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## **The Bogus Anti-Terrorist Crackdown on Financial Freedom** **by James Bovard**

In the post-9/11 era, federal officials are treating cash as they would a suspected weapon of mass destruction. They have created legions of new restrictions and reporting requirements for citizens' money. But the new controls have done nothing to make Washington any more competent at protecting Americans from real threats.

Federal experts estimated that Mohamed Atta and the other 18 hijackers required only about half a million dollars in total financing to carry out their attacks on September 11, 2001. That is a tiny fraction of the trillions of dollars' worth of currency transactions that occur daily around the world. Terrorism expert Brian Jenkins observed, "Terrorism tends to be a low-budget item. The real resources are fervent young men who are willing to blow themselves to bits."

But the feds seized upon the attacks to greatly expand intrusions into Americans' financial affairs. The terrorist attacks instantly endowed George W. Bush with the right to micro-manage world financial institutions — or so the Bush administration apparently believed. And while Treasury Department officials portrayed their decrees as first strikes against "money that kills," in reality it is almost impossible to determine which dollar bills have homicidal intent.

The USA PATRIOT Act gave the feds the right to financially strip-search every American. It created new financial "crimes without criminal intent" — empowering the Customs Service to confiscate the cash of American travelers who fail to fill out a government form.

Congress redefined the possession of cash to make it sound far more insidious. The PATRIOT Act created a new crime — "bulk cash smuggling" — to punish anyone who doesn't notify the government of how much money he is taking out of or bringing into the United States (if he is carrying more than \$10,000). The PATRIOT Act stated that "if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the *corpus delicti* of the smuggling offense." Congress rewrote the law to pretend that money travels

by itself and that money commits the crime. And since a stack of cash has no constitutional rights, the government can do no wrong when it seizes the money. (This is based on a medieval legal doctrine known as an *in rem* proceeding — taking legal action “against the thing.”)

Anti-terrorism rhetoric bedecked the new confiscatory powers. In the PATRIOT Act’s “Findings,” Congress proclaimed that “the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.” Congress also ordained, “The intentional transportation into or out of the United States of large amounts of currency ... is the equivalent of, and creates the same harm as, the smuggling of goods.” Congress did not explain how a person became a smuggler merely by transporting his own money.

The “bulk cash smuggling” provision states that the money cannot be confiscated unless it has been concealed. But “concealment” includes “concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.” In other words, any traveler with a heap of bills not plopped openly on the airline seat when a G-man walks up to interrogate him is guilty of concealing the money. Violators of the reporting requirement are subject to five years in prison, as well as loss of all their money.

### **“A dream come true”**

The PATRIOT Act contained an array of money-laundering financial-crackdown provisions. The act empowers the U.S. government to penalize anyone in the world who is accused of violating U.S. money-laundering laws. *Money Laundering Alert*, a pro-government newsletter, hailed the new law:

It is no exaggeration to say that, as a whole, the act has the ability to reach the assets of every financial institution and business in the world and to cripple their [sic] ability to function in a world in which the United States is the financial centerpiece.

If a foreign bank has a single dollar deposited or held in a U.S. bank, or wires a single dollar through the United States, the U.S. government can claim jurisdiction over that bank’s operations anywhere in the world.

And the information that is stockpiled will be shared far and wide. *Money Laundering Alert* described one financial provision of the PATRIOT Act as a “dream-come-true information gathering tool for U.S. agencies,” extending a “welcome mat to the

Central Intelligence Agency, National Security Agency and other U.S. counterparts” to look at the new financial information on American citizens and others.

The PATRIOT Act greatly increased the feds’ power to investigate Americans’ financial affairs. As *Newsweek* reported,

Law-enforcement agencies can submit the name of any suspect to the Treasury Department, which then orders financial institutions across the country to search their records for any matches. If they get a “hit” — evidence that the person has an account — the financial institution is slapped with a subpoena for the person’s records.

## **Strippers and the Cuban embargo**

Most of the warrantless financial searches the feds have ordered under the PATRIOT Act have had no connection to terrorism. Kevin Bankston of the Electronic Frontier Foundation observed,

There is no probable cause here. There is no judicial oversight. Yet the government can immediately query financial institutions across the nation to find out where you have an account or who you've done business with. It's not just if you have an account there, but any record of a financial transaction.

