

The Courageous Decision That Lasted But Nine Days

by Joseph S. Fulda

Sonya Evette Singleton is not a heroine, but for nine days her case shaped the law in the tenth judicial circuit of the United States and opened the doors for a bit more honor in government.

Ms. Singleton had been convicted of conspiracy to distribute cocaine and of money laundering, based partly on the testimony of one Napoleon Douglas, an accomplice to her offenses.

A three-judge panel of the Tenth Circuit, including its Chief Judge, asked why Mr. Douglas would possibly sell out a confederate. It turned out there were three reasons: First, the prosecutor had promised not to bring any additional drug charges against him; second, the prosecutor had promised to recommend a lightening of his sentencing for the charges already filed, or so Mr. Douglas believed; third, the prosecutor promised to inform the Mississippi parole board of Mr. Douglas's material assistance in obtaining the conviction of Ms. Singleton and others. The prosecutor made these promises to Mr. Douglas in consideration of his testimony, a rather unsurprising practice in the case of victimless crimes since without some kind of sting operation the absence of a victim who is harmed makes it impossible to prosecute these crimes.¹

Contributing Editor Joseph Fulda (fulda@acm.org) is the author of *Eight Steps towards Libertarianism* (Free Enterprise Press). Copyright Joseph S. Fulda 2002.

There is only one problem with this mode of operation: *It is illegal*. § 201(c)(2) of Title 18 of the United States Code *forbids* giving “anything of value” in consideration of testimony. The panel of judges considered whether this applies to the government too. There were also questions raised by three precedents in other circuits. Among the issues were a ruling that something relatively “intangible” like a liquor license was not a thing of value and that a promise made to secure the status quo was not consideration. The panel made short shrift of these arguments:

We agree with those circuits which have held that the test of value is whether the recipient subjectively attaches value to the thing received. . . . In this light we apply the statutory phrase “anything of value” to the promises made to Mr. Douglas. The obvious purpose of the government's promised actions was to reduce his jail time, and it is difficult to imagine anything more valuable than personal physical freedom. . . . In the case of the promise not to prosecute, the value was even greater: besides guaranteed physical freedom he was guaranteed freedom from the burden of defending himself and from the stigma of prosecution and conviction as well.

Our basis for determining these promises were of value is that the record indicates Mr. Douglas subjectively valued

them. They were all he bargained for in return for his testimony and guilty plea.

And:

We are likewise unpersuaded that preservation of the status quo cannot constitute a thing of value. The persuasion of the United States was brought to bear in return for testimony at a time when the witness's status quo (which happened to be ill-gotten gain) was about to change drastically for the worse.

Good Austrian economists!

Does It Apply to the State?

As to the question of whether the statute applies to the government, the panel's judges later reasoned: "To suggest that government attorneys performing prosecutorial functions are beyond scrutiny because of who they represent is anomalous because it merges attorney and client. . . . Merely because the government cannot be prosecuted if its agents violate a rule does not mean that the rule may be disregarded; to the contrary, the rule may be enforced by means other than prosecution, here by exclusion of evidence."²

We think that in the hierarchy of "life, liberty, and property," liberty clearly comes before property—and if Patrick Henry is the model, before life, as well. Yet, surely, no one would regard a witness whose testimony was obtained by bribery—*property* in exchange for "evidence"—as credible, and no judge aware of the bribe would allow the "witness" to testify in his courtroom. Yet uncounted thousands of prosecution witnesses are bribed by an offer of *liberty*—no charges, reduced charges, or less time under lock and key. Such witnesses are said to "turn state's evidence," and, indeed, the evidence is turned—from credible to inescapably tainted. There are few men who would not commit perjury to escape prison time, and to allow testimony against a defendant to be received in evidence when the alternative is the terrifying prospect of incar-

ceration is simply unconscionable. It is, simply put, state bribery and subornation of perjury. No principle is more self-evident than that nothing can be believed of a witness with a gun to his head. Thus we no longer exact "confessions" from defendants by force or threat of force. To do so from his alleged accomplices is not much more credible—or honorable.

The panel also spoke to this issue, although in terms more muted than we just have:

If justice is perverted when a criminal defendant seeks to buy testimony from a witness, it is no less perverted when the government does so. Because § 201(c)(2) addresses what Congress perceived to be a wrong, and operates to prevent fraud on the federal courts in the form of inherently unreliable testimony, its proscription must apply to the government.

