there is an innocent owner, and there are de facto innocent owners who are bona fide purchasers, and those also who receive the property through probate. We see that as a problem. The substitute maintains that innocent owner defense but ensures that the provision will not be used by criminals to shield their property through sham transactions.

For example, the probate provision would allow a drug dealer to amass a large fortune, and then to transfer that by his will to his criminal cohorts or his mistress, and upon his death, if he has died in a shootout or an arrest, then it would transfer without being able to to be seized, even though it is clearly the result of drug trafficking. So that is fundamentally wrong, and the substitute would correct that problem.

There are a number of other distinctions, Mr. Speaker, in the base bill and the substitute that is being offered, but we believe that the rule is fair that allows this. It would allow a fair debate on this.

I will point out that law enforcement has expressed concern in the base bill, from the Drug Enforcement Administration to the International Association of Chiefs of Police. So I would ask my colleagues to support the rule.

Ms. SLAUGHTER. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I thank the gentlewoman for New York for yielding time to me.

Mr. Speaker, I rise to indicate that on our side we support the rule, a modified open rule, and urge its support by all the Members. We want to try to proceed to general debate and the amendments, and hope that this measure may terminate and be concluded in final passage by this evening.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, let me reiterate that the criteria does nothing to undermine laws that allow for the confiscation of property in the case of a convicted criminal. Instead, the bill focuses on the potential abuse under civil forfeiture laws when a property owner may not be accused of any crime or wrongdoing.

The reforms in the bill protect the rights of innocent citizens to basic due process. The bill has the support of numerous organizations who span the ideological spectrum, but if my colleagues do not share the views of this broad coalition, they are free to offer amendments under this fair rule.

Every Member of the House should support this rule, which provides for a full and fair debate on civil asset forfeiture reform in the interest of restoring fairness to our system of justice. I urge a yes vote on the rule.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material in the RECORD on H.R. 1658.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

CIVIL ASSET FORFEITURE REFORM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 216 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1658.

□ 1406

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, about 6 years ago I was reading a newspaper and I read an op ed article in the Chicago Tribune explaining a process that goes on in our country, and I must tell the Members, I could not believe it. I thought that over 200 years we had ironed out what due process meant, what equal protection under the law meant. But I found out that there are corners in our legal proceedings into which light needs to be shed. One of them concerns civil asset forfeiture.

There are two kinds of forfeiture, criminal asset forfeiture and civil asset forfeiture. What is the difference? The difference is in criminal asset forfeiture you must be indicted and convicted. Once that happens, the government then may seize your property if your property was used, however indirectly, in facilitating the crime for which you have been convicted.

You are a criminal, you are convicted, and they seize your property. I have no problem with that. I think that is useful in deterring drug deals and extortionists and terrorists. I have no problem with criminal asset forfeiture.

But the other type is civil asset forfeiture. That is a horse of a different color. In civil asset forfeiture, the government, the police, the gendarmes, can seize your property upon the weakest, most flimsy, diaphenous charge, probable cause. Probable cause will let you execute a search warrant or maybe frisk somebody, but no, they use probable cause as the basis to seize your property. I do not just mean your roller skates, they can take your business, they can take your home, they can take your farm, they can take your airplane. They take anything and everything premised on the weakest of criminal charges, probable cause.

What is also unbelievable is that unless you take action in court, you cannot get your property back. They do not have to convict you, they do not have to even charge you with a crime, but they have your property because they allege probable cause.

How do you get your business back, your home back? You go to court, you hire a lawyer, you post a bond, and then you have to prove within 10 days, you have 10 days to do all this, you have to prove that your property was not involved in a crime. In other words, you prove a negative.

I do not know how you do that. I have been a lawyer since 1950, and I do not know how you prove that something did not happen. But nonetheless, that is the burden now. Under our jurisprudence, the burden of proof should be with the government. If you are guilty of anything, then prove it. The standard is beyond a reasonable doubt in a criminal case.

So what we are asking is to turn justice right side up, to switch the burden of proof from the poor victim, who has been deprived of his property and not convicted of anything, to the government, who has seized this property.

Now, may I suggest there are some incentives for some police organizations not to do this, because they share in the proceeds of the seized property. It is like the speed trap along the rural highway where the sheriff waits for us, takes us to a magistrate, and his salary is paid out of the fines he levies against us. We do not have a very great chance at equal justice.

That is the situation here. Civil asset forfeiture as allowed in our country today is a throwback to the old Soviet Union, where justice is the justice of the government and the citizen did not have a chance.

