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National Security Letters

Mr. Mercer, Council member and members of the audience

~~We've heard from Eric Funk about the role of the FISC courts in terrorism investigations, so I won't expand on the complex topic here. Rather, I'd like to discuss "National Security Letters" which, like the FISC court, I knew nothing about until I started browsing the internet and there found hundreds, if not thousands, of commentaries on the subject of National Security Letters and the FISC.~~

SD/MD

Apparently National Security Letters have existed in one form or another for many years--predating the Patriot Act. They are a form of "administrative subpoena" that originally could only be authorized by a senior governmental official—like the Attorney General. Their role has been to authorize access to financial records related to espionage and then, in the Patriot Act timeframe, "terrorist" investigations. Within the framework of the Patriot Act, NSL's do not require any judicial oversight or clear probable cause—rather, they only have to "relate" to some terrorism investigation. Even at that level they represent a clear violation of the 4th Amendment.

However, in December, 2003, our president signed into law the Intelligence Authorization Act for Fiscal Year 2004.

Appended to that authorization bill in “conference committee” were amendments that changed the rules governing the use of NSL’s. The most fundamental and sweeping being changes to the definitions of “financial Institutions” It changed the definitions from banks and similar financial institutions to also include:

Stockbrokers, currency exchanges, anyone who issues or redeems cashiers checks, money orders travelers checks, dealers in precious stones, metals, pawnbrokers, travel agencies, Auto, airplane and boat dealers, real estate, Unites States Postal Service, casinos and any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters. The purpose in reciting this list is to show that it covers almost anything.

Secondly, the term, “Financial record” has been expanded to include any record held by any of businesses mentioned that pertain to a customer.

Thirdly, it is now possible for law enforcement at a significantly lower level (even an FBI field office) to generate and serve an NSL subpoena indicating only that it “relates” to some national security investigation. Furthermore, these are secret subpoenas and issued with a GAG order, meaning, the 3rd party recipient of this subpoena, that is, any of the business categories listed before, is precluded from disclosing anything

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about the subpoena to anyone under penalty of possible federal prosecution.

Thus any person here tonite could be the subject of such a subpoena without any knowledge of it's existence, what it's about, nor is there any opportunity to address it in the courts—a serious violation of the 4th amendment.

Additionally there seems to be no specification about what is done with the collected information—how it is used, where it is used, where it is stored or how long it is kept.

Those groups following up on Admiral Poindexter's TIA database work must be dancing in the streets over this information gathering authorization.

I would close with ^{one} ~~two~~ quotes and ^{one} ~~one~~ question:

~~The associated press reports that, "Stephan Cassella, deputy chief for legal policy for the Justice Department's asset forfeiture and money laundering section, said that while the Patriot Act's primary focus was on terrorism, lawmakers were aware it contained provisions that had been on prosecutor's wish lists for years and would be used in a wide variety of cases"~~

~~Senator Patrick Leahy, in the congressional record of November 20, 2003, when speaking about the December, 2003 changes discussed herein, said,~~

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“This is what the new law has done. Under the Patriot Act the FBI was permitted to use NSL’s to obtain records from banks and other similar financial institutions if they were “sought for” an intelligence or terrorism investigation. Now the term “financial institution” has been expanded to include a host of other businesses that have nothing to do with the business of banking, and the term “financial record” has been expanded to include any record held by any such business that pertains to a customer.

The FBI has long had the power to obtain this sort of information, whether through judicial subpoena or a search warrant. But with the stealth amendment of the NSL authority, the FBI can now obtain a vast amount of personal and highly confidential information without obtaining court approval, and without any other independent check on the validity or scope of the inquiry. The privacy rights of all Americans have been compromised as a result”

It is not difficult for me to understand why so many people across our country are upset and angry about some of the provisions of the Patriot Act.