

**BEFORE THE
CONGRESS OF THE UNITED STATES**

**PETITION PURSUANT TO THE FIRST AMENDMENT OF THE UNITED STATES
CONSTITUTION SEEKING REDRESS REGARDING GOVERNMENT MISCONDUCT
CONCERNING THE POST-9/11 ANTHRAX ATTACKS OF 2001**

**BY
THE LAWYERS' COMMITTEE FOR 9/11 INQUIRY, INC.**

Dated: September 10, 2020

I. BACKGROUND OF THE 2001 ANTHRAX ATTACKS, THE FBI'S "AMERITHRAX" INVESTIGATION, AND THE LAWYERS' COMMITTEE'S REVIEW

One week after the tragic September 11, 2001 terrorist attacks in the United States, a second series of attacks began, utilizing lethal spores of the biological warfare agent *Bacillus anthracis* (*B. anthracis*)¹ sent through the public mail in envelopes. At least 22 people became infected—the number may be much higher—and five people died. **Exhibit 21**. All the deaths were from the most lethal form of anthrax, inhalation anthrax. Thousands of potentially exposed persons had to take antibiotics as a preventative measure.

At least two United States Senators were specifically targeted in the second of two waves of these anthrax letter attacks. **Exhibit 21**. The anthrax used in the second wave of letter attacks was more highly refined and more lethal. **Exhibit 21; Exhibit 40; Exhibit 32; Exhibit 42; Exhibit 46**. The initial wave of anthrax letters included a crude form of *B. anthracis* that was not readily dispersed in air and thus the first wave attacker(s) may not have anticipated that deaths would result. The second wave of letter attacks used a more refined and more lethal version of *B. anthracis* in the form of a fine dry powder that was readily dispersed in air. This second wave of attacks occurred after the first death from the first wave of attacks, of Robert Stevens in Florida, had been reported. **Exhibit 21**. Thus, it is very likely that the second wave attacker(s) anticipated that deaths would result.

The anthrax involved in the first wave of these anthrax attacks was different than the anthrax used in the second wave of these attacks, although both sets of anthrax were determined to be the "Ames" strain, a strain used by U.S. military labs. **Exhibit 36**. The first wave of letter attacks involved a comparatively crude anthrax which had 10% silicon content, most of which

¹ The term "anthrax" technically refers to the disease caused by exposure to *Bacillus anthracis*. For convenience, in this Petition, the authors sometimes use the term "anthrax" as a shorthand for *Bacillus anthracis*.

was outside of the anthrax spores altogether, i.e. between the spores, or separate from but mixed in with the spores in the contents of the letters. **Exhibit 40**. This first wave of letters also contained contamination from another bacterium – *B. subtilis* (aka *B. globigii*). **Exhibit 40**; **Exhibit 46**; **Exhibit 32**. The anthrax involved in the second wave did not show the *B. subtilis* contamination and the silicon found in the anthrax used in the second wave of attack letters had about 1% silicon content, virtually all of which was found *inside* the exosporium on what is called the spore coat. **Exhibit 40**. The second wave anthrax was made with a process that effectively weaponized the anthrax spores by purifying, concentrating, and drying the spores into a fine powder easily transported through air (i.e. aerosolized). **Exhibit 21**; **Exhibit 40**; **Exhibit 46**..

The first wave of letters went to news media offices in mid-September 2001. **Exhibit 21**. The second wave of letters, containing the more sophisticated form of anthrax spores, went to at least two senators, including Senator Leahy and Senator Daschle, in early October, 2001. **Exhibit 21**. The five deaths from the anthrax attacks occurred between October 5 and November 21, 2001. **Exhibit 21**. *And see, e.g.,* <https://www.npr.org/2011/02/15/93170200/timeline-how-the-anthrax-terror-unfolded>.

Both federal law and the Department of Defense consider anthrax to be a biological agent/weapon and a weapon of mass destruction. *This is the only attack on Congress in history with a weapon of mass destruction.*

The text of the handwritten letters accompanying the anthrax spores seemed at first glance to point to al Qaeda or a similar foreign terrorist group. **Exhibit 21**; **Exhibit 35**. In the early stages of public awareness, this was the leading, although later discovered to be erroneous, hypothesis advanced by certain government officials and certain news media. The assumption

was that the September 11th terrorist airplane attacks were being followed by a second wave of terrorist attacks by the same perpetrators. As the anthrax attacks progressed in October 2011, an additional government-espoused hypothesis emerged and was publicized very widely in the news media. According to this government hypothesis, Iraq was the source of the deadly anthrax spores. *See*, <https://www.theguardian.com/world/2001/oct/14/terrorism.afghanistan6>; **Exhibit 35**; **Exhibit 21**. Iraq's helper or surrogate in these anthrax attacks, according to this government hypothesis, was al Qaeda, whose foot soldiers mailed the actual letters. This theory, which never had a basis in evidence, also was determined to be erroneous. **Exhibit 21**.

By late 2001/early 2002, both the al Qaeda hypothesis and the al Qaeda-Iraq hypothesis had been shown to be incorrect, including by Dr. Barbara hatch Rosenbergt. In 2002, the FBI acknowledged that the anthrax used in the attacks was of domestic origin, i.e., had actually come from inside the United States from one of several ostensibly highly secure military or government contractor labs, and began investigating former employees of government labs. *See, e.g.*, <https://www.npr.org/2011/02/15/93170200/timeline-how-the-anthrax-terror-unfolded>.

The FBI contracted for DNA analyses to be performed on the samples submitted by all or most of the labs holding Ames anthrax samples. **Exhibit 21**; **Exhibit 40**. This was several years into the investigation. The FBI used these DNA analyses to identify the presence or absence in the lab samples of what the FBI considered to be “fingerprint” morphs (DNA variants) that had been identified in the attack anthrax. **Exhibit 21**; **Exhibit 40**; **Exhibit 18**; **Exhibit 19**.

But even after these DNA analyses for the “fingerprint” morphs were completed, there still was no valid evidentiary basis for the FBI to have focused only on a lone wolf scenario. This is particularly so in light of the determination that there were two sets of letter attacks separated in time, and the anthrax used in the first of the two attack waves was notably different in size of

particles, silicon content and location, and *B. subtilis* contamination than that used in the second wave of attacks. And, there were clearly some strong motives within certain quarters of the military-industrial-intelligence complex to both justify the soon-to-be-initiated attacks on Afghanistan and Iraq, and the soon-to-come endless war on terror. There were also strong motives within these quarters to justify future and past biowarfare research and experiments, including past work that may have violated the international treaty on biological weapons, i.e., the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. *See, e.g., "U.S. Germ Warfare Research Pushes Treaty Limits"* Judith Miller, Stephen Engelberg and William J. Broad, New York Times, September 4, 2001.

The FBI, after working through a series of lone wolf "suspects," apparently including Perry Mikesell who worked at Battelle, eventually focused its investigative attention on Dr. Bruce Ivins, a long-time microbiologist who worked for the Army at Fort Detrick, specializing in anthrax vaccine development. [Exhibit 21](#); [Exhibit 18](#); [Exhibit 19](#). The FBI subjected Dr. Ivins to an extended period of intense scrutiny, which some have characterized as harassment, knowing Dr. Ivins was emotionally vulnerable. [Exhibit 34](#). Dr. Ivins died on July 29, 2008, reportedly by suicide via an overdose of over-the-counter medication. [Exhibit 21](#).

In press releases, news conferences, and what were described as science briefings in August of 2008, the FBI and the Department of Justice declared Dr. Bruce Ivins of USAMRIID to have been the sole perpetrator of the anthrax attacks. [Exhibit 18](#); [Exhibit 19](#). However, the FBI's then-seven-year Amerithrax investigation, which ostensibly led it to this conclusion, was then and has been on several occasions since, roundly criticized by a number of scientific experts as well as some lawyers, and has been the subject of several critical investigative journalism

reports. These reports included articles in the New York Times and the Washington Post, and a documentary by PBS, Pro Publica, and McClatchy. The FBI formally closed its investigation, which it codenamed “Amerithrax,” in 2010. [Exhibit 21](#); [Exhibit 17](#).

Notable among the critics and skeptics of the FBI’s investigation and conclusion were (and are) scientist Dr. Barbara Hatch Rosenberg, attorney Barry Kissin, physician Dr. Meryl Nass, veterinary epidemiologist Dr. Martin Hugh-Jones and his colleagues and co-authors (see [Exhibit 32](#); [Exhibit 33](#); [Exhibit 34](#); [Exhibit 46](#)), which included scientist Stuart Jacobson, a number of scientists who had worked at the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID) at Fort Detrick in Maryland (see, e.g., [Exhibit 01](#); [Exhibit 02](#); [Exhibit 15](#); [Exhibit 31](#)) members of the family of the FBI’s (eventual) prime suspect Dr. Bruce Ivins, and Dr. Ivins’ attorney. Notably, an additional criticism of the FBI’s investigation was presented by the FBI Special Agent who served as an Inspector and directed the FBI’s Amerithrax investigation for four years, from 2002-2006, Richard Lambert. [Exhibit 47](#).

