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Money Laundering
A View From North America
Address to the Financial Markets Group
London School of Economics

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It is an honor to be invited to speak about “Money Laundering” at the London School of Economics, and an opportunity to clarify my own thoughts on what money laundering is, what if anything should be done about it, and what if anything can be done about it. I thank you for the opportunity, and Professor Goodhart for his introduction.

In talking about money laundering I bring to bear a perspective which is uniquely my own, with a background that not everyone here shares. I am not a banker, nor a bank regulator. I do not work for a Fortune 500 company, a trade association or an international law firm.

Rather I am an Assistant District Attorney in Manhattan ? New York County, to use its official name ? charged with prosecuting those crimes and offenses committed in the 22 square miles of the County, or within the county's jurisdiction as defined; a very different matter indeed.

Since 1977 I have been prosecuting economic crimes both sophisticated and simple, which constitute the criminal or pathological part of the white-collar world in Manhattan. I have dealt with securities frauds, frauds against government agencies, tax shelter frauds, and corruption cases. Since 1989 I have examined or prosecuted the Bank of Credit and Commerce, International (BCCI), certain aspects of the collapse of the Venezuelan banking system, events at the Bank of New York and a number of substantial international securities frauds involving victims from around the world. My views are those of someone who has sought to gather evidence of financial crimes, and had that evidence withheld.

In addressing you I would like to thank two men who have greatly influenced my thinking in this area. One is my boss, Robert M. Morgenthau, the District Attorney of New York County, who has led the fight against money laundering for the past 35 years. The other is Dr. Barry Rider, the Director of the Institute for Advanced Legal Studies here in London, and the moving force behind the Cambridge Symposium on Economic Crime. He too has contributed greatly to my understanding of the situation but neither of them is not to be held accountable for what I say. My views are my own, and I speak only for myself.

First though, some definition is required. "Money laundering," as I define it, is a process for the concealment of evidence, in which a person seeks to evade responsibility for the ownership, origin or the use of funds. Money is power. A person who seeks to launder funds wants to be able to achieve results - that is, to exercise power - without having to accept responsibility for such results or the means used to achieve them.

For you to follow my conclusions as to where we are and where we are going to be in a few years a little background is in order.

The fight against money laundering was initially started by Robert M. Morgenthau in the mid-1960s, when he, as United States Attorney for the Southern District of New York, attempted to gather evidence from Swiss Banks and certain subsidiaries of American banks about United States securities fraud and United States Army black marketeering, and was thwarted by bank secrecy laws. That fight against money laundering gathered strength with the advent of the war against drugs, and both Congress and the American bank regulators adopted the cause. Congress passed an anti-money laundering law, which has dramatically changed the face of American law

enforcement, even though it did not cover illegal funds from such national leaders as Marcos, Salinas, Mobutu, Suharto, or Abacha.¹

The bank regulators have, over the past seventeen years, adopted the anti-money laundering cause as their own. Entire new bureaucracies have been created within the ranks of the regulators and the regulated to deal with the problem; this aspect of the war against drugs looks as though it has become an employment tool. With the passage of the USA PATRIOT Act last fall those tendencies were re-inforced by adding anti-terrorism to the tasks anti-money laundering personnel are supposed to undertake.

I am reminded of an old definition—that a fanatic is a person who, having lost sight of his objective, redoubles his efforts. It appears to me that the bank regulators have lost sight of why it was important for a bank to know its own customer –“KYC” in the regulatory parlance.

As the cost of compliance increases dramatically, entire new regulatory entities such as the Financial Action Task Force, Financial Stability Forum, and now even groups from OECD have sprung up to measure compliance with anti-money laundering suggestions, best practices or regulations. And, while that has been going on, there has been a serious change in emphasis from fighting the narcotics trade to collecting taxes to fighting terrorism.

¹ The federal anti-money laundering statute covers most parochial crimes, such as a car theft, robbery and the like, as well as securities fraud, bankruptcy fraud, and harboring an illegal alien. The penalties for money-laundering, however, are draconian, and, taken with the federal sentencing guidelines, have given federal prosecutors far more power, individually, than they have ever had, and have incidentally given the words “money-laundering” a very bad name. In referring to money laundering I refer to the process of concealing evidence, not the statutes named after that process.

