Prepared Statement of Samuel J. Buffone,
On Behalf of
the National Association of Criminal Defense Lawyers

**Hearing on "Oversight of Federal Asset Forfeiture:
Its Rule in Fighting Crime"**

**UNITED STATES SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIMINAL JUSTICE OVERSIGHT**
July 21, 1999

Distinguished members of the Committee. I appear today on behalf of the National Association of Criminal Defense Lawyers (NACDL). On behalf of the NACDL I thank you for inviting us participate in this hearing. I currently serve as co-chair of the NACDL's Forfeiture Abuse Task Force.

NACDL is the preeminent organization in the United States advancing the mission of the Nation's criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL's 10,000 direct members – and 80 state and local affiliate organizations with another 28,000 members – include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

The committee has captioned today's hearing as "Oversight of Federal Asset Forfeiture: Its Role in Fighting Crime." The issue before this Committee should not be the importance of asset forfeiture as an effective weapon to combat crime. All parties to the debate agree on this point. Rather, the issue before this Committee should be whether current forfeiture law and practice adequately protects the rights of all Americans. Since the rebirth of forfeiture law in the 1970's, and its subsequent dramatic growth, I have been involved as an author, litigator and spokesperson on behalf of organized bar associations on forfeiture issues. Throughout this entire debate there has never been a serious contention that both civil asset forfeiture and criminal forfeiture are indeed effective law enforcement tools and play a valuable role in fighting crime. It is appropriate for this committee to consider how this important weapon in the arsenal of law enforcement can be most effectively employed consistent with our constitutional system of government and historic concern as a nation for the personal and property rights of our citizens.

During hearings before the Committee on the Judiciary of the House of Representatives on civil asset forfeiture reform Stefan D. Cassella, Assistant Chief, Asset Forfeiture, Money Laundering Section, Criminal Division, United States Department of Justice testified regarding the Department of Justice's position on asset forfeiture reform. Mr. Casella stated:

> "I said last year that no matter how effective asset forfeiture may be as a law enforcement tool - and this is a very effective law enforcement tool - that no program, no tool of law enforcement, however effective at fighting crime, can survive long if the public thinks

> that it violates the basic principles of fairness and due process that lie at the core of the American system of justice."
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> Statement of Stephan D. Casella, Hearings Before the Committee on the Judiciary, House of Representatives, 105th Congress (June 11, 1997)

The NACDL agrees with Mr. Casella's premise that respect for the rule of law is ultimately based on the respect for understanding of the basis for societal regulation and the overall fairness of how that regulation is administered. When law becomes an abstraction as it has in the area in forfeiture, the government risks losing societal consensus on the very need for these law enforcement tools. Such archaic notions as the "personification fiction," under which inanimate property can be found guilty of a crime despite the innocence of its owner, is a level of abstraction that evades all but the most attentive scholars to the nuances of forfeiture law. The average citizen finds it difficult to comprehend the fairness of a system under which property may be seized on an ex parte showing of probable cause, and the property owner must post a bond simply for the right to shoulder a higher burden of proof to demonstrate the innocence of his property.

The NACDL strongly supports the enactment into law of HR 1658 the "Civil Asset Forfeiture Reform Act." The Bill as passed by the House, addresses the most important areas of abuse of forfeiture law and rationalizes the civil asset forfeiture system in a way that will move closer to ensuring public support for appropriate uses of civil forfeiture. In a series of hearings before the House, a broad coalition of organizations presented testimony regarding ongoing abuses of civil asset forfeiture and the need for comprehensive reform. Chairman Henry Hyde's book "*Forfeiting our Property Rights, Is Your Property Safe From Seizure*", presented striking evidence of the pervasiveness of civil asset forfeiture abuse.

The recent passage of HR 1658 was made possible in part by an unprecedented bipartisan coalition that both recognized and supported the pressing need for civil asset forfeiture reform. The NACDL joined the Americans for Tax Reform, Small Business Survival Committee, Republicans for Choice, Institute for Justice, The Madison Project, Free Congress Foundation, American Conservative Union, National Rifle Association, Association of Concerned Tax Payers, Conservative Leadership Pact, Law Enforcement Alliance of American, Eagle Forum, Seniors Coalition, Frontiers of Freedom, American Civil Liberties Union, Chamber of Commerce of the United States of America and the Utah Republican Party State Convention in supporting this legislation. HR 1658 passed the House with 375 votes including 191 Republicans, 183 Democrats and 1 Independent.

The Need for Reform

The NACDL has continued to collect instances of abuse of civil asset forfeiture reform. The following case studies illustrate how innocent Americans can suffer substantial financial detriment based on the application of the current civil asset forfeiture system.

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

February 17, 1998, the U.S. Attorney's Office in Houston seized the 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 when applied to a legitimate business: "Perhaps another time, the advice will be to close up shop altogether." The editorial went on to make these additional, 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."

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.

The motel owners were represented by NACDL member Matt Hennessy of Houston, Texas. (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. (a.k.a. CAF Technologies Inc.) the $296,000 it had seized from it 6 years ago. Aquarius, and other computer chip dealers 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 for 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

- **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 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 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 track 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 including Congress Pizzeria in order to feed his crack cocaine habit.

On this information, a warrant was issued authorizing police to search the pizzeria and seize a camera, a snowblower, a television, and three VCRs, which are items the informant said he 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 was 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 ever 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 one 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 1/3 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 in late 1998, the First Circuit Court finally ruled that it must be returned. 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 Rob'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 seized employee travel expenses.

