

Outside the Scope

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CONYERS:

Thank you very much.

Ladies and gentlemen, this has been an excellent hearing. We thank the witnesses for a continued and extended period of examination. We'll all be working together.

There are five legislative days in which members may submit additional questions to you, and send them back as soon as you can.

CONYERS:

We also want to enter into the record Caroline Fredrickson's statement on behalf of the American Civil Liberties Union; Congressman Coble's Department of Justice fact sheet release.

We also have the New York Times, which officially alerted FBI to rules abuse two years ago, dated March 18. And we also have a letter being hand-delivered to the general counsel, dated today, March 20th, which asks her for additional information.

The record will be open for five additional days. And without any further business before the committee, the hearing is adjourned. We thank you for your attendance.

ACLU Sect. 215-1657

CONGRESSIONAL TRANSCRIPTS

March 20, 2007

House Judiciary Committee Holds Hearing on FBI Patriot Act Misuse

CONYERS:

Good morning. Committee will come to order.

We're here for a hearing on the inspector general's independent report on the FBI's use of national security letters.

Nearly six years ago, in the immediate aftermath of September 11th, the Department of Justice told us that they needed significantly enhanced authority, while promising the members of this committee in no uncertain terms that these new tools would be carefully and appropriately used.

Two years ago, when the Patriot Act was reauthorized, they promised us there was not a single instance in which the law had been abused.

Now, to underscore the importance of the reasons that we're holding this hearing, many of us remember the times in the past when the power of our government has been abused: in one war, led to the suspension of habeas corpus; another war, the notorious Palmer raids; in World War II, the internment of Japanese Americans; in the Vietnam War, the secret spying and enemy list.

In my view, we are now in a period where we risk a continuation of these deplorable acts and effect genuine harm to the Constitution and the rule of law.

One week ago, the inspector general told us that the exact opposite was true of the promise that had been made that there was not a single instance when the Patriot Act was being reauthorized that the law had been abused.

Outside the Scope



CONYERS:

And we ask Inspector General Glenn A. Fine to begin our testimony.
Welcome to the committee.

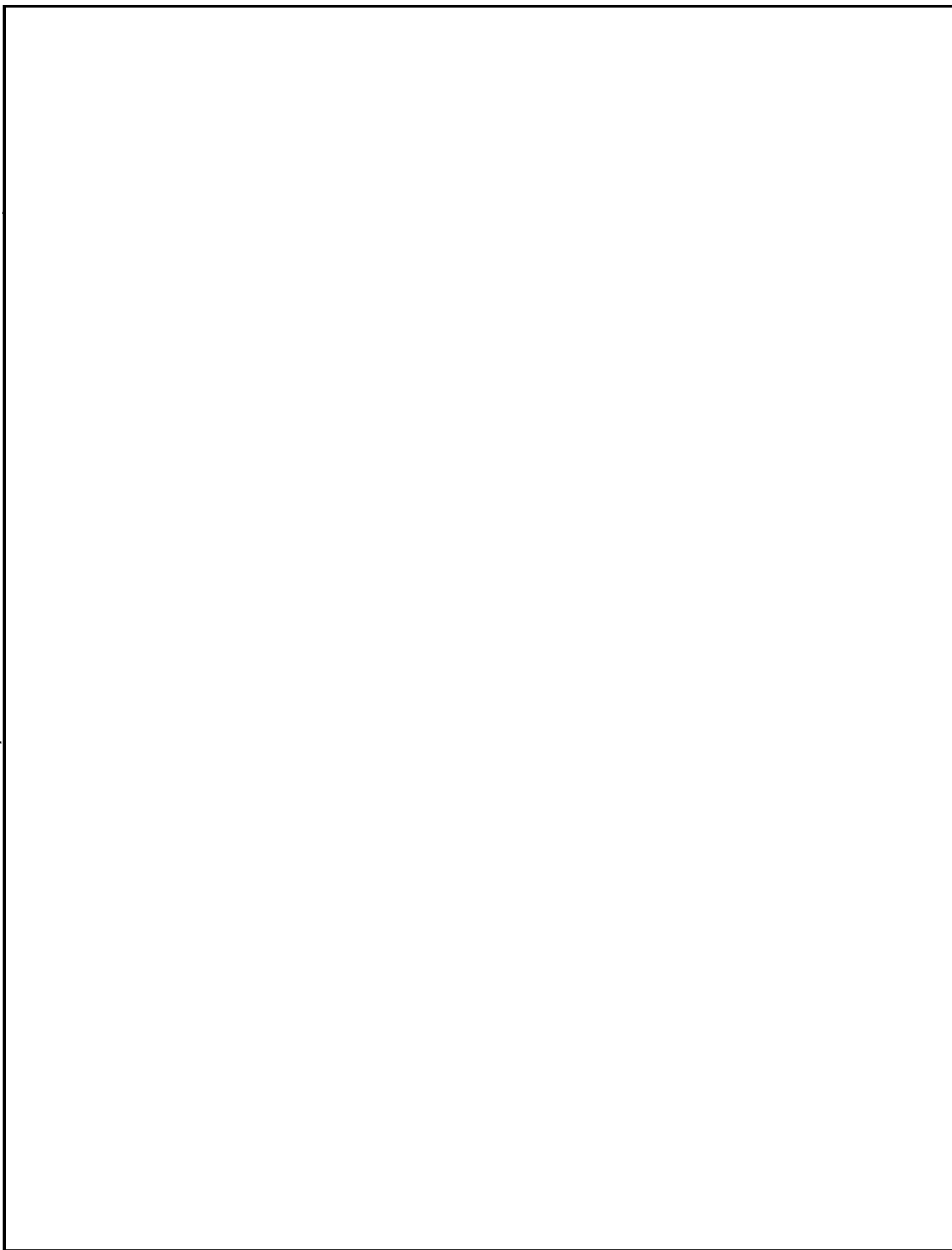
FINE:

Mr. Chairman, Congressman Smith and members of the Committee on the Judiciary, thank you for inviting me to testify about two reports issued by the Department of Justice Office of the Inspector General, regarding the FBI's use of national security letters and its use of Section 215 orders to obtain business records.

The Patriot Reauthorization Act required DOIG to examine the FBI's use of these authorities. And on March 9th, we issued reports detailing our findings.

Today I will summarize the key findings from our reviews, focusing my comments on the national security letter report.





NADLER:

ACLU Sect. 215-1681

OK. And I have one final question, and that is to Mr. Fine, just a quick clarification on accessibility of PIN numbers and Social Security numbers of individuals through this process.

On page 73 of your report, there's a discussion of a potential intelligence review board violation because an agent accessed a bank balance by getting a person's bank account and PIN number from the result of a FISA order.

The agent was faulted for not using an NSL, but was not faulted for the fact that the PIN number was readily available.

And the reason I flagged this, because this reference makes clear that through an NSL or a 215 order the government can secretly obtain the PIN number for someone's credit or debit account along with their account number and all their identification.

CONYERS:

The gentleman's time has expired.
Finish.

NADLER:

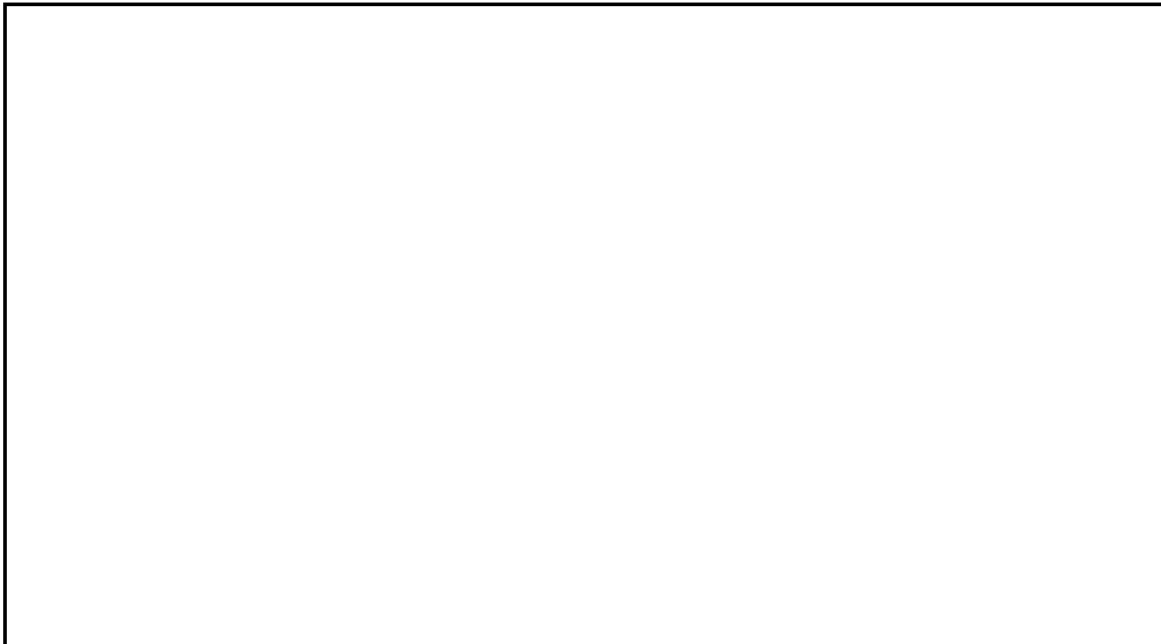
Well, what limits are there on this and what protections are there on this power to get PIN numbers and credit account numbers?

FINE:

The FBI can get bank records and records like that. There has to be predication for it, and they have to show the need for that.

And that is one of the tools that the FBI has used and can use. And as we pointed out, that's one of the reasons there need to be controls on this.

Outside the Scope



[REDACTED]

SCOTT:

What information is obtained through NSL letters that could not have been gotten through going through the normal FISA process, even in emergencies, when there's an after-the-fact process with the FISA Courts?

CAPRONI:

Anything that we can obtain through a national security letter could be obtained from a FISA 215 order.

I would tell this committee that I think if you changed the law in that way, you would be doing grave disservice.