When Robert M. Morgenthau first started to fight bank secrecy statutes, many countries asserted that they wanted to have bank secrecy to assist people with commission of “fiscal” offenses or tax fraud. It appears that much of the social acceptance underlying this was based on the post -World-War II tax regime in England (and much of Europe) under which Labor governments set levels of taxation of income and estates so high that much of society was quite willing to violate the law, or at least was willing to support ostensible lawful excuses for tax evasion. Great Britain, after World War II, became an intellectual centre of bank secrecy practices, designed by the upper classes to protect their family wealth from confiscatory taxes; the intellectual heritage of that tradition continues today, even though the facts have changed enormously since then. Crown colonies and Crown dependencies such as Jersey, Guernsey, Isle of Man, Gibraltar, and Cayman started as offshore financial jurisdictions to assist UK residents.² Narcotics dealers starting in the 1970s, however, gleefully exploited the bank secrecy practices adopted to protect tax evaders. The money-launderers’ use of bank secrecy statutes became the stuff of legend, and fraudsters seeking to hide money other than tax money and narcotics proceeds started to use the same techniques.

By the mid 1990s the European Union and the United States were beginning to attack tax havens bitterly. The attack, for the governments is a matter of survival. As transnational corporations manage their affairs to minimize taxes paid, they deprive all governments of tax revenue. In Europe and the United States the middle classes have been following their lead. For those of us who believe in the rule of law, depriving

² It is worthwhile to note that Jersey, Guernsey and the Isle of Man have decided to repudiate dirty business.

democratic regimes of revenue by manipulating the laws of offshore havens is exceptionally bad government, as I discuss below.

Until the election of George Bush it appeared that there would be constant pressure on the offshore jurisdictions to clean up their act. Some have done so, many more wish to create the appearance, but not reality of having done so, and some are simply willing to accept dirty money as a source of business.

During the decades since the fight for and passage of the Bank Secrecy Act of 1970, the money launderers have not been passive. The old picture of a Colombian drug dealer driving into a bank with valises filled with currency is not now quite accurate. Smugglers transport most narco-dollars out of the United States for deposit in jurisdictions in which there are no forms to fill out.³ They have developed for the cocaine trade the entire legal infrastructure of a legitimate business.

Elegant lawyers, registered lobbyists, and public relations firms all represent the industry's efforts, even though the industry is based on drug selling in the streets. "Campaign contributions," the current American euphemism for bribery, were in recent years made by groups such as the Texas Bankers Association, to get government to take "a more balanced view" of the anti-money-laundering fights. When a lobbyist for the American Bankers Association opined, publicly, that a particular bill would not harm the banking industry, he was privately but severely chastised by a senator who had accepted money from the lobbyists for Antigua, and told he must in the future oppose all bills

³ The Colombian drug dealers have excess dollars; the Russians Maffiya, for example, want U.S. dollars. It appears to me that the two groups are working together to launder money outside regular channels for their mutual benefit. I note that the Russians are now seriously involved in the heroin trade with Europe, and suggest, on scanty evidence, that the "businessmen" are far ahead of the regulators and the policemen in this area.

strengthening the fight against narcotics money-laundering, even if the bankers were not adversely affected.

Many years ago Winston Churchill wrote that he could not engage to remain neutral as between the fire brigade and the fire; that senator wanted the ABA to actually hinder the firemen. I wonder why. Some have suggested it is because the Senator has a visceral distaste for regulation. All that is clear is that his ideology or his financial self-interest (in the campaign contributions) caused him to ignore the reality of what he was doing.

While the narcotics lobby and the anti-tax lobby were fighting against anti-money laundering legislation and regulation, the Board of Governors of the Federal Reserve System in the mid 1990s proposed new “KYC” regulations, which, after a fight, resulted in their being withdrawn. Individual rights and consumer privacy were advanced as the reasons for the KYC debacle, after a cynical campaign inspired, at least in part, by lawyers and lobbyists who refuse to identify the source of their clients’ funding.