The FBI’s investigation and conclusions had critics among members of Congress as well, including Senator Patrick Leahy and Congressman Rush Holt. Senator Leahy made clear in a congressional hearing during the examination of FBI Director Robert Mueller that he did not believe the FBI’s conclusion that the October 2001 anthrax attacks had been perpetrated by Dr. Bruce Ivins, at least not acting alone, and that there were others, yet to be identified by the FBI, who could be, and should be, charged with murder. [Exhibit 10](#).

These public critiques, which The Lawyers’ Committee found not only well-researched but concerning, were one of the primary motivating forces behind the decision of the Lawyers’ Committee to take a close look at the publicly available evidence in the case. Notwithstanding all the previous critiques and exposés, which raised many valid concerns, what the Lawyers’

Committee found in its review was surprising, and even more disturbing than the reviews that had come before.

This Petition draws both on 1) significant evidence available to the FBI during the FBI's 9-year "Amerithrax" investigation, much of which the FBI either ignored, misrepresented, or concealed, as discussed *infra*, as well as 2) significant evidence that has come to light since February 2010 when the FBI closed its investigation, after having declared Dr. Bruce Ivins to be the (lone) perpetrator some two years prior.

Some of the more important recent evidence reviewed for this Petition includes the following:

1) The 2011 report submitted at the FBI's request by the National Research Council, "Review of the Scientific Approaches Used During the FBI's Investigation of the 2001 Anthrax Letters." **Exhibit 40.**

2) Court filings in the United States District Court for the Southern District of Florida by Department of Justice lawyers defending the United States government against charges brought on behalf of the family of Robert Stevens, the first person to die from anthrax during the attacks. **Exhibit 43; Exhibit 44.**

3) Reports by journalists working for PBS Frontline, McClatchy, and ProPublica, and the documentary "The Anthrax Files." See <https://www.pbs.org/wgbh/frontline/film/anthrax-files/>.

4) Research done in 2011 and 2012 and thereafter by microbiologists on the nature of the attack spores, published as articles by Martin Hugh-Jones, Barbara Rosenberg, and/or Stuart Jacobson, including articles in the *Journal of Bioterrorism & Biodefense*. **Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 46.**

5) A December 2014 report to Congress by the Government Accountability Office entitled,

“Anthrax: Agency Approaches to Validation and Statistical Analysis Could Be Improved”.

Exhibit 30.

6) An April 2, 2015 filing in the US District Court for the Eastern District of Tennessee against senior executives and attorneys employed by the Department of Justice and the FBI by Richard Lambert, who headed the FBI's anthrax investigation from 2002 to 2006. **Exhibit 47.**

7) The FBI's publicly released Amerithrax documents. <https://vault.fbi.gov/Amerithrax>

II. THE FBI'S INVESTIGATION OF THE 2001 ANTHRAX ATTACKS WAS OBSTRUCTED AND CORRUPTED, FROM BOTH THE OUTSIDE AND FROM WITHIN THE FBI ITSELF

A. The Lawyers' Committee Has Obtained Evidence that High Level Department of Defense Officials Ordered the Commander of USAMRIID, the Army's Biowarfare Defense Research Laboratory, to Squelch Investigations by USAMRIID Scientists into the Anthrax Attacks, and to Squelch Criticisms of the FBI's Anthrax Attacks Investigation

Arthur Osmund Anderson, M.D. (COL US Army Medical Corps Retired) has provided to the Lawyers' Committee several of his memoranda-for-record and other documents related to the Army's, the FBI's, and Dr. Ivin's actions and statements during the Amerithrax investigation, as well as Col. Anderson's personal written declaration made under oath. **Exhibit 15** (Declaration); **Exhibit 14** (Curriculum Vitae); **Exhibit 03**; **Exhibit 04**; **Exhibit 05**; **Exhibit 06**; **Exhibit 07**; **Exhibit 08**; **Exhibit 09**; **Exhibit 10**; **Exhibit 11**; **Exhibit 12**; **Exhibit 13**. Most of these documents have been made exhibits to this Petition. One of these documents, **Exhibit 11**, reflects that high level Army officials issued an order directing the USAMRIID Commander to squelch the then on-going internal investigations by USAMRIID scientists of the anthrax attacks as well as their criticisms of the FBI's investigation. The following paragraphs describe Col. Anderson's background and how he came to discover this high-level gag order, which was issued in an apparent attempt to cover up defects in the FBI's Amerithrax investigation.

From 1975 until March 2007, Col. Anderson served as the USAMRIID's Institutional Review Board (also called the Human Use Committee) Chairman. His functions in that capacity were to chair a committee that reviews for approval/disapproval all clinical protocols that use human volunteers as subjects of research and to make sure all of this research met the ethical, legal and moral requirements of Department of Defense, and Federal, Laws and Regulations.

Exhibit 15.

From 1992 until his retirement at the end of October 2016, Col. Anderson served as USAMRIID's Research Integrity Officer where his responsibilities included investigating all allegations of research misconduct (defined as Fabrication, Falsification or Plagiarism) and preparing preliminary inquiries to determining if misconduct had occurred. From 1983 until 2007, he was assigned as the Pathologist and Director of the USAMRIID clinical laboratory. He was also a Principal Investigator on Immunological Research aimed at developing the means to enhance immune responses to vaccines. His first 6 years at USAMRIID involved developing and testing immunological adjuvants. He left USAMRIID from 1980 to 1983 to be a civilian assistant professor of Pathology and Biology at the University of Pennsylvania, and returned to USAMRIID in July 1983, when he set up USAMRIID's first Respiratory and Mucosal Immunology Research Laboratory in the Airborne Diseases Division. He continued with this work in the Disease Assessment Division after the Airborne Diseases Division shut down in 1987 and continued with his research until 1996, whereupon he collaborated with scientists at the National Institutes of Health (NIH) and continued running the USAMRIID Clinical Laboratory until his Army Retirement in 2007. **Exhibit 15.**

Col. Anderson first met Bruce Ivins in 1983 when he heard that he was interested in testing adjuvants to improve a vaccine he was working on. Col. Anderson reports that he found Ivins to

be a good listener and a hard worker. Ivins completed that research and Ivins' publication cited two of Col. Anderson's papers on immunological adjuvants. Col. Anderson spoke with Ivins on numerous occasions about science or research issues, USAMRIID concerns, or family matters, and never observed Ivins behaving inappropriately. [Exhibit 15](#).

In 1997, the existing Anthrax vaccine (AVA) was put on hold by the FDA because of Good Manufacturing Practices problems at the private manufacturing plant. Dr. Ivins was one of the USAMRIID scientists who were recruited to help the company resolve its manufacturing problems and enable it to be re-approved. This necessitated accumulating batches of certified anthrax reference material to be used in animal testing and tests related to potency of the vaccine. [Exhibit 15](#).

Ivins' reference material (i.e. pure Ames anthrax spores) started with a batch of spores manufactured at U.S. Army's Dugway Proving Ground laboratory (Dugway) using their large fermenter. One of the tubes of spores from Dugway was contaminated with *Bacillus subtilis* (B. subtilis) so Ivins had to use shaking flask incubators to make enough wet spores to bring the flask up to 1000ml. Ivins made small batches of Ames Anthrax using the flask incubator system, which had much less output than a fermenter. Therefore, numerous runs were needed to fill that flask with 1000 ml of wet spores. That flask of spores, labelled RMR 1029, is known as such because it was closely monitored by USAMRIID's research quality (regulatory studies) branch according to quality control systems of Good Laboratory Practices (GLP) due to FDA requirements related to the tests of the anthrax vaccine. Ivins also began manufacturing, from the same Ames anthrax that he had used to fill RMR 1029, a second batch of Ames anthrax called RMR 1030. By the time RMR 1029 was filled, most of the Ames Anthrax in it had come from Dugway and only a small amount of this the material was made by Ivins. (Ivins also had another

stock of anthrax called RMR 1028, which was a different strain of anthrax, the Vollum strain).

Exhibit 15.