Alas, the decision, correct legally and morally, was not to stand. Nine days later, the entire U.S. Court of Appeals for the Tenth Circuit *acting on its own motion* voted to vacate the panel's decision and to rehear the case *en banc*. Although all three judges on the original panel dissented, every other circuit judge voted with the majority to allow this offensive evidence-buying practice. They did this so quickly that the *Federal Reporter*, a compendium of appellate court decisions published quasi-privately by the West Publishing Company, contains no record of the panel's original decision. The vacated decision is also gone from the Lexis and Westlaw legal databases, which are also only quasi-private; this, even though the first word on top of the original panel decision is "PUBLISH." To find this decision, one has to go to completely private legal resources such as findlaw.com on the Internet.³ There truth lies buried from sight. □

1. See my "The Pernicious Nature of Victimless-Crime Laws," *Ideas on Liberty*, April 2002, pp. 19–20.

2. *United States v. Singleton*, 165 F.3d 1297, 1311 (10th Cir. 1999) (en banc) (Kelly, J., dissenting).

3. See <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=10th&navby=case&no=973178&exact=1>.

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The Map that Predicted the Terrorist Attacks

By Mark Skousen
President, FEE

Take a close look at the chart in the next column and the world map on the next page. They reveal a story that will forever change the way you view the world, especially after September 11, 2001, and how YOU can help fight the war against terrorism.

The chart shows an amazing connection between economic freedom and income. As you can see, the more freedom a nation enjoys, the higher its standard of living, as measured by per capita income in purchasing power terms. The chart conveys two simple messages.

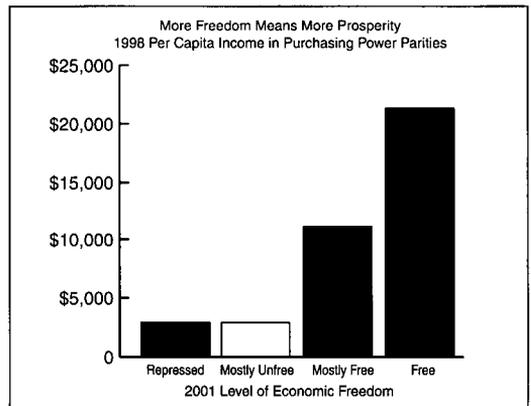
Message #1: Economic Freedom Leads to Prosperity

Despite the good intentions of those who support government intervention, regulated economies, and redistribution of wealth, the free market is the surest way to provide the highest standards of living for all people.

Message #2: Free Markets Lead to Peace

Free markets mean more than higher income. They also lead to international security. Look at the "world map of economic freedom" on page 2. This map, published prior to the terrorist attacks on September 11, 2001,¹ reveals with

Economic Freedom and Per Capita Income



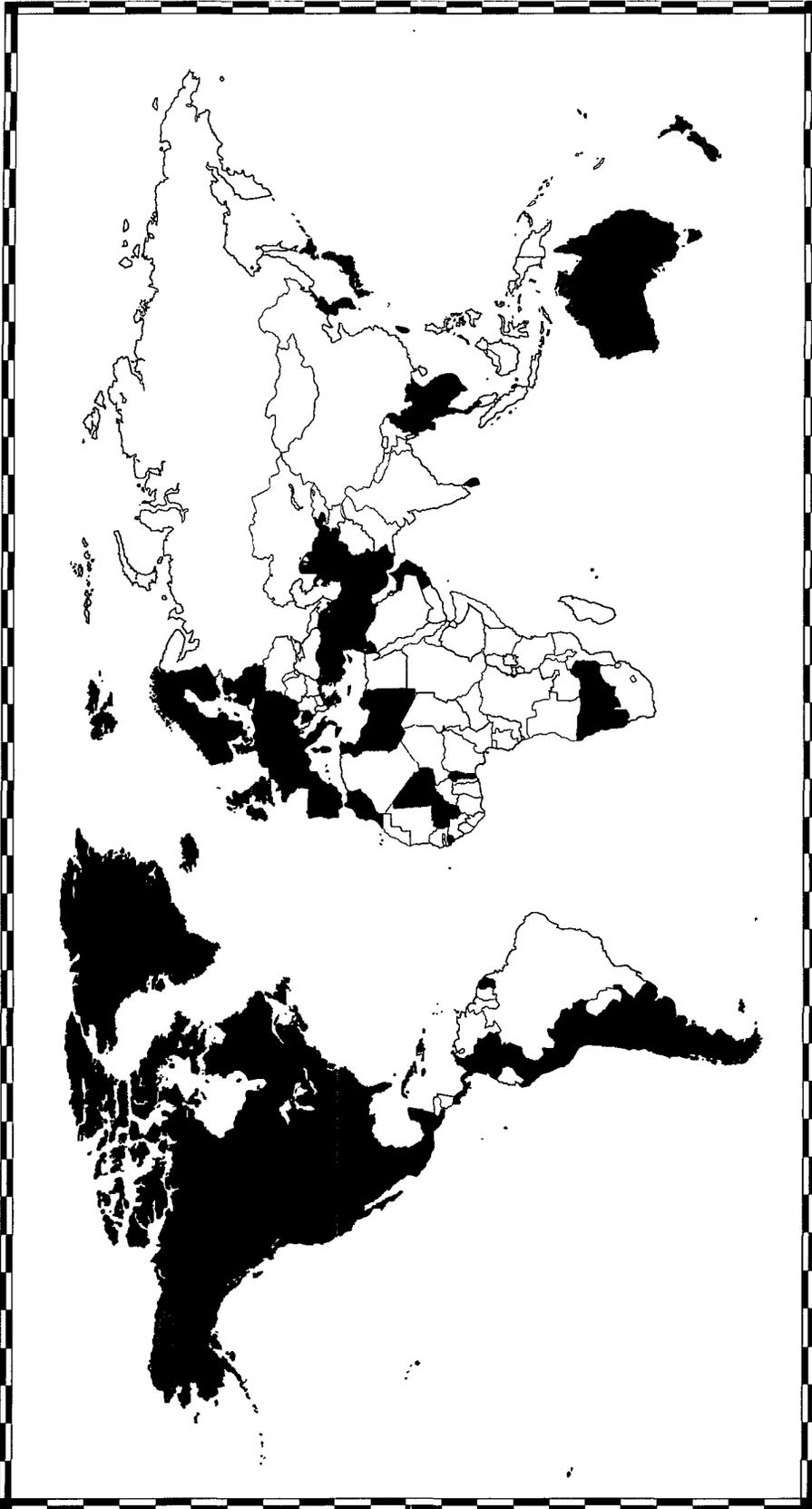
Source: The World Bank, 2000 World Development Indicators.

