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## Discussion Following the Remarks of Mr. Murphy and Mr. Forsythe

Discussion

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**DISCUSSION FOLLOWING THE REMARKS OF  
MR. MURPHY AND MR. FORSYTHE**

**COMMENT, MS. DALLMEYER:** Well, they have opened the floor for questions from you and we will be happy to start.

**QUESTION, MR. LADD:** This is probably for Terry Murphy. I would like to talk about facilitation of financial transactions. If a non-U.S. citizen processes a prohibited transaction on their Citicorp Visa card, where the actual computer work is done in Fargo, North Dakota, or a Citicorp—affiliate in North Dakota, has Citicorp facilitated a prohibited transaction?

**ANSWER, MR. MURPHY:** Don't you just love them? I came here to basically hide behind Doug Forsythe. Don't you just love these guys? For this, it is three million dollars an hour. I do not know that they have. The person who caused them to get moving may well have. The facilitation—I do not know, to be honest with you.

**COMMENT, MR. LADD:** They are a foreign national happening to carry a Citibank card.

**ANSWER, MR. MURPHY:** I would be somewhat doubtful that they have. But the facilitation issue is a very, very important one. It is in the Iran sanctions and all kinds of things. Indeed, in the European sanctions regulations and if you thought there were no European sanctions you better go back and look again; there are. One of the things you cannot do with European sanctions is facilitate—I am not sure that is the right word, but there is an equivalent word—facilitate, cooperate, whatever, compliance with the U.S. sanctions.

One of the facilitation techniques is to render legal advice on whether the United States sanctions apply to a Citicorp. Keep Citicorp out, because that is clearly an American brightline company, but somebody else. So if you gave advice in Brussels, Belgium as to whether the United States OFAC facilitation sanctions here might apply to you, you are giving legal advice. For some years my wife practiced in Brussels, and we used to transfer clothes back and forth. She did a lot of this work. There were ways to do it, but you could not give the advice from Europe. You had to give the advice somewhere far away. So that is as much as you get on a Saturday morning.

**COMMENT, MR. FORSYTHE:** The meter is running.

**COMMENT, MR. MURPHY:** Absolutely, for that one, big-time.

**QUESTION, PROFESSOR KING:** Are there legislative changes that you think would be helpful? It seems as though Canada is always caught up in

our sanctions, and they have been directed at very unfriendly nations. It seems to me that this is one of the gaps as a partner in many affairs. Perhaps there are legislative changes that should be considered when we do these sanctions. It might make our relationship a lot easier. Do you have any comments on that, both of you?

ANSWER, MR. FORSYTHE: To start with, the government of Canada has been a big supporter of some of the reviews taking place within the United States of this proliferation of sanctions in the past few years. I suppose the watchword we have always brought to the discussion is multi-lateral. Do things in concert with the like-minded. Do things in concert with your allies. Then you just do not have these disagreements. You do not have conflicts.

Part of the real problem is that the United States goes off and does things. Now, admittedly, you can do things more effectively on your own, despite the calls in Canada for sanctions and unilateral sanctions actions, which we do not even arm ourselves with the legislative capacity to do. People say Canada should do something. We are under a lot of pressure from the coalition of friends of Burma who do not want to denigrate their serious concerns. For Canada to take such an action would be meaningless in affecting the regime of Burma. We recognize that limitation in our power, and so we strive to act effectively.

The United States, though, can certainly do damage to a target country by imposing sanctions. You probably do as much damage to yourselves. Hence, we have been trying to reinforce the message of multi-lateral action. The United Nations because there is a multi-lateral sanctions regime imposes the fact that in terms of conflict management—we do not have a problem with Iraq collectively; hence, there just simply is no conflict. Cuba, of course, is an example. We have had a foreign policy dispute there for 35 years with the U.S. and even more recently regarding Iran, Libya, and with your other sanctions regimes where you marched on your own; that causes problems for us.

The resolution for us would be coherence to the U.S. sanctions regime. Perhaps focused through more single pieces of legislation, or at least the philosophy that allowed for multi-lateralism as the approach. An approach stressed by somebody in the administration allowing your executive to tailor it to avoid conflicts with your allies.

