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Can the President “Destroy” Criminal-Justice Reformers?

Sarah Stillman

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On Tuesday, President Trump hosted a group of county sheriffs at the White House, where he spurred a now-infamous exchange with a lawman from Texas. The back-and-forth went like this: Trump asked the sheriffs if they had any ideas on “how we can bring about law enforcement in a very good, civil, lovely way,” in order to “stop crime.” Sheriff Harold Eavenson, of Rockwall County, Texas, fired first. “Asset forfeiture!” he called out. “We’ve got a state senator in Texas that was talking about introducing legislation to require conviction before we could receive that forfeiture money.”

“Can you believe that?” Trump interjected.

“And I told him,” the sheriff continued, “that the cartel would build a monument to him in Mexico if he could get that legislation passed.” Trump was eager for details. “Who’s the state senator?” he asked. “Do you want to give his name?”

The sheriff shrugged. He wore the conflicted smile of a child who’d just tattled on a sibling, only to realize, upon dad’s approach with a belt, the stakes of what he’d unleashed. Trump pushed on, saying, of the senator, “We’ll destroy his career.” Obsequious laughter flowed.

If some dismissed the President’s threat as a joke—however cruel or misguided—the issue it referenced can’t be dismissed so easily. In what appeared to be an act of improvisation on a major public policy, the President endorsed the sheriff’s comments on the alleged evils of civil-asset-forfeiture reform. And this matters, because Eavenson’s characterization of the practice obscured a significant truth. Civil forfeiture—the practice of authorities seizing goods they believe are the fruits of crime—is far less frequently used against bona-fide cartel kingpins than it is against individuals who’ve not been proved guilty of crimes. Often, it’s used against people who haven’t even been accused of any wrongdoing. And, though Trump’s “we’ll destroy his

career” comment quickly drew widespread criticism, the remark was only the coda of an equally unnerving conversation with the sheriffs that went largely unremarked upon.

A [transcript of the full event](#) reveals how little Trump seems to grasp civil forfeiture’s meaning. “So, in other words, they have a huge stash of drugs,” the President told the group, shortly before the exchange with Eavenson. “So, in the old days, you take it. Now we’re criticized if we take it.” The President appeared unaware of the distinction between contraband itself and the proceeds that may flow from it; no policymaker, to my knowledge, has ever contested cops’ right to seize drugs or other direct contraband, and forfeiture isn’t required—or even called upon—to do so. (Sean Spicer, the White House press secretary, did not respond to my request for clarification on the President’s official forfeiture stance, nor for comment on Trump’s broader remarks.) What makes civil forfeiture so legally unique is that a case can be brought directly against otherwise legal goods if they are deemed “fruit of the poisonous tree”—the proceeds of crime. In many states, the burden of proof for civil forfeiture is strikingly low, and the cost to contest a case is often high. At the White House, one Kentucky sheriff voiced frustration with Congress, where a push to amend the lack of due process in forfeiture laws has found some bipartisan support. The sheriff complained to the President that forfeiture’s opponents “make up stories.”

In 2013, I embarked on [an in-depth investigation of civil asset forfeiture](#) for this magazine. I travelled the country, documenting more than a hundred cases in which people’s property was seized on mere “suspicion” of wrongdoing, or through other arguably unconstitutional or unfair means. In Philadelphia, I met an elderly couple whose home of four decades was placed in forfeiture proceedings after the couple’s son was charged with selling sixty dollars’ worth of marijuana to a confidential informant on the porch. (That the house belonged to the parents apparently didn’t matter to the local district attorney’s office, which planned to seize it, auction it off, and keep the proceeds.) In Washington, D.C., I spent time with a janitor who’d lost her car after her son, who had borrowed it, got pulled over for a minor traffic infraction and then was charged for unlawful possession of a handgun. (To seek the right to have her Honda returned, the mother learned, she would have to pay a “penal sum” of a thousand and twenty dollars, or else the vehicle would be swiftly auctioned off, or reappropriated for use by police. A car, unlike a person, does not have a right to a lawyer.) And, most chillingly, I travelled to Sheriff Eavenson’s own state of Texas, where, in the small town of Tenaha, dozens of drivers—almost all of them black and Latino—had been pulled over by local authorities and stripped of their cash, jewelry, DVD players, cell phones, and other valuables. The deputy city marshal claimed that the goods were suspect, even absent evidence of contraband. In some cases, he cited the presence of junk-food wrappers and energy drinks in drivers’ vehicles as a sign of drug trafficking, and noted that drivers’ kids might be “decoys.”

