



## FBI Agents Get More Freedom; Americans Get Less

The Federal Bureau of Investigation is issuing a new edition of its manual, the Domestic Investigations and Operations Guide, the *New York Times* reports. The 2011 edition, the paper says, gives “significant new powers” to FBI agents, allowing them “to scrutinize the lives of people who have attracted their attention.”

Read that again: “... people who have attracted their attention.” Not just those suspected of actual crimes, but anyone an FBI agent feels like investigating, is now fair game under the agency’s official guidelines. As a matter of fact, FBI general counsel Valerie Caproni (left) “rejected arguments that the FBI should focus only on investigations that begin with a firm reason for suspecting wrongdoing,” according to the *Times*. In other words, Caproni dismissed the Fourth Amendment, which requires the government to obtain a warrant based on probable cause before searching a person’s body, house, or other possessions.



Moreover, the paper writes, Caproni “said the bureau ... had carefully weighed the risks and the benefits of each change.” Not surprisingly, it found that in each case the benefits to the FBI far outweighed the risks to Americans’ liberties.

In December 2008 the FBI created a new category of investigations called an “assessment,” which “allows agents to look into people and organizations ‘proactively’ and without firm evidence for suspecting criminal or terrorist activity,” the *Times* explains. This category, the paper adds, “sets a low bar to examine a person or a group. The FBI has opened thousands of such low-level investigations each month, and a vast majority has not generated information that justified opening more intensive investigations.”

As if such an invitation to fishing expeditions weren’t bad enough, the new manual now permits agents to search commercial and law enforcement databases for information about anyone they so desire without having to open any kind of official inquiry. As former FBI agent and current American Civil Liberties Union attorney Michael German pointed out, this rule “change would make it harder to detect and deter inappropriate use of databases for personal purposes,” relates the *Times*. Caproni, naturally, took the opposite tack, complaining that requiring an agent to open a formal inquiry before investigating someone was “too cumbersome,” the newspaper said. Besides, Americans have nothing to fear, she said, since “agents could not put information uncovered from such searches into FBI files unless they later opened an assessment,” as the *Newspaper of Record* paraphrases her. So whatever



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information agents glean may be stored only in their own files, on their own pads of paper, or on their personal BlackBerrys. *Certainly* there's no potential for abuse under such circumstances!

Another change will permit agents to administer lie-detector tests and search people's trash not just for the purpose of investigating suspected criminal activity by the target of such activities but also for figuring out if they can use the target as an informant. "Agents," the *Times* writes, "have asked for that power in part because they want the ability to use information found in a subject's trash to put pressure on that person to assist the government in the investigation of others." In other words, they want to be able to blackmail people — with the threat of either exposure or prosecution — into helping the G-men trap their family members, friends, and business associates. That informants are notoriously unreliable, and that the bureau has been known to [cover for its informants](#) who commit crimes including murder, should give anyone pause about making it even easier for the FBI to enlist the aid of such persons. The fact that, as the *Times* puts it, "Caproni said information gathered [via lie-detector tests and trash searches] could also be useful for other reasons" should also raise the hairs on the back of every American's neck.

Under the new rules, surveillance squads, which follow targets surreptitiously, can now be used "repeatedly," the Gray Lady says, during an assessment, as opposed to the one-time use permitted under the old rules. Caproni again hastened to assure Americans that they had nothing to fear from this, according to the paper: "[B]ecause of limited resources, supervisors would use the squads only rarely during such a low-level investigation." The simple fact that an investigative tool that was supposedly limited is already being expanded offers a hint as to where this is headed, so Caproni's soothing words must be taken with a shaker or two of salt.

FBI infiltration of various organizations, from anti-war groups to churches, has been the cause of numerous problems over the decades. In recent years, agents and informants appear to have been the prime movers behind most of the alleged terrorist plots the agency "busted" to great fanfare. The new manual loosens the rules for such "undisclosed participation" as well.

Now comes the part where the government explicitly rewards its friends and punishes its enemies — or at least those enemies with little influence. The new FBI manual, the *Times* explains, "clarifies a description of what qualifies as a 'sensitive investigative matter' — investigations, at any level, that require greater oversight from supervisors because they involve public officials, members of the news media or academic scholars." These are, of course, just the sort of people most likely to be chummy with the government and most able to bring public attention to government abuses such as unwarranted FBI investigations of themselves.

First, says the newspaper, if a covered individual "is a victim or a witness rather than a target of an investigation," or if he is a low- or midlevel official being investigated for "activities unrelated to [his] position," then all the extra supervision goes out the window.

Second, and more ominously, only certain members of the news media and the academic community are singled out for kid-glove treatment. "Prominent bloggers would count," the *Times* avers, "but not people who have low-profile blogs." Prominent bloggers, of course, tend to be affiliated with the mainstream media, who are nothing if not friends of the government. Furthermore, they would have the ability to draw attention to an FBI investigation of themselves that they knew to be politically motivated. Low-profile bloggers, on the other hand, have no such friends in Washington, would largely be ignored if they complained of being investigated, and — perhaps most importantly — don't have the wherewithal to hire high-powered attorneys to defend them against unethical investigations. Likewise, scholars who



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work for U.S.-based institutions are covered, while foreigners, whose plight in the case of an unwarranted FBI investigation would get scant attention in the U.S. news media and even less sympathy from most Americans, can be investigated with little oversight.

“The entire history of government teaches us that it always attempts to accumulate power and always tries to undermine limitations on its authority,” observed [Steven LaTulippe](#). Nowhere is this more evident than with the FBI, which began as a small agency with very few laws to enforce but has since become a behemoth with about 14,000 agents and a myriad of statutes and regulations that it can use to trap almost anyone it chooses, a task the new rules make even easier. Against such a foe the Constitution stands little chance of prevailing.

*Photo: FBI General Counsel Valerie Caproni testifies on Capitol Hill in Washington, before the House Judiciary Committee hearing to discuss FBI use of National Security Letters.: AP Images*



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