After the 2001 anthrax attacks, USAMRIID was responsible for confirming the FBI's anthrax tests by culture, a task performed by Bruce Ivins, or by validated PCR (Polymerase Chain Reaction) Assays, a task performed by Members of the Diagnostic Systems Division. The FBI was using these tests to determine if any mail, mailboxes or offices were contaminated with Anthrax. **Exhibit 15.**

Col. Anderson, and many of his scientist colleagues at USAMRIID, concluded that Ivins did not have access to the equipment necessary to make the dry anthrax spores in sufficient quantity to fill the anthrax letters. Nor did they believe Ivins' anthrax stocks were contaminated with *B. subtilis* (although some of the attack letters anthrax was). They also did not believe Ivins had the expertise, skill, or equipment to make the attack letters anthrax used in the second wave of the attacks which had been made into a fine powder and had silicon added on the spore coat inside the exosporium (the outer shell of the anthrax spore). **Exhibit 01; Exhibit 02; Exhibit 07; Exhibit 15; Exhibit 31; Exhibit 12.**

As the FBI's Amerithrax investigation dragged on, and particularly when the FBI started focusing its attention on USAMRIID and specifically Dr. Ivins, Col. Anderson and some of his colleagues, all experts in their field, conducted their own analysis of the anthrax attacks issues. **Exhibit 12; Exhibit 01; Exhibit 02; Exhibit 31.** He and many of his colleagues at USAMRIID who knew Ivins knew how much Ivins cared for his work and USAMRIID and how appropriately he acted irrespective of any psychological demons that plagued him. *Id.* Based on their knowledge of Ivins, their expertise, and their own analysis of the facts of the anthrax attacks, they doubted the FBI's evidence and conclusions and were convinced that Dr. Ivins was

innocent, although psychologically vulnerable to threats and intimidation because of what Col. Anderson described as Ivins' self-consciousness and need for affirmation. *Id.* They concluded that a truly independent analysis of the entire FBI anthrax attacks investigation, not just the science, was needed. **Exhibit 11.**

Around mid-September of 2008, Col. Anderson compiled information that he believed would have absolutely transferred the responsibility for the anthrax attack letters to two labs other than USAMRIID. **Exhibit 11.** Col. Anderson's information was never reviewed or acted on by the USAMRIID Commander because, as Col. Anderson was in the process of bringing his information to the Commander's attention, Col. Anderson was informed, either directly by the Commander or by a colleague who served as an advisor to the Commander, that the USAMRIID commander had recently been visited by an entourage including the Secretary of the Army. The announced purpose of this high-level visit was to inspect first-hand security at USAMRIID. This delegation felt positive about USAMRIID security, but when the USAMRIID Commander questioned the FBI's Amerithrax investigation, he was told to "let it go." The Commander was also instructed by someone in this high-level delegation, possibly the Army Chief of Staff, to squelch any "internal investigations or questioning of the FBI." *See* **Exhibit 11.**

When the Lawyers' Committee obtained this information from Col. Anderson as part of its investigation leading to this Petition, the Lawyers' Committee was prompted to take a closer look at the FBI's Amerithrax case documents to see if there might be further evidence of a coverup consistent with, and perhaps explanatory of, the gag order that Col. Anderson reported was imposed by the Secretary of the Army. The Lawyers' Committee regrets to report that such evidence was found. That evidence is discussed below.

B. The Lawyers' Committee Has Discovered that the FBI Covered Up Key Evidence Pointing to the U.S. Army's Dugway Proving Ground and Government Contractor Battelle as Sources of the Anthrax Used in the Attacks, Sources More Likely than Dr. Ivins, and Concealed this Evidence from Congress Even When the FBI Director Responded to a Specific Information Request by Congress

1. It Was Not Just Dr. Ivins and a Few USAMRIID Scientists and Employees Who Had Access to Ames Anthrax that Contained What the FBI Considered to be the "Fingerprint" DNA Variants ("Morphs"); Personnel at Both Dugway and Battelle Had Access to this Same Anthrax Containing this DNA "Fingerprint" Found in the Anthrax in the Attack Letters

On September 16 and 17, 2008, the House Judiciary Committee and the Senate Judiciary Committee conducted "Amerithrax oversight" hearings consisting of questioning FBI Director Robert Mueller. **Exhibit 26.** Congressman Jerrold Nadler (D-NY) asked a key question. Salon.com journalist Glen Greenwald at the time recounted this as follows: "Nadler asked one of the most central questions in the anthrax case: he pointed out that the facilities that (unlike Ft. Detrick) actually have the equipment and personnel to prepare dry, silica-coated anthrax are the U.S. Army's Dugway Proving Ground and the Battelle Corporation, the private Central Intelligence Agency (CIA) contractor that conducts substantial research into highly complex strains of anthrax. Nadler asked how the FBI had eliminated those institutions as the culprits behind the attack. After invoking generalities to assure Nadler that the FBI had traced the anthrax back to Ivins' vial (which didn't answer the question), Mueller's response was this: I don't know the answers to those questions as to how we eliminated Dugway and Battelle. I'll have to get back to you at some point. Nadler pleaded: please try to get back to us with the answer quickly. Mueller replied: 'Oh, absolutely Congressman.'" <https://www.salon.com/2008/09/16/oversight/>

Attorney Barry Kissin notes that shortly thereafter, Nadler's question was put into writing and sent to the FBI with other questions from the House Judiciary Committee. Nadler's question read: "How, on what basis, and using what evidence did the FBI conclude that none of the

laboratories it investigated were in any way the sources of the powder used in the 2001 anthrax attacks, except the U.S. Army Laboratory at Fort Detrick, Maryland? Please include in your answer why laboratories that have been publicly identified as having the equipment and personnel to make anthrax powder, such as the U.S. Army's Dugway Proving Grounds in Dugway, Utah, and the Battelle Memorial Institute in Jefferson, Ohio, were excluded as possible sources.”

Seven months went by before the FBI issued this response:

Initially, the spores contained in the envelopes could only be identified as *Bacillus Anthracis* (Anthrax). They were then sent to an expert, who ‘strain typed’ the spores as Ames. Once the strain type was identified, the FBI began to look at what facilities had access to the Ames strain. At the same time, science experts began to develop the ability to identify morphological variances contained in the mailed anthrax. Over the next six years, new scientific developments allowed experts from the FBI Laboratory and other nationally recognized scientific experts to advance microbial science. This advancement allowed the FBI to positively link specific morphs found in the mailed anthrax to morphs in a single flask at USAMRIID. Using records associated with the flask, the FBI was able to track the transfer of sub samples from the flask located at USAMRIID to two other facilities. Using various methods, the FBI investigated the two facilities that received samples from the parent flask and eliminated individuals from those facilities as suspects because, **even if a laboratory facility had the equipment and personnel to make anthrax powder, this powder would not match the spores in the mailed envelopes if that lab had never received a transfer of anthrax from the parent flask.** (emphasis added))

Exhibit 27.

Attorney Kissin notes, and the Lawyers’ Committee must agree, that on its face, the FBI’s response is absurd. The response literally says that **after identifying “two facilities” that received samples of anthrax from the USAMRIID (Bruce Ivins’) flask**, these facilities were excluded as possible sources of the attack anthrax **because they “never received” anthrax from said flask.**

During the spring and summer of 2001, Bruce Ivins sent samples from flask RMR-1029 to both Battelle and Dugway. See **Exhibit 03; Exhibit 04; Exhibit 05**. Most of the science underlying the FBI's Amerithrax investigation and conclusions that Ivins was the anthrax attacks perpetrator is about matching or, as is now clear, about *pretending* to match, the genetic fingerprint of the attack anthrax to that of flask RMR-1029. **Exhibit 21; Exhibit 18; Exhibit 19**. Given that both Battelle and Dugway had anthrax from flask RMR-1029, Battelle and Dugway should have been (and were) no less incriminated by the FBI's "fingerprint morphs" scientific evidence (valid or not), than Dr. Ivins.

Dr. Paul Keim's 20-page interview with PBS, as well as FBI documents including a key search warrant affidavit and the FBI's Amerithrax Investigative Summary, clearly state that all of the labs in the U.S. (plus 3 outside the U.S.) that had been identified as holding Ames strain anthrax were asked to provide to the FBI, via subpoena or a consensual search, a sample of each Ames anthrax batch/production run/culture etc. that they had. **Exhibit 21; Exhibit 29; Exhibit 36**. The FBI collected 1,070 Ames samples. *Id.*

The FBI's 1,070 repository samples of Ames anthrax from the labs on the initial suspect list, or at least most of them, were subjected to DNA analysis initially for strain typing. **Exhibit 36**. The attack anthrax was confirmed as the Ames strain by Dr. Paul Keim's Arizona lab, and by the Center for Disease Control and Prevention (CDC). *Id.* Later, using more sophisticated DNA sequencing and analysis methods, most of these FBI repository samples were analyzed to determine if they contained the "fingerprint" morphs, unusual DNA variants, observed in the attack anthrax. **Exhibit 21; Exhibit 18; Exhibit 19**. Dr. Keim's lab had a role in extracting the DNA material for this second stage of the DNA analysis. **Exhibit 36**. But it was Dr. Claire Fraser-Liggett at the TIGR lab in Maryland that did the analysis to detect the presence or absence

of the “fingerprint” morphs in each of these samples. **Exhibit 36; Exhibit 21; Exhibit 40.** The National Academy of Sciences (NAS) National Research Council (NRC) reported that in addition to RMR 1029 being tested and showing the “fingerprint” morphs, Ivins’ RMR 1030 was also submitted and tested and found not to have the “fingerprint” morphs. **Exhibit 40.**

The FBI asserts that Ivins was justifiably treated as the prime suspect because he purportedly not only had access to, but controlled access to, the specific supply of B. anthracis from which, based on the DNA “fingerprint” morphs analysis, the presumed lone wolf attacker must have obtained a starting stock of B. anthracis that the attacker then grew and processed into the form ultimately used in the attack letters. **Exhibit 21; Exhibit 18; Exhibit 19.** This FBI assertion was not only factually and logically faulty, the evidence the Lawyers’ Committee has reviewed indicates that the FBI had reason to know that this assertion was false when the FBI made it.