It must be conceded that the KYC regulations, as proposed, were out of date. By the mid 1990s it was no longer appropriate for the full weight of the anti-money laundering fight to be born solely by banks, when financial service providers are all equally available for abuse by the criminals. Merrill Lynch is, for regulatory purposes, not a bank, and has not been subject to KYC regulation, even though it has more money on deposit than does any bank in the USA. The securities markets are woefully wide open to money-laundering, but until very recently the industry and the SEC took the view that there was no money laundering in the markets.⁴ The insurance industry is also wide open

⁴ The work of Neil Jeans, then at the National Crime Squad of England and Wales, demonstrates how easy it is to use the markets to launder money; my own cases tend to support his conclusions.

to abuse; there is no perceptible regulation at all in the insurance field, but numerous indictments, based on pending cases, can be expected soon.

The problem which has arisen is that as technology changes, the money-transmission part of banking has become exceedingly vulnerable to customer abuse. The entire Bank of New York (“BNY”) problem was due to a wonderful set of technological advances the Bank had implemented, without having thought through as much as the “bad guys” did the possibility of their misuse.

Simply put, BNY allowed customers unfettered access to its computers to receive and transmit wire instructions from anywhere the customer’s computer could be reached by telephone. That, today, is anywhere. We could call it Banking at Home. The use, at the Bank of New York, was restricted to whomever the customer wanted to allow in—itsself an invitation to disaster. The technology permitted each customer to engage in correspondent banking with unlicensed correspondents, which certain customers did in accounts totaling \$7.2 billion. And following the attacks on the United States on September 11, 2001, Congress dealt with correspondent banking and private banking in the USA PATRIOT Act, but not necessarily in a way that will stop either narcotics money laundering, nor payments for terrorism.⁵

In the future, what should we do? We should work together to establish the rule of law, worldwide. To that end we should join to abolish bank secrecy laws and practices, insofar as they keep evidence from prosecutors and courts. We should fight to abolish corporate secrecy, and refuse to deal with anonymous corporations. We should make sure that we know or if necessary can learn which people are responsible for each amount of

⁵ Small, one-time payments are undetectable in the huge flow of funds worldwide. Systematic payments are easier to catch, with appropriate resources. Stopping all money laundering is no more likely than stopping all crime.

money going through financial institutions. Keep in mind that prosecutors need evidence, and it is reality of that need, not its outward forms, that we should take care to assist.

An example of the wrong sort of behavior can be found (easily) in Cayman, where the Irish authorities were seeking evidence about payments to a Prime Minister of Ireland from the Ansbacher bank. Initially the Cayman court told the Irish authorities to “Get Lost,” citing bank secrecy. A few years later Ansbacher went into Court, because they were under pressure in Ireland to release the evidence. Cayman’s Chief Judge authorized the bank to release the information as to the flow of funds, but barred the bank from identifying the parties directing the transfers, receiving the money, or controlling the accounts. With that information withheld, the information released was of little value to prosecutors or others seeking to know what had happened. Cayman continued to keep evidence from the courts and legislature of Ireland, whose processes would have been compromised by bribes, on the intellectually trivial argument that Cayman bank secrecy is more important.

The Cayman view favors criminals. It makes sense, however, if one understands that certain countries choose to be economic parasites, selling their sovereignty for cash to whoever is willing to pay the price. What Cayman and others like the British Virgin Islands offer is financial and corporate secrecy: they promise to keep honest, competent evidence out of the world’s courts of law.

It is apparent from my perspective that the world economy has become a global marketplace, in which some countries are better able to participate than others. That is because honest markets demand the Rule of Law, and some nations either cannot or do not choose to be bound by laws.

Role of Rule of Law in the Business World

The April 18, 1998 edition of the Financial Times asserted editorially that:

At the national level the emerging global standard consists of liberal trade and open financial markets. It demands a high quality of regulation, and independent legal processes, to protect private property and handle bankruptcy. It calls for non-corrupt government. Within this framework prosperity is generated by free competition among profit-seeking companies.

