

CATO INSTITUTE POLICY FORUM

GLOBAL MONEY, SOVEREIGNTY, AND PRIVACY

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Featuring:

Bradley Jansen, Legislative Director for Banking and
Monetary Affairs, Office of Representative Ron Paul (R-Tex.);

Dr. Muhammad Abdul Ghaffar, Ambassador of Bahrain;
Adrian Day, Editor, Adrian Day's Global Analyst; and
Bill Tucker, former Section Chief, Organized Crime
Narcotics Division, Federal Bureau of Investigation

The Cato Institute

F.A. Hayek Auditorium

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P R O C E E D I N G S

MR. LUCAS: Good morning. Welcome to the Cato Institute. I am very pleased that you could all make it here today for what I hope will be an interesting and spirited discussion about the global financial system.

My name is Aaron Lucas. I am an analyst at the Center for Trade Policy Studies here at Cato. Our goal at the Trade Center is to educate the public about the economic and moral benefits of free trade and, conversely, the costs of protectionism.

Now, protectionism does come in many forms and with many justifications; and some, at least a few, are much more valid than others. When we think of protectionism we do think mostly of tariffs or quotas applied to physical goods that go through Customs checkpoints. But protectionism can also be financial in nature. When the United States seeks to impose discriminatory regulations on foreign providers of financial services, that is also a form of protectionism.

In the case of anti-money-laundering legislation, I think that there may be reason to believe that the people being protected are actually U.S. tax collectors rather than U.S.

financial service providers. But that is another point that I will get back to in just a moment.

On the other hand, it is true that international criminals are real. They are out there. And they do sometimes take advantage of privacy protections that are intended to serve law-abiding citizens. And while I think that many of us in this room at least would be critical of efforts to enforce narcotics prohibition by chasing the proceeds of drugs transactions, we must also concede that not all financial crimes are tied to drugs. There are stolen car rings, terrorists, and child pornographers; in other words, people who commit real crimes against unwilling victims. They also engage in money-laundering.

So, there is obviously a balance to be struck somewhere. After all, we can certainly reduce incidents of, say, child abuse, by installing video surveillance cameras in every living room in America or we could cut school violence by strip-searching every child as they enter a school. But I would venture that most Americans would not be willing to live that way. We value our privacy and we insist that it be respected, even when that means that sometimes people will get away with crimes and other activities that we don't agree with.

We also believe that the government has the potential to abuse us and violate our rights, and that that is a danger often at least as great as the occasional criminal who might

escape punishment. This seems to hold especially true for financial privacy.

A recent Gallup survey conducted for the Institute for Health Freedom reported that a full 84 percent of Americans consider financial confidentiality very important, while another 11 percent consider it at least somewhat important. The concern for financial privacy outranked all other categories in the survey, including medical records, employment and educational history. So, it is obviously something that Americans at least say that they care about.

Democratic presidential candidate Al Gore has even called for an "electronic bill of rights." He says, "Privacy must be protected. You should have the right to choose whether your personal information is disclosed. You should have the right to know how, when and how much of that information is being used, and you should have the right to see it yourself to know if it is accurate."

Of course, unlike the original Bill of Rights, which was designed to protect citizens from abuses of power by their government, Mr. Gore's bill of rights would only apply to private users of information. But surely we can agree that, with its unique powers of law enforcement, government should not be permitted to completely disregard what we consider basic privacy principles.

With respect to money-laundering, we are left then with the following question: How do we balance a deep concern with financial privacy with the desire to catch increasingly sophisticated international criminals?

And what, if any, additional tools do U.S. law enforcement agencies need to do their jobs effectively?

Some members of Congress are clearly seeking to answer that question by granting broad new powers to enforcement agencies. Specifically, the International Counter Money-Laundering Act, H.R. 3886, that was introduced earlier this year, I think, would authorize the Treasury Department to impose conditions on U.S. banks that do business with foreign banks in what is known as "primary concern jurisdictions." It is otherwise known in common language as "bank havens."

A related bill, H.R. 4695, would have even authorized the U.S. to impose costly civil money-laundering penalties on foreign banks that participate, even unknowingly, in a laundering operation that occurs at least partially in the United States. Now, since a good chunk of the money-laundering that goes on internationally unfortunately does happen in this country that opens up foreign banks to quite a bit of legal liability.

Such measures have lawmakers in these targeted countries, often smaller countries, concerned that United States and other OECD countries are simply bullying them into lowering

their own financial privacy standards to meet U.S. and Western country preferences.

An even more troubling aspect, I would add, to the current counter-money-laundering proposals relates to tax competition. For example, H.R. 3886 would punish not only those countries that are allegedly facilitating financial crimes, but also those that offer "special tax or regulatory advantages."

Bahrain is in fact one of those countries on the OECD's list of harmful tax regimes. So, hopefully Ambassador Ghaffar, who is here with us today, will be able to speak a little bit more at least about this anti-tax competition angle during his remarks.

I should also note that Dan Mitchell, of the Heritage Foundation, I think he was signed up to be here today, has recently reduced an excellent backgrounder on the subject of international tax competition, which I urge you all to take a look at.

As of now, at least, it appears that most of the legislation dealing with counter-money-laundering efforts will escape a vote this session, but its supporters have vowed to bring it up again as soon as possible. So, I don't expect that these issues are going to go away any time soon.

Fortunately, we do have with us today a panel of experts that will be able to shed some light on these complex

issues. Before I introduce our speakers, however, I want to note with regret that Representative Ron Paul was unable to be with us today due to a last-minute family medical situation. From his position on the House Banking and Finance Committee, Representative Paul has been one of the most outspoken critics of U.S. counter money-laundering efforts and an articulate spokesman for the importance of personal financial privacy protection.

The good news, however, is that Bradley Jansen, a member of Representative Paul's staff, was able to fill in for him at the last minute. So, he will be speaking to us.

Joining Bradley on the panel is Ambassador Dr. Muhammad Abdul Ghaffar, of Bahrain; financial analyst and publisher Adrian Day; and finally, Bill Tucker, the former Section Chief of the Organized Crime Narcotics Division at the Federal Bureau of Investigation. I want to especially thank Bill for agreeing to join us at the last minute, in place of another speaker who had to cancel unexpectedly. I have asked Mr. Tucker to give us a little background on money-laundering and the scope of the activity as part of his remarks, so we will start with him.

Mr. Tucker served for 29 years as a special agent with the Federal Bureau of Investigation. During this period he was assigned to FBI offices around the country, including a three-and-a-half year tour as staff counsel in the FBI's Office of General Counsel. For the majority of his career, he

specialized in organized crime matters, focusing on the activities of the Cosa Nostra, Colombian cartels and the Asian triads. In 1994, he was appointed to the Senior Executive Service and selected by the Directors of the FBI and CIA to lead the first joint international organized crime program undertaken by those agencies.

He retired in 1997 and is currently practicing law and providing consulting services to the Department of State and U.S. intelligence community through a firm, Professional Risk Management, which he co-founded. Mr. Tucker holds a B.A. in philosophy from St. Joseph's College and a M.A. in criminal justice from the George Washington University and a J.D. from the Potomac School of Law.

BILL TUCKER, FORMER SECTION CHIEF,
ORGANIZED CRIME NARCOTICS DIVISION,
FEDERAL BUREAU OF INVESTIGATION

MR. TUCKER: Thank you very much, Aaron. Thank you for your kind remarks.

Let me begin by explaining that I am not a banker. I am not an economist. I am not an academic. I come from the rough and tumble world of law enforcement. It is an arena where cynicism reigns in the proximity to deviance, evil, and

malefactors really sort of twist one's optic. It is difficult at times to see things in a balanced way when you are that close to some of these characters. And it is profession where skepticism is probably your greatest ally. That is my bias. That is my optic.

