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Rivendell

part 8

The War on Cash, the New Money, and the End of Financial Privacy

by Mark Nestmann

Government bureaucrats don't like cash transactions. Cash is difficult, if not impossible to trace. Cash makes it easier to do business "off the books" without paying taxes. In short, cash is a *private* way of doing business. To fight cash, governments worldwide have adopted legislation over the last two decades to discourage its use. In some countries, if you use cash to disguise a financial transaction, you're now committing a crime!

The process is furthest advanced in the United States. In this country, the so-called "Bank Secrecy Act" requires banks and other financial institutions are required to report cash transactions over $10,000 and any other "suspicious cash transactions." As of Feb. 1992, "cash" also includes money orders, casher's checks, and traveler's checks. Amendments to this act enlist ordinary businesses into the war on cash. The new cash reporting form for businesses, Form 8300, even requires merchants to report "suspicious transactions" by their customers. No one is exempt--not even your attorney. The money you pay your defense attorney can now serve as the "smoking gun" to convict you of a crime. Forfeiture laws adopted in the 1980s give the government the right to seize cash tainted by drugs. Yet analysis by the Drug Enforcement Administration's own labs shows most cash circulating is drug tainted. Does this make cash illegal? You be the judge!

The "Crime" of Structuring

By far the most insidious Bank Secrecy Act crime is "structuring;" any act you take in order to avoid filling out a currency transaction report (Form 4789 for banks; Form 8300 for other businesses; Form 4790 for moving cash across a U.S. border). This might seem a fairly trivial offense, but you can be imprisoned up to five years and fined up to $250,000 per violation, in addition to having any property "involved in" the offense forfeited. Did you drive to the bank to structure a transaction? If you did, prosecutors can seize your car. Seizure of such property can occur before trial, even before arrest. There is no requirement that the funds be earned illegally or involve tax evasion to sustain a structuring conviction. Hiding your own lawfully- earned, tax-paid dollars is the "crime." In essence, the structuring statute makes virtually any attempt you make to protect large cash transactions from government financial inquisitors unlawful! Because the structuring law is worded vaguely, not even IRS agents are sure what structuring is, and what it is not.

It is clear from the regulations the IRS has issued that a person who deposits $9,000 in cash into an account on two consecutive days is structuring his transactions. But twelve consecutive $900 deposits may also be structuring as well. The regulations don't address this possibility, or any of an infinite number of other possibilities. And remember: not only transactions in cash, but cash equivalents, are treated identically for the purposes of defining structuring. I personally have received letters from dozens of persons in jail for structuring whose only crime was trying to protect their financial privacy. In one case (U.S. vs. Aversa), the defendant's "crime" was "conspiring" with a friend to hide income from the defendant's wife. The scheme triggered reports of suspicious transactions in Aversa and his friend's bank accounts. Aversa Judge Loughlin was particularly critical of the circus atmosphere surrounding the U.S. District Attorney's office when the indictments were announced at a press conference. The implication was that prosecutors had broken up a major money laundering ring. Judge Loughlin wrote: Defendants should never have been prosecuted for structuring currency transactions...where evidence showed that defendants were not attempting to avoid paying tax on money or disguise where it came from...The evidence shows that [Aversa] did not believe that [he] was breaking any law... This is a case that was never contemplated by the drafters of the statute and that never should have been brought by the U.S. Attorney. There is only one explanation for the bringing of these charges--it was easy. Loughlin reluctantly sentenced Aversa to a mandatory prison term. In 1994, the Supreme Court briefly brought some sanity back into the structuring statute by requiring that prosecutors prove that persons criminally charged under the statute know they are violating the law, as the structuring law's "willfulness" language required. Congress, outraged by this impudence, quickly removed the willfulness requirement, rendering the Supreme Court judgment moot.

The New Money

If the government can't end the use of cash overnight, the next-best solution from a bureaucratic perspective might be to require all citizens to use currency whose movements can be tracked. A "more traceable" currency has now been introduced. In 1991, the first example of the new currency--the $100 bill--was introduced. New $100s contain a microscopic line of print circling the portrait in the center of the bill and a tiny thread running vertically down the left side of the bill. The bills also contain magnetized ink. New $20s and $50s were introduced in early 1992. The thread running down the left side of the bill contains a band of small letters running down the length of the bill. The Treasury claims the threads are polyester, but they are interwoven with magnetic threads. Moreover, these threads are capable of being encoded with messages--a Social Security number, for instance. At least some U.S. banks are already equipped with machines capable of "reading" the message. I've not seen the machines yet (officially, they don't exist), but I've heard from reliable sources that they are fully operational.

Now that the new money has been introduced, the next step might be for an outright recall of the "old money." In 1989, a suggestion for a currency recall came from former Treasury Secretary Donald Regan. He recommended that all $50 and $100 bills be recalled and replaced with a new currency. The changeover would occur in a 10-day period, Regan proposed, and the old money would no longer be legal tender after that time. Furthermore, Regan recommended that anyone turning in more than $1,000 in old bills be forced to prove that all taxes on the cash had been paid, and that it had not been generated through illegal activity. Otherwise, the funds would be impounded by the IRS--and their former owner would face further investigation.

