

CONGRESSIONAL TRANSCRIPTS

Congressional Hearings

March 28, 2007

House Intelligence Committee Holds Hearing on FBI Use of National Security Letters

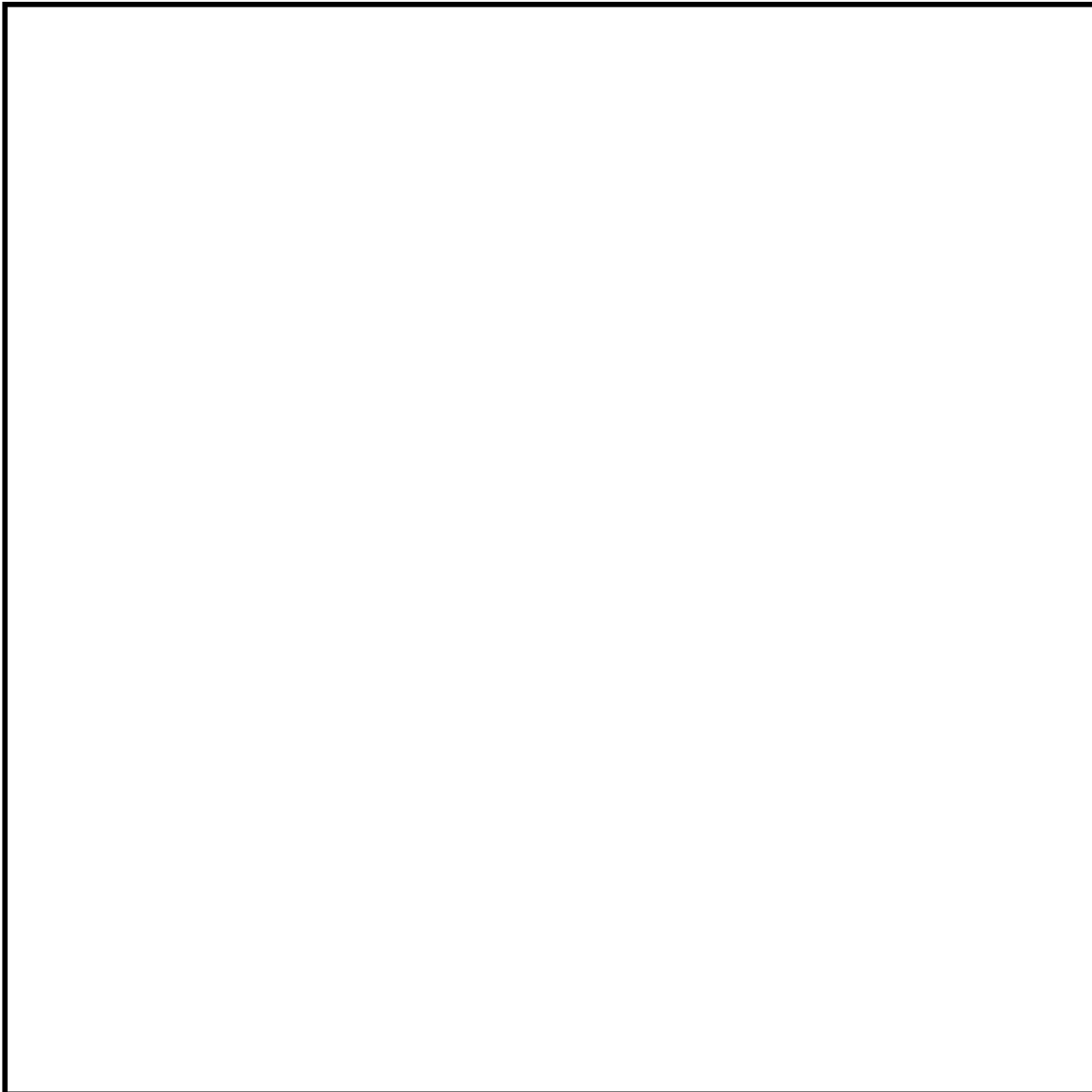
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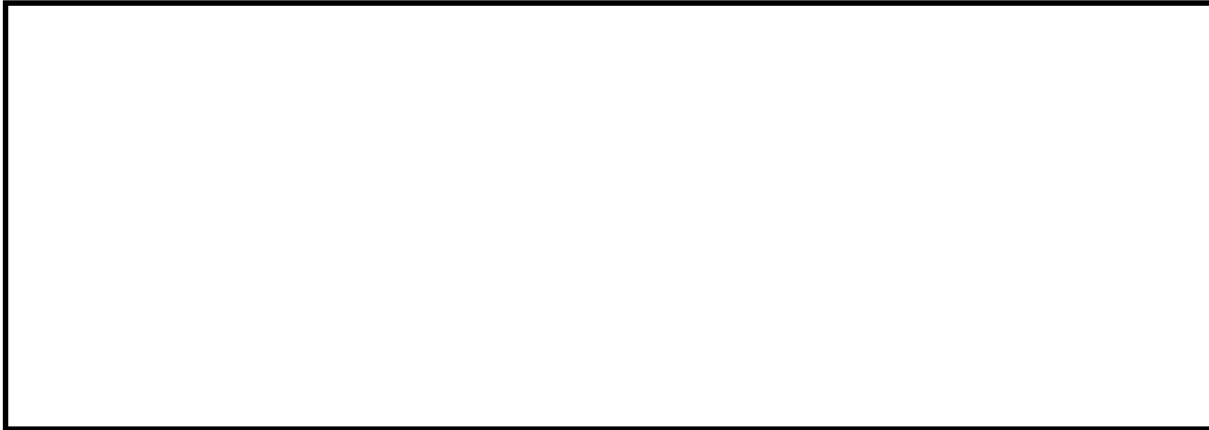
REYES:

Outside the Scope

The committee will please come to order.

This morning, the committee will examine the FBI's use of the national security letters and Section 215 orders for business records under the Foreign Intelligence Surveillance Act, two investigative tools that were greatly expanded by Congress under the USA Patriot Act.





REYES:

Thank you, Mr. Hoekstra.

And with that, we'll begin with the panelists' opening statement.

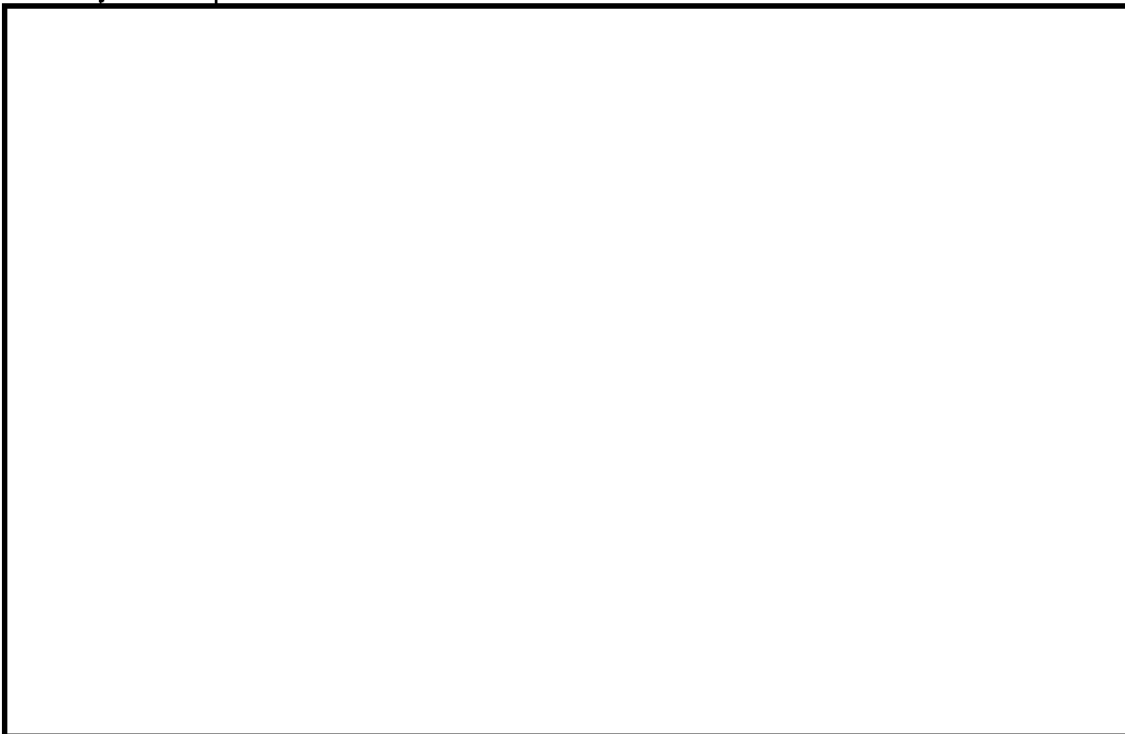
We'll start with you, Mr. Fine.

FINE:

Thank you, Mr. Chairman, Mr. Hoekstra and members of the committee. Thank you for inviting me to testify about reports issued by the Department of Justice Office of the Inspector General regarding the FBI's use of national security letters and Section 215 orders to obtain business records.

