

**BEFORE THE  
CONGRESS OF THE UNITED STATES**

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

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

Dated: October 15, 2020

## I. THE FIRST AMENDMENT RIGHT TO PETITION CONGRESS

The Lawyers' Committee brings this Petition to Congress pursuant to the First Amendment of the United States Constitution. This Petition is a formal request for redress of grievances regarding federal government misconduct related to the post-9/11 anthrax attacks of 2001.

The First Amendment right of citizens and organizations to petition the government is well established and applies to all branches of the federal government, including Congress. The First Amendment to the Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

The First Amendment protects the right of citizens to petition each of the branches of the federal government.

"In a representative democracy such as this, these branches of government act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives. ..." *Id.*, at 137, 81 S.Ct., at 529. ...

The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. Certainly the right to petition extends to all departments of the Government.

*California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). *Also see*, *Gearhart v. Thorne*, 768 F.2d 1072, 1073 (9th Cir. 1985). The First Amendment also protects the right of associations to engage in advocacy on behalf of their members. *NAACP v. Button*, 371 U.S. 415 (1963).

The First Amendment's Petition Clause protects "the right of the people ... to petition the Government for a redress of grievances." U.S. Const. amend. I; *see*

*generally Borough of Duryea v. Guarnieri*, —U.S. —, 131 S.Ct. 2488, 2498–2500, 180 L.Ed.2d 408 (2011) (summarizing scope and history of Petition Clause). When “a person petitions the government” in good faith, “the First Amendment prohibits any sanction on that action.” *Nader v. Democratic National Committee*, 567 F.3d 692, 696 (D.C. Cir. 2009).

*Venetian Casino Resort, L.L.C. v. N.L.R.B.*, 793 F.3d 85, 89 (D.C. Cir. 2015).

The right of citizens to petition government has a long-honored tradition in both British and American law. Because of the importance of this history, it is described in detail below in a quote from the Supreme Court’s decision in *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 395–97 (2011).

The right to petition traces its origins to Magna Carta, ... The Magna Carta itself was King John's answer to a petition from the barons. *Id.*, at 30–38. Later, the Petition of Right of 1628 drew upon centuries of tradition and Magna Carta as a model for the Parliament to issue a plea, or even a demand, that the Crown refrain from certain actions. 3 Car. 1, ch. 1 (1627), 5 Statutes of the Realm 23. The Petition of Right stated four principal grievances: taxation without consent of Parliament; arbitrary imprisonment; quartering or billeting of soldiers; and the imposition of martial law. After its passage by both Houses of Parliament, the Petition received the King's assent and became part of the law of England... The Petition of Right occupies a place in English constitutional history superseded in importance, perhaps, only by Magna Carta itself and the Declaration of Right of 1689.

The following years saw use of mass petitions to address matters of public concern. See 8 D. Hume, *History of England from the Invasion of Julius Caesar to the Revolution in 1688*, p. 122 (1763) (“Tumultuous petitioning ... was an admirable expedient ... for spreading discontent, and for uniting the nation in any popular clamour”). In 1680, for instance, more than 15,000 persons signed a petition regarding the summoning and dissolution of Parliament, “one of the major political issues agitating the nation.” Knights, London's ‘Monster’ Petition, 36 *Historical Journal* 39, 40–43 (1993). Nine years later, the Declaration of Right listed the illegal acts of the sovereign and set forth certain rights of the King's subjects, one of which was the right to petition the sovereign. It stated that “it is the Right of the Subjects to petition the King, and all Commitments and Prosecutions for such Petitioning are Illegal.” 1 W. & M., ch. 2, 6 Statutes of the Realm 143; see also L. Schwoerer, *The Declaration of Rights, 1689*, pp. 69–71 (1981).

The Declaration of Independence of 1776 arose in the same tradition. After listing other specific grievances and wrongs, it complained, “In every stage of these

Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury.” The Declaration of Independence ¶ 30.

After independence, petitions on matters of public concern continued to be an essential part of contemporary debates in this country's early history. ... During the ratification debates, Antifederalists circulated petitions urging delegates not to adopt the Constitution absent modification by a bill of rights. ...

Petitions to the National Legislature also played a central part in the legislative debate on the subject of slavery in the years before the Civil War. See W. Miller, *Arguing About Slavery* (1995). Petitions allowed participation in democratic governance even by groups excluded from the franchise. See Mark, *The Vestigial Constitution: The History and Significance of the Right to Petition*, 66 *Ford. L.Rev.* 2153, 2182 (1998). For instance, petitions by women seeking the vote had a role in the early woman's suffrage movement. See Cogan & Ginzberg, *1846 Petition for Woman's Suffrage, New York State Constitutional Convention*, 22 *Signs* 427, 437–438 (1997). The right to petition is in some sense the source of other fundamental rights, for petitions have provided a vital means for citizens to request recognition of new rights and to assert existing rights against the sovereign.<sup>1</sup>

Petitions to the courts and similar bodies can likewise address matters of great public import. In the context of the civil rights movement, litigation provided a means for “the distinctive contribution of a minority group to the ideas and beliefs of our society.” *NAACP v. Button*, 371 U.S. 415, 431, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

Individuals may also “engag[e] in litigation as a vehicle for effective political expression and association, as well as a means of communicating useful information to the public.” *In re Primus*, 436 U.S. 412, 431, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978). Litigation on matters of public concern may facilitate the informed public participation that is a cornerstone of democratic society. It also allows individuals to pursue desired ends by direct appeal to government officials charged with applying the law.

*Id.*

## II. THE 2001 ANTHRAX ATTACKS AND THE FBI'S INVESTIGATION

One week after the tragic September 11, 2001 (9/11) attacks, a second series of attacks began in the United States. This second series of attacks utilized lethal spores of the biological

---

<sup>1</sup> The term “sovereign” refers to either a monarch or to a republic or democratic form of government, depending on the point in history being referenced.

warfare agent *Bacillus anthracis* (*B. anthracis* or “anthrax”)<sup>2</sup> sent through the public mail in envelopes. In the pages that follow, the Lawyers’ Committee makes reference to numerous exhibits in describing the details of these anthrax attacks, the available evidence, and the Federal Bureau of Investigation’s (FBI) anthrax attacks investigation. These exhibit references should appear in blue font and should contain an active hyperlink to the full exhibit document.

The five deaths that resulted from these anthrax attacks occurred between October 5 and November 21, 2001. [Exhibit 21](#), pp. 1-4; [Exhibit 29](#), p.3. At least 22 people are known to have been infected. [Exhibit 40](#), p. 61. All the deaths were from the most lethal form of the anthrax disease, inhalation anthrax. [Exhibit 21](#), p. 2. Thousands of potentially exposed persons had to take antibiotics as a preventative measure. [Exhibit 21](#), p. 3; [Exhibit 25](#), p.1; [Exhibit 55](#). These attacks exacerbated the fear and trauma that began with the 9/11 attacks.

The first wave of anthrax attack letters, postmarked September 18, 2001, went to news media offices. [Exhibit 55](#); [Exhibit 21](#), p.4. Robert Stevens, a Florida resident, was the first to be killed in these attacks. Mr. Stevens died on October 5, 2001. [Exhibit 21](#), p.4. Although no anthrax-laden letter was recovered in Mr. Stevens’ case, he is presumed to have received an anthrax letter mailed as part of the first wave of attacks. The FBI failed to thoroughly investigate this anthrax incident in Florida. [Exhibit 40](#), pp. 65, 67 (see discussion *infra*, pages 49-50).

The letters in the second wave of attacks, which contained a more sophisticated form of anthrax spores, were postmarked October 9, 2001. These letters were addressed to two United States senators, Senator Patrick Leahy and Senator Tom Daschle. [Exhibit 21](#), pp. 1-4. As anthrax is a biological warfare agent and considered under federal law to be a weapon of mass destruction, [Exhibit 29](#), p.2, *this is the only attack on Congress in history with a weapon of mass*

---

<sup>2</sup> The term “anthrax” technically refers to the disease caused by exposure to *Bacillus anthracis*. For convenience, in this Petition the Lawyers’ Committee sometimes uses the term “anthrax” as a shorthand for *Bacillus anthracis*.

*destruction*. On October 15, 2001, an anthrax-laden envelope was discovered in the office of Senate Majority Leader Tom Daschle. This Petition to Congress by the Lawyers' Committee is being filed on October 15, 2020, the 19<sup>th</sup> anniversary of this biowarfare attack on the United States Congress.

The anthrax used in both waves of the letter attacks was determined by Dr. Paul Keim and by the Center for Disease Control (CDC) to be the "Ames" strain, a strain used by U.S. military labs. [Exhibit 36](#), p.2. The anthrax used in the second wave of letter attacks contained much finer particles, making it more readily dispersed in air and therefore more lethal. [Exhibit 21](#), pp. 14-15; [Exhibit 33](#), p.2; [Exhibit 40](#), pp. 62-64; [Exhibit 42](#), p.12; [Exhibit 12](#), pp.6-7; [Exhibit 29](#), p.4; [Exhibit 27](#). This second attack wave anthrax was made with a process that effectively weaponized the anthrax by purifying, concentrating, and drying the spores into a fine powder easily transported through air (i.e., aerosolized). [Exhibit 21](#), pp. 14-15; [Exhibit 33](#), p.2; [Exhibit 40](#), pp. 62-64; [Exhibit 42](#), p.12; [Exhibit 12](#), pp.6-7; [Exhibit 29](#), p.4; [Exhibit 27](#).

The text of the handwritten letters accompanying the anthrax spores seemed at first glance, to some, to point to al Qaeda or a similar foreign terrorist group. [Exhibit 21](#), pp. 2, 5. In the early stages of public awareness, this was the leading hypothesis, later discovered to be erroneous, that was advanced by certain government officials and certain news media. *See, e.g.*, [Exhibit 49](#); [Exhibit 21](#), p. 5. The initial assumption by many was that the September 11<sup>th</sup> attacks were being followed by a second wave of attacks by the same perpetrator, and that this perpetrator was Al Qaeda.

As the anthrax attacks progressed in October 2001, an additional government-espoused hypothesis emerged and was publicized widely in the news media. According to this government hypothesis, Iraq was the source of the deadly anthrax spores. *See*, [Exhibit 35](#); [Exhibit 28](#);

**Exhibit 51; Exhibit 52; Exhibit 54.** 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 foreign-state-sponsored-terrorism theory, which never had a basis in evidence, was later abandoned by the FBI in favor of the theory that the perpetrator was a domestic lone wolf associated with a U.S. military facility. **Exhibit 21**, p. 5.

By late 2001/early 2002, both the al Qaeda hypothesis and the Iraq-al Qaeda hypothesis had been replaced as the primary theories reported in the media by the theory of a domestic attack by someone associated with a U.S. military facility, based in significant part on the work of Dr. Barbara Hatch Rosenberg. **Exhibit 50; Exhibit 53.** As early as 2002, FBI sources reported to the media that they were pursuing the theory that the anthrax used in the attacks was of domestic origin, i.e., had come from inside the United States from one of several ostensibly highly secure military or government contractor labs. **Exhibit 50; Exhibit 55.**

Dr. Paul Keim's lab at Northern Arizona University, after having confirmed the attack anthrax as the Ames strain, had a role in extracting the DNA material for a second stage of DNA analysis. **Exhibit 36**, p. 9. Dr. Claire Fraser-Liggett, at The Institute for Genomic Research (TIGR) lab in Maryland, and her colleagues, then did a whole genome sequencing of the Ames anthrax strain. **Exhibit 36**, p. 9; **Exhibit 21**, p. 24.

Microbiologists Terry Abshire and Dr. Pat Worsham at the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), experts on morphological variation in *Bacillus anthracis*, after having left one of the attack anthrax samples to grow on an agar plate (Petri dish), noticed colony morphology, which involves visually distinctive colonies growing on the plate. **Exhibit 40**, p. 109. They noticed some rare variances, colonies that looked different. **Exhibit 36**, p. 6. They were able to track down multiple different morphological variances in the

attack anthrax that were then subjected to DNA analysis. This DNA analysis demonstrated genetic variations that accounted for the different morphological variances.

As a result of this discovery, the FBI then decided to collect into a repository Ames anthrax samples from all labs known to possess that strain. The FBI selected four of the detected DNA variants or morphs as their targets for a large-scale investigation of these Ames anthrax samples in its repository. [Exhibit 21](#), p. 24.

