Republican voter turnout was high also saw an increase in civil asset seizures (Costanza & Helms, 2009, p. 13). The model Helms and Costanza used is indicative of where Civil Asset Forfeiture theories need to turn to because it provides reliability and backing to proposed changes to legislation, as the other articles mentioned prior so adamantly seek.

III. History of Civil Asset Forfeiture

The Latin term, "*in rem*", meaning against "the thing" is the premise by which Civil Asset Forfeiture is legal. The history of Civil Asset Forfeiture can be dated back to the Old Testament in which a passage read, "If an ox gore a man or a woman, that they die; then the ox shall be surely stoned and its flesh shall not be eaten . . ." (Moore, 2009, p. 780). The reasoning behind such action was the animal or property was guilty of committing the act and should in turn be sacrificed to God. Roman and Medieval practices varied little from Old Testament practices in which property, such as livestock, were dressed up in clothes and burned at the stake,

there in punishing the guilty property (780). Civil Asset Forfeiture then had applications with the expansion of naval warfare and maritime law during the 16th-19th centuries. Civil Asset Forfeiture laws were often used by governments to “legally” procure a ship or its cargo for its owner/captains misdeeds (781).

As *in rem* proceedings slowly grew in popularity, so did the applicability for fighting crime and incentivizing law enforcement to tackle specific crime goals. Prohibition featured a resurgence in Asset Forfeiture as did the 1970s Drug Wars (781). In 1970 Congress passed the Comprehensive Drug Prevention and Control Act which allowed for law enforcement to seize assets that were used in the commission of a crime, were proceeds of a crime, or were purchased by proceeds of a crime (Murphy, 2010, p. 81). In 1984, Congress then passed the Comprehensive Crime Control Act which added the policy that allows for the seizure of cash as well as equitable sharing between federal and local law enforcement seizures working in joint capacities (81). The most recent addition to Civil Asset Forfeiture law was the 2000 Civil Asset Forfeiture Reform Act which sought to make the asset forfeiture process “more fair” in the eyes of the law. Representative Harry Hyde fought to include a burden of proof requirement for law enforcement, said burden of proof being a preponderance of the evidence, an innocent owner’s defense, as well as “court appointed counsel for indigent owners whose primary residences had been seized” (Moores, 2009, p. 783).

Since 2000 and the Civil Asset Forfeiture Reform Act, civil asset forfeiture, federally, has remained unchanged. States however, have passed laws governing civil asset forfeiture policy while some states, like North Carolina and New Mexico, have ceased all civil asset forfeiture activity (Carpenter et al., 2015, p. 14). While some states believe that their seizure activity is

effectively combating the War on Drugs and others believe the contrary, no academic or supportive literature has addressed if the national trend is accomplishing its intended plan.

