



# **DON'T TRUST ME, I'M A LAWYER:**

**THE OPERATION, SCOPE  
AND POSSIBLE EFFECTS  
OF THE GOVERNMENT'S  
WAR ON MONEY  
LAUNDERING**



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# DON'T TRUST ME, I'M A LAWYER: THE OPERATION, SCOPE AND POSSIBLE EFFECTS OF THE GOVERNMENT'S WAR ON MONEY LAUNDERING

DAVID J. K. CARR

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**“Why should I nationalise industry, when I can nationalise the people?” — Adolf Hitler**

If you were to ask any member of the public what they understand by the term ‘money laundering’ you might well get an answer that involves Colombian gangsters, a Cessna jet full of narco-dollars and a sun-drenched Caribbean island whose two major industries are coconuts and, well, money laundering.

Whilst very few people have any real understanding of what the term actually means there is a general perception that it involves activities which are shady, international and, let's face it, faintly glamorous.

For the avoidance of any doubt, the formal definition of money laundering is the process by which the proceeds of criminal conduct, and the true ownership of those proceeds, is changed so that those proceeds appear to originate from a legitimate source.

Despite the term having only made a recent appearance in the national lexicon it is, nonetheless, one which dates back to Chicago in the 1920s and involves one of its most illustrious residents, namely one Mr Alphonse Capone.

Mr Capone made his huge sums of money from the illegal activities of gambling, prostitution and, of course, bootleg alcohol but he had to find some method of accounting to the authorities for his resultant flamboyant wealth. He did this by investing in a string of laundrettes around the Chicago area. Being cash businesses, this allowed Capone's henchmen to turn up at the bank every week with bags full of ready cash which they claimed were the legitimate takings of a laundry empire. And, thus, the term ‘money laundering’ was born.

From this perspective it could be argued that the State has taken its time about catching up with this kind of ruse. However, what it lacked in terms of responsiveness it has made up in gusto for, since the late 1980s the entire Western World has enacted an Anti-Money Laundering regime that is so broad in its scope and draconian in its operation that it will dramatically impact upon just about every sector of commercial activity both national and international.

Yet, this entire legislative process has been enacted (and continues to develop) with barely any publicity and not a shred of debate. It's time that changed.

## THE BACKGROUND

Unless you have been ensconced in a remote mountain cabin or walled up in a cellar for the last ten years, you will have heard of the expression ‘New World Order’. For the majority of us that are familiar with the expression it can mean either a shadowy, secretive, sinister cabal of politicians, bankers and oligarchs hell-bent on world domination or it can mean nothing more than the fevered rantings of conspiracy-theorists and fringe political groups.

I subscribe to neither view. Nor do I intend to use this paper to lend credence to either. I do suggest this much: if there is such a thing as a New World Order, then the international anti-money laundering regime is it.

It made its first public appearance in 1988 in Vienna in the form of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the ‘Vienna Convention’) which adopted various proposals to criminalise profits from the drug trade world-wide.

The following year, 1989, a summit of the G7 countries (USA, Britain, France, Italy, Germany, Japan, Canada) saw the establishment of the Financial Action Task Force on Money Laundering (FATF).<sup>1</sup>

FATF, based in Paris, designed forty recommendations which included proposals to “criminalise money laundering as set forth in the Vienna Convention” and to extend it to other serious offences besides drug dealing. Included in the list of activities are bribery and insider dealing, but what, perhaps, should concern us most is that the list of activities proscribed as “criminal” is open-ended. FATF has specifically stated that:

Each country would determine which serious crimes would be designated as money laundering predicate offences.

Under such a definition, any oppressive regime could declare, for example, that an anti-government magazine is committing serious crimes and invoke international action to seize the profits from its sales.<sup>2</sup>

So what crimes are actually included here? Well, on the face of it, all and any. But it's very difficult to imagine some feckless street urchin fetching up at the swish offices of a City Merchant Bank with a view to ‘laundering’ the proceeds of a stolen car stereo.

I would contend that the chief target of the anti-money laundering regime is tax evasion. After all, wasn't it a charge of tax evasion that eventually put the notorious Mr Capone behind bars?

## THE IMPLEMENTATION

The FATF agenda having been set, it was incumbent on its member countries to enact anti-money laundering provisions into national law and, since every member of the EU is also a member of FATF, the next logical step was legislative provision at EU level.

