

Statement
of

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before a hearing of the

Committee on Banking & Financial Services

U.S. House of Representatives

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Mr. Chairman and Members of the Committee:

For the last eight years I have served as legal counsel to two membership organizations, one domestic and one international, both of which have among their purposes providing information, contacts and advice concerning investments, asset protection, banking, tax savings and financial privacy. I appear today in my capacity as legal counsel to the Sovereign Society, Ltd., a Virgin Islands corporation, with headquarters at: 5 Catherine St. Waterford, Ireland, TEL: 353_51 844 068 FAX: 353_51 304 561. Web site: <http://www.sovereignsociety.com>

In recent years I have authored several books on offshore banking and related topics including *The Offshore Money Manual 2000*, published by The Sovereign Society in 1999 and the soon to be published *Complete Guide to Offshore Residency, Dual Citizenship and Second Passports*, also a Sovereign Society publication. Since 1995, I have also have served as editor and an author of the Oxford Club Wealth Protection Series, Agora Publishing Co., Baltimore, Md. I am also a contributing writer of articles for offshore publications on banking, taxes and related topics and have spoken on these issues at seminars in London, at Oxford University, in Bermuda and in the U.S. My activities have allowed association with many of the prominent American and Canadian asset protection attorneys and accountants. The Sovereign Society has associations with banks in Vienna, Austria, in Zurich, Switzerland, in Luxembourg and in other nations.

It is with this background and perspective that I appear today.

History

Two centuries ago Mayer Amschel Rothschild (1743-1812), founder of the famous international banking dynasty, revealed his definition of power. His practical wisdom: "Give me control over a nation's currency, and I care not who makes its laws." Acting skillfully on this belief, the House of Rothschild filled a void, creating a profitable continental money system that influenced the course of European history by financing its rulers and wars.

Today we live in the midst of powerful technological change that already has created a new world economic structure. It's a system that offers huge financial opportunities based on instant communications, interlinked data bases, electronic commerce and digital cash flows. And it means power is shifting from the state to the individual, greatly increasing personal financial freedom and the chance for profit.

Henry David Thoreau long ago concluded "the mass of men lead lives of quiet

desperation.” The pace of life today doesn’t allow much time for introspection. Yet the individual’s ultimate survival depends on understanding the powerful new forces remaking the world economy.

Establishment politicians see what’s coming and realize their power is slipping away. They’re clawing desperately against the inevitable, but they’ll fail. Just as the leaders of a corrupt, dying Soviet Union brazenly tried to outlaw fax and copying machines that were used to spread the ideas of liberty. Just as myopic 19th century Luddite workers in England failed to stop the Industrial Revolution by destroying new labor-saving machinery.

It’s the bureaucrat’s worse fear: millions of computers linked worldwide, electronic banking and on-line investment accounts, “smart card” money, easily available encryption; free communications unmediated by governments. As one astute observer says: “You get untraceable banking and investment, a black hole where money can hide and be laundered, not just for conglomerates or drug cartels, but for anyone.”

I fully understand why the Treasury bureaucrats are frantic. The freedom potential of this new money system runs counter to all the Big Brother policies that have bled taxpayers and stifled prosperity for decades. And government is doing all it can to stifle these liberating trends. And they will fail.

The Exodus to Offshore

Part of this new revolution in world economics is the escape from stultifying national tax systems that financially propped up the dying welfare state. People in ever greater numbers are seeking havens where hard work is rewarded, not punished by wealth confiscation. Places where business is free to make its own decisions, without regulatory predators hovering over every attempt at free enterprise.

But, as they say about we humans, “Old habits die hard.”

Despite the occasional financial excursion abroad, human nature dictates that most of us prefer to make money at home. We tend to be comfortable with the familiar and less threatening domestic economy. Until recently, most of us thought “personal finance” meant checking and savings accounts, a home mortgage or an auto loan. Even now, with widely available international mutual funds, many of them successful in the face of world economic turmoil, relatively few investors take advantage of the proven advantages of global diversification:

- * expanded profit opportunities
- * greater privacy
- * less government interference
- * stronger asset protection.