Shortly after the Regan proposal was made public, Massachusetts Senator John Kerry introduced an act that called for machine-readable bar codes on all U.S. currency so that all $20s, $50s, and $100s would be "more traceable." Kerry recommended that serial numbers on these bills be tracked by optical scanning devices such as those used at grocery store check-out counters. In this manner, perhaps in combination with a national ID card, the identity of the individual spending the currency could be ascertained.

Today, the tools are in place to put into effect Regan and Kerry's suggestions. If a sudden currency recall were to take place, it would presumably be justified as part of the War on Drugs. And once the old money had been recalled, the Treasury could announce that money laundering, for all intents and purposes, had been eliminated. But I believe the recall would have a much more sinister purpose; the introduction of a two-tiered currency--a "domestic" currency to circulate in the United States and an "international currency" to circulate abroad. The two-tiered system could be justified as providing a permanent end to the money laundering problem. The latest drumbeats for a currency recall and a new currency came in 1993 and early 1994 because of a counterfeiting "crisis;" one involving the "new money". Now a new "new money" is proposed that will be counterfeit-proof and at the same time "fight money laundering." How? By issuing it in two colors: one color to circulate in the United States, one outside of it. The real reason for the changeover, however, would have nothing to do with fighting counterfeiting or money laundering. It would be to establish a two-tiered exchange rate for the dollar.

At first, the values of the domestic and international dollars would be equal. However, having a currency that could not leave the country except under restricted conditions would permit the Federal Reserve and the Treasury to inflate away the government's gargantuan debts and unfunded obligations, using the power of the printing press. This would rapidly depreciate the value of the domestic currency against the international currency. A law on the books for nearly a decade makes this kind of debasement completely legal (and the U.S. dollar has already lost more than 90% of its value in relation to gold in the past 60 years; see Chart 1). U.S. Public Law 96-221, the "Depository Institutions Deregulation and Monetary Control Act of 1980" made the following change in what constitutes legal monetary reserve for the U.S. money supply: Bills, notes, revenue bonds and warrants with a maturity date not exceeding six months and obligations of, or fully guaranteed as to principal and interest by a foreign government or agency thereof. In other words, it is perfectly legal for the U.S. government to simply buy or borrow a few trillion dollars worth of foreign bonds denominated in the Russian ruble, Brazilian cruizero, or any other third-world currency. It could then use these "assets" as a "legal monetary reserve" in order to print as much currency as is required to meet its obligations to the welfare state. Moreover, the Fed could allow the international dollar to float in the international currency markets. U.S. Treasury securities issued for purchase by foreigners would be denominated in this new currency, perhaps even backed by gold. This would have the effect of greatly increasing foreign purchases of U.S. Treasury debt, which have declined in the past five years, as the value of the U.S. dollar has collapsed. Treasury securities held by U.S. citizens would be denominated in the virtually worthless, non-gold-backed, domestic currency. Only selected banks would be authorized to exchange domestic dollars for international dollars, and the amount of currency that could be exchanged at one time could be made progressively smaller. The domestic dollar would become a "blocked" currency, no longer freely exchangeable in world markets.

Even if you don't think you have anything to hide, currency recall could touch your life directly. Millions of us have perfectly legitimate reasons to hold cash. These reasons do not relate to any unlawful activity. For instance, many people who experienced the Great Depression firsthand recall that thousands of banks failed during those years. The present economic situation looks hauntingly familiar to anyone who lived thorough this period. Anyone who lost money in a failed bank during the Depression, or fears that the government might possibly violate its current deposit guarantees, might prefer to keep his money in cash. If you think that there would be massive opposition to a new money conversion, you're not reading the same opinion polls that I am. Market Facts, a market research company, showed enormous public support for any currency exchange that was part of a fight against counterfeiting or drug trafficking. "Conservative" columnists such as William Safire have gone on record as favoring currency recall to fight drug trafficking and money laundering. And when former Treasury Secretary Regan proposed the recall of all $50 and $100 bills, his suggestion met no criticism that I read about outside the alternative press.

The Ultimate Bureaucratic Goal: The Cashless Society

One way for bureaucrats to do away with cash is to make possible substitutes very convenient. Today, credit cards and personal checks have done away with most cash transactions. And tomorrow, electronic "debit cards" promise to do away with the remainder. With a debit card, purchases are paid for with a card read by a merchant's computer terminal. Your bank account is debited automatically for the amount of purchase and the merchant's account is simultaneously credited that same amount, minus a service charge. The process is neat, simple and all the paperwork is done automatically. A paper trail on every item you purchase is created. But if you are making a purchase or contribution that you wish to keep private, then you have a problem. Debit cards are popular with merchants because they permit an instant, foolproof credit to be applied to their accounts. Bouncing checks and credit card chargebacks are eliminated. Debit cards also permit a merchant to categorize his customers by what they purchase and how much they spend. This analysis permits him to direct his marketing efforts appropriately. Banks like debit cards because they can deduct a service charge for making the transaction. My bank recently began imposing a service charge for use of its automatic teller machines (ATMs), which are nothing more than debit card terminals. Yours will too, if it hasn't already. Marketing firms like debit cards since the profile created from individual purchases will create a much more detailed picture of consumer spending patterns than is currently available. Government bureaucrats like them because they eliminate cash and permit much more detailed financial surveillance.