It came in 1991 with the European Communities Council Directive of 10th June 1991<sup>3</sup> on the prevention of the use of the financial system for the purpose of money laundering.

Based on the opinion of the Economic and Social Committee its first two paragraphs read as follows:

Whereas when credit and financial institutions are used to launder proceeds from criminal activities (hereinafter referred to as ‘money-laundering’), the soundness and stability of the institution concerned and confidence in the financial system as a whole could be seriously jeopardised, thereby losing the trust of the public.

Whereas lack of Community action against money laundering could lead Member States for the purpose of protecting their financial systems, to adopt measures which could be inconsistent with completion of the single market; whereas, in order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movement and freedom to supply financial services which the integrated financial area involves, if certain coordinating measures are not adopted at Community level.

In that preamble lies the entire *raison d’être* of the anti-money laundering regime that we have in place in the UK today and which is soon to be entrenched even further. But, of particular significance are Articles 3,4, 10 and 11.

#### **Article 3**

1. Member States shall ensure that credit and financial institutions require identification of their customers by means of supporting evidence when entering into business relations, particularly when opening an account or savings account or when offering safe custody facilities.

#### **Article 4**

Member States shall ensure that credit and financial institutions keep the following for use as evidence in any investigation into money laundering:

- in the case of identification, a copy of the references of the evidence required for a period of at least five years after the relationship with their customer has ended.
- in the case of transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following execution of the transaction.

#### **Article 10**

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for money laundering.

#### **Article 11**

Member States shall ensure that credit and financial institutions:

- establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering.
- take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognize operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

Thus the stage was set, the deal was done and it was now the duty of every national government to go home and take steps to enact the requirements of the FATF and the EU Directive into law. The UK government did just that.

### **UK ANTI-MONEY LAUNDERING LAWS**

Having been handed their brief, the then Conservative government set about it’s task of putting in place an anti-money laundering regime and, in order to do this, it required three things:

1. Legislation outlawing money-laundering
2. A regulatory framework for the financial sector
3. The monitoring and enforcement machinery

#### **1. The Legislation**

The government passed two acts which, together, cover the entire scope of the kind of money which the FATF considers ‘dirty’. These are:

- **Criminal Justice Act 1993 (Sections 93A-93D)**<sup>4</sup>
- **Drug Trafficking Act 1994 (Sections 49-53)**

#### **Criminal Justice Act 1988 (as amended by the 1993 Act)**

##### **Section 94A**

Assisting another to retain the benefit of criminal conduct

- it is enough that the property concerned indirectly represents the proceeds of criminal conduct
- it is a defence for any person accused under this provision to prove that they did not know nor have any grounds to suspect that the property was proceeds of criminal conduct (see later in relation to professional advisers)
- it is a defence for any person to report their knowledge or suspicions to a constable (see later)
- the maximum penalty on indictment is 14 years imprisonment

##### **Section 94B**

Acquisition, possession or use of proceeds of criminal conduct

- it is a defence if the person acquired the property for adequate consideration (i.e. market value)
- it is a defence to report one’s knowledge or suspicions to a constable the maximum penalty on indictment is 14 years imprisonment

##### **Section 94C**

Concealing or transferring proceeds of criminal conduct’

- a person is guilty if they know or suspect that property in whole or in part directly or indirectly represents criminal proceeds the maximum penalty on indictment is 14 years imprisonment

##### **Section 94D**

Tipping Off

- (1) A person is guilty of an offence if:-

- (a) he knows or suspects that a constable is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering and
- (b) he discloses to any other person information or any other matter which is likely to prejudice this investigation or proposed investigation
- it is a defence for a person accused under this section to prove that he did not know or suspect that the disclosure was likely to be prejudicial
- the maximum penalty on indictment is 5 years imprisonment

The CJA 1993 also amended the Prevention of Terrorism (Temporary Provisions) Act 1989 so as to add a similar offence of concealing or transferring terrorist funds and, more significantly of “Failing to Report”. This latter provision means that where someone has knowledge or suspicion that another person is engaged in concealing or transferring or converting funds for use by terrorist organisations then they are under a legal duty to report those suspicions to the police, failing which they themselves will be guilty of an offence.