I am not here to go through a line-by-line defense of H.R. 3886. I will leave that to others. It is really an expansion of the existing legislative scheme that the U.S. Congress has established through the Bank Secrecy Act and other legislation.

I did have the opportunity, though, to view the Cato Institute's Web site for the first time when I got word that I was coming here. I noted that there is a strong anti-drug law enforcement theme in their policy and legislative initiatives.

In fact, I must say that oft-times when I was at the FBI, I, too, would agree that it was time to disband the DEA, but it was for other reasons.

(Laughter.)

MR. TUCKER: I must say, I do share many of the libertarian ideas that the Cato Institute stands for.

I think that many of you here may also become quite upset when we see the United States Congress acting more like a city council or a board of supervisors or a school board, rather than a national legislature. But, be that as it may, liberty

only exists where there is order. Liberty does not exist where there is chaos. And order comes with rules.

Again, rather than go through H.R. 3886 and provide a defense for it, I would rather speak to you about my views, not the Department of Justice's views but my views, on international organized crime, its corrosive effect on governments, markets and people. And let me tell you that money-laundering is the engine, it is the grease; it is what makes international crime function. Without it, it would be in really bad shape.

Specifically, I would like to talk about transnational crime. As Aaron said, I did have the opportunity to work in this area towards the end of my career. As a young agent here in Washington, D.C., in fact, not very far from this building -- and this was in 1972 -- I received a call from the editor of the then Washington African-American, a newspaper that had been in this town for many years. Unfortunately, I believe it is no longer published.

The editor said he wanted to speak to an agent. Myself and my partner went up there. We were met not only by the editor but by a gentleman and his son. This individual had determined that his son had a large amount of money, and he knew his son didn't come by it honestly. In fact, it was \$55,000 in a duffle bag. I was amazed at that much money. I had never seen that much money before in my life.

And it became a true pain. We must have counted it five to 10 different times, until our hands were green and we couldn't get a count. Finally, somebody said, "You know, you ought to take it to a bank."

Well, I tell that story because, in 1990, when I was in the Houston division of the FBI, as the Assistant Agent in Charge, it was not uncommon for the agents working for me to walk into the office with \$500,000 per week. Houston was awash in drug money. And it was that drug money which made things operate.

We got to the point where we were watching the U-Haul Company, not because U-Haul was doing anything wrong, but U-Haul boxes were the strongest boxes known to man. The drug dealers would go to U-Haul and buy their boxes. So, if you saw some people just pulling up in a nice Mercedes or some other fancy automobile and walking out with a lot of boxes, that was a clue.

Eventually, the transporting of drugs across State lines, in fact through Congressman Paul's jurisdiction down through the east coast of Texas and across the Mexican border, became too hazardous. U.S. law enforcement's antenna was up and we were looking for these people. At one point, the agents on my squad seized \$12 million in a van. They found out that the night before that an additional \$6 million had been taken off and sent

off in another direction -- an \$18 million grab of cash -- unheard of.

Well, the money-launderers are no fools. They quickly adapted. And now we have what is popularly known as the black market peso exchange. The money that is in the United States is now turned over to brokers. The brokers live in Colombia. They will buy the money from the drug dealers. Their job is to get the money into the U.S. banking system. And then they turn around and sell that money to other Colombian businessmen who want to do business in the United States.

There was an article recently in the Washington Post, Tuesday, August 29th, and I will read a portion for those of you who may not have seen this:

"Bogota, Columbia. Early this month, a \$1.5 million Bell helicopter was tracked by Colombia-based U.S. Customs agents from here to Panama, where it was seized by local authorities acting at the U.S. request. The helicopter was a seven-seat Bell-407. It had been purchased in 1986 by a Colombian multi-millionaire with laundered drug money, according to the U.S. Customs and Justice Department."

In the Bell case, there were 31 deposits to Bell, none of which came from the buyer. It was all money that had been spread around the United States and the brokers were funneling the money to the buyer at the request of the drug trafficker.

A very neat system. No longer were they buying those boxes at U-Haul and carrying large amounts of cash across the U.S.-Mexican border. Now they have developed their own sophisticated system for getting this money out of the United States and back into the business world.

Transnational crime, what is it? Well, it is four things: It is transnational. The fall of communism and the dissolution of the Soviet Union, the collapse of the Berlin Wall, were great, great things for freedom and democracy. They also provided a unique opportunity for criminals who had survived well under corrupt communist regimes to spread out into the free world.

International organized crime is organized. One only has to look at the example of the black market peso exchange to see how well organized, how these criminals have taken advantage of the banking system, of telecommunication, of transportation networks. It is for profit.

Unlike the most recent case -- I don't know if you followed it -- in Charlotte, where a group has been accused of being involved of raising money for terrorist groups by importing cigarettes more cheaply from the State of North Carolina and selling it in Detroit. That is an example of crime, but yet they are not for profit; that is for a cause.

The international criminal is only out for money. The tools they use -- violence -- I think that is most clearly illustrated in those pictures from Sierra Leone of the rebels, who are supporting themselves from the illicit diamond trade. And their trademark is chopping the hands off of children. The murders of journalists, not only in Russia, but also in Ireland. A journalist who was exposing organized crime was killed last year.

Corruption: Corruption is probably their most effective tool, along with money-laundering. They are buying off officials. It is not unknown in this country, but it is held in check by a strict set of rules and laws. Elsewhere it is known in the Latin-speaking world as "mordita"; as "baksheesh," is that correct, Ambassador?

AMBASSADOR GHAFAR: Baksheesh.

MR. TUCKER: Baksheesh in the Middle East, and "increesha" in Russia and in the former Soviet Union. It destroys faith in governments, and it undermines the rule of law.

Money-laundering is what is making these international criminals operate, and our country needs a very strong regime to oppose the money-laundering.

The Bank of New York case, which was really the genesis for H.R. 3886, a case of corruption. You had individuals in the bank easily corrupted. In that case, it was two wives who were

bank employees, opening accounts for their husbands who owned businesses in Russia and funneling, I think at one point, \$7.5 billion in a short period of time through the Bank of New York, one of this Nation's oldest and most venerable banking institutions, founded by none other than Alexander Hamilton.

What is the answer to all this? Well, not only is the answer stricter regulation of money-laundering, but there is another answer, and it is starting to come to the fore. Many nations are recognizing that these international criminals are traveling around and posing as legitimate businessmen. And nations are reacting to that.

In this country, we have restricted many of these people who wanted to come here, and are just turning them back. I guess the program is best described as visa denial or, the flip side of it, is turning the international criminal, who likes to think of himself as a businessman, into an international pariah.

Switzerland has been very active in this. And recently, of all places, the Bulgarians have got some starch in their back, and they are turning people away. Hopefully the international community will respond in like manner and turn their backs on these individuals, isolate them and, by restricting their movement, restrict their ability to spread their criminal activities.

I am not going to go on. I think we will save it for the Q&A at the end. Is that correct, Aaron? I will turn it over.

(Applause.)

MR. LUCAS: Thank you very much.

Our next speaker is Brad Jansen. Bradley is Representative Ron Paul's Legislative Director for Banking and Monetary Affairs. He initiated and led opposition to last year's failed FDIC "Know Your Customer" rule, and has been actively involved in opposing global "Know Your Customer" legislation this year.

He covers a range of other issues for Representative Paul, including financial modernization, civil asset forfeiture, bankruptcy, financial privacy, corporate welfare, insurance, and on and on into other regulatory issues.

He holds a B.A. in international studies from Miami University in Oxford, Ohio, and has also studied in South America, Chile, and some other universities that I won't even begin to pronounce their names. So, I will just turn it over right now to Brad Jansen.

