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.