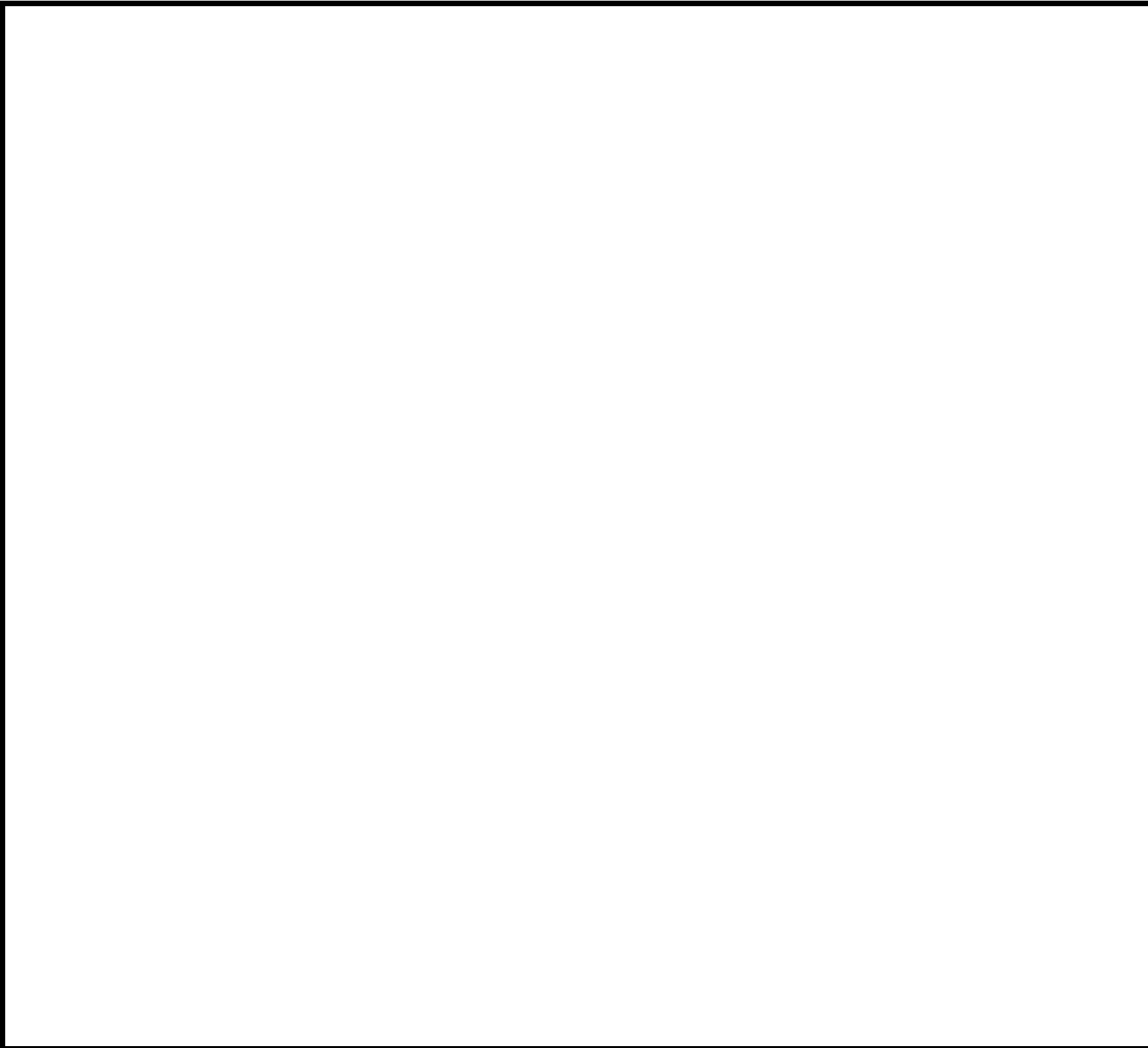
The Patriot Reauthorization Act required the OIG to examine the FBI's use of these authorities. And on March 9th, we issued reports detailing our findings.

