

United States Senate

WASHINGTON, DC 20510

December 5, 2019

The Honorable Jeffrey Ragsdale
Acting Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Director and Chief Counsel Ragsdale:

We write to ask that you open an ethics investigation into Attorney General William Barr's recently revealed decision to approve an illegal, bulk surveillance program that collected billions of records of Americans' telephone without conducting any legal analysis of the program.

On March 28, 2019, the Department of Justice (DOJ) Office of Inspector General (OIG) published a report identifying serious problems with a two-decade long Drug Enforcement Administration (DEA) bulk data collection program. As Attorney General in the Bush Administration in 1992, Mr. Barr provided approval for the DEA to use its subpoena authority (21 U.S.C. 876(a)) to obtain, in bulk, records of all phone calls between Americans in the United States and people in countries of interest to the DEA. As the OIG noted, the program "involved the collection of telephone call records for billions of telephone calls from the United States to many different countries."

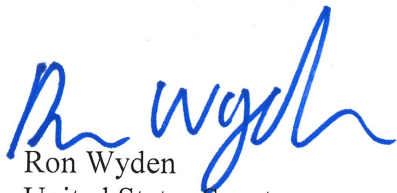
The OIG "found no evidence that anyone in the Department of Justice or the DEA prepared a comprehensive legal analysis of [the program], particularly the use of administrative subpoenas to amass a bulk collection of telephone metadata, prior to the program being established." The OIG found that this failure "troubling" because of the "uniquely expansive use of 876(a) to collect data in bulk without making a prior finding that the records were, in the language of that statutory provision enabling DEA's subpoena authority, 'relevant or material' to any specific defined investigation." The OIG further noted that the use of administrative subpoenas for bulk collection was "not consistent with DEA's normal practice" and emphasized that there were "significant legal issues" that were never examined. Finally, the OIG identified specific U.S. Supreme Court and Ninth Circuit case law "clearly suggesting potential challenges to the validity of the DEA's use of Section 876(a)" to conduct bulk collection.

Mr. Barr's authorization of this sweeping surveillance program without requiring, at minimum, an appropriate legal analysis, was not consistent with his oath to support and defend the Constitution and it likely amounted to professional misconduct. Attorney General Barr knew, or should have known, that neither statutory law nor federal case law permitted the DEA to

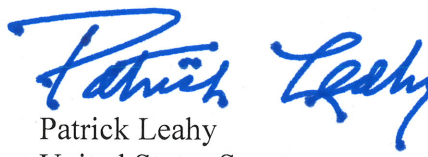
sweep up, in bulk, billions of records of Americans' telephone communications. We write to ask that you open an investigation into the authorization of this recently-disclosed illegal, bulk surveillance program that collected billions of records of Americans' telephone calls without conducting any legal analysis of the program.

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden
United States Senator



Patrick Leahy
United States Senator