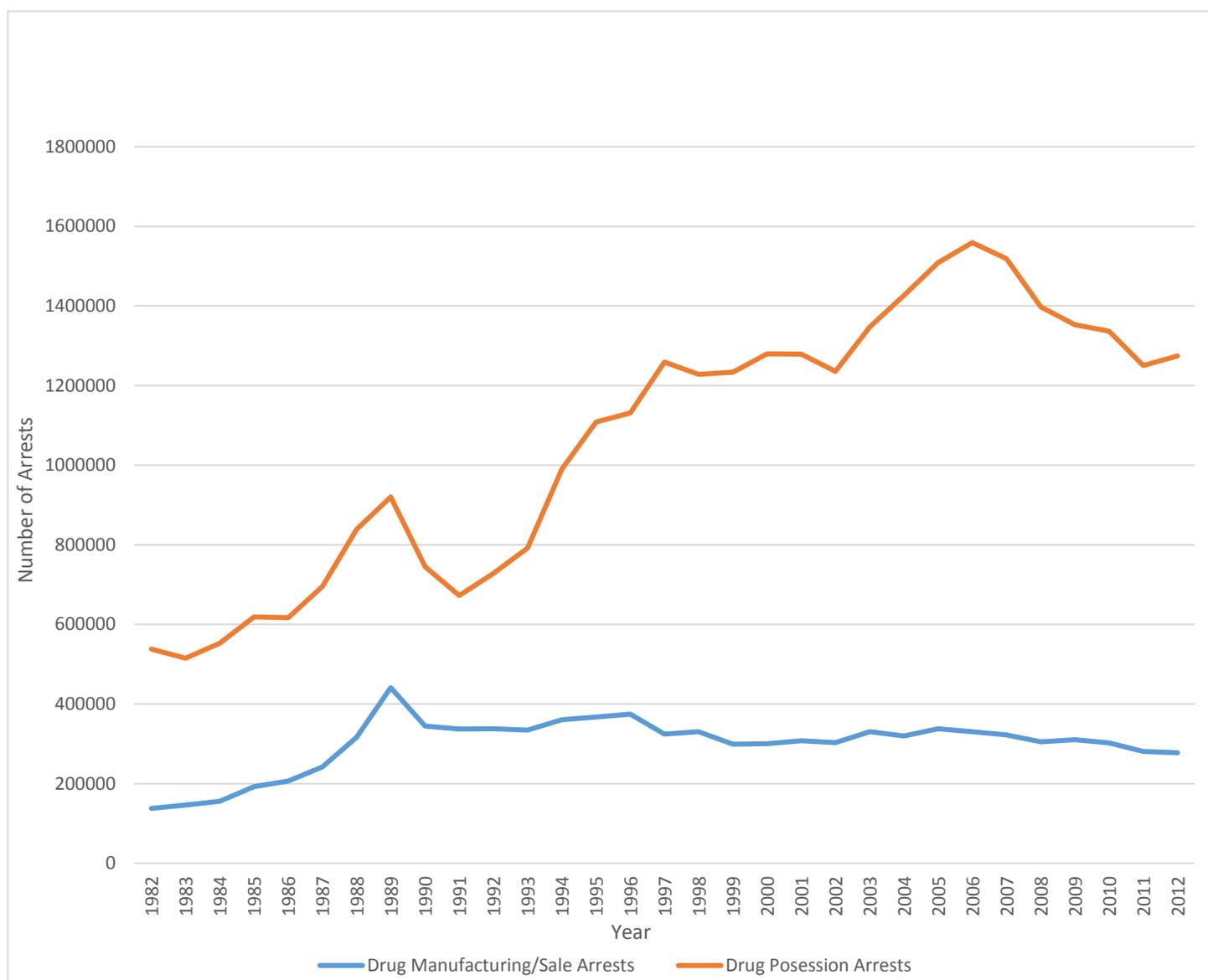
IV. Intended versus Actual Use

Despite there being numerous qualitative studies on the need for reform and incentive based decision making on the part of law enforcement, not once has there been mention of a quantitative approach in determining whether Civil Asset Forfeiture is being used as it was intended. Without statistical facts to prove a point, any argument for reformation is weakened. Therefore this paper will look to use past and current crime data and correlate that with civil asset forfeiture amounts to discern if the Civil Asset Forfeiture program is accomplishing what it was originally set out to do; minimize drug trafficking and criminal enterprises.

As stated prior, Civil Asset Forfeiture and the power to seize assets without a criminal conviction used by law enforcement was granted in 1970 with the congressional passing of the Comprehensive Drug Prevention and Control Act in an effort to combat criminal enterprises, specifically those involved in the drug trade (Murphy, 2010, p. 81). Therefore the intent of Civil Asset Forfeiture and the allowance of law enforcement to seize property under suspicion of being a part of a crime, is to combat criminal enterprises, specifically that of the drug trade. In order to discern if intent and actual use are correlated, one must look to the crime data to see past and current trends. The Uniformed Crime Report (UCR) is the self-reporting crime statistics database run by the FBI which tracks crime trends over decades of data collection. Within said database are crimes that can be linked in being the intended target of Civil Asset Forfeiture.

