

The Devil Inside the Beltway

The Devil Inside the Beltway

*The Shocking Exposé of the
US Government's Surveillance and
Overreach into Cybersecurity, Medicine
and Small Business*

By Michael J. Daugherty

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Broadland Press
2030 Powers Ferry Road
Suite 520
Atlanta, GA 30339
www.michaeljdaugherty.com
www.broadlandpress.com
info@broadlandpress.com

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DISCLAIMER: Memories can't be verified to perfection since the human mind is faulty, but in telling this story, I have relied upon interviews with my attorneys, friends, and co-workers, in addition to court documents, emails, letters, journals, and other research. I have also taken certain liberties such as dramatizing, compressing, and/or combining events, times, or conversations. In some cases, names and identifying details have been condensed and/or changed to avoid unnecessary embarrassment to private individuals. This was done in an effort to move the story forward and spare readers the mundane, trivial details not critical to the story. While I may not remember word for word what was said in the conversations contained in this book, I have done my best to ensure that they capture my recollections and perceptions of what was discussed. For those who want more details and facts about the underlying basis for my story and strong opinions, you will find in the endnotes links to full versions of all documents and emails referenced in this book. In short, this is my story. It is an emotional story of years marred by torment and disgust dealing with the FTC. It is, ultimately, my personal account about events that have forever changed my life.

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This book is dedicated to all the small business men and women
around the world.

From the independent contractor, telecommuter, small medical
practice, independent bookseller, part-time mother working
during school hours, technology business that builds the magic of
tomorrow, to the student working part-time as she puts
herself through school, artists creating their masterpieces,
housekeeper making her children's lives better than hers,
and former corporate players that chucked it all for a small
piece of paradise that they can call their own . . . you are my
strength and safety. You are not alone. You are the backbone
of the world's economy.

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Acknowledgements

Life is a wild ride sometimes. I would like to thank those that have helped me hold on.

To my parents, Roy and Joan Daugherty, for letting me know I always had a home to come back to. That has always helped me take risks and stare fear in the face.

To my sisters, Christine and Diana, for knowing and believing that I will land on my feet.

And finally, to those too many to mention . . . to friends, employees, managers, bosses, doctors, nurses, technicians, and medical staffs that have stuck with my company, believed in us all, and cheered me on, I can't thank you enough. This book was started long before NSA, Surveillance, and Privacy were top stories in the media. I knew I could attempt to slay the Devil Inside the Beltway because you were standing there beside me when strangers might think I was crazy to attempt such a thing. My heartfelt thanks to you all.

PROLOGUE

Who is the Devil Inside the Beltway?

The Devil is a mindset that infiltrates the minds and souls from the weak to the powerful; it hates principle, memory, and truth.

The Devil moves freely among us, numbs our ethics, compromises our moral character, cauterizes our memory, charms us into submission, and convinces us that its carnage is for the betterment of mankind.

The Devil is the master of spin in a world of no up or down, right or wrong, truth or fiction; just a manipulative verbal volleyer always at the ready to spew.

The Devil is seductive in convincing you that you are powerless.

The Devil lives in the silence.

But never forget, knowledge is power. Stare down the Devil Inside the Beltway. Look right into its eyes.

“Hardships often prepare ordinary people for an extraordinary destiny.”

—C.S. LEWIS

CHAPTER 1

Breach of Trust

Right now—and completely unknown to them—Americans are sharing sensitive personal data—their bank records, credit card numbers, passwords, tax returns, and letters, to name a few.¹

*Thomas D. Sydnor, II,
Testifying before the US House of Representatives,
House Committee on Oversight and Government Reform
July 24, 2007*

The Call—May 13, 2008 Atlanta, Georgia

My nightmare began with a stranger's call from out of the blue. A lightning bolt out of nowhere, I didn't know if it was a random hit or a strike with intent. But until that moment, life was good for me and seemingly for everyone at LabMD.

LabMD is my baby and my life. After being in medical and surgical device sales for over a decade, I built the company from scratch in 1996 using equity lines of credit and charge-card advances. We—and by that I mean myself and current and former physicians, technologists, and employees—built a beautifully run cancer detection facility that focuses on prostate and bladder cancers, as well as almost every other test that may be ordered by a urologist. By May 13, 2008, we were debt free, profitable, and private. I was not looking for a stock run or going public to make a killing. I just wanted to be the best lab possible and to enjoy the meaningful work. That morning there were calm waters all around.

But then everything came to a screeching halt. I was in my office answering e-mails when I looked up and saw Bill Barnett, our VP of Operations and General Manager, standing in front of my desk, typically crisp in his tucked-in shirt, creased pants, and

double-knotted shoes. And I saw he had *that* look on his face; I knew that blank look. It came with a pregnant pause that said to me, “Mike, brace yourself, and please don’t go ballistic on me.” Of course, I always brace myself for the worst. That way, nothing seems so bad when I’m confronted with the words that follow his three seconds of silence.