The FBI contracted for DNA analyses to be performed on more than one thousand Ames anthrax samples that had been submitted by 20 labs, pursuant to either an FBI subpoena or a consensual search. [Exhibit 21](#), pp. 24-25, 28. These DNA analyses by FBI-contracted labs took several years to complete, starting in 2002 and finishing in 2007. [Exhibit 21](#), p. 25. These FBI-contracted DNA analyses attempted to identify the presence or absence in the collected samples in the FBI's Ames anthrax repository of what the FBI considered to be the four "fingerprint" morphs (DNA variants) that had been identified in the attack anthrax. These four morphs collectively (when found together in the same sample) were considered to be a "fingerprint" that the FBI concluded pointed to the source from which the attack anthrax had been taken and then further processed into the attack anthrax. [Exhibit 21](#), pp. 25, 28-29. *Also see*, [Exhibit 18](#); [Exhibit 19](#).

A method called DNA Polymerase Chain Reaction (PCR) testing was used to examine the Ames anthrax samples in the FBI's repository. The FBI concluded that the testing performed on its repository samples using this method showed that RMR 1029, an Ames anthrax stock maintained at USAMRIID and used by Dr. Bruce Ivins and his colleagues, was the sole "parent material of the evidentiary anthrax spore powder, i.e., the evidentiary material came from a derivative growth of RMR-1029." [Exhibit 21](#), p. 28. The FBI also stated this conclusion another

way, noting in a heading in its report “RMR-1029 is the source of the murder weapon.” *Id.* (emphasis in original).

After working through a series of lone wolf “suspects,” reportedly including Perry Mikesell who worked at Battelle Memorial Institute (aka Battelle), see [Exhibit 58](#), the FBI eventually focused its investigative attention on Dr. Bruce Ivins, a long-time microbiologist who worked for the Army at Fort Detrick, and specialized in anthrax vaccine development. [Exhibit 21](#), pp.6-11, 25-91; [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 due to an overdose of over-the-counter medication. [Exhibit 21](#), p. 1.

In press conferences and what was described as a science briefing 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 19](#); [Exhibit 23](#). The FBI formally closed its investigation, which it had code-named “Amerithrax,” two years later in 2010. [Exhibit 21](#); [Exhibit 17](#).

However, an FBI-commissioned report from the National Academy of Sciences (NAS) National Research Council (NRC) noted in 2011, after the close of the FBI’s Amerithrax investigation, that the FBI repository of Ames anthrax samples collected from labs in the U.S. and elsewhere was likely incomplete. [Exhibit 40](#), pp. 129, 144-146. The NRC noted that it is possible that the FBI Ames anthrax sample repository was incomplete because the global distribution of Ames stocks was not known or because some stocks might have been destroyed prior to the issuance of FBI subpoenas to these labs. *Id.* p. 146.

The NRC further reported that the FBI repository of anthrax samples was unreliable as

being representative given that potential perpetrators at the labs that were subpoenaed could have destroyed, altered, or concealed incriminating samples before responding to the FBI's subpoena.

**Exhibit 40**, p. 145. Perhaps most significantly, the NRC also reported that the DNA PCR analysis performed for the FBI was not sufficiently validated or statistically reliable to support the FBI's conclusions. **Exhibit 40**, pp. 125 -148.

The NRC concluded that "It is not possible to reach a definitive conclusion about the origins of the B. anthracis in the mailings based on the available scientific evidence alone."

**Exhibit 40**, p. 144. The NRC elaborated on this conclusion, stating:

**The scientific data alone do not support the strength of the government's repeated assertions that "RMR-1029 was conclusively identified as the parent material to the anthrax powder used in the mailings"** (USDOJ, 2010, p. 20), nor statements about the role of the scientific data in arriving at their conclusions, as in "the scientific analysis coordinated by the FBI Laboratory determined that RMR-1029, a spore-batch created and maintained at USAMRIID by Dr. Ivins, was the parent material for the anthrax used in the mailings" (USDOJ, 2010, p. 8).

\* \* \*

These limitations made it impossible for the committee to generate any meaningful estimate of the probability of a coincidental match between the B. anthracis genotypes discovered in the attack letters and those later found by screening samples from the RMR-1029 flask.

\* \* \*

The scientific data generated by and on behalf of the FBI provided leads as to a possible source of the anthrax spores found in the attack letters, **but these data alone did not rule out other sources.**

**Exhibit 40**, pp. 20, 145-147 (emphasis added).<sup>3</sup>

The NRC found that "The results of the genetic analyses of the repository samples were **consistent with** the finding that the spores in the attack letters were derived from RMR-1029,

---

<sup>3</sup> 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**.

**but the analyses did not definitively demonstrate such a relationship.” Exhibit 40, p. 145** (emphasis added). The NRC explained in its report that “consistent with” in the NRC’s terminology referred to the weakest level of certainty, which does not eliminate the possibility of there being no relationship at all between the attack anthrax and RMR 1029. **Exhibit 40, p. 53.**

The NRC concluded that “The scientific link between the letter material and flask number RMR-1029 is not as conclusive as stated in the DOJ Investigative Summary.” **Exhibit 40, p. 6.**

The NRC further found that:

**The flask designated RMR-1029 was not the immediate, most proximate source of the letter material.** If the letter material did in fact derive from RMR-1029, then one or more separate growth steps, using seed material from RMR-1029 followed by purification, would have been necessary. Furthermore, **the evidentiary material in the New York letters had physical properties that were distinct from those of the material in the Washington, D.C. letters.**

**Exhibit 40, p. 96** (emphasis added).

Even if one were to adopt the FBI’s exaggerated view of the reliability and validity of its DNA PCR testing, there still was no valid evidentiary basis for the FBI to have focused only on a lone wolf scenario. This is so for a number of reasons. First, there were two sets of letter attacks separated in time. Second, the anthrax used in the first of the two attack waves was notably different in size of particles and chemical and physical characteristics (including the presence or absence of *B. subtilis* contamination), from that used in the second wave of attacks. As the NRC noted:

Some of these findings, as well as others, indicate that the New York letter materials were prepared separately from the materials in the Washington, D.C., letters. **The presence of *B. subtilis* in the New York but not the Washington letter materials and the different physical properties of the materials indicate that the two sets of letter materials were prepared separately.**

**Exhibit 40, p. 96** (emphasis added).

Further, there were clearly some strong motives within certain quarters of the military-

industrial-intelligence complex to justify the soon-to-be-initiated attacks on Afghanistan and Iraq and the soon-to-come endless war on terror which dwarfed the speculative personal motives the FBI attributed to Dr. Ivins. 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 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention). *See* [Exhibit 56](#). The FBI's focus on a lone wolf attacker was, at best, based on an unjustified assumption, rather than a careful evaluation of which hypothesis best fit all the available evidence.

The FBI's investigation, which ostensibly led it to the conclusion that Dr. Ivins was the sole perpetrator, was then, and has been on several occasions since, roundly criticized by a number of experts. Notable among the critics and skeptics of the FBI's investigation and conclusions were (and are) scientist Dr. Barbara Hatch Rosenberg, physician Dr. Meryl Nass, veterinary epidemiologist Dr. Martin Hugh-Jones, and chemist Stuart Jacobsen. *See, e.g.,* [Exhibit 32](#); [Exhibit 33](#); [Exhibit 34](#); [Exhibit 46](#); [Exhibit 61](#).

In addition, significantly, a number of scientists who had worked at the USAMRIID at Fort Detrick in Maryland are also among the critics and skeptics of the FBI's investigation. *See, e.g.,* [Exhibit 01](#); [Exhibit 02](#); [Exhibit 15](#); [Exhibit 31](#). Even some of the scientists who contributed to the FBI's own investigation have expressed reservations about the FBI's conclusions, including Dr. Claire Fraser Liggett, who led the team at the Institute for Genomic Research in genetic analysis of the attack spores, and Dr. Paul Keim, the anthrax expert at Northern Arizona University who identified the attack spores as the Ames strain. *See* [Exhibit 62](#).

One of the early critics of the FBI investigation was attorney Barry Kissin. Attorney Kissin

prepared a detailed critique of the agency's Amerithrax investigation. See [Exhibit 61](#). The critics and skeptics of the FBI's investigation also included Dr. Ivins' attorney and members of Dr. Ivins' family.

The FBI's anthrax attacks investigation has also been the subject of several critical investigative journalism reports. These reports included articles in the New York Times, the Washington Post, and Salon, and a documentary by PBS, Pro Publica, and McClatchy. See, e.g. [Exhibit 10](#); [Exhibit 41](#); [Exhibit 45](#); [Exhibit 53](#); [Exhibit 58](#). After the FBI-commissioned NRC report came out in 2011, the Washington Post noted lingering unanswered questions about the attacks stating that the NRC report "is not satisfying - nor is it conclusive." [Exhibit 63](#). The Post called for a new inquiry by an independent commission appointed by Congress:

Congress should convene a nonpartisan commission staffed with individuals experienced in law enforcement to probe all of the evidence in the case, including that which the FBI claims shows Mr. Ivins had the opportunity and the wherewithal to carry out the 2001 attack. The inquiry should explore why and how the Justice Department eliminated other scientists who had access to RMR-1029 as suspects, and it should examine the security protocols at repositories for biological weapons. The exploration also should focus on the country's preparedness to deal with such an attack in the future.

*Id.*

The FBI's investigation and conclusions had critics among members of Congress as well, including Senator Patrick Leahy, see [Exhibit 10](#), Senator Chuck Grassley, see [Exhibit 65](#), Congressman Jerrold Nadler, see [Exhibit 26](#), pages 15-17, and Congressman Rush Holt, see [Exhibit 24](#); [Exhibit 69](#); [Exhibit 68](#). 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 he believed there were others, yet to be identified by the FBI, who could be, and should be, charged with murder. [Exhibit 10](#). Senator Leahy, Chairman of the Judiciary

Committee, also stated, after the NRC report was released in 2011, that he had “extreme doubts” about the case, noting “I’ve expressed those concerns to the FBI, and this report adds to those concerns.” [Exhibit 64](#). Senator Chuck Grassley, the ranking member of the Judiciary Committee, stated that the NRC report “shows that the science is not necessarily a slam dunk. There are no more excuses for avoiding an independent review and assessment of how the FBI handled its investigation in the anthrax case.” [Exhibit 65](#). Congressman Holt and Congressman Nadler introduced proposed legislation in the House of Representatives in 2011 calling for a new investigation by an independent commission. [Exhibit 67](#). The Congress has not yet enacted such legislation.

Further, notably, additional substantial criticisms of the FBI’s investigation came from an unexpected, but extremely authoritative source. These criticisms were presented by Richard Lambert, the FBI Special Agent Inspector who *directed* the FBI’s Amerithrax investigation for four years, from 2002-2006. [Exhibit 47](#).

These public critiques, which The Lawyers’ Committee finds not only well-founded but deeply concerning, were one of the primary motivating forces behind the decision of the Lawyers’ Committee to take a closer look at the publicly available evidence in the anthrax attacks case. Although the previous critiques and exposés raised many valid concerns, what the Lawyers’ Committee found in its review was still surprising, and even more disturbing, as explained below.

This Petition draws both on 1) significant evidence that was available to the FBI during its nine-year 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.

Some of the more recent sources of evidence reviewed for this Petition include the following:

1) The 2011 report prepared, at the FBI's request and expense, by the National Academy of Sciences 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 civil claims 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 and scientific analysis done in 2011 and thereafter on the nature of the attack spores and their likely sources, published in articles by Dr. Barbara Hatch Rosenberg, Dr. Martin Hugh-Jones, and Stuart Jacobsen, 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 Complaint filed by ex-FBI Agent Richard Lambert, who headed the FBI's anthrax investigation from 2002 to 2006, in the U.S. District Court for the Eastern District of Tennessee against senior executives and attorneys employed by the Department of Justice and the FBI. **Exhibit 47**.

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

After reviewing these sources and the evidence presented therein, the Lawyers' Committee concluded that the FBI's Amerithrax investigation was obstructed and corrupted. The detailed bases for this conclusion are described below

### **III. THE FBI'S INVESTIGATION OF THE 2001 ANTHRAX ATTACKS WAS OBSTRUCTED AND CORRUPTED**

#### **A. High-Level Department of Defense Officials Are Reported to Have Ordered the Commander of USAMRIID to Squelch Both the Investigations by Army Scientists into the Anthrax Attacks and Their Criticisms of the FBI's Anthrax Attacks Investigation**

Arthur Osmund Anderson, M.D., Colonel, U.S. 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. Ivins' actions and statements during the Amerithrax investigation. Colonel Anderson has also provided his written declaration made under oath. *See* [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](#).