According to UCR data in 1982, when the UCR started differentiating between possession drug offenses and trafficking offenses, there were 137,900 arrests for the sale or

manufacturing of drugs (Dorsey & Middleton, 2010, p. 17). The number of arrests peaked in 1989 with 441,000 arrests while 322,000 were arrested in 2007 (Dorsey & Middleton, 2010, p. 17). As of 2012, the number of arrests have dropped to 277,802 for manufacturing and sales charges (Snyder, 2012).



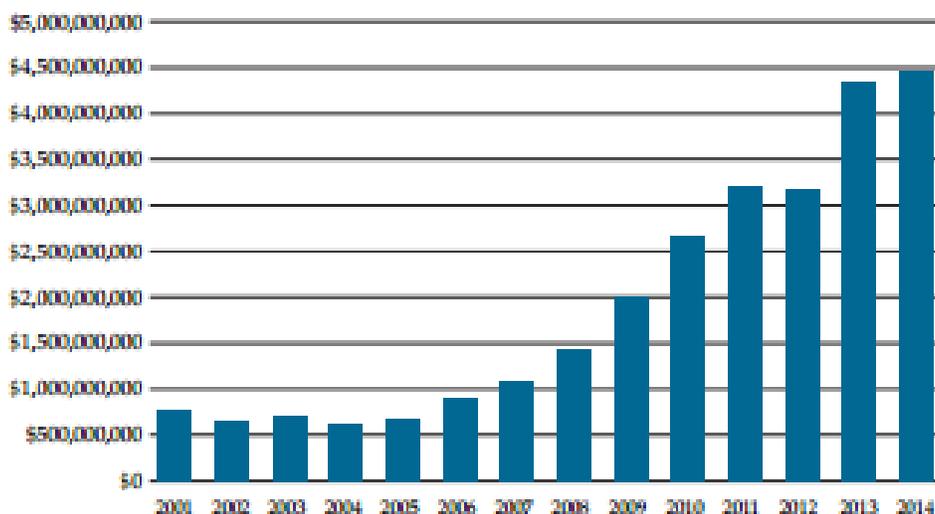
Data compiled from Bureau of Justice Statistics and Uniformed Crime Report

As seen in the graph above, compiled from both the UCR and Bureau of Justice Statistics, the national trend for drug manufacturing/sale arrests peaked in 1989 and has since

declined. Despite the high peak in 1989, there has been a steady decline in the number of arrests. It can be said that a decline in arrest rates can amount to two separate hypotheses; that a decline in arrests indicates a decline in the overall number of individuals who are selling/manufacturing drugs due to removal from their operations or that these criminal enterprises are becoming more sophisticated and arrest rates are on the decline. However, when comparing the very slight decline in number of manufacturing arrests to the dramatic rise in drug possession arrests it indicates drugs are still made available. Therein drug enterprises are still flourishing and policing efforts have been misplaced in targeting the wrong individuals. We can conclude via this graph that the Civil Asset Forfeiture program is not being used as it was intended; to incentivize police to combat criminal enterprises and increase the number of drug sales and manufacturing arrests.

To further illustrate that the Civil Asset Forfeiture program is not being used as it was intended, one can look to the Civil Asset Forfeiture Fund. This fund, overseen by the Department of the Treasury, is where all civilly seized funds end up via federal investigation. If the Civil Asset Forfeiture program were being used as intended, it could be said that the amount of money being deposited in the Forfeiture fund would mimic that of the drug manufacturing and sales arrest trends. However, according to the data, that is exactly the opposite of what is actually

Figure 2: Total DOJ and Treasury Forfeiture Funds Net Assets, Fiscal Years 2001–2014



happening.

Carpenter, et al., 2015, p. 10

According to the data provided by the Institute for Justice's *Policing for Profit* report, net asset trends for the Forfeiture Funds is increasing with asset values reaching \$4.5 billion in the 2014 fiscal year (Carpenter et al., 2015, p. 10). Doing exactly the opposite of what the arrest trends for manufacturing and sales of drugs, the Fund is not only growing, it has grown to 9 times that of the lowest amount collected in 2004. The graph, in fact, is illustrating that the Asset Forfeiture fund is mimicking more of the drug possession arrest trends rather than the sales and manufacturing ones.

