

from, as well as from the review of documents and e-mails and things like that.

Mr. GOODLATTE. And what steps have you taken to ensure that the practice was stopped?

Mr. FINE. The steps we have taken are to inform the FBI about the unacceptability of this practice, to note it, to report it, to let the people who are in charge of the FBI and the General Counsel's Office know about it, and to make a recommendation that it does stop.

Mr. GOODLATTE. When did you make that recommendation?

Mr. FINE. I think we made the recommendation when our report was issued to the FBI in draft; and I think that was in either December or January of this year. It was December of last year or January of this year.

Mr. GOODLATTE. Ms. Caproni, has that practice been stopped?

Ms. CAPRONI. Yes.

Mr. GOODLATTE. What steps have you taken to ensure that it does not persist in any of the offices of the FBI?

Ms. CAPRONI. Well, first, we are trying to find out whether it did happen in any office other than the unit at headquarters, and we should know that answer probably by the end of this week or sometime next week.

The second thing is that the practice of providing a letter with a promise of future legal process has been banned. And, again, we are also developing a vigorous compliance program to make sure that we do not simply make the rule, but we actually have in place some kind of process to make sure that the rules are being followed.

Mr. GOODLATTE. Current law authorizes a full credit report request for only counterterrorism investigations. The Inspector General discovered two instances in the same field office of a full credit report request under counterintelligence investigations.

How is this being corrected?

Ms. CAPRONI. This is being corrected by—the deputy director ordered a full audit of every counterintelligence file that has been opened since January 1, 2002. This authority went into effect in the PATRIOT Act. So, realistically, we think the earliest one that could have been issued would have been in 2002.

So they have to review every file since then in which a Fair Credit Reporting Act NSL was issued and find out if they have any full credit reports. If they do, they need to remove them from their files and report it as a potential IOB violation. Those will, in turn, be reported on to the IOB.

Mr. GOODLATTE. One last question.

In at least one instance, a National Security Letter issued under the Electronic Communications Privacy Act was determined by the Inspector General to be seeking content.

How was this remedied, and what steps do your field agents take to delineate between content and transaction information?

Ms. CAPRONI. In that case, there was no need to remedy it because the Internet service provider refused to provide us with any records, so we actually did not have an overcollection.

Mr. GOODLATTE. Have you remedied the request? I mean, they should not be asking for that.

This was a big issue when we wrote the PATRIOT Act, and it was the subject of a great deal of discussion with the Administration about making sure that we had a clear line between what could be requested and what could not be requested.

Ms. CAPRONI. The statute defining electronic communications transaction records actually does not define the term, and there had traditionally been the debate that says that we will leave up to the ISP what is content and what is not.

We think that is a trap for the unwary. It is bad for our agents in that we do better with bright lines. And so OGC will establish—we are in the process of making sure that we have a list that makes sense of what is content and what is not.

In the abstract, that seems like a very clear line; in practice, it is not. There are some difficult issues because some of the answers revolve around how the ISP keeps their records.

So we are working on it. My anticipation is that, within the next week or two, we will have out to the field these records you can seek, these records you cannot seek, and it will be a very bright line.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. CONYERS. The gentleman from Georgia, Mr. Hank Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

In these reports that I have read, it indicates that there were three phone companies that the FBI, particularly the FBI Communications Analysis Unit, the CAU, contracted with three telephone companies between May of 2003 and March of 2004. Who were those telephone companies?

Ms. CAPRONI. The telephone companies were AT&T, Verizon and MCI, which has now been acquired by Verizon.

Mr. JOHNSON. Now, are those contracts still in force at this time?

Ms. CAPRONI. Yes, they are.

Mr. JOHNSON. And are there any other phone companies that are contracted with the FBI through the Communications Analysis Unit or any other unit of the FBI?

Ms. CAPRONI. Not through the Communications Analysis Unit; broader than that, I do not know. We may have contract—not for this sort of information. We may have other contracts with phone companies, but not like this.

Mr. JOHNSON. And nobody put a gun to these telephone companies' heads and made them sign the contracts, did they?

Ms. CAPRONI. No.

Mr. JOHNSON. They were just simply agreements with the FBI and with the phone company?

Ms. CAPRONI. Correct. From our perspective, because these originated—given the volume of our requests, that this permitted us to get our records very quickly.

Mr. JOHNSON. Well, I understand.

Then the phone companies received compensation for engaging in this contract with the FBI; is that correct?

Ms. CAPRONI. That is correct.

Mr. JOHNSON. And this compensation, was it merely for expenses or was there profit involved, or you have no way of knowing?

Ms. CAPRONI. I do not know.

Mr. JOHNSON. Really, you do not really care as long as you get the information, correct?

Ms. CAPRONI. Again, from our perspective, the goal was to get the information in a form that is readily usable for us so that we do not have—some phone companies give us paper records. That requires a lot of data.

