The FBI's Secret Scrutiny

Woods, the former FBI lawyer, said secrecy is essential when an investigation begins because "it would defeat the whole purpose" to tip off a suspected terrorist or spy, but national security seldom requires that the secret be kept forever. Even mobster "John Gotti finds out eventually that he was wiretapped" in a criminal probe, said Peter Swire, the federal government's chief privacy counselor until 2001. "Anyone caught up in an NSL investigation never gets notice."

To establish the "relevance" of the information they seek, agents face a test so basic it is hard to come up with a plausible way to fail. A model request for a supervisor's signature, according to internal FBI guidelines, offers this one-sentence suggestion: "This subscriber information is being requested to determine the individuals or entities that the subject has been in contact with during the past six months."

Edward L. Williams, the chief division counsel in Mason's office, said that supervisors, in practice, "aren't afraid to ask . . . 'Why do you want to know?' " He would not say how many requests, if any, are rejected.
"The Abuse Is in the Power Itself"

Those who favor the new rules maintain -- as Sen. Pat Roberts (R-Kan.), chairman of the Senate Select Committee on Intelligence, put it in a prepared statement -- that "there has not been one substantiated allegation of abuse of these lawful intelligence tools."

What the Bush administration means by abuse is unauthorized use of surveillance data -- for example, to blackmail an enemy or track an estranged spouse. Critics are focused elsewhere. What troubles them is not unofficial abuse but the official and routine intrusion into private lives.

To Jeffrey Breinholt, deputy chief of the Justice Department's counterterrorism section, the civil liberties objections "are eccentric." Data collection on the innocent, he said, does no harm unless "someone [decides] to act on the information, put you on a no-fly list or something." Only a serious error, he said, could lead the government, based on nothing more than someone's bank or phone records, "to freeze your assets or go after you criminally and you suffer..."
consequences that are irreparable." He added: "It's a pretty small chance."

"I don't necessarily want somebody knowing what videos I rent or the fact that I like cartoons," said Mason, the Washington field office chief. But if those records "are never used against a person, if they're never used to put him in jail, or deprive him of a vote, et cetera, then what is the argument?"

Barr, the former congressman, said that "the abuse is in the power itself."

"As a conservative," he said, "I really resent an administration that calls itself conservative taking the position that the burden is on the citizen to show the government has abused power, and otherwise shut up and comply."

At the ACLU, staff attorney Jameel Jaffer spoke of "the profound chilling effect" of this kind of surveillance: "If the government monitors the Web sites that people visit and the books that they read, people will stop visiting disfavored Web sites and stop reading disfavored books. The FBI should not have unchecked authority to keep track of who visits [al-Jazeera's Web site] or who visits the Web site of the Federalist Society."

Links in a Chain

Ready access to national security letters allows investigators to employ them routinely for "contact chaining."

"Starting with your bad guy and his telephone number and looking at who he's calling, and [then] who they're calling," the number of people surveilled "goes up exponentially," acknowledged Caproni, the FBI's general counsel.
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