In conclusion, one could make the argument that the Civil Asset Forfeiture program is not being used as intended based on the data above. First, drug manufacturing and sales arrest trends, the type of crime that the Civil Asset Forfeiture program was to lower by giving law enforcement monetary incentives, has barely dropped since 1990. The arrest trends, if the program was doing what it was intended to do, should spike and remain at a high level in comparison to the amount in the Asset Forfeiture fund. However, trends have not only remained low, but drug possession arrest trends have increased dramatically in comparison to the sales and manufacturing trends. This can further the argument that the Civil Asset Forfeiture program is not being used as intended, and appears as if, according to the data, that law enforcement are seizing more assets in conjunction with drug possession arrests rather than sales and manufacturing arrests.

It is important to note that the Asset Forfeiture fund encompasses all criminal and civil seizures, ranging from the Madoff Ponzi Scheme to low level drug offenders. However, the

program, as stated prior, was developed with the intention to combat criminal enterprises and the drug trade. To make the argument that the majority of seizures is predicated on the increase in prosecution of white collar offenders is misguided based on the qualitative and quantitative data in the cited works. For example, Bernie Madoff's assets were primarily seized in 2008 and subsequent seizures occurred up until 2011 with a total seizure amount of \$104 million which is minimal when looking at the Forfeiture Fund data (CNN, 2013).

V. Potential For Racial Impact

Via the data provided and the qualitative data made available by watch dog groups, it is clearly illustrated that the Civil Asset Forfeiture program is not being used for its original intention. This leaves to question who is actually being affected by this program? Like the intended use hypothesis, current academic literature is overwhelmingly qualitative in nature. However, if one were to simply look at available data, a valid argument can be made that based on probability that racial minorities are exposed to civil asset forfeiture more than those of Caucasian ethnicity.

When reading the qualitative research conducted by academics and journalists alike, Civil Asset Forfeiture activity is typically conducted by police during traffic stops. The entire Washington Post series, Stop and Seize, was predicated on the amount of traffic stops and subsequent seizures of property (Sallah, et al., 2014). Just on that information alone, one can look at specific traffic stop data to get a better understanding about those who may be involved in some kind of Civil Asset Forfeiture activity. According to the Bureau for Justice Statistics' Traffic Stop report, of the 26.4 million people stopped in the year 2011, 13% were African American, 10% were Caucasian, and 10% were Hispanic (Bureau of Justice Statistics, 2011). This information illustrates that African Americans are more susceptible to be subjected to a

traffic stop versus other ethnic groups. Not only that, but according to the same report, Hispanics are more likely to have their vehicles searched (7%) more than African Americans (6%) and Caucasians (2%) (BJS, 2011). This indicates that minorities are more likely to be stopped and potentially searched by police which could result in an asset seizure than white people.

The Oklahoma Watch article, about racial targeting in Civil Asset Forfeiture situations, also closely examines the impact of race in regards to asset seizures. According to Oklahoma Watch, in the 401 cases involving \$5,000 or more in asset value seized, it was found that minorities comprised roughly two thirds of the asset forfeiture cases in Oklahoma (Adcock et al., 2015). To place it in perspective, 69% of all Civil Asset Forfeiture cases involved a minority group while Oklahoma is 74.8% white according to the 2015 census (United States Census Bureau, 2015). Therefore 25.2% of Oklahoma's population comprised on 69% of all civil asset forfeiture cases of over \$5,000. The same can be said for the city of Philadelphia. Even though African Americans consist of approximately 44% of Philadelphia's population, 71% of all cash forfeiture cases are against property belonging to African Americans with the average seizure amount of \$192, furthering the previous argument of the Asset Forfeiture Program not targeting who it was intended to (Kelly, 2015, p. 10).

Finally, travelling via interstate highways is more prevalent amongst minorities, making them more susceptible to drug trafficking interdiction efforts by local and highway police (Murphy, 2010, p. 91). According to Murphy, roughly 85% of the African American population live in either southern states or an urban environment in northern ones (91). With the south lacking extensive train and mass transit travel, coupled with the expensive rates for airline tickets, African Americans are more likely to travel via the interstate highway system (91). This then leaves minorities vulnerable to drug interdiction efforts by local and highway police

departments who specifically target out of state drivers from southern locations in an attempt to stop drug trafficking. Although the actions by the officer are warranted and within the law, based on the national traffic stop data provided by the Bureau for Justice Statistics, minorities are more likely to be stopped and searched which impacts the minority community negatively in regards to the Civil Asset Forfeiture program.

