



T H E   R E V I E W  
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- For a balanced budget
- For the "rule of the law"
- For the privatization of the public corporations
- For a smaller government and lower taxes
- For an efficient justice system
- For wages and prices to be market driven rather government controlled
- Against a minimum wage
- Against price controls

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# Harmful Tax Competition

by 200 Economists including Nobel Laureates  
Milton Friedman and Jim Buchanan

(The following is a letter to President George W. Bush dated May 31, 2001.)

"We, the undersigned economists, urge you to reject the Organization for Economic Cooperation and Development's so-called "harmful tax competition" initiative. According to the OECD, it is unfair for low-tax countries to attract jobs, capital and entrepreneurial talent away from high-tax countries. To stop this process, the Paris-based bureaucracy is threatening low-tax nations with financial protectionism unless they change their tax and privacy laws so that high-tax nations can more easily double-tax income that is saved and invested - even when that income is earned in other nations.

"This is a completely misguided initiative. Tax competition is a liberalizing force in the world economy, something that should be celebrated rather than persecuted. It forces governments to be more fiscally responsible lest they drive economic activity to lower-tax environments. Other reasons for our opposition includes:

- "The OECD seeks to create a tax cartel - Consumers benefit and the economy is more efficient when gas stations, banks, pet stores, and car companies compete. The same thing is true for government. Competition promotes efficiency and encourages lawmakers to rationalize public finance.

- "The OECD is threatening global commerce - Protectionism is a bad idea, and it is a really bad idea when the goal is to interfere with international capital flows. The OECD effort is akin to a high-tax state like California trying to block investment dollars from flowing to a low-tax state like Nevada.
- "The OECD proposal will boost the underground economy - Instead of propping up non-competitive tax systems, criminalizing tax competition will simply drive taxpayers into the informal economy. A low tax burden, by contrast, will reduce incentives to hide, shelter and under-report income.
- "The OECD is defending bad tax policy - In order to minimize tax-induced distortions, the tax code should neither subsidize nor penalize different activities. Yet the OECD initiative is driven by a desire to help high-tax nations double-tax income that is saved and invested.
- "The OECD will hurt growth in less-developed nations - Penalizing countries for adopting market-friendly tax systems will hinder economic reform and reduce growth rates in the developing world. This may even cause more crime since opportunities for honest employment will shrink.

"Mr. President, we ask again that you stop the OECD's ill-conceived project. As the world's largest economy and single largest contributor to the OECD's budget, the United States has the ability to pull the plug on this unwise proposal."



# A Bahamian Tragedy

by Ralph J. Massey

Shakespeare wrote both comedies and tragedies; but he is best known for his tragedies. In these stories a series of unhappy events evoke feelings of increasing pity and terror. However, the events are triggered by the "defects" of the leading character and they end in a dramatic disaster. That's the tragedy of Shakespeare. Similarly, the blacklisting crisis is a real-life tragedy for the Bahamas.

## *The drama.*

Let's look at the defect and the unfolding events:

- Although the Bahamian legal system is based on English common law and there is an ample supply of homegrown legal talent, "the law" in practice is not applied impartially. Up until now...in the sequence of crime and punishment, punishment in so many areas has been reluctantly pursued...if at all. This reluctance is so pervasive that it appears deeply cultural in origin. It's "the Bahamian way."
- Consistent with this, the Attorneys General of the Bahamas were unable and/or unwilling to process actions initiated by the United States under its 1992 Mutual Legal Assistance Treaty with the Bahamas. Allegedly there were as many as 300 requests related to drug trafficking and money laundering and apparently none elicited a meaningful positive response. The U. S. Government was fighting its "War on Drugs" beyond its borders and it

became profoundly irritated over the failure of the Bahamas to live up to its treaty obligations.

- In this disagreement the U.S. held the high cards. In a pinch it could directly affect financial and tourist flows...the lifeblood of the Bahamian economy. In this situation the Bahamas was defenseless. It lacked the only viable cards available to a small country, a proven integrity in a wider community of nations and the ability to marshal their support.
- Then came the "perfect storm". In the skies over the Bahamas this disagreement met the Organization for Economic Cooperation and Development's "War on Harmful Tax Havens" and a supportive U. S. Secretary of Treasury. The result was the dramatic disaster...the Blacklisting.