(Applause.)

BRADLEY JANSEN, LEGISLATIVE DIRECTOR FOR BANKING AND
MONETARY AFFAIRS, OFFICE OF REPRESENTATIVE RON PAUL (R-TEX.)

MR. JANSEN: I want to start off by thanking Aaron and everyone at the Cato Institute for putting this together. It is an important topic, and we need more debate on this to find out where our common ground is and where we still disagree.

I also want to apologize for Dr. Paul's absence. His wife, Carol, had emergency surgery and he is at her side in the hospital in Texas. I did want everyone to know that she is doing well and everything is expected to be fine, but we had a little scare for a while.

I want to start off first by commenting on some of the remarks of the previous speaker. Citing personal bias, again, part of my job as a legislative staffer for Congressman Paul, I go down to the District and I visit with the bankers in our district and listen to their concerns and complaints. Unsolicited, I have gotten complaints about the Bank Secrecy Act, compliance and problems, at every meeting I have had with the bankers.

Our district is a rural district. It is 22 counties. It is mostly community banks. And I kind of explain what is going on in Congress and then open it up for questions. Even before "Know Your Customer" became an issue, even before money-laundering became as high a priority in the legislative arena, it never failed that one of the bankers would bring up

problems with the regulatory burden, compliance and many other issues involving the Bank Secrecy Act.

So, my personal experience has been that it doesn't work, that the bankers have complained that there is very little feedback that any of the information that they are giving to law enforcement is of any use to law enforcement. The regulatory burden is severe and, for community banks especially, disproportionately hard for them to comply.

Most recently, just over the August recess, I spent a couple of weeks dealing with an emergency situation for one of the bankers, where it's a small, start-up community bank to handle some of the agricultural loans that the larger banks wouldn't take. It is in Matagorda County, an agricultural area of our district.

A woman walked out of the bank so offended by the intrusiveness of the questions that were mandated by the Bank Secrecy Act Currency Transaction Report forms -- and this is not even the more intrusive Suspicious Activity Reports -- she walked out of the bank, threatening to close personal and corporate accounts because of the privacy violations that she felt.

The bank called us. They called the regulators. They got conflicting responses. They called us in D.C., because they knew that we were more knowledgeable on this question and that we had been very helpful to them in the past.

And this is the president and CEO of a bank who is calling me. He understands this. He has spent a lot of money on training and compliance for his employees, and he thought that, for all of the burden that he has gotten and for all of the work that he has done to comply with these, he shouldn't be losing customers because of it.

It was explained to him that what was required at his bank was a more onerous requirement for his community bank than it was for the local branch of a bank holding company. When he called Dallas, because one is regulated by the FDIC and the other by the Fed, they were given different answers. And this is to comply with the same law. There is not supposed to be any discrepancy. And in fact, if you call FinCen they will tell you that the law is the same and it applies to all of the financial institutions equally. This is what they lecture us here in Washington, D.C., and I think this is what most of the regulators in D.C. believe.

What actually happens in the field is very, very different. There was a difference in interpretation between the different regulatory agencies themselves and a difference of opinion between the Dallas Regional Branch and the D.C. branches, and a different opinion in some of the details entirely from FinCen, which was supposed to have been the final say.

Needless to say, for all of the benefits of competition that all of us here that believe in the free market like, the idea of customers being able to choose which bank they want by getting around money-laundering laws is not, I think, the approach that Bill Tucker and others in law enforcement are suggesting would be the best approach.

Because of that, I have to believe that even though there is a denial by a lot of the regulators and law enforcement officials that this is not a privacy issue, it is emphatically a privacy issue. When you have customers walking out of banks threatening to close personal and corporate accounts, this is a privacy issue.

Mr. Tucker talked about how it is undermining the rule of law and the safety and soundness, implicitly, in the financial system. These money-laundering laws undermine public confidence and public trust in the financial system. And it is the undermining of that public confidence that is threatening, in part, the safety and soundness of the institutions, especially at a time when they are as highly leveraged as they are today.

These are not concerns that I am trying to exaggerate the effects of, because obviously there are other parts of the economy that are doing well and the banks are offering great service to their customers. But when we are isolating out this particular regulation, we need to know that the net effect is a

detriment to the financial system itself, because it undermines the public confidence that the customers have in their institutions. And it is that public confidence that the banks rely on for their business.

We are jeopardizing this relationship for very little benefit for the banks, and even less benefit, I would argue, for law enforcement itself. An argument is made by some of the regulators that the profiling monitoring is to the benefit of the customers and also to protect the financial system. They use the analogy of credit card companies monitoring your Visa transactions to detect fraud.

I lived in Adams-Morgan for a while and had a credit card stolen from my mailbox. It was a new card so I didn't know that it had arrived yet. They ran up over \$8,000 in charges over eight days. And I got a call from the Visa company saying, we suspect that there is something wrong going on. It was a great deal of paperwork getting it corrected, but I was not liable for any of that, and it was to the benefit of me that they were able to cancel the card before there were further charges incurred.

This is something that financial institutions are doing to protect their customers and to build and maintain that public confidence. When the banks are deputized as law enforcement agents to do police work for law enforcement against their customers, this analogy does not hold.

The profiling of customers, as mandated by the Bank Secrecy Act, which the compliance manual of the Fed for the Bank Secrecy Act still requires, it still requires them to look for a "Know Your Customer" policy, which has been explained as a couple of things. The banks need to identify their customers which most of us would want the banks to do, though it did impose a new regulatory burden on that; to determine the source of funds for transactions; and to determine a profile of their "regular and expected transactions."

That profile was determined not by that individual customer's personal banking history, but by what regulators determined that profile should be based on that individual's geography and income and other characteristics. Anything violating that profile of regular and expected transactions would have required the banks to fill out a Suspicious Activity Report meant as an indicator to law enforcement that this had "no obvious lawful purpose." I believe that is the phrase.

It is these types of questions that are undermining the public confidence that the customers have in their banks. I would argue that there is very little benefit to law enforcement with these.

Larry Lindsay was here at the Cato Institute last time on money-laundering and gave a long list of figures that he had gotten from the Justice Department. I won't go through all of

the numbers since he has already done them, but what it boiled down to is less than one-1,000th of one percent of the forms mandated by the Bank Secrecy Act are ever even used in an investigation.

Of the thousands of investigations that are pursued by law enforcement, the conviction rate is very, very small. What this means is that 99.999 percent of the forms that are filed by the banks against their customers, violating their privacy expectations, are reports filed on law-abiding citizens going about their regular financial transactions.

The TRACH, the Transactional Records Access Clearinghouse, filed a Freedom of Information request and got updated information from the Department of Justice. Since the implementation of the Suspicious Activity Reports in 1986, they have been tracking the number of forms and how useful they are. What they have found is that the number of money-laundering charges fell by 20 percent in the four-year period after the adoption of the last round of forms in 1994.

Law enforcement is requiring more and more forms with less and less utility for law enforcement. There is a new bill out. We have dubbed it the Global Know Your Customer Bill, H.R. 3886, which, in addition to all the privacy violating aspects that we would expect for the anti-money-laundering campaign, it

gave a great deal of discretion to the executive branch against the legislative branch.

The Secretary of the Treasury, at his own personal discretion, can make new requirements on financial institutions; can prohibit whole classes of international transactions. He could prohibit all international financial transactions with certain institutions or prohibit all international financial transactions with certain countries.

I would argue that the lack of probable cause and other Common Law and constitutional expectations of privacy, voluntary exchange and free markets, are not well served by this approach.