ANSWER, MR. MURPHY: I agree with everything, but allow me to emphasize the substantive comment about multi-lateral regimes. There will be times when the United States reserves on this, and I do not think I could disagree with them. There will be times when the United States feels that it has to take the lead and have unilateral sanctions for one reason or other.

But my answer to your question Professor, is that this issue be moved to the maximum extent possible away from the Congress and into the executive branch. We were asked to give a strategy paper, to the National Foreign Trade Council, also known as U.S.A. Engage, which is the anti-sanctions lobby in the States. But it, more brightly, is the chief litigant in the Burma sanctions case, the chief attacker of those Massachusetts sanctions.

Our recommendation was to do what you can, and it may be a long period, to get these issues over into the executive branch, or at least to maximize the influence of the executive branch. You will lose some. You will win some.

Burma is an example, specifically. Nobody likes Burma. Everybody sort of wants sanctions on Burma. The EU does not want sanctions, et cetera, et cetera. The United States, to wit the central government, has tailored sanctions. They have sanctions of no new investment in Burma. You may trade. Most people do not particularly want to, and there is not a lot of volume, but you may trade. You may also maintain the investments you have, which is another way of keeping some U.S. influence in there.

Massachusetts and others say, no, no, no, no; no trade, no nothing. So that is the problem. I do not want to re-litigate that case, but that is the fundamental core issue. The business community has to accept that part of this is that you're going to win some, and you're going to lose some. The executive branch may decide against you. Well, that is too bad. They are there to govern. I would say that they are not necessarily evil there, either.

In the India-Pakistan matter, where first India, and then a few weeks or days later Pakistan, exploded nuclear devices, the Glenn Amendment tied the hands of the United States and sort of forced sanctions against India and Pakistan. The United States government came to the business communities, and said, we know we have to have sanctions. That is not discussible. There will be sanctions. But we certainly do not want to have sanctions inadvertently to hurt our economic interests. We do not know what they are. So would you please – this is the moment to lobbyists—tell us what you have in India; tell us what you have got going in Pakistan so that, when we swing that bat of sanctions, we sort of hesitate for a minute so you can get your head down or whatever. They do try to avoid the worst excesses of these blunderbuss congressional enactments causing a vast amount of trouble. There is nobody I know in the policy community who thinks they are a good idea.

We're in accord on that, multi-lateral as much as possible, to which I would simply say (not speaking for the United States government, but agreeing with them) you have to have some unilateralism. We do.

QUESTION, MS. LUSSENBURG: I want to return to the more practical side of export control for a moment in this discussion about deemed release and the context of cross-border trade and American subsidiaries doing business in Canada. My first question is, when you talk about the exceptions within the United States where the deemed release provisions do not apply, does that extend to wholly owned subsidiaries of American parent corporations, or do we still face that issue for Canadian companies or American subsidiaries that are operating in Canada?

The second is more broadly focused. We all know how unacceptable it is to screen our perspective employees and ask them various personal questions, including citizenship, nationality, etc. Yet that ties directly into the export control regime depending on the nature of your business. You have to ask certain questions. What is your experience, or those of others, as to where you set the line? What can and can you not ask?

Often we become aware of these issues when we see someone and it occurs to us that they may have a different nationality. At which point they may be our employee. That raises all sorts of difficult issues in terms of the basis upon which you hired them. Is it cause for dismissal? Can you re-employ them? Etc. I would be interested in your views as to how one might resolve some of those issues.

ANSWER, MR. MURPHY: This would be a good one to get other views, but let me just say quickly, the first one, as I understand your question, is not the people. It is the product itself. If it is of U.S. origin, whoever is handling it is stuck with that.

QUESTION, MS. LUSSENBURG: Also, the exchange between the engineers is an export, right?

ANSWER, MR. MURPHY: Yes, it is.