So I suggest we remedy this, and that is what we are trying to do.

The bill before us makes eight changes. First, the burden of proof goes to the government, where it belongs.

Secondly, the standard is clear and convincing. The reason it is not a mere, simple preponderance is that this is quasi-criminal. They are punishing

you when they have taken charge of your assets and of your property.

The next thing it does, it permits the judge to release the property pending the disposition in case a hardship exists and you are out of business or you have no place to live.

The third thing is the court can, in an appropriate case, appoint counsel. That is important if you are broke, if they have taken your property. You need help, you cannot afford a lawyer. The reason some organizations resist appointing counsel is because if you cannot get a lawyer, you cannot file a claim, so the forfeiture stands. You have a disincentive, you are discouraged from filing a claim because you cannot pay for a lawyer.

We also eliminate the bond, and I am happy to see that the gentleman from Arkansas (Mr. HUTCHINSON) eliminates the bond, too.

Our bill provides an innocent owner defense which is uniform across the country. If you own something and somebody else performed a crime in it or with it, and you are perfectly innocent and that can be established, that is a defense. You can sue the government under my bill if they destroy your property, and you can get interest if they have held your cash, and you can have 30 days to file your claim, not 10 or 20.

Lastly, let me just say this. This bill puts civil liberties and due process back in our criminal justice system. I am so delighted at the sponsors of this bill, both Democrats and Republicans, liberals and conservatives.

I am also delighted at the organizations that have endorsed it: The American Bar Association, the National Rifle Association, the National Association of Criminal Defense Lawyers, the American Civil Liberties Union, Americans for Tax Reform, the National Association of Realtors, the Credit Union National Association, the American Bankers Association, National Association of Home Builders, and on and on; the U.S. Chamber of Commerce. There is the widest possible spectrum of support for this reformation of our civil asset forfeiture laws.

I beg Members to listen carefully and join me in this essential reform.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to the Members of the House of Representatives, I would like Members to understand that there is wide, wide support not only in the committee but among organizations for reforming civil asset forfeiture.

□ 1415

When we bring together the gentleman from Illinois (Mr. HYDE), chairman of Committee on Judiciary, myself, the ranking member, the distinguished gentleman from Massachusetts (Mr. FRANK), and the gentleman from California (Mr. FARR), then we have a combination that covers, I think, the entire political philosophical spectrum of the Congress.

When we bring also the American Civil Liberties Union, the Criminal Defense Lawyers, the United States Chamber of Commerce, the Cato Institute, and the National Rifle Association, we have a combination of organizations that I think they come together every 10 years on a legislative agreement.

But it is wide, it is deserved, it is merited only because we have now found a process that is so abominable that it must be corrected, and we are very proud to have this wide array of philosophical views joining behind the Civil Asset Forfeiture Act, H.R. 1658.

Would my colleagues believe that, under current law, the government can confiscate an individual's private property on a mere showing of probable cause and then, even though the person may never have been convicted of a crime, require the person to file an action in Federal court to prove that the property is not subject to forfeiture in order to get the property back.

Well, that is the state of the law. There is no question that forfeiture laws, as Congress has intended to serve legitimate law enforcement purposes, and in the greater instances, they do, but they are currently susceptible to abuse and abuse that this measure proposes to correct.

There is also a problem for racial minorities. For example, a 10-month Pittsburgh Press investigation of drug law seizure and forfeiture included an examination of court records on 121 sole suspected drug courier stops, where money was seized and no drugs were discovered.

The Pittsburgh Press found that African-American, Latino, and Asian persons accounted for 77 percent of these arrests. So this bill before us today, the Civil Asset Forfeiture Act, seeks to change this and to make Federal civil forfeiture laws more equitable in a number of ways.

First of all, we change the burden of proof. Very few places in our law other than this, if any, require that the person coming in carry the burden of proof. Well, not so in forfeiture law. So if a property owner challenges a seizure, we want the government to prove by clear and convincing evidence that the property is subject to forfeiture. There cannot be any problems with that.

Now it is just the reverse. The government comes in, and the person seized has to prove that the property should not have been seized. This provision that we correct places the burden of proof where it historically belongs under United States jurisprudence within the government agency that performed the seizure. It protects individuals from the difficult task of proving a negative, in other words, that their property was not subject to forfeiture, which may be pretty hard to prove.