In the Bank of New York case that he cited, there are good indications that a lot of the money that was laundered was from the IMF. What we need here is "Know Your Customer" for government employees, not private citizens. In the Bank of New York case, no Suspicious Activity Reports were filed until after they were notified by the FBI that these accounts were under investigation.

The Bank Secrecy Act forms do not work for law enforcement. The FBI did not initiate its investigation into the Bank of New York until they were asked to do so, and there was a delay of many, many months by law enforcement in Britain investigating a criminal kidnapping case.

In the Aldrich Ames case we had a double agent working for the United States Government, who was on the take for the Soviet Union depositing, routinely, amounts into his checking account far beyond what he should have earned in his salary at the CIA. Suspicious Activity Reports were filed in this case repeatedly. These SAR's initiated no investigation into Mr. Ames.

For those of us who believe in privacy, limited government, the rule of law, and prosperity through free trade, there is hope in this multilateral attack on financial privacy. If the United Nations and the other multilaterals are as successful in their war on bank secrecy as the U.N. is at keeping the peace and the IMF is at preventing financial crises, I think our financial privacy, globally, is going to be pretty well secure for a while.

In conclusion, I would urge that we recognize Common Law expectations of privacy. And there is an interesting note here that when Congress passed the Graham-Leach-Bliley Act, they added, for the first time in Federal statute, an explicit Federal expectation of privacy rights. These privacy rights may help close some of the premises by which two Supreme Court cases enabled the money-laundering statutes, California Bankers Association v. Saltz and United States v. Miller. In these cases they found that you didn't have a right to your 4th Amendment

protections for the records that the banks kept on you, even if they were mandated by the government. And these were done by two different exceptions to the Common Law expectations.

Graham-Leach-Bliley may have closed some of those loopholes by which law enforcement has been able to do this. And it will be interesting to see if this statute has given individuals standing to challenge the constitutionality of the money-laundering laws against their 4th Amendment protections which the Supreme Court rules they had not had previously. So, we look forward to some interesting developments and unintended consequences of the law as we proceed.

Thanks.

(Applause.)

MR. LUCAS: Well, of course, 4th Amendment protections don't apply to customers at foreign banks, so that is an entirely different issue, the international side of this. And hopefully we will hear a little bit about that from our next speaker. But, first, I have just been handed this, to demonstrate that these issues are very much alive.

Someone at the ACLU, I guess they were aware of this forum, called and asked if we would announce that right now a piece of legislation just passed the Senate, S.2314, and it is possibly moving in the House. According to this anonymous source at the ACLU, the legislation would allow the government to use an

administrative subpoena, no judge, no probable cause required, against fugitives -- which could be broadly defined -- to get personal records, including bank and phone records. And it includes a delayed notice provisions, which allows the government months before informing the fugitive of the search. So, these issues are very much alive and moving in Congress as we speak.

Our next speaker is Ambassador Dr. Muhammad Abdul Ghaffar. Dr. Ghaffar has served as the Ambassador of Bahrain to the United States since 1994. He has also served as nonresident Ambassador to Canada since 1996 and to Argentina since 1998. Before that, he served as the Ambassador-Permanent Representative of the State of Bahrain to the United Nations.

Dr. Ghaffar also worked at the Embassy of Bahrain in Jordan during the late 1970's, and at the U.N. in the early 1980's.

During his time at the Ministry of Foreign Affairs in Bahrain, he worked on a range of issues, including economics, development, and international affairs.

Dr. Ghaffar received his B.A. in political science from Punha University in India, his M.A. from the New School of Social Research in New York, and his Ph.D. from the State University of New York, in Binghamton.

DR. MUHAMMAD ABDUL GHAFFAR,
AMBASSADOR OF BAHRAIN

AMBASSADOR GHAFFAR: Thank you very much.

Good morning, ladies and gentlemen. It is a pleasure for me to be here today. I would like to personally thank Mr. Aaron Lucas and the Cato Institute for giving me this valuable opportunity to speak to you.

As none of the panelists are running for any office, we can speak openly, because there are no people to ask us tough questions in this election season in the United States.

The topic of discussion in this forum, namely Global Money, Sovereignty, and Privacy, has increasingly become a significant issue for the international community as the nation-state system have entered an era of globalization. An old saying states that money knows no fatherland. Historically, the world economy has gone through significant transformations in the last three decades. In the 1970's it was characterized as international, and thereafter it was popularly known as transnational, and now, heading into the 21st Century, the world economy has been referred to as the global economy.

As a matter of fact, the movement of global money, a major component of the global economy, plays a critical role in shaping it. It is now apparent that the money and fiscal

policies of sovereign countries are increasingly influenced by the mechanisms of the movements within a global money system.

Thus, given the independent nature of the flow of money, which is almost autonomous and uncontrollable, it has been more and more difficult for governments to cope with this new phenomenon in the global economy. We have entered an era in which global money has gone beyond the control of any individual nation-state. The new technologies of the information revolution and digital money are enabling the development of financial markets and procedures to contract services on a completely new and innovative level.

All of these trends lead some people to think that the very concept of the sovereign nation-state is at stake and may face demise. It has been clear for some time that the nation-state has gradually began losing its fiscal and monetary sovereignty. But history shows that the nation-state has always demonstrated flexibility and resilience in its ability to adapt itself to new circumstances and environments.

As many of you may know, the well-known French lawyer and political thinker, Jean Bodin, who lived in the 16th Century, coined the term "sovereignty." Bodin considered the control of money, credit and fiscal policy as one of the three mainstays of the sovereign nation-state.

Throughout the last two centuries, the concept of the demise of the nation-state has been discussed by a number of political thinkers and philosophers. For example, Immanuel Kant, in his famous 1795 pamphlet, "Perpetual Peace," raised the idea of the decline of the nation-state.

Karl Marx, in his book, "The Withering Away of the State," also believed in the demise of the nation-state. In our time, some writers speak about the sovereign individual to be dominant and not sovereign nation-states.

It is apparent that the nation-state has historically survived some dramatic changes through world history. So it will survive the era of globalization and the information revolution.

But the global money mechanism knows no borders, unlike the borders that define the sovereignty of nation-states. So, at this juncture of history we need to reach a consensus on how we can bring the interests of nation-states and of the global economy, including global money, to a point that would prevent those people who want to take advantage of it and commit financial crimes.

Out of all these developments, we face problems with some individuals or organized groups who are involved in money-laundering. The money-laundering problem is an international phenomenon, as are other issues we are facing and

dealing with globally, such as the environment, terrorism, and the problems of international trade.

Money-laundering is internationally recognized as criminal activity; however, it differs from terrorism and the environment in that there is no unilateral international consensus on how to deal with it. It is my view that we need to concentrate on finding a resolution to this problem.

The Organization for Economic Cooperation and Development, OECD, already has in place the Financial Action Task Force on Money-Laundering. Several regional groups, such as the Gulf Corporation Council, of which Bahrain is a member, starting cooperating with that task force in the effort to fight money-laundering.

Now the question is how a nation-state can face the serious challenges emanating from the movement of global money. Can a nation-state meet these challenges individually, by taking measures on a national level, or should we, rather, work on a regional and international level?

It is clear that the international community agrees on the criminal nature of money-laundering. But there are various views on how to combat this criminal phenomenon. Therefore, it is extremely important that governments engage themselves in candid debate on how to best face this money-laundering problem collectively.

We have to launch a serious diplomatic discussion in order to work together. And I am confident that the --

[End of side A. Begin Side B.]

AMBASSADOR GHAFAR: -- effort will be positive. For us in Bahrain, it is extremely important to cooperate with any such effort.

In our recent history, Bahrain has moved from a traditionally based economy to a modern economy. The discovery of oil in 1932 by American expertise helped finance Bahrain's initial economic development. Yet, in the planning for our future, Bahrain has realized the importance and necessity of having a diverse economy and, as such, has embarked from 1970 onwards on the path of modernizing its infrastructure.

