



**Congressional Affairs Office**  
**Congressional Contacts**

Date Entered: 04/08/2005     Briefing     Hearing     Other     FOC

2005-121    Event Date: 4/6/2005

Subject: House Judiciary Committee Hearing Re Reauthorization of the USA PATRIOT Act.

CAO Contact Person: SSA [redacted]

DOJ Notification: N/A    DOJ Data/Time: [redacted]

FBI Participants: NONE

Other Participants: U.S. Attorney General Robert Gonzales

Committees /Subcommittees: House Judiciary Committee

Members/Staff: Chairman Sensenbrenner, Ranking Member Conyers, Coble, Lundgren, Smith (Texas), Berman, King (Iowa), Nadler, Feeney, Jackson Lee, Gohmert, Lofgren, Hostettler, Scott, Watt, Flake, Delahunt, Goodlatte, Weiner, Bachus, Van Hollen

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**Details of Briefing:**

After A.G. Gonzales testified, the members asked many questions, particularly focusing on various provisions of the USA PATRIOT Act (i.e., sections 213, 215, 505, 206, etc.). Of particular note were questions directly related to how the FBI operates under some of these provisions. Congressman Smith asked how many terrorists had been arrested or disrupted as a result of the Patriot Act. A.G. Gonzales stated it was very difficult to prove a negative, but pointed out that since 9/11/01 and the passage of the Act, there have been no further attacks on U.S. soil. He stated he would obtain any statistics for Smith regarding arrests and convictions. Congressman King stated that he was aware that 47 individuals listed on the Terrorist Watch List had legally acquired firearms, and wanted to know how this could be allowed to happen. A.G. Gonzales illustrated the point that until new legislation is implemented by Congress indicating that persons designated as being on the Terrorist Watch List is a disability which prevents gun ownership, the FBI and the Department of Justice must uphold these laws. If law enforcement can find another reason for denying gun ownership once it is determined a person is on the list, efforts are made to preclude gun ownership. In conjunction with this issue, Congressman Van Hollen asked the question, "Does it make sense that a person on the Terrorist Watch List is prevented from flying on an airplane, yet can go to a gun store and buy a number of assault weapons?" Again, A.G. Gonzales stated it was up to Congress to remedy this glitch in the law for reasonable enforcement. Congresswoman Lofgren asked how many times section 215 which allows the collection of library, bookstore, and medical records, has been utilized under the Act, and whether these institutions should be exempt from the Act. A.G. Gonzales stated he would not exempt any of these repositories of information, as they may yield important information regarding a terrorism nexus. Also, there has never been a use of the Act for acquiring library records (as the grand jury process which allows for a subpoena is often utilized). This point was illustrated by Congressman Coble. In fact, Coble was aware of instances where librarians contacted the FBI and volunteered information in order to thwart a potential terrorist. Section 215 would be used in lieu of the grand jury process where the investigation or subject being targeted is extremely sensitive (thereby limiting those with knowledge of these sensitive facts). Many questions were asked regarding section 206 and the validity of allowing roving wiretaps. A.G. Gonzales effectively addressed this issue explaining how the target and the telephone required a probable cause finding by an impartial judge or magistrate. He stated that the roving wiretap can be authorized through a FISA court as well as a criminal court. Congressman Flake asked what the longest time was for delayed notice subsequent to a covert authorized search. A.G. Gonzales stated that he was aware of 5 cases in which delayed notice was utilized, and the cases did not specify a requisite time. However, the longest time was for 180 days. Congressman Weiner asked whether the elimination of the delayed notice provision would jeopardize an investigation. A.G. Gonzales stated it could definitely jeopardize an investigation and used illegal drugs as an example. If law enforcement replaced the drugs with an inert substance or seized the drugs, then identity of all those involved would be lost. If the drugs were allowed to enter the public domain, this could harm or cause death to those using the drugs. Chairman Sensenbrenner praised A.G. Gonzales for his testimony, stated he performed well, and thanked him for his full cooperation.

**Follow Up Action:**

**Questions for the Record:**



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#### Details of Briefing:

In his opening remarks, Chairman Hoekstra stated that, during closed sessions of the Committee, there has been strong bipartisan support for renewing the Patriot Act. He said the Committee particularly appreciated the opportunity to discuss some of these issues with you as part of the FBI's annual budget hearing.

The provisions of the Patriot Act which recurred during the question and answer period were: Section 206 - "Roaming" wiretaps; Section 213 - Delayed notice search warrants; Section 215 - Access to Business Records. Following is a summary of those issues related specifically to the FBI which arose during the hearing:

Representative LaHood commented that you did a good job in discussing Patriot Act issues with the Committee during the recent budget hearing. He said that during that hearing, you said you did not know of any instances where the FBI has gone into a library to obtain records using the Patriot Act authorities. Representative LaHood asked the DAG to comment on the "library" provision. The DAG said that it is more difficult to obtain an order through the Foreign Intelligence Surveillance Court (FISC) for business records than through the use of Federal Grand Jury subpoenas in criminal cases.

Representative Harman asked the DAG whether changing the language of Section 215 to include a standard that the target of the order is an agent of a foreign power would be problematic. The DAG responded that such language may limit the ability of investigators to obtain records of associates of a known agent of a foreign power. Representative Harman challenged the DAG on this point. The DAG also said that such a standard may cause FBI agents to use criminal tools, namely Grand Jury subpoenas, rather than Patriot Act tools having judicial and Congressional oversight.

Representative Ruppertsberger raised the  case as the one Patriot Act abuse complaint which, per the DOJ Inspector General, is being further examined. The DAG responded that he is confident the Mayfield case was not a misuse of the Patriot Act.

Representative Rogers asked the DAG if, prior to the passage of the Patriot Act, an FBI agent could obtain library records. The DAG answered that in criminal cases, including the Unabomber case, library records could be obtained with a Grand Jury subpoena which does not require appearance before a judge. The Congressman then asked the DAG to describe the steps necessary for an FBI agent to obtain business records using the Patriot Act. The DAG answered approvals are required at many levels within the FBI before the request is presented to DOJ/OIPR. A written application is then prepared for presentation to the FISC to seek a court order. If the order is issued, the Agent will serve the order on a business for records. In addition to the many levels required in order to obtain the order, DOJ is required to report to Congress every 6 months on the use of Section 215. There is therefore substantial Congressional and judicial oversight, which is not the case for Federal Grand Jury subpoenas.

Representative Thornberry asked about the WMD Commission report. The DAG said DOJ is currently reviewing the recommendations but disagrees with the notion of an MI-5 organization. He said FBI personnel "grow up" within a Constitutional standards culture. He also said the FBI's almost symbiotic relationship with state and local law enforcement is very important to relying and acting upon intelligence and threat reporting.

#### Follow Up Action: