



**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

March 9, 2007

The Honorable Arlen Specter  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Senator Specter:

On November 23, 2005, the Department of Justice provided you with an extensive response to a November 6, 2005, *Washington Post* feature article entitled “The FBI’s Secret Scrutiny: In Hunt for Terrorists, Bureau Examines Records of Ordinary Americans.” In our view, the article presented a “materially misleading portrayal” of the FBI’s use of National Security Letters (NSLs). Our letter, attached for your convenience, set forth 17 claims which we believed merited a response and those responses. To provide you and other Members with a full understanding of the FBI’s use of NSLs, we also gave several classified briefings. The letter and the briefings were based on our analysis of the governing statutes, guidelines, and policies, and reflected the information known to us at that time. We continue to believe that the *Post* article incorrectly implied many things, including that the FBI may use NSLs to listen to phone calls or read emails, or to review what books Americans read or web sites they visit.

Today, the Department of Justice Inspector General (IG) will deliver to Congress a report pursuant to section 119 of the USA PATRIOT Improvement and Reauthorization Act on the FBI’s use of NSLs. As part of the process of cooperating with the IG’s audit and a review of the IG’s conclusions, we have determined that certain statements in our November 23 letter need clarification, although the IG did not identify the need for such clarification. We also stand by our strong conviction that, as the IG recognized, NSLs are a critical tool for detecting and preventing terrorist attacks and espionage.

Overall, our letter emphasized the oversight mechanisms in place with respect to the FBI’s use of NSLs—mechanisms including internal FBI guidance and oversight, congressional oversight, and oversight by the Intelligence Oversight Board. As the IG has found, these oversight mechanisms were inadequate in some cases and did not always function as intended. Corrective action is already underway to ensure compliance with existing policies and to establish new policies. In addition, the FBI’s use of NSLs will also now be subject to audits by the Department’s new National Security Division. Similarly, our letter referenced the statutory, guideline, and policy restrictions on the FBI’s use of NSLs. Again, as the IG has found, these

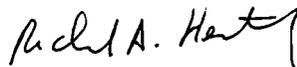
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limitations were not always followed—contrary to our belief at the time we prepared our November 23 response. We recognize the significance of the IG's findings, and corrective action is being taken on numerous fronts.

Finally, as the IG found, the reports provided to Congress in response to statutory reporting requirements did not accurately reflect the FBI's use of NSLs. The FBI is currently undertaking efforts both to correct previously reported numbers and to improve the accuracy of future reporting. As soon as possible following the completion of this process, the Department will provide the relevant committees with corrections to its recent reports, and with a new report covering the period July 1 to December 31, 2006. We will also correct, as necessary, any erroneous statements made in testimony before or correspondence to Congress. We fully recognize that Congress's ability to conduct oversight is hampered by a failure to provide accurate information.

Should you or this Committee desire additional information regarding both the IG's findings and corrective actions, we would be available to provide additional briefings.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Patrick J. Leahy  
Chairman