

U.S. SENATOR PATRICK LEAHY

CONTACT: Office of Senator Leahy, 202-224-4242

VERMONT

Leahy-Grassley Seek Release Of IG Reports

[Below is a letter that Senators Patrick Leahy (D-Vt.) and Charles Grassley (R-Iowa) sent on Friday to Attorney General Ashcroft, FBI Director Mueller and DOJ Inspector General Fine, asking that an unclassified version be publicly released of all or portions of the Inspector General's recently completed reports on (1) the FBI translator program, (2) allegations made by a former FBI contractor regarding problems in the translator unit and (3) information obtained by the FBI prior to the terrorist attacks of Sept. 11, 2001. Leahy and Grassley were notified earlier this week that two of the reports had been completed but were classified. In 2002, the two senators had made the request to the Department of Justice Inspector General's Office that the FBI contractor's allegations be investigated.]

July 9, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington D.C. 20530

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Suite 4322
Washington, D.C. 20530

Dear Attorney General Ashcroft, Director Mueller, and Inspector General Fine:

It is our understanding that the Office of Inspector General (OIG) of the Department of Justice has completed two investigations and is near completion of a third on issues that we have followed closely. These investigations relate to the following topics:

- (1) Specific allegations made by a former contract linguist, Sibel Edmonds, about problems in the FBI translation program. Sens. Leahy and Grassley requested that the OIG investigate these allegations in a June 19, 2002, letter.
- (2) An audit of the FBI's overall translation program, initiated by the OIG after its review of the allegations made by Ms. Edmonds was underway; and
- (3) Information obtained by the FBI and other federal law enforcement agencies prior to the terrorist attacks of September 11, 2001, that was not acted upon, or not acted on in the most effective and efficient manner. We understand that this report includes a focus on the FBI's handling of the so-called "Phoenix memo"; the FBI's handling of information about Zacarias Moussaoui, the only person who has been charged in connection with the 9-11 attacks; and the FBI's investigation of and handling of information about two of the 9-11 hijackers, Nawaf Alhazmi and Khalid Almihdhar, about whom both the FBI and CIA had information regarding their links to terrorism. Sen. Grassley, in a May 15, 2002, letter to Inspector General Fine, requested that his office investigate the FBI's handling of the Phoenix memo.

The Justice Department and FBI, as the agencies of origin for the information in the reports, decide what information is classified in such reports. We have been informed that all three of these reports are classified and that there are no plans at this time for the OIG to release to the public any unclassified information about these reports. As a result, the information gathered in these investigations, which is of significant public interest and is critical to effective Congressional oversight of the FBI and other Federal agencies, will not be made available to the public.

We understand that the OIG has shared its findings with the 9-11 Commission, an action we suggested earlier this year, and one that we commend. Nonetheless, we respectfully request that these reports be released in some form to the public. If the reports must remain classified for security reasons, we request that one of the following steps be taken, and we present the following options in the order of preference: release an unclassified version of each of the reports, release a redacted version of each of the reports, or release an unclassified summary of each of the reports.

The importance of these investigations to the relevant oversight committees of Congress—particularly the Senate Judiciary Committee, which held hearings on the FBI's handling of pertinent information collected prior to 9-11—cannot be overstated. Indeed, in recent months questions have been raised by ourselves, by the 9-11 Commission, and by the media about the competency and abilities of the translation program at the FBI—concerns that should reverberate in the highest levels of the Department of Justice and the FBI. The FBI itself has provided alarming information about problems in the translation program during briefings to congressional staff. Yet two

years after the allegations made by Ms. Edmonds triggered two investigations, we are no closer to determining the scope of the problem, the pervasiveness and seriousness of FBI problems in this area, or what the FBI intends to do to rectify personnel shortages, security issues, translation inaccuracies and other problems that have plagued the translator program for years. The findings of the investigation into pre-9-11 intelligence are of equal importance as we strive to understand how important clues were overlooked and how we can protect Americans by preventing such failures from occurring in the future.

While we recognize that information is designated as classified because government officials believe its disclosure could harm national security, a serious and open-minded consideration of declassification, to some degree, is in order. The Justice Department and FBI have declassified information related to the 9-11 terrorist attacks and other national security issues numerous times over the past few years. The following are examples of such declassifications.

During the Senate Judiciary Committee's review of the FBI's Moussaoui investigation, in particular, and the process of obtaining Foreign Intelligence Surveillance Act (FISA) warrants, in general, the Justice Department and FBI declassified the procedures, known as the "Woods Procedures," used by the FBI to process FISA applications.

In 2002, the Justice Department and FBI declassified a letter by FBI Special Agent Coleen Rowley to FBI Director Mueller. This letter raised concerns about the handling of the Moussaoui case at FBI headquarters and regarding official FBI statements about the case.

The Justice Department and FBI also agreed to declassify information in the Joint Intelligence Inquiry report of its investigation into the 9-11 attacks. This report contains an extensive discussion of the three issues examined in the OIG review of the FBI's handling of information and investigations prior to the 9-11 attacks.

More recently, in April 2004, the Justice Department declassified memos and documents written by then-Deputy Attorney General Jamie Gorelick, regarding "the wall" restricting communication between agents investigating criminal violations and agents investigating intelligence and terrorism matters. These documents and memos were released in the course of a 9-11 Commission hearing and posted for a period on the Justice Department's Web site.

While the needs of national security must be weighed seriously, we fear that the designation of information as classified in some cases serves to protect the executive branch against embarrassing revelations and full accountability. We hope that is not the case here. Releasing declassified versions of these reports, or at least portions or summaries, would serve the public's interest, increase transparency, promote effectiveness and efficiency at the FBI, and facilitate Congressional oversight. To do otherwise could damage the public's confidence not only in the government's ability to protect the nation, but also in the government's ability to police itself.

Thank you for your prompt attention to this serious matter. While we understand that declassification can require a lengthy review process, we ask that you at least reply by July 15, 2004, indicating whether you intend to release declassified versions of the reports, parts of the reports, or to provide classified summaries.

Sincerely,

PATRICK LEAHY
CHARLES GRASSLEY

cc: The Honorable Orrin G. Hatch, Chairman
Chairman Kean and Vice Chairman Hamilton,
National Commission on Terrorist Attacks Upon The United States

#