One of these documents provided by Colonel Anderson, [Exhibit 11](#), recounts that Colonel Anderson was told that high-level Army officials issued an order directing the USAMRIID Commander to squelch the then-ongoing internal investigations by USAMRIID scientists of the anthrax attacks as well as their criticisms of the FBI's investigation. The following paragraphs describe Colonel Anderson's background and how he came to discover this high-level gag order regarding the FBI's Amerithrax investigation.

From 1975 until March 2007, Colonel Anderson served as 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 the Department of Defense and applicable federal laws and regulations. [Exhibit 15](#).

From 1992 until his retirement at the end of October 2016, Colonel Anderson also 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 determine 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. [Exhibit 15](#).

Colonel Anderson 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, at which time 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](#).

Colonel Anderson first met Bruce Ivins in 1983 when he heard that Ivins was interested in testing adjuvants to improve a vaccine on which he was working. Colonel Anderson reports that he found Dr. Ivins to be a good listener and a hard worker. Dr. Ivins completed that research and Dr. Ivins' publication cited two of Colonel Anderson's papers on immunological adjuvants.

Colonel Anderson spoke with Dr. Ivins on numerous occasions about science or research issues, USAMRIID concerns, or family matters, and never observed Dr. Ivins behaving inappropriately.

[Exhibit 15](#).

In 1997, the existing Anthrax vaccine (AVA) was put on hold by the U.S. Food and Drug Administration (FDA) because of Good Manufacturing Practices problems at the private manufacturing plant that produced the vaccine. Dr. Ivins was one of the USAMRIID scientists who were recruited to help this company resolve its manufacturing problems and to enable the AVA 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' RMR 1029 reference material (i.e., pure Ames anthrax spores) started with a batch of spores manufactured at the U.S. Army's Dugway Proving Ground (Dugway) laboratory using Dugway's large fermenter. Some of the Ames anthrax spores sent from Dugway to Dr. Ivins were contaminated with *Bacillus subtilis* (*B. subtilis*), which could not be used, so Ivins had to use small shaking flask incubators at USAMRIID to make enough wet spores to bring the flask up to the required 1000 ml. 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 up to 1000 ml of wet spores. [Exhibit 15](#). That 1000 ml of Ames anthrax spores, labeled RMR 1029, was divided and stored in two flasks which were 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 vaccine tests.

Ivins also grew, from the same Ames anthrax he had used to add to RMR 1029, a stock of Ames anthrax called RMR 1030.<sup>4</sup> By the time the RMR 1029 reference material reached the

---

<sup>4</sup> Ivins also had another stock of anthrax called RMR 1028, which was a different strain of anthrax, the Vollum strain. [Exhibit 04](#); [Exhibit 15](#).

targeted quantity of 1000 ml, most of the Ames anthrax in the two RMR 1029 flasks had come from Dugway and only a small amount of this material was made by Ivins. [Exhibit 12](#).

After the 2001 anthrax attacks, USAMRIID was responsible for confirming the presence of anthrax in the FBI's crime scene samples by culture, a task performed by Dr. Ivins, or by PCR Assays, a task performed by members of the USAMRIID Diagnostic Systems Division. The FBI was using these tests on samples collected to determine if any mail, mailboxes, or offices were contaminated with Anthrax. [Exhibit 15](#).

Colonel Anderson, and many of his colleagues at USAMRIID, concluded that Ivins did not have access to the equipment necessary to make dry anthrax spores in sufficient quantity to fill the anthrax letters. *See* [Exhibit 01](#); [Exhibit 02](#); [Exhibit 12](#); [Exhibit 31](#). The anthrax contained in the first wave of attack letters was contaminated with *B. subtilis*, but Ivins' colleagues did not believe Ivins' anthrax stocks were contaminated with *B. subtilis*. [Exhibit 01](#); [Exhibit 12](#). 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 processed 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 the FBI started focusing on USAMRIID and Dr. Ivins, Colonel Anderson and some of his colleagues, all experts in their field, conducted their own analyses of the anthrax attacks. [Exhibit 12](#); [Exhibit 01](#); [Exhibit 02](#); [Exhibit 31](#). He, and many of his colleagues at USAMRIID who knew Dr. Ivins, knew how much Dr. Ivins cared for his work and USAMRIID and how he conducted his work in a professional manner irrespective of any psychological problems that may have plagued him. *Id.* Based on their knowledge of Dr. 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 Colonel Anderson described as Dr. Ivins' self-consciousness and need for affirmation, Ivins continued to maintain he was innocent. Ivins' colleagues 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, Colonel Anderson compiled information that he believed would have absolutely transferred the responsibility for the anthrax attack letters to two labs other than USAMRIID: Dugway and Battelle. [Exhibit 11](#). However, Colonel Anderson's information was never reviewed or acted on by the USAMRIID Commander. As Colonel Anderson was in the process of bringing his information to the Commander's attention, Colonel 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." [Exhibit 11](#). 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." [Exhibit 11](#).

When the Lawyers' Committee obtained this information from Colonel Anderson as part of its investigation leading to this Petition, the Lawyers' Committee was prompted to take a closer look at the FBI's conclusions and reports to see if there might be further evidence of a cover-up, including by the FBI itself, consistent with the gag order that Colonel Anderson

reported was imposed by or on behalf of the Secretary of the Army. The Lawyers' Committee regrets to report that such evidence was found. That evidence is discussed below.

**B. The FBI Covered Up Key Evidence Pointing to the U.S. Army's Dugway Proving Ground and CIA Contractor Battelle As More Likely Sources of the Anthrax Used in the Attacks than Dr. Ivins and USAMRIID, Notwithstanding a Pointed Congressional Inquiry As to How the FBI Eliminated Dugway and Battelle Personnel As Suspects**

**1. The FBI Knew that Dugway and Battelle Personnel, Not Just USAMRIID Scientists, Had Access to Ames Strain Anthrax that Contained What the FBI Considered to be the "Fingerprint" DNA "Morphs" Found in the Attack Letters, and Could Not Be Eliminated As Suspects Based on the FBI's DNA PCR Testing, But Concealed Key Material Evidence Confirming this Fact from Congress and the Public**

On September 16 and 17, 2008, the House Judiciary Committee and the Senate Judiciary Committee conducted FBI oversight hearings that included questioning of 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."

[Exhibit 57](#).

As Attorney Barry Kissin has reported, [Exhibit 61](#), 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.

#### Exhibit 09.

Seven months went by before the FBI issued a response. The FBI response was:

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.**

#### Exhibit 09.

Attorney Kissin notes, [Exhibit 61](#), 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 RMR 1029 flask (the "parent" flask)**, these facilities were excluded as possible sources of the attack anthrax **because they "never received" anthrax from said flask.**

This mysterious response from the FBI, apart from being illogical on its face, omitted a number of critical material facts that would have been directly responsive to this key inquiry

from Congress. For example, during the summer of 2001, Dr. Ivins sent samples of Ames anthrax to Battelle, and had previously sent such samples to Dugway. *See* [Exhibit 03](#). In addition, it is important to note, as Colonel Anderson observed and as the FBI and NRC have acknowledged, that it was Dugway that produced approximately 85% of the Ames anthrax that went into the USAMRIID RMR 1029 flask that Dr. Ivins, and others, used for their vaccine tests. [Exhibit 12](#); [Exhibit 04](#); [Exhibit 13](#); [Exhibit 21](#), p.26-27. *Also see*, [Exhibit 40](#), p. 131.

Most of the science underlying the FBI's Amerithrax investigation and the FBI's conclusion that Dr. Ivins was the perpetrator is about matching or, as will be made clear, about *pretending* to match the genetic fingerprint of the attack anthrax to only that of RMR-1029 at USAMRIID. [Exhibit 21](#), pp 23-25, 28; [Exhibit 18](#); [Exhibit 19](#). But Battelle had received anthrax from USAMRIID's RMR-1029 at least twice. [Exhibit 46](#), p.8 and footnote 68, citing NRC FBI document number B3D16. FBI documents also show that a Battelle sample submitted to the FBI Repository was one of the eight that tested positive for all four of the "fingerprint" morphs (i.e. contained the "fingerprint"). [Exhibit 46](#), footnote 68 ("... One Ames repository sample from Battelle tested positive in all 4 assays; another from Battelle, known to have originated from an RMR 1029 sample, tested positive in 2 or 3 assays"), citing NRC FBI document number B2M10, p. 25. *Also see*, [Exhibit 32](#), p.2; [Exhibit 40](#), p. 185 (NRC confirming same). The FBI in its response to Congress failed to disclose that one of Battelle's FBI repository samples was one of the eight that tested positive for all four "fingerprint" morphs.

The FBI has emphasized as a cornerstone of its case that seven of the eight samples that showed all four of the "fingerprint" morphs came from USAMRIID (and de-emphasized the eighth such sample that came from Battelle). However, it is clearly demonstrated in this Petition *infra* that Dugway must also have had Ames anthrax with all four of these "fingerprint" morphs

and evidence of this was covered up by the FBI. The FBI accomplished this cover-up by not performing the DNA PCR testing on the RMR 1029 production run samples from Dugway (on the pretext that these samples were not viable). But even putting this evidence aside, for the moment, the NRC concluded that there was a 0.14223 (~14%) probability that USAMRIID would have been the lab that submitted seven of the eight samples that showed all four of the “fingerprint” morphs simply due to random chance given the much larger number of samples submitted overall from USAMRIID compared to the other nineteen labs. **Exhibit 40**, p. 140.

Both Battelle and Dugway should have been no less incriminated by the FBI’s “fingerprint morphs” scientific evidence, whether that scientific evidence was valid or not, than Dr. Ivins and USAMRIID. The FBI failed to disclose or acknowledge this key material fact in its responses to inquiries from Congress.

Dr. Paul Keim's interview with PBS, as well as FBI documents including a key search warrant affidavit and the FBI's Amerithrax Investigative Summary report, 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, or culture that they had in their possession. **Exhibit 21**, pp. 24-25, 28; **Exhibit 29**, p.4; **Exhibit 36**, 6-7. The FBI reports that it collected a total of 1,070 Ames anthrax samples from these labs during its investigation. *Id.* The NRC reported that the FBI represented the same to the NRC. **Exhibit 40**, pp. 126-129.

The FBI's official report states that all 1,070 repository samples of Ames anthrax collected from the labs on the FBI’s list of labs holding Ames anthrax were subjected to DNA analysis using the PCR method to determine if any of these lab samples contained the "fingerprint" morphs, the unusual DNA variants observed in the attack anthrax. **Exhibit 21**, p.25. However,

this turns out to be a significant overstatement and apparent knowing misrepresentation by the FBI. The NRC reported that only 1,059 of the 1,070 lab samples collected were actually subjected to the FBI's DNA PCR testing, with 11 of these samples not subjected to this DNA PCR testing because they were not viable (would not grow Ames anthrax). **Exhibit 40**, pp. 129.

Further, the NRC reported that over one hundred of the PCR tests of the FBI Repository's lab samples were excluded from the FBI's investigation due to inconsistency in results or inconclusive results (or no results) obtained by the contractors doing the DNA PCR testing procedures for the FBI. **Exhibit 40**, pp. 133-134 ("An additional 112 samples were omitted from further investigation because the results with these samples were recorded as 'inconclusive,' 'variant,' 'no growth,' or 'no DNA' for one or more of the four genotypes."). This resulted in the FBI considering PCR results from only 947 of the 1,070 lab samples submitted. *Id.*<sup>5</sup>

The FBI made an even more significant misrepresentation when it reported that it had a valid evidentiary basis for concluding that USAMRIID's RMR 1029 Ames anthrax flask(s), used by Dr. Ivins and others for their vaccine studies, was the specific stock of *B. anthracis* from which the presumed lone wolf attacker must have obtained a starting stock of anthrax (that was then processed into the attack anthrax). **Exhibit 21**, p. 28; **Exhibit 18**; **Exhibit 19**. The FBI had reason to know that this assertion was false when the FBI made it. As explained below, the FBI knew, at the time it announced its conclusions, that there were other Ames anthrax stocks at both Dugway and Battelle that either had been tested and confirmed to contain the "fingerprint" DNA morphs (Battelle), or based on government documentation could be deduced to contain the "fingerprint" DNA morphs (Dugway).

The FBI bases its assertion on its DNA PCR testing of samples of *B. anthracis* submitted

---

<sup>5</sup> And three of the excluded samples showed three of the four "fingerprint" morphs. *Id.*

from 20 labs that used this type of anthrax. *Id.* As noted, 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<sup>6</sup> showed the presence of all four of what the FBI considered the "fingerprint" morphs. *Id.*; **Exhibit 40**, p. 134-135. The FBI further asserts that all eight of these "fingerprint" positive samples were taken from or were derived from RMR 1029, either directly or indirectly. **Exhibit 21**, pp. 25, 28-29; **Exhibit 18**; **Exhibit 19**.