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

- **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, saving it from collapse, and was still contributing more.

In the fall of 1990, his wife urged 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 was the first cash ever placed in the bank account, All the other money was 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 guilty 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, no 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, offered 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 then 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'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 were 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 (CTR), upon reception of Dr. Lowe's $300,000 in currency. At best, this was 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 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 appealed to the Eleventh Circuit Court of Appeals. Finally, in late 1996, the court of appeals vindicated Dr. Lowe. It reversed the lower court-t'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 wear "the old man" out? The impact of this experience on him was so severe that Dr. Lowe had to be 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 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)

- **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., Inc., 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 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, 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

clays 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

Key Reforms Work By HR 1658 – The Civil Asset Forfeiture Reform Act.

The bipartisan supported bill implements four critical reforms of civil forfeiture law:

1. The Legislation places the burden of proof on the government, and sets an appropriate standard, clear and convincing evidence;

2. The Legislation provides for the appointment of counsel for indigent claimants who have bona fide claims but lack the resources to protect their property;

3. It establishes a uniform innocent owners defense applicable to all civil forfeitures;

4. It establishes uniform time limits for providing notice of a seizure and for filing a civil forfeiture complaint in court.

Burden of Proof

Under current civil forfeiture practice, the burden of proof is placed upon the claimant. A party whose property has been seized on a mere showing of probable cause must come to court and prove by preponderance of the evidence, that probable cause for forfeiture does not exist. In the alternative the claimant can show lack of knowledge or consent to legal activities. This defense is not uniformly applied.

Normally, the burden and standard of proof is fixed based upon the risk of erroneous decision making. It is remarkable that the burden is placed upon the claimant when it is the government that has instituted the law suit and the greatest risk of erroneous fact finding is in unbridled application of this governmental authority. The burden is a constitutional anomaly in view of the quasi criminal nature of forfeiture and the important privacy interest at stake in forfeiture proceedings. The House bill would reestablish a constitutional balance by requiring that in all civil forfeiture actions the burden of proof is on the United States to establish by clear and convincing evidence that the property is subject to forfeiture. This provision recognizes both the appropriateness of the United States shouldering this burden and the necessity for a clear and convincing evidence standard in light of the risk of erroneous fact finding and the importance of the rights at issue. The clear and convincing evidence standard has been used successfully by law enforcement in some of the major state jurisdictions including California, New York and Florida.

Appointed Counsel

The House Bill provides that if a person filing a claim is financially unable to obtain counsel, the court may appoint counsel to represent the person with respect to the claim. The bill does not provide counsel for all claimants, and not even all indigent claimants but rather requires courts to consider the claimants standing to contest the forfeiture and whether the claim appears to be made in good faith and to be non-frivolous. The bill would do no more than provide discretion to District Court judges to appoint counsel for indigent claimants and does not constitute a radical departure from current law. Fundamental due process considerations dictate that indigents be provided with counsel in order to contest the seizure of their property. The bill would provide an important safeguard for indigents who face civil forfeiture actions but who do not face related criminal charges. Under current practice, those facing criminal charges have more ready access to counsel than claimants who do not. Whatever other reforms are passed, an indigent claimant facing the loss of a significant portion of their property will still not face a fair process if he must face it unrepresented.

Innocent Owner

The House bill provides a uniform innocent owner defense. Under current law a variety of standards, or none at all, govern claims by innocent owners regarding their property that is subject to forfeiture. The statute carefully defines the interest of an innocent owner and provides relief only where the owner did not know of the conduct giving rise to the forfeiture or upon learning of the conduct did all but reasonably could be expected under the circumstances to terminate illegal use of the property. For property interest acquired after the conduct giving rise to forfeiture, an innocent owner must show that he is either a BFP for value or that the interest was acquired through probate or inheritance or at the time of the acquisition he was reasonably without cause to believe that the property was subject to forfeiture. Special rules apply to real property in order to ensure that spouses or minor children of a person who committed an offense are not unnecessarily deprived of their homestead.

This provision codifies an important standard of fairness and centers forfeiture law in a critical area that the public can support. The notion that even an innocent owner can lose his property because of its involvement in a crime garners little public support.

Uniform Time Limits for Notice of Seizure and Filing a Civil Forfeiture Complaint

The bill establishes uniform and enforceable time limits for the government to provide notice and commence a forfeiture action. First, the bill establishes a must needed sixty day time limit for the government to provide notice of the seizure and its intent to forfeit the property. Second, it establishes a ninety day time limit in which the United States Attorney must file a civil forfeiture complaint following a receipt of a notice of claim.

Conclusion

As I stated at the beginning of my testimony, ultimately understanding of and respect for the rationale and fairness of forfeiture laws are the best way to ensure their continued vitality. The provisions of HR 1658 take critical steps towards ensuring the necessary balance between the necessities of law enforcement and the fairness of the processes. Additionally, the process, untethered by any easily understood rationale, will not garner public confidence. Forfeiture has grown on the back of arcane notions of medieval law and complex rules relating to custom seizures that bear little relationship to the reality of an average citizens life. The bill positions forfeiture closer to the central concept that a wrongdoer should not profit from his illegal activity. The NACDL supports Senate passage of the Bill as passed by the House.

Note: Neither Mr. Buffone nor NACDL has received any federal grant, contract or subcontract in the current and preceding two fiscal years.