“We received a phone call from some guy at a data security firm in Pennsylvania,” he said monotonously.

“And you are telling me this why . . . ?”

“Well, the guy—some Robert Boback from a company called Tiversa—says he’s got a file of ours. He was able to download our data because they perform security intelligence.”

Baffled, I fired off questions: “Security intelligence? What the hell is that? For whom? What file is it?”

“He says it’s a file containing patient health information.”

“That makes no sense at all. Let me get this straight. This guy calls us, says he has *our* file? How did he get it? How does he know it’s our file? Have this guy prove what he has in some form of documentation. And please ask for it in writing. This stinks to high heaven. Only communicate in writing.”

“Okay.” Bill paused. “It doesn’t make any sense.” Another pause. “I can’t wait to find out how this guy got this.” We were both on edge, alarmed and mad.

Hearing patient information was in possession of this company set off multiple alarms. I was terrified for our patients. I had a basic instinct to protect them. It was hard to believe it was our file just because this guy said so. I considered LabMD’s network security and overall system set-up ahead of the game, especially compared to what I saw on a day-to-day basis in a typical physician’s office.

Slow down, I coached myself. *This makes no sense. Just gather the info and execute. But if there’s patient data out there, then we need all hands on deck.* I needed someone to bounce off my thoughts and get feedback. This called for our lawyer, Evelyn O’Connor.

Good morning, Chairman Waxman, Ranking Member Davis and distinguished members of the committee.

My name is Robert Boback and I am Chief Executive Officer of Tiversa, a Pennsylvania-based company that provides information technology and investigation services that help or protect organizations, government agencies and individual consumers from the disclosure and illicit use of sensitive, confidential, and personal information of peer-to-peer file sharing, or P2P, networks . . . Beginning in 2003, Tiversa has developed systems that monitor and interact with and within P2P networks to search for sensitive information. Where an individual user can only see a portion of a P2P file sharing network, Tiversa can see the whole. It is our belief that no other system has this capability.¹

*Robert Boback, CEO, Tiversa,
Testifying before the US House of Representatives,
House Committee on Oversight and
Government Reform July 24, 2007*

May 13, 2008 Atlanta, Georgia

General Counsel's Advice

Evelyn O'Connor had been LabMD's general counsel since 1996, so by 2008 she and I could finish each other's sentences. Hailing from Oklahoma and having attended law school there, she relocated to Atlanta after graduation. I had met her soon after, when she was dating a friend of mine. That was when I didn't know what it was like to need an attorney, let alone work with one.

Cool and in control, but not icy, the tall, beautiful, well-dressed Evelyn has a disarming manner that makes her easy to get to know. Shrewdly observational, she can be objective when I'm emotional—always a good balance for me. Besides, having the same lawyer for so many years builds up a bank of experience and trust that's invaluable when new alarm bells go off. All the “get to know and trust each other” stuff is behind you. I know Evelyn is trustworthy; she's on our side.

I called her and brought her up to speed on what Bill had just told me.

“He says his firm does security intelligence,” I told Evelyn, sarcasm dripping in my voice.

“Mike, our firm gets calls like these from snake oil salesman trying to sell services by instilling fear. Make this guy prove what he says. Make him show you what he’s got and disclose how he got it. If there is a problem, identify it and fix it, but have this guy do more than shake his rattle.”

As I hung up the phone and returned to my paperwork, I had no clue the next five years of my life would be dramatically changed by what I then thought was just an annoying little fly in the ointment. I had no inkling that this bug was more like a band of locusts that would cost my company at least a half million dollars and countless hours pulled away from our growth and opportunities. And I had no idea I’d encounter federal government officials, US Congressional representatives, bloggers, reporters, underwriters, and a seemingly endless parade of self-righteous lawyers. Little did I know that any scenario I could conjure up could not have possibly been as crazy, unbelievable, or bizarre as what was about to happen.

I did know that letting my emotions create all sorts of stories in my mind was a waste of time, perhaps even damaging. Oblivious to what lay just ahead, I decided not to worry about their claim until we had more information. *I can't assume we have a problem until I know we have a problem. Who the hell is Tiversa and this guy Boback, who has such unmitigated nerve?*

I turned to my computer, fired up my trusty advisor Google, and typed in “Tiversa.” Up popped the company’s Web site and a stock photo of corporate office buildings (that tells me nothing) and an obvious marketing pitch, “Do you know who is searching for and finding your data on the P2P?” Then, following a quick delay to build the anticipation, two ominous words popped up in yellow: “We do.”

Is that trick supposed to instill fear and make me want to run to this company?