Mr. JOHNSON. Okay. All right. I understand.

Earlier in your testimony, ma'am, you stated that the phone companies were responsible for a lot of the errors that are cited in the compliance with the National Security Letters.

Ms. CAPRONI. We do see third-party errors, correct.

Mr. JOHNSON. You saw a substantial number, and so you are placing upon the phone company the obligation to properly document whether or not there has been a follow-up with an exigent letter?

Ms. CAPRONI. Oh, no, sir. They are two separate things. I do not excuse our lack of recordkeeping in connection with the exigent letters. They did keep the records, which was fortunate.

Mr. JOHNSON. And it is important to note, Mr. Fine, that your analysis of the FBI's compliance with the PATRIOT Act found that there were woefully inadequate mechanisms for the collection of data on these National Security Letters. In other words, the recordkeeping by the FBI was woefully inadequate as far as the issuance and follow-up on these National Security Letters and also the exigent letters; isn't that correct?

Mr. FINE. We did find serious and widespread misuse and inadequate recordkeeping, absolutely.

Mr. JOHNSON. Do you have any idea, Mr. Fine, how much the telecommunications companies were paid for their so-called "contract" with the Government?

Mr. FINE. I do not know, no.

Mr. JOHNSON. All right.

Can you, Ms. Caproni, provide my office with that information, along with copies of the contracts between the CAU and the phone companies?

Ms. CAPRONI. I have great confidence that we are going to get a number of questions for the record after this, and I am assuming that will be one of them, and we will respond appropriately.

Mr. JOHNSON. Will it take a subpoena for us to get that information?

Ms. CAPRONI. I do not believe so. I do not know what is in the contract, so I do not know if there are any sensitive issues.

Mr. JOHNSON. Will you provide it to my office?

Ms. CAPRONI. Again, we will respond to questions for the record as they come in.

Mr. JOHNSON. All right.

Why, if the NSLs are the FBI's bread-and-butter investigative technique, could the Inspector General only identify one terrorism prosecution out of the 143,074 people whose investigatory information was obtained?

Ms. CAPRONI. Again, Mr. Fine can explain his methodology, but I think the issue and the difficulty of that question is that because there was no congressional—because we were not legally obligated to tag the data, tracing it through is difficult.

Mr. JOHNSON. So 1 out of 143,000.

How does that equate to being the bread-and-butter investigative technique for uncovering terrorism by the FBI?

Ms. CAPRONI. Again, we disagree that in only one case did NSL data contribute to a criminal prosecution.

Mr. JOHNSON. But would you say more than 10 or less than 10?

Ms. CAPRONI. I do not know. It is my belief that virtually every counterterrorism case that began in its normal course of affairs is likely to have a National Security Letter used sometime during it.

Mr. JOHNSON. And it is also—

Mr. CONYERS. Your time has expired.

Mr. JOHNSON. Thank you.

Mr. CONYERS. Mr. Johnson, any records that you request will come to the Committee, and then you will be advised.

The Chair is pleased now to recognize the gentleman from Florida, Mr. Tom Feeney.

Mr. FEENEY. Thank you very much, Mr. Chairman.

Earlier, Mr. Smith alluded to your illustrious basketball career. I went to the same high school as Mr. Fine. He graduated a few years before me, and I wish I had had a jump shot like Mr. Fine did, but not nearly so much as I wish I would have been able to hit a fast ball like Mr. Reggie Jackson, who graduated a few years before Mr. Fine did.

But we thank you for your work. By the way, none of us is the most famous graduate because Benjamin Netanyahu, the former Prime Minister of Israel, is. I had to get that plug in.

We are very grateful for your work here, because a lot of us are supporters of the PATRIOT Act, but only with some serious restrictions. And I guess the first question I want to ask you—and I want to remind people that it was the reauthorization of the PATRIOT Act that actually required the report that you have just completed; is that right?

Mr. FINE. Yes.

Mr. FEENEY. And I hope that not just your report but the tenor of the questions from supporters of the PATRIOT Act, as well as the critics, is being listened to very carefully in the Justice Department and in the FBI.

We have got to get this balance correct; and nothing could be more critical because some of the most unthoughtful critics of the PATRIOT Act candidly will be the first ones—when there is another 9/11 and when we do not get the information accurately ahead of time to stop, maybe not 3,000 or 4,000 people, but 300,000 or 400,000 people, they will be the first ones jumping on the Administration, the Justice Department and the FBI for not doing its job.

But those of us trying to strike a thoughtful balance between civil liberties and the need to protect America from this new threat are very, very concerned about what we have heard, and if the FBI does not take this to heart, we will correct the problem.

I do not think anybody could have said it better than Jim Sensenbrenner, who, again, is a supporter of the PATRIOT Act, who said that the overreaching that is apparent here within the FBI is going to erode support, if it has not already, for very important national security initiatives. And I would hope that everybody down