These advantages have especially strong application when it comes to placing assets offshore. While many people are willing to use offshore bank accounts, more complicated but proven offshore techniques, such as the international business corporation (IBC) and the foreign-based asset protection trust (APT) largely have been ignored, until recently.

Now the financial secrets formally known only to the very wealthy are available to a much wider group worldwide.

Government as the Enemy

Citizens who move a portion (or all) of their assets offshore simply recognize present reality - that government is engaged in the systematic destruction of citizens’ right to financial privacy. It’s been called the “Nazification” of the economy. That’s certainly true in the United States. Sadly, in ever greater numbers Americans must look to foreign lands for the kind of

economic freedom once guaranteed by the U.S. Constitution.

Sad to say, at a anti-money laundering conference I attended last April in Miami Beach, I heard a top U.S. Dept. of Justice official state in essence that the DOJ operating presumption is that any one with offshore bank accounts or other offshore financial structures is presumed probably guilty of money laundering. Why else, he asked rhetorically, would any American "go offshore" financially? That's as idiotic as the repeated claim that only the guilty want to protect their financial privacy, a variation on the demagogic refrain, "Honest people have nothing to hide!"

The tax collectors know the most talented citizens of the U.S. and other welfare states are deserting, setting up financial shop where they and their capital are treated best. What has been called the "permeability of financial frontiers" now empowers investors instantly to shift vast sums of money from one nation to another and from one currency to another.

Lovers of liberty with an acute sense of history see in these developments the potential for liberation of "the sovereign individual," the courageous person who declares independence from "decrepit and debilitating welfare states" as *The Wall Street Journal* described them. (For more on this topic I recommend reading *The Sovereign Individual*, by James Dale Davidson and Lord William Rees-Mogg, Simon & Shuster, 416 pages, US\$25, 1997, an excellent book that explains the exodus of the wealthy from high tax nations.

No wonder the U.K. Inland Revenue, the U.S. Internal Revenue Service and other tax hounds are worried. *The Economist* noted that "undeclared" (untaxed) work in 1998 exceeded 15% of Europe's combined gross domestic product (GDP), up from 5% in the 1970's. In the somewhat freer US, the underground "black market" economy accounts for nearly 10% of GDP. That means billions of dollars slipping through the eager hands of the tax man.

Why the growing black market? Confiscatory taxes, exorbitant labor costs, over regulation - all failures of big government. All things bureaucrats love. And of course, proliferating litigation and unreasonable jury awards and the destruction of financial privacy.

A Prophecy Come True

In far too many ways, life in modern America parallels the chilling description of life in the ultimate totalitarian state foretold in George Orwell's famous book "1984." In part, we have ourselves to blame. Although we claim to value freedom and privacy, too many of us willingly surrender personal information piece-meal, until we stand exposed to the world.

As I speak government and corporate computers, from FinCEN to DoubleClick hum with detailed binary facts about me and you, our families and our businesses. Nothing is sacred: health, wealth, tax and marital status, credit history, employment, phone calls, faxes and e-mail, travel, eating and reading habits, even individual preferences when cruising the Internet are recorded.

In an age of digital cash, interconnected data bases, electronic commerce, and instant worldwide communication, no area of financial activity offers more pitfalls than personal and commercial banking. Once considered discreet and honorable, American banks and other financial institutions have forced to become a brown-shirt brigade, a U.S. version of Big Brother's thought police. Congress has forced bankers to become spies.

Knowledgeable people now realize that their dealings with any financial institution must be based on a thorough understanding of current applicable laws. One misstep can mean a quick loss of both your money and your freedom. We'll provide more details later in this chapter, but first let's examine some of the destructive, anti-freedom forces at work.

The War on Drugs as an Excuse

When the United States was founded there were only three federal crimes: treason, counterfeiting and piracy on the high seas.

Now, with complete disregard for the constitutional tradition that long reserved criminal law to the states, Congress has enacted over 3,000 federal criminal prohibitions. That disturbing number comes from Ronald Gainer, a Washington attorney who was paid to count all those crimes by the U.S. Department of Justice. Even he admits he cannot be certain of the exact number. Worse, Congress gives non-elected, executive branch bureaucrats the power to write thousands of pages of regulations which also impose criminal penalties for their violation.

A blur-ribbon commission of the American Bar Association headed by former U.S. Attorney General Edwin Meese in early 1999 called for an end to the continuing aberration that is the federalizing of crimes. They noted that over 40% of all federal crimes enacted since the Civil War (1860-65) have become law just since 1970. Add to their warning these facts: there now are over 2 million people locked away in U.S. jails (at a 1998, one-year cost of \$35 billion); the U.S. now has achieved the highest per capita incarceration rate for non-political offenses of any nation in human history.

In the 1980's Congress was initially prompted to unleash this criminalizing onslaught by concern about illegal drugs. But now, almost two decades later, vast profits are being made by the vested interests that promote the unwinnable "war on drugs." Civil asset forfeiture laws supposedly aimed at preventing drug profits allow police to seize any funds and property they consider to be illicit. A host of new "anti-money laundering" laws and banking regulations are used to destroy financial privacy and turn bank clerks into government spies. Congress has converted cash and property transactions associated with, at last count, more than 176 "specified unlawful activities" into separate new federal money laundering felonies, allowing still more asset confiscation. Now proposed "long arm" legislation presumes to make actions in foreign nations U.S. crimes.

Money-hungry prosecutors routinely pressure citizens whom they readily accuse of non-violent, non-drug-related white-collar crimes. Regardless of the crime alleged, prosecutors add on unrelated money-laundering charges in hopes of levying a big fine and enriching their own official coffers. Most people caught in this vice pay up, because the grim alternative is prison. Many of these paperwork "crimes" carry a maximum sentence of 20 years in jail, twice the average sentence served by murderers in the U.S. Punishable acts include toxic-waste dumping, trafficking in food stamps or contraband cigarettes, insider trading, water pollution, copyright violations, willful injury of government property, even the refusal to file reports on peanut processing, shipping and ownership.

Thomas Dillard, retired after eighteen years experience as an assistant U.S. attorney and U.S. attorney in Tennessee and Florida, in November, 1998 told the *Pittsburgh Post-Gazette* that today's federal prosecutors have gotten way out of hand. "They have to justify their existence," Dillard said. "They go out and makes things crimes that weren't even crimes ten years ago."

The U.S. National Association of Sheriffs put it this way: "We're getting closer to a federal police state. That's what we fought [a revolution] against over 200 years ago - this massive federal government involvement in the lives of people."

Suspicious Activity Reports

Since 1996, using powers granted by the Bank Secrecy Act, the government has imposed Suspicious Activity Report (SAR) regulations on 23,000 banks and depository institutions

throughout the U.S. Similar rules are to be imposed on all other financial institutions eventually.

Revolutionary in character, these broad rules converted bank officers and employees into proxy police. Every employee of a bank now has a legal duty to notify the government of any single or cumulative transactions of \$5,000 or more which, in their judgement, *“has no business or apparent lawful purpose or is not the sort in which the particular customer is expected to engage, and the [bank] knows of no reasonable explanation for the transaction after examining the available facts including the background and purpose of the transaction.”*

Banks have been forced to establish full compliance systems, provide employee SAR training programs, and constantly watch customers for a long list of suspicious behaviors. What transgressions are deemed suspicious? How about “excess nervousness,” or frequently depositing “musty or extremely dirty” currency?

The banks have little choice but to enforce these ridiculous regulations. Failure to file SARs can result in heavy civil fines (\$10,000 a day) and criminal prosecution of individual employees (\$250,000 fines and up to five years in prison). Special punishment (\$500,000 in fines and 10 years in prison) is reserved for bankers who engage in “willful blindness” towards suspect customer conduct. Federal investigators conduct sting operations at selected banks to ensure compliance with the SAR rules.