Secondly, I think it is important that the bill provide for the appointment of legal counsel if the person challenging the forfeiture is indigent or cannot otherwise afford proper legal counsel. What this provision does is simply recognize that legal representation is appropriate, indeed necessary, to defend against this type of deprivation of property.

Now, in determining whether or not to appoint counsel, the court must consider whether the claim appears to be made in good faith. Because if it is, they should get counsel. If it is not, they should not be provided counsel.

Third, the bill permits a court to provisionally return the seized property to the owner before the final adjudication is complete if the claimant can prove and demonstrate substantial hardship. Now this could occur, for example, if the forfeiture crippled the functioning of a business, which oftentimes is the case, prevented an individual from working, or left an individual homeless in the case of where homes are seized. Individuals lives and livelihoods should not be in peril during the course of a legal challenge to a seizure.

The next thing we do that I think commends the bill to the Members of the House of Representatives is that we create a uniform innocent owner defense against forfeiture to prevent people from losing their property because of the wrongdoing of others.

The presumption of innocence is fundamental to the American criminal justice system and should be in the case of civil asset forfeiture. This basic tenet, however, is seriously compromised whenever assets are confiscated, as they are now often seized under these forfeiture statutes without proof of wrongdoing by the owner.

The next thing that we do that I think should attract the attention and support of the Members is that we permit individuals who prevail in their forfeiture challenges to be able to sue the government if their property was destroyed or damaged, what could be more fair than that, while it was in government custody. It makes little sense to grant the right to reclaim the property only to find that it has lost all or half of its value.

The next item that is in this bill that I commend to the Members' attention is the requirement that the government pay successful claimant post-judgment interest as well as prejudgment interest on currency. This provision prevents the government from gaining a windfall on improperly seized property and puts the property owner in the position he or she would have been if the property had not been seized in the first instance.

The next thing that we do is eliminate the current requirement that a claimant must file a bond before challenging a forfeiture. This lifts a financial hurdle to filing a forfeiture challenge.

Finally, we expand the time to file a forfeiture challenge by 10 days from 20 to 30 days, giving additional persons time to learn about their rights and

file a claim. We believe that this measure is long overdue in coming.

We have had a very thorough and fair hearing in the Committee on the Judiciary. Everybody is pleased about it. But I should warn my colleagues that a substitute may be offered that would expand the categories of crime, that would worsen the measure that is before us, expanding categories of crime subject to a civil forfeit, and includes a seize now, fish for evidence later provision that allows the government to hold the property with no evidence, and then use their powerful Federal civil discovery tools to seek more evidence to try to build their case.

So I would like to put our colleagues on notice that there is a substitute that would completely reverse the benefits of this bill. I urge Members, both Democratic and Republican, to join us in the bill that has the widest support both in and out of the House.

Mr. Chairman, I include the following document, entitled ''The Need for H.R. 1658: Recent Cases of Civil Asset Forfeiture Abuses of Innocent, Legitimate Businesspeople and Entities'' as follows:

THE NEED FOR H.R. 1658

RECENT CASES OF CIVIL ASSET FORFEITURE ABUSES OF INNOCENT, LEGITIMATE BUSINESSPEOPLE AND ENTITIES

Houston, Texas: Red Carpet Motel—Raise Your Prices or Else!

February 17, 1998, the U.S. Attorney's Office in Houston seized a Red Carpet Motel in a high-crime area of the city. The government's action was based on a negligence theory—that the motel owners, GWJ Enterprises Inc. and Hop Enterprises Inc., had somehow ''tacitly approved'' alleged drug activity in the motel's rooms by some of its overnight guests.

There were no allegations that the hotel owners participated in any crimes. Indeed, motel personnel called the police to the establishment dozens of times to report suspected drug-related activity. U.S. Attorney James DeAtley readily bragged to the press that he envisioned using current civil asset forfeiture laws in the same fashion against similar types of legitimate commercial enterprises, such as apartment complexes.

The government claimed the hotel deserved to be seized and forfeited because it had ''failed'' to implement all of the ''security measures'' dictated by law enforcement officials. This failure to agree with law enforcement about what security measures were affordable and wise from a legitimate business-operating standpoint was deemed to be the ''tacit approval'' of illegality cited by the prosecutors, subjecting the motel to forfeiture action.

