



# NACDL Testimony

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*Hearings on Bi-Partisan Bill to Provide a More Just and Uniform Procedure for Federal Civil Asset Forfeitures ("Civil Asset Forfeiture Reform Act of 1997")*

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**Written Statement of Susan Davis  
McMillan, Unruh and Davis, P.A.  
Fort Lauderdale, Florida**

**Before the Committee on the Judiciary  
United States House of Representatives**

**Hearings on Bi-Partisan Bill to Provide a More Just and  
Uniform Procedure for Federal Civil Asset Forfeitures  
("Civil Asset Forfeiture Reform Act of 1997")**

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**Chairman Hyde, Ranking Member Conyers, Other Distinguished Members of the  
Committee:**

My name is Susan Davis. I'm a partner in a small CPA firm in Fort Lauderdale, Florida.

Thank you for inviting me to testify today. I have never done this before. I am not lawyer, or used to public speaking. But I very much appreciate being invited here today to tell you about my unexpected experience with these unfair asset forfeiture laws you do need to reform.

## **I. Why *Me*?**

In June of 1990, I was named personal representative for the estate of one of our clients who had died of cancer. The estate had a value of approximately \$900,000, the main assets being securities and two pieces of real estate -- a house in New York state and one in Fort Lauderdale.

In the Fall of 1990, I received a call from one of the beneficiaries who was staying at the house in Florida. He said he had returned home to find that the house had been seized by Federal Marshals.

Upon inquiry, we were informed that some "confidential informant" who was in prison, had stated that the decedent had told him that he had received \$10,000 for allowing a boat to unload drugs at the Fort Lauderdale property in 1988. In short, an unnamed person in prison told an unnamed government agent that an unnamed vessel was used by unnamed persons to offload cocaine at the home of the decedent, George Gerhardt, on an unspecified date in December, 1988. It was also claimed that he had received \$10,000 from an unnamed person for the use of his property. On these vaguest of "facts" alone, the house had been "seized."

## **II. Meeting "Asset Forfeiture"**

We were referred to Marc Gold, a local attorney (now a judge) who had prior experience with this type of case. He explained to me and the beneficiaries that we could choose to forfeit the house or to file and pursue a case against the government. But he explained that under the unusual laws in this area known as "asset forfeiture": "the cards have always been stacked in favor of the government, no matter how innocent the claimant." Accordingly, he counseled us that if we chose to file and pursue a case, *we -- not the government* -- would have to prove that the government's charge was wrong. And our chances of doing so would be slim.

But none of us could see just abandoning a \$300,000 house when we knew the government had no good grounds whatsoever for taking it. Indeed, George Gerhardt was very much anti-drugs. He hated drugs.

So, we decided to try to get the house back.

## **III. Will and Ability to Fight Back?**

We found ourselves being required to *prove the negative*, that the now-dead Mr. Gerhardt had not known anything about drugs being off-loaded at his property. The government, on the other

hand, did not have to prove anything: not that their unnamed informant had in fact been told what he said he had been told; not that any drugs had ever been off-loaded at the property.

It took close to three years -- during which the government possessed and collected rent on the property it had taken -- before the case went to court. When it finally did, after a one-day non-jury trial, U.S. District Court Judge James C. Paine agreed that there was no reason to think that Mr. Gerhardt knew of any crime being committed on his property.

#### **IV. Through the Looking Glass**

More specific, as discovery went forward, we found the government refusing to provide any relevant information until they were finally placed under threat of judicial sanctions by the court.

It did not matter to the government that Mr. Gerhardt was dead and, obviously, could not defend himself. It did not matter that he was out of the country on vacation during a time when an acquaintance, unbeknownst to him, illegally used the property. It did not matter that *every testifying witness listed by the government* said that Mr. Gerhardt in fact had no knowledge of the incident; indeed, that any information regarding it was specifically and deliberately *kept from* him. Finally, it did not matter that all of his heirs were indisputably innocent and without knowledge of any wrongdoing.

It is impossible for me to adequately describe the full magnitude of government arrogance in this matter. But I want to at least note some of the low-lights of our three year travail with the government, left so unrestrained under existing laws:

► Our case was filed in September 1990 and was finally resolved in a court in August 1993. During this time, in addition to the costs and energies expended in waging the uphill, unfair legal fight against the government, a beneficiary of Mr. Gerhardt's will had been thrown out of the house by the Marshall Service Seizors, and the government collected thousands upon thousands of dollars in rent from various tenants obtained by the government.

► Even after the entry of the Final Judgment by U.S. District Court Judge Paine, the conduct of the government remained abusive. It took us an unreasonably long time to actually get the house back from the government. Indeed, the Court had to take the unusual step of imposing *sanctions* against the government in the amount of \$5,690.00.