COMMENT, MS. LUSSENBURG: It is something we have always grappled with. When you take that down to the mundane, there is the letter of the law, and then there is the practicality of what happens in your work rooms and in your board rooms. When you talk with someone that is considered to be an expert, there are a lot of businessmen that look at you and say, "You do not understand. This is not an export." You say, "Well, excuse me, the U.S. law is written in this way." We Canadians that know a little bit about American export law have come to learn what is considered an export. You may not have intended it as an export, but it is one. It is that exchange that makes it – the physical product is so much easier to control, in my mind, than is the intellectual know-how that goes with the job.

COMMENT, MR. MURPHY: You have stated it very accurately. It is easy to talk about this thing up in the sky somewhere. Lawyers are happy

with it because they do not have to be practical about anything. They think of an abstract idea.

The fact is that it is U.S. technology, whether we like it or not, and whether you might agree with that or not within the contemplation of the United States. There is no *de minimis* rule applied to that, particularly in encryption. In other areas, there is a 10 percent or 25 percent rule, depending on whether you're dealing with bad guy countries or other countries, for your so-called direct product. But you – I do not think there is much there except tea and sympathy.

As the Navy used to say, you get a chit from a Chaplain. Your lament is heard out and then back to work. You have to have that product under some type of control. Now, whether you're facing a knock on the door from Canadian enforcement authorities or the Swedes or the Swiss or whoever, that is a business judgment. That is not my job. My job is to give legal advice and to help people figure out what their requirements are.

Now, you had a second question. I must say I have forgotten what it was.

QUESTION, MS. LUSSENBURG: Actually, part of my first question was the wholly owned subsidiary, as well, and then the employee screening.

ANSWER, MR. MURPHY: Oh, employee screening. Employee screening is a tough, tough, tough problem because it cuts – in our country as well as in yours – against values that we hold dear. We do not discriminate on the grounds of sex. We do not discriminate on the grounds of age. We do not discriminate on the grounds of nationality. We fight wars so that we do not get forced into that. That is stuff that is very, very important to us. Yet, the security officers of the land are charged with the protection of our nation, and indeed yours are, too. I have met with Canadian intelligence. I have, indeed. I have been in meetings where the United States intelligence services and Canadian intelligence services were in the same room with Canadian companies on the one hand, U.S. companies on the other hand.

That is the world we live in. I would not have thought it was so when I started law school, but it is so today. Now agencies voice mail, and you can call them on the phone. If they are not there, he'll tell you, you have reached the national security agency's export control office. We are at lunch right now, and we will call you in the morning or later or whatever. So you cannot unstick yourself from the security services in some of these areas. But I do not know, other than that, the answer.

ANSWER, MR. FORSYTHE: Just to add to that, we get a lot of calls from Canadian counsel saying, why is this happening? What's going on? We have companies and subsidiaries with whom they regularly exchange things such as engineering data to make projects work, who have turned off their internet connections because heavens, somebody might see the stuff. That

would be an unacceptable transfer of technology and technical data, and hence not eligible under the Canadian exemption and the Technical Assistance Agreement. By the way, could you please ask the U.S. authorities, would you please buy us a list of all your employees who have access to this and their nationalities? By the way, we do not like Mr. Agerwall and Mr. Sing. Sorry, they will have to go. One of the unfortunate affects of the Glenn Amendment, is that Canadian citizens who are of Indian origin and have been Canadian citizens for 25 years, were being told they were unacceptable for certain companies.

Companies have stopped talking to us many times because I am afraid the Canadian companies are out doing things that, as a Canadian government official, I would be horrified to hear what they are doing. Some of them are re-deploying within a company, and maybe that is practically acceptable. In some cases we think hiring decisions are being made on the basis of nationality to satisfy U.S. requirements. We have said to U.S. authorities that in your own Bill of Rights, certain guarantees apply. We cannot allow that kind of discrimination to go on. They say, well, that is what our guarantees are, but that is not our problem for you. Dealing with people in these negotiations at a very low level has made it very difficult. That is not the attitude that you get at the top, the instructions we hope are going down. But one of the reasons we drag it out so long is, how do you address that? I wish I had some sage counsel for you on how to deal with it, but I do not.