The message reminded me of aggressive marketing tactics used when the US Department of Health and Human Services (HHS) began its Health Insurance Portability and Accountability Act (HIPAA) patient privacy regulations a decade ago. A week didn't go by without a card in the mail from some "education" company warning me to enroll in their patient privacy course so I wouldn't go to jail.

Bill soon returned with more info. "We just got the file from Boback. It is a financial billing file. It is over 1700 pages long. It contains nine thousand patients' billing information. Thank goodness it did not contain phone numbers or home addresses. It has patient names, social security numbers, insurance company names, and policy numbers, as well as dates of birth and diagnosis codes. It is the summary report of patient accounts that had a balance due to the laboratory. I have no idea how this file could have come into Boback's possession." Bill paused and looked thoughtful. "But, boy, am I ever going to find out."

I was rolling in shock and disbelief. Bill was right there with me.

"Oh my God, ask this guy to give us more information. Remember, please e-mail . . . no phone. Evelyn thinks this is suspicious."

Bill asked Boback for info via e-mail. Then we passed the time, pretending nothing was wrong. Interrupting our anxiety, we received another e-mail forwarded to Bill from Boback right after lunch:

From: Rick Wallace
Sent: Tuesday, May 13, 2008 1:11 PM
To: Robert Boback
Cc: Chris Gormley
Subject: LabMD

Mr. Boback,

Per your request, I checked back against the timeline to see the date that we originally acquired the file pertaining

to LabMD. It appears that we first downloaded the file on 02/05/08 at 3:49PM. Our system shows a record of continued availability for sporadic periods over the past several months but we did not attempt to download it again. The system did not auto-record the IP, unfortunately, most likely due to the little amount of criteria indexed against the DSP. We may, however, have the actual source IP address in the data store logs but it was not readily available at this point. If it is there, I should be able to get it but it would take some time.

Please let me know if I can be of further assistance.

Thank you,
Rick Wallace
Forensic Engineer
Global Incident Response Operations Center (GIROC)

I crowed to Bill, “They downloaded this but they don’t have any information? Global Incident Response Center? Response for who? This just doesn’t add up. Who in-the-know calls a medical facility and says, “Hey, we just found your file with our secret recipe software?”

Bill stood there in stony silence, every bit as dazed and confused as me.

“Okay, we’ll just play it very low key and easy with this guy, Bill. We want him to keep talking.”

This is bad news, kept repeating in my head; I just knew it. Patient security first, figure out what’s going on second, I repeated in my mind. And try to stay calm.

Bill “gets it.” All about execution and professionalism, he’s any business owner’s dream of an operations leader/GM. He nodded and we were immediately on the same page. My experience told me he’s better at poker than I am. That made him a good choice for luring Mr. Boback into disclosing what cards he was holding.

“Bill, I think we need to slow things down here. Does this make any sense to you at all?”

“No. He has to cough up way more info.”

“I know. We need to not act too hastily here. Let’s think of exactly what we want to know from him.”

Bill left my office and got to work on formulating a list of what he wanted to know.

Before we got a chance to send another question, Bill returned to my office with another e-mail from Boback. “Oh, you are going to love this first sentence. Check this out.”

From: Robert Boback
Sent: Tuesday May 13 2008 14:13:15
To: Bill Barnett
Subject : LabMD

Bill,

We are able to provide investigative and remediation services through our Incident Response team if you are need of their professional assistance. They would locate and identify the precise source of the disclosure. They could also identify additional disclosed files from that source (of which there are most likely additional files since most individuals are sharing an average of over 100 files per PC). They can also perform a Global Spread Analysis to determine severity of the breach. Most importantly, they can work to recover and cleanse the sensitive documents from the P2P. I only mention this because it appeared that there was some confusion about the breach.

If any of these services are of interest to you, please let me know and I will put you in touch with our Operations team to get it started.

Regards,
Robert Boback
CEO Tiversa

“I have your file; do you want to hire me?” is the message I was putting together. My instincts screamed, *Danger!*

I looked at Bill's stunned face and knew we were thinking the same thing as I said, "Yeah, right, we aren't buying this one, buddy. How the hell did this guy get our information? ARGH . . . what the hell are we going to do here? Time for the lawyer, dammit."

I want to just disclose now that I am an advisor to Tiversa, and in that role I do have a small equity stake in Tiversa . . . The American people would be outraged if they were aware of what is inadvertently shared by Government agencies on P2P networks . . . I asked Mr. Boback to search for anything marked classified secret, or secret no-foreign. So he pulled up over 200 classified documents in a few hours running his search engine . . . I am a civilian and I am just in business.¹

*General and former game show host Wesley K. Clark,
Testifying before the US House of Representatives,
House Committee on Oversight and Government Reform
July 24, 2007*

*“America will never be destroyed from the outside.
If we falter and lose our freedoms, it will be because we
destroyed ourselves.”*

—ABRAHAM LINCOLN