

United States Senate

WASHINGTON, DC 20510

September 15, 2003

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear General Ashcroft:

We are writing to express serious concern about a proposal to expand the Federal Bureau of Investigation's (FBI) jurisdiction and authority over bombing and explosives incidents at the expense of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

It is our understanding - based on Justice Department documents, concerned law enforcement officials and a new report - that you are considering this proposal. We understand that the Attorney General directive under consideration would give the FBI authority as the "lead agency" on any bombing or explosive incident "until such time as investigation has significantly ruled out a link to domestic or international terrorism." We urge you to consider this matter carefully and to wait on taking any action until Congress has had the opportunity to evaluate this matter and other law enforcement jurisdiction problems.

The directive is problematic for several reasons. First, this mandate would be an unnecessary drain on the FBI's scarce resources and take agents away from labor-intensive counterterrorism and foreign counterintelligence investigations. In short, this directive would hinder, not help, the FBI's mission to prevent terrorism attacks. In fact, the FBI might actually benefit from allowing the ATF to handle more bombing and explosives crimes. Less than one percent of bombings and explosive incidents are related to terrorism. Also, it is often immediately clear which ones are related to terrorism, such as the first attack on the World Trade Center. If an incident has signs of terrorism, ATF officials have in the past and would in the future immediately notify the FBI. We are not so certain about the converse situation. "Significantly ruling out" terrorism involvement can theoretically take forever, or at least so long that when ATF commences its investigation, the trail could very well be cold. If a disgruntled employee fills a soup can with gunpowder and blows up his boss's car, the FBI should not wait until it can prove the employee did not attend terrorism training camps in Afghanistan before turning the case over to the ATF.

Second, the proposed Attorney General directive contradicts clear Congressional intent. As part of the legislation that created the Department of Homeland Security, Congress moved ATF from the Department of Justice and explicitly gave ATF jurisdiction over bomb investigations. This could not have been more clear when Congress changed the name of the Bureau to recognize the importance of explosives investigations to its core mission, adding

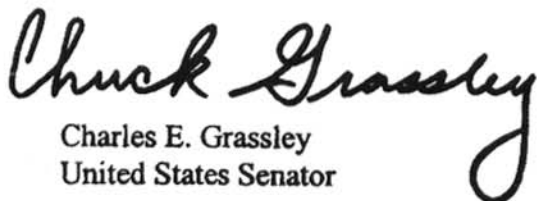
"Explosives" to the title. This move recognized ATF's long successful track record with explosives investigations.

Since 1978, ATF has investigated more than 13,000 explosives incidents. In addition, in 2001, the last year for which statistics are available, ATF opened 881 explosives investigations, sent 271 cases for prosecution, and achieved 295 convictions. A comparison over the last 17 years between ATF and FBI for the most common explosives and bombing charges – 18 USC 0844, and 26 USC 5861 – shows that ATF has many times more cases than the FBI, and those cases lead far and away to more prosecutions, more convictions and longer prison terms, according to data obtained from the Executive Office for United States Attorneys by the Transactional Records Access Clearinghouse. For example, on the first charge "Explosives - Importation and storage of explosives," ATF had a total of 1,179 convictions from 1986 through 2002, while the FBI had 363 during the same period. On the second charge, "Tax on Making Firearms - Prohibited acts," the ATF had 4,318 convictions from 1986 through 2002, while the FBI had 188 during the same period.

Moreover, ATF was given explicit authority over bomb cases at the time of its move, in part because of concerns that the FBI would try to assert authority over this investigative area. Director Mueller himself has said the FBI's post 9-11-01 focus must be and will be counterterrorism. However, the tendency of some FBI officials to expand authority and jurisdiction seems to continue. This issue erupted last fall when a draft FBI report about the proposal to move ATF to the Justice Department was disclosed in the media. This report was both inaccurate, extremely unprofessional, and mischaracterized ATF's performance. FBI Director Robert Mueller issued a statement that essentially disavowed the draft report and said the FBI was "working closely....to ensure that any legislation effectuating such a transfer would preserve the ATF's existing criminal and regulatory enforcement authorities." (Emphasis added). We hope that attitude continues to be the case for Director Mueller and the FBI, but we fear this proposal, at the very least, is contrary to the spirit of that statement.

In light of these considerations, we ask that you weigh this proposal carefully. It would be prudent to delay such a significant decision until Congress can examine this and other jurisdictional issues within the Department of Justice and among other law enforcement agencies. In any case, we ask to be fully appraised on whatever decision, if any, you make. If you proceed with this directive, we ask for a copy of it. We also expect such a decision would be accompanied by a report detailing the efficiencies of the proposed change, and we ask to be furnished with a copy of any such report. Thank you in advance for your attention to this matter. We would appreciate a response to the concerns raised herein by Monday, September 22, 2003.

Sincerely,


Charles E. Grassley
United States Senator


Herb Kohl
United States Senator

cc:

Bradley Buckles, Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

Honorable Robert S. Mueller, Director, Federal Bureau of Investigations