The Technology Liberation Front

"The real problem is not whether machines think but whether men do."

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October 19, 2004

The Markle Foundation: Font of Evil

It is becoming increasingly clear that the Markle Foundation, a New York based non-profit, is evil. It assembled a group of people to think very carefully about anti-terrorism. The work of this group has quickly metastisized into federal Big Brother legislation.

Exhibit A: A National Surveillance Network

The Markle Foundation's Report entitled "Building a Trusted Network for Homeland Security" advocates a program that could be called "Total Information Awareness Lite". It got into the Senate bill to reform the intelligence system (section 207 of the Public Print). I have commented on it in an Op-Ed, and debated it vigorously in posts to Declan McCullagh's Politech list. Here are postings number one and number two. Number three is not yet archived on the site, so it is reprinted in the extended entry below.

Exhibit Two: A National ID Card

The same intelligence reform legislation has proposals to create a national ID card system by standardizing state IDs. The source of this idea is the 9/11 Commission report (page 390), but the 9/11 Commission cites - you guessed it - the Markle Surveillance Project. In particular, it cites an Appendix written by a rump group (and I use the word advisedly).

The chief author was Amitai Etzioni, Director of the Institute for Communitarian Policy Studies at George Washington University. He organized a panel discussion on national IDs that I appeared on back in April. After the actual panelists spoke, he invited from the audience a representative of the American Association of Motor Vehicle Administrators to give an infomercial for national IDs. (It was broadcast on C-SPAN.)

It was all quite bizarre, but revealing: AAMVA, Markle, and many others working behind the scenes are part of the surveillance-industrial complex, working to grow the state and erode our liberties.

———— Original Message ————
Subject: RE: [Politech] Stewart Baker: What's in the water at Cato? [priv]
Date: Mon, 18 Oct 2004 14:38:35 -0400
From: Jim Harper - Privacilla.org
Reply-To:
Organization: Privacilla.org
To: 'Declan McCullagh'

Declan:

I like Stewart Baker and respect his work. I also know that he was the General Counsel of the National Security Agency, making him deeply knowledgeable about government spying, if sometimes a little too accepting of such methods. I'm glad I could pique his interest in defending the Markle Surveillance Project. He takes his positions and states his opinions in good faith.

But given his taunt that I slept through 9/11, I believe a better subject line would have been "Is Jim Harper narcoleptic?" . . .

We should start with first principles. The Fourth Amendment is not about information parity between the government and the private sector. It specially restricts the government's ability to collect information about people. The Framers of our constitution knew the unique power of governments and hemmed in our government accordingly, for the good. The fact that the phone company has records doesn't mean the government should have equal access to them, even if Fourth Amendment law is currently in tatters.

The Fourth Amendment was not further repealed by 9/11 and I do not accept the syllogism: "We had 9/11, so [insert policy] is acceptable." Rather, policies should emerge from the crucible of debate, not from an echo chamber, as the Markle Surveillance Project appears to have become.

I didn't express all my views in my rant last week, but Stu puts forward a straw man when he suggests that I wouldn't use technology to upgrade our country's law enforcement / national security abilities. My Op-Ed in the San Francisco Chronicle Friday said:

"If there is to be a network, the mission should define the network, rather than the network defining the mission. Let there be networked delivery of warrants dealing with particular suspects, and networked responses to those warrants. Using technology consistent with the Constitution is perfectly acceptable, and there is no need for new legal authority if a network serves an existing legitimate purpose."

http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/10/15/EDGAB99A971.DTL

Stu says the network should be used to apprehend "suspect[s]" and "killers," so perhaps he and I have no disagreement. A network for serving and responding to search warrants would be terrific. But the Markle Surveillance Project did not suggest such a limited scope - and the Senate took that advice. I would be delighted to learn that Stu would confine sharing of personal data on this network to constitutional limits, but I doubt it. So, continuing . . . .

Did the lack of a government surveillance network stand in the way of apprehending al-Queda killers in the weeks before 9/11? It's more evident that the government did not recognize them as killers, so no one was looking for them all that hard. I believe one or two people were quite agitated about the threats, but these voices were ignored. The Markle Surveillance Project holds no cure for absence of foresight - or for narcolepsy - in our national security infrastructure.

Which brings us to human intelligence. Few recognize that a U.S. agent had infiltrated the al-Queda network and audaciously met with Osama bin Laden while 9/11 was in the planning stages. He gained valuable information about bin Laden, al-Queda, and its operations **without even trying**.