Although FBI documents show that one of the Ames anthrax samples it obtained from Battelle did show all four of the FBI's "fingerprint" morphs, see **Exhibit 32**, p.2, footnote 8 (citing NRC FBI documents B2M10 p. 25, and B3D16), there is no indication that the FBI informed Congress of this key fact in any supplemental response by the FBI to its prior misleading answer to Congress' inquiry as to how Dugway and Battelle were eliminated from suspicion by the FBI. The FBI also failed to inform Congress of the material facts discussed below that point to Dugway production runs as the source of the "fingerprint" morphs found in the USAMRIID RMR 1029 stock that the FBI asserts (erroneously) Dr. Ivins controlled.

As noted, the NRC report made clear that there was no valid scientific basis for the FBI to rely on its DNA morphs PCR testing as a true "fingerprint," i.e. as a method that could point with reasonable scientific certainty to the source from which the anthrax attackers must have obtained their starting anthrax stock (before they processed it into the final form of the attack anthrax). **Exhibit 40**, pp. 125 -148. The Lawyers' Committee was interested in determining whether the FBI's reliance on this DNA morphs PCR testing as a basis for focusing on Dr. Ivins of USAMRIID as the perpetrator, a reliance shown by the NRC to be completely misplaced, was an inadvertent error due to a naïve understanding of newly developing science or whether the

---

<sup>6</sup> As a result of the issuance of subpoenas and the conduct of consent searches.

FBI was knowingly overstating or misrepresenting its non-dispositive DNA PCR test results in order to mislead the public and Congress. The Lawyers' Committee was again surprised and disappointed to find that the latter scenario was true.

While comparing details in some of the voluminous and numerous FBI Amerithrax case documents to the lengthy NRC report, including its footnotes, the Lawyers' Committee discovered dispositive evidence that the DNA "fingerprint" morphs relied on by the FBI to point the finger at Dr. Ivins actually pointed the finger, if they were reliable at all, to Dugway. The first key fact to note in this regard is that Dr. Ivins had two stocks of Ames anthrax. The first stock, which was labelled, tracked and controlled for FDA regulatory purposes as "RMR 1029", was a composite made up of a total of 1000 ml of Ames anthrax. Approximately 85% of this Ames anthrax came to Ivins from the Army's Dugway Proving Ground in Utah, where it was produced at the request of USAMRIID using USAMRIID seed stock. *See, e.g.*, [Exhibit 22](#), pp. 1-5. The other approximately 15% was from Ivins "RMR 1030" Ames culture, produced in small batches by Ivins at USAMRIID. [Exhibit 04](#); [Exhibit 13](#); [Exhibit 21](#), pp. 26-28; [Exhibit 40](#), pp. 130-131.

The FBI had Ames anthrax samples from both RMR 1029 and RMR 1030 subjected to DNA PCR analysis for the four FBI "fingerprint" DNA morphs which had been identified, among others, in the anthrax in the attack letters. The FBI reported that tests on RMR 1029 showed all four of the morphs to be present. [Exhibit 21](#), pp. 25, 28-29, 79; [Exhibit 18](#); [Exhibit 19](#); [Exhibit 40](#), p. 140. Significantly, the tests on RMR 1030 did not show any of the "fingerprint" morphs. [Exhibit 40](#), p. 85, footnote 3. The FBI mentioned RMR 1029 more than one hundred times in its 96-page Amerithrax Investigative Summary report but failed to mention RMR 1030 even once.

Therefore, even without direct evidence from first-hand observations of Dugway samples or DNA PCR testing on Dugway samples, it may be logically deduced with certainty that the Dugway-made Ames anthrax provided to USAMRIID for RMR 1029 contained the “fingerprint” (all four of 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 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 40](#), p. 131. RMR 1030 was tested by the FBI and found to not contain the “fingerprint” morphs. [Exhibit 40](#), p. 85, footnote 3. Therefore, what “remains” as the source for these “fingerprint” morphs in RMR 1029 is Dugway.

This of course does not mean that Dr. Ivins and his colleagues at USAMRIID did not have access to Ames anthrax containing the “fingerprint” morphs via the two RMR 1029 flasks. They did, but the point here is that contrary to the FBI’s public representations, they were not the *only* ones who did. The FBI made a knowing material misrepresentation to the public and Congress,<sup>7</sup> when it stated that the FBI had legitimately, based on scientific evidence, narrowed the field of suspects to USAMRIID where Dr. Ivins worked. The FBI’s purported scientific basis for eliminating Dugway and Battelle personnel from suspicion was disingenuous, and therefore so was the FBI’s response to the inquiry from Congress.

Anyone with access to Dugway’s or Battelle’s Ames anthrax stocks could no more validly

---

<sup>7</sup> The FBI presumably presented the same (mis)representations of the case evidence to the federal grand jury as it did to the public regarding the DNA PCR evidence having narrowed the field of suspects to those with access to RMR 1029 at USAMRIID. Otherwise, the FBI and DOJ would have had no hope of getting an indictment of Ivins with the field of suspects not having been narrowed, and still including hundreds of USAMRIID, Dugway, and Battelle personnel.

be ruled out as a suspect than could Dr. Ivins and his USAMRIID colleagues. Access to a stock of *B. anthracis* Ames strain containing the “fingerprint” morphs that were found in the attack anthrax was not limited to Dr. Ivins or even USAMRIID. Whether the attacker was a lone wolf or not, the field of suspects remained, even after the FBI’s DNA PCR “fingerprint” morphs testing, a large one including hundreds of personnel at Dugway, Battelle, and USAMRIID (not to mention the CIA and DIA, agencies that contracted for anthrax-related biowarfare work to be done at Dugway and Battelle).

The FBI’s DNA PCR “fingerprint” morphs testing could have been, and should have been, conducted on the Dugway samples from Dugway’s Ames anthrax production runs for RMR 1029, notwithstanding that these samples were not “viable.” [Exhibit 40](#), p. 130. The FBI’s Investigative Summary report and the FBI’s press statements likely have led the public, the press, and Congress to believe that such DNA testing of Dugway’s RMR 1029 production runs samples was actually performed and the results included in the FBI’s investigation and analysis. However, the evidence discovered by the Lawyers Committee, explained in detail below, indicates, disturbingly, the contrary.

Although *some other* Ames anthrax samples from Dugway may have been subjected to the FBI’s DNA PCR testing,<sup>8</sup> Dugway samples from its RMR 1029 production runs with virtual

---

<sup>8</sup> *See, e.g.*, [Exhibit 46](#), p. 8, footnote 65 (citing NRC FBI document B2M10). If this Dugway sample referenced by Dr. Hugh-Jones in [Exhibit 46](#), which showed one or two of the fingerprint morphs, was represented by Dugway or the FBI to be from Dugway’s RMR 1029 production runs, an unlikely possibility given that the samples from these production runs had no “live” spores ([Exhibit 22](#), p. 5), then given the facts presented in this Petition showing that these Dugway production runs *must* have contained the fingerprint morphs, because Ivins’ RMR 1030 stock, the only other component of RMR 1029, did not, such a result would simply confirm the NRC’s conclusions that the FBI’s DNA PCR testing for the fingerprint morphs was not a reliable enough basis on which to draw conclusions as to which samples in the FBI’s repository contained the four “fingerprint” morphs, which collectively in the FBI’s view constituted the “fingerprint,” and which did not. The NRC concluded, in this regard that: “The lack of replication in the assays of the FBIR samples makes it impossible to quantify the strength of any finding relating to the presence or absence of genotypes in the repository samples since some absences may be false negatives. Because samples were not retested and because the dilution experiments demonstrate the potential for different results on the same sample, one cannot quantify the strength of any finding related to the absence or presence of genotypes in the

certainty were not DNA PCR tested. This is indicated, *inter alia*, by the fact that neither the FBI's Amerithrax Investigative Summary report, [Exhibit 21](#), nor the NRC report, [Exhibit 40](#), as specific as these reports were regarding *other* sampling and test results details, reported any results, positive or negative, from DNA PCR testing for Dugway RMR 1029 production runs samples, even though such samples were obtained, [Exhibit 22](#), p. 5. Further, the Dugway RMR 1029 production run samples *must* have contained the four "fingerprint morphs," given that RMR 1029 did and RMR 1030, the only other input into RMR 1029 other than the Dugway production runs, did not. But the FBI reported that only 8 samples showed the "fingerprint" and 7 of those came from USAMRIID and the 8<sup>th</sup> came from Battelle. Therefore, the only possibilities are: 1) The FBI did not test the Dugway RMR 1029 production runs samples (on the excuse they were not viable); 2) The FBI tested the Dugway RMR 1029 production runs samples and concealed the results; or 3) The FBI tested the Dugway RMR 1029 production runs samples but the PCR tests produced false negative results for all those samples, demonstrating that the FBI's DNA PCR "fingerprint" methodology, the foundation of its case against Dr. Ivins, was unreliable for the FBI's purpose.

The NRC report confirms that a Dugway official involved in those RMR 1029 production runs at Dugway admitted that he observed visually the presence of many morphs in Dugway's initial small-scale cultures that were then fed into Dugway's large fermenters for the large-scale production runs for the RMR 1029 Ames anthrax to be sent to USAMRIID. [Exhibit 40](#), pp. 131-132. Given that Dr. Ivins' RMR 1030 was found to not have the "fingerprint" morphs, and USAMRIID's RMR 1029 was found to contain all four of these morphs, Dugway's RMR 1029 production run samples must have contained the "fingerprint" (all four of these FBI-selected

---

repository samples: thus, some test results of "negative" could well be false negatives ("present but unable to detect"). [Exhibit 40](#), p. 140.

morphs). Therefore, the FBI's DNA PCR tests, if such tests were actually conducted on Dugway RMR 1029 production run samples, should have shown these "fingerprint" morphs (assuming the FBI's DNA PCR methodology was sufficiently reliable).

Dugway did retain some samples from its production runs for the RMR 1029 Ames anthrax. [Exhibit 22](#), p. 5. The FBI, in a consensual search at Dugway, did collect samples of Dugway Ames anthrax represented as having been taken from the batches produced by Dugway for USAMRIID that went into RMR 1029. *Id.* Given this then, why did the FBI not report to the public and Congress that the Dugway samples showed the presence of the "fingerprint" morphs? Had the FBI made such a public acknowledgement, then USAMRIID and Dr. Ivins could not have been singled out as having the only Ames anthrax that contained the "fingerprint" morphs. The answer, the Lawyers' Committee has concluded, based on the evidence described below regarding key Dugway samples being non-viable (dead), *id.*, and the FBI adopting a testing protocol that omitted non-viable samples, [Exhibit 40](#), pp. 127, 129-130, is that the FBI (or some entity influencing the FBI) concocted a scientifically invalid excuse (a pretext) to avoid having to conduct the DNA PCR analysis for the "fingerprint" morphs on Dugway's RMR 1029 production run samples.

A close look at one of the FBI's Amerithrax case documents revealed that in the FBI's report of their consensual search of Dugway it is noted, without any fanfare, that the samples Dugway made available to the FBI from its RMR 1029 Ames anthrax production runs were all dead. That is, the Dugway samples were not viable anthrax cells or spores capable of being grown. [Exhibit 22](#), page 5. This is significant because, as the NRC pointed out, the FBI adopted a testing protocol that excluded non-viable samples altogether. [Exhibit 40](#), pp. 127, 129-130.

The NRC reported, with concern, that certain non-viable Ames anthrax samples submitted

to the FBI's repository (without identifying them as Dugway samples) could have been and should have been tested by the PCR method, but were not tested due to the FBI's adoption of this viable-samples-only testing protocol that required each repository sample to be grown twice (i.e., to be viable) before DNA PCR testing would be done on the sample. [Exhibit 40](#), p. 130. The NRC stated:

However, the sensitivity of each of the molecular assays would not have necessarily required this additional cultivation step. Furthermore, **the committee notes at least two problems with this additional cultivation step.** First, **the samples that were submitted to the repository but then failed to grow in culture could not be tested; however, they could have been tested if the genetic assays had been directly applied to the samples.**

*Id.* The Lawyers' Committee has concluded that the FBI consciously decided not to test collected samples that were non-viable, at least some of which were Dugway RMR 1029 production run samples, and created the testing protocol criticized by the NRC to give this FBI decision the false appearance of validity.

