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The continuing outrage that is civil asset forfeiture

By: Radley Balko
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The motorist advocacy site TheNewspaper.com has the story of 64-year-old Laura Dutton. Estelline, Tex., police officer Jason Fry was manning a speed trap (a spot where the speed limit suddenly drops) when he pulled Dutton over for driving 61 mph just into the 50 mph zone. Here's what happened next:

Officer Fry said he "smelled marijuana" so a drug dog was called in, and when the K-9 arrived thirty minutes later, it alerted. Dutton had no drugs, but she was carrying \$31,000 in cash, the bills wrapped up as they had come fresh from the bank. She had recently earned the sum from the sale of 12.9 acres of land in Van Zandt County.

Despite the explanation, Officer Fry grabbed the cash and arrested Dutton, who had no criminal record of any kind, for "money laundering." Officer Fry handed the money over to Estelline City Manager Richard Ferguson.

Two months after the money had been taken from her, the charges were finally dropped and \$29,640 returned to Dutton. In addition to the \$1400 stolen from her by the city, Dutton was out \$1050 in fees she had to pay to get out of jail the day after her arrest. She was never reimbursed for the travel expenses she incurred to get her money back.

Dutton filed a complaint. The city didn't bother to investigate. So she sued. The city claimed in discovery that all video related to Dutton's arrest had been destroyed. (Sound familiar?) Fortunately, a Texas judge didn't buy into any of this. Faced with the possibility of a jury trial in front of a sympathetic plaintiff, the city settled for \$77,500. It seems unlikely that the settlement will be enough to end the harassment and fishing expeditions. Consider that Estelline police need only find three more Laura Duttons who don't sue to more than recoup the city's losses. Here's the kicker: The Amarillo Globe-News reports that **89 percent** of Estelline's 2012 gross revenue came from asset forfeiture.

Meanwhile, there's a remarkable story unfolding in Baltimore, where a supervisor for the Maryland Transportation Authority Police has admitted in a deposition that a drug dog handler fabricated the dog's certification, then used the faked credentials in court proceedings. Worse, he

said he suspects that knowledge of the fabrication went well up the chain of command, including prosecutors in the Maryland U.S. Attorney's Office. No one seemed to care.

All of this was revealed during litigation over a bag of cash that was seized at the Baltimore airport by Transportation Security Administration officials. The drug dog's alert helped the authorities establish a "drug connection" to the money, which they believed permitted them to seize it. Studies have shown that as much as 90 percent of U.S. currency contains a trace of illicit drugs potent enough to trigger a drug dog alert. This means that even if this dog had been impeccably trained, its alert should have had little evidentiary value at all.

As the legal commentator Walter Olson has documented in recent years, Maryland is a hotbed of asset forfeiture abuse.