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A Simple Solution to Policing for Profit

Brookside, Ala., issued so many speeding tickets that police had to direct traffic around the courthouse.

By Penny J. White and Glenn Harlan Reynolds

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Everyone knows the speed trap: a sudden speed-limit drop, often poorly marked, with police waiting to pounce and local courts ready to assess fines for the local treasury. This has now gone mainstream, as communities large and small across the U.S. adopt policies that make citizens targets to be squeezed, not constituents to be protected.

This destructive exploitation is due in part to state and federal laws that allow jurisdictions—and sometimes law-enforcement agencies themselves—to keep the proceeds from fines, forfeitures and court costs. Fortunately, there is a simple fix.

In some places, police prey on citizens. In Brookside, Ala., as Birmingham News columnist John Archibald recently reported, from 2018 to 2020 “revenues from fines and forfeitures soared more than 640 percent and now make up half the city’s total income.”

So many tickets are issued that police have to direct traffic around the courthouse. Forfeitures—in which property is seized by police on suspicion of a crime, requiring the owner to prove his innocence in court to regain his property—are out of control. In 2020, taking advantage of its 1½ miles of Interstate 22, the town of about 1,250 residents had more misdemeanor arrests than residents. That year it collected \$487 in traffic fine and forfeiture revenue for each resident, quite an achievement for a town with no traffic lights. Total town income more than doubled on proceeds from fines and forfeitures. Brookside’s police chief recently resigned under pressure from state lawmakers and the public.

A Justice Department investigation of Ferguson, Mo., found similar forms of policing for profit, and other jurisdictions around the country, from Doraville, Ga., to Chicago have faced lawsuits over such tactics. What was once limited to sleazy rural jurisdictions is now common. And it isn’t just fines. According to the Institute for Justice, the government now seizes more property from citizens than burglars do.

It is easy to see the appeal for government officials. Voters may punish politicians at the polls when taxes are raised to fund government, but when those same expenditures are funded by fines, forfeitures and court costs paid by those who “violate” the law, politicians face less risk. Some targets may be out-of-towners, but too often those targeted are poor and minority citizens who may be less likely to vote.

What is at risk, however, is the legitimacy of law enforcement. Policing for profit produces a predatory relationship between officers and citizens. Policing is no longer about protecting people, but about extracting money from them. This also promotes hostile interactions between police and citizens, which increases the likelihood of violence. The entire system winds up being corrupted. Can an accused person expect fair treatment when everyone in the system knows that its well-being depends on revenue from convictions?

The U.S. Supreme Court held in *Tumey v. Ohio* (1927) that when judicial officials profit directly from fines, defendants are denied due process. It also held, in *Ward v. Village of Monroe* (1972), that if those administering the fines benefit indirectly from boosting municipal budgets, then due process is violated.

Two 2019 decisions from the Fifth U.S. Circuit Court of Appeals, *Cain v. White* and *Caliste v. Cantrell*, applied the due-process requirement that judges be entirely disinterested in the outcome. Noting that money from fines and fees went into a slush fund that covered judicial personnel and travel, the court held that judges' knowledge that their day-to-day comfort depended on revenue from convictions was enough to bias them unacceptably, denying defendants the neutral decision makers to which they were entitled.

We agree. As municipalities' and law enforcement's reliance on revenue from fines, fees and forfeitures grows, the chance that defendants will get a fair shake falls. Judges are supposed to avoid even the appearance of impropriety, and relying on people targeted by law enforcement as a revenue source makes the entire process appear improper.

What to do? One would hope for greater judicial scrutiny, but the judiciary is part of the problem. Appellate courts and the U.S. Supreme Court should provide more supervision. So should state legislatures and Congress.

The solution is to send the money from fines, fees and forfeitures elsewhere. If that money went to a state's general fund, municipalities would have no incentive to target people for extra revenue and could focus simply on public safety. Even if the state returned the money to municipalities based on a neutral formula, the incentive to engage in financially motivated law enforcement would vanish.

For law enforcement to flourish, it must hold the moral high ground. Redirecting the flow of funds to remove the temptation for predatory policing would be a good first step.

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