Alas, John Walker Lindh was an agent of a jackass spiritual quest rather than the U.S. government. Our national security apparatus seems to have been attending to the maintenance of butt-prints in swivel chairs at the time this dirt-bag - sorry, wanderer - from Marin was infiltrating al-Queda.

Hindsight is 20/20, the terrorists were stupendously lucky, and I don't blame the national security bureaucracy for proximately allowing 9/11. Neither do I shrink from a fact that is clear to everyone who was awake for 9/11: They failed.

Today, the surveillance-industrial complex is telling the national security bureaucracy that a surveillance network will do the trick. This must be a pleasing message because it suggests that the bureaucracy didn't fail to prevent 9/11: No, it was a lack of technology. Maybe further comfort comes from building a domestic surveillance network because it seems to minimize the need to rise from those swivel chairs and put boots on the ground in some very dangerous foreign assignments. The Markle Surveillance Project helps carry all these messages forward.

But I'm not an expert in the ways of national security or international espionage (obviously). I'm a privacy advocate, skeptical of domestic surveillance. Stu did not answer the central argument I made about the Markle surveillance roadmap, which I repeat here:

"[R]ules, protocols, and oversight boards will be impediments to the institutional interests of those operating this surveillance system, including not only the law enforcement/national security bureaucrats, but also the growing number of companies in the surveillance-industrial complex. They will work quietly and diligently over years to dismantle the limits placed on them, making a mockery of the 'careful balance' supposedly struck by the Markle Surveillance Project."

I welcome Stu or anyone pointing out a government program that has shrunk due to completion of its mission or become less invasive or acquisitive over time. Looking for one leads to an inevitable conclusion, the one I stated in the paragraph just above.

I do appreciate having a Plan named after me, and I think the Harper Three-Point Plan for Worldwide Happiness (protection against tools and methods of attack, HumInt, and promotion of liberty) survives Stu's derision intact.

Jim

Jim Harper
Editor
Privacilla.org
and
Director of Information Policy Studies
The Cato Institute

———— Original Message ————
Subject: Re: [Politech] Stewart Baker: What's in the water at Cato? [priv]
Date: Mon, 18 Oct 2004 17:23:58 +0200
From: Mickey Coggins
To: sbaker@steptoe.com
CC: Declan McCullagh
References: <4173CD2A.1000409@well.com>

>Jim Harper seems to have slept through September 11. In the weeks before >the attacks, we identified two of the hijackers as al-Qaeda killers, knew >they were in the country, but couldn't find them — even though they had >drivers licenses, phones, etc., in their own names. And, until we have a >method for rapidly checking private databases for suspects, we still won't >be able to find them.

Were "we" looking for them? It seems like the FBI had all
the information they needed to know all about the upcoming attacks, but could not get themselves adequately coordinated to use this information.

http://www.time.com/time/nation/article/0,8599,249997,00.html

>At bottom, the task force recommends that the government use — with >safeguards — capabilities that the private sector already uses with >enthusiasm. If Sprint can already tell that Messrs Atta and al-Hazmi
make a
>lot of phone calls to each other and to Afghanistan, and can use the >information to offer them cheap long-distance, most of us would like our >government to use the same information to keep our families alive.

How on earth would knowing that people call Afghanistan help prevent a terrorist attack? Unless you can read someone's mind, you can't know what people are going to do before they do it. Once "they" know that we monitor everything, they'll just do it a different way, but we're all stuck with the gargantuan bureaucracy, and privacy invasions. Get real. Assuming that there really are a bunch of crazy "freedom-hating terrorists" out there, none of the stuff recommended will help catch them.

I won't even get into my personal feeling that we're just trying to put steam back into a kettle of boiling water. We need to spend our energy looking at what our government is doing to cause these people to want to use terror on us, not finding more ways to bloat that same government with more power to spy on us.

Best regards,
Mickey

—

Mickey Coggins

———— Original Message ————
Subject: Fw: [Politech] Stewart Baker: What's in the water at Cato? [priv]
Date: Mon, 18 Oct 2004 12:52:04 -0700
From: Fred Heutte
To:

Stewart Baker's response to Jim Harper slips past two
critical points about the difference between governmental and private use of corporate customer data.

First, the government has powers and responsibilities different than corporations. The risks for misuse of such data by the government is on a far different level than of the corporation itself. If Sprint knows when and where I made my phone calls, that's one thing. If a federal law enforcement agent with a vendetta against something I believe in, like free speech, has access to that data, it opens up a much larger realm of threats and pressure even though I have done nothing illegal at all except exercise my Constitutional rights.

Second, the power of databases is synergistic. A federal agent having both bank statements and phone call data can do much more with the combination than with just one or the other.

The law rightfully allows law enforcement to receive this kind of corporate customer data in cases of likelihood that a crime has been committed or there is a substantive threat to national security. But they have to go before a judge and get a warrant. The question is the standard that such a request must reach.

The "PATRIOT" law relaxed existing provisions to a dangerous degree, in my view, in the name of increased security but with the likely effect of making it more convenient for federal agencies to intrude on the affairs of law abiding citizens.

That's not the way to do things under our Constitution.

I read the Markle summary and thought it had some good points, but I also find merit in the criticism. The restraints needed to prevent government from acting with arbitrary authority against those holding opinions it doesn't like must be far stronger than before because of the synergistic effect of customer information databases. Those of us who are involved with database management for a living know this is a matter of the greatest import.

Finally, I am worried by the tone of Baker's response. Aside from the passive-aggressive form so popular with the TV shouters ("seems to have slept through September 11"), I get the sense that Baker feels the topic is closed to discussion and nothing can be done to improve the Markle proposal. This is all too similar to the attitude that prevailed during the passage of the "PATRIOT" law.

Three people attending a Bush campaign rally in southern Oregon last week were ejected by police on the demand of the campaign because they were wearing shirts that said, "Protect Our Civil Liberties."

I'm not willing to give an administration so relentlessly antagonistic to criticism and debate any quarter whatsoever on the matter of access to private information. I'm not sure I expect the Democrats to be much better on this either; it always amazed me what a former professor of constitutional law, Bill Clinton, supported during his tenure, on matters ranging from the Clipper Chip to the Anti-Terrorism and Effective Death Penalty Act of 1996 to other actions of his administration diminishing civil liberties and the Fourth Amendment.

The Founders were right to build strong protections against arbitrary government power into our Constitution. The threat of terrorism is serious today, just as was the threat of sedition by partisans of the Crown in 1789. But the extent to which there is suppression of vigorous debate and legal activity by government in the name of security will, in the end, have more bearing on the real substance of our future security.

Fred Heutte
Portland, Oregon

————————————

(Portland) Oregonian
10/18/1004

The three women were ordered, under threat of arrest, to leave the president's rally in Central Point. They said a volunteer objected to a statement on their T-shirts, "Protect Our Civil Liberties." . . .

Tonia Tong, a Medford schoolteacher who was one of the three women removed from the rally, also participated in the conference call. She said the trio had agreed to remain quiet during the event and had successfully passed three security checkpoints.

But she said a volunteer helping with security stopped one of the three women, Janet Voorhies, when she tried to go to the bathroom. The volunteer told her they were no longer welcome and would have to leave the event. The women said they were escorted out of the Central Point fairgrounds by police officers and threatened with arrest if they did not comply.

———— Original Message ————
Subject: Re: [Politech] Stewart Baker: What's in the water at Cato? [priv]
Date: Mon, 18 Oct 2004 16:11:29 -0500
From: Jim Davidson
To: Declan McCullagh
CC: sbaker@steptoe.com, info@cato.org

Dear Declan,

Fascinating stuff.

> Jim Harper seems to have slept through September 11.

That's a harsh and unfair criticism. My friend John Perry did not sleep through 11 September 2001. He died attempting to rescue others in the WTC. He was a police officer and a lawyer and he was against the abuses of the identity state and the war on drugs.

I think it is wrong to assert that Mr. Harper was asleep during the attacks in 2001 if Mr. Harper doesn't happen to agree with using that event as a Reichstag fire to justify wand raping Americans at the airports or otherwise invading their privacy. Moreover, I think it is wrong to remember John Perry and the other victims of 11 Sep 2001 by using their deaths as a pretext for further erosions of liberty.

> In the weeks before the attacks, we identified two of the hijackers > as al-Qaeda killers, knew they were in the country, but couldn't find > them > — even though they had drivers licenses, phones, etc., in their own > names.

I am always curious about the plural pronoun "we" in these instances. Who had identified two of the hijackers? Mr. Baker? Persons of steptoe.com? Apparatchiks of the Markle "task force"? Or persons in the USA fedgov?