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



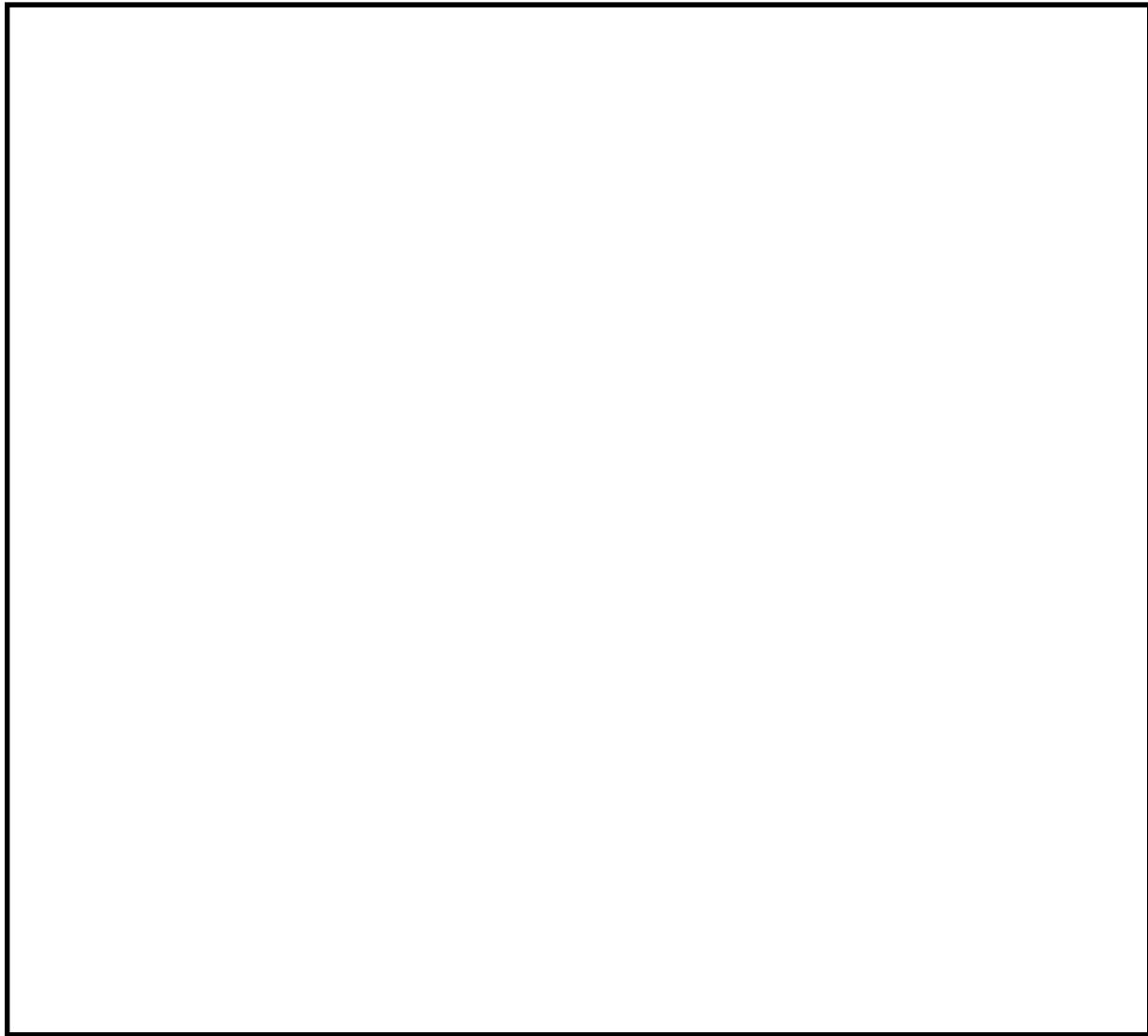


FINE:



I also want to briefly note at the end here our review of Section 215 orders for business records. We did not find that it was used widely. Only 21 pure Section 215 requests were issued from 2002 through 2005. We also did not identify instances involving improper or illegal use of a pure Section 215 order. In addition, we did not find that they were used to obtain library records, which was one of the concerns relating to the statute when it was passed.

The FBI also noted to us -- reported to us, and we reviewed -- that Section 215 orders were a specialized tool that was useful in various contexts.



REYES:

But it wasn't without having warnings from those of us in Congress -- as we debated the Patriot Act, we actually identified some of these, some of these very issues that the inspector general has now documented in his report.

In fact, yesterday the director was at the Senate Judiciary Committee. And he was asked: Had Congress not required an inspector general report, would it have been possible for the FBI to have identified these issues or these problems?

And the director's answer was: He certainly hoped so.

Well, hope -- like everything else -- doesn't cut it in an area where we're talking about the security of this country and making sure that agents are accountable to follow procedures and the law.

The fact that, in at least one case, a problem by one of your attorneys in the FBI was brought to the attention of a member of management, a supervisor, and nothing was done is very troubling to me.

I have, as you know, the privilege of having worked with many fine, outstanding FBI agents, and also managers and agents in charge as a chief in the Border Patrol. So I know how important having these kinds of tools is to an investigation, especially when we're talking about terrorism.