QUESTION, MR. ROBINSON: Michael Robinson from Toronto. Question for Doug, but I need to give you a little sort of homely example to lead up to it. CSIS, our Canadian CIA people, came to a meeting of the international section of the Bar Association in Toronto a couple of years ago to speak to lawyers about how they can help their clients. Their basic theme was, since the KGB was shut down, the Russians have all switched to international espionage. Your companies are full of all these bright, young people who have come from Russia as refugees or immigrants or whatever. They are probably stealing all your industrial secrets, and they are all going back on the Internet or on tapes or whatever to Russia. These people work for what used to be the KGB.

We can hardly believe it, but by strange coincidence, two days later, I went out to meet a new client doing a very high tech thing, nothing to do with defense. It has to do with medical technology. But I told him this little story. I said, do you have any Russians working for you? Oh, he said, scads of them. They are all bright young people.

I said, well, you better find out a little bit more about them. I suspect that we have a missing person in these negotiations, and that is Mrs. Kaplan, who is our immigration person, a minister in Canada. Because, oh, yeah, we're

wonderful people, and we do not discriminate, but we also have an immigration system in Canada that is like a sieve. Our refugee system is even worse. If our own bunch of spies, the CSIS, are telling us that our industries are infiltrated with former KGB people who have been re-treaded to be in international espionage, then maybe we have got to clean up our act a little bit if we want to continue to have this kind of relationship with our, albeit slightly paranoid, partners to the south.

ANSWER, MR. FORSYTHE: Not a great deal I am going to be able to say in response to that.

QUESTION, MR. MURPHY: Never heard of it?

ANSWER, MR. FORSYTHE: No. It is a very real concern. It is unquestioned that in our discussions with the United States, one of the things that was emphasized is that there is a form of security screening that all immigrants go through. But do you assume that you better not hire any Russians because they are probably KGB? The answer to that is no. You would hope that is part of our solution here, but employers are going to have to be conscious of that.

It is in their interests, and if we do get a deal in the introduction of this new security industrial program, there will be some responsibility. You are handling sensitive things. Look at these people. Think about that aspect of it. But well, there is a very lively public debate going on. There is a new immigration act introduced into the House, and we'll see what happens from there.

COMMENT, MR. MURPHY: As I was saying in the encryption debate, these issues are not good guy/bad guy issues with the exception that there is always some sort of fairly identifiable bad guy interest. These are tremendous issues. What Canada is doing, good or bad, is about the same as what we are doing. I hate to say it to the Canadians, but you are just like us in many, many respects, however offensive that may be to good Canadian national perceptions. There is a lot of similarity.

I was in a conference once where there was an official from our embassy in Paris who was an officer and was describing the process in which they interview people who want visas. It is a 15 minute interview, and that is it. It is a screening interview. Now, you show me the highly trained intelligence agent who has been carefully sent to school somewhere in a forest, the mock village and everything else, who cannot get through a 15 minute interview. We have all read John LeCarre and the special documentation and all the rest. Find me somebody who cannot get through a 15 minute interview, and I will find you a pretty inadequate spy who should not be sent out in the first place.

So we are dealing with exactly the same issue.



COMMENT, MR. RANDALL: I would like to make a comment, and then I do have a question for you. It is a real issue for foreign nationals in a company like Dow Chemical. We have at least two people fulltime in my group who are working on managing visitation and that kind of thing. It is a problem with suppliers and with repair people, and you do have to manage it. It is a nightmare, but it is a fact of doing business under U.S. export controls. It was my understanding in U.S. export control that if you can add a U.S. citizenship or permanent residency to any prior stamp on your branding of your original birth, it will make you automatically a good person. Yet I hear in this agreement, or disagreement, with Canada, that the automatic branding with Canadian citizenship does not automatically make you a good person. It leaves you questionable.

I know that we have operated globally with an assumption in a lot of cases that the branding with a French or English citizenship over the top of an Iranian or Iraqi birth certificate makes you a good person. Now I hear in this the anomaly that all of a sudden your original birth is more important than what you have been doing maybe for the last 30 years.

