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Management

By
Richard N. Holden

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PROFIT-MOTIVATED POLICING: SEIZURE LAWS AND POLICE MANAGEMENT

Due to civil forfeiture laws, many law enforcement agencies, over the past decade, have become the recipient of unanticipated revenue. They are able to seize property that is the result of criminal activity or is used in the commission of a crime. The emphasis of this law is on drug enforcement. Because it is a civil process, the burden of proof and trial procedures shift to the substantial benefit of the state. The law enforcement agencies keep all or a substantial portion of the property seized.

There are two rationales behind this law. First, a person who engages in illegal activity should not be allowed to retain the proceeds of that activity. Unlike theft, where there is a legal owner of the property, revenues from illicit drug transactions or other forms of vice have no legal owner. It seems logical that the government should take these funds. The effect of asset forfeiture is essentially that of a one hundred percent tax on the illicit activity (Eck, 1989, p.5).

The second argument is that seizing the illicit gains provides law enforcement with the resources to better enforce the drug laws (Holmes, 1989, pp. 19-20). This theory is enhanced by the arguments of law enforcement administrators that without the additional resources they are less effective than with those resources. Statistical information would seem to bear this out. Police agencies actively engaged in asset forfeiture operations do appear to be more active in the drug enforcement arena than those agencies not engaged in asset forfeiture.

Asset forfeiture, however, provides an additional motivation for increased drug enforcement. It may be that for many police agencies, asset forfeiture causes drug enforcement activities to increase because of a shift in police priorities. For these agencies, drug enforcement becomes a profit-making enterprise where traffic enforcement and theft investigations do not.

This is not true of every agency, nor of every state; in more than half, seized assets are transferred into the state or local treasury (*Use of Forfeiture Sanctions in Drug Cases*, 1985, p.5). In many other states, however, the police agency is allowed to keep all or a portion of the seized property. Moreover, through the use of the federal adoption system, all police agencies can be given a portion of the seized proceeds when the federal government adopts a drug case and files it through the federal court system. Still, a safe estimate is that police agencies throughout the nation add hundreds of millions of dollars a year to their resource base as a result of drug related seizures.

The Profit Motive Versus Public Service

Profit-based management is a different type of management than that of the usual public service orientation of law enforcement. The potential for misuse and mismanagement is very high when there is an unpredictable flow of large sums of money and property into an agency.

The danger in profit-motivated policing is all too clear. There will be almost certain abuses that will take place within the framework of these laws.

This issue is not new. Over two thousand years ago the Roman courts rewarded those who filed criminal charges against others by giving them a

portion of the condemned person's property. The result, until the Romans corrected the system, was an overloaded and badly abused court system.

The American judicial system has faced similar situations. Up until the mid-twentieth century American police officers were awarded a portion of the fines they collected and, in many cases, the salaries of officers and magistrates were built around enforcement activity. The result was the infamous speed trap and law enforcement for personal gain. This problem has not been completely solved. A number of communities still use traffic enforcement as the primary means of generating money for the local government's budget.

Legislators, both state and federal, have now upped the ante. Farms, houses, airplanes, ships, boats, and automobiles have become police property for the taking. Despite the fact that asset forfeiture was designed to attack drug kingpins by removing the substantial resource base of this illicit activity, this law is being applied on a scale much larger than anyone predicted or intended. Some police departments take in more cash than the local banks. Fort Lauderdale, for example, seized property worth \$5,500,000 between 1980 and 1983 (Swanson, Territo, and Taylor, 1988, p. 490).

The issue of this paper, however, is not whether civil forfeiture laws are right or wrong. Rather, the focus here is to determine the potential impact of such laws on police management. More specifically, we will look at the likely problems inherent in a shift from a service orientation to a profit motivated management style.

Administrative Issues

The shift to profit-motivated policing offers some unique problems for police executives. The law enforcement structure has been designed so that the people, government, and police agency are carefully interrelated with law enforcement ultimately accountable to the public by way of elected officials.