Whether we will obtain the utopia of prosperity through free competition among profit seeking companies is something which time will tell. Experience teaches me that high quality regulation, independent legal processes, including independent prosecutors, honest judges, and non-corrupt government are necessary to avoid disaster, even if they cannot generate prosperity. What The Financial Times proposed, and what appears to me beneficial, is establishing the Rule of Law in the worldwide economy. That requires a certain amount of change.

Simply put, in the twenty-odd years since the Reagan-Thatcher era started there has been a revolution in the roles of government and business. Power shifted at an incredible pace from government to business, especially with the end of the Cold War and the diminished need for "National Security" to be pre-eminent. The needs of international business for government are relatively few; they are concerned with everyone getting a level playing field. (I do not suggest that any business wants a level playing field; they each want the edge over their competitors. Collectively that means the field should be level.)

With the arrival of international nihilistic terrorism, such as the attacks on the World Trade Center, however, there are countervailing pressures leading to even stronger anti-money laundering pressures.

Some of the new pressures, such as the USA PATRIOT Act, are going to have a serious impact on world banking, by, for example, requiring all correspondent banks in the United States to appoint an agent for the service of legal process. It can have that impact and still not affect the “Bank of New York” sorts of money laundering, however. We do not need so much in the way of detailed regulation as wholehearted and honest record keeping, that leaves no place for people to hide the actions they have taken or paid for from law enforcement. This is true in a far greater sphere than simple terrorism.

Banks, brokerage firms, insurance companies and their customers are, or own companies which create value in the world. They are creatures of law, and, by and large, with inevitable exceptions, they try to follow the laws of the countries in which they do business. Banks live by, and rely on, the Rule of Law in every commercial transaction in which they engage. The honest businesses with which banks deal rely on it as well. But there are other business interests in the world than those which are honest.

Being successful in the global economy makes a businessman the target of thieves ? of people who want to undercut established manufacturers’ prices without incurring their costs. Under the law they cannot do this, so they break the law. (I focus on business here, because that is where the money is). Whether the issue is patent, or trademark or copyright, a manufacturer who does not pay royalties can easily undersell one who does.⁶

Necessary Legal Evidence

The rule of law involves the use of legal mechanisms to defend property rights. And the clearest way I know to accomplish that end ? to protect production and creation

⁶ And, of course, without the royalties or licensing fees there is little economic incentive for inventors, designers, composers, authors or even software writers to work. “The condition of man in a state of nature,” wrote Thomas Hobbes, “is solitary, poor, nasty, brutish and short.” The Rule of Law is an improvement ? for everyone.

of goods ? is to put in jail the people who steal property and to seize or forfeit the proceeds of their crimes, not necessarily in that order. Such actions require the use of courts, and, in order to be successful in court, the gathering of valid, accurate evidence. Having said that, let me add that collecting such evidence is a daunting task, requiring intensive investigation into the source of goods, and requiring a more complicated, if less manpower-intensive investigation to trace the proceeds of the crime.

Identifying the originators of contraband goods by tracing goods backward starts at the level where the goods are sold. (The goods could be drugs, or stolen goods, or counterfeit goods, it does not matter. I refer to them all as contraband.) One can, theoretically, follow the trail of invoices backwards to the point of original manufacture if the goods are counterfeit or stolen. If, as may well be the case, the invoice trail is false one can, theoretically, accomplish the same end with street level surveillance. But the repeated seizure of street peddlers' wares makes no more of a dent in the illicit commerce in contraband goods than repeated arrests of street dealers stops the flow of narcotics into the United States, and that has not worked. However necessary it may be, or is for social purposes to combat street level distribution, it is more effective in seeking to deter crime at its source – to prosecute the concentration of capital, both human ⁷ and financial. This means going after the wholesalers, and manufacturers, and entrepreneurs. To prove by evidence in a court of law who those people are requires a choice between two prosecution strategies.

⁷ The incarceration of skilled criminal entrepreneurs can disrupt criminal organizations.

One can attempt to follow the goods backwards from the point of sale to the point of origin, or one can follow the money from the point of sale back to the beneficiaries. There is a serious problem with tracing the origin of goods, aside from the investigative difficulty, and that has to do with the fact that certain goods, at some point in their origination, are legal until they are mislabeled, and hence are immune from effective seizure.⁸ Proof of the receipt of profits, however, is evidence on which one can act. The money, by definition, is the proceeds of the sale of contraband, and hence is the proceeds of crime. By tracing the money to its ultimate beneficiaries one can both seize the money and make a legal case against the human beings who profit from the trade in counterfeit goods (or contraband weapons or drugs).

In that sense following the profits from contraband is far more lucrative and productive ? financially and in terms of evidence obtained ? than is tracing the goods themselves.

That solution, however, has a major failing, and it is one which needs to be addressed and remedied.

The problem with tracing money to identify the people engaged in profiting from contraband is that there exist hurdles to obtaining valid, legal evidence. Key among the hurdles are bank secrecy laws and corporate secrecy laws. To hold those people benefiting from economic crime accountable in the world economy, just as we wish to hold accountable people engaging in terrorism, such secrecy laws must be abolished.

⁸ I have in mind, for example, watches which can be manufactured inexpensively, and legally, and do not acquire their counterfeit characteristics until a brand name is falsely attached. That step, which can be late in the process, leaves the expensive capital-intensive part of the manufacturing process immune from forfeiture. "How was I to know that the other scoundrel would add a false brand name?" will be the defense offered by a shipper even if he is corrupt and secretly pays the man who adds the false brand name to the watches.

Keeping Up with Technology

As the world economy becomes more unified we must adjust. We cannot afford the peculiar legal quirks of places such as Grand Cayman, or the British Virgin Islands, which operate as havens of secrecy, whether for bank transactions or corporate ownership. The impact ? indeed the purpose of those laws ? is to facilitate money laundering for the purpose of concealing criminal activity. To deal with jurisdictions that choose to thrive on sheltering crime it is necessary to adjust our view of the equal sovereignty with which we have dignified many nations unworthy of equal treatment in world financial markets.⁹ We cannot merely punish, however. We must assist men and women of good will in smaller countries, either to avoid dealing with situations too complex for them to manage, or to deal properly with the situations in which they find themselves. We need to provide for adequately staffed modern legal systems, adjusting to new technologies as technologies change. We need independent and honest prosecutors. We cannot afford local corruption anywhere if it impacts the world economy. And, with current technology, it does.

Simply put, with our present technology it is possible to move money in and out of bank secrecy jurisdictions so fast that investigation becomes almost impossible. In the case of BCCI the bank secrecy statutes of the various jurisdictions in which BCCI operated were such that no one ? no auditor, no regulator, indeed no one outside the circle of thieves ? knew the true identities of the owners of the bank or of its various

⁹ For example, there was a proposal adopted that **all** financial transactions through Antigua, a notorious money - laundering nation be deemed suspicious, which requires any United States licensed financial institution to fill out Suspicious Activity Reports for every transaction involving that country. This tends to make their dealings very expensive, and highlights them all for law enforcement. Antigua responded by paying millions of dollars in a highly focused effort to enlist the support of key United States political leaders, who are in a political position to defeat the

borrowers. Without that knowledge it is impossible to evaluate whether transactions are with related parties, or are arms-length deals in which a banker is putting his own money at risk, and is presumably using his best judgement in doing so. Old-fashioned secrecy is out of date. We must adapt.

I suggest that we do so by eliminating bank secrecy statutes as a factor in international trade and finance. In this age of multi-billion dollar a year narcotics trafficking, of 24 hour a day securities markets with international securities frauds as easy to accomplish as lifting the phone and calling abroad, and "asset protection programs" which are a euphonious way of describing frauds on creditors and courts, it is inappropriate for international lawyers and bank regulators to defend in the abstract that which is in reality used to corrupt the public and private lives of the major industrial and financial nations of the world.

Money Laundering and Narcotics

Narcotics massively inflate the problems of violent crime, economic crime, and official corruption with which the District Attorney's office deals every day. The District Attorney's Office is on Centre Street, due south of Park Avenue in Manhattan. Park Avenue in Harlem at the far north of the island has a large population of narcotics addicts, who must burglarize, rob, and steal to feed their narcotics addiction. The money they get goes to drug dealers, to larger drug dealers, and then into the banking system. South from Harlem on Park Avenue are a large number of the world's banks; BCCI was there in mid-town, at 320 Park, laundering narcotics money from the junkies committing crimes of theft and violence here. Due south of our office is the Federal Reserve Bank of New York, where the dirty money is transferred. When we started investigating, District

Attorney Robert M. Morgenthau and I decided that bankers laundering narcotics money should be derailed by our office, and if possible sent to jail.