ANSWER, MR. FORSYTHE: That is it. That is the dilemma we face. To have such helpful comments such as U.S. citizenship meaning more than Canadian citizenship because you have to wait five years instead of three, it is not a very helpful approach. That is the attitude we face at the lower levels of the State Department. That is the interpretation they placed on the Canadian exemption of the ITAR. That is the source of our difficulties.

ANSWER, MR. MURPHY: I think it is also true with other countries, such as with Britain and others.

COMMENT, MR. FORSYTHE: Oh, yeah, but they do not have the exemption.

COMMENT, MR. MURPHY: They do not have the exemption, but the same thing.

COMMENT, MR. WOODS: First of all, I would just like to say this is a really good and illuminating discussion. The fact that we have a lot of time for free discussion is also very useful. I usually come away from these conferences with a couple of nuggets that I remember. Because of this session, I will always be able now to equate the security issue, which is very difficult, to what I will call the new domino effect. That will help me understand it.

COMMENT, MR. MURPHY: Piece of cake from Glasgow, think of it that way.

QUESTION, MR. WOODS: Also, sometimes when we get into the world of very difficult concepts and ideas, we sometimes forget most of the people in the room are practitioners from one group or another, from the government

or from the private sector. So I would like to ask Doug in particular and also set your comments on this, about the dynamics. We have talked about the Gulf of Maine. We have talked about trade disputes where there are certain structures in place, tribunals that hear the cases, and time limits, and so on.

From the sound of it, the discussions that are going on sound very collegial, and it is almost not in terms of disputes. It is negotiation and resolution. On the other hand, you also do mention that in trying to leverage the highest levels of government, you sometimes find it more difficult at the working level. So I would like to hear some comments in the context of lessons learned or the dynamics and the tool kit of the practitioner trying to work out these deals.

ANSWER, MR. FORSYTHE: I suppose for me one of the lessons learned is that we do not understand each other as well as we would like to think we do. You scratch any Canadian and they will think that they are an expert on the United States, and they are clearly not. There is an internal dynamic going on in the United States. It is quite common, of course, rivalries between agencies and within agencies, but we clearly did not understand the way the U.S. side was thinking. There is no real structure in place. There are a lot of people certainly at the export control level who deal with each other daily and still do. But for a lot of the rest of us, it was a little more remote.

What will emerge from this process will have to be, not a structured environment for consultation, but a way of facilitating it. Certainly, we have these disputes about every decade or so. We had one in the late 1980s. There was some mechanism put in place which allowed for more regular contacts and consultations. As things were working out, that sort of fell apart because people are busy. Things just were going along. The lesson is that we need more of that. We do not need a formal structure, but we do need a way of interacting between the export control agencies and the security agents in a way that has not existed. The need to talk and the need to better understand each other has been a real lesson.

ANSWER, MR. MURPHY: I would add, from a practitioner's viewpoint, with reference to our colleague from the softwood lumber industry, which thank goodness I know nothing about, but there was a wonderful moment in American politics: There is a fellow named Leander Perez, who was an old segregationist from Plaquemine Parish, Louisiana. This was in the days of resistance. Governor Earl Long of the Long family was a bit of a liberal, but you did not really know it from his demeanor. Leander was going to have a bitter-end resistance. Earl Long gave to Leander what I hope the Supreme Court will give to the State of Massachusetts, which is the following lesson. "You gotta remember, Leander, the Feds has got the bomb."

So the Feds has got the bomb, and you have to deal with them. I would not litigate any of these cases. That we do not do; we do not ever do. This is a foreign affairs function. The Administrative Procedure Act does not apply. You do not have the usual procedural protections unless you are going after a denied parties order where there is some minimal protection. You sit down, and you work it out. That is what you do. To do that, like any other good negotiator here – I do not have any lessons I can teach in this room – but you try to figure out where the other fellow is coming from and what he or she needs to achieve his or her objective, while you are trying to get where you or your client needs to be. That is the fundamental.

The other point I would make is – I cannot speak for Canada, but you are a federal state, so the lurid imagination can take over. I certainly know about our federal state. Never mind the 50 states. I am only talking about the 50 warring factions within my own esteemed federal government. You heard with some passion the views of the former legal advisor of the United States Department of State. That is not atypical in Washington. So if you want to get anywhere, you do not just belly up to the bar in the Commerce Department and put your license application in. You have to make sure that you're nice and friendly with the Department of State, or in the areas of encryption, your good buddies over there in NSA, "no such agency." Because no such agency runs the high tech industry of America. They, I assure you, do.

So you cannot get anywhere unless you figure out where the power systems are and treat them like they like to be treated, as ordinary, decent human beings trying to do their jobs the best they can. With that you can be relatively successful if you have a reasonable case. If not, then you probably do not deserve to win.

COMMENT, MR. TENNANT: I just felt Michael Robinson had made some broader characterizations for effect, that he would acknowledge for effect were probably an overstatement of the case. Much as the Canadian Security and Intelligence Service probably did, too. But one characteristic of the cooperation between Canada and the United States, and it has, if anything, only been intensified more, is the degree to which our two countries share intelligence, including in the immigration area.

Over the course of the last year, there have been some very explicit agreements so that we are at a point where a Canadian visa officer operating abroad, or an American visa officer operating abroad, have access to virtually the same types of information. Neither of us wants people of unsavory character to get into this part of the world. We also have recently announced major new immigration legislation in Canada. This is within the last two weeks. It is being characterized as seeking to close the back door so that we

can keep the front door open. In the most recent Canadian budget, over a billion dollars in additional funding has been given for immigration, law enforcement, and customs. Some of that is explicitly intended for enforcement.

Doug Forsythe is absolutely right in acknowledging that there are concerns. There are risks, and these must be watched. Michael has very usefully brought that to our attention.

COMMENT, MR. CUNNINGHAM: I would like to underline one thing that Terry said, and draw a conclusion from it. It really is important in areas like this, particularly in dealing with the U.S. government and NSA on areas like this, that you work things out when you think there is going to be a problem. Because, as Terry said, a most of these people are doing their jobs. They are good people. They understand the contradictions in these laws. They know that there are areas in which a hard-nosed application of the law is really important, and there are areas in which the risk to their agency's interest is not massive, and they need to give you what amounts to slack.

I guess I would characterize this in the same view as my all-time favorite political campaign in the United States, which occurred when I was a young lawyer doing litigation in Oklahoma. Oklahoma at that time was a dry state. It did not have liquor. You could not get liquor except in private clubs. There were three candidates running. One favored repeal of prohibition. One favored continuing prohibition. The third, and the candidate who won on a landslide ran on the slogan of, "Prohibition is better than no liquor at all." You're never going to get repeal but this is a situation in which the consequences of being caught doing something wrong may, without consultation before hand, be awful for you. Awful not only in terms of the legal consequences, but in terms of what the company may come under, as some companies have learned to their awful chagrin. But this is prohibition in the sense that it is better than no liquor at all.

QUESTION, MS. COFFIELD: Getting back to the very practical aspects of a brick and mortar company, selling a fairly innocuous material that gets caught in the Glenn Amendment situation with respect to India and Pakistan.

Thinking of my own situation, a client was selling transmission fluid. Transmission fluid, of course, can also shoot off rockets it is necessary to get the thing up on the crane. I mean, I learned a lot about transmission fluid. But what happens frequently with companies that are in these businesses is that they do not want to take the risk, no matter what you tell them. You give them all the procedures and what we can do. They lose business because they are unwilling to put themselves in that situation. That is particularly true with these out of the blue bombs that go off and cause restrictions to be put on.

There is nothing really we can do about this except in the context of our discussions with the U.S. government.

Do not forget these guys. There are companies that will take the risk. It is big enough for them. They will go through all the procedures. They will try to get the approvals. But for every one there are probably six that will not make the sale because of this. It is a sale that would not have been prohibited if it had gone through – if we had gone through the entire process for them. I cannot fault them on that.

ANSWER, MR. FORSYTHE: Certainly in our experience very often during these prolonged negotiations with the United States, we would gather anecdotal evidence which impacts Canada on these ITAR amendments. We would be relating to them corporate decisions that have been made, like switching off the internet in some cases. Many of the U.S. regulators were quite surprised at some of these decisions. They were not sure if that is really what we intended. So there may be corporate decisions being made because people are skittish. Sometimes they are being made on legal advice, which is ultra-cautious. Though I would say that it seems that many American companies live in fear of the regulators and really do not want to talk to them; that is the problem.