Providing a secondary source of income, beyond that supplied by government, threatens the police government relationship in a number of ways. The most notable of these is through the ability of elected officials to control police resources. The second is the loss of either government or the citizens ability to influence police priorities. Finally the police themselves find their own internal control systems inadequate to monitor and control the activities of an agency whose mission and resource allocation process has been altered.

External Controls

A primary mechanism of control and accountability lies with the budgeting process. Through this process city, state, and federal priorities are assigned to each public agency. Tight control of the purse-strings is synonymous with control over the agency (Gaines, Southerland, and Angell, 1991, p.396). Even in those agencies where the chief executive officer is tenured or elected by popular vote, the top elected officials still maintain a substantial influence through the budgeting process (Guyot and Martensen, 1991, p. 448).

Seized assets are a somewhat vague category of income. It is not tax derived; it is not court ordered, such as with fines; nor is it a product of fees

and licensing. When tightly controlled, as in some systems, where the resources go into either the general fund or an account controlled by multiple agencies or an oversight board, the resources act in many ways as though they are a product of the budgeting system. When resources are handed to the agency, however, without a system of accounting, the potential for misuse is high. The federal adoption system, for example, offers the potential for abuse by local agencies.

The Department of Justice equitable asset-sharing programs are designed to share seized assets with state and local government (Karchmer and Ruch, 1992, pp. 6-7). Presently there are fifteen federal statutes providing for asset sharing (Ferris, 1989, p.26). In theory, the proceeds going to the police are to be used for drug enforcement efforts and should be managed by the agency's civilian accounting department. In reality, the federal government has done little, if anything, to ensure compliance with this law. While this been a source of substantial income for state and local agencies, auditing procedures for these funds has sometimes been lacking.

The problem is basically one of accountability. The police department has income for which there is little external control. There have been cases where the chief executive officer failed to even notify the budgeting authority of when or how much money was received.

Fortunately, most agencies have somewhat better systems for tracking both the income generated as well as the expenditures. Unlike the use of public funds, however, where a specified amount is placed at the disposal of the agency and strict accountability maintained, many jurisdictions have only the word of the police executives concerning the amount of money obtained. This is less true of other assets, such as cars, planes, boats, and land. Forfeiture of these items offer other problems for the police agency.

Generally speaking, as the ability of the police to generate external resources increases, the capacity of the elected officials to maintain control of the agency decreases. Those who control the budget control the agency. Agencies that have independent sources of income are answerable to no one.

There is an action that can be taken by elected officials in some states to counter the new resource-based power of police agencies. Elected officials may have no control over police external funding, but they can cut the tax-based funding in accordance with projected external revenues. For example, if the police are projected to make a profit of five million dollars in seized assets for the next fiscal year, the legislative body can reduce the police budget by that amount. The police maintain their budget level and other public service agencies gain additional revenue. In this scenario everyone supposedly wins.

There are, of course, drawbacks to this relationship. The greater the dependence on external funding, the lower the amount of control available to elected officials. The police may ultimately become a private organization, answerable to no one. Moreover, as police dependence on external funding grows there is corresponding increase in the amount of pressure generated internally on officers to produce more resources. Police officer evaluations could appear to be more like those of sales personnel who work on commission rather than of public servants.

The above scenario is not certain to happen. Florida, for example, has a law prohibiting the reduction of the police budget as a result of seizures (Swanson, Territo, and Taylor, 1988, p.490). This would not necessarily prevent the local legislative bodies from freezing the police budget at its present size or reducing the size of future budget increases. Even the budget

protection laws, such as Florida's, do not provide total immunity from the budgetary actions of local legislative bodies.