This “Failure to Report” provision was used again the following year.

## Drug Trafficking Act 1994

### Section 49

Concealing or transferring proceeds of drug trafficking

- knowledge or reasonable grounds for suspicion was necessary

### Section 50

- Assisting another person to retain the benefit of drug trafficking’
- knowledge or reasonable grounds for suspicion was necessary

### Section 51

Acquisition, possession or use of proceeds of drug trafficking

- as with Section 94B of the CM above

### Section 52

Failure to disclose knowledge or suspicion of drug money laundering

### Section 53

Tipping Off

- As with Section 94D of the CM above

With the enactment of these two Statutes, the entire money laundering criminal code was in place. It is the one that is still with us (though see later). Of course, these Acts contained several other provisions giving the police extra powers for investigation and the Courts extra powers for confiscation of any money that was proved to be criminal/terrorist/drug proceeds.

But the real points of note lie not just in the criminalisation of large swathes of economic activity but the deputising of the entire population as the eyes and ears of the police. From 1993 onwards it is no longer enough to shut one’s eyes and

ears and take no part in; those acts, in themselves, become criminal.

This is nothing less than the deliberate creation of what might be termed a ‘snitch culture’. But more on this later.

It is also worth noting that, as the law stands, there is a burden on the prosecution to prove beyond reasonable doubt that an accused knew or suspected money laundering.

## 2 The Regulation of the Financial Sector

So far, the government had enacted the criminal code necessary to prosecute money launderers and those that assist them (directly or indirectly). But that was not enough to fulfil its obligation under the European Directive of 1991.

For this the government enacted the **Money Laundering Regulations 1993**.

The Money Laundering Regulations put into effect Articles 3, 4, 10 and 11 of the Directive and apply to all businesses in the investment/financial sector. This includes banks, building societies, credit houses, mortgage lenders, pension/investment companies, insurance brokers and the such. As well as these it also applies to any professional advisers working in the investment/finance sector such as financial intermediaries, brokers, solicitors and accountants.

The kind of activities covered are acceptance of deposits, lending, financial leasing, money transmission, broking, portfolio management and safe custody services.

The regulations lay down strict procedures for:

- Systems and training to prevent money laundering
- Identification procedures for clients both individual and corporate
- Record keeping procedures
- Internal reporting procedures (a “responsible person” within the organisation has to be appointed and all internal reports of suspicious conduct made to them)

It should be noted that any failure to comply with the Money Laundering Regulations by a relevant business is, *per se*, a criminal offence even if no money laundering has actually been taking place.

Anyone who has opened a bank account since 1994 will already be familiar with the snowstorm of formalities required. The bank concerned will usually demand at least two separate pieces of identification (preferably a passport) and also demand that you complete a comprehensive ‘Know your client’ questionnaire.

The latter is usually explained as a means whereby your chosen bank can better understand your lifestyle requirement and tailor their various services to suit you accordingly. As if they are doing you a big favour.

They are, of course, doing no such thing. The purpose of the ‘Know Your Client’ forms is so that the bank can have a detailed record of your personal and financial circumstances so that they can more readily identify any conduct or transactions on your account that are inconsistent or unusual and thereby warrant investigation.

## THE ENFORCEMENT MACHINERY

So you’re an employee of investment/financial business and you’ve just discovered evidence of suspected money laundering. What do you do?

Well, since you've been trained by your organisation, you are sufficiently familiar with the legislation to know that you are required to report your suspicions to a 'constable'.

So you rush headlong into the street, find the nearest uniformed bobby, demand that he tear himself away from his usual task of issuing parking tickets and accompany you to your office to investigate a man who is trying to encash half-a-million dollars worth of Negotiable Bearer Bonds drawn on a bank in Costa Rica.

No, that would never do would it. It is no use at all to enact a sweeping and rigorous anti-money laundering regime only to rely on an Ealing-comedy style of enforcement.

Something much more serious and dedicated was required. A British FBI.

Herald the serious and dedicated **National Criminal Intelligence Service (NCIS)**.

Given statutory life by the Police Act 1997, NCIS is pretty much what it purports to be: a central body handling intelligence on criminal conduct and coordinating with up to 22 other government agencies including the Metropolitan Police, the Inland Revenue, Customs and Excise and MI5 among others.