VI. Potential for Socio-Economic Impact

As stated prior, racial minorities are impacted more negatively by Civil Asset Forfeiture than others. Without intending to harm or intentionally target any race, the Civil Asset Forfeiture program can cause strife to the racial community. The program's original intent was to target large scale drug trafficking criminal syndicates who possessed large quantities of money, particularly those in a much higher socio-economic status than the general population. However, according to the data provided, law enforcement is not seizing assets from those criminal syndicates, but rather seizing smaller amounts of cash as is the case for Philadelphia where the average cash seizure amount is around \$192 (Kelly, 2015, p. 10). This marginalizes an already strained socio-economic class when assets are seized in such a manner.

According to the United States Census Bureau, in 2014 the average income for African Americans was \$35,398, Hispanics \$42,491, White \$60,256, and Asians \$74,297 (DeNavas-Walt & Proctor, 2015, p. 7). For a family who is living off of \$35,398 per year, an average seizure amount of \$192 is a significant impact on their quality of life. With the majority of the African American community living well below the poverty line, seizures of cash or an automobile may be the difference between life in a home versus life being homeless. A study that looked at Virginia and Texas vehicle seizures showed that "more than 17,000 vehicles between 2001-2007. The average value of these vehicles was less than \$6,000, which strongly suggests that low-

income people are the most affected by vehicles seizures in those states” (Vallas et al., 2016, p. 7). Between the two states, that is approximately 7.7 cars seized on a daily basis and if those vehicles were of low value, the ability for the owner to afford another car would be greatly diminished. This then creates a hardship upon the person whose vehicle was seized.

Aside from affecting lower income communities on a strictly cash/asset sense, the cost of litigation to retrieve the seized items also presents a barrier to low income individuals from retrieving their property. It is widely known that aside from a pro-bono case, lawyer fees can be quite expensive, regardless of the litigation type. The median number of times that an individual must appear if they are attempting to regain their property is four separate appearances (Kelly, 2015, p. 8). The average cost to an individual for attending these proceedings out of their daily income is \$232 dollars (9). If the majority of seizures are against African Americans, the daily wage earnings for someone making \$35,398 is \$136.14 a day. If the average loss for attending asset seizure proceedings is \$232, and the individual has paid days off, the party would then be losing \$96 dollars per day for trying to regain their property back. If the individual is not paid for their days off then \$232 would be lost each day totaling \$928 dollars for the four day average. A similar equation could be made for those of Hispanic ethnicity. If the median household income for Hispanics is \$42,491, then the average daily salary would equate to \$163. Again this is well below the average loss for attending proceedings to regain property. Those in the lower socio-economic bracket are disenfranchised and often dissuaded to file any claim proceedings based on these statistics.

On top of the average loss for individuals who are seeking to reclaim their property, the cost of lawyer fees would also increase the amount towards regaining property as well. Since Civil Asset Forfeiture is a civil issue, the offices for the Public Defender do not offer their

services for those who cannot afford an attorney. Coupled with the fact that there is minimal postings of Prosecutors moving to seize property and there are few attorneys that specialize in asset defense, the likelihood of the property owner reacquiring their assets are minimal at best. According to the ACLU's report on Philadelphia, the District Attorney's office successfully seized property in 96% of their cases, settled in 3%, and rejected in 1% while 87% of the cases were entered in default based on the lack of appearance by the defendant (Kelly, 2015, p. 5). While experienced lawyers typically charge between \$200-\$400 per hour, and average seizures being \$192, the lawyer fees in it of itself is more than the seized property is worth. This strongly disfavors individuals who are lower income earners as a socio-economic group. Money that is pivotal for their livelihood can be seized and the cost to retrieve said property is outweighed by the cost of litigation. Even in the primary empirical study done on asset forfeiture and race, it was found that those residing in a more highly diversified income area, law enforcement is more likely to rely on different methods of punishment like asset forfeiture (Costanza & Helms, 2009, p. 14).