unmistakable clarity why Islamic extremists killed over 2,500 people in New York and Washington, and more importantly, it shows how we can prevent terrorism in the future.

Each nation is scored and ranked according to its degree of economic freedom, based on ten factors, such as level of taxation, trade restrictions, labor regulations, inflation, property rights, and government intervention in the economy. Each country is denoted by color, from blue to red, similar to the bar chart.

¹This map appears in a book titled *2001 Index of Economic Freedom*, published jointly by the Heritage Foundation and the *Wall Street Journal*. The book is updated yearly.

World Map of Economic Freedom



Courtesy: The Heritage Foundation

Countries colored blue are ranked “free.” Countries colored green are considered “mostly free.” Nations colored yellow are labeled “mostly unfree.” And nations colored red are ranked “repressed.”

This unique world map is an eye-opener. Note the following:

- **First, only a few countries are “free.”** Only a dozen countries around the world are colored blue, including the United States, Ireland, Britain, Switzerland, Australia, New Zealand, and Hong Kong. True freedom is a rare and delicate flower.

- **Second, Canada, Latin America, and Europe are “mostly free.”** Some Americans may be surprised to see Canada listed as “mostly free.” But Canadians are not surprised—they know that Canada has a much bigger welfare state than the United States. The same holds true for Europe. Despite efforts to create a “United States” of Europe (the European Union), Europe remains a highly regulated welfare state.

- **Third, nations in the Third World are “mostly unfree.”** Countries painted yellow include Russia, China, India, Brazil, and most of Africa. In fact, of the 155 nations surveyed, over half (81) received a negative grade (“yellow” or “red”).

Look Where the Red Is!

The biggest shock is this: nearly all the red is located in the Middle East. The connection is clear: terrorism and poverty go hand in hand with repressed freedom. Despite an abundance of oil reserves, most Arabs live in shockingly deep poverty, governed by leaders who oppress their people economically. The region has been crippled by constant war, corruption, inflation, black markets, protectionism, and government intervention on a grand scale. Most of the Middle East continues to suffer from economic

depression, political turmoil, and military conflict. And, as we have seen, countries there are also steeped in terrorism.

Henry Hazlitt, a FEE founding trustee and author of *Economics in One Lesson*, summed it up well: “It is socialist governments, notwithstanding their denunciations of imperialist capitalism, that have been the greatest source of modern wars.”

The Most Important Lesson in the War on Terrorism

What is the most important lesson we can learn from this map? Simply this: **Economic repression breeds fanaticism and terrorism.** It is not surprising that the Middle East is a major source of radicalism today. A closed society breeds intolerance and fanaticism. Interestingly, most of the Middle East is also famous for its lack of political democracy and religious tolerance. Most are ruled by dictators or kings. Religious proselytizing is prohibited in Arab nations and even in Israel.

How to Permanently Win the War Against Terrorism

But there is another important lesson to learn from this map. **Liberalized trade and open markets break down cultural and social monotheism and destroy fanaticism and intolerance.** Adam Smith, the Scottish economist and founder of market capitalism, and Charles Montesquieu, the great French philosopher, taught this vital doctrine. “Commerce cures destructive prejudices,” Montesquieu wrote in *The Spirit of the Laws*. “It polishes and softens barbarous mores. . . . The natural effect of commerce is to lead to peace.” Adam Smith added that the commercial society moderates the passions and prevents a descent into a Hobbesian jungle of greed and hate.