Debit cards won't eliminate cash overnight. But their convenience will make them a hot product of the nineties, and beyond. A national debit card system is already in use in France. Canadian banks intend to launch a national debit card system in 1992. A recent agreement between a dozen of the largest regional ATM networks in the United States would set up a national debit card system that would allow consumers to instantly deduct purchases from their checking accounts anywhere they travel. In the near future, you'll be hearing much more about them.

How the Cashless Society Will Operate

In 1984, the IRS announced an initiative designed to lead to a "return- free system." Once complete, the IRS would figure your taxes for you, and electronically debit your bank account for whatever it calculated you owe. How convenient! The only way the IRS can figure your taxes, however, is if it's reasonably certain you've reported every penny of your income. With non- traceable cash in circulation, the return-free system is impossible to set in motion. The only alternative is a more traceable currency. Even better would be no currency at all. From this viewpoint, the new money is only an interim step toward the government's ultimate goal of a cashless society. In Congressional testimony in May 1991, a Secret Service representative stated that anti-counterfeiting advances would have to continue indefinitely "unless we can come up with a new medium of exchange." A new medium exchange, of course, means the elimination of cash.

Until the cashless society arrives, the government discourages cash use in the ways I've already described. At the same time, more traceable cash alternatives are becoming ever more convenient. The government encourages credit card use to the point where the U.S. President calls for lower credit card interest rates. Use of debit cards is exploding.

Advocates of the cashless society would have you believe that its arrival would spell the end of tax evasion, money laundering, the drug trade, and black markets. But it won't work. Instead of wiping out the underground economy and black markets, the cashless society will expand both dramatically. Exchanges in the cashless underground economy will be made in the form of barter.

Barter, already under attack by the IRS for over a decade, will come under renewed assault. But the sheer volume of barter exchanges will overwhelm any enforcement policy short of "stationing IRS agents in every American kitchen," as George Bush once accused former Democratic Presidential candidate Michael Dukakis of proposing. How should you react to the prospect of a more traceable currency, a possible currency call-in, and the eventual move toward a cashless society?

If you can't prove that you've paid taxes on your cash holdings, you need to take steps to construct a paper trail to prove that the funds were earned legitimately. This is a job for an accountant or even better, a tax attorney. Then you need to pay taxes on these funds, if you haven't done so already. Even if you can prove taxes you paid all taxes due on the cash you hold, you must still be careful to avoid being stung by a cash recall. Furthermore, you shouldn't hold too much cash; $1,000 was the suggested threshold for a full-scale IRS audit in the cash recall proposed in 1989 by former Treasury Secretary Donald Regan. Convert cash holdings larger than $1,000 to traveler's checks, which are unlikely to be recalled, and can be replaced if lost or stolen.

If you prefer cash, make certain that it contains no drug residues. One good way to accumulate drug-free cash is to take back some cash from every paycheck you deposit in your bank. Ask the teller to provide you with new and uncirculated bills, which should be free of drug residues. If the teller asks you why you want new bills, simply say you are a currency collector. Have the teller put the bills into a bank envelope with the withdrawal slip. Then have the teller seal the envelope and stamp over the seal with the bank's date stamp. If the teller asks why you're going to all this trouble, just say you want to be able to prove you withdrew the money directly from a bank, and that the bills really are uncirculated. Keep these funds at home in a floor safe, not in a safety deposit box. The IRS presumes cash it finds in a safety deposit box is the proceeds of illegal activity, and automatically seizes it. Then buy some books on bartering (privately, of course).

*Mark Nestmann is the editor of *Low Profile* newsletter and author of *How to Achieve Personal and Financial Privacy in a Public Age*, now in its fifth edition. For a free catalog describing these and related publications, e-mail lpp@blkbox.com, Subject: Catalog, for an electronic version of our catalog.*

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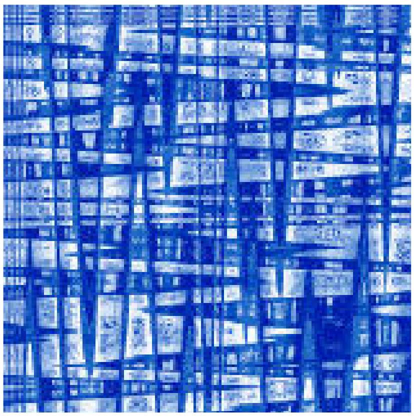

Published by pi34 December 1994

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Issue 4
Thanks to all contributors.
Designed by R-art A.M.D .

Misinterpretations made by the reader/s\
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Issues 1,2,3 £20 each. Email for details
7482-5192-472-5472-1415-82154-4525-24134
518-381-1816-1541-5235-6556-1515-2862-63