One victim of the Tenaha scheme, a waitress named Jennifer Boatright, was pulled over while passing through the town with her boyfriend and two kids; they were en route, with cash, to buy a used car. Authorities told Boatright that a large sum of cash was surely criminal, and that if she didn’t sign it over to the local district attorney, they’d confiscate her kids and charge her with money laundering. “Where are we?” Boatright recalled thinking, when I interviewed her in 2013. “Is this some kind of foreign country, where they’re selling people’s kids off?”

But the legal landscape has shifted since then. Most notably, a small but growing group of Republican and Democratic lawmakers, at both the state and federal levels, have come together to insist on forfeiture reforms that aid due process. At this week's roundtable, Trump expressed dismay that civil forfeiture had grown "political," and claimed that the only individuals who could possibly want reforms were "bad people." It was unclear if he recognized how much of America he'd just condemned: according to a study by the Cato Institute, eighty-four per cent of U.S. residents oppose the use of civil forfeiture. Coverage of the once obscure practice has become commonplace. In 2014, the *Washington Post* did its own investigation, which, among other things, documented how hundreds of police departments and task forces now rely on seized assets for twenty per cent or more of their annual budgets.

The issue, remarkably, has become a steppingstone for bipartisan criminal-justice-reform collaborations in nearly every corner of the country. According to the Institute for Justice, some twenty states have enacted forfeiture reforms since 2014, including Florida, California, and New Mexico. In Texas, two state Senators—a Republican named Konni Burton, and a Democrat named Juan (Chuy) Hinojosa—have championed far-reaching forfeiture reforms that were the apparent target of Sheriff Eavenson's comments to Trump. (One suggested change would require a criminal conviction before a person's property can be seized.)

But here's the most urgent question that Trump's meeting with the sheriffs raised: How much power does the President actually have to "destroy" criminal-justice reformers? Does the White House have the capacity to thwart not just forfeiture fixes but also, more broadly, the emergent bipartisan push for a system-wide overhaul? Unlikely partnerships to address asset-forfeiture abuses have, in recent years, lent strength to a much larger cross-party push: to roll back mandatory minimum sentences; to address the injustices of the money-bail system; to curb soaring rates of criminal-justice debt; and to address other drivers of mass incarceration, many of which trace back to profiteering. What will become of these movements, under Trump?

On the campaign trail, Trump offered a criminal-justice platform ripped from the nineteen-eighties. Since entering the White House, Trump's flurry of actions—the refugee ban, the botched Yemen raid, a Supreme Court nominee—have limited press scrutiny of his criminal-justice agenda. But, this week, the country finally got a glimpse of what lies ahead. On Wednesday, a day after Trump had the sheriffs to the White House, Jeff Sessions, a major proponent of civil forfeiture and other controversial drug-war tactics, was confirmed by the Senate as Attorney General. And, on Thursday, Trump signed three new executive orders on crime, confirming that an old-school law-and-order approach will prevail in his White House. The domestic battle over the future of criminal-justice reform has officially commenced.

Here, then, is a comfort: Presidents have never controlled all the critical levers of American justice, or injustice. The current push to end mass incarceration and to uphold due process emerged largely from cities, counties, towns, and municipalities. Its progress has been aided, at times, by state lawmakers, and, at last, by Congress and the courts. Families who've borne the brunt of the system have proved crucial to raising the issue's visibility and making the case for action.

In 2014, California passed a ballot measure known as Proposition 47, which reclassified a range of felonies as misdemeanors and invoked the voices of crime victims to prioritize drug treatment over incarceration. In Ferguson, Missouri, community advocates and civil-rights litigators challenged profiteering laws around criminal-justice fees and fines. And in Oklahoma, in November, voters who resoundingly backed Trump also approved Republican-backed ballot initiatives to reduce the state's prison population. These calls for change unfolding around the country are the strongest rebuke to a threat-making President. What frustrates many about the country's justice system—its patchwork nature, which resists sweeping, cohesive fixes to its many flaws—may now prove an unexpected grace. Already, reformers in both parties have echoed Texas State Senator Konni Burton, an apparent target of Trump's threat this week, who issued a statement in response to the news: "I will not be discouraged," she wrote, "or deterred."