



## Has the FBI Gone Too Far in Investigating White-Collar Crime and Fraud?

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A recent *Wall Street Journal* article describing the FBI's use against suspected financial criminals of techniques normally used to hunt terrorists shows how seriously white-collar crime is being viewed these days. It also vindicates those who sounded warning bells after 9/11 when Americans were asked to trade civil liberties for the promise of national security. Those who argued against the slippery slope of government encroachment on civil liberties were accused of aiding terrorists:

"To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists; for they erode our national unity and diminish our resolve. They give ammunition to America's enemies, and pause to America's friends."

– Attorney General John Ashcroft, December 5, 2001

However, the argument that we can increase national security by reducing civil liberties is an illusion; when we make ourselves less free, we are not safer, we are simply less free. Many Americans wrongly assume that constitutionally suspect FBI intelligence-gathering techniques will never be used on them. But, over time, what was once extraordinary becomes normal. The baseline continues to slide. Since 9/11, the DOD, FBI and other U.S. agencies have been engaged in domestic monitoring activities reminiscent of those used during the Vietnam era that outraged the public and led to new limits on domestic military intelligence gathering. In fact, a database established at the direction of the DOD to track potential terrorist threats includes "suspicious incidents" and "threats" such as anti-war activists gathering at a Quaker meeting house in Florida. So it is surprising that the FBI's recent announcement that it is applying techniques used to hunt down terrorists against those suspected of financial crimes has garnered so little attention.

FBI Special Agent-in-Charge James Trainor, head of the New York field office's intelligence division, told the *Journal*, "We're trying to apply the principles of the national-security side so we can prevent something from becoming a \$50 billion fraud by catching it early on." The FBI said some of those tools include expanding its network of human sources — a key facet in



fighting terrorism — who are willing to tip off or guide authorities in probes, the *Journal* reported.

The FBI is also planning to use more intelligence reports and so-called tripwire programs. Tripwires are unusual or odd phenomena that people might notice that could tip them off to an underlying fraud. While preventing financial fraud is a worthy goal, and the government's failure to stop Bernard Madoff's decades-long scam is alarming, Trainor did not mention the government's liberal use of wiretaps in such investigations.

Following the October 2009 arrest of Raj Rajaratnam, the alleged leader of what prosecutors describe as the biggest instance of hedge fund insider trading in the nation's history, the U.S. attorney for Manhattan confirmed that much of the government's evidence was gathered using wiretaps and that the government intended to use electronic surveillance for future Wall Street investigations.

George Orwell would be alarmed. This means that prosecutors are using the FBI's massive surveillance system, DCSNet (Digital Collection System Network), which connects FBI wiretapping rooms to switches controlled by traditional land-line operators, internet-telephony providers and cellular companies. This system can be used to instantly wiretap almost any communications device in the nation.

Unfortunately, we will never know the extent of the government's wiretapping efforts; nor will we know how many innocent Americans' Fourth Amendment rights were trampled along the way. Does every headline touting the arrest of a "Madoff" represent five, ten, perhaps twenty Americans whose civil liberties were violated? Unfortunately, the public outcry that one might expect to hear against this broad wiretapping tool has been drowned out by the even greater outcry over the thefts by Madoff and other fraudsters.

*Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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