One of the government's ''recommendations'' refused by the motel owners was to raise room rates. A Houston Chronicle editorial pointed to the absurdity and danger of this government forfeiture theory against legitimate business: ''Perhaps another time, the advice will be to close up shop altogether.'' The editorial went on to make these additional, excellent points:

''The prosecution's action in this case is contrary not only to the reasonable exercise of government, but it contradicts government-supported enticements to businesses that locate in areas where high crime rates have thwarted development. Good people should not have to fear property seizure because they operate business in high-crime areas. Nor should they forfeit their property because they have failed to do the work of law enforcement. . . . *This case demonstrates clearly the need for lawmakers to make a close-re-examination of federal drug forfeiture laws.*'' . . . (emphasis added)

After more bad publicity all over Texas, in July 1998, the government finally released the motel back to the owners and dropped its forfeiture proceedings. It exacted a face-saving, written ''agreement'' with the motel owners. The agreement, however, in fact only put into words the security measures and goals the owners had already undertaken and those which it had always strived to meet.

The motel owners had lost their business establishment to the government's seizure for several months, suffered a significant loss of good business reputation, and were forced to spend substantial amounts of time and money on hiring an attorney and defending against the government's forfeiture action, which should never have been undertaken in the first place.

[Source: Houston Chronicle, Mar. 12, 1998 editorial and 1998 articles Dallas Morning News, 1998 articles (unreported case)]

San Jose, California: Aquarius Systems, Inc—Your Buyer, Your Assets!

October 28, 1998, a federal judge in San Jose, California finally granted summary judgment against the government in a civil forfeiture action, ruling that the government must return to Los Angeles-based Aquarius Systems, Inc. (aka CAF Technologies Inc.) the $296,000 it had seized from it 6 years ago. Aquarius and 4 other computer chip dealer companies had been accused of marketing stolen chips. Federal agents, who participated in this ''sting'' operation, then seized $1.6 million of the companies' chip-buying, operating money.

Unknown to Aquarius Systems, Inc., the buyer used by the company had been operating for his own profit, by purchasing chips for $50.00 each while reporting to his supervisors at the company a unit cost of $296.00 (which at the time was a reasonable price). (The buyer ultimately served a short sentence of conspiracy to buy stolen property.)

In his ruling ordering the government to return to Aquarius $296,000 of its seized operating money, U.S. District Court Judge Jeremy Fogel blamed the government for dragging its feet on due process, by tying up the company's operating assets for so many years. Ruled the Court: ''It is incumbent upon the government to institute civil forfeiture proceedings expeditiously.'' The judge then denied the government's motion for summary judgment against the company, and granted the company's motion for summary judgment against the government. The Court held that Aquarius Systems knew nothing about what its buyer was doing. As the judge noted, the company was unusual in its ability to stave off ruin from the government's seizure and forfeiture action, and in its ability ''to fight [it] for six years.''

[Source: The (California) Recorder, Nov. 17, 1998 article (unreported case)]

Chicago, Illinois: Family-Owned and Operated Congress Pizzeria—Restaurant+Money+3 Handguns=Forfeiture?

September 3, 1997, Anthony Lombardo, owner and proprietor of the family business, Congress Pizeria of Chicago, was finally returned over $500,000 in currency improperly seized from his restaurant in early 1993. It took him over four years, and much expensive litigation, all the way to the federal court of appeals for the Seventh Circuit, before former U.S. Attorney and Chief Judge Bauer and his colleagues on the Court ordered the government to return Mr. Lombardo's money.

Based on the ''confidential informant'' testimony of Josue Torres, the Chicago Police Department conducted a search of Congress Pizzeria. Torres, a crack addict, had been employed as a truck driver for the restaurant up until a few months before he told his story to the police. He told the police that he regularly fenced stolen property at various places in Chicago in order to feed his crack cocaine habit, and that Congress Pizzeria was one of the places in which he did so.

On this, a warrant was issued to authorize police to search the pizzeria and to seize a camera, a snowblower, a television, and three VCRs, which are items the informant said he had sold to the sons at the restaurant. None of these items were found. During the search, however, the police did ''find'' and seize three unregistered guns, and $506,076 in U.S. currency.

The money was in a make-shift safe in the family-owned restaurant—a forty-four gallon barrel located inside either a boarded-up elevator or a dumb-water shaft (the record was somewhat unclear). It was wrapped in plastic bags and consisted of mostly small bills—such as might be expected from transactions by a pizzeria.

The owner's son, Frank Lombardo, was present at the time of the search. He was arrested and charged with possessing unregistered firearms (the guns at the restaurant). At the state court proceeding, the guns case thrown out, because ''it was not apparent that the guns were contraband per se'' and ''the guns were seized prior to the establishment of probable cause to seize them.'' No other state or federal criminal case was every investigated or charged against the Lombardos or their pizzeria.

