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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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April 15, 2010

The Honorable Robert S. Mueller, III  
Director  
Federal Bureau of Investigation  
U.S. Department of Justice  
935 Pennsylvania Ave., NW  
Washington, DC 20535

Dear Director Mueller:

We are writing with respect to the Inspector General's January report on the FBI's use of exigent letters and other informal requests for telephone records, which was the subject of an April 14 hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties. The IG report highlights a number of serious issues that require prompt FBI action. We write to obtain your personal assurance that the FBI will take such action.

As you are aware, the IG report documents numerous improper actions by FBI personnel to obtain personal telephone record information on individuals between 2003 and 2006, including actions that "violated the requirements" of federal law. More than 700 times, such information was obtained about more than 2,000 phone numbers by so-called "exigent letters," some of which were signed by FBI agents 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 email, requests on a post-it note, or "sneak peaks" of telephone company records. In several cases, FBI personnel violated additional rules by seeking telephone records of news reporters, including one case where actual phone records were improperly obtained concerning *Washington Post* and *New York Times* reporters.

To ensure that this troubling chapter in the FBI's history is fully remedied and never repeated, we seek your commitment that you will take the following actions.

First, in cooperation with the Justice Department, the FBI 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.

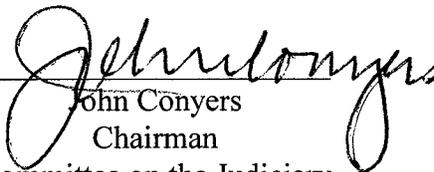
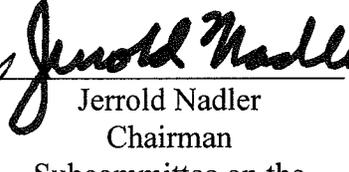
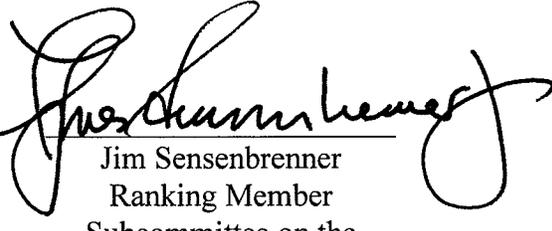
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Second, the FBI must take prompt action to ensure accountability for the misconduct by FBI personnel documented in the IG's reports. Accountability is critical both to punish those who violated the rules and to help deter this kind of conduct in the future. This should include the Office of General Counsel, which Inspector General Fine testified had "approved [the] continued use" of exigent letters and "provided legal advice that was inconsistent with" federal law. At previous hearings, you and other FBI officials have told this Committee that the agency would promptly consider appropriate disciplinary action after the IG report was completed. In fact, when you first testified on this subject before the Committee in July, 2007, you pledged that once the report was complete, "we will take whatever steps are necessary to hold persons accountable." Now, four months after the report's completion, what specific disciplinary or other personnel actions are underway at the FBI on exigent letters and when will they be complete?

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. Although the FBI has generally concurred with these recommendations, a number have not yet been fully implemented. We ask that you report to this Committee within 30 days or as soon as practicable on the FBI's progress in completing all action necessary to carry out the IG recommendations.

We appreciate that FBI General Counsel Caproni addressed some of these and related issues in her April 14 testimony. Nevertheless, on a bipartisan basis, we think it is crucial that you, as director of the FBI, personally address these important questions. We look forward to hearing from you at your earliest convenience. Please direct your responses to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your prompt cooperation.

Sincerely,

 _____ John Conyers Chairman Committee on the Judiciary	 _____ Jerrold Nadler Chairman Subcommittee on the Constitution, Civil Rights and Civil Liberties	 _____ Jim Sensenbrenner Ranking Member Subcommittee on the Constitution, Civil Rights and Civil Liberties
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cc: The Honorable Eric Holder  
The Honorable Lamar Smith  
Stephen D. Kelly