It was extremely important for Bahrain to build a solid basis for our banking system. We readily refer to financial experts and institutions from these countries in order to meet financial standards, mainly the United States of America, Britain and some other Western European countries.

Today, Bahrain has become an exemplary model of a country which has made itself a financial hub for the region, and maintains monetary and financial stability. According to the 2000 Index of Economic Freedom, published by the Heritage Foundation, Bahrain is ranked number one as the economically

freest country in the Middle East and the fourth freest economy in the world.

With few barriers to trade, Bahrain has virtually no black market. In terms of size, Bahrain is host to 180 financial institutions and more than 100 insurance companies. The very strength of Bahrain's financial sector is drawn from the competency of the local monetary authority, the Bahrain Monetary Agency. The agency itself is responsible for the licensing, supervision and regulation of banks and financial institutions.

Moreover, the agency has worked steadily within a clearly defined regulatory and supervisory framework, which is consistent with the highest international standards. For instance, Bahrain was one of the first countries outside the G-10 to apply the Bank for International Settlements' 8 percent capital adequacy ratio.

Given all this, we have to take into consideration that there are many other small countries, especially small island developing nations, whose economies depend heavily upon their financial and investment sector.

Recently I attended the United Nation's Millennium Summit in New York. And I listened attentively to the speeches of the leaders of the small island developing countries, especially those which are considered by the OECD as tax havens. Generally speaking, they expressed dissatisfaction with the OECD,

which wants to impose its own set of standards for taxation on others.

Many of these small island countries asserted their concerns on this subject and emphasized that some larger developed economies, or nations, are attempting to bypass the principles of international law and national sovereignty. Small nations have arrived to attract foreign capital, and it is justifiable that they compete in this matter.

The larger and more developed nations should take into consideration the disadvantaged position of the smaller countries' economies, especially island developing countries. It is extremely dangerous to impose such regulatory pressures from powerful countries onto smaller developing nations.

Instead, we should aim to resolve this issue in a multilateral forum. We need to ask ourselves, what is more effective, to allow national governments to enact laws and regulations on taxation and then impose them on foreign countries, or to approach this problem with a collective international effort?

As I mentioned earlier, the global economy is shaped by the flow of money. Therefore, it warrants a real international effort to deal with problems related to this. It is time for the international community to jointly launch a concerted effort to

combat difficulties arising from global money and other problems facing our global economy.

Thank you very much.

(Applause.)

MR. LUCAS: We will move very quickly to our next speaker. Bill has to leave at 12:15. I want him to have time for at least a little of the Q&A, so I will move right ahead.

Adrian Day is our last speaker on the panel today. He is a British-born money manager and writer, now living in the United States, who has made a name for himself searching for unusual investment opportunities around the world. He is an honors graduate from the London School of Economics and a pioneer in global investing as well as the author of several books on the subject.

He manages money through his SEC-registered firm, Global Strategic Management, with both global and gold accounts, and publishes his own premier fax and e-mail service, Adrian Day's Global Analyst. He is a Fellow at the Offshore Institute, as well as a member of the International Tax Planning Association.

Please help me welcome Adrian Day.

(Applause.)

ADRIAN DAY, EDITOR, ADRIAN DAY'S GLOBAL ANALYST

MR. DAY: Thank you very much, Aaron. Thank you, ladies and gentlemen.

As was mentioned in my introduction, I am primarily an investment advisor, and that is the focus with which I look at most of these topics. But I realize most people in this room are not so much interested in that as they are interested in the policy aspects as they regard sovereignty, as they regard privacy. I am not going to get into a lot of details of the various rules like other speakers, but rather talk in a more general sense about some of the effects of these various rules.

The 20th century order of exchange controls is mostly over. And for a couple of decades, we had a period of global movement of money, which was mostly free. But, increasingly, we are seeing more restrictions on the movement of money. One principle that is fairly clear, I think, is that if a government wishes to encourage money to come into a country, it must also allow that money to leave, and to leave freely without restrictions.

But, of course, this opens up a whole lot of various issues that have law enforcement as well as moral and practical implications. Part of my talk this morning will focus on some of

these practical implications, although I personally think the moral implications are more important.

And I am going to talk primarily on the U.S. restrictions that we have seen. U.S. restrictions and taxes on offshore money frequently -- in fact, I would say typically -- backfire. They don't solve the problem. They don't achieve the purpose for which they were introduced. But, in addition, they add little revenue. They add regulatory burdens. They annoy other countries. And they frequently force more money into the black economy.

And I will give a couple of recent examples of this, if I may. The infamous exit tax on U.S. persons who wanted to leave the country and give up their citizenship. In my view, that is the financial equivalent of the Berlin Wall. And it is more typical of a country like Soviet Russia or Nazi Germany or, indeed, apartheid South Africa, all of which had similar rules. It is morally wrong. But let's not focus on the morality for the time being.

Now, of course, these rules came about because of the U.S. taxation regime, which taxes U.S. citizens and residents -- or U.S. persons, I should say -- it taxes U.S. persons on their worldwide income, regardless of where they live. Very few countries in the world have regimes that are as all-encompassing as that. But it has implications, practical implications.

I will give the example of the Hong Kong Chinese in the period leading up to the handover of Hong Kong to China. Many countries introduced special schemes to attract these Hong Kong Chinese people, who were considered wealthy, entrepreneurial and so on. Many small countries in the Caribbean and Asia, as well as the United States and Canada, introduced schemes to attract these people. I use "scheme" in the British sense, which is a positive thing as opposed to the American sense, which tends to be criminal or nefarious.

Now, in the U.S., Hong Kong Chinese could obtain green cards on an expedited basis for a limited investment. But having a green card obligated these people to pay U.S. taxes on their worldwide income on a permanent basis. And if they revoked the green card at a future date, they were obligated to pay a tax penalty on their U.S. assets.

Now, is it any surprise, therefore, that not a single Hong Kong person -- not a single Hong Kong person -- faced with the threat of China taking over Hong Kong and all the concerns that that raised at that time, is it a surprise that not a single Hong Kong person chose to obtain U.S. residency?

Thousands obtained Canadian, Bermudian, Anguilan, Dominican residency, with all the inward investment that that involved.

A second quick example concerns foreign annuities. For a long time, and traditionally, foreign annuity policies have received the same tax treatment as domestic annuities. No tax or reporting on the buildup until the holder annuitizes and starts receiving the annuity back.

Now, a lot of U.S. people put money into foreign annuities because they were concerned about the dollar, but also some put it into foreign annuities because of some vague concern about the U.S. Government and future confiscatory taxation and so on. Having a foreign annuity allowed a person to maintain options, to have money offshore privately, legally, but still have options. And I can assure you that the vast majority of people who put their money into foreign annuities would report and did report the income and pay tax when they annuitized it.

Now, there are new regulations that apparently -- and I won't get into this -- but apparently tax the buildup in the annuities. What that meant is that for thousands of U.S. people with money in offshore annuities, it meant that the decision had to be made now. Do I report it and pay tax on the buildup of my annuity right now or do I maintain the privacy of that particular investment?

I can also assure you that many, many people chose to ignore the new tax. But having made that decision, which last year was legal and this year apparently is heinous, having made

that decision, they are now set on a course. That money is permanently black.

The result? Less revenue for the U.S. Treasury, thousands of law-abiding, ordinary Americans set on a course of tax evasion, which is a road they did not intend to travel.

Now we see this new coordinated plan to eradicate tax havens. It is the desire of major countries, in my view, not only to stamp out drug activities and money-laundering, but also to control the activities of their own citizens abroad and to make it impossible for people to lower their taxes through offshore jurisdictions.