The federal government nonetheless moved to seize and forfeit the $500,000 ''found'' in the pizzeria, under current civil asset forfeiture drug laws. The government's theory of why this money was forfeitable as ''drug money'' was this: The owner's son, Frank Lombardo, was said to have been ''extremely distraught'' and ''visibly shaken when he was told that the money was being seized'' from his family's restaurant; and, said the government, he had ''offered no explanation for the cash horde.'' (Later, Frank went to the police station to explain that the money belonged to his father, the owner of the pizzeria, who was then in Florida.)

Drug-sniffing dogs were also brought to the police station (not in the pizzeria), to check out the money for the presence of drugs. A narcotics canine named Rambo was instructed to ''fetch dope'' and he grabbed on bundle of money from the table and ripped the packaging apart. To the amazement of the court of appeals, this behavior apparently indicated to the officers the presence of drugs on the money.

At best, as the Court noted, the dog only identified narcotics on one bundle of the seized currency even though the officers seized 31,392 separate bills in multiple bundles. And, even the government admitted that no one can place much stock in the results of dog sniffs because at least ⅓ of all the currency circulating in the United States, and perhaps as much as 90–96%, is known to be contaminated with cocaine. (Indeed, as the court of appeals noted, even Attorney General Reno's purse was found by a dog sniff to contain such contaminated currency.)

On this non-evidence of any nexus between the money and drugs, the government kept the money of Mr. Lombardo and his family Pizzeria for 4 years—until the 7th Circuit finally ruled that it must be returned, in late 1998. The Court held that the government had in fact failed to establish even the cursory burden that it is supposed to shoulder

under current law—the establishment of ''probable cause'' to seize property in the first place.

None of the supposed ''suspicious factors'' cited by the government had ''any bearing on the probable cause determination. The existence of any sum of money, standing alone, is not enough to establish probable cause to believe the money is forfeitable.'' Nor, for the reasons discussed above, was the police-station, drug-sniffing dog episode enough for probable cause. And, ''putting to one side the fact that the state court suppressed the guns as evidence against Frank Lombardo, [there is] no reason to believe that the presence of handguns should necessarily implicate narcotics activity or that their presence need be seen as anything other than protection in a small business setting.''

In conclusion, the Court wrote: ''We believe the government's conduct in forfeiture cases leaves much to be desired. We are certainly not the first court to be 'enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.''' (Quoting *US* v. *All Assets of Statewide Auto Parts, Inc.*, 971 F.2d 896, 905 (2d Cir. 1992))

[Source: *U.S.* v. *$506,231 in U.S. Currency*, 125 F. 3d 442 (7th Cir. 1997) (Bauer, J.).]

North Dakota and Daytona Beach, Florida: Customs versus Bob's Space Racers—Who's Amusement?

In 1997, on a routine business trip, a large number of circus employees of the Bob's Space Racers Company, of Daytona Beach, Florida, were traveling to Canada. Bob's Space Racers, a privately held company, is one of the leading providers of amusement park games. The company also provides entertainment at traveling circuses.

As normal, the employees had been provided with their salary and traveling expenses for the project in cash. Thus, each of the 14 employees had several hundred dollars in his or her pockets when the group attempted to cross the border into Canada from North Dakota.

Customs agents at the North Dakota border seized all their money on the theory that, when the Customs agents aggregated all the money carried by each of the 14 employees, the total came to just over $10,000—the amount of money triggering the regulations about ''declaring'' and filing Customs' ''cash reporting'' forms (Form 4790).

Customs had no basis for ''aggregating'' the money of the employees. And there was no reason to believe the employees were part of any conspiracy to smuggle money out of the country without filing the appropriate Customs forms. Indeed, the company informed Customs that the money was legitimate traveling expenses.

Into 1998, at least, the company was still trying to get Customs to remit the employee travel expenses seized.

[Source: National Association of Criminal Defense Lawyers (NACDL) Asset Forfeiture Abuse Task Force Co-Chair David B. Smith, Alexandria, Virginia (unreported case)]

Haleyville, Alabama: Doctor, Beware Your Banker?

In 1996, after many years and much costly litigation, Dr. Richard Lowe of the small northwest Alabama town of Haleyville, was finally returned his wrongfully seized life savings of almost $3 million, when the 11th Circuit Court of Federal Appeals ordered the government to return it.