According to *Communications Week* columnist Bill Frezza: “Federal bank examiners have been given significant latitude to invoke draconian penalties against uncooperative banks. Because bank officers have few due-process protections under this regime, it is no surprise that most of them have become sniveling toadies. The objective is to insure that banks ‘voluntarily’ introduce even more aggressive, unpredictable and intrusive monitoring than the government would ever dare mandate. And to make sure nothing slips through the cracks, human surveillance will be supplemented with artificial-intelligence agents that can perform pattern analysis on the aggregate flow of electronic transactions, flagging anything remotely suspicious. George Orwell would be impressed.” As has been the case at Citibank where they have used such software for several years, only recently admitting to the fact.

This nasty SAR system may unduly pressure bankers, but stress may have its rewards. For each successful criminal conviction, civil fine or forfeiture resulting from an SAR, the reporting bank employee receives a cash reward of 25% of the total take, or \$150,000, whichever is less.

Computerized Suspicions

Employees who think bank management isn't suspicious enough are encouraged to phone in for information. They can receive guidance or leave anonymous tips at the U.S. Treasury Department's Office of Financial Crimes Enforcement Network (FinCEN).

Along with four large buildings at the Detroit, Michigan IRS Center, suburban Washington, D.C.'s FinCEN headquarters is the heart of the government's financial crimes operations. All suspicious activity reports are compiled in FinCEN computers. Bureaucrats then cross check the SARs with data banks at such places as Dun and Bradstreet, CBI-Equifax and Lexis-Nexius, snooping into credit ratings, real estate ownership and other personal financial data. State and local police, the FBI, the IRS, the DEA, Customs and Postal Inspectors all have instant computer access to these SAR files.

The Treasury's Financial Crimes Enforcement Network was only the first of its kind. Now there are two dozen such agencies in other nations, with fifty or more planned.

Would it surprise you to know that “confidential” SARs have fallen into the wrong

hands?

The General Accounting Office, the investigative arm of the U.S. Congress, reported in June, 1998 that FinCEN has no controls to protect SARs, that police in at least two major cities had given SARs to private investigators, that almost anyone can access the SAR data base and that 13 federal agencies had violated rules designed to control SAR access. Under the FinCEN system police all over the US can dial into the SAR data base and during 1997 they did so 57,000 times!

U.S. Is Not Alone

The U.N. Declaration of Human Rights (Article 12) promises: "*No one shall be subject to arbitrary interference with his privacy, family, home or correspondence . . .*" It claims everyone has a right to "*protection of the law against such interference.*"

In spite of those fancy words, government financial snooping has gone international.

As of now, any U.S. or United Kingdom bank (or soon, any other financial institution) can and may subject a customer or account holder, to:

- * secret accusations and investigations based on a bank clerk's judgment that a client might be engaged in a long list of so-called "suspicious activities."
- * background financial security checks forcing customers to reveal the source of funds and justify their legality.
- * constant surveillance for any deviation from what the bank thinks should be your "normal" pattern of financial activity.
- * an instant freeze of all assets and possible confiscation by the police.

And the law demands, under penalty of jail, all this be done in secret, with no notice to the accused.

Joseph Field, a London partner of the U.S.-based law firm, Bryan Cave, says this nefarious system is "turning bankers and advisors to the wealthy into a class of stool pigeons." No doubt it is also fueling the move of personal financial activities to safe offshore locations.

Yet Another Attack on Financial Freedom

Need I remind this honorable Committee?

As if police surveillance and conscripted bank informants weren't enough, the U.S. Federal Reserve System, together with other banking agencies, on October 1, 1998 issued another extensive set of proposed new "Know Your Customer" (KYC) rules that would have covered all banks and depository institutions. This proposal produced a political first; tens of thousands of U.S. citizens bombarded the government with email protests after Internet publicity of a denunciation of the rules by a distinguished member of this Committee, the Honorable Ron Paul of Texas.