CAPRONI:

It would essentially sink the system.

We issue, as you can tell from the report, thousands of national security letters to get information. We do not have an infrastructure in place to take every one of those to court any more than an AUSA in any district has the infrastructure in place to go to court to get every grand jury subpoena.

It's simply not -- we don't have the infrastructure to do that.

SCOTT:

So you're not getting any information you couldn't get through FISA but just administratively...

CAPRONI:

Well, the Patriot Act...

SCOTT:

You would have a judge looking at what you're doing and not having a process that lacks oversight?

CAPRONI:

Congressman, under the FISA statute, Section 215 of the Patriot Act gave us the authority to get an order for any type of record.

SCOTT:

Well, that's what we're talking about.

Mr. Fine, did I understand that in these cases there's an actual ongoing investigation prior to issuing these letters, or there's not an identifiable investigation ongoing when they issue the letters?

FINE:

It has to be tied to some investigative file. They have to open an investigative file or a threat assessment or preliminary inquiry, a full inquiry. It has to be tied to one of those. It can't be issued out of a control file.

SCOTT:

That's what they're supposed to do. Are they doing that?

FINE:

We found that there were instances where they didn't; that they were issued out of control files and they were not tied to a specific investigation.

SCOTT:

Well, if there's no ongoing investigation, what is the standard for deciding when to issue one and when not?

CAPRONI:

The standard is that it has to be relevant to an authorized investigation.

What Mr. Fine was talking about with the control files is, while it's a difficult situation to understand, those NSLs were -- in fact, they related to an authorized investigation. There was a bureaucratic problem, which nobody likes to hear that it's a bureaucratic problem that we believe we have worked out.

None of the NSLs that were issued out of control files did not relate to an authorized investigation. They all were tied to investigations that were appropriately opened.

Outside the Scope

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Total Deleted Page(s) ~ 80
Page 4 ~ Outside the Scope
Page 5 ~ Outside the Scope
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