But, you know, the one thing -- and I will tell you, in the last three weeks or so, I've made contact with some of my former colleagues; some have made contact with me -- one of the troubling things is that you might have had training in place, but it was not followed.

In fact, a couple commented to me: You know, when we're under such pressure to perform and to do these investigations, one of the first things that falls by the wayside is training.

But training in a critical area like NSLs or Section 215 -- in fact, I asked that question: How come there weren't more 215s executed? And the candid answer from some of my colleagues was: Because more agents don't understand them; don't understand how to use them.

And so that is very telling on the agency. And so I hope you do refocus on training; you do refocus on accountability and tracking and making sure that you, as the deputy and the director, know exactly what's going on in your respective agency.

I know, as a chief, we always had the mantra to do more with less. And whenever we had to cut back, one of the first areas that management always identified: Well, we'll just forego the training.

Well, you know what? There are certain areas that we can't forego. We certainly can't forego firearms training for agents out there, because that makes a difference between an agent surviving or not surviving.

And the same principles apply when you're dealing in national security and you're dealing with the rights and liberties of Americans. We want you to have the tools, but we want to make sure that you use them judiciously, and certainly within the Constitution and the law.

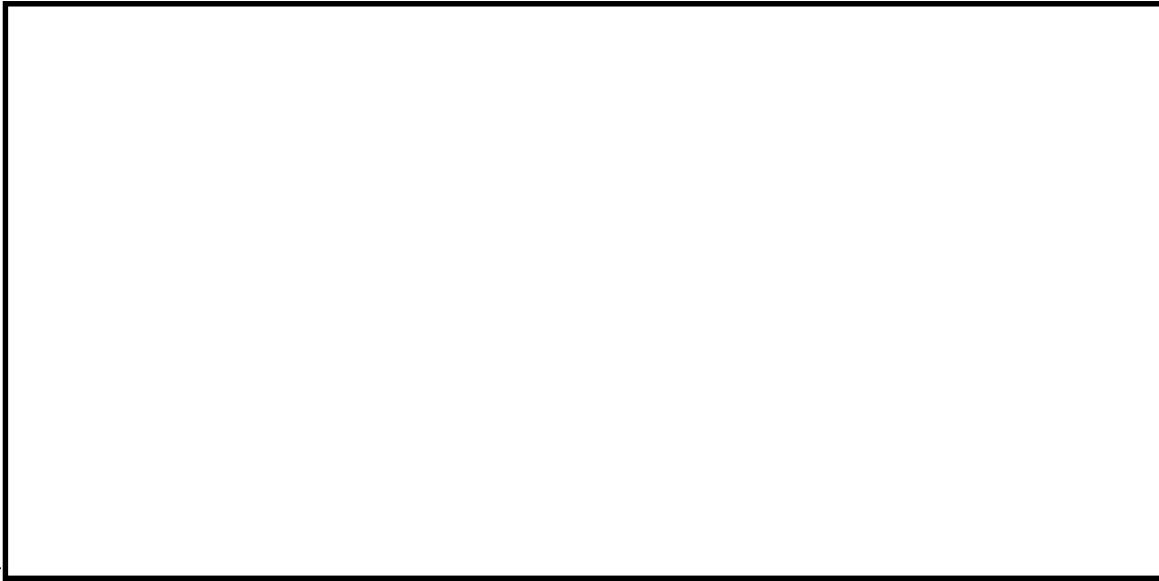
So I wanted to make those comments, because I hold the FBI in the highest regard. I mean, you've stumbled, you've tripped, but I'm certainly going to be mindful to continue to watch but also remind you that there's a lot at stake in your ability to do your job professionally, competently and within the law.

So I hope you carry that message back.

Outside the Scope

With that, I'd like to -- I don't really have a question; I just wanted to make that comment because of my experience and relationship with the FBI in the past.





DINH:

Thank you, Mr. Chairman.

Thank you, Ranking Member Hoekstra and members of the committee. It is an honor, although not necessarily a pleasure, to be here with you today.

My formal statement is submitted for the record so, with your permission, I'll speak very frankly.

I am disappointed; I'm dismayed; and, frankly, I was sick to my stomach when I found out about these misuses, when I was on vacation a couple of weeks ago.

The reason for that, as you all know, is that, when I was assistant attorney general, my colleagues spent many days, hours and nights with you and with your staff, in working through to revise and reform the pre-existing NSL authorities that are disparate amongst our laws, to come up with the provisions in the USA Patriot Act.

With the authority that you gave the Department of Justice and the FBI comes a very particular responsibility to use it wisely and correctly.