The money that went to BCCI had to get into the banking system, and then be invested, for the drug dealers to profit. Likewise the proceeds from the sale of counterfeit goods has got to get into the banking system for the counterfeiters to benefit. To keep their profits safe, and to keep law enforcement from getting legal evidence against them, the bad guys, be they thieves or counterfeiters, or narcotics dealers (who, after all, are merely homicidal businessmen dealing in unlicensed pharmaceutical products based on cocoa leaves and poppies) need secrecy, which means that they need to launder their money through a bank secrecy or a corporate secrecy jurisdiction ? Grand Cayman, British Virgin Islands or the like ? before sending it back to Park Avenue for investment. What we have learned, as I mentioned earlier ? and it is frightening ? is that the money, once back in New York, is respectable, and can be used to buy influence over the law enforcement and foreign policy decisions of the United States and other nations. The ancient concept used now to validate bank and corporate secrecy is that bank secrecy must be preserved to keep a gentleman's financial affairs confidential. That concept dates back to the days when only "gentlemen" had checking accounts. That concept is archaic, and must give way to the current reality. Bank secrecy statutes in international trade and finance are used by crooks, tax evaders, securities fraudsters, counterfeiters and capital flight fellows; they are used by narcotics dealers, but they are not needed by honest folks engaged in honest transactions.¹⁰

¹⁰ There are three levels of bank "secrecy" which warrant discussion. There is an obvious interest in privacy - in that no one wants his financial affairs to be open to his competitors, his neighbors or perhaps, his family. At that level, which I believe to be appropriate, only bona-fide criminal investigators and bank regulators, can get access to the data and are forbidden effectively from misusing it. At the next level of secrecy only bank regulators can get access to the

I have said that bank secrecy in international finance must give way to the harsh realities of life. There is no reason why the people on Grand Cayman cannot have rigid bank secrecy laws. I, for one, do not care what they do amongst themselves, so long as they are consenting adults. I do care, however, when they try to merchant their sovereign status and impose their sovereignty on the rest of us to protect narco-dollars or other proceeds of contraband from detection. If the people of Grand Cayman, the British Virgin Islands, or the other countries selling their sovereignty for cash were to have bank secrecy statutes relating only to local residents ? not corporations ? doing business in their local currency, and not involved in international trade and finance, their laws would be of concern only to themselves.¹¹ But we are not dealing with that.¹² Banks in such countries are taking deposits from people they have never met and from brass-plate companies with no assets except the bank account, and inserting the money into the world monetary system. Most of this is in dollars, and most of it goes through Manhattan.

Two thirds of the world's trade is conducted in dollars. Far more than 99% of the international dollar transactions clear through New York County in any given day. The current volume, I understand, is about \$2.7 trillion on a normal day. One can move that volume of money only by moving it so quickly that it is instantaneous. I remember my shock when I learned that the fastest way for two banks in Hong Kong to settle a dollar

identifying information on bank accounts and financial transactions; law enforcement and courts cannot. At the third level not even bank regulators can obtain the identifying information necessary to see if transactions involve relating parties or are being conducted at arms length.

¹¹ Cayman is proud of the fact that more than 100 banks have a physical presence on the island, out of more than 400 Cayman has licensed; the threat Cayman poses can be judged by the fact that it has more than \$800 billion on deposit—more than twice as much as the banks in the second Federal Reserve district—New York—have.

¹² When Lichtenstein launders payments from the French government -owned oil company through North African nations and into the coffers of a political party in Germany, Lichtenstein becomes of concern to us all.

transaction was to wire the money from Hong Kong to New York and back again. What that means is that from an evidentiary point of view money in New York can be wired to Grand Cayman, sheltered from further identification, and wired back to New York as an arms-length transaction, when in fact it is not. That money's trip to Grand Cayman, economically harmless a century ago when it required a sailboat, gold coins, and handwritten entries, is infinitely mischievous when it can be done electronically, instantaneously, from a distance, with no one ever going to the island at all.¹³

Technology has changed world trade and world finance irrevocably in recent years, and we must adjust to that change.

