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 owners have the right to protect their property, 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 dealer to make 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 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 gentleman 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 not requested 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.
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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. It says, anybody can come and say 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, 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, and more.

I commend to the Members’ attention some of those organizations that I think they come to-gether 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. 1669.

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 could not be 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 words 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 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 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 30 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 a property without 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 entitled "The Need for H.R. 1658: Recent Cases of Civil Asset Forfeiture Abuses of Innocent, Legitimate Businesspeople and Entities" as follows:

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 activity. According to U.S. Attorney James DeAtley readily bragged to the press that he envisioned using current civil asset forfeiture laws to get "one-stop shopping against similar types of legitimate commercial enterprises, such as apartment complexes.

The government claimed the hotel deserved to be 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 illegal activity committed by the motel guests, subjecting the motel to forfeiture action.

One of the government's "recommendations" refused by the motel owners was to raise its room rates. At a June 24, 1999, Congressional Record—House hearing, the editorial went on to make these additional, excellent points:

"The prosecution's action in this case is contrary to the reasonable expectations of government, but it contradicts government-supported enticements to businesses that locate in areas where high crime rates have prevailed. . . . This case demonstrates clearly the need for lawmakers to make a close examination of civil and drug forfeiture laws." (emphasis added)

"After more bad publicity all over Texas, in July 1998, the government finally released the owners of the motel to face civil forfeiture proceedings. It enacted a face-saving, written "agreement" with the motel owners. The agreement, however, in fact ratified all past asserted 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 goodwill and reputation, and were forced to spend substantial amounts of time and money on hiring an attorney and defending against the government's forfeiture action (a victory which should never have been undertaken in the first place.


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 $506,076 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 and seized $6 million of the companies' chip-buying, operating money.

Unknown to Aquarius Systems, Inc., the buyer used by the government had been expecting for his own profit, by purchasing chips for $50.00 each while reporting to his supervisory company at a unit cost of $296.00. (The buyer ultimately served a short sentence of conspiracy to buy stolen property.) In his ruling ordering the government to return to Aquarius $500,000 of its seized operating money, U.S. District Court Judge Jeremy Fogel blamed the government for dragging his feet on tying up the company's operating assets for so many years. Ruled the Court: "It is incumbent upon the government to institute civil forfeiture actions promptly. . . . 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 prove 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 of the restaurant and business Congress Pizzeria 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 an expensive litigation, all the way to the federal court of appeals for the Seventh Circuit, before former U.S. Attorney and Chief Judge John D. Hall and a three-judge Court held the government had in fact failed to establish even the cursory burden that it is supposed to shoulder on this non-evidence of any nexus between the alleged drug sales and the restaurant.

The government claimed the restaurant's location in a high-crime area of the city. The government also refused to return Lombardo's money. Indeed, the government charged Lombardo with felonies regarding his ownership and operation of the restaurant.

On this, a warrant was issued to authorize police to search the pizzeria and to seize a camera, a snow blower, and a television, which the government said he had sold to the sons at the restaurant. None of these items were found. During the search, however, the police did find "two 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—money that 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 was thrown out, because "it was not apparent that the guns were contraband." And "the guns were seized prior to the establishment of probable cause to seize them." No other state or federal criminal case was ever investigated or charged against the Lombardos or their pizzeria.

The federal government nonetheless moved to seize and forfeit "cashed in" 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 the Lombardos and was in the pizzeria, which was then in Florida.)

Drug-sniffing dogs were also brought to the pizzeria (not in the pizzeria), to check on the money for control drugs. A narcotics canine named Rambo was instructed to "fetch dope." He grabbed a 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 1,022 separate paper money bundles. And, even the government admitted that no one can place much stock in the results of dog sniffs because at least ½ 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 alleged drug sales and the restaurant, the judge ruled that it must be returned, in late October 1998, to Mr. Lombardo, who had in fact failed to establish 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 sufficient reason for a search warrant. The government can believe the money is forfeitable.” Nor, for the reasons discussed above, was the police-station, drug-sniffing dog episode enough for probable cause. Outlining to one fact that the state court suppressed the guns as evidence against Frank Lombardo, [there is] no reason to believe that the presence of handguns necessarily implies 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. $536,231 in U.S. Currency, 125 F. 3d 1375 (11th 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 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 promoters of amusement and park games. The company also provides entertainment at traveling circuses.

As 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 triggering the regulations about “declaring” and filing Customs’ “cash reporting” forms (Form 4790).

Customs had gone 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, however, 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 K-12 Bank!

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 $300,000 in cash deposits. They were as much as 20 years old. Dr. Lowe took the money to the bank and gave it to the bank president, longtime friend and former neighbor of Dr. Lowe.

This was the first cash that had ever been placed in the bank’s account. All the other money had been checked from other banks when CD’s matured.

The bank president knew the Doctor was obsessive about anonymity; he did not want to even be seen at the bank. So, instead of depositing the money to the account, the bank president 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 deposited $6,000, $2,500, $7,000, and $8,000 in cashier’s checks and then credited it to Dr. Lowe’s account.

When some of the other bank’s 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 report was to the bank president, he thought it was 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 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 guilty to structuring/reporting violations, in exchange for the government’s agreement to dismiss the charges against his son. And, a full two years after the seizure, the government attempted forfeiture of the Doctor’s accounts, during which time all of his money was held by the bank. 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. Yet, alone the totally innocent, ignorant bank customer, Dr. Lowe.

Prosecutors kept pursuing their case against Dr. Lowe, anyway. Within just a little 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, it said, “structured the case” 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, Dan B. Brewster, Gonzales, dropped the civil asset forfeiture action against Dr. Lowe’s life savings account—clinging to the fact that, under current law, the burden rested on the Doctor to prove his money innocent!

While prosecutors now understood there was no such thing as “structuring” one time, as they had initially asserted they changed their theory to this Alice in Wonderland claim: Dr. Lowe’s account was forfeitable under current law, because the bank had failed to file with the government the required reporting form, a Cash Transaction Report (CTR), 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 appealed to the 11th Circuit Court of Appeals 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. Thus, his attorneys 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 all of his life savings.

The federal district court judge erred in ruling for the government on the $300,000 in cash, finding that the Doctor “must have exorted” the bank president (his words) not to file the technical CTR with the government, even though the government had never even noticed that a CTR 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 the tremendous costs associated with these actions. After 6 years of his wrongful indictment and an additional 6 years to get a federal court to rule in his favor, he was able to keep fighting to win, as did the extraordinary Dr. Lowe.


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 of a drug dealer. Local newspapers prominently publicized that Maya’s restaurant had been closed and seized by the government for “drug dealing.”

Exequiel Soltero and the Soltero Corporation were completely innocent of any wrongdoing and had no knowledge whatsoever 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 and expensive and probably resulted in much more litigation than we really need. 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 discussed here. And, as a result of crime, we use the preponderance of the evidence test and seize assets, to prove their innocence and lengthy litigation against the government.

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