The FBI bases this assertion on its DNA testing of samples of B. anthracis submitted from (most) labs that used this type of anthrax. *Id.* The FBI reported that only 8 of the 1,070 samples of B. anthracis Ames strain that labs submitted to the FBI’s Amerithrax investigation repository,² showed the presence of what the FBI considered the “fingerprint” morphs. *Id.*; **Exhibit 40; Exhibit 36.** The FBI further asserts that 1 of these “fingerprint” morphs positive samples was taken from RMR 1029 directly, 6 of these positive samples were taken from Ames anthrax stocks or cultures at USAMRIID that started with B. anthracis taken from RMR 1029, and 1 other positive sample came from Battelle’s lab, and that sample also was reported to be from a B. anthracis culture that started with B. anthracis taken from RMR 1029. **Exhibit 36; Exhibit 40; Exhibit 21; Exhibit 18; Exhibit 19.**

² As a result of the issuance of subpoenas and the conduct of consent searches.

Although the FBI acknowledges that one of the Ames anthrax samples it obtained from Battelle did show the FBI's "fingerprint" morphs, there is no indication the FBI rushed to inform Congress of this key fact in any supplemental response by the FBI Director to his prior misleading answer to Congress' inquiry as to how Dugway and Battelle were eliminated from suspicion by the FBI.

The Lawyers' Committee discovered some surprising evidence by comparing details in the voluminous FBI Amerithrax case documents to the (lengthy) NAS NRC report, including its footnotes. First, Ivins had two stocks of Ames anthrax. The first batch, which was labelled and tracked and controlled for FDA regulatory purposes as "RMR 1029", was a composite made up of a total of 1000ml of Ames anthrax, approximately 85% of which came to Ivins from the Army's Dugway Proving Ground in Utah, where it was produced, and the other approximately 15% was from Ivins "RMR 1030" Ames culture, produced in small batches by Ivins at USAMRIID. [Exhibit 12](#); [Exhibit 04](#); [Exhibit 13](#); [Exhibit 21](#).

The FBI had Ames anthrax samples from both RMR 1029 and RMR 1030 subjected to DNA analysis for the four FBI "fingerprint" DNA variants (mutations or morphs) which had been identified, among others, in the attack letters anthrax. RMR 1029 showed the morphs. [Exhibit 21](#); [Exhibit 18](#); [Exhibit 19](#). Significantly, RMR 1030 did not show the "fingerprint" morphs. [Exhibit 40](#).

Even without direct evidence from first-hand observations or DNA testing, it may be logically deduced with certainty that the Dugway-made Ames anthrax provided to USAMRIID for RMR 1029 contained the "fingerprint" morphs. This is so because, as Arthur Conan Doyle's Sherlock Holmes character is famous for stating, "When you have eliminated the impossible, whatever remains, however improbable, must be the truth." The FBI admits, and the NAS NRC

confirmed, that RMR 1029 had only two inputs. Those two inputs were: 1) Dugway-made Ames anthrax, and 2) Ames anthrax from Ivins' RMR 1030 Ames stock. **Exhibit 21; Exhibit 40; Exhibit 04; Exhibit 13; Exhibit 12.** RMR 1030 was tested by the FBI and found to not contain the “fingerprint” morphs. **Exhibit 40.** Therefore, what “remains” as the source for these “fingerprint” morphs is Dugway.

DNA testing could have been, and should have been, conducted on the Dugway samples from Dugway's Ames anthrax production runs for RMR 1029. **Exhibit 40.** The FBI, in a consensual search at Dugway, collected samples of Dugway Ames anthrax from the batches produced for USAMRIID that went into RMR 1029. **Exhibit 22.** The NRC report confirms that a Dugway official involved in those production runs admitted that he observed the presence of many morphs in Dugway's initial small-scale cultures of the seed stock Ames anthrax provided to Dugway by Ivins from USAMRIID anthrax, and that those small-scale growths were fed into the Dugway fermenters for the large-scale production runs for the RMR 1029 Ames anthrax without any effort to remove or avoid these morphs. **Exhibit 40.**

Dugway did have samples from its production runs for the RMR 1029 Ames anthrax and the FBI obtained at least some of those samples. So, why did the FBI not report to the public and Congress that USAMRIID and Dr. Ivins could not be singled out as having the only Ames anthrax that contained the “fingerprint” morphs? Disturbingly, the answer the Lawyers' Committee has discovered is that the FBI concocted a scientifically invalid excuse for avoiding conducting its DNA analysis for the “fingerprint” morphs on Dugway's samples.

A close look at the FBI's voluminous Amerithrax documents revealed that in the FBI's report of their consensual search of Dugway, the samples that Dugway made available to the FBI from Dugway's RMR 1029 Ames anthrax production runs were samples that were dead, i.e. not

viable, not capable of being grown. **Exhibit 22**, page 5. That fact alone, while suspicious, would not have, from a scientific perspective, and should not have, from an investigative perspective, precluded the FBI from conducting its DNA “fingerprint” morphs tests on these Dugway samples. The fact that an organism is dead does not prevent its DNA from being extracted and analyzed. **Exhibit 40**.

However, the National Academy of Sciences’ National Research Council reported that the FBI decided it would not conduct its “fingerprint” morphs DNA tests on any samples that were not viable. **Exhibit 40**. The NRC study faulted the FBI for its mysterious and arbitrary decision not to conduct this DNA analysis on any of its Ames anthrax samples obtained by its subpoenas and searches that contained non-viable (dead) cells or spores. **Exhibit 40**. It is not clear that the NRC discovered the full significance of the FBI’s arbitrary adoption of this approach.

This arbitrary decision by the FBI resulted in the FBI not conducting its DNA “fingerprint” morphs analysis on these Dugway samples (or conducting these tests but concealing the test results) from the Dugway production runs that supplied 85% of the Ames anthrax that went into RMR 1029. Such DNA analysis would, with scientific and logical certainty, have confirmed that the anthrax at Dugway contained the “fingerprint” morphs that the FBI has relied on as its purported basis to narrow its investigation to Ivins and a few USAMRIID personnel.

The NRC’s statement that the FBI’s decision, to not do the “fingerprint” morphs DNA analysis on any samples that were non-viable, was arbitrary, and unnecessary from a scientific point of view, is an understatement. This FBI decision led to Dugway’s RMR 1029 production runs samples never getting DNA tested for the “fingerprint” morphs (or having those test results concealed). This failure to test in turn allowed the FBI to pretend that there was no “fingerprint” morphs DNA evidence pointing to Dugway, when in truth that evidence, with scientific and

logical certainty, must have existed and been obtainable.

This evidence that the FBI so disingenuously swept under the rug via its arbitrary investigation testing policy sleight-of-hand would have been a smoking gun pointing to Dugway as having the Ames anthrax containing the FBI's identified "fingerprint" morphs found in the attack anthrax. Thus, the FBI's claimed smoking gun DNA evidence did not just define a small group of suspects that included Ivins and some of his colleagues at USAMRIID, it actually defined a large group of hundreds of suspects which included personnel at both Dugway and Battelle, and other entities that received RMR 1029 Ames anthrax (or other Ames anthrax containing the "fingerprint" morphs) from either of these two labs.

The FBI, as noted, admitted that one sample from Battelle showed the "fingerprint" morphs. But the FBI concluded that the (assumed) lone wolf attacker had no opportunity to steal any Battelle Ames anthrax or process it into the final form of the attack anthrax because of Battelle's reported official policy that no one was allowed to work alone with anthrax at Battelle. **Exhibit 21.** This FBI logic is clearly faulty for a number of reasons. First, a thief is not going to follow the rules. Second, there is no reason to assume that there was only one anthrax attacker. The lone wolf assumption has no basis in evidence and flies in the face of evidence to the contrary. Third, this erroneous FBI conclusion also assumes that Battelle reported honestly and knowledgeably when it claimed that there were no violations of the two-man rule by Battelle employees working with anthrax.

The above evidence and analysis should have been disclosed to Congress by FBI Director Mueller when he replied in the hearing, or when the FBI replied in the follow-up letter to the Judiciary Committee's inquiry as to what basis the FBI had to eliminate Dugway and Battelle personnel from the suspects list. Based on the Lawyers' Committee's investigation and analysis,

including the above, that omission does not appear to have been accidental. Whether this material misrepresentation to Congress, by knowing omissions, was one the FBI Director was responsible for, or whether the FBI Director himself was intentionally misinformed at the time, remains to be determined.