Privacy of Banking vs. Anonymity of Crime

Just as bank secrecy is a criminally malevolent anachronism, so too have secretly owned corporations and anonymous trusts become tools of the trade for the criminals on

¹³ One final note on the economic utility of tax havens. Countries, which exist to shelter in untaxed form profits earned from the world's industry and commerce, provide an exceptionally mischievous service which should not be tolerated. The following example comes to mind. A man owns a factory in London which produces widgets. He establishes a sales company offshore in the Caribbean and sells his widgets through that company. Before he established the sales company he made a profit let us say of a million pounds a year on which he paid taxes. After he established the sales company he sold goods at almost no profit from the factory to the sales company and sold the goods at whatever profits he could realize from the sales company to the world market. He paid no taxes. The factory in London still requires fire protection; the garbage must be collected; and he very much expects that the police will protect his premises from depredation by street criminals. His contribution to the cost of those services however is nil. To make matters worse the offshore company is audited if at all by accountants who care only about their audit and not about the expenses of the firm. The hiring of public servants working for countries offshore to the tax havens for nominal work at high pay? which might be construed by independent observers as bribes? attracts no scrutiny and the tax laws continue to permit this sort of behavior.

The amount of wealth in offshore tax havens is enormous, it is liquid, it is immune from audit and most criminal investigations and it is available to malefactors of great wealth for malicious use without fear of retribution. Given the constant need of politicians the world over for money this pool constitutes a constant temptation to corrupt governments throughout the world while allocating the tax burden of the cost of governments to people without the ability to hide their wealth. The anti-democratic implications and the morally corrupting aspects of this behavior are just becoming known.

What is clear is that, here too, times change. The old idea that one country does not care about the fiscal offenses of another has outlived its usefulness; it is now dangerous. At one point in the late 1990s the Russian government was so strapped for revenue that it had to go to the oligarchs asking them to pay their taxes. The billions of dollars laundered through the Bank of New York were tax evasion or tax avoidance, would traditionally have been viewed as "not really a problem". When you recognize that the Russian government has nuclear, chemical and biological weapons, that the people guarding those weapons need to be paid, and that there are terrorists in the world willing to buy the weapons, it may be clear that the collapse of the Russian government due to non-payment of taxes would be a disaster with worldwide consequences. As one of our Supreme Court Justices wrote three quarters of a century ago, "Taxes are what we pay for civilized society."

the world economy. It is only slightly useful to be able to trace funds if the beneficiaries of those funds can conceal their identities.

Unfortunately, in following the huge amounts of money involved in the narcotics trade, we have found an entire cottage industry of professionals ? lawyers, accountants, and so-called financial planners ? establishing ostensibly legal mechanisms for people to conceal the ownership of money from the courts of the nations in which they choose to live.

In one case a British part-time magistrate and his former partner, a lawyer, in London, established a whole series of companies to facilitate securities fraud in New York.

The way the scheme worked, a securities fraudster in New York hired the judge to set up off-shore companies, which had to be owned by someone who was not an American citizen or resident. The judge and his partner incorporated the companies in Liberia, which let the fraudsters succeed for a while. Then the United States SEC came looking around to see who owned the companies. The magistrate thereupon hired a Liberian diplomat to falsely state that he was the beneficial owner of the companies. As the diplomat had diplomatic immunity, one could reasonably assume that his statement would end the inquiry.¹⁴

These companies, having been established with no owner, could transfer ownership quite readily; one could transfer their entire assets (a bank account) by "selling" the company without anyone knowing that a transfer had occurred. That

¹⁴ That it did not is due partly to luck and mostly to the skill of the detectives working on the case, who persuaded the diplomat to cooperate with law enforcement authorities.

transaction, in slightly different form, takes place routinely in the laundering of money we believe originates in the drug trade, but the technique is clearly transferable. In fact, it was by following a narcotics money launderer that the British police found much of the evidence about the Liberian companies. When by good fortune, the British police heard of our securities fraud case, they provided the evidence to convict our securities fraudsters: the fraudsters in turn promptly gave evidence against the magistrate, whom the British police proceeded to arrest. It turned out that he had performed his "secret corporation" trick for a large number of people, including a number of New Yorkers. Cases such as this are pending on both sides of the Atlantic.