Florida also requires that all seized cash and proceeds be placed into the Law Enforcement Trust Fund (LETF). In this way, the money is tightly controlled, but still available for legitimate police use (Gallagher, 1988, p.4). This means individual agencies do not receive the resources directly from asset forfeiture. This reduces the likelihood that the local governments will manipulate their budgets due to such programs. Whether or not this includes funds obtained through the federal adoption program is unclear. It may be at the discretion of the police agency whether or not such funds are placed into the LETF.

The bottom line is that there must be strict external controls on how the resources are used. To not have these guidelines is to invite misuse of the resources and ultimately close scrutiny by courts and legislative bodies (Ferris, 1989, pp. 14-15).

The civil governance body must have a mechanism to maintain external control over police operations and priorities. Asset forfeiture need not compromise external control, but without adequate safeguards the potential is always present.

Prioritization

Historically, police priorities have been closely related to the perceived needs of society. Highest priority crimes were those in which there was violence. Vice offense, including drugs, were relegated to small specialized units. Since vice-related crimes rarely have a complainant, public demand for enforcement actions was minimal and mostly relegated to news

articles are editorials. Consequently, these units were typically of a low priority nature.

The ability to generate additional resources through specific enforcement actions has quite likely led to a redefinition of police priorities. In many agencies it appears that drug enforcement has moved to the top of the list. In some agencies it appears that only murder and violent rape receive more police attention than the traffic in illicit drugs.

Attention has already been focused on the current preoccupation of the police with drug enforcement. Recently the American Bar Association (ABA) argued that while drug use has been on a downward trend since 1985, drug enforcement during this same time period has steadily increased. The ABA attributes this to a misguided war on drugs (Kansas City Star, 1993, p. A-3). Another reason for increased enforcement efforts could be profit motive.

The impact of asset forfeiture on police priorities can be partially seen through the personnel assignment process. In 1989 Metro-Dade County, Florida, for example, had two full-time and two part-time attorneys, two full-time police officers, and two part-time researchers working on forfeiture cases. Ft. Lauderdale, Florida had five employees working full-time on forfeiture while Detroit, Michigan, at the same time, had twenty-eight people allocated to identifying forfeiture targets and initiating the forfeiture process (Gallagher, 1989, p.7). Officers assigned to asset forfeiture are not investigating homicides, robberies, or even traffic accidents. One wonders if this much effort would be put into asset forfeiture if the agencies involved received none of the proceeds.

For whatever reason, police priorities appear to have shifted. It is safe to assume that as profits increase, police priorities will increasingly shift

away from non-profit making investigations to those with profit making possibilities. The danger in this shift of priorities is that the new priorities will be in the pecuniary interest of the police agency, but not be in the best interest of the public.

Internal Controls

The police executive must also be cognizant of the dangers inherent in cash transactions. Serious problems occur when officers at all levels of the organization have uncontrolled access to large sums of cash. This has always been a problem when investigating organized crime of any type. Where large sums of cash are readily available, the possibility of bribes and theft by police officers is always present. The difference is the focus of the police. When profit is the motive rather than enforcement of criminal laws, procedures alter to fit the circumstances.

In previous eras police officers encountered large sums of cash almost by accident. Now-as is evident with the creation of forfeiture specialists within police organizations-they seek out the money.

More importantly, there have always been officers willing to play fast and loose with the evidence necessary for a successful criminal prosecution of drug offenses (Barker, 1991, pp. 124-125). Now police administrators are faced with the potential problem of police officers planting evidence so that they may seize an expensive car, boat, or airplane. How is the police chief going to protect a farmer from the unscrupulous actions of a narcotics officer who plants marijuana in a section of the farmer's land to provide a legal basis for seizing the farm?

Falsification of evidence has been a problem haunting police management for centuries. In the United States, however, the stakes have

been raised. The rewards for illegal police investigations have, until now, been clearing cases and achieving successful prosecutions. The reward now includes replacing the officers unmarked Ford with a new Ferrari. It is naive to think abuses of these laws will not occur.