#### **V. Why and What For?**

All of this wrongful havoc wreaked by the government, and on what basis? At trial, the government did not present one speck of hard evidence in support of the allegations contained in the complaint. And yet, as the Judge said on the record after our long-awaited one-day, non-jury trial:

"The law is slanted very heavy in favor of the Government [in forfeiture cases], and it seems to me that the people against whom their property is being forfeited are at a tremendous disadvantage. I wonder about the constitutionality of these laws. They have been held to be constitutional by appellate courts. I must say that I find it very hard to find for the Government in this case on the character of the evidence that has been put before us here. On the other hand, the statute is so strong for the Government, it is hard *not* to find for them as well."<sup>1</sup>

Fortunately, Judge Paine found the government seized the property of the Estate on such a lack of cause that he could rule in our favor, even under the current laws so "tremendously disadvantaging" the property owner, and of doubtful constitutionality.

## **VI. . . . But for the Grace of God . . . .**

Had Mr. Gerhardt been alive, he would have been evicted from his home, as his beneficiary later was. He would have been forced to face the costs of new housing and litigation just in order to fight the disadvantaged battle against the government to get his home back (that is, unless he simply bent to the arbitrary will and power of the government). Few people can afford to do this. And I have since discovered very few actually *have* done it.

In this case, we were lucky enough to have the cash available, backed by the Estate, to engage in the necessary long, unfair fight against the government's unsubstantiated claim. This protracted fight eventually cost the Estate more than \$40,000 in legal fees. In addition, we had to: hold back distributions from the beneficiaries; pay other costs associated with the trial; pay several years back real estate taxes -- left unpaid for three years by the government seizers -- once we *did* get the house back; as well as pay insurance for the time that the government held the house, as the government had not insured it. Further, when we finally won our case in court and the house was returned to the Estate, the person to whom the government had rented the house for \$2,000 per month refused to leave and refused to pay rent. We had to hire still another attorney and use additional time and money to have the government's wrongful, worthless tenant evicted.

## **VII. Conclusion: Very Important Reform Bill**

I feel that we were very fortunate to get the property back in this case and fortunate to have the means and the intestinal fortitude to withstand the long hard fight to get it back. But it does not seem right to me that the government should have the right to confiscate an innocent person's property based on nothing more than the hearsay claim of some unnamed person in prison on criminal charges, sure in the knowledge that the laws, time and money advantages are almost always so in the government's favor that most people will be unable to even start contesting the taking, let alone do so successfully.

I am not a lawyer. But I got a quick education in the abuses of these current laws as an unsuspecting CPA entrusted by a deceased client to take care of his Estate.

With that experience and with a CPA's training in reading the technical, I can see that the reform bill before this Committee would make several important improvements to the laws:

- ▶ It would put the burden of proof on the government, where I think Americans rightly expect it to be, and where it *should* be.
- ▶ It would make the government prove its burden by a "clear and convincing" legal standard -- a standard that certainly strikes me as appropriately commensurate with the gravity of the government's action, the taking of a citizen's property, even one's home or life savings.
- ▶ The bill says it would ensure that an innocent owner's interest in property cannot be forfeited by the government under any forfeiture law. This is important, so that in all cases (no matter *which* specific forfeiture law is invoked by the government), as in our case, a property owner who did not know of alleged conduct that would make a property subject to forfeiture will be protected under the law.
- ▶ This bill states that there would be important court supervision of the property during a contest with the government, so that a property owner would not be left homeless or rendered unable to make a living with his or her business, during the time the government has seized the property for whatever period of time before a final decision may be rendered by a court. Had Mr. Gerhardt been alive at the time of the government's actions in our case, he would have been left without his home (as his beneficiary actually was), *for three years*.
- ▶ *The time it took for our battle raises another point.* I understand this bill would ensure that courts make the government adhere to a reasonable timetable for commencing its litigation over seized property. That way, the government would no longer be allowed to drag these cases out for many months, or years -- all the while holding the house or other critical property of the individual so as to cripple the person's ability to live, let alone contest the government's perhaps wrongful actions.
- ▶ Finally -- and I think this is *extremely* important -- I understand the bill to provide for the appointment of an attorney for those who would otherwise not have the financial ability to hire one to help them in the complex fight against the government in one of these cases. We were extremely fortunate to have had the cash available to fight the long, unfair legal fight against the government in our case.

Thank you again Mr. Chairman for allowing me to speak to you and the Committee today. And I thank you and the other co-sponsors of this important bill. I do hope you get it passed into law as soon as possible.

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1. Trial Transcript, *United States v. One Parcel of Real Estate at 3241 N.W. 40<sup>th</sup> Court, Fort Lauderdale, Florida*, CIV-Paine, Case No. 90-6761 (S.D. Fla. Oct. 26, 1992), at page 32.

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Susan Davis is a partner in a small CPA firm in Fort Lauderdale, Florida, McMillan, Unruh and Davis. She received her B.A. from Wells College in Aurora, New York, and has been a certified C.P.A. practicing in the Fort Lauderdale area since 1980.

In June of 1990, she was named personal representative for the estate of one of her clients who had died of cancer, George Gerhardt. That Fall, part of the estate -- Mr. Gerhardt's Florida home -- was seized by the federal government based on a statement by a confidential informant in prison.

Ms. Davis fulfilled her duties to the estate by hiring a lawyer and pursuing a case against the government for wrongful forfeiture. Against the odds, unduly stacked in favor of the government in such cases: after three years and more than \$40,000 in legal costs to the Estate, Ms. Davis was finally able to regain the Florida home for the Estate.

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