### ***The disaster.***

The threat levied against the Bahamas was the blockage of financial transfers between the Bahamas and the major countries of the OECD by July 2001. The relief offered was the adoption of comprehensive legislation to control all Bahamian financial intermediaries. In addition, the Bahamian Government had to prove itself by implementing the legislation within that time period. Compliance no longer meant just saying you were going to do something.

The period was so short that the Government simply copied the existing legislation of an unspecified foreign country, a country whose economy may or may not have been similar to the Bahamas. The 11 separate bills are draconian in scope and detail; and the Government is operating on the presumption that they must be implemented at all costs in order to get off the list.

Then and only then can the Government propose amending legislation to iron out the gross errors contained in it. Hopefully the "best and the brightest" in the Bahamas will have the "right stuff" to obtain the suggestions of its financial intermediaries and to propose amending legislation. Or...devise another strategy to extricate the country from this situation.

### *Another reality.*

A reality that has troubled all Governments in the world for decades is that international financial capital flows are huge, fluid and resist unreasonable controls. Examples range all the way from the Bank of England trying to defend an unrealistic exchange rate to the Government of Indonesia trying to stop the capital outflows of its citizens when the banking system collapsed. Governments cannot set market parameters that are unrealistic or confiscatory in nature. If a country does not have the "right" parameters, capital goes elsewhere quickly...it creates "fiscal" refugees trying to preserve and protect their wealth.

In this regard the Bahamas has had ample direct experience.

- In the 1970s its captive insurance companies went permanently to Bermuda, a more hospitable country.
- In the 1980s the Immovable Property Act ended foreign investment in Bahamian real estate.
- In the 1990s Prime Minister Hubert Ingraham boldly and wisely offered the right inducements to get Sol Kerzner to make the largest single foreign investment ever. This was the critical factor in the country's recent prosperity. The long-term benefits are obvious to anyone who is objective.



### *The nightmare.*

In the case of the Blacklisting the weight of both the past and the present is pressing down on the PM and the country like a nightmare.

The weight seems heaviest on the smaller financial intermediary that includes lawyers, accountants, independent financial advisers, fund managers and realtors. To presume...as some have...that they are less ethical than the major banks is patently false. Right now these laws cannot be implemented in a timely manner. Under the very best of circumstances new business is not written; workloads have skyrocketed; departing workers are not replaced; and investments and new hiring are on hold. There is gridlock.

It is clearly evident that this crisis has already adversely affected business and jobs. The problem is determining what the situation will be after "the dust settles."

- What will be the business lost by the "producing" private sector?
- What are the critical factors causing that loss?
- What will be the added cost of "non-productive" regulation?
- How much regulation is essential and will it be cost effective?

Right now no one knows for sure.

### *The silver lining.*

In the meantime the Government is rightfully publicizing its crack down on "the bad apples" and extolling the virtues of government regulation. It also has –



1. Finally unleashed the Police to crack down on the drug trade and
2. Caused the A/G's Office to make the first conviction of a prominent Bahamian for a major white-collar crime in the banking industry.

Two Commissions of Inquiry failed to produce such results. This is progress. But...will this progress last beyond the immediate crisis? Will it produce a new day?

It will take wise political leadership and a new way of thinking about government and law and order. A fundamental improvement in government efficiency and the rule of law in the long run can turn today's nightmare into tomorrow's good morning. That is our fondest hope.

## Battling the OECD

*by* Ralph J. Massey

The Honorable Zhivargo Laing, the Minister of Economic Development, at a recent seminar spoke of globalization and trade liberalization. He stated that in this world the Government, among other things, must "detect international trends" and "identify international allies to help build local prosperity." He urged his listeners to keep their "hands to the plough and not look back."

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**Think-tank says FNM government must now  
extricate nation from 'regulatory nightmare'  
after failing to spot US policy change**

The Tribune Business, June 26, 2001

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But...the present financial crisis demands such a looking back. Any appraisal suggests strongly that in 2000 the FNM had trouble with the above "musts" in its battle with the OECD...a battle that paralyzed the country's vibrant financial community. In addition, it is clear that economic think tanks played a critical role in the battle.

### ***Buildup.***

After World War II the United States deliberately promoted an open worldwide trading system. However, the process greatly accelerated after the fall of the Berlin wall in 1989 thanks to the end of Cold War politics and to "microchips, satellites, fiber optics and the Internet." The spectacular decline in telecommunication costs wove the world tighter and produced spectacular economic growth. With it came social protest and financial crises.

But governments differ greatly in their political/social policies...and some tax individual wealth to the point of expropriation. The governmental bureaucracies of high tax countries as France, Germany and Sweden were threatened by the new technology that made the evasion of excessive taxation easier. The outward flow, or loss, of their tax base caused these countries to spearhead the movement to stop "unfair tax competition".

The Bahamas was one of those countries that benefited most from "globalization" and also one most exposed to the campaign against unfair tax competition.

### ***Attack.***

The tax battle began over a decade ago within the Organisation for Economic Cooperation and Development (the "OECD", a Paris-based organisation of 29 countries). Separately the United

States conducted its war against illegal drugs by pursuing perpetrators and their financial gains in foreign countries. Landmark events were the OECD publication "Harmful Tax Competition: An Emerging Global Issue" in 1998 and the U.S./Bahamian "Mutual Legal Assistance Treaty" of 1992.

But nothing seemed to happen. The United States and the U.K. benefited greatly from international capital flows and were, in fact, big money launderers themselves...at least according to the U.S. State Department's "1999 International Narcotics Control Strategy Report." The OECD was largely a toothless tiger and the Bahamas successfully frustrated all actions initiated by the U.S. under the Treaty.

The critical point was the summer of 2000.

- The G-7, the seven most powerful nations in the world, said they would support sanctions against tax havens.
- Mr. Larry Summers, the new Democratic Secretary of Treasury, against the interests of the country as a whole, "endorsed added regulatory burdens on financial institutions in low-tax countries" and others in the administration supported "discriminatory treatment against offshore institutions."
- The French Government argued that the IMF should "oversee capital flows into these centers" and the Prime Minister wanted to outlaw "all financial transactions with low-tax regimes."

Then it is reported that the U. S. Government "held the gun" to the head of the Bahamian Government. Just before yearend the Bahamas passed all the regulations and financial controls specified by the OECD.



### ***Counter attack.***

Two conservative think tanks, The Center for Freedom and Prosperity and the Heritage Foundation, developed the counter attack. They produced a steady flood of material and campaigned tirelessly in Washington throughout 2000.

Daniel J. Mitchell on September 18, 2000 produced the definitive study, "An OECD Proposal to Eliminate Tax Competition Would Mean Higher Taxes and Less Privacy". It was a 33-page work with 287 footnotes. He personally handed hard copies to Bahamian Government officials during a visit to the Bahamas just before Christmas 2000. At that time he indicated that the Republican Administration of George W. Bush would not support the Clinton/Summers initiatives.

The FNM did not detect the counter attack nor did it identify a Republican administration in Washington as a potential ally. And this was a shame because both the U. S. and the European Union in 2001 reversed their positions.

### ***Next battle.***

The FNM must now extricate the country from what can only be described as a legal, constitutional and regulatory nightmare. No doubt...Mr. Laing...it will need allies to do it effectively.

# The Myths of Compliance

by Richard Coulson

I just received from my bank the questionnaire required by the new "know your customer" legislation and put aside work for a few hours to "comply" with it. Let me give you a "how-to-do-it" manual.

## *The world of bureaucrats.*

First, although the account (open for some 5 years) is actually in the name of a Bahamian incorporated company, the bank sent me their **"Personal Account Information"** form. On querying the bank's Money Laundering Prevention Officer ("MLP"), I was told that I got the personal form because I was the authorized signing officer. OK, but still leaving many nit-picky questions to resolve. Should I answer with my own data or the company's?

Under **"name of customer"**, I thought for a bit and filled in my personal name, with explanatory note as "sole signatory" for my company. Asked to supply "certified" copies of my passport, I learned from the MLP Officer that I could simply scrawl my own certification on the photocopied pages. This was good news: I had no need to call on the services of a notary or a passport official.

**"P. O. Box"**. Again, I needed more thought. I decided to fill in the company's box (not my personal one), since that's where the bank sends mail.

**"Permanent address"**. A certified copy of driver's license, utility bill, RPT assessment bill or other documentation must

evidence this. Well, the new licenses do not include address, nor do Batelco bills, and my company does not get a BEC bill, nor is it assessed a real property tax. I responded by enclosing the tax assessment for my personal residence.

**"Nationality".** Both the company's and mine are Bahamian, so that was easy.

**"Date of birth".** I chose my own, not the company's.

**"National Insurance No".** I considered strange the instruction "retain certified copy". Does the bank really expect me to send them the original? I resolved it by sending a photocopy (certified by me again) of my own NIB card. But why on earth is this needed for a customer who provides a passport?

**"Telephone No. - home and work".** The directive "verify in telephone directory and retain certified copy of listing" puzzled me. Was I supposed to photocopy pages from the 2001 Directory and certify them? I compromised by sending originals of Batelco bills for both numbers. The long-suffering MLP Officer told me she would verify them in Directory.

**"Place of Work".** I simply named the company and its street address.

**"Occupation".** Whose? Mine or the company's? I fudged by writing in "financial consultant". The MLP Officer told me I should just back this up by providing a copy of company's business license.

**"Purpose of Account".** I filled in simply "pay company's operating expenses". Hope this will pass muster with MLP Officer.



**"Source of Income"**, with instruction to attach copy of letter from employer or certified copy of pay slip. How could this be applicable to a company, with income from many clients? MLP Officer (by now tired of me) told me business license itself would answer this point

**"Expected monthly account activity -- number & \$ value of deposits"**. By now tired myself, I answered brusquely: "same as past history."

### ***Does it work?***

All very entertaining, and for someone who handles complex paperwork every day, it was no big deal. But think of the thousands of Bahamians who sadly will have a real struggle with this procedure. And think of working Bahamians who have been considering opening a bank account and who will now be deterred by these complexities. A modern economy needs deposits in banks, not cash under mattresses: is this the way to achieve it?

Like many hasty legislative actions, the new "know your customer" rules will have unforeseen and unfortunate consequences of the highest order. Banks' MLP Officers, either taken away from more productive work or newly hired at considerable expense, will devote hours and days of their time answering picayune queries like mine or reviewing the submitted forms and wrangling with customers over the tiniest details. At the end of the day on December 31, 2001, we can be sure that many questionnaires will not have been completed in full compliance with every pinprick of the regulations. Banks will then have two options: they can simply sweep the deficiencies under the rug and accept the risk of keeping the accounts, or take the Draconian remedy of turning the

accounts over to the Central Bank. Is the Bank really prepared for this?

Another objection to the regulations is more serious. Far from being an effective net to catch money-launderers, they will in fact do the opposite: they will lull bankers into a false sense of security and distract them from detecting the few real crooks. By accumulating and reviewing vast files of irrelevant paperwork, our banks will have little time or incentive to investigate the serious cases deeply. No professional drug-dealer is going to be spotted by having on file his NIB number and his "source of income" as provided by himself.

In fact, probably 90% of our B\$ bank accounts are held by decent wage-earning citizens who the slightest scrutiny will reveal cannot possibly be laundering money. The banks themselves can observe that the modest in-flow of funds to these accounts comes from payroll deposits or savings account interest. Unlike the clients of international private banks with diversified investment portfolios booked in complex trusts and holding companies, these retail customers should be exempt from the cumbersome "know your customer" apparatus: a proven signature, address and phone number should be all that's required.

Our local life insurance companies face similar absurdities. Sales agents, instead of selling, are spending most of their days now collecting detailed information from thousands of long-time customers with ordinary life policies. The only movements of funds are the periodic fixed premiums and the eventual death benefit — surely a far-fetched path for laundering money.

### *The alternative.*

By radically reducing the redundant paperwork, well-trained bank compliance officers would be better able to focus on the truly suspicious events, which are rare but time-consuming. Their characteristics are not hard to learn:

1. An exceptionally large deposit on opening an account can be questioned by an officer before acceptance;
2. Subsequent large deposits from unknown sources (particularly if followed by immediate large withdrawals or transfers) can be investigated and, if necessary, the customer can be reported and the account blocked.

The real way to identify money launderers is through the use of computer programs (they do exist) that immediately detect unusual movements in an account and flag them to management, plus training front-line tellers how to spot questionable walk-in customers.

This is the efficient approach to money laundering – using a rifle instead of scattershot firing without aim.

Our country would be well served if the banks and insurance companies themselves stage a quiet but forceful revolt against these new and useless burdens that have been placed upon them. They should demand that our lawmakers return to a world of reality, rather than the mythical world of bureaucrats where all problems are solved by keeping archives of paper on file. **END**

**"The Americans' frustration with government regulation was caused not mainly by what is regulated – everyone wants a safe workplace and clean air – but by how regulation works. Government regulates us like central planning, using ironclad legal dictates that effectively banish human judgment and good sense." (Philip K. Howard, *The Death of Common Sense*)**



# Attorney Leandra Esfakis Challenges Commission

The Tribune reported on May 16, 2001 that Attorney Leandra Esfakis, a member of the Bar Association's Commercial Law Committee, "strongly rejected the newly-formed Compliance Commission's authority to conduct annual examinations of all institutions under its authority, arguing that such powers were unconstitutional and discriminatory."

On another occasion she stated that under the Acts, --

1. "We are obliged to report to a Financial Intelligence Unit those individuals of whom we may have suspicions; and
2. "We are subject to searches by the Inspector of Companies and the Compliance Commission --
  - At will or annually, without warrant, without need to show cause, without any obligation of confidentiality, without the use of discretion, but
  - With the obligation to pay for such search AND substantial fines or jail terms if the paper work required is not on file.

"In effect, the new legislation intends to deprive us of a constitutional right to the privacy of our premises and to allow for the confiscation of property in satisfaction of its demands ...On a practical level, you have a disruption of business that I'm supposed to pay for."

Section 21 of the Constitution states that "Except with his consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises."

While it provides for exceptions she contends that The Financial Transactions Reporting Act does not fall under them.

Her letter of May 10<sup>th</sup> to the Compliance Commission concludes –

“Accordingly, I put you on notice, that should any officer, agent or employee of the Compliance Commission enter or attempt to enter my premises for the purpose of conducting such evaluation, I will bring an action against the Commission to seek the protection that the Constitution affords against the abuse of power.

“I submit under protest, the published registration form.” END

**Most OECD nations made the jump from poor, agriculture-dependent economies to industrial powers during the 1800s—a period when most did not impose income taxes of any kind. Today, poorer nations are being told they cannot adopt similar policies in order to have an attractive investment climate—a demand that has been called an “infringement on their sovereignty by a group of rich white nations.” David Louis, “Blacklist”, *Tax Notes*, August 2000, quoted by Daniel J. Mitchell)**

## *Highlights*

The Bahamas was one of those countries that benefited most from "globalization" and also one most exposed to the campaign against unfair tax competition.

The OECD effort is akin to a high-tax state like California trying to block investment dollars from flowing to a low-tax state like Nevada.

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We are obliged to report to a Financial Intelligence Unit those individuals of whom we may have suspicions. And...we are subject to searches by the Inspector of Companies and the Compliance Commission. These are done at will or annually, without warrant, without need to show cause, without any obligation of confidentiality, without the use of discretion, but with the obligation to pay for such search AND substantial fines or jail terms if the paper work required is not on file.

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