

**Statement of the Honorable John Conyers, Jr.
for the Hearing on
the Report by the Office of Inspector General of the
Department of Justice on the FBI's Use of Exigent Letters and
Other Informal Requests for Telephone Records**

**Before the
Subcommittee on the Constitution, Civil Rights, and Civil
Liberties**

**Wednesday, April 14, 2010 at 10:00 a.m.
2141 Rayburn House Office Building**

Just this last January, the Inspector General completed the third in a series of reports concerning the use and misuse of national security and exigent letters by the FBI on hundreds of occasions. It is no understatement to say that taken as a whole, these reports paint an agency that has violated the law and our citizens' civil liberties. They have sought personal information – including personal information concerning reporters – without proper authorization, and that they had not statutory or constitutional entitlement to. This member will do everything in his power to ensure that these reports do not gather dust, but rather that they serve as a blueprint to rein in the FBI and protect our precious rights and liberties.

In this January report, the inspector general found that FBI personnel violated federal law and FBI policy on numerous occasions between 2003 and 2006 in obtaining personal telephone record information from U.S. telephone companies. The records included private information about the calls that is protected by federal law, including the date, time, duration, and number called.

The IG found that more than 700 times, such information was obtained about more than 2,000 phone numbers by so-called “exigent letters” from FBI personnel. In some cases, the IG concluded, FBI agents sent the letters even though they believed that factual information in the letters was false. For more than 3,500 phone numbers, the call information was extracted without even a letter, but instead by e-mail, requests on a post-it note, or “sneak peaks” of telephone company computer screens or other records.

In three cases, FBI personnel went so far as to violate more rules by seeking telephone records of news reporters. In one case, the FBI actually obtained phone records of *Washington Post* and *New York Times* reporters and kept them in a database, leading to an IG conclusion of “serious abuse” of FBI authority and an FBI public apology.

This pattern of misconduct suggests a range of possible actions, and I would like to suggest three to start.

First, the FBI and the Justice Department must ensure that this abuse of authority never happens again. The FBI General Counsel guidance memorandum of March 1, 2007, makes clear that exigent letters and similar methods are not proper. But that is only a guidance memorandum. It must be made binding, clear, and public that such methods cannot and will not be used under the law. The FBI and DOJ should commit to take whatever action is necessary to achieve this, whether through federal regulations, formal attorney general guidance, or otherwise.

Second, the FBI must take immediate action to ensure accountability for the misconduct by FBI personnel documented in the IG's reports. Accountability is critical both to punish those who violated the rules and to help deter this kind of conduct in the future. At previous hearings, FBI Director Mueller and others have told this committee that the agency would promptly consider appropriate disciplinary action after the IG report was completed. In fact, when Director Mueller first testified on this subject before the full Committee in July, 2007, he pledged that once the report was complete, "we will take whatever steps are necessary to hold persons

accountable.” Yet, four months after the report’s completion, I am not aware of any specific disciplinary or other personnel actions that are underway at the FBI on exigent letters. That is not acceptable.

Third, the IG report makes a number of recommendations for further action by the FBI and DOJ in response to its report. In addition to recommending possible disciplinary action, the report suggests such steps as periodic legal training for FBI personnel, careful review of contracts with telephone and other service providers, review of subpoenas in media leak investigations, and review of policies concerning obtaining information from reporters. Chairman Nadler and I are writing directly to FBI Director Mueller today to obtain his personal assurance that the FBI will take all these steps and will report back to us within 30 days on whether it has complied with each and every one of these recommendations, and if not, why not.

This hearing is an important step for the Judiciary Committee to exercise its oversight authority with respect to the FBI and the crucial problems it must deal with. I welcome our witnesses and look forward to their testimony today. And I pledge that I will continue to work with all my congressional colleagues to help ensure that the FBI fulfills its obligations to protect the rights as well as the security of all Americans.