Although Col. Anderson did not have available to him at the time all of the evidentiary details reported in this Petition, he did not beat around the bush in stating his opinion regarding the FBI's removal of Dugway from its list of suspects. Col. Anderson stated:

In my collection of news media there is a statement that Dugway/Battelle were removed from suspicion because they turned in anthrax cultures of a different strain than Ames. Give me a break, Bruce's RMR 1029 started with spore material made at dugway using their fermentor. Bruce's lab did not have a fermentor and all of his cultures were made using shaker flask incubators which make small lots. The material Bruce produced and added to the Ames from Dugway was identical to the material in another Reference batch of Ames he made and that one had none of the 4 mutations. Therefore, one would expect that Dugway had Ames which had a higher frequency of spores with the 4 mutations than that of the RMR 1029 flask in Bruce's lab.

The Congressmen are on to something by asking about Dugway and Battelle. It surprises me that the bureau responded that those studies were secret. Regardless, the existence of those studies has been in the public domain since September 4, 2001. The details of how these were eliminated from suspicion are very relevant to the case, especially with regard to whether they were scrutinized as intensely as was Bruce Ivins.

See **Exhibit 11**.

In addition to withholding material evidence from Congress, the FBI also refused to provide the NRC certain information the NRC requested for its review of the FBI's Amerithrax science. **Exhibit 40**. FBI Director Mueller, facing widespread criticism of the FBI's investigation, had himself commissioned the NAS NRC to undertake a review of the scientific approach used during the investigation. The Lawyers' Committee presumes that when Director Mueller commissioned the NRC to undertake this review of the FBI's investigation science that

he intended to use the results of the NRC review to improve the investigation and ensure that the FBI completed the inquiry using valid scientific methods.

However, the FBI formally closed its investigation while the NAS NRC study was still in progress. **Exhibit 17; Exhibit 40.** Given the NAS NRC's finding that the FBI's DNA analyses could not with scientific certainty be relied on to identify a specific anthrax culture or stock, such as Ivins' RMR 1029 flask from which the attack anthrax was derived, directly or indirectly, see **Exhibit 40**, the FBI's decision to close its investigation appears clearly premature and at best ill advised.

The NRC's review was conducted under significant constraints and then ignored by the FBI. The constraints included the NAS NRC not receiving or reviewing classified material; the FBI providing information that was compartmentalized and documents that were redacted, the FBI providing "terse" responses to NAS NRC questions on scientific matters or refusing to respond on the grounds that doing so would "intrude" into the criminal investigation or that the NRC's question went beyond the scope of its mission; and the FBI failing to provide any "written explanatory materials showing the NAS NRC committee why the FBI conducted the analyses they did and how they contributed to the FBI investigations and conclusions." **Exhibit 40.** As can be seen from the discussion of other evidence in this petition, the FBI's conduct in not fully cooperating with the NRC and then closing the FBI's investigation before the NRC's inquiry was complete and before the NRC's findings and recommendations were released, is consistent with a broader pattern of FBI misconduct.

Either the Government Accountability Office (GAO), see **Exhibit 30**, and NRC, see **Exhibit 40**, were correct in concluding that the FBI could not rely on the DNA testing for the "fingerprint" morphs to conclude with any scientific certainty that the attack anthrax was taken

from Ivins' RMR 1029 flask, or the FBI was correct in relying on that newly developed DNA analysis methodology (see [Exhibit 21](#); [Exhibit 18](#); [Exhibit 19](#)). If the GAO and NRC are correct, then the centerpiece of the FBI's case against Ivins disappears for lack of reliable scientific evidence.

If the GAO and NRC are not correct, and the FBI's DNA analysis for the "fingerprint" morphs is scientifically reliable, then the disturbing problem remains that the FBI disingenuously decided to not test non-viable samples using this DNA technique which left the Dugway Ames anthrax samples from its RMR 1029 production runs conveniently untested (because Dugway only provided non-viable samples to the FBI). This, on its face, appears to be a fraud designed to avoid having to publicly disclose that Dugway also had Ames anthrax that matched the "fingerprint" of the anthrax found in the attack letters. Once that disclosure had been made, then again, the centerpiece of the FBI's case against Ivins again disappears. So, either the FBI had no meaningful evidentiary case against Ivins (nothing besides speculative circumstantial evidence) and proceeded against Ivins through incompetence and negligence, or the FBI knew it had no meaningful case against Ivins and engaged in fraud to cover up that fact.

2. The FBI Also Had Evidence that the B. Subtilis Contamination Found in the First Wave of Anthrax Attack Letters Tracked Towards Dugway, and the Silicon Content of the Attack Anthrax Tracked Towards Battelle, But Failed to Explain this in Initially Answering Congress's Request for Information, or in Any Later Supplemental Answer to Congress

Had the FBI answered the Congress' inquiry about Battelle and Dugway forthrightly, it would have been clear to Congress that rather than the evidence narrowing the field of suspects to exclude Battelle and Dugway, the reverse would have been true. To make a long story short, for the moment (the longer story to come in the Lawyers' Committee's forthcoming federal

grand jury petition), the *B. subtilis* contamination, the silicon inside the exosporium on the *B. anthracis* spore coat in the second attack wave anthrax, and the fine dry powder nature of some of the attack anthrax immediately take the suspicion spotlight away from Ivins and shine it clearly on Dugway and Battelle, and the CIA and/or the Defense Intelligence Agency (DIA). *See, e.g.,* **Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 46; Exhibit 43; Exhibit 44**. Ivins could not have created the fine dry powder attack anthrax, or the attack anthrax with a silicon coating inside the exosporium on the spore coat because he lacked equipment, expertise, and time to do either. **Exhibit 01; Exhibit 02; Exhibit 07; Exhibit 12; Exhibit 15; Exhibit 31; Exhibit 32; Exhibit 46**.

But Battelle could create a fine dry powder anthrax, as could Dugway. **Exhibit 32; Exhibit 46**. Battelle was involved in the secret biowarfare work reported in the New York Times (September 4, 2001, New York Times article entitled “U.S. Germ Warfare Research Pushes Treaty Limits”), secret studies admitted to Col. Anderson by the USAMRIID Commander which involved using dry anthrax spores.

Col. Anderson reports that his final meeting with Dr. Ivins occurred on July 10, 2008, the day he attended a conference in their main conference room. Before one of the sessions of the conference, Ivins came to Col. Anderson’s office and wanted to talk about two things related to the Anthrax investigation. The first was his concern that the FBI was constantly stalking him and that he knew that the FBI had tried to bribe or coerce his son and daughter to claim he was guilty. The second was his concern about his former USAMRIID colleague, the late Perry Mikesell, who then worked at Battelle. **Exhibit 08**.

Ivins had stayed in touch with Perry Mikesell after Mikesell left USAMRIID to work for Battelle Laboratories in West Jefferson, Ohio. Mikesell had become agitated about secret agency

work that was being done in and around the Battelle laboratory in Ohio. **Exhibit 08; Exhibit 12.** Some of this secret work was reported by Ivins to Col. Anderson to include the testing of means by which SUVs could be blown up. **Exhibit 08.** Other concerns were about the work Mikesell was required to do. Three secret experiments involving anthrax, if known outside the laboratory, could be regarded as having violated the treaty concerning biological warfare. William Broad and his colleagues at the New York Times revealed these DOD/DIA- funded studies that were being conducted at the Battelle Laboratory in the aforementioned article published on September 4, 2001. Perry Mikesell is reported to have begun drinking heavily, and he died of complications of alcoholism on October 19, 2002. Ivins mentioned Mikesell's death to Col. Anderson.

Ivins also did not have anthrax with *B. subtilis* (aka *B. globigii*) contamination or a *B. subtilis* contaminated spore production machine, called a fermenter, but Dugway did. **Exhibit 40; Exhibit 12.** The *B. subtilis* contamination (called *B. globigii* in the FBI Dugway search report) was so abundant during the Dugway production runs for RMR 1029 that the anthrax produced from several of those runs had to be destroyed (autoclaved) and were not sent to USAMRIID. **Exhibit 22.** Battelle obtained some of their Ames anthrax from Ivins/USAMRIID, but according to Col. Anderson also got some of their Ames anthrax from Dugway. In addition, the CIA had apparent access to Ames anthrax from Battelle in Ohio, and likely also Battelle at Dugway.