The argument against police abuse is that it is the police agency, not the individual officer, that benefits from asset forfeiture. This is partly true. Officers do not get pay raises or cash bonuses for seizing assets. Many states prohibit the organization from using such proceeds for salary or any other continuing operational expense (Ferris, 1989, p.15). Police officers do, however, get an increased standard of life within the organization. They get new cars, new equipment, and increased travel money. Police officers do, therefore, benefit personally from asset forfeiture. Police administrators should keep this fact in mind when designing policies concerning such forfeitures. The potential for abuse of these laws is too great for a police agency to ignore.

Management Issues

In addition to the administrative problems created by the addition of the profit motive to public policing, there are a number of management issues as well. The internal control mechanism mentioned above is a problem both for top administration and mid and lower management. There are also operational characteristics of the police organization that are complicated by the input of large amounts of cash and property. In this section we will look at some of these issues.

Property Management

The seizure of physical property brings with it an array of problems. First, when the property has a lien attached seizure of the item brings with it a bill that must be paid. Seizing a new Ferrari only to find that the previous owner still owes fifteen thousand dollars on the car is not the most pleasant of surprises for the seizing agency. If it is seized, the car must be paid off; the previous owner is not likely to continue payments. Part of the decision making process, therefore, requires the determination of when it is not in the best interest of the agency to make a seizure (Gallagher, 1988, p.8).

Second, court actions on seized property sometimes take years. Cars, boats, and airplanes cannot simply be placed in storage and left. They must be maintained. Several years of neglect will reduce the value of expensive vehicles to almost nothing. Also, if the court orders the property returned, it will also require the property be in the same condition as when it was seized. Agencies seizing physical property, therefore, will be required to provide storage and maintenance for these items (Gallagher, 1988, pp. 1-4). That means storage facilities and maintenance personnel. Because such activities are on-going activities they are budget expenditures; especially in states that prohibit the use of seized assets for on-going operations or salaries. This means more budgetary resources and personnel taken from other police operations and applied to asset forfeiture.

Police Arrogance

Organizational arrogance occurs when an individual employee becomes consumed with the power of the organization. The police department is powerful, therefore, the officer is powerful. The individual

citizen becomes only that; an individual citizen. Police officers, know that the police subculture, with its code of silence and blind support, protects them from most citizen complaints (Thibault, Lynch, McBride, 1990, p.32). The result is that the officer sees no need to be polite, or in many cases, even fair. The officer is powerful , the citizen is not. The result is a rude form of arrogance that taints the entire department.

Asset forfeiture may increase this problem. This could occur because the officer's power to inflict harm has increased while the legal limits of police authority have decreased. Asset forfeiture is a civil case, subject to civil court rules of evidence. Gone are such legal notions as *proof beyond a reasonable doubt*; replaced by *preponderance of evidence*. Gone are a number of other rights guaranteed by the constitution; for the constitution was written to protect an individual from criminal accusations.

The ability to use the civil court, with its relaxed rules of evidence and burden of proof, increases the likelihood that the accused will suffer. This is a significant increase in police power. It will likely be matched by an increase in police arrogance. Police management will have a difficult time with this problem, but it is a problem that must be addressed.

Decision Making

Who decides when property will be seized? Attempting to solve the problems inherent in profit-motivated policing will require policies and procedures that will attempt to guarantee a fair process. It is a reasonable assumption that the vast majority of police agencies do not wish to seize the property of an innocent person (Goldsmith and Lenck, 1990, p.7). One can only hope that when faced with the choice involving questionable seizure most agencies will choose to not take seizure action. Likewise, the danger of

injuring innocent third parties in a seizure process is also very real. The Supreme Court has consistently authorized the seizure of the property of an innocent person when that property was used in illicit activities; especially when the property is a vehicle of some type (Goldsmith and Lenck, 1990, pp. 8-11).