In another case, involving sophisticated bank fraud, one of the big accounting firms established a shell corporation in the Caribbean, and acted as its managing agent. The District Attorney's office served the accounting firm with a subpoena, whereupon the firm fatuously asserted that the Caribbean partnership was not the United States partnership, and that they had not been served. Of course both partnerships have the same name, the same signature, the same internal telephone directory: the Caribbean partners took direction from New York. So the firm agreed to accept service of the subpoena, but then responded that they did not know who owned the company, and would have to ask the person with whom they dealt.

Such behavior by professionals has a business plan of earning money specifically from the crimes of others. The lawyers and accountants are establishing formalistic structures specifically designed to defeat those very laws which we need to establish a level playing field. If thieves can hire accountants and attorneys prospectively to shield the proceeds of crime, we all have a problem.

To trace the proceeds of crime you need legal, competent, valid evidence.¹⁵ To the extent that contraband is, as it surely is, an attack on legitimate commerce, laws protecting the proceeds of contraband commerce are adverse to the world's long term economic interests. And, quite frankly, to the extent that professionals promote this conduct by establishing structures designed prospectively to defeat sound legal investigations and to conceal evidence they, too, are damaging our interests.

Times change. The world economy is in flux, and will continue to be. The value of goods and services will vary over time. But if we are to establish a Rule of Law in the global economy we must forbid the bank secrecy and corporate secrecy laws and traditions which are so adverse to legal, honest, competent evidence? that is, inimical to the truth. Corporations which are creatures of law and are themselves law-abiding must work together to eliminate the use of bank secrecy, corporate secrecy, and other anachronistic legalisms used to shield the proceeds of crime from its victims.

New York State has implemented an anti-money laundering law, designed to prosecute the people in the business of laundering money. It was effective November 1, 2000, and applies only to the State of New York. As a state law it covers, among other institutions, the Federal Reserve Bank of New York, the Fedwire system, the Clearing House Association and the Clearing House Inter-Bank Payment System (CHIPS) as well as the clearing systems for almost all United States securities and government debt markets. If you deal in United States dollars, other than in currency form, the law affects your business.

¹⁵ I say legal because you can, by paying money or otherwise, unlawfully obtain the information from a "bank secrecy" jurisdiction. You just cannot use it in court. The rule of law providing for secrecy becomes a rule protecting only the guilty.

The law forbids the laundering through New York of the proceeds of crime, whether the crime took place in New York or in any other jurisdiction. Put simply the law forbids the laundering of the proceeds of specified criminal conduct, whether involving drugs, tax crimes, or other criminal conduct. The law does not require the establishment of a bureaucratic regime: it penalizes, severely, people who, with the requisite knowledge and criminal intent, launder money.

Besides forbidding the laundering of the proceeds of a broad variety of crimes through New York, the statute specifically forbids the use of the payments and settlements systems to avoid reporting requirements or to advance new crimes. And the law provides that if a financial institution is told that certain funds are the proceeds of what is called “specified criminal conduct” and the institution engages in the financial transactions anyway, the financial institution is at risk.

Since September 11, 2001 Congress has passed the U.S.A PATRIOT Act, which in one of its parts deals with money laundering. Specifically Congress has required that financial institutions know their customers, and that private bankers engage in “enhanced due diligence.” More importantly Congress has passed a law requiring all correspondent banks to appoint an agent for the service of process; if a subpoena is issued to a correspondent bank in the United States, that bank may well have to produce records from abroad. For those who believe in the Rule of Law the PATRIOT Act may be very good indeed. If other countries adopt similar rules, money laundering will be severely threatened. If other countries start asserting local laws as a bar to disclosure, and do so effectively, we will be left with nineteenth Century law enforcement dealing locally

while international crooks use twentieth Century bank secrecy to conceal twenty first Century crimes.