Again, getting back to an old example, in former days, many U.S. people had secret Swiss bank accounts, Austrian bank accounts and so on. They used to declare the income and pay taxes on the income in their foreign banks, but they didn't declare the existence of the account.

Now, as we know in recent years, the surveillance of offshore accounts has increased. The penalties for not reporting the existence of offshore accounts has increased, and many of these people have chosen to maintain the privacy of their offshore account and simply stop reporting the income. Again, the result was not the one desired. It was less income to the U.S. Government, and driving ordinary, honest people into the black economy.

As I say, now we have this multi-pronged attack on tax havens, and I will just run through them. In my mind, there are four distinct fronts in this war. There is the attack on money-laundering, headed by the Financial Action Task Force, which is a link to the OECD. It has now published a blacklist of countries that are uncooperative in dealing with money-laundering. These are not necessarily tax havens. They increase countries apart from Liechtenstein; they include countries like Russia and so on.

The second is an attack on tax havens themselves. The OECD has launched a well-publicized attack on so-called "tax competition." That is essentially aimed not at these money-launderers and drug lords, which is the target of the Financial Action Task Force attack, but this attack is aimed at countries that permit residents of second countries to bank and invest in their countries at low or sometimes no tax rates.

In my mind, this is the most invidious of all of the battles, because the victims are frequently not gangsters or criminals, and nor indeed are the tax havens themselves, in most cases, in any way encouraging immoral activity. This is much more a war, if you like, on mom and pop tax evaders and individuals who simply want privacy, as well as on the small countries that permit such activity.

High-tax countries, of course, don't like the fact that their citizens can put their money in tax havens in order to earn income tax free and maintain their privacy. But the truth is this has nothing to do with drug lords and kidnapers and so on. For many years, most tax havens have had very clear rules regarding the identification of new clients. New clients have to provide identification and, in most cases, have to inform the bank of the source of funds, if there is any question about it. But they don't pass that information on to the United States Government.

Most tax havens, most reputable tax havens, have fully cooperated in the investigations of illegally gotten funds. If there is evidence of money in a Cayman bank that came from a kidnapping or a bank robbery or an extortion, the Cayman Government will cooperate fully, for example. But most of these countries have also drawn a line at simple nonpayment of taxes.

Now, in my mind, in this particular battle, the OECD has managed to offend many tax havens, as the Ambassador just mentioned. It has given them a year to eliminate that privacy and two-tier tax regimes -- one tax for locals and one tax for offshore people -- or face some specified sanctions. The thought that the world community is going to impose sanctions on countries like Bermuda and Cayman and Bahamas because they maintain privacy is, in my view, quite astonishing. Most of

these countries' only offense is that the banks maintain the privacy of their clients, which is something that we all used to take for granted around the world.

The third prong in this attack is the convergence in Europe. I am not going to talk much about this because most people here are not from Europe. By convergence, I am talking about the move towards a single continent-wide system of taxes, withholdings, continent-wide exchange of information, and so on.

The main casualty of this so far has been that Austria, in a weak position because of having Heider's party in the government, Austria has agreed to abolish its famous anonymous passbook accounts. Now, the idea that some international drug baron from Colombia is going to use a passbook savings account in Austria to launder money is so preposterous when you say the words as not to even warrant detailed examination. But that is so far the only result of this. The result, of course, is that the Austrian people, who use these anonymous passbook accounts, are very upset about Europe, about the rest of Europe and the European Community.

Now, the fourth prong in this attack is the U.S. withholding initiative. Starting in January 2001, anyone, not just a U.S. person, but anyone with an account at a non-U.S. financial institution will be subject to a 31 percent U.S. tax on all income and all proceeds -- not gains, proceeds -- of any

sales from U.S. sources unless a bank is designated a qualified intermediary and the client has completed forms that show that they are subject to U.S. taxes or provide adequate proof to the U.S. Government that they are not subject to U.S. taxes.

For U.S. people, this is a simple thing. It means they either give up their privacy or they stop investing in U.S. securities. Now, I can tell you that the reaction of people using foreign banks has been mixed..

I manage a lot of accounts through Swiss and Austrian banks. And I can tell you that most people are refusing to sign these new forms. Many U.S. people with offshore accounts, as I mentioned earlier, already report their foreign holdings on their tax forms. But many of them resent the additional invasion of their privacy. Some are signing the new forms and some are not. And those who are not are deciding not to invest in U.S. securities anymore.

Remember, these people are doing nothing wrong, nothing morally wrong and nothing legally wrong. They have an offshore bank account; they want to maintain their privacy. But the net result of all of this is that a handful of U.S. accounts are being repatriated to the U.S., but even more offshore accounts are liquidating their U.S. investments.

Not a single individual has decided now that he is going to declare his offshore account where previously he did

not. So, in short, as we would expect, a lot of U.S. stocks will be sold, no additional revenue to the U.S. Government, and really, no reduction in privacy for those who put privacy as their main priority. But once again, the U.S. is driving more offshore money underground.

In conclusion, it seems to me that the U.S., who is the leader in this, but also many of the leading countries in Europe, seem to regard activities as very damaging and morally wrong if they are carried out by small, weak jurisdictions, but they are perfectly acceptable if they are carried out by world-class powers.

This is nothing less than fiscal colonialism, in the words of the Offshore Institute. There is also a certain degree of hypocrisy about this: the OECD and the IMF, which are tax-exempt themselves, telling other people that they ought to be more transparent and pay their taxes like good people.

Now, some countries roll over -- Bermuda is the most obvious case -- but at a rather a high cost domestically. Many smaller, independent states, however, may simply choose to become more belligerent. Panama's Minister of Economics, for example, recently said that his country is not in the world tax collection business, "nor are we in the international tax dispute settlement business."

I think that is a reflection of some of the anger and antagonism that is coming out of this drive. I think the very circumstances that the U.S. seeks to attack will be the result. When you think about it, when these countries are attacked by the U.S., they have really little incentive to cooperate other than fear, which is not a very good foreign policy.

Bermuda and Cayman have run very clean, as examples, very clean, highly regulated industries, highly sophisticated industries, for many, many years now. They have cooperated in drug cases, as I say, in things that we would regard as Common Law crimes. Yet, they have received no reward from the U.S. for doing so.

Many of these countries, indeed, attempted to build up respectable financial businesses to offset the drug business. The Bahamas is perhaps a good case of that. And now the U.S. is trying to destroy these financial businesses that have been the offset to the drug business.

So, in conclusion, we see many countries that will resent U.S. interference in their domestic policies. Money-launderers, of course, will not collapse and cave in. They will simply go to other locations. But a lot of U.S. money will simply go underground. So, the result is that we don't achieve what we are trying to achieve and these policies often backfire.

Thank you.

(Applause.)

MR. LUCAS: Thank you.

We will now take questions from the audience. I know Mr. Tucker has to leave in a moment. Do you have time for a few questions?

MR. TUCKER: Yes.

MR. LUCAS: We have a microphone that is going to be coming around. Just raise your hand and, when the mike comes to you, state your name and affiliation.

Are there any questions to start with?

QUESTION: Mr. Tucker, I would be interested in your reaction to some of the things that Mr. Day and the others have mentioned. In particular the distinction between either so-called "flight capital," or legal tax avoidance efforts and how they are getting trapped by so-called money-laundering rules versus the more legitimate focus of law enforcement on actual criminal actions that you are trying to crack down on.

Is there some way that law enforcement can properly distinguish between those and not require or not seek to have such onerous legislation that catches law-abiding activity, as well?

MR. TUCKER: I think I can only speak, really, from the Department of Justice perspective. The Treasury Department, as

you know, is the other branch of U.S. law enforcement and has much more of a regulatory function.

The Justice Department, primarily the Federal Bureau of Investigation, is a very small organization, with 11,000 Special Agents and a like number of support personnel. And not only the FBI, but other law enforcement agencies have to pick and choose. I think IRS is probably going to be far more concerned. The CID, the Criminal Investigative Division of the IRS, is going to be far more concerned with the regulations that have been mentioned here.

The FBI, the Drug Enforcement Administration, the U.S. Customs Service, they are after the major criminals, those who are doing the most damage. As far as the individuals who may come a cropper because of the very, very complicated tax schemes that are being proposed, I sympathize with them myself.

But as far as the law enforcement community is concerned, they are looking for the most significant criminals, where they can get the best return on the investment of their time and effort in eliminating major criminal groups.

QUESTION: Yes, but how do you react to the points made by Mr. Jansen that these Currency Transaction Reports and Suspicious Activity Reports are no help to law enforcement because they are used so infrequently? And, indeed, he cited

cases of Aldrich Ames and other cases, the Bank of New York case, in which these were of no help. Do you support these laws?

MR. TUCKER: The Suspicious Activity Reports, it has only been recently that the SAR's, the form 8300's, the CMIR's, and the CTR's, those are the four, I think, major resources they use. The CTR's are those which are filed when a financial transaction in excess of \$10,000 is performed. The CMIR refers to the taking of more than \$10,000 out of the United States, a form has to be filed. The 8300 is a purchase in excess of \$10,000 again. And, finally, the SAR's.

I think that, as a whole, those four documents are resources. They are online. I think they are maintained by the Treasury Department in Detroit now. I think they will be used more effectively as the law enforcement community develops a much more robust strategy to go after the money-laundering angle of international crime.

But let me share with you this. I was sitting here thinking about my first money-laundering case. It is a cautionary tale. And it involves some of the issues that we are talking about here. I was a member of the Organized Drug Task Force in Baltimore. It comprised various elements of the U.S. law enforcement community, the IRS Criminal Investigative Division, the Drug Enforcement Administration, the U.S. Marshals

Service, the Immigration and Naturalization Service, the FBI, and the U.S. Attorney's Office.

I was approached by an IRS agent, who asked me if the Bureau had any information on an individual. I said I would check. I called out to our office and immediately got a response. We had an anonymous letter in our files, indicating that this individual was a drug dealer. Nothing had been done about it. We get a lot of anonymous reports like that.

I asked the IRS agent, "Why were you interested?" Well, it seemed that this fellow was at a bank in Maryland and he wanted to draw out -- he had \$370,000 in cash, and he wanted two cashier's checks. And when he came to the point where he was asked to state his profession on the CTR, he asked the banker if he could use the phone to call his lawyer. In filling out the Currency Transaction Report under "employment," he put 5th Amendment. This got the banker's attention, and he called the IRS, and they called us.

A dog was brought out to the scene. He alerted on the money, indicating that the money had been close to narcotics. Eventually, we got a warrant. We seized the money, and he was eventually, through further investigation, was arrested for not only attempted money-laundering, but also for drug trafficking.

The odd part of the story is that the two checks that he had tried to negotiate, one was to the Internal Revenue

Service and the other was to the Maryland Bureau of Taxation. He was trying to get out of the drug business. So, you can run afoul of these statutes and regulations.

MR. LUCAS: Brad, did you want to respond to that?

MR. JANSEN: Yes. I found it odd that the two of us are both trying to uphold the rule of law, but we come to very opposite conclusions of money-laundering.

You talked about chaos versus order and that order coming with rules. Sitting in the Hayek Auditorium, I think it is important to point out the idea of spontaneous order out of chaos and how the rules that are being promoted here actually undermine the rule of law, where you have civil asset forfeiture.

The case that you gave on the helicopter -- they stole the property of a company. This is what it boils down to. They took the property of a company without actually convicting them of a crime. The owner of the helicopter lost his property without ever being charged with a crime, as far as I know. And this is the example that you are citing to uphold the rule of law.

MR. TUCKER: I would argue that the Bell Company was willfully blind.

MR. JANSEN: But what I am arguing is that there is a rule of law and we have a set of processes. And they can go to a court and they can, if they have probable cause, they can follow

the rule of law and do what you want to do. And I agree with that.

We think that banks should assist law enforcement, the financial industry, just like every other industry, but no more. That means if law enforcement has probable cause, they can get a warrant, and banks should comply, just the same as every other industry. There should be no special carve-outs undermining that public confidence.

Law enforcement now is -- well, on the global scene you have a small cartel of rich welfare states setting the rules and trying to impose it by naming and shaming other countries who had no voice in setting those laws. In the words of Premier Owen Arthur of Barbados, "Institutions of the developed world that have no authority under any treaty, convention, agreement or legal instrument known in international law are simply attempting to bend the course of developing countries to their will by the use of crude threats and stigmas."

In my mind, this is not furthering the rule of law. This is undermining it. These countries that had no voice in setting these rules are being forced to adopt policies such as "Know Your Customer," which is the cornerstone of the OECD policy, that has been rejected overwhelmingly by the American people here.

In addition to the States rights issues involved of whether it should be criminalized or not, we believe very clearly that this is not a Federal issue. And in fact, before the Bank Secrecy Act, many States had laws that were more tailored to their specific locations.

What may make sense legally for a money center bank in New York probably doesn't make a lot of sense to the rural community banks in our district. Yet, they are forced to follow the same laws. Not only that, the laws are enforced disproportionately more severely against the rural community banks than they are the larger institutions. And this is what we find in practice.

Real quickly, and this is a question to you, or two questions: One, there is a debate whether money-laundering laws started either in Russia or Nazi Germany. I am wondering if you can enlighten us on that and which one you see as a better model.

The second question, then, is that if we want to use banks as informants for the government against their customers, and there is now a push by law enforcement to use accountants and lawyers as informants against their customers for the government, how long will it be before we start using priests, as well?

MR. TUCKER: You forgot the question about when did I stop beating my wife.

(Laughter.)

MR. TUCKER: Again, obviously, each April 15th, I have my own views of the IRS and its rather very complicated scheme for taking money out of my accounts and putting it in the Federal Treasury. I am not here to in any way attempt to defend the IRS. The IRS has obviously been the subject of very severe criticism of late by both the public, by the Congress, and they seem to recognize that they have to change their ways.

But let me just finish up on the Bell helicopter. That Bell helicopter was not taken from the Bell Helicopter Corporation. They had the opportunity to post a bond and to contest the seizure in the U.S. district court.

Furthermore, that money did not belong to the Bell Helicopter people. That money, if in fact it is drug money, it is instantly forfeitable. It is the property of the U.S. Government. Forfeitable money cannot be used to buy anything. And that is what happened in that case.

MR. LUCAS: I want to get away from a debate here. I know you are going to have to take off.

MR. TUCKER: I do have to go. I was sort of a last minute replacement and I have another appointment. But I will take one more question.

MR. LUCAS: Fred Smith in the back, very quickly.

MR. SMITH: Fred Smith, CEI.

The broader topic on sovereignty and how it is or isn't being improved or harmed by the money-laundering laws is akin in a way to Federalism in the United States system. Nation-states or the States in the United States are free to impose good or bad regulations or taxes, but they bear the consequences. If the regulations and tax policy produce benefits, then they are better off. If they are excessive, then they suffer consequences; money flows to other States or, in the global system, to other places.

Governments obviously dislike competition. Capital flights from oppressive rules, whether those rules reflect civil rights violations like Nazi Germany or Indians in Fiji today, for example, or whether they reflect economic oppression, high taxes and excessive regulatory systems.