And for the first time in recent U.S. history, the government withdrew the proposed KYC banking regulations in March, 1999. Four U.S. banking regulatory agencies, responding to a massive public outcry over privacy concerns, scrapped proposed KYC anti-money laundering rules that would have tracked the transaction patterns of bank customers. One agency received over 225,000 protests as privacy advocates, conservative groups, ordinary people and the nation's bankers all complained the rules would turn every bank teller into a spy for Big Brother. They charged the rules were unconstitutional and would violate prohibitions against unreasonable search and seizure.

These KYC rules were an attempt to curb the growth of private banking services for high-dollar customers, now estimated to total US\$15 trillion worldwide. These rules would have

forced banks to verify fully each new customer's true identity, to demand documented fund sources and proof of financial capabilities. Individuals would have been forced to answer questions about their personal background, even their lifestyles and spending habits. Outside sources could also have been tapped for "facts" about others.

This information was to be used to build a "profile" of anticipated transactions and the "suitability" of a customer. Banks then would have been required constantly to monitor the account - and the customer - to discover and immediately report any "unusual" deviation from his or her original profile.

Only a concerted public protest ended, at least for the moment, these ridiculous proposals.

What Justification?

Are these gross violations of your privacy and due process rights really effective in catching the bad guys?

In 1997 in the United Kingdom 14,148 SARs were filed. According to the European Union (EU) parliamentary report on money laundering, between 1994 and 1996 there were 45,000 SARs filed in the U.K. Yet to this day, out of a grand total of 25 U.K. convictions for money laundering, only one prosecution resulted from filing a SAR!

In the U.S. from April 1996, when the rules took effect, to September 1, 1997, 110,000 SARs were filed. That's according to a sketchy FinCEN, May 1998 report that raised far more questions about effectiveness than it answered. It gave no figures on actual convictions resulting from SARs but claimed that 36,000 SARs, or 33%, were reported directly to police authorities. There was no report as to what, if anything, happened to these cases.

As of a few months ago, the one known U.S. case in which a SAR figured, was a 1998 arrest of eight North Carolina robbers who grabbed over \$8 million in an armored bank truck heist. Two days after the robbery one of the thieves deposited over \$5000 in cash (all in \$20 bills) into her account, repeatedly assuring the bank teller her money did not come from "drug trafficking." Still chatting about bank secrecy rules, she later attempted to purchase a \$200,000 money order with cash and, finally, the bank filed an SAR, which in part led to her conviction. (Case No. 97-CR-294, USDC WDist NC).

For just such magnificent crime fighting results, the financial freedom and privacy of everyone has been destroyed.

Marcus Killick, an official of KPMG in Leeds, U.K., writing in *Offshore Investment* (November 1998) framed the issue exactly: "Privacy is a fundamental human right. No individual should be required to explain why they wish their business to remain confidential, just as no one has to justify why they should not be subjected to arbitrary arrest or imprisonment."

Recent History

I personally see the administration's legislative proposal described last week by Secretary Summers as another step in an ongoing international campaign by high tax nations to destroy the legitimate competition afforded by tax havens. Big Brother knows it cannot compete on a level playing field and so it wants to destroy the opponents.

With proposals such as that just made by the Treasury, the offshore and domestic financial freedoms of Americans and others are now in even greater jeopardy. The formidable forces pressuring tax and asset haven nations are relentless. It's all part of Big Brother government's desperate attempts to control the growing citizen revolt against confiscatory taxes

and smothering regulation. This is not a conspiracy. It is their announced goal and the Treasury Department is playing its self-serving role.