Although the NRC's report does reference the fact that the FBI reported to the NRC that 11 of the 1,070 total FBI repository samples were not subjected to the DNA PCR testing, and that these 11 samples were not tested because they were not viable, the NRC does not explicitly state that the NRC was aware that the FBI failed to test samples from Dugway's RMR 1029 production runs, or that the NRC was aware that the Dugway RMR 1029 production runs samples were not viable. The NRC report makes no explicit reference to having reviewed any results from any DNA PCR testing of Dugway samples. This is a notable omission given that the NRC stated that the Dugway Ames anthrax RMR 1029 production runs visually showed many morphs and that the likely source of the "fingerprint" morphs in RMR 1029 at USAMRIID was Dugway's production runs. [Exhibit 40](#), pp. 131-132. The NRC explained their rationale for drawing these conclusions:

**It is likely that some or all of the genetic variants (including especially those discovered on the basis of atypical colony morphologies) present in RMR-1029 were present in the material provided by Dugway,** for the following reasons. First, the DPG material was prepared using inocula that had not been started from a single colony but instead came from stocks that had been obtained from USAMRIID.<sup>9</sup> Bulk material from the stock was then used to inoculate blood agar plates.

A photograph shown to the committee of a dense lawn of *B. anthracis* grown on such a plate at Dugway reveals the presence of many papillae, small outgrowths of bacteria indicative of mutants that are overgrowing their neighbors in the lawn or have some other distinctive feature (Martin, 2010). The scientist who repeatedly prepared these materials for the multiple production runs told the committee that the presence of numerous papillae was the typical outcome. The committee believes that the presence of these papillae can be taken as evidence that the agar slants already contained mutants, that growth of the bacterial population on the blood agar plates selected for mutants, or both. Because *B. anthracis* cells sporulate on blood agar once they reach high density, the papillae could have been outgrowths of sporulation-defective mutants that continued to grow for several generations after other nonmutant cells stopped growing and formed spores.

---

<sup>9</sup> Dugway used one of four 1 ml vials of Ames anthrax sent by Dr. Ivins from USAMRIID as seed stock to initiate its production runs for RMR 1029. See, e.g., [Exhibit 22](#), p.2. Whether this USAMRIID seed stock sent to Dugway, for the purpose of large scale production of Ames anthrax spores for eventual use as RMR 1029 for the USAMRIID vaccine studies, contained the “fingerprint morphs,” or not, while it may be a question of academic interest, is not a question of forensic importance. If this seedstock from USAMRIID did not contain the “fingerprint” morphs, then those morphs must have resulted from Dugway’s history of large-scale production runs of Ames anthrax. In that event, as already deduced from the fact that Ivins’ RMR 1030 did not contain the “fingerprint” morphs, Dugway must have had Ames anthrax samples from these production runs (and others) that contained the “fingerprint” morphs, and this is why these morphs showed up in RMR 1029 at USAMRIID. In this scenario, therefore, Dugway should not have been eliminated by the FBI as a possible source of the attack anthrax. This appears to be the case given that the FBI reports only 7 samples from USAMRIID tested positive for the “fingerprint morphs” and reports that all 7 tracked back to having been derived from RMR 1029 (which would not have been the case for the original seed stock). On the other hand, if this seedstock from USAMRIID did contain the “fingerprint” morphs, the forensically significant outcome is the same, i.e. Dugway’s production runs using this seedstock would contain the “fingerprint” morphs and the Ames anthrax produced in these production runs that was sent to USAMRIID and Dr. Ivins explains how these morphs showed up in RMR 1029 at USAMRIID. This alternative scenario would have required USAMRIID to have destroyed or exhausted its original seed stock before the FBI DNA PCR testing, given the above referenced results of the FBI’s tests. And again, under this alternative scenario, Dugway should not have been eliminated by the FBI as a possible source of the attack anthrax because it must have had samples from these production runs that contained the “fingerprint” morphs. The NRC noted, based on FBI documents, that Dr. Ivins created RMR 1029 using only two inputs, Dugway production runs Ames anthrax and Ivins’ RMR 1030 Ames anthrax. [Exhibit 40](#), p. 131. The FBI noted that nothing was added to RMR 1029 after it was initially created by combining the Dugway production runs material and Ivins RMR 1030 material. [Exhibit 21](#), pp. 26-28. As noted, the FBI’s DNA PCR tests showed Ivins’ RMR 1030 did not contain the “fingerprint” morphs. [Exhibit 40](#), p. 85 footnote 3. The seed stock sent to Dugway, whatever its source, was not added directly into RMR 1029. The forensic conclusion of interest from these facts is that some Ames anthrax samples from Dugway’s RMR 1029 production runs must have contained the “fingerprint” morphs and thus Dugway should not have been eliminated from the FBI’s list of suspect sources from which the attack anthrax was obtained.

Second, according to one DPG scientist, the biological material (lawns, including papillae) scraped from these plates was then used directly to inoculate the fermentors at Dugway (Martin, 2010). This material was collected from the plates after the lawn population had largely converted to spores. Because spores must germinate before growth can resume, unsporulated cells (including from sporulation-defective mutants in the inoculum) would likely have had a growth advantage in the fermentor. **Because material prepared at Dugway comprised the bulk of the material that was pooled in the RMR-1029 flask, and because the inocula used to prepare the spores had visible evidence of mutants that may have been defective in spore formation, the committee suggests that at least some of the morphotypes identified in RMR-1029 originated from Dugway.** Various biological factors would have affected the resulting presence and abundance of the genetic variants, including their growth rates, germination rates, and sporulation efficiencies under the specific cultivation conditions used as well as the rate at which each variant arises by mutation.

NRC report, [Exhibit 40](#), pp. 131-132 (emphasis added).

Had samples from the Dugway RMR 1029 production runs been subjected to the DNA PCR testing, and had the NRC and the public and Congress been made aware of the results, then the NRC would not have to be inferring the likelihood, and the Lawyers' Committee would not have to be deducing the certainty, that this Dugway anthrax contained the FBI's "fingerprint." The matter could have been addressed by simply reporting the test results.

The significance of the fact that the RMR 1029 production runs samples Dugway provided to the FBI were non-viable became clear upon reading in the NRC report that the FBI decided, at some undetermined point in time, on use of a DNA PCR testing protocol that resulted in the FBI not conducting its "fingerprint" morphs DNA PCR tests on any samples that were not viable.

[Exhibit 40](#), pp. 127 (Box 6-1, the subpoena protocol requiring an initial growth before submission); [Exhibit 40](#), pp. 129-130 (the FBI's adoption of a protocol requiring a second growth of submitted repository samples before DNA analysis). This FBI protocol, adopted for the Amerithrax investigation, required that, before the labs being investigated submitted their anthrax samples to the FBI, the labs needed to grow the samples. And, this FBI protocol further

required that the labs' anthrax samples submitted in response to the FBI's subpoenas be grown a second time before the DNA PCR morphs testing was performed. *Id.* This FBI-established (for the Amerithrax investigation) double regrowth protocol requirement ensured that all non-viable samples, including Dugway's RMR 1029 production run samples collected during the FBI's search of Dugway (see [Exhibit 22](#), pp. 1-5), would never be DNA PCR tested.

The NRC study criticized the FBI for adopting this protocol and for the FBI's failure to perform the DNA PCR morphs tests on the non-viable samples. [Exhibit 40](#), pp. 129-130. The NRC concluded, at least implicitly, and correctly as it turns out, that these FBI testing protocol decisions may well have impacted the validity of the results of the FBI's DNA PCR testing program, and the FBI's conclusions drawn therefrom. *Id.* It is not clear that the NRC discovered the full significance of the FBI's arbitrary adoption of this approach, and that Dugway RMR 1029 production run samples were, with virtual certainty, never tested as a result of the use of this FBI protocol.

This arbitrary decision by the FBI to adopt this viable-samples-only testing protocol resulted in the FBI not conducting its DNA "fingerprint" morphs PCR analysis on the Dugway samples from the Dugway production runs that supplied 85% of the Ames anthrax that went into USAMRIID's RMR 1029 used by Dr. Ivins (unless the FBI did have such tests conducted but concealed these test results using their protocol as a cover). Neither the NRC report, [Exhibit 40](#), nor the FBI's Amerithrax Investigative Summary, [Exhibit 21](#), reported DNA PCR morph testing results for the Dugway RMR 1029 production runs samples recovered in the FBI search of Dugway, [Exhibit 22](#), p. 5.

As discussed *supra*, such DNA PCR analysis of these specific Dugway samples would, with scientific and logical certainty, have confirmed that anthrax stocks that had been held at

Dugway contained the FBI's "fingerprint" morphs. Such a finding, if reported by the FBI, would have completely undermined the FBI's purported basis for narrowing its suspect list to Dr. Ivins and a few USAMRIID personnel. The NRC stated, as noted above, that morphs of some kind were observed visually during the Dugway production runs, and also stated that the NRC expected that the Dugway RMR 1029 production runs Ames anthrax contained some or all of the FBI's four designated "fingerprint" morphs. [Exhibit 40](#), p. 131-132.

The NRC's criticism of the FBI's decision to adopt a testing protocol that led to not doing the "fingerprint" morphs DNA PCR analysis on any samples that were non-viable was understated. This FBI decision led either to Dugway's RMR 1029 production runs samples never getting DNA PCR tested for the "fingerprint" morphs, or to the concealment of those test results. This failure to test, or to report, 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 was obtainable.

This evidence that the FBI so disingenuously swept under the rug via its arbitrary viable-samples-only testing protocol sleight-of-hand would have been a smoking gun pointing to Dugway as having Ames anthrax containing the FBI's identified "fingerprint" found in the attack anthrax. Further, once that key fact, that Dugway personnel remained suspects, had been acknowledged, the FBI would then have been forced to also acknowledge and follow-up on another key fact -- that the whereabouts of an entire large-scale production batch of Ames anthrax (with the "fingerprint morphs") made at Dugway, the 19th production run in the Dugway RMR 1029 production series, was unknown. [Exhibit 22](#), p. 4. That is, the FBI, notwithstanding its consensual search of Dugway's anthrax stocks and records and the FBI's interviews of Dugway personnel, could not account for the disposition of this batch of Ames anthrax

documented to have been produced at Dugway. Thus, contrary to the FBI's public misrepresentations, the FBI's claimed smoking gun DNA PCR evidence did not just define a small group of suspects that included Dr. 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.

FBI documents, as noted, showed that one sample from Battelle showed the "fingerprint" (all four of the FBI-selected morphs). [Exhibit 46](#), footnote 68, citing NRC FBI document number B2M10, p. 25. 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 (referenced by the FBI as the "commercial lab in the Midwest"). [Exhibit 21](#), p. 35. 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.

All of the above evidence and analysis should have been, but was not, disclosed to Congress by FBI Director Mueller when he replied in the hearing referenced *supra*, or when the FBI replied in the follow-up letter to the Judiciary Committee's inquiry, [Exhibit 09](#), as to what basis the FBI had to eliminate Dugway and Battelle personnel or others allowed to work at these facilities from the suspects list. Based on the Lawyers' Committee's investigation and analysis,

those omissions do 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 by others at the time, remains to be determined.

Although Colonel Anderson did not have available to him at the time all of the evidentiary details reported in this Petition, his logic and insights supporting his conclusion that the FBI should not have removed Dugway or Battelle from its list of suspects were sound. Colonel 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 [D]ugway 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.

#### **Exhibit 11.**

FBI Director Mueller himself, facing widespread criticism of the FBI's investigation, had been the one to commission the NRC to undertake a review of the scientific approach used during the FBI's investigation. The Lawyers' Committee presumes that when Director Mueller commissioned the NRC to undertake this review of the FBI's investigation science 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 in 2010, see [Exhibit 17](#), while the NRC study which ended in 2011 was still in progress, see [Exhibit 40](#). Given the NRC's finding that the FBI's DNA PCR analyses could not with reasonable scientific certainty be relied on to identify a specific anthrax culture or stock, such as the RMR 1029 stock used by Dr. Ivins, from which the attack anthrax was derived, directly or indirectly, and given the evidence discussed herein that the FBI went to some lengths to avoid disclosing that Dugway's Ames anthrax production runs contained the "fingerprint" morphs that went into USAMRIID's RMR 1029, the FBI's decision to close its investigation prior to completion of the NRC's review appears not only premature and ill-advised, but suspicious.

The NRC's review first was conducted under significant constraints imposed by the FBI, and then the significance and clear implications of the NRC's findings were ignored by the FBI. The constraints included the 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 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 NRC committee why the FBI conducted the analyses they did and how they contributed to the FBI investigations and conclusions." [Exhibit 40](#), pp. 33-34. 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 intended not to get the truth, but to hide it.