It is the Economic Crime Unit of NCIS (an Orwellian sounding department if ever there was one) to whom reports of suspicious financial transactions are to be made. It is NCIS that requires such reports to contain details of the client involved, the sum involved and the nature of the transaction. It is NCIS that will decide whether or not the report requires further investigation and it is NCIS that will instruct the reporting firm or individual as to whether they can continue with the transaction or not.

In the meantime, the transaction is frozen and the reporting firm or individual just has to wait. And wait.

For all the swaggering things that NCIS can apparently do, it is under no compunction to do any of them quickly or at all.

### WHAT DOES IT ALL MEAN IN PRACTICE?

What indeed? What exactly does this jumble of legalese actually amount to? What difference will it actually make to ordinary work-a-day folk in their ordinary work-a-day lives?

Perhaps I can best illustrate with a hypothetical case study involving Mr Jones, a Bank Manager, and Miss Smith, a bank customer.

One day, Miss Smith, a long-standing customer of ABC Bank PLC, goes into her local branch to see the manager, Mr Jones, about arranging a re-mortgage on her flat.

Mr Jones is only too happy to assist, handing her some brochures and some forms to fill in to apply for the loan.

However, when Miss Smith leaves, Mr Jones notices that she drives away in a brand spanking-new sports car.

"How curious" thinks Mr Jones, "She never had that last time she came to the bank, I'm sure."

Since Mr Jones has been thoroughly grounded in how to spot signs of money-laundering, he goes to examine Miss Smith's profile, which he has on record thanks to the bank's 'Know Your Client' procedure.

From her profile, Mr Jones learns that Miss Smith is 27 years old, unmarried and lives alone. She works in PR, earns £21,000.00 *per annum* gross, owns a one-bedroom flat, has outgoings of around £750 per month, three credit cards, two

store cards, a life assurance policy and often goes abroad on holiday.

Now Mr Jones is an experienced bank manager-of-the-world and he realises that someone with Miss Smith's resources would be very hard put to afford the kind of handsome road-beast she drove away in.

So, next time Miss Smith pops in to return her forms, he is obliged to investigate this further and inquire as to how she is able to afford the vehicle she is driving.

"It's very simple, Mr Jones. My Grandfather died and left me a large bequest in his Will. And here's a copy of the Grant of Probate to prove it."

Fine. End of story. Miss Smith has provided a perfectly plausible explanation and that is the end of the matter.

But what if Miss Smith hasn't got a *prima facie* plausible response? What if the car is a gift from a secret male admirer? What if she saved all her pennies for years? What if she is one of those people who freeze when confronted with ostensible authority and she fluffs her answers or clams up? What if she resents the intrusive nature of the question and simply refuses to answer?

In that case, woe betide Miss Smith because now, unbeknownst to her, Mr Jones is obliged to file a report with NCIS because maybe Miss Smith hasn't been declaring her taxes or worse. Maybe.

And woe betide Mr Jones because he cannot touch Miss Smith's affairs until given the green light to do by NCIS (or not, as the case may be). The next time Miss Smith pops in to enquire about the progress of her re-mortgage application Mr Jones must fob her off with a pantomime of lame excuses for the one thing he cannot do is tell her the truth. He must lie to her because if he does not, he risks being imprisoned.

By the time he has managed to shuffle her out of his office, poor Mr Jones is dripping with sweat from the stress of performing his dance of deceit and Miss Smith is bug-eyed with rage and frustration.

But that's the least of her worries. For while Mr Jones is blathering his excuses to her, the entire audit trail of her life, and possibly those of her friends and family, is being scrutinised in minute detail by state agents whose very existence she is probably not even aware of.

Doubtless those same state agents would argue that, as long as Miss Smith has nothing to hide, then she has nothing to fear.

Q1: Where have we all heard that one before?

Q2: How easily could Mr Jones or Miss Smith be you?

### WHAT LIES AHEAD

Has what you have read thus far bothered you at all? Are you more than a little concerned? Do you find it all intrusive, ugly and totalitarian?

Well, if you do, then brace yourself, because it's going to get a lot worse.