Here is a recent history of the events which have brought me (and this ill-conceived legislation) before your Committee today:

Dec. 1, 1997. Finance ministers of the 15 European Union nations agree on a "taxation code of conduct" that calls for a 20% withholding tax on all interest payments to foreigners, and/or reporting of payments to the payee's home government. EU member states, including the U.K., agree "to ensuring that these principles are adopted" in their dependent territories. (<http://www.europa.eu.int/comm/dg15/en/tax/strategy/1067.htm>)

April 1998. Paris. The European Organization for Economic Cooperation and Development (OECD) publishes "*Harmful Tax Competition: An Emergency Global Issue.*" The report blacklists 35 "tax havens" (12 more added later) alleged to "harm" high tax nations by levying low taxes or by imposing no taxes. An OECD "offshore initiative" to eliminate tax havens is launched. (<http://www.oecd.org/daf/fa.>)

June 1998: New York: A United Nations conference claims the "enabling machinery" of international financial crimes is provided by offshore haven nations (trusts, international business corporations, privacy laws, private banking). Haven nations, argues the UN, are "an enormous hole in the international legal and financial system" that must be stopped. UN warns the world must stop "the use of sovereignty by some countries to give citizens of other countries a way around the laws of their own society." A UN "white list" of acceptable haven nations is proposed, with 5 years to conform. (<http://www.un.org/>)

November 1998: London. The OECD's Financial Action Task Force (FATF) says "transnational [money] laundering activity" is aided by the "outright refusal" of offshore financial centers to identify "the true owners or beneficiaries of foreign registered business entities - shell companies, international business companies, offshore trusts, etc." FATF demands surrender of such information to foreign investigative agencies. A "black list" of uncooperative haven nations is proposed. (<http://www.oecd.org/fatf/reports.htm>)

February 2000: Paris. The Financial Action Task Force publishes a report describing an agreed upon FATF process designed to identify "non_cooperative jurisdictions in the fight against money laundering." Twenty_five criteria are to be used to identify "detrimental rules and practices" that allegedly impede "the fight against money laundering." (http://www.oecd.org/fatf/pdf/NCCT_en.pdf)

The Latest Administration Proposal

Those bent on destroying Americans' financial freedom could not have asked for a better public relations windfall than the notorious case of the Bank of New York and its mysterious role as a conduit for US\$7 billion in Russian money, "some of which investigators believe was derived from illegal activities," as the *New York Times* described it (March 2). The Wall Street Journal reported that about 7% of this money "may have been" involved in illegal activity. By comparison, as one UK financial expert told *The Economist* last year, "More illegal cash passes through the City in London in one hour than washes through any ten haven nations in one year."

And of course the usual suspects were rounded up as false justification for this latest Clinton administration assault on financial freedom; the hoary specters of shadowy drug traffickers, child pornographers and enough Mafioso to populate an entire season of HBO's

“Sopranos.”

The *New York Times* quotes “a senior [Treasury] official” as saying: “We need to be able to target the root problems without unnecessarily hindering legitimate economic activity.”

The “root problems” as I see them are; 1) the continuing destruction of financial privacy in the United States and elsewhere; and, 2) rates of taxation in a time of prosperity that verge on confiscation and drive people of wealth offshore to seek justified relief.

If these Treasury proposals are truly a “response” to Russian corruption, I suggest that the IMF and U.S. AID reexamine their own financial mismanagement that has allowed billions to be poured into hopeless loans administered by a host of known untrustworthy persons, one of whom is about to be elected president of Russia.

I have no objection to American banks and companies having to collect proper data on transactions with an off_shore banks or financial institutions, but the Congress has no power to repeal the financial privacy statutes of foreign nations and it should not resort to financial bribery to force such a repeal. Law enforcement now has more than enough power to investigate “suspicious activity” without the Treasury having the power to declare international war on small nations that displease them.

The U.S. Treasury definitely should not be given the power to cut off foreign nations banking systems from the American financial system, without seeking Congressional approval first in each case. In this new banking “Trading with the Enemy Act,” Treasury should not be allowed to decide who may be the enemy of America. This proposal inherently involves international relations between sovereign nations, not just cross-border police pursuit of errant bank account holders.

History Repeats

This plan sounds very much like the annual political farce-score card of nations published by the State Dept. Bureau of International Narcotics Affairs, a useless, rigged rating system that has caused major international problems for both accused nations and the U.S. Just ask the government of Mexico.