Dr. Lowe, MD, is something of a throwback. He's a country doctor in small-town America, who still charged $5.00 for an office visit in 1997. He drives a used car and lives in a very modest home.

When he was a small child in the Depression, he lost $4.52 in savings when the local bank failed in his home town in rural Alabama. His parents lost all of their savings when that bank collapsed. Because of that experience, he has always hoarded cash. He'd empty his pockets at night into shoe boxes in a closet at home. Over the years, he had accumulated several boxes of cash in the back of a closet in his home.

In 1988, he consolidated his savings in the First Bank of Roanoke, Alabama—in order to set up a charitable account for a small private K–12 school in his hometown that was about to fail. He transferred all of his life savings into the consolidated account. At the time the government first wrongfully seized his account, in June 1991, Dr. Lowe had given the school over $900,000, had saved it from collapse, and was still contributing to it.

In the fall of 1990, his wife was urging him to do something about the boxes of money in the closet. The Doctor said OK, you count it and we'll put it in the school's account. It came to $316,911 in denominations of ones, fives, tens and twenties. Some of the bills were as much as 20 years old. Dr. Lowe took the money to the bank and gave it to the bank president, who was a longtime friend and former neighbor of Dr. Lowe's.

This is the first cash that had ever been placed in the bank account. All the other money had been transferred by check from other banks when CD's matured.

The bank president knew the Doctor was obsessive about anonymity; he did not want to be known as a ''rich doctor.'' So, instead of depositing the money to the account, the bank president just put the money in the bank vault. He gave the Doctor a receipt for the deposit, but he chose to simply put the money in the bank's vault. Then, with some of the money over the next 6 weeks, the bank president went to neighboring banks in the vicinity of Roanoke, and bought $6,000, $7,000, and $8,000 cashier's checks, and then credited it to Dr. Lowe's account.

When some of the other banks thought it was peculiar that the Roanoke bank president was doing this, they made a report to authorities. When FBI agents came to interview the bank president, he told them exactly what he had done and why. He told them that it was his idea and not Dr. Lowe's. And he told them that as he understood the reporting laws, he had done nothing wrong.

Still, the FBI and U.S. Attorney decided to seize Dr. Lowe's account. They did not just seize the $316,000 in cash deposits. They seized his entire account—his entire life savings of some $2.5 million, at the time.

The bank president and his son, who was vice president, were both indicted. The bank president later made a deal with the government to plead guilt to structuring/reporting violations, in exchange for the government's dismissal of charges against his son. And, a full two years after the seizure and attempted forfeiture of the Doctor's accounts, during which time all of his money was held by the government, the government decided to indict Dr. Lowe as well, for the alleged reporting transgressions of his banker.

It is, however, not violation of law, and certainly no crime, for a bank to send cash to another domestic financial institution. That is not within the definition of illegal ''structuring.'' In short, there was no offense here, by even the banker, let alone the totally innocent, ignorant bank customer, Dr. Lowe.

Prosecutors kept pursuing their case against the Doctor anyway. With just one more week to go before his trial was to start, the prosecutors balked at taking their shoddy case to a jury. The government, to save face, offer the Doctor a ''pretrial diversion'' rather than simply dismissing the case, as they should have done. Under the diversion, the Doctor had to agree to stay out of trouble for one year and the case would be dismissed. Of course, the Doctor had no trouble staying out of trouble, as he had never done anything wrong to begin with, or in his entire life.

Still, even then, the U.S. Attorney General's office in Birmingham refused to drop its civil asset forfeiture action against Dr. Lowe's life savings account—clinging to the fact that, under current law, the burden remained on the Doctor to prove his money innocent!

While prosecutors now understood there was no ''structuring'' violation by anyone, as they had initially asserted they changed their theory to this Alice in Wonderland claim: Dr. Lowe's account was forfeitable under civil asset forfeiture laws because the bank had failed to file with the government the required regulatory reporting form, a Cash Transaction Report (CRT), upon receipt of Dr. Lowe's $300,000 in currency. At best, this was a violation by the bank, not the customer. Yet, the government deemed this enough to proceed in a civil forfeiture action against the Doctor's life savings—to force him to meet his burden of proof under current law, or else lose his property permanently.

The federal district court judge did rule that there was nothing wrong with the underlying account until the $300,000 cash deposit. And thus, he held that these monies should be returned to the Doctor. This was 3 years after the government's initial seizure—for 3 years, Dr. Lowe was denied access to any of his life savings.

