

Keep Terror-Fighting Tools, but Explain Them Better

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In response to recent revelations about the FBI's misuse of national security letters - administrative subpoenas issued by the FBI without having to go through a judge, a longtime FBI tool enhanced by the Patriot Act - some members of Congress are threatening to scale back the FBI's authority to issue such letters. These damaging reports have also sparked broader calls for a re-examination of other Patriot Act tools. FBI officials have acknowledged that there were significant problems and have pledged to impose tighter controls to ensure national security letters are used appropriately and their use is adequately tracked.

Although the FBI's response is reassuring and necessary, this will address only one part of the problem. The other issue driving reaction by Congress and the public is that neither has a good understanding of how these tools are used and why they are so valuable. As a result, when there are reports of abuse, Congress and the public are unable to put this in any type of broader context. The FBI is running the risk that Congress - feeling pressure to restrict the FBI's reach - may end up revoking one of its most desperately needed powers.

To address this situation, the FBI and the Department of Justice must do a better job of publicly explaining the counterterrorism importance of national security letters and similar authorities. Over the past five years, the department has strongly defended the Patriot Act tools, maintaining that these powers have played a critical role in the war on terrorism. However, this defense has often been lacking in specificity and nuance. The department has been reluctant to provide specifics on how these authorities were used, beyond arguing that each tool was extremely important.

The Department of Justice has lost credibility on the occasions when it became public that it was strongly advocating for little-used tools. The department long insisted that Patriot Act Section 215 - which allowed Justice to seek a federal court order granting access to individuals' business records from third parties, including libraries - was essential to its counterterrorism efforts. After a long period of public pressure, the department conceded that it had not yet used that section. This aroused skepticism regarding the importance of this provision and the Patriot Act.

To succeed in this effort, the FBI and Department of Justice must be willing to publicly disclose far more information about their use of these powers than they have previously. Given the stakes, this is a compromise worth making.

In testimony before the House Judiciary Committee, the FBI's general counsel, Valerie E. Caproni, noted that national security letters have been "instrumental" in breaking up cells including the "Portland Seven," the "Lackawanna Six" and "Northern Virginia Jihad." Through the letters, she added, the FBI has "traced sources of

terrorist funding, established telephone linkages that resulted in further investigations and arrests, and arrested suspicious associates with deadly weapons."

This is exactly the type of information that the FBI should expand on (likely in a somewhat sanitized form) for Congress and the public. Although the FBI may be unable to provide details involving pending investigations, there might be more information that the bureau can disclose from its completed investigations, like those cited above. The FBI should also give Congress a broader sense of the usefulness of these authorities beyond these individual success stories. Does the information the FBI collects often generate new leads or fill in important pieces of the puzzle, or are these stories the exception?

To accurately advise Congress, the FBI must perform comprehensive internal assessments on the use of these tools. The recent Department of Justice inspector general's report, criticizing the FBI for its failure to track usage of national security letters, did not inspire confidence that the FBI is performing this analysis. Having used these authorities for more than five years, the FBI should be well-positioned to assess the tools' relative counter-terrorism value. Without the benefit of a thorough internal analysis, however, the FBI and Department of Justice will be unable to provide appropriate guidance to Congress as it considers legislative changes.

The FBI cannot afford to lose vital tools that are necessary to track down and neutralize terrorist networks. On the other hand, Americans have the right to be concerned about intrusive authorities that have little counterterrorism benefits. A well-informed, robust public debate, which carefully considers the relevant liberty and security calculations, gives the FBI and the American people the best chance of an optimal outcome.

Michael Jacobson, a senior fellow at the Washington Institute for Near East Policy, formerly worked as an analyst for the FBI and served as counsel on the 9/11 Commission. ❖

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