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Investigations into the FBI's NSLs Abuses Continue

As widely reported, hearings began this week in the House and Senate Judiciary Committees on the numerous violations of policy and potential violations of law in the FBI's distribution and enforcement of National Security Letters (NSLs), as reported by the Office of the Inspector General (IG). Investigations will continue and a hearing has been scheduled in the Senate with FBI Director Robert Mueller next week and with Attorney General Alberto Gonzales in April.

While the ALA fully supports the efforts of law enforcement in legitimate investigations, those efforts must be balanced against the right to privacy. These findings confirm many of ALA's most repeatedly stated concerns about the lack of oversight into the FBI's surveillance activities, resulting in repeated intrusions into the lives of innocent Americans.

As part of this investigation, the ALA has contacted Members' offices to discuss our position and propose questions for these and future hearings concerning the number and nature of NSLs that have been served to libraries/bookstores. In addition, while the ALA thanks Congress for doing its Constitutional duty by beginning an investigation into this matter, it further calls upon Congress to tighten language in the USA PATRIOT Act to minimize these sorts of privacy violations and to provide thorough, ongoing oversight into the FBI's surveillance activities.

Hearing witnesses included Valerie Caproni, General Counsel of the FBI, and Glenn A. Fine, Inspector General. Testimony, and opening statements are available from the Senate Judiciary Committee and House Judiciary Committee.

Members on both sides were highly upset and continually repeated that even though these abuses were reported as "unintentional," there was clearly a pattern of abuse and a major violation of trust.

- Rep. Sensenbrenner (R-WI) a supporter of NSLs, stated during the hearing this was a "gross overreach" and "let this be a warning to the FBI."
- Rep. Lungren (R-CA), a longtime supporter of the FBI, commented that

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the IG's report referring to mistakes, sloppiness, lack of training, sounds more like a "report on a first-grader," and this must be fixed or "terrorists will succeed indirectly by destroying our Constitution."

- Sen. Leahy (D-VT) remarked during the Senate's hearing "I wonder if there were any grown-ups round here." Referring to the fact that someone approved and signed off on letters knowing they were being issued inappropriately.

NSLs enable the FBI to collect private information about people who are not reasonably suspected of being involved in terrorism, and it retains information indefinitely. From 2003 to 2005, the FBI issued 140,000 NSL requests. These requests have greatly increased from 2000, when there were only 8,500 NSL requests. Congress broadened the use of NSLs in the PATRIOT Act in regard to the legality of seeking information with no judicial review and reduced the standards for obtaining information to records that are deemed "relevant" to an investigation.

In the worst cases, according to the IG's report, the FBI went around NSL statutes (using over 700 of what is being referred to as "exigent" letters) and contracted directly with telephone companies to access information illegally--when no authorizing investigation was open, no NSLs or subpoenas had been requested, and when no emergency situation existed.

Since the FBI agent does not need to get approval from a judge, prosecutor, or grand jury, and since the recipient is permanently "gagged" from telling its customers or anyone else about the government's request, citizens never know that their personal information has been disclosed to the government.

In May 2006, recipients of an NSL -- a nonprofit consortium of 27 public and academic libraries in central Connecticut known as the Library Connection -- were finally allowed to speak publicly after lawyers representing the government withdrew an appeal to keep their identities hidden after Federal District Court Judge Janet C. Hall declared the perpetual gag order that accompanies NSLs unconstitutional.

This is just one example of libraries being subject to NSLs, and notably came not long after the FBI claimed not to have ever invoked Section 215 of the PATRIOT Act (the section on business records, including access to library records). The recent findings by the Inspector General demonstrate that not only was the FBI misleading citizens then, it's been misleading them all along.

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