The federal district court judge erred in ruling for the government on the $300,000 in currency, ''finding'' without any evidence that the Doctor ''must have exhorted'' the bank president (his words) not to file the technical CTR with the government, even though the government itself had never even noticed that a CRT had not been filed when it started its action against Dr. Lowe, the bank president and his son.

Dr. Lowe somehow had the wherewithal to continue his long fight against the government's wrongful taking of his money, and appealed to the 11th Circuit Court of Appeals. Finally, in late 1996, the court of appeals vindicated Dr. Lowe. It reversed the lower court's erroneous ruling, holding that, even under current, distorted civil asset forfeiture law, the Doctor had shown by evidence clear beyond a preponderance that he knew nothing of the banker's actions.

Meanwhile, though, he was without access to any of his seized life savings for 3 years, and without access to $300,000 of his accounts (which he had donated to the private school) for 6 years. He faced a wrongful indictment and threat of criminal trial. And he endured the financial, physical and emotional devastation of lengthy, costly litigation against a U.S. Attorneys Office blindly pursuing his assets, no matter the shoddy nature of its case.

Perhaps the government thought it could simply sear ''the old man'' out? The impact of this experience on him was so severe that Dr. Lowe had to hospitalized at least once for stress and high blood pressure. Very few victims of such governmental abuse would have been able to keep fighting to win, as did the extraordinary Dr. Lowe.

[Source: Hearing before the U.S. House Judiciary Committee, on H.R. 1835 (105th Congress), June 11, 1997 (Testimony of National Association of Criminal Defense Lawyers (NACDL) Asset Forfeiture Abuse Task Force Co-Chair E.E. Edwards III, Nashville, Tennessee) (unpublished case)]

Kent, Washington: Maya's Restaurant—The Sins of the Brother?

In 1993, in the Seattle suburb of Kent, Washington, police officers stormed Maya's

Mexican food restaurant in the middle of business hours, ordering customers out of the establishment, and telling the patrons that the restaurant was being forfeited because ''the owners were drug dealers.'' Local newspapers prominently publicized that Maya's restaurant had been closed and seized by the government for ''drug dealing.''

Exequiel Soltero is the president and sole stockholder in Soltero Corp., the small business owner of the restaurant. The actual allegation was that his brother had sold a few grams of cocaine in the men's restroom of the restaurant at some point.

Exequiel Soltero and the Soltero Corporation Inc. were completely innocent of any wrongdoing and had no knowledge whatsover of the brother's suspected drug sale inside the restaurant. According to the informant relied upon by the law enforcement officers, the brother had told him that he was part owner of the restaurant. This was not true. It was nothing but puffery from the brother. The officers never made any attempt to check it out. If they had, they would have easily learned that Exequiel Soltero was the sole owner of the Soltero Corp., Inc., and Maya's.

There was no notice or any opportunity for Mr. Soltero to be heard before the well-publicized, business-ruining raid and seizure of his restaurant. Fortunately, Mr. Soltero was able to hire a lawyer to contest the government's seizure and forfeiture action, but not until his restaurant had already been raided and his business had suffered an onslaught of negative media attention about being seized for ''drug dealing.'' Further his restaurant was shut down for 5 days before his lawyer was able to get it re-opened.

Finally, when Mr. Soltero volunteered to take, and passed, a polygraph test conducted by a police polygraph examiner, the case was dismissed. However the reckless raid, seizure and forfeiture quest by the authorities cost him thousands of dollars in lost profits for the several days his restaurant was shut down, as well as significant, lingering damages to his good business reputation. And he suffered the loss of substantial legal fees fighting the seizure of his business.

[Source: National Association of Criminal Defense Lawyers (NACDL) Asset Forfeiture Abuse Task Force Co-Chair Richard Troberman, Seattle, Washington (unreported case)]

NOTES ON RECENT CASES AND HYDE/CONYERS ASSET FORFEITURE REFORM ACT, H.R. 1658

Each of the above cases demonstrates the importance of the Hyde/Conyers Asset Forfeiture Reform Act. Several features of the legislation would deter governmental abuse of innocent Americans and legitimate business under the civil asset forfeiture laws.

Placing the burden of proof where it belongs, on the government—to prove its takings of private property are justified, by a clear and convincing standard of evidence—should curb reckless seizures and forfeiture actions like those described above. Now, the government can seize and pursue forfeiture against private property without any regard to its evidence, or lack thereof, without any burden of proof. The burden is borne by the citizen or business, to prove the negative, that the property seized is in fact innocent.