The loss of access to the American market indeed would cripple any legitimate banking activity in a targeted haven nation and make it impossible for all persons to do business there, not just the fraction that may or may not qualify as a criminal element.

After a half century of American foreign policy railing against “colonialism” in all its evil forms, how is that the U.S. Treasury is to be given greater power over the destiny of small nations than the British raj ever had over India, or Europeans ever imposed on Africa?

And does this not amount to an international bill of attainder, a legislative act allowing the finding of an entire nation guilty without a trial? This sounds very much like an ancient common law punishment, long since abandoned in England, known as “banishment” – the exile

of those who displease the ruler.

In his remarks Sec. Summers, acting as both judge and jury, named Russia, Colombia and Nigeria as among the biggest sources of alleged illegal funds. The islands of Dominica, Nauru and Antigua were named as the major destinations of such funds.

Yet given these extraordinary powers, radical in the extreme, there would be no restraint against Treasury adding the Cayman Islands, Guernsey, Nevis or the Cook Islands to the list. And if you doubt my list, consider the scandalous, unjustified treatment by the Treasury Department of the small Caribbean island nation of Antigua early in 1999, the financial equivalent of dropping an A-bomb on them. (See attached article from the respected newsletter, *Money Laundering Alert*, issue of June 1999).

Constitutional Issues

I am indebted to a good friend and leading U.S. asset protection attorney, Michael Chatzky,¹ for voicing his objections to this proposal on constitutional grounds. Mr Chatzky notes that Article I Section 8 of the U.S. Constitution states that "The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." This commerce regulation provision has been construed judicially repeatedly since the earliest days of America's history. For example, Chief Justice Marshall speaking for the United States Supreme Court, defined the extent and nature of the commerce power in the seminal case of *Gibbons v. Ogden*, 9 Wheat. 1, as follows: "It is the power to regulate, that is, to prescribe the rule by which commerce is to be governed."

Marshall's description was amplified by Mr. Justice Day in the textbook case of *Hammer v. Dagenhart*, 247 U.S. 251, 38 Sup. Ct. 529, 62 L. Ed. 1101 (1918) as follows: "In other words, the power is one to control the means by which commerce is carried on, which is directly contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities." (Emphasis added).

Justice Day concluded the Court's decision (which found the statute before it unconstitutional) as follows:

In our view, the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the states, a purely state authority. Thus the act in a twofold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce, but also exerts a power as to a purely local matter to which the Federal authority does not extend. The far_reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters intrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the states over local matters may be eliminated, and thus our system of government be practically destroyed. For these reasons we hold that this law exceeds the constitutional authority of Congress.

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Although the factual situation differs in the child labor case from the financial commerce restrictions proposed by the Treasury Department, the constitutional principal governing the matter is the same. The congressional power to enact legislation giving authority to the executive branch is predicated upon the Commerce Clause, and the foreign commerce clause is limited to the regulation of commerce, it excludes the power to destroy or prohibit commerce, such as would be the case if commercial banking transactions with parties situated in designated offshore haven jurisdictions were prohibited by act of Congress.

Furthermore, the proposal of the Treasury Department is repugnant to well established First Amendment principles which prohibit guilt by association. Thus, if a customer of a bank in an offshore haven nation engages in an illegal money laundering transaction, this is no justification for punishing all legitimate, law abiding bank customers, as well as the bank itself and the entire nation in which the bank is located.

The proposal raises obvious due process issues regarding the right to challenge Treasury boycotts against a foreign bank or foreign nation and who, if anyone, has standing to object to these unilateral actions. Will these nations be forced to sue the United States government in the U.S. Supreme Court under its original jurisdiction over cases between foreign nations and the U.S.? Will we soon see *The Republic of Austria vs. The United States of America*?

Conclusion

I hope, but do not trust, the Committee, in its collective wisdom will reject this unconstitutional proposal outright. It is unsalvageable in any form.

Attachment: "US Attack of Antigua bares seamy side of laundering geopolitics," article, age 1, Vol. 10 No. 8 (June 1999) *Money Laundering Alert*, Miami, Florida.