



PHILADELPHIA BAR ASSOCIATION

WRITTEN TESTIMONY OF ALBERT S. DANDRIDGE III,
CHANCELLOR, PHILADELPHIA BAR ASSOCIATION
BEFORE THE PENNSYLVANIA SENATE JUDICIARY COMMITTEE

Tuesday, October 20, 2015

Harrisburg, PA

Chair Greenleaf, Chair Leach and Members of the Senate Judiciary Committee:

As Chancellor of the Philadelphia Bar Association, which represents approximately 13,000 members of the legal profession in Philadelphia, I write in support of Senate Bill 869, which will reform civil asset forfeiture laws in Pennsylvania.

The position of the Philadelphia Bar Association with regard to this issue is clear. In March of this year, the Philadelphia Bar Association's Board of Governors unanimously passed a resolution, attached hereto, calling for the abolition of civil asset forfeiture in Pennsylvania.

The Philadelphia Bar Association's position on civil asset forfeiture stands on a strong foundation. This year, we celebrate the 800th anniversary of the Magna Carta. That great document introduced the concept of due process of law into Western culture and jurisprudence when King John declared, "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."

Five centuries later, abuses by the British Crown, including seizure of property without due process of law, led to the American Revolution and ultimately to the inclusion of due process clauses in the Fifth and Fourteenth Amendments to the United States Constitution.

As a nation, we have spread the concept of due process of law to lands far beyond our shores. In our own country, the path has not always been smooth. However, it is the strength of our democracy that when government action, through legislation or otherwise, results in a loss of due process rights for our people that we recognize the error, correct it through our courts or reform legislation and move forward.

In 1991, on the 50th anniversary of Pearl Harbor, President George H. W. Bush spoke directly about the internment of Japanese Americans and the seizure of their property without due process of law during World War II. President Bush said, "In remembering, it is important to come to grips with the past. No nation can fully understand itself or find its place in the world if it does not look with clear eyes at all the glories and disgraces of its past. We in the United States acknowledge such an injustice in our history."

Civil asset forfeiture is an injustice. It is used most frequently in relation to incidents that may involve illegal drugs. Intended as a tool to seize assets of drug cartel members and those making large sums of money in the drug trade, civil asset forfeiture has evolved into a process through which the assets of tens of thousands of individuals have been seized, often without notice and without the property owner or anyone else being convicted of – or even charged with – a crime.

Examples of overreach through the use of civil asset forfeiture in Pennsylvania are abundant. Sarah Stillman, author of the article “Taken,” published in the August 12, 2013 issue of *The New Yorker*, wrote eloquently about Mary and Leon Adams, an elderly couple living in the West Philadelphia home they purchased in 1966. Before retiring, Leon had worked two jobs at a factory and as a janitor, while Mary had worked as a patient care assistant at Bryn Mawr Hospital. Their son was staying at the home to help out following Leon’s stroke and cancer diagnosis. As they were eating breakfast one summer morning in 2012, a police SWAT team arrived in front of their home and used a battering ram to break down their front door. Mary and Leon’s son was alleged to have sold \$20 worth of marijuana on three occasions from the front porch of their home.

Although Mary and Leon Adams knew nothing of the alleged sales, one month following the raid they were notified that due to the alleged activity on the property, their home would be seized and sold at public auction, with the proceeds of the sale being split between the District Attorney’s Office and the police department. This would happen despite the fact that Mary and Leon Adams had not been charged with any crime and their son’s criminal case was still pending.

Fortunately for the Adamses, they were told about a civil law clinic at the University of Pennsylvania Law School headed by Professor Louis Rulli, who will provide testimony here today. Through the extraordinary efforts of Professor Rulli and his colleagues, Mary and Leon Adams were able to save their home.

However, the majority of people facing civil asset forfeiture proceedings are not as fortunate. While the burden of proof in a criminal proceeding is guilt beyond a reasonable doubt, the burden of proof in a civil asset forfeiture proceeding is much lower. The Commonwealth of Pennsylvania may prove its case with only a preponderance of the evidence.

In *United States v. James Daniel Good Real Property*, 510 U.S. 43, 62 (1993), the United States Supreme Court ruled, “The Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture.”

In civil asset forfeiture proceedings, a “meaningful opportunity to be heard” cannot be realized without representation by legal counsel. Nevertheless, there is no right to counsel in civil asset forfeiture proceedings. Most property owners are poor and unrepresented. They are unaware of defenses available to them. In Philadelphia alone, more than 100

forfeited homes are sold at auction each year, yet fewer than half of those who lost their homes to civil asset forfeiture were represented in the proceedings.

While homes are the marquee item, the vast majority of civil asset forfeiture proceedings involve a small sum of money – typically a few hundred dollars – found at a crime scene, or a vehicle occupied by or in the vicinity of a defendant charged with possession of illegal drugs. Cases of this type number in the thousands across Pennsylvania each year. As police departments receive a portion of the proceeds, the current system of civil asset forfeiture incentivizes officers to seize as much property as possible that may have been used in the commission of or happen to be in the vicinity of an alleged crime.

In recent years, cash-strapped police departments have used the proceeds of civil asset forfeiture sales to purchase new equipment. This situation puts more pressure on officers to go after the easy targets – drug users and small-time dealers who lack the means to challenge the taking of a few hundred dollars or a 12-year-old car. From an academic standpoint, the fact that the same officials who seize the property also stand to benefit from its successful seizure and sale creates an irresolvable conflict of interest. From the point of view of those in the community, the perception is that our law enforcement officers have more to gain by pursuing profit off of those less fortunate than through the fair administration of justice. Such circumstances lead to unneeded tension between police officers and the community they serve.

A previous generation of legislators sought to address the problem of wealthy cartels importing large quantities of illegal drugs into our country by expanding civil asset forfeiture as a weapon in the war on drugs. Seize their yachts, luxury homes and massive bank accounts, the theory went, and the financial ability of the drug kingpins to continue their activities would be curtailed.

Good intentions, however noble, cannot support unjust results. The dream of crippling drug cartels through civil asset forfeiture was just that – a dream. The real impact of civil asset forfeiture on ordinary individuals should no longer be ignored.

With clear eyes, we must acknowledge the injustice of civil asset forfeiture laws in Pennsylvania. With strong resolve, we must end the practice of civil asset forfeiture and move forward. The Philadelphia Bar Association strongly urges you to support Senate Bill 869.

Thank you for this opportunity to provide testimony on this important matter.

Respectfully,



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Chancellor
Philadelphia Bar Association