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 PCR testing for the “fingerprint” morphs, 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 Dr. Ivins disappears for lack of reliable scientific evidence.

On the other hand, if the FBI’s DNA PCR analysis for the “fingerprint” morphs is sufficiently scientifically reliable, then the disturbing fact remains that the FBI disingenuously decided to not test non-viable samples using this DNA PCR technique, which left the Dugway Ames anthrax samples from its RMR 1029 production runs, which although not viable were capable of being tested using the PCR method, conveniently untested. This FBI pattern of conduct, 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” (the combination of the four FBI-selected morphs) of the anthrax found in the attack letters. Had that disclosure, that the Dugway anthrax matched the FBI’s “fingerprint” of the attack anthrax, been made by the FBI then, once again, the centerpiece of the FBI’s case against Dr. Ivins again disappears.

So, only two possibilities remain in regard to the FBI’s conduct regarding the DNA PCR testing and evidence. Neither is flattering to the FBI. Each supports the Lawyers’ Committee’s request in this Petition for an investigation by Congress and by an independent commission.

The first of these two possibilities is that FBI officials understood what the NRC later reported, that the DNA PCR testing and science regarding purported “fingerprint” morphs that had been relied on by the FBI did not support the FBI’s conclusions with any reasonable scientific certainty. Therefore, under this scenario, the FBI knew that it had no meaningful

evidentiary case against Dr. Ivins because its DNA “fingerprint” was not a fingerprint at all.

However, the FBI proceeded to scapegoat Dr. Ivins anyway, possibly to protect its reputation.

The second, and only remaining possibility, is that FBI officials actually believed that the DNA PCR testing produced a fingerprint that could reliably point to a source from which the attacker(s) could have obtained their anthrax stock used to make the attack anthrax. Under this scenario, given the facts discussed above, all known to the FBI, the FBI knew that its presumed-reliable DNA PCR “fingerprint” morphs evidence pointed as much towards Dugway and Battelle personnel as towards Dr. Ivins and USAMRIID personnel, and more towards Dugway and Battelle when the silicon content and *B. subtilis* contamination evidence is considered. Under this remaining possibility, the FBI, having this knowledge, nonetheless intentionally adopted its viable-samples-only testing protocol in order to avoid having to report to the public or Congress (or a federal grand jury) the otherwise inescapable facts that Dugway’s Ames anthrax RMR 1029 production run samples had the attack anthrax “fingerprint” (the four FBI-selected DNA morphs), and this Dugway anthrax made up 85% of the contents of USAMRIID’s RMR 1029 flask used by Dr. Ivins.

Had the FBI not engaged in this cover-up tactic, the FBI would have found itself in the unenviable public position of appearing incapable of narrowing its suspects list and bringing the anthrax murderer to justice, because with Dugway and Battelle (and CIA) personnel included in the list of suspects, the FBI would be looking at a list containing hundreds of suspects. And this interpretation of the facts is the one that is most flattering to the FBI.

There is, unfortunately, a worst-case alternative consistent with these facts. That worst-case alternative is that either the FBI or the Department of Justice was improperly influenced to engage in such cover-up tactics in order to protect the real perpetrators from discovery and

prosecution, and/or to cover up evidence of violations of the Biological Weapons Convention, see e.g., [Exhibit 56](#).

**2. The FBI Had Evidence that B. Subtilis Contamination Found in the First Wave of Anthrax Attack Letters Pointed Towards Dugway and Not USAMRIID, and that the Silicon Content of the Attack Anthrax Pointed Towards Battelle and Dugway, But the FBI Also Failed to Disclose this Information In Response to Congressional Inquiries**

Had the FBI answered 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. There are at least four "smoking gun" reasons for this: 1) The concealment of the fact that Dugway's RMR 1029 production runs anthrax contained the FBI's "fingerprint" morphs (discussed above); 2) The B. subtilis contamination found in the New York Post attack letter; 3) The silicon found inside the exosporium on the B. anthracis spore coat in the anthrax in both attack waves; and 4) The fine dry powder nature of the anthrax used in the second wave of attacks. These four lines of evidence take the suspicion spotlight away from Dr. Ivins and USAMRIID personnel and shine it on Dugway and Battelle personnel (and the associated intelligence agencies). See, e.g., [Exhibit 32](#); [Exhibit 46](#); [Exhibit 43](#); [Exhibit 44](#).

In regard to the second of these smoking guns, the first wave of attack letters contained contamination from another bacterium – B. subtilis. [Exhibit 40](#), pp. 104-106; [Exhibit 32](#), pp. 10-11. Neither Dr. Ivins' Ames anthrax stocks specifically nor USAMRIID's anthrax stocks generally had contamination by B. subtilis, which is used as a simulant for anthrax. [Exhibit 12](#); [Exhibit 32](#); [Exhibit 34](#). USAMRIID did not have a B. subtilis-contaminated spore production machine, called a fermenter, but Dugway did. *Id.* 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) rather than being sent to USAMRIID. [Exhibit 22](#), pp. 1-5.

The U.S. military has a long history of use of such anthrax simulants. With some involvement of the CIA, the U.S. military in the 1950's and 1960's conducted secret open-air tests in U.S. cities using anthrax simulants *Bacillus globigii*, aka *Bacillus subtilis*, variant Niger, as well as other bacteria.<sup>10</sup> See [Exhibit 66](#), "Of Microbes and Mock Attacks Years Ago, The Military Sprayed Germs on U.S. Cities," Jim Carlton, Wall Street Journal, October 22, 2001. Also see, Cole, Leonard A., Clouds of Secrecy: The Army's Germ-Warfare Tests Over Populated Areas, Totowa, New Jersey: Rowman & Littlefield (1988); "Working Paper, Bioterrorism and Biocrimes, The Illicit Use of Biological, Agents Since 1900," W. Seth Carus, August 1998 (February 2001 Revision); and "The Message in the Anthrax," Don Foster, Vanity Fair, pp. 180-200, October 2003.

These secret tests were alleged to have led to at least one fatality and numerous illnesses, with millions of people being exposed to these bacteria in San Francisco, New York City, and Washington, D.C. *Id.* It was not until 1977 that the U.S. Army disclosed in Senate subcommittee hearings that it had performed such mock biological attacks using these simulants. *Id.* Thus, certain elements of the U.S. military had not only a history of use of such anthrax simulants at military facilities, but a history of exposing the public to such simulants and concealing those activities for decades.

The NRC noted that the efforts by the FBI, via its contractors, to trace the *B. subtilis* contaminant in the attack letters to a specific source fell, mysteriously, short. The NRC noted:

---

<sup>10</sup> *B. atrophaeus* is the modern name for what has historically been known by several other names, including *B. globigii* and *B. subtilis* var. *niger*. See "Genomic Signatures of Strain Selection and Enhancement in *Bacillus atrophaeus* var. *globigii*, a Historical Biowarfare Simulant," Gibbons, Henry S. et al., <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3064580/>.

In short, many repository samples were contaminated with *B. subtilis*, although apparently not by the same strain as in the New York Post letter. Ultimately, the FBI concluded that the testing for *B. subtilis* did not provide useful information leading to the source of the New York letter materials—GB22 **is apparently an environmental strain of unknown origin that could not be traced to any particular source.**

**Exhibit 40**, pp. 106 (emphasis added).

The Lawyers' Committee notes with concern that this mysterious result – that the *B. subtilis* contaminant in the attack anthrax purportedly originated from no source that could be identified – was obtained by a team that included the National Bioforensic Analysis Center (NBFAC) at the Department of Homeland Security's National Biodefense Analysis and Countermeasures Center. NBFAC was then operated by Battelle Memorial Institute. See **Exhibit 59**; **Exhibit 60**. Battelle, significantly, is one of the two labs that Congress had inquired about with FBI Director Mueller. As noted *supra*, Director Mueller was asked by Congress to explain how Battelle and Dugway came to be eliminated from the FBI's investigation of the source of the attack anthrax. Had Congress been aware of the NBFAC's involvement in key FBI Amerithrax investigative work, Congress may have had additional questions for Director Mueller (see discussion *infra* regarding the fox guarding the henhouse).

In regard to the third “smoking gun,” the content of the first attack wave letters was 10% silicon, most of which was outside of, and not attached to, the anthrax spores, **Exhibit 40**, p.82, and silicon compounds were also found in the second attack wave letters inside the anthrax spores. The anthrax in this second wave of attack letters, which were addressed to Senator Leahy and Senator Daschle, had a 1% - 2% silicon content. Virtually all of this silicon was *inside* the exosporium on what is called the spore coat. **Exhibit 40**, pp. 82, 86-87.

The NRC, in its FBI-commissioned report issued in 2011 reviewing the science used by the FBI, noted that the FBI offered no explanation for the presence of the higher concentration of

silicon in the New York Post letter. *Id.* at pp. 94-95. Further, the FBI's conclusion that the 1% to 2% silicon inside the spores in the second wave of attack letters resulted from a natural uptake of silicon during anthrax cell growth is not supported by the scientific studies that have been performed which could not replicate the 1% to 2% silicon content. [Exhibit 32](#), p. 5. Also, as noted below, USAMRIID and Dr. Ivins did not have the equipment or expertise to achieve this kind of silicone compound microencapsulation or to make the fine dry anthrax powder.

The NRC, significantly, noted that Ivins' RMR 1030 Ames anthrax stock did not resemble the attack anthrax chemically or physically. [Exhibit 40](#), p. 85 footnote 3. The NRC reported that **only a few spores of the RMR 1030 had silicon and the RMR 1029 had no silicon.** [Exhibit 40](#), pp. 82, 85, 87. 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.*, p. 87. 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 (and in the case of RMR 1030, to account for the "fingerprint" morphs). *Id.*

In addition to generally inquiring about the FBI's basis for eliminating Dugway and Battelle from its investigation of the possible sources of the attack anthrax, Congress also specifically asked the FBI about the silicon content of the attack anthrax. In the follow-up inquiry submitted to the FBI after the September 16, 2008 hearing, Congress asked the FBI to answer a question that had been posed at the hearing by Representative Nadler: "What is the percentage of weight of the silicon in the powder used in the 2001 anthrax attacks?" See [Exhibit 09](#).

The FBI's written response, dated April 17, 2009 was:

FBI laboratory results indicated that the spore powder on the Leahy letter contained 14,479 ppm of silicon (1.4%). The spore powder on the New York Post

letter was found to have silicon present in the sample; however, due to the limited amount of material, a reliable quantitative measurement was not possible. Insufficient quantities of spore powder on both the Daschle and Brokaw letters precluded analysis of those samples.

*Id.*

However, Dr. Barbara Hatch Rosenberg, Dr. Martin Hugh Jones, and Stuart Jacobsen reported that the FBI had known the percentage of silicon in the New York Post letter powder since October, 2002, when an FBI laboratory measured silicon content of 10.77%, and that this fact was not publicly divulged until the FBI document release of February, 2011. [Exhibit 32](#), p. 5, footnote 47 (citing NRC FBI document B1M7). Thus, again, the response provided by the FBI to a direct and specific inquiry from Congress was either inexplicably misinformed or an intentional misrepresentation of material facts.

The presence of tin and iron in the attack anthrax may be another “smoking gun,” related to the silicon smoking gun evidence, that could serve as a fingerprint pointing to the source of the attack anthrax. See the detailed analysis on this issue by Dr. Martin Hugh-Jones, Dr. Barbara Hatch Rosenberg, and chemist Stuart Jacobsen. [Exhibit 46](#). The NRC noted in this regard that the FBI and the Department of Justice (DOJ) appear to have not followed up on this potentially important lead:

As of 2005 Michael and Kotula of Sandia National Laboratories believed that the tin and iron present in the powders may have provided a useful chemical signature; however, the committee was never shown any evidence to indicate that this possibility was pursued further (FBI Documents, B1M1D5) or that these discussions led to any conclusions about the source of material or production methods.

[Exhibit 40](#), p. 82.

In regard to the fourth “smoking gun,” neither Dr. Ivins nor his colleagues at USAMRIID could have created the fine dry powder attack anthrax or the silicon compound inner coating,

because they lacked the 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 also reportedly involved in secret biowarfare studies as reported in the New York Times. [Exhibit 56](#). The USAMRIID Commander admitted the existence of these secret biowarfare studies to Colonel Anderson. Dr. Ivins had also made disclosures regarding this secret Battelle work to Colonel Anderson. Colonel 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, Dr. Ivins came to Colonel 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 microbiologist Perry Mikesell, who then worked at Battelle. [Exhibit 08](#).

