

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy, Chairman, Committee On The Judiciary subcommittee on the constitution Hearing on "Responding to the Inspector General's Findings of Improper Use of National Security Letters by the FBI"

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I thank Senator Feingold for holding this important hearing to help the Judiciary Committee determine how to prevent further abuses by the FBI.

Last year, Congress reauthorized government investigation of Americans and others, often secretly, without the check of a magistrate or court, when the Patriot Act reauthorization extended the use of so-called National Security Letters ("NSLs"). Supporters of these changes said we could trust the FBI to only use these expanded powers where necessary, and to follow the legal restrictions set by the reauthorized Patriot Act and Congress.

The Department of Justice Inspector General issued a report last month, however, finding that the FBI had breached that trust. The Inspector General found that, time and again, the FBI did not follow the law, or its own rules in issuing thousands of NSLs for personal and financial records since 2003. In his recent testimony before the full Committee, Inspector General Fine called the FBI's conduct "the product of mistakes, carelessness, sloppiness, lack of training, lack of adequate guidance, and lack of adequate oversight." Given the facts uncovered by the Inspector General, this description may even understate the problem.

The revelations concerning the FBI's misuse of NSLs would never have come to light but for the oversight of Congress and this Committee. In debating the Patriot Act and its reauthorization last year, I argued that it was vital to include safeguards and checks and balances to be sure that the government did not abuse its powers, violate civil liberties, or needlessly invade the privacy of Americans. Working with then-Chairman Specter, we insisted that the reauthorization include a review of the FBI's use of its powers by the Justice Department Inspector General. The bill was pushed through without many of the safeguards I advocated, but fortunately, the requirement of that Inspector General review survived. Without that "sunshine" provision, we would not be having this Subcommittee hearing today, and these abuses may have gone undiscovered entirely.

Inspector General Fine documented numerous, egregious errors, which he described as "clearly inappropriate" in his testimony before the Committee. He found that the FBI had no effective system for tracking the number of NSLs issued by the various FBI field offices, and in many cases the FBI never even kept signed copies of NSLs. As a result, the FBI has significantly under-reported to Congress the number of NSLs issued each year, leaving out as many as 6,000

NSLs over the past several years. Inspector General Fine found many violations of rules or law in only a small sample his office checked, none of which the FBI reported as required in the Patriot Act. The FBI Director conceded in his testimony last month that these violations likely never would have been reported, but for the Inspector General's review.

Overall, the Inspector General found improper or illegal use of NSL authority in one out of every five files his office reviewed. These violations included improperly obtained telephone records, financial records, and even full credit reports. In some cases, the requests were not appropriately authorized or did not go through proper procedures. In others, the FBI requested or got information to which it was not entitled under the relevant laws. The Inspector General found widespread "confusion" and failures to oversee the process for FBI agents seeking NSLs.

In 60 percent of the files reviewed, the Inspector General found that the FBI did not have the documentation required by its own in-house policies for issuing NSLs. In most cases, the FBI did not even have signed copies of the NSLs issued. We have to wonder how we can trust the FBI to fix these serious problems on its own if it cannot even follow its own rules.

Perhaps most disturbingly, Inspector General Fine reported that the FBI had misused its emergency authority to obtain records more than 700 times by issuing so-called "exigent letters," which contained serious misstatements. These demands were for the immediate disclosure of personal information, such as telephone and bank records, because of purported emergency circumstances and were to be followed by grand jury subpoenas. In fact, the FBI never applied for or received grand jury subpoenas, and, in at least some cases, the Inspector General found that there was no emergency. Later, the FBI tried to correct the problem by issuing "blanket" NSLs after the fact, which were not authorized by law and did nothing to solve the problem.

Throughout these many episodes, the FBI failed to police itself time and again. The FBI's Office of General Counsel became aware of the problem with "exigent letters," and recommended small changes that did little to fix the problem, but never moved to eliminate the use of such letters. And Director Mueller himself admitted that the FBI had no internal compliance program to make sure the law was being followed as to NSLs.

These abuses are unacceptable. We cannot have the FBI requesting information under false pretenses and proceeding with total disregard for the relevant laws. That the FBI continued to use lawless techniques for years in hundreds and perhaps thousands of instances is alarming.

It is important to emphasize that these are not mere technical violations. The FBI obtained private and personal information about Americans and others without following the proper safeguards, and at times agents requested and received personal information to which they were not entitled. This information was then placed in databases and distributed within the FBI, to other intelligence agencies, and beyond. The Inspector General's report makes clear that the FBI's record-keeping in connection with NSLs was so poor that we cannot even determine what has happened to much of the improperly obtained information. This is not acceptable. We cannot have these unwarranted and unauthorized invasions of Americans' privacy rights and civil liberties.

Now we must take the next step and work constructively to answer the serious questions raised by the Inspector General's findings. We need to consider whether it is necessary to roll back some of the Patriot Act's expanded powers to make sure the FBI will appropriately follow the law and respect our citizens' rights and privacy. We must consider whether more independent review would ensure that the FBI does not continue to overstep its lawful authority.

We need to explore whether the law should require higher-level review and approval, perhaps from FBI headquarters or from Department of Justice attorneys and perhaps from a judge. We must design an appropriate procedure for obtaining information in an emergency, and make clear that false and inaccurate "exigent letters" are not acceptable. We should require a process that creates a paper trail for records received which can be easily audited and reviewed in the future. Those whose records are collected improperly should be able to rest assured that the problem will be corrected and the records destroyed. Finally, we should comprehensively reexamine the PATRIOT Act's expansion of the FBI's powers and the types of information that can be obtained.

I look forward to the insights of Senator Feingold, who has been a leader on this issue. This hearing, and others that may follow, are necessary and important steps in the oversight process, which is so essential to the protection of our freedoms and liberties under the Constitution.

Trusting the FBI to fix the problem and proceed properly from now on is no longer an option. We tried that already, and that has failed. That is why this hearing is necessary, and why we must find new ways to hold the FBI and our government more fully accountable. While we strive to strengthen the FBI and give it the tools necessary to protect our country, we cannot sacrifice the privacy and civil liberties enshrined in our Constitution and history.

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