



Office of the Attorney General

Washington, D.C.

July 13, 2007

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Department of Justice will announce today the implementation of a significant new national security oversight and compliance effort. This effort encompasses substantial changes within the Department of Justice aimed at improving the Department's controls over its national security activities. The effort will include the implementation of a dedicated Oversight Section within the Department's National Security Division and the proposed establishment of a new Office of Integrity and Compliance within the Federal Bureau of Investigation. The oversight and compliance programs run by these offices will be at the forefront of the Department's ongoing effort to ensure that national security investigations are conducted in a manner consistent with our laws, regulations, and policies, including those designed to protect the privacy interests and civil liberties of our citizens.

These innovations reflect a new level of internal oversight and an appreciation of the need for strong measures to improve compliance in our national security investigations. As you know, the Department's Inspector General recently issued a report raising serious concerns about the FBI's use of National Security Letters. We appreciate the fine work done by the Inspector General's Office, and we are working together to implement all of the Inspector General's recommendations.

The following will explain the objectives and describe the operational plans for the new oversight and compliance programs we are announcing today. At the end of the letter, we will provide an update on the many specific corrective actions that the Department has undertaken in the four months since the Inspector General released his report on the National Security Letters.

The National Security Division's Oversight Program

To appreciate the significance of the oversight program we are announcing today, it is important to understand the historical context in which it is being established. As you know, FBI agents conduct both criminal and intelligence investigations, and they have always done so with some level of participation by Department of Justice (DOJ) attorneys. Given that criminal investigations routinely result in prosecutions that are handled in court by DOJ prosecutors—unlike intelligence investigations which rarely develop into prosecutions—it has long been understood that prosecutors have an active and important role in the conduct of criminal

investigations. For example, it is required that Assistant U.S. Attorneys approve particular investigative steps, like applications for search warrants, and experienced Department prosecutors oversee the FBI's use of human sources and undercover operations in its criminal investigations through participation on the FBI's Criminal Undercover Review Committee and Human Source Review Committee.

The role of Department attorneys in overseeing the FBI's intelligence investigations has historically been more limited. Because intelligence investigations typically focus more on identifying and addressing threats, rather than on prosecuting criminals, and because such investigations often involve highly sensitive sources and methods, DOJ attorneys have exercised less regular oversight of the FBI's national security investigations. The primary oversight in this area has been exercised with respect to the FBI's use of Foreign Intelligence Surveillance Act (FISA) authorities. In their role as representatives to the Foreign Intelligence Surveillance Court, DOJ attorneys have routinely visited FBI field offices along with attorneys from the FBI's Office of General Counsel to conduct file reviews to ensure that agents are adhering to the court-ordered minimization requirements in each FISA order.

This oversight regime, relatively robust in the FISA area but more limited in others, was designed in a time when the FBI's national security program was comparatively limited in size and scope. On the eve of the September 11th attacks, only about 20% of the FBI's agent workforce served in the FBI's counterterrorism and counterintelligence divisions. Since those attacks, however, the Bureau has transformed fundamentally from a law enforcement-focused agency to an agency whose top priority is the detection and prevention of terrorist attacks. Since 2001, the number of agents in the counterterrorism and counterintelligence divisions has nearly doubled and the number of counterterrorism investigations has increased by more than 150%.

With this dramatic expansion of the FBI's national security mission, the Department has taken steps to develop a stronger oversight capacity. For the past several years, the Department has complemented its FISA minimization reviews with accuracy reviews designed to ensure the factual accuracy of every assertion contained in the FBI declarations submitted to the Foreign Intelligence Surveillance Court. We are also increasing the frequency of these field office reviews; DOJ attorneys are on a pace to complete 30 such reviews by the end of this year, as compared with the 23 reviews conducted in 2006.

Most importantly, we are taking advantage of the opportunity presented by Congress' creation of the Department's new National Security Division. Since its establishment, the National Security Division has been building its capacity and increasing the tempo of its oversight activities, and today we are announcing the initiation of a comprehensive national security oversight program that extends well beyond the Department's traditional, primarily FISA-related oversight role. For the first time, DOJ

attorneys have been given the clear mandate to examine all aspects of the FBI's national security program for compliance with law, regulations and policies.

To accomplish this expanded mandate, we are standing up a dedicated Oversight Section, as approved by the Congress last year, within the National Security Division's Office of Intelligence. This section is part of a broader proposed reorganization of the National Security Division. It will consist of attorneys and staff members specifically dedicated to ensuring that the Department fulfills its national security oversight responsibilities across the board.

We will exercise this oversight through a regular process of conducting National Security Reviews of FBI field offices and Headquarters national security units. These reviews are staffed by career Department attorneys with years of law enforcement and intelligence experience from the National Security Division and the FBI's Office of General Counsel, along with officials from the Department of Justice's Privacy and Civil Liberties Office.

These reviews, which the Division started conducting in April 2007, broadly examine the FBI's national security activities, its compliance with applicable laws, policies, and Attorney General Guidelines, and its use of various national security tools, such as National Security Letters. The reviews are not limited to areas where shortcomings have already been identified; instead, they are intended to enhance compliance across the national security investigative spectrum.

Since establishing this new national security review process in April, the National Security Division already has completed national security investigation reviews in four field offices, with two scheduled for the month of July. By the end of this year, the Department will have completed a total of 15 reviews in field offices and headquarters units.