Business encourages people to become educated, industrious, and self-disci-

plined. Commerce encourages trade, travel, and exchange among nations and cultures. Business people are the ultimate in practicality—by nature open-minded and tolerant of other viewpoints. Their goal is to provide what others need, at a price they can afford. As John Maynard Keynes once said, “It is better that a man should tyrannize over his bank balance than his fellow-citizen.”

What then is the real solution to the war on terrorism? Sending troops and fighting war in faraway lands may offer a short-term solution to terrorism, but real, permanent peace can only be achieved through opening trade and business, and establishing a legal system conducive to a civil society and prosperous economy. A good dose of open markets and competition in all walks of life could go a long way toward bringing peace, prosperity, and good will to this dangerous part of the world. Until that happens, however, many will shout “peace, peace, when there is no peace.” (Jeremiah 8:11)

Help Color the World Blue!

The bar chart and the world freedom map also give us the opportunity to explain our mission here at FEE. Simply put, our goal is to color the world blue, to maximize freedom for all people in all lands. It’s a tall order, but we are determined to create more “blue” countries wherever possible.

How do we at FEE fight terrorism? By expounding sound free-market principles both here and abroad to students, teachers, business people, and the general public—to anyone who will listen.

I have traveled around the globe to 64 countries—in North America, Europe,

Africa, Asia, Latin America, and the Middle East—and talked to people of all walks of life about the liberating effects of the free-enterprise system. They have asked for our help in bringing *Ideas on Liberty*, books, pamphlets, and seminars to them and teaching others about the benefits of a free society.

I do think that we are making progress. If this world map of economic freedom had existed in 1985, when the Soviet Union and China were closed communist nations, over half the world’s population would have been colored “red.” But with the collapse of the Berlin Wall and the downfall of Soviet communism, many nations have moved from “red” to “yellow” and from “yellow” to “green.” Will they eventually move to “blue”? Through our ever-expanding programs, FEE will do everything in its power to achieve this lofty goal.

How can you help? Pass along this special issue of *FEE Today* to your friends, relatives, and business associates. Show them how freedom and prosperity are closely linked. If we lose our freedom, you can be sure that our standard of living will decline. But more importantly, show them how free markets lead to the end of terrorism, intolerance, and oppression.

Please consider making a donation to FEE, which will help spread ideas on liberty and sound economic thinking throughout the world. If you give any amount over \$39, you will receive a year’s subscription to *Ideas on Liberty*.

Keep the light of freedom alive.



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The Maternity Hospital and the Mental Hospital



At first sight, the maternity hospital and the mental hospital are two completely different institutions. However, on closer examination, striking similarities emerge.

Neither pregnancy nor delivery is a disease; each is an aspect of the mammalian reproductive mechanism. Women delivered babies long before there were special buildings called “lying-in hospitals” established to care for them. Behavioral reactions to the vicissitudes of life are also not diseases; they are aspects of the repertoire of human actions. In the past, people who displayed such behaviors prospered or perished, were celebrated or condemned, long before there were special buildings called “mental hospitals,” ostensibly devoted to their care.

Modern medicine begins in the middle of the nineteenth century, with the development of the concept of disease as a pathological alteration of cells, tissues, and organs. This new understanding was made possible in part by advances in technology, and in part by the establishment of large municipal teaching hospitals. The live patients were the “case material” for clinical instruction, and when they died their corpses formed the “material” for the pathologist’s postmortem examination.

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In England, hospitals began to be established more than a hundred years before the dawn of scientific medicine. These institutions resembled our current nursing homes and hospices more than they resemble our hospitals: they were way-stations to the cemetery. Most of their would-be beneficiaries viewed entering them with the same dread with which people now view entering a nursing home. When persons of rank and wealth fell ill, they were cared for and died at home. The aim of the early hospitals was social reform, not medical healing. Before the twentieth century, women from families with even modest means were rarely, if ever, delivered in maternity hospitals.

The development of mental hospitals followed a similar pattern. The early private madhouses were intended to help wealthy persons dispose of their unwanted relatives, by disguising coerced rehousing as care for insanity. After insane asylums became public institutions, in the eighteenth century, their inmate population consisted almost entirely of paupers. In hindsight, no medical historian doubts that, for the patients, the early hospitals did more harm than good. In the case of mental hospitals, this is still the case, with the judicial system and lawyers as additional beneficiaries.

Prior to the twentieth century, hospitals were places of horror. However, the harm they could do was limited by the fact that most of the sick people who went there were hopelessly ill and would have soon died in any case. This, however, was not true for