

GLENN FINE TO INVESTIGATE GOVERNMENT USE OF PATRIOT POWERS AGAIN

Main Justice reports that Pat Leahy and DOJ's Inspector General Glenn Fine have been chatting about further IG review of the FBI's use of the several PATRIOT provisions that were contentious issues in last years attempt to reauthorize the PATRIOT Act. This means that Fine is going to do what the legislation would have mandated—conduct further reviews of these authorities—on his own. But I'm also interested in the scope Fine lays out for his review in his response to Leahy.

We intend to initiate another review examining the FBI's use of NSLs and Section 215 orders for business records. Among other issues, our review will assess the FBI's progress in responding to the OIG's recommendations in the prior reports. In addition, we intend to examine the number of NSLs issued by the FBI from 2007 through 2009, and we will closely examine the automated system to generate and track NSLs that the FBI implemented to address the deficiencies identified in the OIG reports.

In addition, our review will cover the FBI's use of Section 215 orders for business records. It will examine the number of Section 215 applications filed from 2007 through 2009, how the FBI is using the tool today, and describe any reported improper or illegal uses of the authority. Our review will also examine the progress the FBI has made in addressing recommendations contained our prior reports that the FBI draft and implement minimization procedures specifically for information collected under Section 215 authority.

We also intend to conduct a programmatic review of the FBI's use of its pen register and trap and trace authority under the FISA. That part of the review will examine issues such as how the FBI uses the authority to collect information, what the FBI does with the information it collects, and whether there have been any improper or illegal uses of the authority either reported by the FBI or identified by the OIG.

I find the scope interesting, first of all, because it would put all three of these provisions—NSLs, 215, pen registers—into one report. Given the way they've been used together in the past (Section 215 was used to get contact data more expansive than available under pen registers, for example), it will be interesting to see how Fine understands these provisions to work together. I could be overreading, but Fine seems to have a sense that the "what the FBI does with the information" might be interesting.

I'm also interested in his specific promise to investigate his recommendation that DOJ develop minimization procedures. I would bet money DOJ has done nothing to respond to that recommendation. If so, what we may get in the report will be a (probably redacted) discussion of how DOJ has collected a bunch of information from otherwise innocent people and kept it. Remember the probable use of Section 215 in the Najibullah Zazi case (focused on some associates who also bought acetone)? Those people appear never to have been charged, suggesting the possibility that some Muslims who bought beauty supplies remain in a DOJ database even though no connection with Zazi's plot has been found. And then consider the suggestion that FBI is using Section 215 to collect more than just "records," but also much more intrusive medical records (and possibly DNA). That might create some database indeed, full of information that was not minimized.

So it sounds like it might result in an

interesting report.