Should or do the laws of the world require nation-states to help nation-states that oppress their citizens economically or in a civil rights way enforce those laws? If I don't want to oppress citizens' civil rights or raise their taxes, why should I have any obligation under the moral rules to help a nation enforce their laws? It is extraterritoriality, it seems to me. That is the question.

MR. LUCAS: Bill, if you want to comment first, we will let you and then you can go ahead and take off.

MR. TUCKER: Obviously, there are very valid arguments. And we have heard some of them here from the panelists, wherein

the wealthy nations are imposing their will on nations with less clout. But when you read an article like this which appeared in the Washington Post last October, "Russians use tiny island to hide billions." In 1998, \$70 billion was transferred from Russian banks to accounts in banks chartered in the island of Nauru. Nauru is about a 13-mile-wide little island in the South Pacific. There has to be a balance there. Nauru is just using themselves as an opportunity for capital flight.

There are some estimates now that over \$500 billion has been leaking out of Russia in the last 10 years. There has to be a balance. With that, I do have to go. I do apologize to all of you. I would like to stay a little longer, but I've got to go.

MR. LUCAS: Thanks for joining us.

(Applause.)

MR. LUCAS: Would anyone else like to address Fred Smith's question?

(No response.)

MR. LUCAS: We will just open it up, then. Right up here in front.

QUESTION: This is a rather short question. Would 95 percent or maybe all of this evaporate if we legalized drugs? Is this the whole cause of all this problem?

MR. DAY: Well, let me just answer very briefly. Yes. As I sort of touched on right at the very beginning of this, all

of these things come about because of basic policies, whether it is confiscatory taxes or the war on drugs.

And if we were to have a more, sort of moral system, if you like, a more moral and libertarian system, where taxes were reasonable -- when tax rates are reasonable, people don't spend all their waking hours and spend thousands of dollars on accountants trying to escape them. Hong Kong, again, was a perfect example. People sort of willingly, if you like, pay their maximum 15 percent tax rate -- maximum 15 percent -- and get on with business. The same with drugs. I won't go into the whole thing, but yes, absolutely.

QUESTION: Ambassador, I would be interested if you can comment briefly on what has been the experience of bankers and financial institutions in Bahrain in dealing with U.S. and OECD law enforcement agencies. Has it been a harmonious cooperative relationship in general, or have there been demands placed on banks and financial institutions in Bahrain that have caused friction?

AMBASSADOR GHAFAR: Thank you for this interesting question. I think, as I mentioned in my remarks, that Bahrain was an island country and, in the early 1970's we started to diversify our economy and established a very important and solid banking system that was a very important component for our economy. So, from the very beginning, we started cooperating

with American organizations, American bankers, and also European bankers, including the OECD, in order to abide by the laws which are accepted, internationally speaking.

But what is happening now, and one of the topics that you are discussing, are countries or organizations like OECD are trying to impose their own type of rules and regulations on countries which are not breaking rules and regulations, internationally speaking. For example, if we take money-laundering, money-laundering, I think my government considers money-laundering as a criminal act. So, we try to do everything we can in order to avoid it.

But I think Bahrain and any other countries, they have the right to attract foreign investments and not to charge them a lot of taxes like some other countries do. And this is one of the reasons that many island developing countries are attracting investment.

I have to add also something, that Bahrain and the United States of America, last year we signed an agreement, which is called "The Protection of Investment Agreement." As Mr. Day said, if you bring your money to Bahrain, you also must be free to take it out when you wish to do that. Thank you.

MR. LUCAS: Way in the back.

MR. LOWMAN: Good afternoon. My name is Samuel Lowman. I am Deputy President of the Offshore Institute. I am a lawyer

practicing in Geneva, Switzerland. I am an American lawyer, but I have been practicing for the last 13 years outside the United States. I represent banks. I represent offshore jurisdictions. I represent high net worth individuals.

I am just commenting on Bahrain. The benefits you have there is clearly we know the source of the funds typically are oil-related. That is the type of money that would not have difficulty passing the "Know Your Customer" rules, just as a side note.

But what I would like to say, and I am an advocate for offshore jurisdictions -- or I would like to refer to them as offshore financial service centers -- what I think is offensive is oftentimes the gap between what is said and what is actually done. For instance, take for instance the anti-money-laundering laws. Who in the audience 10 years ago would have stood up and said, "No way; we don't want anything to combat drug money and we don't want anything to combat arms trades"? Because that is indeed how it was sold to the international financial service industry. "We want to combat drugs and we want to combat arms trades."

But look where we have gone from there. Now we are all the way into all serious crimes. And as His Excellency, I think referenced or at least suggested, laws are a reflection of a

nation's morals and their own internal sovereignty in terms of what they want to enact or not enact.

And what we find offensive is that the gap between where we started with the money-laundering laws and where we are now. Because, ladies and gentlemen, if you take the domestic legislation along the lines of the FTAF-40 recommendations, plus the mutual legal assistance treaties, you have no sovereignty among nations when it comes to financial affairs. In fact, you have a great deal of cooperation.

I am not suggesting maybe the ultimate conclusion is wrong, but the question is, did we know what we were getting into when we started that track?

Likewise, the FTAF, who would have ever thought the FTAF could put so much pressure on a country like Austria to the extent that they would change their passbook accounts? Was it ever intended to be a mechanism to do that?

Likewise, their shame list of the various different countries, who would have ever thought they would be put in the position to do that? It is a harmless list, but what happens? Immediately, important countries start to cut off relationships with those blacklisted countries. So, it has a big impact.

Was it intended to do that? Is that what we understood it to be when we began?

Likewise, take the qualified intermediary arrangement, which virtually nobody knows anything about, but it is probably going to be the biggest battlefield. And there we have a very big concern for the right to privacy.

If you have taken a look at what I refer to as the qualified intermediary agency arrangement -- because it is not an agreement; if anything, it is an adhesion contract -- it is given to these foreign banks and they are told to sign them. It is not a question of mutual assent or anything like this. But if you take a close look at it -- and, ladies and gentlemen, you take your typical foreign banker and ask them to read the agreement and all the intricacies and all the citations to the United States Code, they are completely lost. And I suspect a lot of American lawyers would be completely lost, as well.

But, most importantly, these foreign banks are entering into an agreement with an agency of the United States Government to hand over information. And there is a choice of law clause within that agreement that says that they have jurisdiction over the bank in the United States and the United States laws will control.

What about sovereignty? You know, Switzerland, with all of its criticism -- I'm sorry.

MR. LUCAS: I am going to have to cut you off in a second there, because we would like to have time for another question.

MR. LOWMAN: Well, I can cut off here.

MR. LUCAS: Well, how about that, did we know what we were getting into when these regulations were being sold to the public?

MR. DAY: I don't know that I can answer that we knew what we were getting into then, but I think we are seeing a reaction against it now. When the New York Times reported on the Danish rejection of the Euro, they quoted a lot of people who cited the treatment of the larger countries towards Austria, and they didn't want to be part of that and subject themselves to that. And that was the reason for many people voting no.

MALE VOICE: I can only agree with every single word that you said. But just to expand on a couple of things, if I may. One thing you mentioned is the sort of ethos of various countries. Different countries have different ethos. I think Switzerland and Austria, that we have mentioned, are good examples of where there is a very, very strong tradition in all parts of society for confidentiality. People just don't think that someone else's money is their business.

Now, in the U.S., we really don't have that ethos. I tell you, one of the most astonishing questions that was ever

asked of me -- and it was shortly after I came to the United States, I was at a cocktail party -- someone who had only just introduced themselves to me and started talking, I mentioned that I had just bought a house, and he asked me how much it was. I could have almost fallen on the floor. But now that I've been in America --

[End Side B. End of Transcript.]