Dr. Ivins had stayed in touch with Perry Mikesell after Mikesell left USAMRIID to work for Battelle Laboratories in West Jefferson, Ohio. [Exhibit 15](#). Mikesell had become agitated about secret agency work that was being done in and around the Battelle laboratory in Ohio. [Exhibit 08](#); [Exhibit 12](#). Dr. Ivins discussed with Colonel Anderson the secret work Mikesell was required to do, including secret experiments involving anthrax that could be regarded as having violated the Biological Weapons Convention. William Broad and his colleagues at the New York Times revealed these DOD/DIA-funded studies that were being conducted at the Battelle Laboratory regarding "enhanced anthrax." [Exhibit 56](#). Perry Mikesell is reported to

have begun drinking heavily and to have died of complications of alcoholism on October 19, 2002.

FBI Director Mueller, in his testimony to Congress or in the FBI's months-later follow-up response to the questions submitted to the FBI by Congress, should have disclosed the above "smoking gun" evidence. Congress had specifically requested the basis the FBI used to eliminate Dugway and Battelle from the list of possible sources for the attack anthrax (which does not equate *per se* to a suspects list). Had the FBI been forthright, the proper response to Congress' inquiry would have been that the FBI made an error and neither Dugway nor Battelle should have been eliminated from the FBI's investigation because the *B. subtilis* contamination evidence, the silicon content evidence, the fine, dry powdered form of the second attack anthrax, and the DNA "fingerprint" morphs evidence all pointed more towards Dugway and Battelle than to Dr. Ivins and USAMRIID.

But the FBI was not forthright. For all the reasons thus far stated, Congress should initiate its own focused inquiries into the post-9/11 anthrax attacks, and should establish as well a properly staffed and funded independent commission to conduct a comprehensive inquiry into these attacks which used biowarfare agents against Congress and the free press and involved the attempted assassination of two United States Senators.

**C. At Key Points in the FBI's Anthrax Attacks Investigation, the FBI Allowed Entities that Were Legitimate Candidates for the Source of the Attack Anthrax to Control the Submission and Analysis of Key Evidence that Might Point to Them – That Is, the FBI Allowed Potential Foxes to Guard the Proverbial Henhouse**

As the NRC pointed out, there was a major flaw in the FBI's investigatory approach in regard to collecting the anthrax samples from the 17 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. 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. The NRC noted "a final challenge was that the repository collection process was based on the integrity of the individuals asked to provide samples. ... Standards of custody of evidence would dictate that agents of the FBI should have obtained the samples."

**Exhibit 40**, p. 145.

Further, a Battelle corporate entity was allowed by the FBI to do key investigations including regarding the *B. subtilis* contamination and anthrax particle sizes. **Exhibit 40**, pp. 48, 79, 89, 156, 158, 169. Interestingly, the FBI's case-document-index given to the NRC listed a Battelle document that was not provided to the NRC because of its security classification.

**Exhibit 40**, p. 179, footnote 4.

Dugway Proving Ground was also relied on by the FBI to conduct key scientific work in support of the investigation, including regarding the silicon found in the attack anthrax. **Exhibit 40**, pp. 49, 79, 80, 82-85, 154; **Exhibit 46**. As explained *supra*, neither Dugway nor Battelle should have been eliminated from the FBI's investigation of the source of the attack anthrax for numerous reasons. Therefore, allowing either to participate in a study of key evidence that could point towards or away from either as a source of the attack anthrax was again potentially allowing a fox to guard the henhouse.

During the FBI's 2008 press conference a scientist identified as the FBI's "processing" expert 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 23](#); [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, [Exhibit 59](#), [Exhibit 60](#), and this key FBI consultant was therefore a scientist employed by Battelle.

In this context of a potential fox guarding the henhouse during the Amerithrax investigation, it is also worth noting that during the FBI’s investigation confusion may have been created, as a result of misconduct by Battelle in its handling of the attack anthrax evidence, regarding how fine of an anthrax powder was used in the second wave of the attacks targeting the two senators. Dr. Martin Hugh-Jones et al. note that in Richard Preston’s book [The Demon in the Freezer](#), this possibility is referenced.

Presumably for this reason, an effort to determine the dispersibility of the attack spores by direct measurement was undertaken by Michael Kuhlman of Battelle Memorial Institute. Sometime between October 17-23, 2001, he measured the particle size distributions of an aerosolized Daschle sample and later, of a Leahy sample and of several *B. subtilis globigii* spore samples made at Battelle using standard methods, with no milling or other processing [footnote omitted]. He found them all to be similar. The particle sizes in all cases had bimodal distributions; for the Daschle sample, surprisingly, only 0.05 % of the mass had a diameter of 2 micrometers or less, and 0.9% had a 10 micrometer diameter or less; the Leahy sample had ten times more particles in this respirable range. The NAS Report took the Battelle data to indicate that “powders with dispersion characteristics similar to those of the letter materials could be made without the addition of a dispersant [footnote omitted].” However, there is reason to question whether the attack samples were in pristine condition when these measurements were carried out, or whether Battelle had autoclaved them first, which might have caused clumping. Richard Preston’s *The Demon in the Freezer* [footnote omitted] describes an argument at a meeting on October 22, 2001 involving the FBI laboratory, scientists from the Battelle Memorial Institute, and scientists from the Army. The Army scientists were telling the FBI that the attack powder was “extremely rarified and dangerous,” while Michael Kuhlman of Battelle “was allegedly saying that the anthrax was ten to fifty times less potent than the Army was claiming....One Army official is said to have blown up...at the meeting,

saying to the Battelle man, ‘Goddamn it, you stuck your anthrax in an autoclave, and you turned it into hockey pucks.’” The FBI’s conclusion that the silicon content of the attack anthrax had nothing to do with its dispersibility remains unproven.

**Exhibit 32**, p. 6.

In addition, an opportunity, apparently the only opportunity, to develop potentially key forensic DNA morphs evidence on the Florida attack anthrax, the attack anthrax that killed Robert Stevens, the first victim, and which has been the least studied, was inexplicably not pursued on apparent direction from the DOJ after the Florida attack anthrax samples were sent to the NBFAC. The NBFAC, operated by Battelle, was requested to do the DNA extraction on a Florida attack anthrax sample and then send the extracted DNA material to the TIGR lab for DNA PCR testing. But before that extracted DNA could be sent to the TIGR lab for the DNA PCR analysis, the DOJ issued a directive to not process that evidence further. That is, this evidence reached the Battelle-operated NBFAC and went no further, after someone apparently communicated to the DOJ about this evidence prompting the directive that this evidence should not be sent to the TIGR lab or processed further. The NRC describes this series of events regarding this potentially key Florida attack evidence as follows:

At least one environmental swab sample from AMI was sent to Patricia Worsham at USAMRIID (in June 2005) for detection and identification of *B. anthracis* variant colony morphotypes. Material from this swab was used to inoculate sheep blood agar. The report of this work by Worsham (2009; FBI Documents, B1M2D14) states that *B. anthracis* variant morphotypes A, B, and C/D were found, but not morphotype E, in addition to the wild-type colony morphotype.

Furthermore, Worsham states that a *Bacillus* strain was recovered that resembled the *B. subtilis* found in the New York Post letter. The report states that in October 2006, cell suspensions from 34 colonies that exhibited a variant morphotype, as well as from the *B. subtilis*-like isolate, were sent to the National Bioforensic Analysis Center (NBFAC) for DNA extraction, and that the DNA from the variant colony morphotypes were to be sent to the Institute for Genomic Research (TIGR) for sequencing of the morphotype A, B, C/D, and E genomic

regions. However, according to statements by the FBI to this committee (FBI/USDOJ, 2011), the U.S. Attorney's Office advised that this sequencing and further characterization of these colony morphotypes from AMI would not be undertaken.

\* \* \*

The decision by the U.S. Attorney's Office not to pursue molecular analysis on the AMI crime scene samples (FBI, 2011) limits the ability to definitively connect this attack to the material in the recovered letters from New York and Washington, D.C.

**Exhibit 40**, pp. 65, 67.

NBFAC was also involved in the processing of all the samples in the experiment ordered by the FBI involving testing RMR 1029 thirty times. NBFAC processed all of these samples before the DNA material was transmitted to the four labs that performed the DNA PCR testing. The purpose was to determine the variability in results and to use that data to determine the probability that Ivins' second sample could have been an honest sample of RMR 1029 and still not show any of the four "fingerprint" morphs. The NRC noted that the FBI misstated the outcomes in this experiment, asserting that none of the re-tested samples showed less than three of the morphs, when in fact five samples among the thirty showed only two morphs and one of the thirty samples showed only one of the "fingerprint" morphs. **Exhibit 40**, p. 141-142. It was not explained how the FBI came to misstate these results. The DOJ later issued an erratum acknowledging and correcting the previous misstatement of these experimental results.

Although being the source of the anthrax used by the perpetrator(s) who committed the anthrax attacks does not equate necessarily with being a perpetrator, potential sources of the attack anthrax such as current or former personnel at Dugway or Battelle would, even if not perpetrators, still have potentially strong motives to hide evidence that they or their facility were the source of the attack anthrax. Such motives include the risk of losing funding due to the

exposure of lax security at their facilities, and the potential disclosure of work they were engaged in that may have violated the Biological Weapons Convention.

The FBI must have known about these potential conflicts of interest before it decided to contract or assign responsibility to perform key studies or scientific investigative work for the Amerithrax investigation to entities such as Battelle or Dugway. Why the FBI did not take actions to avoid such conflicts is not apparent. These facts add to the pattern of facts presented herein indicating that the FBI's Amerithrax investigation was corrupted and/or obstructed.

**D. The Former Director of the FBI's Anthrax Attacks Investigation Reported a Pattern of Significant Flaws in the FBI's Investigation, a Pattern Consistent with Intentional Obstruction from Within the FBI and the Department of Justice**

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 Special 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](#).

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.

These numerous flaws in the FBI's Amerithrax investigation, together with the unreasonable constraints imposed by FBI leadership, 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.

## **E. Dr. Bruce Ivins Was Scapegoated by the FBI**

### **1. The FBI Misrepresented that Ivins Controlled Access to RMR 1029**

In another apparent knowing misrepresentation by the FBI, the FBI asserted that Ivins was

justifiably treated as the prime suspect because he purportedly not only had access to, but controlled access to the USAMRIID RMR 1029 Ames anthrax stock. See [Exhibit 21](#), pp. 5, 8, 26-27; [Exhibit 19](#), pp. 1-2. Although RMR 1029 was represented by the FBI as having remained in Ivins' possession and under Ivins' control in his lab, Colonel Anderson of USAMRIID confirms that this was not the case. [Exhibit 12](#). RMR 1029 was routinely stored both in Ivins' lab in Building 1425 and another USAMRIID building, Building 1412, in which tests were conducted by USAMRIID personnel other than Dr. Ivins. [Exhibit 12](#), p.3. 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 RMR 1029 at USAMRIID.

The FBI claims Ivins changed his RMR 1029 receipt form using whiteout to accurately reflect that RMR 1029 was never stored in Building 1412. [Exhibit 21](#), p. 27. That is, the FBI asserts that although RMR 1029 was originally planned by Ivins to be stored in Building 1412 as well as in Building 1425, and Ivins' RMR 1029 receipt form originally reflected that plan, Ivins later changed his mind and used whiteout to change this form to reflect that RMR 1029 was only stored in Building 1425 where Ivins' lab was located. However, Colonel Anderson has reported not only that RMR 1029 was sometimes stored in Building 1412, but also that key alterations in this revised RMR 1029 receipt form are not in Ivins' handwriting. [Exhibit 12](#). Further, there is no reason for Ivins to have used whiteout for such an innocent change, had he made it. This form may have been tampered with by someone other than Ivins 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.

**2. Before and Shortly After Dr. Ivins' Death, the FBI and DOJ Accused Him of Having Prepared the Attack Anthrax Spores at the USAMRIID Labs, But in a Later Lawsuit the DOJ Advised a Federal Court that No One at USAMRIID Could Have Done So**

Before and shortly after Dr. Ivins' death, the FBI and DOJ accused him publicly of having prepared the actual attack anthrax working late at night at USAMRIID using lab equipment there. *See, e.g.*, [Exhibit 19](#). However, the FBI and the DOJ were in a position to know that neither Dr. Ivins nor anyone at USAMRIID could have done so because of the unusual properties of the attack anthrax and the special facilities required to make it that USAMRIID did not have. After Dr. Ivins' death, the DOJ, by statements of DOJ attorneys in its Civil Division, admitted as much to a federal court during litigation of the lawsuit filed against the federal government by the widow of Robert Stevens, the first victim of the anthrax attacks, in Florida. [Exhibit 43](#), pp. 4-8; [Exhibit 44](#), pp. 3-6 of pdf (pp. 26, 31, 32, and 34 of original transcript).