The NRC reported that the New York Post attack letter anthrax contained 10% silicon, most of it between or outside the spores (not within the exosporium). **Exhibit 40.** The Leahy attack letter contained 1 to 2% silicon, located within the exosporium on the spore coat. *Id.* The NRC noted that Ivins RMR 1030 Ames anthrax did not resemble the attack anthrax chemically or physically. *Id.* The NRC reported that only a few spores of the RMR 1030 had silicon and the

RMR 1029 had no silicon. *Id.* The NRC concluded the obvious, **that the attack letter anthrax (the actual “weapon”) could not have been taken directly from RMR 1029 (or RMR 1030).**

Id. A separate growth of anthrax would have to have been prepared to account for the *B. subtilis* contamination, the silicon content, and the fine dry powder form of the attack anthrax used in the letters. *Id.*

D. At Key Points in the FBI’s Anthrax Attacks Investigation, the FBI Allowed Entities that Were Legitimate Suspects to Control the Submission and Analysis of Key Evidence that Might Incriminate Them – That Is, the FBI Allowed a Potential Fox to Guard the Hen House -- in the Investigation of the First Biowarfare Attack on Congress in the History of the United States

As the NAS NRC pointed out, there was a major flaw in the FBI’s investigatory approach in regard to collecting the anthrax samples from the 15 U.S. labs and 3 foreign labs identified as holding Ames anthrax cultures or stocks. The NRC, in its report, describes what is a classic fox-guarding-the-hen-house problem with the FBI’s investigation – that the FBI did not send anyone to oversee the sample collection or preparation by the labs, and a perpetrator working at any of those labs involved in the attacks could have hidden or destroyed an incriminating sample or simply failed to send it in. **Exhibit 40.**

Further, Battelle was allowed by the FBI to do a key investigation of the *B. subtilis* contamination of the attack anthrax. **Exhibit 40.** Battelle was also allowed to do the investigation of whether the small particle sizes observed in the second and more lethal wave of attack letters required special processing. **Exhibit 40; Exhibit 46.** And, Battelle was also allowed to conduct a portion of the DNA analysis on the anthrax samples collected from the various labs that used Ames anthrax, part of the DNA work the FBI relied on to justify focusing its investigation on Dr. Ivins and USAMRIID (and away from Battelle). **Exhibit 40.** Dugway Proving Ground in turn

was also relied on by the FBI to conduct key scientific work in support of the investigation regarding the silicon found in the attack anthrax. **Exhibit 40; Exhibit 46.**

During the FBI's 2008 press conference a scientist identified as the FBI's "expert on processing" was introduced at the beginning of the briefing by FBI Lab Director Hassell as "the associate laboratory director of the National Bioforensic Analysis Center." Later in the briefing when that scientist introduced himself, he stated that he was "from the U.S. Naval biodefense community," that he "became a scientific consultant to the FBI in the early stages of the Anthrax investigation," and that he "helped to establish the National Bioforensic Analysis Center . . . to support Homeland Security and the FBI." **Exhibit 18.** What was not disclosed during this conference is the fact that the Department of Homeland Security contracted with Battelle to manage and operate the National Bioforensic Analysis Center at Fort Detrick, see, e.g., <https://www.battelle.org/newsroom/press-releases/press-releases-detail/battelle-selects-new-director-for-national-biodefense-analysis-and-countermeasures-center> and this key FBI consultant was a scientist employed by Battelle.

D. The Former Director of the FBI's Anthrax Attacks Investigation Has Disclosed Significant Flaws in the FBI's Investigation, Flaws that the Lawyers' Committee Concludes, in Light of the New Evidence Reported Here, May Have Been Intentional Attempts to Obstruct the Investigation

FBI Agent Richard Lambert served as the director of the FBI's Amerithrax investigation from 2002 to 2006. When he left the investigation, which continued for four more years, he prepared and submitted a 2,000-page report, titled "Interim Major Case Summary" (IMCS), in which he detailed his numerous concerns about how the FBI had mishandled this important investigation, and what some of the specific flaws were that he observed in this FBI inquiry. Agent Lambert later brought a lawsuit alleging retaliation against him by the FBI in which he

disclosed a number of these flaws in the FBI's Amerithrax investigation. In Lambert's retaliation Complaint, at pages 24-26, Lambert alleged, *inter alia*, the following:

- 1) The FBI's Washington Field Office (WFO) persistently understaffed the Amerithrax investigation;
- 2) The FBI's WFO diverted and transferred two Ph.D. Microbiologist Special Agents from their key roles in the investigation to fill billets for an 18-month Arabic language training program in Israel;
- 3) The FBI's WFO insisted on staffing the Amerithrax investigation principally with new agents recently graduated from the FBI Academy resulting in an average investigative tenure of only 18 months, with 12 of 20 agents assigned to the case having no prior investigative experience at all;
- 4) The FBI's WFO's agent in charge threatened to retaliate if Agent Lambert disclosed the understaffing to FBI Headquarters;
- 5) FBI Director Mueller mandated that the Amerithrax investigation be "compartmentalized" by stove piping the flow of case information and walling off task force members from those aspects of the case not specifically assigned to them;
- 6) The FBI Laboratory refused to provide timely and adequate scientific analyses and forensic examinations in support of the investigation;
- 7) FBI Headquarters imposed politically motivated communication embargos on him and his team;
- 8) Agent Lambert, in directing the Amerithrax investigation, experienced intransigence from the FBI's WFO's executive management, and apathy and error from the FBI Laboratory;

9) The FBI WFO evicted the Amerithrax Task Force from the WFO building in downtown Washington and relegated it to Tysons Corner, Virginia, to free up space for Attorney General Ashcroft's new pornography squads;

10) The FBI Laboratory deliberately concealed from the Task Force its discovery of human DNA on the anthrax-laden envelope addressed to Senator Leahy, and the Lab initially refused to perform comparison testing (which purportedly later showed the DNA to be from an FBI Lab technician); and

11) The FBI proceeded to finger Dr. Bruce Ivins of USAMRIID as the anthrax mailer and railroad his prosecution notwithstanding the existence of daunting exculpatory evidence that would have prevented a jury from finding Ivins guilty beyond a reasonable doubt.

12) Following the announcement of its circumstantial case against Ivins, the FBI crafted an elaborate perception management campaign to bolster its assertion of Ivins' guilt. These efforts included press conferences and highly selective evidentiary presentations which were replete with material omissions.

See Exhibit 47.

These numerous flaws in and unreasonable constraints imposed by FBI leadership on the FBI's own Amerithrax investigation clearly significantly obstructed and impeded Agent Lambert's efforts to conduct an effective investigation of the anthrax attacks. Agent Lambert, or others, may have attributed these obstructions to incompetence, agency politics, bureaucracy, and internal agency territorialism. However, in light of the additional evidence disclosed by the Lawyers' Committee in this Petition, this pattern of FBI obstruction of Agent Lambert's efforts to diligently pursue the Amerithrax investigation can be seen in a different, and more disturbing, light.

In addition, there is reason to believe that someone in the FBI made a concerted (but apparently only partially successful) effort to make Agent Lambert's 2,000-page Interim Major Case Summary disappear. In the Freedom of Information Act lawsuit *Dillon v. U.S. Department of Justice*, United States District Court for the District of Columbia, Civil Action No. 17-1716-RC, the FBI reported that it was initially unable to find Agent Lambert's 2000-page Interim Major Case Summary, which was reported to contain 16 pages on Dr. Ivins. The FBI first conducted an index search of the FBI's Central Records System (CRS) under "Interim Major Case Summary" in the digital case file to which it had been uploaded in 2006 by Agent Lambert himself. Agent Lambert's IMCS could not be found there. Then the FBI conducted a search of the physical case file at the Washington Field Office. Agent Lambert's IMCS could not be found there either. The FBI finally, reportedly, found a copy at its Quantico Lab division. However, this key document has yet to be publicly released by the FBI.

Thus, someone may have attempted to destroy or conceal the only known FBI compilation of exculpatory evidence regarding Dr. Bruce Ivins. Until that 2,000-page IMCS by Agent Lambert is released to the public or to Congress, it will remain unknown to what extent that IMCS corroborates the Lawyers' Committee's findings and conclusions here (and vice versa). Although this IMCS report was withheld in the aforementioned FOIA case as deliberative process privileged, the FBI would have no legal basis for withholding it in response to a subpoena issued by Congress.

Former FBI Agent Lambert also points out in his retaliation Complaint that the FBI ordered him not to speak with the staff of the CBS television news magazine "60 Minutes" or investigative journalist David Willman, after both requested authorization to interview Lambert. [Exhibit 47](#), Lambert retaliation Complaint, page 26.

E. A Review of the Evidence Leads the Lawyers' Committee to Conclude that Dr. Ivins was Scapegoated by the FBI

RMR 1029 was represented by the FBI as having remained in Ivins' possession and under Ivins' control in his lab, see [Exhibit 21](#), [Exhibit 18](#), and [Exhibit 19](#), but USAMRIID scientists confirm that this was not the case. [Exhibit 12](#). RMR 1029 was stored sometimes in Ivins' lab and sometimes in another USAMRIID building and the room in that other building in which RMR 1029 was sometimes stored was not locked. [Exhibit 12](#). Consequently, not only did the FBI have no basis to exclude hundreds of Dugway and Battelle (and CIA/DIA personnel) from its suspect list based on access to Ames anthrax from RMR 1029 or other Ames anthrax containing the fingerprint morphs, as discussed above, the FBI also had no reason to exclude an additional 100 or more USAMRIID employees who had such access to 1029.

