

Robert:

OLC has the following suggested revisions, reflected in the attached redlined document, to the draft responses of Director Mueller to questions for the record posed by the Committee on the Judiciary of the House of Representatives. Our suggested revisions may be found at questions 5 (p.3), 11 (p.7), 21 (pp.17-18), 23 (pp.19-20), 28-34 (pp.22-27), and 44 (p.37). We would recommend obtaining CIV's views on the responses to state secret privilege questions (questions 28-34), if CIV has not commented already.

Please let me know if we may be of further assistance.

Regards,

Steve

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**Responses of the Federal Bureau of Investigation  
Based Upon the July 26, 2007, Oversight Hearing Before the  
House Committee on the Judiciary**

Questions Posed by Chairman Conyers

The Use of NSLs and the Report of the Inspector General:

**NOT Responsive**

1. At the March 20, 2007 hearing before the Committee on the Judiciary, Ms. Valerie Caproni testified that with respect to information obtained in violation of law or agency rules the Bureau "[is] making every effort to figure out where those errors are, to sequester the material, to pull it out of our files and to destroy it." Please explain how much information improperly collected has been destroyed and purged from FBI systems and how this has taken place.

Response:

A task force of analysts and attorneys is currently reviewing information that may have been obtained through the use of so-called "exigent letters" to determine whether the information can legally be retained. This process takes time, as the FBI must ensure that we do not lose relevant national security information we are authorized to keep. The FBI will purge from its data bases any information we have no legal right to retain. The FBI is documenting this process, and this documentation will be provided to the Department

*These responses are current as of 12/19/07*

**NOT  
Responsive**

Amendment. See *California Bankers Ass'n v. Shultz*, 416 U.S. 21 (1974) (record-keeping provisions of Bank Secrecy Act do not violate the Fourth Amendment rights of banks or banking association). Of course, any subsequent search of those records by the FBI must be consistent with the Fourth Amendment rights of the individual who is the subject of the search, as well as any applicable statutory or regulatory provisions. The Supreme Court concluded long ago that an individual does not have a reasonable expectation of privacy in telephone-call records held by telecommunications companies and, hence, a search of those records by the Government does not implicate the Fourth Amendment. See *Smith v. Maryland*, 442 U.S. 735 (1979) (use of pen register is not a search under the Fourth Amendment); *United States v. Miller*, 425 U.S. 435 (1976) (obtaining records held by bank not a search under the Fourth Amendment). With regard to Internet records similar to telephone-call records, such as information regarding the URLs of the websites that an individual visits or the to/from e-mail addresses of the e-mails that an individual sends and receives, a person likewise has no reasonable expectation of privacy in those records. See *United States v. Forrester*, \_\_\_ F.3d \_\_\_, 2008 WL 60506 (9th Cir. Jan. 7, 2008). Therefore, any agreement for additional retention of Internet and telephone call records would not raise any Fourth Amendment concern. Furthermore, the FBI would obtain any information retained by the telecommunications companies for an additional period of time in the same manner as "current" information kept by telecommunications companies, subject to the same legal requirements and for the same purposes (such as authorized criminal or national security investigations).

**The Department's Announcement of a New National Security Oversight and Compliance Effort**

**24. In early August 2007, the Department announced the implementation of an Oversight Section within the Department's National Security Division and the proposed establishment of a new Office of Integrity and Compliance within the FBI. According to the Department, these new programs were designed to ensure that national security investigations comply with laws and regulations designed to protect privacy interests and civil liberties.**

**a. Were you involved in the development of these new initiatives?**

**Response:**

The FBI defers to DOJ regarding implementation of an Oversight Section within DOJ's National Security Division. The FBI was involved in the development of the Integrity and Compliance Program.

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b. If so, when were these new proposals originally conceived?

**Response:**

The notion of developing a "corporate style" integrity and compliance program was conceived in mid-March, 2007. The Director was first formally briefed on the proposal to implement the Integrity and Compliance Program on 5/15/07, with a follow-up briefing on 5/24/07. Over those two meetings the Director made decisions regarding the organizational structure and breadth of the program.

c. Were the programs conceived after the Inspector General's March 2007 Report?

**Response:**

The FBI's Integrity and Compliance program was conceived after the OIG's March 2007 report.

d. If so, why not earlier, given the 2005 reports of NSL abuses?

**Response:**

The FBI's Integrity and Compliance Program goes far beyond the single issue of NSLs. It deals with the FBI's responsibility to comply with all legal, regulatory, and policy requirements in all facets of our work, including criminal and national security investigations, science and technology, information systems, and administrative (including human resources and financial) matters.

25. The new Oversight Section is designed to ensure the accuracy of FBI declarations to the Foreign Intelligence Surveillance Court. Were there instances in which declarations to the Court were inaccurate? Please explain.

**Response:**

The response to this inquiry is classified and is, therefore, provided separately.

**Decreased Resources for Traditional Law Enforcement**

26. What performance measures does the FBI have to assess its progress in implementing its counterterrorism policy, and the effects of this priority on its traditional law enforcement and crime fighting mission?

**NOT RESPONSIVE**

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