PLAINTIFF’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE

Pursuant to Local Civil Rules 7(h) and 56.1, and in support of its Motion for Summary Judgment, Plaintiff Project On Government Oversight (“POGO”) sets forth the following statement of material facts as to which there is no genuine dispute.

1. On June 17, 2002, the FBI provided an unclassified briefing for members and staff of the Senate Judiciary Committee. During the unclassified briefing, the FBI discussed information relating to allegations made by Ms. Sibel Edmonds regarding problems in the FBI’s translation unit. Brian Dec. ¶ 14.

3. On July 9, 2002, the FBI held an unclassified briefing for Senate Judiciary Committee members and staff. During the unclassified briefing, the FBI presented information relating to Ms. Edmonds’ allegations and problems at the FBI translation unit. Brian Dec. ¶ 14.


5. On October 28, 2002, Senator Grassley sent a letter to Robert Mueller, Director of the FBI, expressing the Senator’s concern with the FBI’s translation capabilities and referencing the June 17, 2002, FBI briefing regarding the claims made by Sibel Edmonds. Senator Grassley’s October 28 letter was disseminated widely and posted on the Senator’s website. Brian Dec. ¶ 20.

6. On July 21, 2004, FBI Director Robert Mueller sent a letter to Senator Hatch, with copies to Senators Leahy and Grassley, confirming that the Office of the Inspector General (OIG) had concluded that Ms. Edmonds’ allegations were at least a contributing factor in why the FBI terminated her services. Director Mueller also noted that the OIG criticized the FBI’s failure to adequately pursue Ms. Edmonds’ allegations of espionage as they related to one of her colleagues, and pledged to conduct additional investigation as appropriate. Brian Dec. ¶ 18 & Ex. F.

7. Pursuant to Executive Order 12958, as amended by Executive Order 13292, defendants have classified some of the information presented by the FBI to the Senate Judiciary
Committee during the unclassified briefings of June 17 and July 9, 2002. Defendant Ashcroft has accepted responsibility for the decision to classify the information at issue. Brian Dec. ¶ 27 & Ex. H; and Def. Mem. in support of motion to dismiss at 1 n.1, 2, 11 & 12 (asserting that “the classification at issue was entirely consistent with the applicable Executive Orders,” and citing “[t]he Executive Order in question,” “the applicable Executive Orders,” and “[t]he executive order at issue here,” as “Executive Order 12958, as amended by Executive Order 13292”).

8. On May 13, 2004, the following message was sent by e-mail to the staff of the Senate Judiciary Committee:

The FBI would like to put all Judiciary Committee staffers on notice that it now considers some of the information contained in two Judiciary Committee briefings to be classified. Those briefings occurred on June 17, 2002, and July 9th, 2002, and concerned a woman named Sibel Edmonds, who worked as a translator for the FBI. The decision to treat the information as classified from this point forward relates to civil litigation in which the FBI is seeking to quash certain information. The FBI believes that certain public comments have put the information in a context that gives rise to a need to protect the information. Any staffer who attended those briefings, or who learns about those briefings, should be aware that the FBI now considers the information classified and should therefore avoid further dissemination. If you attended this briefing and took notes, please contact Pat Makanui, Office of Senate Security, at 4-5632. If you have any questions, please call Nick Rossi at (202) 324-7484.

Brian Dec. ¶ 21 & Ex. G.

9. Following notice that the information from the briefings of June 17 and July 9, 2002, had been reclassified, Senators Leahy and Grassley removed from their websites the letters of June 19 and August 13, 2002. Brian Dec. ¶ 22.
10. Sometime after this lawsuit was filed, the June 19 and August 13 letters reappeared on Senator Leahy’s website. On August 12, 2004, the June 19 letter was accessible at http://leahy.senate.gov/s/2002/200206/061902a.html and the August 13 letter was available at http://leahy.senate.gov/s/2002/200208/081302.html. When the availability of these letters was brought to the attention of Senator Leahy’s staff, the staff had the letters removed, citing the retroactive classification decision at issue. Brian Dec. ¶ 22.


12. The letter of June 19, 2002, remains available to the public at various websites, including:

C http://www.libertyforum.org/showflat.php?Cat=&Board=news_crime&Number=1397278 (scroll down)


Brian Dec. ¶ 23.

13. The letter of August 13, 2002, remains available to the public at various websites, including:

C http://www.washingtonpost.com/wp-srv/onpolitics/articles/Ashcroftletter.html

C http://www.thememoryhole.org/spy/edmonds.htm#edmonds (scroll down)

C http://209.157.64.200/focus/f-news/1079427/posts (scroll down)

C http://discuss.agonist.org/yabbse/index.php?board=1;action=display;threadid=18112 (scroll down)

C http://www.ocnus.net/cgi-bin/exec/view.cgi?archive=46&num=12115 (New Republic article, excerpt only)
14. POGO obtained copies of the June 19 and August 13 letters before they were removed from the Senators’ websites. Brian Dec. ¶¶ 17 & 19.

15. In furtherance of its mission to serve the public interest by promoting government accountability, POGO desires to post, discuss, and disseminate these documents and the information they contain. Brian Dec. ¶ 28.

16. Because POGO is aware that the information in the documents has been reclassified, POGO has refrained from disseminating the information out of fear of criminal prosecution or other adverse action by the government. Brian Dec. ¶ 28.

17. The government has threatened to prosecute POGO in the past under similar circumstances. Brian Dec. ¶ 28.
18. During the course of litigation concerning the burning of hazardous waste at Area 51 (the government’s secret testing facility in Nevada), POGO obtained an unclassified Area 51 security manual. The Air Force retroactively classified the security manual, threatened to prosecute anyone who had it in their possession, and demanded access to POGO’s files to determine what other “classified” information POGO possessed. Ultimately, an agreement was reached under which POGO avoided prosecution, but POGO was stripped of its ability effectively to participate in and encourage public debate about the environmental crimes at Area 51. Brian Dec. ¶¶ 5-8.

19. After POGO issued a letter critical of the Nuclear Regulatory Commission’s testing of the defenses against sabotage in place at the nuclear generating station at Indian Point, New York, the NRC ordered POGO to remove the entire letter from its website under the threat of criminal prosecution. The NRC alleged that, despite the fact that POGO is not a licensee or otherwise regulated by the NRC, the letter contained safeguards information within the meaning of 42 U.S.C. § 2167. Despite POGO’s belief that the letter contained no safeguards information, POGO complied with the NRC’s order and removed the letter from its website, although the letter remained easily retrievable from other websites. By the time the NRC identified the few passages in the September 11, 2003 letter it insisted POGO not publish because the NRC objected to POGO’s characterization of the information, POGO had for three months been forced into silence on the entire topic of safety at Indian Point. Brian Dec. ¶¶ 9-12.
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Respectfully submitted,

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