Unfortunately, human nature being what it is, the larger the possible payoff-the greater the value of the property being considered for seizure-the greater will be the tendency to initiate the seizure process. There have been, and will continue to be, questionable seizures. The profit-motive will do that to everyone, even the most honest of officers. The problem for police management is minimizing the damage to innocent people

The most useful mechanism for this guarantee is the formalization of the decision making process. For example, a policy that prohibits officers from initiating the seizure process until a conviction is obtained in criminal court would be one way to eliminate some forms of abuse. Under this policy the property would still be seized, but the seizure process would not be filed in the civil court until after the conclusion of criminal court activity. If the criminal case was dropped or the defendant found not guilty, the property would be returned. While this would undoubtedly slow the seizure process, it would increase the likelihood that the seizure was justified.

There are other mechanisms that minimize the danger of malicious seizures. What these approaches have in common is a strict protocol for decision making and a sound system of accountability for decision makers.

Corruption

The availability of large amounts of cash in illicit operations will always provide a source of temptation for police officers. Vice operations

have a bad reputation in this area. Lacking a complainant, the decision to arrest is left to the officer alone. The offer of easy money to an officer for merely walking away and not making an arrest puts great pressure on the officer. The larger the sum of money offered, the greater the pressure.¹

Countering this temptation is the knowledge that the taking of such money is both illegal and in violation of every standard of proper police conduct. That and the effectiveness of the agency's internal affairs unit.

Asset forfeiture has unintentionally muddied these waters somewhat. In the past, officers might seize the money and turn it over to the Internal Revenue Service so that a tax review could be conducted of the individual to determine if taxes had been paid on the gains from criminal behavior. The officer received nothing from this action, therefore, had no vested interest in the outcome of such actions.

With asset forfeiture, the officer seizes the cash, knowing the department will keep some or all of the money. The officer is no longer acting as a neutral party to the disposition of the seized items. The officer is both the seizing party and ultimately may have access to the items seized. This increases the officer's bargaining position, thus increasing the amount of coercion that can be brought to bear on a suspect.

Likewise, accused parties in drug transactions know that anything they possess may be seized in a drug investigation. Facing the possibility that they may lose everything, they are more likely to offer substantially larger bribes than in the past.

The combination of increased numbers of police officers engaged in drug investigations added to the increased coercive power of the police

¹ For a thorough review of the problems associated with bribery and the illicit drug trade see Dombrink, 1991, pp. 61-100.

coupled with the likelihood of larger bribes, will lead to an increase in police corruption. Much of the proceeds obtained through forfeiture proceedings may have to be diverted to internal affairs operations to minimize the danger of this source of corruption.

Conclusion

Asset forfeiture is now a fixture within law enforcement. Whether it is a permanent fixture or just a temporary component of the war on drugs remains to be seen. While it exists, however, police managers will have a different set of priorities and management problems than have existed in the past. Police chiefs will have to make decisions and answer questions never before posed.

Possible problems occurring because of asset forfeiture are: (1) some departments will lose substantial portions of their budgets as city and county governments inevitably begin to reallocate budgets to take advantage of the seized resources; (2) priorities will shift as the demand for profit replaces public service as the primary mission of the police; (3) relations between the police and the civil administration will become strained; (4) corruption will increase; and (5) mechanisms of both internal and external control will require redesign to meet the new realities of the police organization.

Unless strict safeguards are built into the civil forfeiture procedures, the legislatures of the nation will eventually either eliminate asset forfeiture or redesign these laws so that the police do not benefit directly. That will happen because the public outcry over the misuse of these laws will rattle the halls of the legislatures from Alaska to Washington, D.C.

Unfortunately, should that happen, the image of American law enforcement will take a battering in the process. Civil forfeiture has allowed police departments to stick their hands in the cookie jar. Without sound policies and procedures that protect the public from abuse, the public will eventually slap that hand. A lot of police chiefs are going to be looking for new jobs when it happens. That is unfortunate, but greed makes a poor value statement, especially for a police agency.

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