If the latter, why am I filled with "not surprise" that the government was incompetent at finding people who were determined to harm Americans? According the the "9/11 Commission" report one of the organizers of the Nairobi and Dar es Salaam embassy bombings was USA military trained.

Apparently, having driver licenses and phones and perhaps even credit cards does not expose someone who doesn't wish to be exposed. Unless Mr. Baker manages to get all private economic transactions banned and manages to get all Federal Reserve note money implanted with tracking chips, people who do not want to be found will continue to use cash and private transactions.

> And, until we have a method for rapidly checking private databases for > suspects, we still won't be able to find them.

The problem with this assertion is that it suggests that the proposed methods for rapidly checking private databases would have turned

up these suspects. However, that isn't at all clear. Unless all hotels wand rape everyone who comes through their doors, it is still possible for one person to rent a hotel room and invite guests to visit. The hotel may be the unwitting host to wanted criminals, whose identities would not ever appear in the private databases Mr. Baker seems so eager to compromise.

In fact, again according to the "9/11 Commission" report, several of the hijackers were singled out for special security attention at the airports. In other words, they were identified, presumably from the "private" databases of the airline companies offering up traveler information on a wholesale basis to the government as collaborators with the earlier Nazi regime were able to do only on a retail basis. Yet, even with this terrible invasion of privacy and horrific amount of data from private airline databases on who was traveling on 11 Sep 2001 the government failed to interdict the hijackers, leaving dozens of air travelers and thousands on the ground with limited options for their safety.

In fact, again, according to the "9/11 Commission" report, the very distributed nature of postmodern terrorist methods left it up to the passengers of the four hijacked airliners to gather their courage and thwart the hijackers. In the event, only one airplane had passengers who were alert enough and convinced that obeying the hijackers would also get them killed to attempt to defend themselves and those on the ground. The report informs us that we owe a debt of gratitude to those who fought that day armed with pocketknives and toenail clippers and other implements of self-defense which are now banned on all airlines.

In other words, in order to secure the safety of future flights, the very people most capable of defending against a distributed threat have been further disarmed. Passengers who have qualified in their states for concealed carry permits or are otherwise authorized to keep and bear arms continue to be disarmed at every boarding checkpoint, continue to be subjected to unwarranted searches and unreasonable seizures by a cartelized airline industry and its federal security authorities.

My friend John Perry once told me that he became a police officer in part motivated by his desire to live in New York City and still exercise his freedom to keep and bear arms. It was not a failure of information access for agents of the Geheimstadt Polizei which caused John's death, but a lack of access to effective weapons of self-defense on the part of air travelers.

> Evidently that's fine with Jim.

I would certainly be curious about Mr. Baker's evidence for this statement of "evidently."

> He'd rather rely on three other techniques,

Perhaps Mr. Harper would rather not rely on techniques that have failed in the past, which seem destined to fail in the future, and which thwart the Bill of Rights protections guaranteeing Americans that they should be safe in their papers, persons, houses, and posssessions from unreasonable searches.

> which seem to be teaching Arab kids to read,

Teaching Arab children to read is not a bad idea. Mr. Baker seems to favor illiteracy for Arab children.

If children in Islamic countries were encouraged to read, they might be inclined to read the Koran and thereby learn of its admonitions against shedding innocent blood. I gather Mr. Baker is against any sort of enlightenment, because he seems to be against any sort of religious or individual liberty.

> huddling behind more and higher blast walls,

Blast walls and other physical security certainly has its place. But, for a distributed threat to be met effectively, it has to be met by a distributed defense, a defense in depth. If American civilians are to be considered front line soldiers in the war on terror, they should not be sent into combat unarmed.

> and using something called "human intelligence" — unaided by > any technical advances made during Steve Jobs's lifetime.

It is curious to me that Mr. Harper is being accused of wanting intelligence agents to be unaided by computer technology. I do not find anything in Mr. Harper's words that merit such an accusation.

> Evidently recognizing that nobody else is likely to feel safer under > the > Harper Three-Point Plan, he also trashes the report by misstating its > impact.

Yes, trashing the opponent does seem to be part of this discussion.

> His claim that dozens of laws will have to be amended is flat > wrong. There is already plenty of legal authority for gathering > information > from private sources.