The Oversight Section will also play an important role in other areas. At the Attorney General's direction, it will review all referrals by the FBI to the President's Intelligence Oversight Board, focusing on whether these referrals indicate that a change in policy, training, or oversight mechanisms is required. The Oversight Section will report to the Attorney General semiannually on such referrals and will inform the Department's Chief Privacy and Civil Liberties Officer of any referral that raises serious civil liberties or privacy issues. In addition, it will provide compliance-related training for National Security Division lawyers and FBI agents and analysts.

The FBI's Office of Integrity and Compliance

The second half of the Department's increased oversight and compliance effort will be the proposed creation of the FBI's Office of Integrity and Compliance, which was recently proposed by the FBI Director. While compliance programs have long been a staple of private corporations, we believe this will be the first time that the federal

government has established such a program. If the required reprogramming is approved, the Office of Integrity and Compliance will be established. Its mission will be to implement a strong compliance program, which will assist FBI management at all levels in maintaining a culture in which ethics and compliance are paramount. The creation of this office and the implementation of the new FBI-wide compliance program represent important innovations in the way the FBI does business.

The Office of Integrity and Compliance is planned to be headed by a career Assistant Director who will report directly to the FBI's Deputy Director, providing the office with direct access to the top decision makers within the FBI. It will develop compliance standards, training programs, and risk assessments, ensure that necessary audits are performed, and deliver an annual report to key stakeholders. It will work closely with the Inspection Division to revise inspection protocols to include compliance risk and to ensure that compliance monitoring is carefully planned and executed. Finally, the compliance program will be institutionalized with a robust management structure including a Steering Committee chaired by the FBI Director and five Executive Management Committees. These committees will analyze the environment and legal requirements in each operational area, identify specific risk areas, and assess and establish policies, procedures, and training to mitigate those risks.

Corrective Actions Taken on National Security Letters

In addition to the substantial institutional reforms discussed above, some of which were in development well before the Inspector General's report on National Security Letters (NSLs), the Department has also taken a number of measures in direct response to the shortcomings identified by the Inspector General in the report. Upon receiving the Inspector General's report, the Attorney General and the FBI Director ordered several significant corrective actions throughout the Department and the FBI. Today, four months after the issuance of the Inspector General's report, we have fully implemented nearly all of the Inspector General's recommendations, and also have made reforms beyond those called for by the Inspector General.

- In March, as part of the FBI's effort to examine the scope of the problems identified by the Inspector General's report, the FBI Director ordered a one-time, historical audit of the FBI's use of NSLs in all 56 FBI field offices. This review was a substantial undertaking, requiring the deployment of over 100 inspectors and the review of thousands of investigative files. The review has now been completed, and it largely confirmed the Inspector General's overall statistical findings with respect to the rate of NSL errors attributable to the FBI.
- With respect to the use of so-called "exigent letters," the FBI has issued a Bureau-wide directive prohibiting the use of the type of letters described in the Inspector General's report. Furthermore, the Inspector General and the FBI are conducting a joint investigation, led by the Inspector General, into the

use of exigent letters to examine whether there has been any criminal conduct, administrative misconduct, or improper performance of official duties.

- The FBI has taken a number of steps to improve the accuracy of the reporting of NSL statistics to Congress. Last year, the FBI began developing a new NSL tracking database and plans to deploy the system to a field office for testing this month and to all field offices by the end of 2007. The FBI has also corrected deficiencies in its current database to reduce the potential for error and is correcting any known errors in the data.
- The FBI issued revised comprehensive guidance on NSLs after consultation with the Congress, privacy and civil liberties groups, and the Justice Department's National Security Division and Privacy and Civil Liberties Protection Officer.
- The FBI has initiated the development of a new training course on the use of NSLs. Once this course is fully developed, the FBI will issue a directive mandating training for all Special Agents-in-Charge, Assistant Special Agents-in-Charge, Chief Division Counsel, and all appropriate FBI agents and analysts. While this course is being developed, the FBI's Office of General Counsel has instructed its National Security Law Branch attorneys that they must schedule mandatory NSL training any time they are in a field office.
- The Department's Chief Privacy and Civil Liberties Officer and the Office of the Director of National Intelligence have jointly convened a working group to examine how NSL information is used and retained by the FBI.

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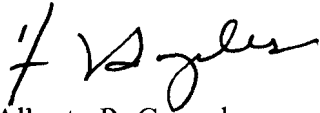
The Department's new national security oversight and compliance effort and our strong response to the Inspector General's report on National Security Letters reflect our recognition that we must constantly work to protect civil liberties while making full use of our investigative tools to fight the war against terror. As the foregoing demonstrates, the Department remains steadfast and committed to fighting the War on Terror with full respect for our cherished rights and liberties. We are happy to provide any further

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information about these changes to you and your colleagues, and we look forward to working with Congress in the ongoing effort to protect our nation and our freedoms.

Sincerely,



Alberto R. Gonzales
Attorney General



Robert S. Mueller, III
Director
Federal Bureau of Investigation

cc: The Honorable Harry Reid
The Honorable Mitch McConnell
The Honorable Patrick J. Leahy
The Honorable Arlen Specter
The Honorable John D. Rockefeller, IV
The Honorable Christopher S. Bond
The Honorable Barbara A. Mikulski
The Honorable Richard C. Shelby