

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
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A Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On "National Security Letters:  
The Need for Greater Accountability and Oversight"  
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When Congress last reauthorized and expanded the USA PATRIOT Act in March 2006, I voted against it. As I stated then, the Bush administration and the Republican Congress missed an opportunity to get it right. Still, we were able to include some sunshine provisions which have given us insight that we use today in our examination of the use of National Security Letters (NSLs).

I have long been concerned by the scope of the authority for NSLs, and the lack of accountability for their use. Thankfully, we were able to include requirements for a review of the NSL program by the Inspector General in the reauthorization of the PATRIOT Act. For two years now, those reports by the Inspector General have revealed extremely troubling and widespread misuse of NSLs.

The authority to issue NSLs allows the Federal Bureau of Investigation (FBI) to request sensitive personal information - phone bills, email transactions, bank records, and credit reports - without a judge, a grand jury, or even a prosecutor evaluating those requests. In his reports, the Inspector General has uncovered very disturbing misuse of this authority. The Inspector General's reports found widespread violations, including failure to comply with even the minimal authorization requirements and, more disturbingly, that the FBI requested and received information to which it was not entitled under the law. The reports found rampant confusion about the authorities and virtually no checks to ensure compliance or correct mistakes.

Very significantly, the Inspector General also found that NSL use has grown to nearly 50,000 a year and nearly 60 percent of NSLs are used to obtain information about US Persons. This is a major change in the years since 9/11.

I have raised these concerns with FBI Director Mueller and, in fairness, the FBI has acknowledged problems. It has issued new guidance and developed a new data system to track issuance of NSLs. It has also created an Office of Integrity and Compliance to ensure that there are processes and procedures in place to ensure compliance. I believe that the Director and his staff are sincere in their efforts, but I am not persuaded that the actions they have taken are enough.

Today we follow up on earlier oversight hearings to ask what changes are needed to the statutory authority. Among the things that concern me are whether the law should require higher level review and approval - perhaps judicial or Department of Justice review - before NSLs can be issued. Is the standard for issuance, which requires only that it be relevant to a terrorism investigation too lenient? Is the scope of documents available under NSLs too broad? I would also like to hear how we can ensure that there are adequate standards for determining when private records on U.S. persons collected using NSLs can be retained, disseminated, and used.

I commend Senator Feingold, who has been a leader on this issue. I believe his bipartisan bill, the National Security Letter Reform Act of 2007, is on the right track, particularly in its recognition of the need for a real check on and independent oversight of NSLs. The bill would also narrow the extraordinarily broad scope of information that NSLs can acquire and would make the standard for their issuance more rigorous. I look forward to hearing our witnesses' views on this important legislation and getting other ideas from them on possible legislative improvements to NSL authority.

The problem we see with NSLs is just one part of a much broader concern. We all recognize that the changing nature of national security threats, in particular the threat from international terrorism, has required changes to the way the government collects and uses intelligence and the kinds of information it needs. We must remember, though, what a perilous undertaking it is when the government engages in domestic spying. Americans do not like it - with good reason. We have a long history of abuses - the Red Scare of 1919, McCarthyism, COINTELPRO, Watergate, the recent Pentagon Talon database program that collected information on Quakers and other antiwar protesters. If we are going to adapt our collection and use of information from Americans to a changing threat, we must be sure to also do the same for the checks and accountability mechanisms we have to protect the privacy and liberties of Americans.

The FBI's misuse of NSLs is one example of the need for clearly defined procedures and careful controls when collecting and using domestic intelligence, but we must be just as vigilant in other areas. Data mining, use of satellites to collect domestic information, biometrics, fusion centers - these all are tools for national security, but each is fraught with the potential for privacy invasions and harm to Americans' liberties. The Congress has a responsibility to be sure that these domestic intelligence tools are used only with the proper controls and checks to ensure oversight and accountability.

I look forward to hearing from our witnesses this morning.

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