VII. Recommendations and Conclusion

With obvious limits in data specifically curtailed to asset forfeiture, quantitative and empirical analysis of the Civil Asset Forfeiture critique is weak to say the least. In an effort to address the issues surrounding Civil Asset Forfeiture, more direct data must be collected. Data categories should include race, gender, job type, address, and reason for initial seizure. If these data categories were collected from the onset, researchers could avoid using peripheral data to, at best, make assumptions about the individuals being affected by this federal program. Federal, State, and local initiatives should require that any prosecutorial body filing for control over an

asset, provide the specific data mentioned above so that researchers can easily access the data sets in order to make more educated assertions about the Civil Asset Forfeiture program.

Despite the need for better data, the most glaring topic is the current use of the Civil Asset Forfeiture Program against its original intent. As stated prior, the Civil Asset Forfeiture Program's initial goal was to target and eliminate criminal enterprises and the manufacturing and drug selling cartels. If the program were being used as it was originally intended, the arrests for drug manufacturing and sales trends would increase, and the Asset Forfeiture Fund would swell in accordance with the arrest trends. However, it is shown that the Forfeiture Fund has swelled in value and more closely resembles the drug possession arrest trends. In order for a correction to occur, and public confidence in law enforcement and the Civil Asset Forfeiture program to increase, law enforcement should focus more on the manufacturers and sellers of the drugs rather than the users. As the heroin epidemic is on the rise, public sentiment is viewing the user/addict as a victim, and is further villainizing the manufacturer and seller. To raise public confidence in law enforcement, the Civil Asset Forfeiture Program, and the original intention behind the program, law enforcement needs to focus more resources on the sellers and makers of the drugs. In Texas alone drug trafficking ring busts average \$125 million per year (Burnett, 2008). Law Enforcement agencies can acquire much more in drug ring busts if efforts were focused on the traffickers instead of the users. If the State of New Jersey were to divide the \$125 million seized among its 21 counties, each county would receive \$5.95 million each and agencies could receive a portion of that as well once it would be divided. It is far more lucrative to seek out the manufacturing and sales side rather than the user who has their assets seized on a traffic stop.

Finally, it is imperative that the justice aspect of asset forfeiture be addressed as well. Without proper representation, innocent owners are often deprived of crucial cash or assets that

contribute to their livelihood. That coupled with the cost of litigation, attorney's fees, and average amounts seized, those who are subjected to forfeiture are often left without anything. Despite the program being civil in nature, due to the asset being seized under the suspicion of a crime, people should be allowed to apply for a Public Defender in an attempt to get their possessions back. By providing legal assistance to those seeking to regain their assets, the villainizing of the asset forfeiture program will likely diminish.

In conclusion, the Civil Asset Forfeiture program is under increased scrutiny as media outlets find faults in the program. Constant victimization stories and reports relying on qualitative data are shedding a magnified light on a program that was intended for the good of society and to assist police departments with minimized budgets. However, without the proper data sets made available for academics and journalists to analyze, the true extent of the Asset Forfeiture program and those who are affected by it are left up to peripheral data that does not fully answer the issues at hand. However, according to the data made available, the Civil Asset Forfeiture program is currently not being used as it was originally intended. Sales and manufacturing trends have barely dropped since 1990 while the Forfeiture Fund value has skyrocketed. The Asset Forfeiture program is inaccurately seizing assets from low level drug offenders and in lower amounts than originally intended; around \$192 in some cities (Kelly, 2015, p. 10). The Asset Forfeiture program is also marginalizing and unfairly subjecting racial minorities and lower earning individuals to having their assets seized. Encompassing national traffic data, African Americans and Hispanics are more likely to be stopped and have their vehicles searched than Caucasians (BJS, 2011). Without addressing the issues at hand, the actual use of the program as well as the subjectivity to racial and lower earning groups will go unchanged.

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