

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SENATE JUDICIARY  
COMMITTEE AND THE COUNSEL TO THE PRESIDENT REGARDING FBI  
BACKGROUND INVESTIGATION REPORTS ON NOMINEES**

September 22, 2009

This memorandum of understanding between the U.S. Senate Committee on the Judiciary (“the Committee”) and the Counsel to the President sets forth the procedures under which the Committee shall have access to background investigation reports prepared by the Federal Bureau of Investigation (“FBI”) on judicial nominees and other Presidential nominees submitted to the Senate for confirmation and referred to the Committee.

**1. FBI Background Reports and Summaries**

- a. Full FBI background investigation reports shall be provided to the Committee for judicial nominees, United States Attorney nominees, United States Marshal nominees, and nominees for the following senior positions at the Department of Justice: Attorney General, Director of the FBI, Administrator of the Drug Enforcement Administration, Assistant Secretary for Immigration and Customs Enforcement, and Director of U.S. Marshals Service
- b. Summaries of FBI background investigation reports prepared by the FBI shall be provided for all other Department of Justice and non-judicial nominees referred to the Committee, except that the full FBI background investigation reports for these nominees shall be provided to the Committee upon request of the Chairman and/or Ranking Member. (Hereinafter, reference to FBI background investigations reports shall include summaries of FBI background investigation reports.)

**2. Access to FBI Background Reports**

- a. Senators: Senators who are members of the Committee, as well as the Majority and Minority Leaders, may review FBI background investigation reports and receive an oral briefing by any Designated Staff Member. Home State Senators who are not members of the Committee may review FBI background reports and receive an oral briefing from a Designated Staff Member with the approval of the Chairman and/or Ranking Member.
- b. Supreme Court Nominations: For nominations to the Supreme Court, in addition to the aforementioned Members, an oral briefing conducted by any Designated Staff Member on the contents of the FBI background investigation will be made available to any Senator upon request.
- c. Designated Staff Members: Six (6) majority staff members and four (4) minority staff members who have “top secret” clearance or interim clearance awaiting final “top secret” clearance from the appropriate federal agency and have a need for

access in connection with the performance of their duties shall be considered "Designated Staff Members" and have access to FBI background investigation reports. No other staff member from the Committee or other Senate office or other Committee may review FBI background reports relating to a nominee or be briefed on the contents of an FBI background investigation report.

- d. A current list of Designated Staff Members, and any changes to such list, shall be provided in writing by the Chairman to the Counsel to the President.
- e. Designated Staff Members shall be informed in writing at the time of their employment with and departure from staff that information from the FBI background investigation reports is to be kept confidential and that unauthorized release of information from FBI background investigation reports is cause for the imposition of appropriate penalties, including summary dismissal.
- f. Physical custody of FBI background reports shall be strictly controlled to limit access to authorized Senators and Designated Staff Members. The FBI background reports constitute confidential business of the Senate Committee on the Judiciary and unauthorized disclosure of information in the reports is cause for the imposition of punishment under RULE XXIX(5) of the Standing Rules of the Senate.

### 3. Security Manager

- a. The Chairman shall assign one (1) Designated Staff Member to serve as the Security Manager.
- b. The Security Manager will be trained by the Office of the Senate Security to maintain custodial responsibility over the FBI background investigation reports to ensure their confidentiality. The Security Manager's responsibilities shall include maintaining logs listing the names of the specific nominees for whom FBI background investigation reports have been received; the dates and times such reports are removed from the secured office area for review by Designated Staff Members; the dates and times such reports are returned to the secured office; and the dates and times such reports are returned to the Department of Justice.

### 4. Delivery of FBI Background Investigation Reports

- a. The FBI background investigation reports shall be delivered by the Department of Justice or the Office of the Counsel to the President directly to a Designated Staff Member of the Chairman. Delivery shall be acknowledged by a receipt signed by that Designated Staff Member and returned to the individual making the delivery.
- b. The Security Manager shall maintain in a locked safe a log that reflects the date, time, and particular FBI background investigation report received by the Committee.

- c. A Designated Staff Member of the Chairman shall immediately notify a Designated Staff Member of the Ranking Member of receipt of all FBI background reports.

**5. Physical Custody of FBI Background Reports**

- a. The Security Manager shall maintain a secure office space, have possession of keys for the secure office space and know the combinations for the locked safes maintained in the secure office space where FBI background investigation reports are stored.
- b. Designated Staff Members of the Ranking Member shall be granted reasonable entry to the Chairman's secure office space and shall sign the log sheet prior to removing any FBI background investigation report for review in an alternative secure office that is locked and has a combination safe to which only Designated Staff Members have the combination. Designated Staff Members will maintain strict control of FBI background reports in their custody.
- c. Document control experts from Senate Security will periodically review the effectiveness of procedures used by the Designated Staff Members to maintain physical custody and control of FBI background investigation reports.

**6. Use of the FBI Background Reports**

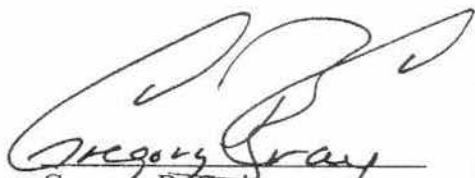
- a. Designated Staff Members may review and summarize the FBI background reports to assist the Chairman and the Ranking Member or other Members of the Committee in assessing a nominee's fitness and qualifications. The Chairman and the Ranking Member of the Committee may authorize Designated Staff Members to brief Members orally as set forth in Section 2.
- b. Photocopying or other reproduction of the FBI background reports is prohibited.
- c. Notes and memoranda derived from the contents of the FBI background investigation reports may be made and shall, in whatever form (including hard copy and computer disk), be destroyed or secured in the same manner as FBI background investigation reports. Destruction of any such notes and memoranda, and other materials derived from FBI background investigation reports, shall be accomplished in a secure fashion.

**7. Return of FBI Background Reports**

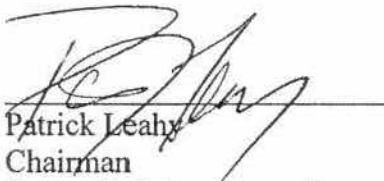
- a. Within 5 days of final Senate action on the nomination, the Security Manager shall arrange for the return, in a secure manner, of the FBI background

investigation report to the Department of Justice. The Security Manager shall note in the Committee's log the return of the FBI background investigation report.

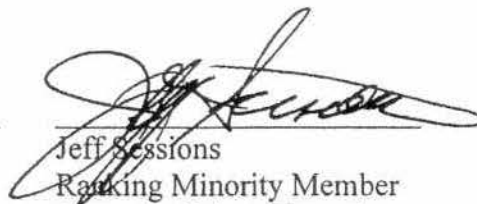
This Memorandum of Understanding is agreed to for the purpose of assisting the Senate in the execution of its constitutional advice and consent responsibilities.



Gregory B. Craig  
Counsel to the President



Patrick Leahy  
Chairman  
Senate Judiciary Committee



Jeff Sessions  
Ranking Minority Member  
Senate Judiciary Committee