### Proceeds of Crime Bill

This legislation is currently at the draft stage but is widely expected to become law during the lifetime of the next Parliament.<sup>5</sup>

To understand the motivations behind this Bill one only has to consider the report to the government by the Performance and Innovation Unit.<sup>6</sup>

... there is a reluctance to take on money laundering cases as they are thought either to be ancillary to the main crime being targeted, or too complex to address. There is a clear public interest in pursuing all such cases. The government is invited to consolidate the money laundering offences *and to simplify them so as to remove obstacles weighting the test for money laundering unacceptably in the respondent's favour.*

By “obstacles”, of course, what they mean is the presumption of innocence.

Well, the government needed no second invitation and the Proceeds of Crime Bill was the result.

Clauses 311 to 319 of the new Bill do, indeed, consolidate all the previous money laundering offences and, simultaneously, remove any remaining distinction between the proceeds of drug trafficking and the proceeds of any other unlawful activity.

Also, there is no *de minimis* rule. No transaction is considered to be too small to warrant investigation and reporting.

But the most significant of these is Clause 314, which removes the “obstacle” of a criminal standard of proof from the charge of failing to report knowledge or suspicion of money laundering and replaces it with a negligence test. The new offence will therefore apply not just in cases where the prosecution can prove its case beyond all reasonable doubt but also where a respondent can be shown to have had reasonable grounds for knowing or suspecting money laundering.

For anyone in the professional, managerial or executive classes the implications of this are mind-boggling. It means that, if accused of failing to report, it will be exceedingly difficult, or maybe even impossible, to rebut the charge because the very fact of their education and competence will be used to damn them.

“Come now, Mr Jones, do you mean to tell this Court that a man of your qualifications and intellect had no suspicions at all about this transaction?”

Poor Mr Jones has many sleepless nights ahead of him. But not just Mr Jones.

### The Next EU Directive

Although not yet passed, another EU Directive on money laundering is expected imminently. It is widely believed that the effect of the new Directive will extend the definition of the ‘regulated sector’ beyond its current limits of the financial/investment sector and to cover just about every business sector involving significant commercial transactions.

This means just about all accountants and solicitors but also company formation agents, salesmen, casinos, estate agents and *bureaux de change*.

### MEANWHILE OVER IN PARIS ...

Commercial activity of any material description is about to get a lot more difficult and dangerous.

Having engineered their extensive anti-money laundering regime for Europe and North America the heroic bureaucrats of the FATF and its sister bureaucracy the Organisation for Economic Cooperation and Development (in whose office FATF is based) must have had serious heart palpitations when

the extent of the democratisation of the internet became apparent.

For, they must have asked themselves, what use is our anti-money laundering regime when money can be transmitted from Manchester to Macao or Berlin to Bogota at the click of a mouse?

The result of this has been a world-wide anti-money laundering crusade conducted with a zeal that can only be described as missionary in its intensity.

Under threat of boycott and economic sanctions, scores of small countries all around the globe have been bludgeoned and bullied into enacting domestic anti-money laundering laws that must meet the approval of FATF as well as act as proxy tax collectors for any EU and North American citizens who relocate their wealth.<sup>7</sup>

But even going this far has proved not to be enough. The global war has seamlessly morphed into another campaign (mostly French led) against what they have absurdly termed “unfair tax competition”. That is, countries with low or no tax regimes are being pressurised into creating European-style tax regimes. Apparently, according to the OECD, the risk that productive Europeans will be lured away to foreign shores by the promise of being taxed less is dreadfully unfair to countries like France and Sweden who insist on bleeding them white.

But, of course, it doesn’t take rocket science to see the obvious link between money laundering and “unfair tax competition”.

### CONSEQUENCES

Not having been privy to the consultation process that lay behind this internationally coordinated effort, I can only hazard a guess at what must have going through the minds of the architects of this regime.

I would imagine that they appreciated only too well the extra economic burden their regime would place on the business world. I would also suggest that they clearly foresaw the weight of the chains of inconvenience they were placing around their citizens necks. But my guess is that they considered both these things combined to be a price worth paying for a society that would be forced to become better behaved, more honest and more obedient.

In some respects, of course, they were quite right. The anti-money laundering regime will be both expensive and burdensome. However, in the latter assumption (if that was indeed their assumption) they were quite fatally wrong.

