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# Judge Rejects Release of Draft Report on FBI Lab

*Inspector General's Probe Has Uncovered Possible Problems in Many Criminal Cases*

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Forcing the Justice Department to make public a draft report of an inspector general's investigation into allegations of misconduct and slipshod work in the FBI's forensic lab would be "premature" and "confusing" to the public, a federal judge ruled yesterday.

U.S. District Judge Gladys Kessler said it also would be unfair to the Justice Department's inspector general, who deserves time to finish his work. "Premature disclosure of what's only a draft could clearly interfere and undercut future actions the government may wish to take based on whatever facts and conclusions are contained in the final report," she said.

"There's no question . . . that the public's confidence in the integrity of the criminal justice system and the FBI is at stake," the judge said. "However, the public interest also requires that the final report . . . be sufficiently thorough."

Kessler sided with the Justice Department and denied a request for a preliminary injunction by the National Association of Criminal Defense Lawyers and Frederic Whitehurst, a former crime lab chemist who first leveled allegations about the lab.

The investigation by Inspector General Michael Bromwich has already led the Justice Department to notify prosecutors in about 50 criminal cases that there may be problems with the quality of the lab's work. Also, the FBI has

suspended Whitehurst and transferred three lab supervisors.

In making her ruling, Kessler appeared to rely on promises made by the Justice Department during a hearing last week. She said that the defense lawyers group and Whitehurst will not be harmed if the draft report is not made public now. She said the department can wait a few more weeks, until April 15, the latest date for release that Justice Department attorney Jessica A. Lerner promised, adding that the department is hoping to release it sooner, during the week of April 7.

The Justice Department also put into writing its position that criminal defendants whose convictions may be questioned because of the failings of the FBI lab have up to one year after the final report's release to file appeals.

Attorneys Daniel Alcorn and Jack King of the criminal defense lawyers group said they remain concerned about a looming April 24 deadline for defendants to challenge convictions. The deadline was set when President Clinton signed a bill last year that significantly curtailed appeals of convictions.

Even though Kessler was assured by the Justice Department's written promise, King said it binds no one, especially federal judges or state prosecutors. But Alcorn and King admitted it was better than nothing and could be used by defense attorneys "for argument's sake," as Alcorn put it.

But Kessler said she was not pleased with the way the inspector general has handled Whi-

tehurst, prohibiting him from discussing the contents of the draft report with his lawyers. In arguments last Friday, Whitehurst's attorney, David K. Colapinto, said Whitehurst's rights are being violated.

Kessler agreed. She said the limits on Whitehurst are "very troubling" and appear to her to be "just plain wrong." She suggested, but did not order, that the FBI ask Whitehurst and his attorneys to sign a statement promising to keep confidential any information they receive pertaining to the IG investigation.

The FBI's handling of Whitehurst was the subject of some extraordinarily blunt correspondence between FBI Director Louis J. Freeh and Bromwich that was made public yesterday.

Bromwich accused Freeh of testifying inaccurately to Congress when he told a House Appropriations subcommittee March 5 that Whitehurst had been suspended in response to the inspector general's preliminary report. In response Freeh conceded that his testimony had been incomplete and that the FBI also suspended Whitehurst because of his refusal to cooperate with an investigation into news leaks.

In releasing the correspondence yesterday, Sen. Charles E. Grassley (R-Iowa) depicted Freeh's testimony as "the latest case of misleading by the FBI."

Last night the FBI said Freeh "totally rejects any contention that he deliberately misled either the Congress or the public during recent testimony. . . . He promptly corrected the record. Freeh regrets his inadvertent omission."