



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 20, 2008

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

We write in response to your letter of August 18, 2008, requesting a brief delay in signature of new Attorney General guidelines governing the domestic activities of the Federal Bureau of Investigation (FBI). The effort to bring together different sets of Attorney General guidelines, including those that govern criminal investigations, national security investigations, and the collection of foreign intelligence, is critical for the Department of Justice. We believe that all interests would be best served by the FBI having one consolidated and harmonized set of guidelines that provides clear and consistent guidance to agents.

We appreciate your interest in this important subject, and look forward to continuing to work with you and your staff as we approach the guidelines' effective date. As you note, FBI Director Mueller is scheduled to testify on September 17th, 2008, and we welcome the opportunity to explain in detail to the American people and Members of this Committee the importance of our efforts to revise and harmonize the Attorney General guidelines. In consideration of your request, the Attorney General will not sign the guidelines prior to the September 17, 2008 hearing.

We do believe, however, that it is critical that these guidelines become effective on our planned effective date of October 1, 2008. To that end, please consider us at your disposal prior to the hearing and the implementation date to provide additional briefings. Although we have not traditionally worked with Congress in developing Attorney General guidelines, and as you note in your letter, we are not obligated to do so, we appreciate the laudable and thoughtful suggestions we have already received, and we believe that the final guidelines will be a better product as a result of our discussions.

Your letter also notes that these guidelines represent an important step toward our shared goal of improving the FBI's intelligence capabilities; we agree. Since the horrific attacks of September 11, 2001, the FBI has evolved from its traditional law enforcement role with some Intelligence Community activities into a flexible and efficient member of the Intelligence Community capable of fulfilling its mandate to be an intelligence driven agency.

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The Attorney General has explained the basic premise of the consolidation effort: there should be one set of rules governing investigating or gathering intelligence about a particular activity, regardless of the activity's label. For example, international terrorism can currently be investigated under three different sets of guidelines—each with its own different procedures. We do not believe that available methods should depend on the label given the investigation. Nor should the guidelines be more restrictive for national security investigations.

We fully appreciate and share your concern about the potential civil liberties implications of the consolidated guidelines. We think the opportunity to explain to your staff our approach to these sometimes difficult issues and why we believe that the oversight mechanisms reflected in the consolidated guidelines afford appropriate protections for our civil rights and civil liberties has been helpful. Moreover, those protections will be enhanced by internal FBI policies that are being written to implement the AG guidelines. Finally, we also plan to discuss the draft guidelines with a broad group of organizations prior to signature and anticipate that they will have valuable input into the guidelines as well.

We look forward to continuing to work with you and your staff. In the meantime, and as we discussed with your staff, we will continue to train FBI employees in preparation for the October 1, 2008 implementation date.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Nelson", with a long horizontal flourish extending to the right.

Keith D. Nelson
Principal Deputy Assistant Attorney General

cc: The Honorable Arlen Specter