Of the intended consequences the most visible is the expense. Listed below are some typical annual compliance costs for various types of institution.<sup>8</sup>

- Large Building Society — £55m
- Large Unit Trust Company — £35m
- Large Life Assurance/Pensions Company — £140m
- Medium Sized Motor Finance House — £600,000

As is the way of things, these costs will simply be passed onto their customers making financial and banking products more costly for every single one of us. I sincerely hope that we all remember that the next time our household insurance cover gets hiked up.

Of course, with the expected extension of the ‘regulated sector’ to cover much smaller commercial concerns, many of

those concerns will simply go bust. Being unable to absorb the massive extra burden, and unable to pass it on to their customers with anything like the alacrity of their big corporate competitors, they have nowhere to go but down.

A less visible (but no less intended) consequence is the press-ganging of just about every meaningful member of the business world into National Service. Regardless of their own desires and ambitions they must spend a portion of every day being the eyes and ears of the security state. It is the equivalent of posting a secret policeman on every street corner.

Did you study hard to become an Investment Adviser or a Solicitor? Fine, you can be an Investment Adviser or a Solicitor — as long as you are also a part-time Tax Inspector.

This is nothing less than the Nationalisation of the People — a massed conscription into the ranks of the police to be paid for by those conscripted. Twice over!

Excuse me, but this is not the deal we signed up to. We have a contract with our government that says we pay them a given proportion of our wealth in the form of tax in return for which our government provides us with various services, one of which is law enforcement.

Now the government says that we have to become our own law enforcement.

Imagine if you had hired a gardener to trim your rose bushes. Imagine he turns up at your house, hands you a pair of pruning scissors, tells you to get on with it, report to him when he has finished, whereupon he will present you with an invoice for his services.

I think I would less than pleased by this turn of events. In fact, I do believe I would point-blank refuse to pay his bill.

Still, there are some people who might say that all of the consequences outlined above are worth it if the end result is a more law-abiding, secure and honest society. To those people I would suggest that the likely unintended consequences of this war against all forms of unregulated economic activity may result in quite the opposite effect.

## UNINTENDED CONSEQUENCES

Who'd be an informer? The government wants us to inform on those dreadful drug barons and gangsters. All I can say in response is, rather you than me. As I am sure any serious drug dealer will tell you, the dead can tell no tales; an axiom that has been all-too-often ruthlessly put into practice. Just how many hapless and perfectly innocent accountants or bankers might end up in pools of their own blood because someone somewhere suspected that they might spill the beans?

By the way, anybody who thinks that drug barons and big-time gangsters will be upended by this regime are being childishly naive, deluded or both. Serious big-time crooks (to the extent that they actually exist beyond the budget-boosting fantasies of state agencies) will do what they have always done; adapt, evolve, swerve the punches and grow a lot more ruthless.

I am no student of history but I know of no government which has actually compelled its own citizens to lie. But that is exactly what the government has done with its Tipping-Off offence. For a government that wants to make society more honest it has a funny way of going about things.

There seems to be a prevailing view in the public and administrative sectors (and far too much of the media) that the private commercial world is shot through with chicanery and

sleight-of-hand. For many the very word 'businessman' is synonymous with crookedness and venality. This is the exact opposite of the truth. Any meaningful commercial activity is built on the foundations of candour, honour and openness. There could be no workable economy without these things. For sure, there are charlatans and con-men, but the very fact that we recognise them to be such means that they are the exceptions which prove the rule.

But if one is of the view that commerce and trade is a process of mendacity and cheating then it is easy to impose more deceit on the basis that it can hardly make any difference. But it can make a big difference and, further, it can be a virus that grows and evolves into Lord-knows what.

Such is the power of egregious misapprehensions that they become self-fulfilling prophecies.

Financial privacy is dead. No longer is your solicitor, your accountant, your banker or investment adviser your priest. No longer will the things you say stay within the confines of his four walls. Actually this is an intended consequence. But what follows is certainly not.

Because it will not take long before this state of affairs is widespread knowledge and, when that happens, not only is privacy dead but trust lies bleeding. Trust is not just desirable it is vital; it is the fabric and glue which makes not just a working economy viable but wider civil society as well.

