



## Destroying Financial Privacy

by Richard W. Rahn

OVERZEALOUS MONEY LAUNDERING RULES SUBJECT THE INNOCENT TO SUSPICION

Do you want your relatives, friends, business competitors and government bureaucrats to know precisely how much wealth you have, in what form, and how you spend all of your money? Most people were appalled when they learned the extent of monitoring of telephone and electronic communications by the various intelligence agencies. But what is even more shocking is the extent to which various government organizations monitor and, in many cases, restrict financial freedom, and seize assets without criminal conviction.

Despite the limited technologies to monitor and control financial transactions at the time, the American Founding Fathers clearly saw the danger of a government that could examine and meddle in people's financial affairs. The right to privacy can be found in the Bill of Rights, specifically in parts of the Fourth and Fifth Amendments to the U.S. Constitution.

In an excellent report, "Financial Privacy in a Free Society," Heritage Foundation scholars Norbert Michel and David Burton detail the ongoing abuses of the basic right of financial privacy in the United States and elsewhere. "Financial privacy can allow people to protect their life savings when a government tries to confiscate its citizens' wealth, whether for political, ethnic, religious or 'merely' economic reasons. Businesses need to

protect their private financial information, intellectual property and trade secrets from competitors in order to remain profitable."

The government argues that it must collect financial data and then share it with many domestic and foreign government organizations in order to stop tax evasion, money laundering, drug dealing, other assorted criminality, and terrorist finance — all of which sounds good at first glance, until one looks at what really happens. If you think that the war on drugs has been a failure, look at the war on money laundering, tax evasion and terrorist finance for an even bigger failure.

First, money laundering is a crime of intent, rather than actions, in which two different people can engage in the same set of financial transactions, but if one has criminal intent he or she can be charged while the other person is home free. Such vague law is both ripe with abuse and difficult to prove. There are almost infinite ways to launder money, so those relatively few who are convicted tend to be the less clever. Ironically, the more complex the tax law becomes, the easier it becomes for those who want to invest the time and resources to evade full payment of taxes. Most terrorists spend very little money. Renting a truck and buying a few knives is never going to show up on a terrorist money watch activity, and even making bombs is relatively inexpensive.

Mr. Michel and Mr. Burton provide extensive data demonstrating that the attack on financial privacy by governments is largely a waste of money — many billions spent to obtain few and very costly convictions. It is also a prime example of the tyranny of good intentions. It was not until 1986 that "money laundering" and many other alleged financial crimes were made explicitly illegal — and the government provided the power to seize a person's assets on the mere suspicion of wrongdoing rather than conviction.

Two decades ago, Judge John Yoder wrote: "When I set up the Asset Forfeiture Office, I thought I could use my position to protect citizens' rights, and tried to ensure that the U.S. Department of Justice went after big drug dealers and big-time criminals, rather than minor offenders and

innocent property owners. Today overzealous government agencies and prosecutors will not think twice about seizing a yacht or car if they find two marijuana cigarettes in it, regardless of where they came from. I am ashamed of, and scared of, the monster I helped create." Judge Yoder and his successor as head of the Asset Forfeiture Office, Brad Cates, have written extensively and worked hard, because of the abuses, to abolish the practice and legality of asset forfeiture at both the federal and state levels — with some successes. Unfortunately, Judge Yoder passed away this past Friday. His voice for liberty and reason will be sorely missed.

The financial information that government agencies now routinely collect is widely shared, not only with other domestic government agencies, but increasingly with foreign governments — many of which do not protect individual liberty and other basic rights. The Organization for Economic Cooperation and Development has been pushing for an information exchange agreement, whereby the U.S. would, as Mr. Michel and Mr. Burton note: "automatically, and in bulk, ship private financial and tax information — including Social Security and tax identification numbers — to nearly 70 countries," many of which are hostile to the U.S.

Information sharing among governments is clearly appropriate in the cases of terrorism and violent crime, but not in cases of political speech or peaceful protest, gambling, homosexual behavior and tax evasion. Information should only be shared in cases of dual criminality; that is, where the information being requested relates to what is a criminal offense in both countries. For instance, countries should not be required to enforce tax law violations that are not criminal violations under their own laws.

More abuses of basic rights are occurring on a daily basis by government officials concerning financial privacy than on political speech — but both need to be stopped.

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<http://www.washingtontimes.com/news/2017/jun/12/money-laundering-laws-also-harm-the-innocent/>