The FBI claims Ivins changed his RMR 1029 receipt form to reflect his RMR 1029 was never stored in Building 1412. [Exhibit 21](#). However, Col. Anderson has reported that key alterations in this revised form are not in Ivins' handwriting. [Exhibit 12](#). This form may have been tampered with in an effort to provide (false) evidence in support of the FBI's factually incorrect claim that few people at USAMRIID had access to RMR 1029 because Ivins purportedly controlled access to it.

Given the scientific evidence available to the FBI regarding the characteristics of the anthrax used in the second wave of attacks, and what expertise, specialized equipment, and time it would have taken to produce it, the FBI was in a position to know that Dr. Ivins could not have produced this type of anthrax nor would he have had access to this type of anthrax or the necessary equipment. [Exhibit 31](#); [Exhibit 15](#); [Exhibit 01](#); [Exhibit 02](#); [Exhibit 32](#); [Exhibit 46](#). Dry anthrax was not used at, and not found at, Ivins' lab. Nor was anthrax contaminated with *B. subtilis*

found in Ivins' lab. **Exhibit 40.** Nor was anthrax found in Ivins' lab that had high levels of silicon either inside the exosporium of the spores or outside of the exosporium. **Exhibit 40.** These were all key characteristics of some or all of the attack anthrax.

Dr Patricia Worsham of USAMRIID testified in the Robert Stevens (the first anthrax victim) litigation that USAMRIID did not have the equipment that would have allowed Ivins to make the attack anthrax, and the government itself filed documents that stated the same conclusion (changing its position years after the fact to now alleging Ivins must have made the attack anthrax somewhere else, without any evidence of where that might have been). **Exhibit 44;** **Exhibit 43.**

The spores used in the attacks were not only dry, pure and fine, they had sophisticated additives. According to Dr. Martin Hugh-Jones, Dr. Barbara Hatch Rosenberg, and Stuart Jacobson writing in the *Journal of Bioterrorism & Biodefense* "all the available evidence can be explained by the hypothesis that the spore coats were silicone-coated using a tin catalyst. ... "[P]otential procedures that might be applicable for silicone coating of spores, barely touched on here, are complex, highly esoteric processes that could not possibly have been carried out by a single individual." The authors of the *Journal of Bioterrorism & Biodefense* article concluded that in order to create the attack spores, the perpetrators "would require a laboratory with specialized capabilities and expertise not found at USAMRIID." **Exhibit 32.**

The FBI identified a mailbox in Princeton, New Jersey (this identification has never been proved) as the place from which the attack letters were mailed. The Bureau argued that Ivins *could* have made the drive in his car, but they had no eyewitness or other evidence to support that he *did* make the drive while carrying anthrax. Searches for anthrax spores in his car and home produced no anthrax spores. **Exhibit 21.**

The FBI's apparent conclusion that Ivins had better opportunity to mail the attack letters than Battelle or Dugway personnel based on geography – distance from the New Jersey mail box at issue -- assumes a lone wolf attacker, rather than a team that was either mobile or geographically spread, an FBI assumption that has no basis in evidence. The FBI's theory that a lone wolf was the perpetrator also ignores contrary evidence including that threat letters containing fake anthrax were mailed from Florida at a time before the public knew that any of the real anthrax letters had been sent. FBI Director Mueller reported over 2,100 fake anthrax threats occurred in the first two weeks of October 2001. **Exhibit 16.** "Hoax" letters mailed prior to the public knowing of the real anthrax attacks could not have been from mere copycats, and mailings from Florida, or other countries, would have necessitated a confederate. In addition, the fact that there were two attacks separated in time using two versions of Ames anthrax that differed both chemically and physically, suggests more than one person was involved, as does the apparent use of then-state-of-the-art microencapsulation technology using silicon compounds.

The motives the FBI attributes to Ivins were personal and speculative and are dwarfed by comparison with the motives of members of the military-industrial-intelligence complex which include justifying their huge federal budgets and government contracts, covering up or justifying potential biowarfare treaty violations, and promoting a war on terror that reaped huge profits for military contractors.

The FBI made much of Ivins having submitted a second sample from RMR 1029 (on the FBI's request) that did not show the "fingerprint" morphs, arguing that he was trying to conceal his guilt, but Ivins had already submitted a prior sample from RMR 1029 that did show the morphs. **Exhibit 40; Exhibit 36.** Thus, there is no factual or logical basis for accusing Ivins of

tampering with or concealing evidence. Based on the new evidence discussed above, the same cannot necessarily be said about the FBI or some of its contractors.

Finally, Dr. Ivins was given at least one lie detector test -- and passed. The FBI's (by now predictable) response was that he may have simply been skilled at fooling the polygraph machines. **Exhibit 21.**

III. THERE IS A CRITICAL NEED FOR BOTH A CONGRESSIONAL INVESTIGATION AND AN INDEPENDENT COMMISSION INQUIRY INTO THE 2001 ANTHRAX ATTACKS

The 2001 anthrax attacks were intended to kill or coerce at least two U.S. Senators in order to either rush the vote on the Patriot Act or ensure its passage. A number of members of Congress have previously expressed concerns about the inadequacies in the FBI's Amerithrax investigation and some have called for either an inquiry into the anthrax attacks by Congress itself, or by an independent commission established by Congress, or both. These criticisms of the FBI's investigation, and calls for a new independent investigation, have been echoed by a number of Army scientists from USAMRIID and a number of independent scientists.

On August 9, 2008, the Washington Post published an editorial stating the position of the Washington Post on the issue. This editorial stated, *inter alia*:

"There are a lot of armchair detectives and instant experts out there formulating opinions not based on a full set of the facts," an FBI official objected on Thursday. True enough -- and all the more reason to give a full set of the facts to someone who can get out of the armchair. But to whom?

Congress definitely has a role to play. Investigative hearings could shed light on Fort Detrick's security policies and on how Mr. Ivins managed to hold on to his clearance. They could look at policy issues, such as whether the expansion of bioterrorism research has perversely increased the risk of an accident or attack. They could examine FBI methods in the agency's investigation of both Mr. Ivins and Steven J. Hatfill, another scientist who came under FBI suspicion and who eventually won a \$5.8 million settlement from the government.

But Congress may not be best positioned to review the scientific and forensic details of the FBI investigation. An independent inquiry that can work painstakingly outside the limelight is called for. The Justice Department's office of inspector general, although overworked already, has shown under Glenn A. Fine that it can conduct such sensitive probes with thoroughness and fairness. Alternatively, a retired judge could be appointed to lead a commission, which could in turn draw on the National Academy of Sciences and other experts. In either case such an inquiry, if it found holes in the investigation, could document them without taint of politics. If it validated the FBI's work, it would reassure the nation that no killers were still at large and put conspiracy theories to rest.

Exhibit 45.

On October 18, 2011, the New York Times published an editorial stating the position of the New York Times on the issue. This editorial stated, *inter alia*: “The Government Accountability Office needs to dig deeply into classified materials to judge how well the evidence holds up. Otherwise, Congress ought to commission an independent assessment to be sure there are no culprits still at large.” **Exhibit 41.**

It is clear from the evidence disclosed by the Lawyers’ Committee in this Petition that key evidence has been withheld from Congress and the American people by the FBI, and likely by the Department of Defense (and by the CIA and DIA) as well. One prime example is FBI Agent Lambert’s 2,000-page report. The public will likely never see this 2,000-page IMCS report by the FBI’s former Amerithrax investigation director unless Congress exercises its authority to request it and, if necessary, subpoena it.

Neither the public, the press, or the Congress have had their legitimate questions about the FBI’s Amerithrax investigation answered, and there is too much stake to allow those questions to remain unanswered. Both the New York Times and the Washington Post have stated the concern that there remains a serious possibility that the perpetrators of these horrendous crimes remain at large. The Lawyers’ Committee concurs, except at this point, the Lawyers’ Committee would

revise the statement of this concern to be a high probability that the perpetrators remain at large.

Based on the above evidence and analysis, neither the FBI nor the Department of Justice are in a position to conduct a new independent, unbiased, trustworthy investigation into the 2001 anthrax attacks. Only Congress, an independent commission, and/or an independently appointed special counsel could accomplish this critical undertaking. The Lawyers' Committee respectfully requests that the Congress take all actions necessary to see that such independent investigations are conducted.

IV. CONCLUSION

Based on the evidence and scientific and expert opinions referenced herein and attached, and based on further evidentiary details that will be described in an upcoming federal grand jury Petition to be filed in October 2020 by the Lawyers' Committee, the Lawyers' Committee concludes, regrettably, that the FBI's investigation was more than misguided or negligent. The FBI's investigation was corrupted and obstructed.

The FBI's Amerithrax investigation not only failed to identify the real perpetrators of these anthrax attacks, it had the effect and apparent intent of obstructing a meaningful investigation of these crimes. The consequence of this intentional misdirection of the Amerithrax investigation was that the real perpetrators were protected from investigation, discovery, arrest and prosecution – AND REMAIN AT LARGE TODAY.