For when every working adult in the land has become either a potential criminal or a police informer; when we have all been systematically turned on each other, then trust will become as rare as hen's teeth. What will replace it is a mutual suspicion which will all-too-quickly evolve into contempt and then disobedience.

This is not just wild speculation. I am basing my prognosis on a well-established precedent. For this is not the first internationally co-ordinated crusade that we have had to put up with. For the past four decades we have also had to live with the internationally co-ordinated (and equally fierce) war on drugs.

This war has seen titanic sums of public expenditure, draconian laws, savage prison terms, sweeping police powers, crushed civil liberties and a government sponsored propaganda campaign of such intensity and scope that the best efforts of Josef Goebbels appear as nothing more than the pathetic attempts of a hack amateur by comparison.

How can all this effort not have worked? Surely all this would have been more than enough to eradicate illegal drugs from our society? Right? Wrong.

Not only has the war on drugs not succeeded even the smallest degree, it has actually produced the opposite of its intended effects. In Britain today, we are awash with drugs and they are getting cheaper all the time. Up to two-thirds of teenagers have tried illegal drugs and up to one-third are recreational users. In fact, so widespread is their use that they have now come to be regarded as a normal part of leisure activities.<sup>9</sup>

If the war on drugs is anything to go by (and the similarities are startling) then far from fostering greater economic control and respect for authority, the anti-money laundering regime may actually lead to a marked decline in both and a society that respects neither.

There are those who, upon reading this, will accuse me of being unduly melodramatic. My response to that is that I certainly hope so.

## CONCLUSION

Those who rule us do not always know best. By embarking on this crusade to eliminate the black market, to abolish all economic activity that takes place outside of tax codes and price controls and fiscal regulations they have saddled themselves with the quixotic task of fighting a war that no government in history has ever won.

Whilst the trenches are still being dug and the gun barrels cleaned, it is to be hoped that the more farsighted among them will stop for a moment to reflect upon the economic, social and moral chaos they will cause on their road to abject failure.

## NOTES

1. FATF now includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Honk Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Singapore, Spain, Sweden, Switzerland, Turkey, UK, USA.
2. This may not be safely assumed to apply only to obvious culprits such as Iraq. The EU has seriously toyed with the concept of rendering criticism of itself as a criminal offence
3. 91/308/EEC.
4. The CJA 1993 actually amended the Criminal Justice Act 1988 and the Prevention of Terrorism (Temporary Provisions) Act 1989 which is why these two Acts are usually quoted as the governing authorities.
5. This is the Bill that will also create the Kafka-esque sounding Criminal Assets Recovery Agency whose sole task will be the confiscating of assets from persons 'suspected' of unlawful conduct. The decision will be made on a balance of probabilities.
6. Recovering the Proceeds of Crime, June 2000.
7. Some countries have resisted as a result of which they have been 'blacklisted' for being 'uncooperative'. Interestingly, these include Israel and Russia. Would the USA tolerate sanctions against Israel? Would anyone seriously contemplate sanctions against Russia with its still very-much-intact nuclear arsenal?
8. HM Treasury consultation paper, May 1992.
9. Howard Parker, Judith Aldridge and Fiona Measham, *The Normalisation of Adolescent Recreational Drug Use Among English Youth*, Social Policy Applied Research Centre, Routledge, London, 1998, reprinted 1999, ISBN 0415158109.

## POSTSCRIPT — August 2001

After spending some time compiling my research for this article, I wrote it all down in the space of a sleepless week at the end of May 2001. The bulk of the article is factual except, of course, for my predictions as to the unintended consequences.

That may be changing though, and it is with mixed feelings that I received my copy of the *Law Society Gazette* for the week commencing 9th August 2001. For the emboldened front page headline reads **"Lawyers face threat of organised crime"**.

The *Gazette* article largely consists of views put forth by a senior NCIS analyst who makes it clear that high-level organised criminals are using solicitors and accountants to add respectability to their various schemes. Most noticeable was this man's assertion that blackmail methods were being used against solicitors and he knew of cases where serious threats of violence had been made to solicitors.

Of course, the fact that this information comes from NCIS means it must be read in that light but, if accurate, it seems that the first of my predicted unintended consequences is already upon us.

This does not automatically mean that the rest of my predictions will prove to be true as well, but I fancy that it does shorten the odds a bit.