The clarification of a uniform innocent owner defense will also protect businesses and other property owners and stakeholders from wrongful seizures and forfeiture actions, based now on nothing more than a ''negligence'' theory of civil asset forfeiture liability. The uniform innocent owner provision will protect all innocent owners, no matter which particular federal civil asset forfeiture provision is invoked against their property.

The Hyde/Conyers Asset Forfeiture Reform Act will also place a time-clock on forfeiture actions by the government, akin to the Speedy Trial Act, which protects persons accused of crime. This will prevent the type of post-seizure, foot-dragging in civil forfeiture cases like those above, in which the government can simply wear down and bankrupt innocent individuals and businesses, who cannot withstand the loss of operating assets and lengthy litigation against the government.

The court-appointed counsel provision will ensure a fair fight against the government's forfeiture actions—even for those with less financial resources than the individuals and businesses described above. This is especially important to those the government can otherwise render indigent, and unable to afford counsel, simply by seizing all of their assets.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The Committee will rise informally.

The Speaker pro tempore (Mr. BRYANT) assumed the chair.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

CIVIL ASSET FORFEITURE REFORM ACT

The Committee resumed its sitting.

Mr. HYDE. Mr. Chairman, may I inquire of the Chair how much time I have remaining.

The CHAIRMAN. The gentleman from Illinois (Mr. HYDE) has 22½ minutes remaining.

Mr. HYDE. Mr. Chairman, I am pleased to yield 6 minutes to the distinguished gentleman from Tennessee (Mr. BRYANT).

Mr. BRYANT. Mr. Chairman, I thank the gentleman from Illinois (Mr. HYDE) for yielding this time to me. It is with great respect that I rise in opposition to the underlying bill and urge my colleagues to support the Hutchinson substitute.

The gentleman from Illinois (Mr. HYDE) and I have been together on many issues, and actually we are not that far apart on this one. The Hyde-Conyers bill, in many ways, has the same provisions that the Hutchinson substitute has, but I think the substitute makes some very important improvements to the bill.

I do not think there is any question that this bill is good. The Hyde-Conyers bill needs to be passed into the law, at least some form of it does. It is time that we have the reform in the area of asset forfeiture that that bill speaks directly to.

It is very important in this country, I think, that we begin to address the due process involved in property rights. Those are very important issues, and I am proud to be a part of this. I just think that the bill, as it is written, while well constructed and well thought out and certainly well intended, needs some fine tuning, if you will, some changes to it, I think, to strike a more reasonable balance.

Before, things were out of balance one way, and I want to be careful, as I urge the adoption of the Hutchinson substitute, that we do not take it too far out of balance the other way.

There are a number of law enforcement, some 19 major law enforcement groups that support the Hutchinson substitute, among those, the Drug Enforcement Administration, the DEA, the Fraternal Order of Police, the National Troopers Association, the National Sheriff's Association, the National Association of Chiefs of Police, and many others.

The reason they support this is because, as we all agree here today, we need to be able to seize the ill-gotten gains of criminals, seize that property, and use that, convert that over and use that to fight more crime. I think that is very important. We agree on that.

Now, I would like to see this go a little further on the other end, and I have asked that report language be put into this bill that there be a little bit more accountability on the use of these funds.

I know in my area back in Western Tennessee, this is a very important issue right now, is what happens to these funds once they get into the hands of law enforcement. I would like to see some very broad community-based, through a government agency, through the mayor, the county mayor, city mayor, oversight of these funds, with all due respect to the necessity sometimes in police work that they have flexibility and secrecy in using some of these funds. But at least there will be some accountability on the end of where it is used to fight crime as it is supposed to be done.

But in the Hutchinson substitute, we have brought the Hyde-Conyers bill, I think, back to a better balance. Rather than requiring that law enforcement prove by a clear and convincing bit of evidence that this money was ill-gotten and as a result of crime, we use the normal, the customary standard in civil cases, which is what this is, and that is a preponderance of the evidence. I am sure we have people that agree with that.

We also talk about furnishing some lawyers to people for free. Now, in the civil context, that is not typically done in any case. There are hardship cases where it is rarely done, and certainly that would apply here given the circumstances of the particular forfeiture, the amount of money involved, the needs of the people. That can be done. But on a routine required basis that the underlying bill would require, I do not think we need that.

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I think that would be very, very expensive and probably result in much more litigation than we really need.