That responsibility was not discharged. Instead, what we saw was reckless actions and careless management. That is inexcusable. It cannot be swept under the rug.

And if there is a silver lining in the last several weeks, it is that nobody has tried to sweep this under the rug; that the FBI director, deputy director, the attorney general, the deputy attorney general have all owned up and said, "These were mistakes."

DINH:

"They are inexcusable. We are not going to try and excuse it or explain it, but we will implement procedures in order to prevent their recurrence and investigations in order to ascribe responsibility, wherever they may lead."

That is the most that we can ask, in hindsight, of our management team.

What we need to ask further is now in foresight. What do we do?

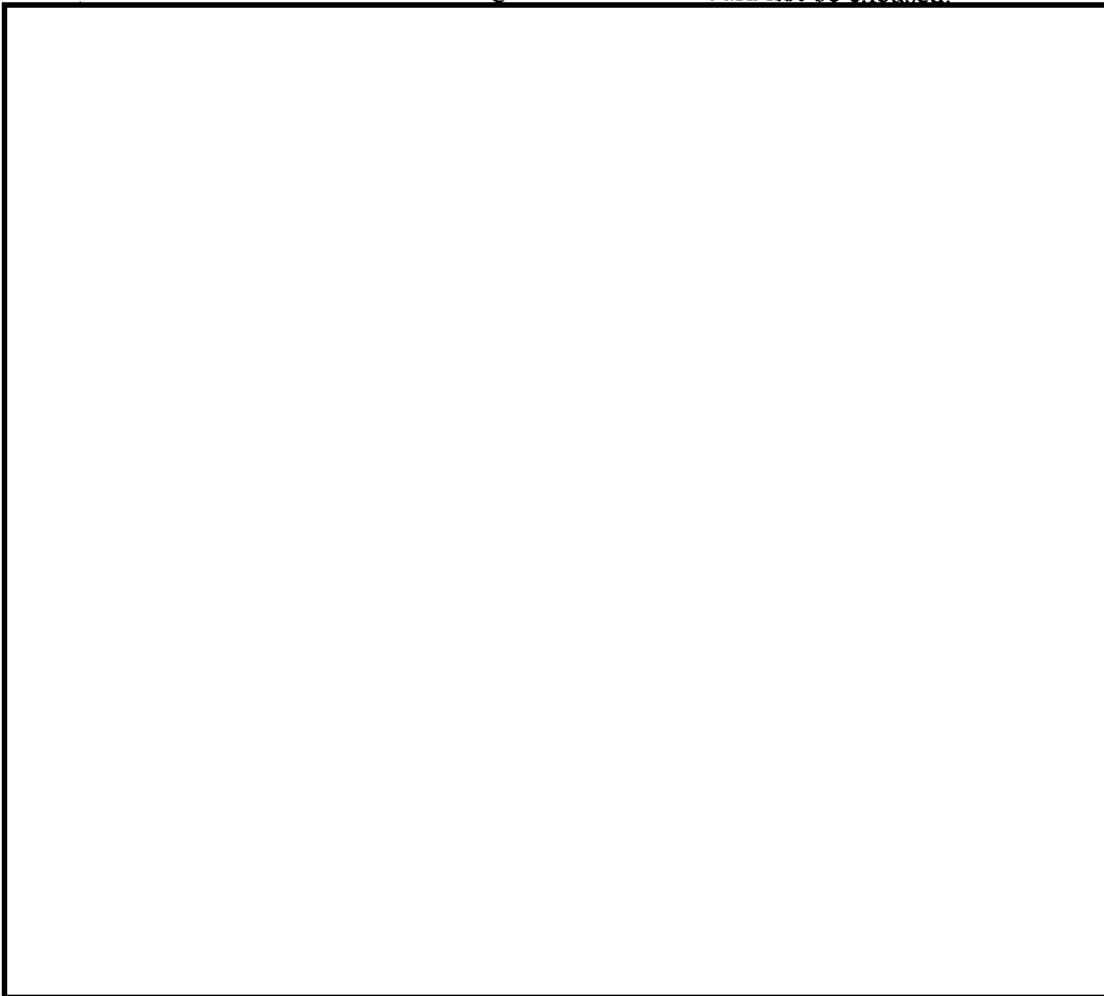
My disappointment and my dismay is especially acute because I realize, as I think most members of the committee do, how important these authorities are to protecting our national security and our law enforcement efforts.

Because they are so important, they should not be misused and give the opportunity for political activism so that the law enforcement and national security officials would be disabled from using these important bread-and-butter tools in protecting America in the future.