Curious then, that the 11 Sep 2001 attacks were so successful. Data was gathered from private sources and several of the hijackers were subjected to increased scrutiny at the airports, yet they were still able to board planes and use them as weapons.

Maybe Mr. Baker's securitat apparatus won't make anyone actually safer, though it may make Mr. Baker feel better.

> The charts simply set forth existing law, without
> proposing to water down any of them. In fact, the safeguards > recommended by > the Markle task force actually add restraints to the government's > current > capabilities (a fact that gave me real pause when I was part of the > task > force).

I can only imagine the pause, and its length as measured in picoseconds, Mr. Baker displayed toward any restraint of the machinery of government which might serve as a modicum of safeguard for the liberties guaranteed by the Constitution.

> At bottom, the task force recommends that the government use — with > safeguards — capabilities that the private sector already uses with > enthusiasm.

I wonder if the task force recognizes that government is a "terrible servant and a fearsome master." I wonder if the task force recognizes that private sector use of data is fundamentally different from the government use of the same data, given that the private sector has not been formed under a constitution limiting its power, but government has. Or are constitutions an old fashioned thing we shouldn't concern ourselves with?

> If Sprint can already tell that Messrs Atta and al-Hazmi make a > lot of phone calls to each other and to Afghanistan, and can use the > information to offer them cheap long-distance, most of us would like > our > government to use the same information to keep our families alive.

One must suppose, then, that the tyranny of the majority is at hand. The constitution is brought low and the monster of governmental power and authority is unleashed. We already see that government providing pan et circenses to the masses to keep their loyalty, even as it offers them up to the warfare machine to be obliterated in distant lands.

Sprint may well have been able to tell that its customers were making phone calls to each other and to Afghanistan. Of course, it is possible to buy phones and phone services from other companies and pay cash without providing any identity information whatever. I gather that Mr. Baker would outlaw such private transactions. It would still remain possible for Mr. Unknown to buy a phone and pay for its services while handing it over to Mr. Terrorist for use. But, I suppose, Mr. Baker would favor checkpoints at every major freeway intersection so that every cell phone would be found and identified along with the person in possession.

Having apparently agreed to eliminate the Fourth Amendment's protections against unreasonable searches and seizures, I suppose Mr. Baker would be just as inclined to do away with the due process protections of the Bill of Rights and allow for summary roadside executions of those who have cash or gold or "unregistered" cell phones or the phones of some third party in their possession.

Perhaps the majority would like to give up all their liberty for a bit of imagined safety. If one considers the record of governments in the 20th Century imprisoning, torturing, maiming, and killing civilian populations, I do wonder at this rush to empower government with more tools to limit liberty, establish injustice, and provide for the general slaughter.

Regards,

Jim

———— Original Message ————
Subject: Re: [Politech] Stewart Baker: What's in the water at Cato? [priv]
Date: Mon, 18 Oct 2004 16:08:10 -0400 (EDT)
From: Dean Anderson
To: Declan McCullagh
CC: sbaker@steptoe.com

On Mon, 18 Oct 2004, Declan McCullagh wrote:

> Jim Harper seems to have slept through September 11. In the weeks before > the attacks, we identified two of the hijackers as al-Qaeda killers, knew > they were in the country, but couldn't find them — even though they had > drivers licenses, phones, etc., in their own names. And, until we have a > method for rapidly checking private databases for suspects, we still won't
> be able to find them.

Actually, its much worse than simply having drivers licenses. The hijackers had pilot's licenses (student, then private, then commercial) as required to attend FlightSafety's 757 Training program. The FAA list of names and addresses of pilots is public information, and is used by marketers. Not only could you call the FAA and get the (correct for the hijackers) home address information, but the FAA will sell the entire database to anyone who wants it.

When you combine this with the Presidential Daily Brief (PDB) report that AlQuaeda was interested in hijacking aircraft, and the PDB report that AlQuaeda was interested in learning to fly (both reports given to the President and select staff), it seems incredible that these names weren't checked with the FAA.

It is no exaggeration to say that if _I_ had the PDB's and the names, I could have found the hijackers. Surveillance of the hijacker pilots would have easily disrupted the plot. No one bothered to check to see if the known bad guys were actually learning to fly, even after the PDB about AlQuaeda learning to fly.

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Archived at http://www.politechbot.com/
Moderated by Declan McCullagh (http://www.mccullagh.org/)

Posted by Jim Harper at October 19, 2004 10:56 AM

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