The NAS NRC report found that the scientific evidence developed by the FBI was not sufficient to support with any certainty the FBI's stated conclusion that the attack letters anthrax must have been grown and processed after being taken from RMR 1029 or after being taken from another Ames anthrax stock that was itself taken from RMR 1029. That is, there is no

scientific certainty that the attack anthrax could not have been grown and processed after being taken from some other lab that had a supply of Ames anthrax (such as Dugway or Battelle).

The GAO, at the request of Congress, did their own inquiry regarding the FBI's anthrax sampling and analytical methods and found that such methods did not support the level of certainty that the FBI attributed to its anthrax sampling and analytical results. **Exhibit 30.**

The Lawyers Committee, for the reasons stated herein, now joins this chorus of voices calling for a new independent inquiry into these disturbing and yet to be solved anthrax attack crimes. These terrible and tragic attacks involved not only the murder of five civilians, and injury to many more, not to mention the terror created nationwide, these attacks also involved the attempted assassination of at least two United States Senators. Because these attacks against the United States government were, based on the available evidence, perpetrated by persons within the United States and likely by persons formerly or currently employed by the government or a government contractor, these anthrax attack crimes also involved the crime of treason. Treason is both a statutory crime, see 18 U.S.C. 2381, and defined as a crime in the Constitution.

Whether the acts of then-government officials to corrupt and obstruct the "Amerithrax" investigation, and cover-up key aspects of these crimes, also involved treason, remains to be fully investigated and determined. Whether treason is found or not, government misconduct was clearly involved in the manner in which the FBI conducted its investigation. This misconduct, criminal or not, created additional victims, including Dr. Ivins and his family.

In addition to the fear and suffering experienced by the anthrax attacks' victims, their families, and the general population of the United States, who were terrorized by the anthrax attacks on the heels of being traumatized by the 9/11 attacks, the anthrax attacks had two additional important, and intended, consequences. First, the anthrax attacks were used,

disingenuously, to throw suspicion on Afghanistan and Iraq and thus helped facilitate the United States' invasion of these two countries and the garnering of political and public support for these wars and the on-going war on terror.

Second, the anthrax attacks were used to ensure an unreasonably rushed passage of the USA Patriot Act, which might not have passed had the Congress had time to be more thorough and thoughtful in reviewing the Act's implications for and impacts on civil and constitutional rights, at least not in the constitutionally troublesome form that it did pass. The Patriot Act, as we now better understand, gave substantially increased power to the federal government, including intelligence agencies, while reducing rights and freedoms of the general population of the United States.

Thus, an effective congressional investigation, independent commission, and special counsel inquiry into these anthrax attacks and public exposé of the truth regarding these attacks is necessary to bring the perpetrators of these crimes to justice. Such independent investigations would also substantially assist this country in getting back on a more just, peaceful, and constitutional course, and in re-establishing some badly needed transparency and accountability in the Executive Branch of the government of the United States.

The Lawyers' Committee's investigation of this matter is on-going, and the Lawyers' Committee will update Congress with any significant new developments.

Respectfully submitted,

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EXHIBIT LIST

- Exhibit 01**, Dr. Jeffrey J. Adamovicz Declaration.
- Exhibit 02**, Col. (Ret.) Brett K. Purcell, Ph.D., M.D. Declaration.
- Exhibit 03**, Anthrax-Shipping Log.
- Exhibit 04**, RMR 1028 1029 1030 Records from Regulatory Studies Branch.
- Exhibit 05**, RMR 1029 Working Log with Col. Anderson comments.
- Exhibit 06**, Col. Arthur O. Anderson, M.D. 2008 MFR re WSJ.
- Exhibit 07**, Col. Arthur O. Anderson, M.D. 2008 MFR re Investigation Hearings (Redacted).
- Exhibit 08**, Col. Arthur O. Anderson, M.D. 2008 MFR re Perry Mikesell and Battelle.
- Exhibit 09**, FBI Director Mueller's answer to Congress with Col. Anderson comment.
- Exhibit 10**, NY Times, Sept. 18, 2008, Senator, Target of Anthrax Letter, Challenges FBI Finding.
- Exhibit 11**, Col. Arthur O. Anderson, M.D. Sept. 18, 2008 memo.
- Exhibit 12**, Col. Arthur O. Anderson, M.D. 2009 Analysis of Anthrax Letter Evidence, corrected.
- Exhibit 13**, Col. Arthur O. Anderson, M.D. Message re different RMR 1029 forms.
- Exhibit 14**, Col. Arthur O. Anderson's Curriculum Vitae.
- Exhibit 15**, Col. Arthur O. Anderson Declaration.
- Exhibit 16**, 2001 Oct 16 FBI Director Mueller statement on Anthrax Investigations, noting 2,100 fake anthrax incidents in first 2 weeks of October.
- Exhibit 17**, Justice Department and FBI Announce Formal Conclusion of Investigation.
- Exhibit 18**, FBI Science Briefing August 18, 2008.
- Exhibit 19**, FBI Transcript of Amerithrax Investigation Press Conference August 6, 2008.
- Exhibit 20**, FBI Amerithrax Fact Sheet undated.

- Exhibit 21**, FBI Amerithrax Investigative Summary report February 19, 2010.
- Exhibit 22**, FBI Amerithrax document number 40 DUGWAY Production Runs and samples.
- Exhibit 23**, FBI Anthrax Briefing Transcript, August 18, 2008.
- Exhibit 24**, Congressman Holt letter to FBI September 28, 2006.
- Exhibit 25**, Justice Department and FBI Announce Formal Conclusion of Investigation.
- Exhibit 26**, Transcript FBI Mueller testimony to Congress September, 16 2008.
- Exhibit 27**, FBI Director Mueller’s answer to Congress re how Dugway and Battelle were eliminated from investigation.
- Exhibit 28**, FBI Transcript of Amerithrax Investigation Press Conference August 6, 2008.
- Exhibit 29**, FBI USPS Search Warrant re Ivins.
- Exhibit 30**, GAO Anthrax Report December 2014.
- Exhibit 31**, Dr. Henry S. Heine Declaration.
- Exhibit 32**, Hugh-Jones ME, Rosenberg BH, Jacobsen S (2011) The 2001 Attack Anthrax: Key Observations. J Bioterr Biodef S3:001. doi: 10.4172/2157-2526.S3-001.
- Exhibit 33**, Dr. Martin E. Hugh-Jones post October 17, 2011 ProMed.
- Exhibit 34**, Dr. Martin E. Hugh-Jones post ProMed October 9, 2019.
- Exhibit 35**, “Building the case against Iraq” The Telegraph, Toby Harnden, October 26, 2001.
- Exhibit 36**, Interview of Dr. Paul Keim, “Keim - We Were Surprised It Was the Ames Strain” – “The Anthrax Files”, FRONTLINE, PBS.
- Exhibit 37**, FBI web posting, Letter Addressed to Senator Patrick J. Leahy Appears to Contain Anthrax, November 17, 2001.
- Exhibit 38**, “Forensic Application of Microbiological Culture Analysis To Identify Mail Intentionally Contaminated with Bacillus anthracis Spores,” Douglas J. Beecher, Appl Environ Microbiol. 2006 Aug; 72(8): 5304–5310.
- Exhibit 39**, FBI web posting “Opening of the Letter to Senator Leahy,” (Leahy anthrax attack letter found in quarantined mail on November 16, 2001).
- Exhibit 40**, “Review of the Scientific Approaches Used During the FBI's

Investigation of the 2001 Anthrax Letters,” NAS NRC 2011.

Exhibit 41, “Who Mailed the Anthrax Letters?” New York Times, October 17, 2011.

Exhibit 42, “Elemental Microanalysis of Bacillus Anthracis Spores from the Amerithrax Case,” Joseph R. Michael and Paul G. Kotula, Sandia National Laboratories.

Exhibit 43, Defendant United States’ Statement of Material Facts Not in Genuine Dispute, *Maureen Stevens v. U.S.*, 9:03-cv-81110-DTKH, U.S. District Court, S.D. Florida, doc-154-1, July 15, 2011.

Exhibit 44, Dr Patricia Worsham February 7, 2011 deposition transcript, *Maureen Stevens v. U.S.*, 9:03-cv-81110-DTKH, U.S. District Court, S.D. Florida, Doc. 154-13 filed July 15, 2011.

Exhibit 45, “Holes in the Anthrax Case?” August 9, 2008, Washington Post.

Exhibit 46, Hugh-Jones ME, Rosenberg BH, Jacobsen S (2012) Evidence for the Source of the 2001 Attack Anthrax. *J Bioterr Biodef* S3:008. doi: 10.4172/2157-2526.S3-008.

Exhibit 47 FBI Special Agent in Charge Richard Lambert

Exhibit 48 Photo comparison between Bruce Ivins speedvac microfuge and microfuge tubes and Dugways Fermenter and ultracentrifuge tubes.