I hope against hope that this process, this dialogue, will reaffirm the necessity of these tools while, at the same time, reaffirm the need for oversight and controls to ensure that they are used properly, aggressively, but within proper channels and with the appropriate checks and balances.

One of the things that was also dismaying in the inspector general's report that the chairman has pointed out is that where there are properly authorized authorities, Section 215, for example, they were not fully utilized because there was confusion, lack of training and lack of knowledge regarding the applicability and usefulness in specific investigations.

So useful tools are not being used while essential tools were being abused. That's what I call reckless action and careless management. And it should not be excused.





REYES:

Thank you.  
Mr. Dinh?

DINH:

I don't know enough about Director Mueller's testimony or the proposal on the table in order to comment intelligently on it. So I can't give you a full answer.

I do know, however, that you have variations of it. Section 215 and also the national security letters, in order to obtain third-party records -- which are essential at a beginning of an investigation -- I think a good first step would be, as the chairman had noted, is to make sure the training is in place, that 215 is fully utilized, and national security letters are properly utilized. And then see where the gaps in enforcement are, and where the envelope was pushed, but the needs of law enforcement was not met with the existing authorities.

It may well be the envelope has been stretched, and I simply don't know it.

REYES:

Thank you, Mr. Dinh.  
Mr. Hoekstra?

HOEKSTRA:

I'll pass.

REYES:

Ms. Eshoo?

ESHOO:



Thank you. And thank you to the members of this panel. I wish all the members were still here to hear your testimony, because I think that the follow-on to the first panel and which you have given to us is really very, very important.

I have some observations, and they may not be in any particular order. But it seems to me that what we heard from the first panel -- with the exception, obviously, of the inspector general -- is, "Mea culpa, mea culpa, but don't touch us."

Now, these powers are really sweeping, and I think that Congresswoman Schakowsky stated that very, very clearly.

What seems to be the mantra of the law enforcement community, namely the FBI in this case, is: "We have to be able to keep these powers, and they should not be subjected to any scrutiny by the court."

I'm convinced that the protections of liberty have to come upfront. I don't believe that no matter what the FBI puts into place -- of course, a lot of things they've put into place have just fallen apart, so I mean, they just talk about it, it doesn't really seem to happen.

We've spent hundreds of millions of taxpayer dollars and come up with, "Close your eyes. What do you see?" "Nothing." So, these are just kind of promises on the (inaudible).

So I'm at a place now where the protections of liberty have to come upfront. And I think that that's something that's strengthful (sic). It's not weakening.

I'm going to go to Mr. Dinh first, because my sense is that you're going to object to that. But can you tell me why the FISA model cannot work?

DINH:

That's a very good question and a very pertinent observation, Congresswoman. The two...

ESHOO:

You don't have to flatter me.

DINH:

No, no, no, no. I do that to everyone.

(LAUGHTER)

There are two observations. One, first that, as Mr. Dempsey points out in his written testimony, third-party records of the type that are subject to NSLs and Section 215 authority have not been recognized by the Supreme Court as constitutionally protected, private matter such that it's subject to the Fourth Amendment because they've been given to a third party.

And so the level of judicial supervision that is appropriate for a content-related intercept or a subpoena would not be appropriate for this type of information, either...

(CROSSTALK)

ESHOO:

But hasn't the FBI suggested that they don't collect content in this?

DINH:

They don't. They don't. And I understand you have a modification and I don't want to put words in your mouth. But that's one...

ESHOO:

Of course, we don't know. There's no way to check.

DINH:

That's one observation. The other observation is the following: The importance of these types of information is similar to what the ordinary criminal investigators put pen registers and trace and trap devices to, which is to find links not in content, but in communication patterns.

ESHOO:

Why don't we go to Mr. Dempsey?  
(CROSSTALK)

DEMPSEY:

Well, I would just say that, Mr. Dinh, you know, you can't have your cake and eat it too. You've testified here about the importance and value and usefulness of the Section 215 Patriot Act court order process for getting third-party business records.

So we have two parallel processes here now: one which is a court order process; one which is this FBI self-issued document for some of the most sensitive information imaginable -- banking records, communications records, insurance records.

You know, the FBI agents already prepared internally, I think, a factual explanation -- or they should be preparing -- why they need this record. I think that the court process can be made flexible, timely, responsive. It won't be perfect necessarily, but we need to get all three branches of government involved in this process.

And I think it can be done in a workable way. And in many regards, Sections 215 is the model for that.

GRAVES:

And if I could just add, Congresswoman.

ESHOO:

Just quickly.