COMMENT, MR. MURPHY: They should.

ANSWER, MR. FORSYTHE: They should talk to them, but I have a feeling they really are afraid of them. There are certain cases we have had that we have said, well, you'll just have to go and speak to them. They cannot do that. Then they just make a corporate decision that really has an adverse affect.

COMMENT, MR. MURPHY: I know that BP was inhibited from investing in Iran. Let's not go into the ins and outs of the Iran-Libya Sanctions Act except to say it is not as extraterritorial a legal issue as some people might think it is. But it is intended to inhibit and intimidate, and it does that quite well. BP decided not to invest in Iran, not because they were right or wrong in the matter of law, but because they had a whopping amount of investment in the United States of America, and they were not going to get cross-wise with the United States.

When we talk about governments or institutions we're really talking about 26 year old staffers on some hill committee people who were not around at certain times and do not have any kind of institutional memory. So that is not an indictment of them. That is just a fact.

This is where the former second baseman no longer capable of running after anything came in, in the great Iran-Libya sanctions case. We had been in the pipeline case in 1982, and we had seen the train wreck. We had seen what happened when there were sanctions pulled in against leading French,

German, British, and Italian companies who were not techno-bandits or crooks, but people who got cross-wise, if you like, with a major foreign policy exercise. It was hugely disruptive.

I was sort of the class historian, so I was sort of brought forth and made to speak to Congressman Lee Hamilton. We explained graphically what happened. There were people pulled off of oilrigs off the coast of Brazil because they had joint ventures with one of the offending companies, which happened to be my client. It was totally unrelated to the coast of Brazil. Halliburton or Brown & Root just was not going to take that chance. Hamilton said, this story has to be told, because nobody up here knows this. They think it is cost-free. They think it is a nice, easy hit, and we'll have trade sanctions on anybody who wants to deal with Iran, and we're out of it, no problems. You simply have to re-tell some these stories. You cannot say, well, we briefed these guys four years ago and check the box. They are not even working there any more. You have to do it over and over and over again.

I am probably the only one in the United States that has an actual Y2K legal problem. There was a huge industry that built up a great deal of disappointment for the lawyers. Y2K actually went very nicely, but of course it came in the sanctions area. Where else? We had a British client who was allowed to trade with Libya and with Iran, and actually had a letter of advisory opinion from OFAC saying you can do it as long as there is less than ten percent U.S. content, and as long as you do not tell your U.S. parent. Now, think about that. United States policy is to not allow our people to deal with the dreaded Iranians. Of course, we say we like the Brits. They are not so bad. We have a nuance view of these things. Brits have been there for us when we needed them. So we'll allow you to do it. But do not tell mom.

Well, with Y2K, everybody thought that the system was going to crash and the sky would fall. We proved that it was not going to fall, or at least the two computers tested each other. This is true. In testing the computers, the British computer picked out of the bin a nice order to Iran, and they sent it over to the American computer. That was considered a violation, at least in the view of the export manager, a potential violation of the United States sanctions law. So now the U.S. is tainted with actual knowledge.

What in the world are we going to do with this? Well, some cases are simply too hard to deal with except with a smile on your face. I mean, some are just ridiculous. The only way we could do this one was to laugh about it. I went to the officials sworn to uphold the law, serious people, tough guys, and I told them this story more or less in this tone of voice. Their response was as I had hoped, and that is they laughed. They said, "that is the funniest thing we have ever heard of."

Well, of course you could not get it done there. You have to file another application, and it will go up to the committee and so on and so forth. So weeks, months passed. Finally we got another letter saying, it is okay this time, and since you have already told the parent, I guess it is okay that they know; go and sin no more. We won a Y2K case.

COMMENT, MS. DALLMEYER: Thank you very much. Both of our speakers deserve a very hearty round of applause. So I guess we can all go and sin no more, and lunch is going to be served.