The feds used PATRIOT Act financial sweep-search powers in 2003 in "Operation G-String," an investigation of bribes involving Las Vegas strip clubs. Rep. Shelley Berkley (D-Nev.) complained, "It was never my intent to have the PATRIOT Act used as a kitchen sink for all of the law-enforcement-tool goodies that the FBI has been trying to get for the last decades.... It is PATRIOT Act creep." Berkley was especially indignant that the powers had been used in a tawdry public corruption case: "Never ... did the FBI say we needed additional tools to keep this nation safe from strip-club operators."

Though the PATRIOT Act vastly increased the feds' financial surveillance powers, they are not concentrating their artillery on the gravest threats to American security. The Treasury Department's Office of Foreign Assets Control has a lead role in tracking down supposedly dangerous money. Unfortunately, this office has ten times more agents assigned to track violators of the U.S. embargo on Cuba than it has tracking Osama Bin Laden's money. Between 1994 and 2003, it collected almost a thousand times as much in fines for violations of the Cuban embargo as it has for terrorism financing violations (\$8+ million versus \$9,425).

Rep. William Delahunt (D-Mass.) complained, "We're chasing old ladies on bicycle trips in Cuba when we should be concentrating on using a significant tool against shadowy terrorist organizations." Treasury spokeswoman Molly Millerwise responded, "There is no question where the administration stands on Cuba policy. We are equally dedicated to fighting the financial terrorism network." But to be equally dedicated to spiking Cuban bicycle tours and to thwarting an organization that knocks down American skyscrapers seems a bit demented. Millerwise stressed, "We do focus on Cuba. They are our nearest neighbor." That raises questions of whether maps used by the Bush administration expunged both Mexico and Canada. However, neither Mexicans nor Canadians will be large voting blocs in elections in Florida.

## **The war on privacy**

The financial war on terror rests on a heap of absurdities. Government crackdowns treat U.S. dollars like plutonium. The only reason for the fixation on absolute control is the notion that any money transfer not controlled by the U.S. government can become “magic beans” that cause terrorism to sprout anywhere in the world. This mindset breeds the presumption that the U.S. government is entitled to assume the worst of anything that it does not control.

It was obvious even before the PATRIOT Act was enacted that the new powers would not make Americans safe. On October 17, 2001, Rep. Ron Paul (R-Tex.) warned that legislation vesting new powers in the feds “has more to do with the ongoing war against financial privacy than with the war against international terrorism” and derided it as “a laundry list of dangerous, unconstitutional power grabs.... These measures will actually distract from the battle against terrorism by encouraging law-enforcement authorities to waste time snooping through the financial records of innocent Americans who simply happen to demonstrate an ‘unusual’ pattern in their financial dealings.”

Ron Paul was right, but almost no one in Washington is ready to admit that truth. If the U.S. government cannot catch enough real terrorists, at least it can use the PATRIOT Act to turn cash-heavy travelers into terrorist scarecrows. For every terrorist who might get caught laundering money, Congress crafted a law that empowers the government to punish thousands of people for breaking the regs. Treasury and Justice Department lawyers made sure the PATRIOT Act was written in a way to maximize seizures, regardless of a person’s guilt or innocence — and then political appointees have portrayed every seizure as a victory against terrorism. But maximizing political brownie points by making terrorist innuendoes is not the same as protecting the public.

There is no reason to expect the U.S. government to be more successful in tracking wads of cash than it has been in tracking bricks of cocaine or bales of marijuana. The end result is more federal control, more intrusions, less privacy — and little or no additional protection from terrorists.

Americans must not permit politicians to continually invoke government failures to justify destroying individual freedom. The financial provisions of the PATRIOT Act will continue haunting Americans until they put enough pressure on Congress to repeal such follies.

*James Bovard is the author of [Attention Deficit Democracy](#) [2006] as well as [The Bush Betrayal](#) [2004], [Lost Rights](#) [1994] and [Terrorism and Tyranny: Trampling Freedom, Justice and Peace to Rid the World of Evil](#) (Palgrave-Macmillan, September 2003) and serves as a policy advisor for The Future of Freedom Foundation. Send him [email](#).*

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