GRAVES:

Every court in the country has emergency procedures to access it on an emergency basis, even the FISA Court. And the suggestion that they can't get records that they need immediately or pretty quickly through the court I think is just not proven by the accessibility of the federal courts and the federal judges across the country.

And if we need more judges, we can provide more judges.

ESHOO:

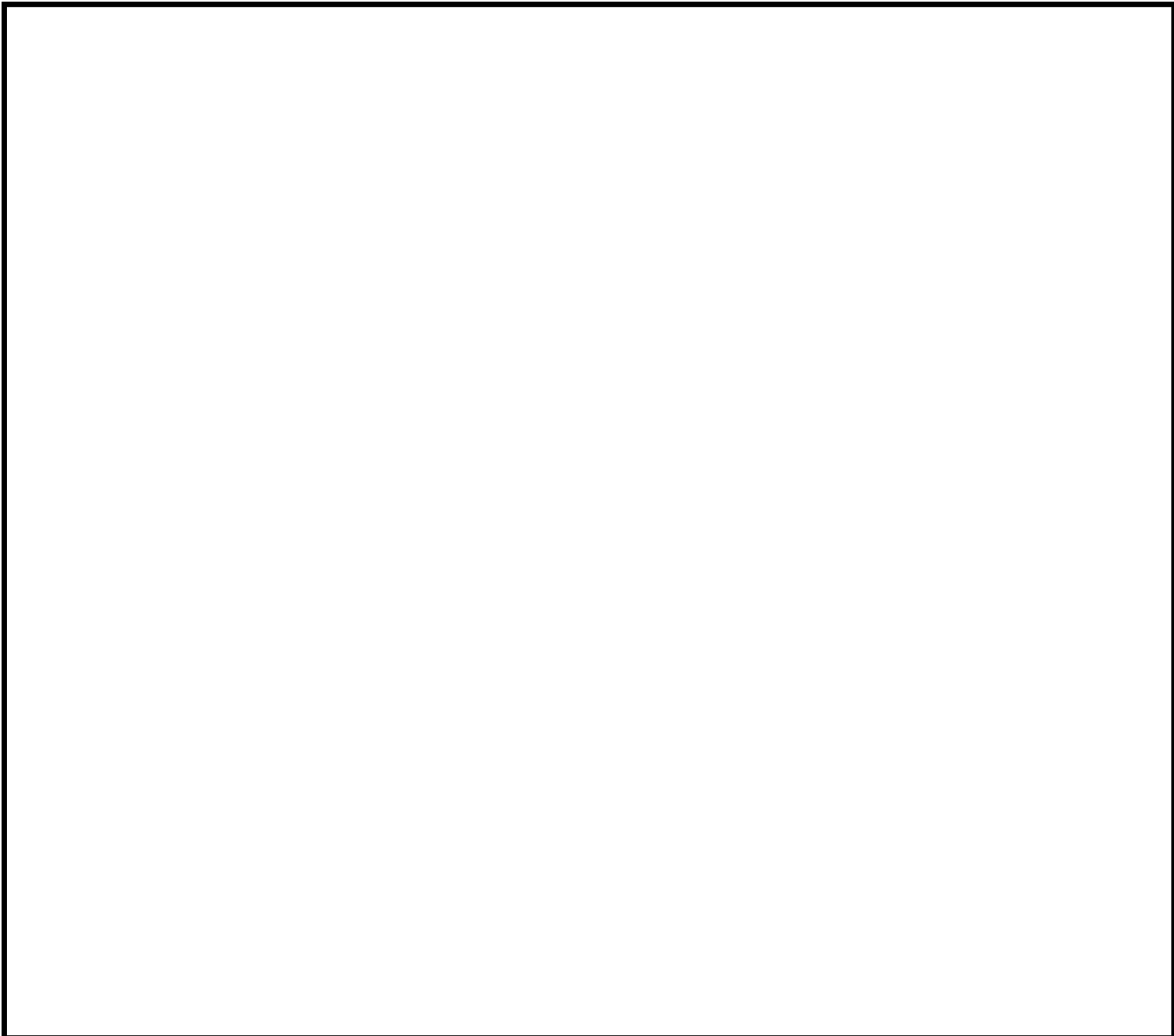
But, Mr. Chairman, I think that this is an area that we're not only going to continue to pursue, but I think really cries out for legislation. I think there's an undeniable conclusion here, and that is that the FBI is incapable of policing itself.

But that's not all right. It's not OK just to make that statement and to leave it there. And I, for one, am interested in pursuing a legislative remedy to this because of what not only the inspector general has brought out, but the widespread abuse that stands as a result of it.

Outside the Scope

Thank you.





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List of Panel Members and Witnesses

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