The NRC found that “The anthrax in the Senate letters was a **highly refined dry powder** consisting of about one gram of nearly pure spores, as determined in subsequent laboratory analyses (see Chapter 4). The preparation was thus more potent than the material in the first (New York) set of mailings.” [Exhibit 40](#), p. 31 (emphasis added). As discussed *supra*, the attack anthrax also had an unusual silicon compound coating on the spore coat inside the exosporium, and the New York attack letters contained *B. subtilis* contamination.

In regard to the inner coating of silicon compounds on the spore coats in the attack anthrax, Dr. Martin Hugh-Jones and his colleagues note that:

Potential **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**. They would require a **laboratory with specialized capabilities and expertise not found at**

## USAMRIID.

**Exhibit 32**, p. 9-10 (emphasis added).

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 dry, fine powder anthrax with an internal silicon compound coating, nor would he have had access to this type of anthrax or the necessary equipment to make it. **Exhibit 31; Exhibit 15; Exhibit 01; Exhibit 02; Exhibit 32; Exhibit 46**. Dry anthrax was *not* used at, and *not* found at, Dr. Ivins' lab. *Id. Nor*, as noted *supra*, was anthrax contaminated with *B. subtilis* found in Ivins' lab. *Nor*, as noted *supra*, was anthrax found in Ivins' lab that had high levels of silicon. But each these characteristics *was* present in 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 from its original allegation that Ivins made the attack anthrax at USAMRIID.<sup>11</sup> **Exhibit 44; Exhibit 43**.

### **3. The FBI Overstated Its Speculative Evidence that Ivins Mailed the Attack Letters, and Erroneously Eliminated Other Suspects from Consideration Based on Alibis Restricted to Too Small of a Window of Opportunity**

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

---

<sup>11</sup> The DOJ's new position as stated in the Stevens case appears to be that Ivins must have made the attack anthrax somewhere else, without any evidence of where that might have been or how it could have been accomplished.

he *did* make the drive while carrying anthrax, and produced no evidence of any anthrax spores in Dr. Ivins' car or home.

The FBI's apparent conclusion that Ivins had a better opportunity to mail the attack letters than Battelle or Dugway personnel, which was based on geography and the distance from the New Jersey mailbox at issue, assumes a lone wolf attacker. But the FBI had no basis to rule out a team that was either mobile or geographically spread.

The FBI's theory that a lone wolf was the perpetrator also ignores contrary evidence including that one or more 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 that the FBI responded to over 2,300 fake anthrax and other dangerous "agents" threat incidents between October 1<sup>st</sup> and October 16<sup>th</sup> in 2001. **Exhibit 16.** "Hoax" letters mailed prior to the public knowing of the real anthrax attacks could not have been from mere copycats, and such mailings from Florida, for example (see, e.g., "The Message in the Anthrax," Don Foster, *Vanity Fair*, pp. 180-200, October 2003), would have necessitated a confederate of whoever mailed the letters from Princeton.

Further, 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. And, as noted, so does the apparent use of then-state-of-the-art microencapsulation technology using silicon compounds.

In addition, the FBI erroneously ruled out numerous other suspects by arbitrarily defining the window of opportunity to obtain and prepare the attack anthrax to two one-week periods, September 11-18, 2001 and October 1-8, 2001. The FBI states the following in its Amerithrax Investigative Summary report, in regard to its conclusions regarding the perpetrator's window of

opportunity and how it proceeded to rule out suspects other than Dr. Ivins:

Armed with new evidence from the scientific breakthroughs, the Task Force focused its investigation on those researchers who had access to the lab at USAMRIID where RMR-1029 was being stored between September 11 and 18, 2001, and again between October 1 and 8, 2001 – the windows of opportunity to have processed and mailed the anthrax used to commit the crime. All of these individuals were interviewed and, when appropriate, polygraphed. The Task Force checked out alibis and examined laboratory notebooks and other records. For each of these individuals, an assessment was made of whether each possessed the requisite skill to produce and dry such concentrated, pure anthracis spores. The Task Force conducted searches of home and work computers and examined e-mails. Evidence obtained from these and several other investigative efforts helped rule out all of the other persons with access to RMR-1029, and demonstrated that Dr. Bruce Ivins committed the crime.

**Exhibit 21**, p. 6. But the NRC concluded that carbon-dating evidence indicated only that the Leahy letter attack anthrax was prepared after 1998 (and that date may be imprecise due to a margin of error in the carbon dating process). **Exhibit 40**, p. 95. Thus, the attack anthrax could have been obtained and processed during a three-year window of opportunity before the September/October 2001 attacks. Therefore, the FBI’s reliance on proffered alibis by other potential perpetrators covering the FBI-defined two one-week windows was completely misplaced.

The FBI’s report gives the impression that the FBI allowed for a longer window of opportunity for potential perpetrators to have accessed the RMR 1029 samples sent from USAMRIID to Battelle and Dugway. The FBI stated that “Dr. Ivins had transferred small quantities of live, virulent RMR-1029 [anthrax] to two other domestic labs between the time of its creation in October 1997 and the 2001 mailings. Any individual with potential access to those samples **during that time** also was thoroughly investigated and ruled out **using these same methods.**” **Exhibit 21**, p. 6, footnote 2 (emphasis added). It is not apparent how “these same methods” would have ruled out Dugway or Battelle personnel for a three-year window of

opportunity.

However, it appears at least for Battelle, the FBI did not insist on Battelle personnel providing alibis to cover a 3-4-year window. Instead, as noted *supra*, the FBI assumed that there was only one perpetrator and that Battelle's two-man rule would have prevented a lone wolf perpetrator from accessing Battelle stocks of anthrax. The FBI's assumptions in this regard, that Battelle employees always followed the two-man rule, or always reported violations of it, and that there was not more than one perpetrator involved, are speculative at best. The FBI apparently also concluded that Battelle personnel could be eliminated from suspicion because of their geographic location, which again baselessly assumes there was not another allied perpetrator on the East Coast who could assist when needed in the mailing or other logistics of the attacks.

Another assumption on which the FBI appears to have based its decisions to rule out suspects is that the attacker must have first obtained the Ames anthrax from a lab and then processed that Ames anthrax into the fine powder form containing the inner silicon compound coating that is reflected in the attack anthrax, at least that found in the Leahy and Daschle letters. The FBI took the position that, at the time of the attacks, no lab had made a fine, dry powdered anthrax. However, as Dr. Barbara Hatch Rosenberg, Dr. Martin Hugh-Jones, and their colleague Stuart Jacobsen have explained, there is good reason to believe that, prior to the attacks, anthrax having those properties was available ready-made at certain labs such as Dugway and Battelle.

See [Exhibit 32](#).

As explained by Dr. Rosenberg and her colleagues, the FBI's assumptions were baseless:

A priori, the most likely sites of production of the letter anthrax are laboratories that work with dry spores: Battelle, Dugway, and DRES, and their associated institutions and subcontractors. Battelle, for example, is well-known for its aerosol study capabilities and biodefense activities, for which dry spores are

routinely needed. USAMRIID, on the other hand, has always insisted that dry spores are never used in the work there. The FBI says that, prior to the attacks, no US laboratory had Ames anthrax spores in powder form [footnote omitted]; however, powdered anthrax spores are known to have been produced at Dugway in the last few years before the attacks [footnote omitted]. The FBI recognized that Dugway had the know-how [footnote omitted], and also, the strain—Dugway had produced the bulk of the B. anthracis in USAMRIID’s flask RMR 1029 in 1997. Furthermore, Battelle has an operation at Dugway and some other government locations, and might have transferred material there. Also note that, according to the US Department of Justice, “Upon the receipt of RMR-1029 spores, the private research laboratory [defined earlier in the same document as “a private laboratory operated by Battelle”] was allowed to provide aliquots to other laboratory facilities for legitimate research purposes”.

The FBI ruled out Battelle as the source of the attack anthrax on the implicit, and unwarranted, assumptions (1) that the anthrax spore preparations in the letters must have been made covertly, and (2) made by the perpetrator(s) of the attack. They say that every minute in the “Midwest” Battelle laboratory is accounted for, and no researcher was ever alone in the laboratory; background investigations of everyone who had access to the RMR 1029 material received from USAMRIID gave unremarkable results; and the great distance of the Battelle laboratory in Ohio from Princeton, NJ, where the anthrax letters were mailed, “preclude any reasonable possibility that the mailings came from there”. Dugway and DRES, being much farther from Princeton than Battelle, may have been eliminated on that basis alone. However, there is no publicly available information to rule out the possibility that the anthrax spores in the letters were made somewhere in the normal conduct of authorized laboratory operations, and later acquired by the mailer(s) at the same or some other location.

The FBI has also routinely assumed (3) that the attack spores were prepared during the short interval between 9/11 and the mailings of the letters on Sept. 18 and Oct. 9, 2001; but there is no publicly known evidence for that assumption. Battelle received its first shipment of material from the USAMRIID flask RMR 1029 on May 9, 2001. A preparation of dry anthrax spores could have been grown at Battelle from that material any time thereafter, for some authorized (and probably classified) purpose such as vulnerability/response studies; the spores could then have been provided to a distant client or other authorized person(s), who, following 9/11, decided to conduct the anthrax attacks. The same can be said of Dugway, and perhaps also of the unidentified laboratories that submitted repository samples that tested partially-positive.

**Exhibit 32**, p. 3.

The FBI’s assumptions did not have a basis in fact. These FBI assumptions were, nonetheless, convenient (again) for drawing attention away from those labs that had produced or

worked with weapons-grade anthrax.

**4. The FBI's Accusation that Dr. Ivins Was Trying to Conceal or Falsify Evidence by the Manner in which He Submitted Anthrax Samples from the USAMRIID RMR 1029 Stock Was the Least Likely Explanation Consistent with the Circumstances**

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 21](#), p. 79; [Exhibit 40](#), p. 141; [Exhibit 36](#). Thus, there is no factual or logical basis for accusing Ivins of tampering with or concealing evidence as opposed to Ivins or the FBI itself having made an error regarding the sample submission, or as the NRC pointed out, the variable sample results being due to random chance.

**5. The FBI'S Conclusion that Dr. Ivins Had Motive Was Also Speculative, and the FBI Ignored the "Elephant in the Room" Motives of the More Likely Suspects**

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

**6. The FBI's Use of Irregular Procedure Regarding the FBI's Polygraph Test of Dr. Ivins Reflects the Bad Faith Nature of the FBI's Accusations Against Dr. Ivins**

Dr. Ivins was given at least one polygraph (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](#), p. 84, footnote 51. No doubt the FBI would not have questioned the reliability of the results of its polygraph test had it reflected the FBI's desired outcome. It reflects bad faith on the part of the FBI to make use of an instrument or methodology in a criminal investigation in an effort to support a planned prosecution when the FBI is not willing to stand by the results equally, whether the results point towards innocence or guilt.

**7. The FBI Has Withheld Substantial Exculpatory Evidence Regarding Dr. Ivins and There Is Evidence Indicating that Someone in the FBI Attempted to Destroy the Compilation of that Exculpatory Evidence Prepared by FBI Agent and Amerithrax Investigation Director Richard Lambert**

FBI Agent Richard Lambert, who directed the FBI's Amerithrax investigation from 2002 to 2006, has stated his own conclusion that the FBI and Department of Justice could not have obtained a conviction of Dr. Ivins, which would have required proof beyond a reasonable doubt, because the FBI and Agent Lambert had compiled a substantial body of exculpatory evidence regarding Dr. Ivins. There is reason to believe that someone in the FBI made a concerted (but apparently only partially successful) effort to make disappear what was likely the most comprehensive written compilation of that exculpatory evidence: FBI Agent Richard Lambert's 2,000-page Interim Major Case Summary.

Had it not been for a Freedom of Information Act (FOIA) lawsuit, *Dillon v. U.S. Department of Justice*, United States District Court for the District of Columbia, Civil Action No. 17-1716-RC, that attempt to destroy or conceal this compilation of exculpatory evidence might have succeeded. In the *Dillon* FOIA case, the FBI reported that it was initially unable to find Agent Lambert's 2000-page Interim Major Case Summary (IMCS), 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. Reportedly, the FBI finally found a copy at its Quantico Lab division. *See* Declaration of David M. Hardy, *Dillon v. DOJ*, Case 1:17-cv-01716-RC, Document 14-2 Filed 06/15/18 Page 14 of 42. Why it was found there, and only there, is an interesting question.

The FBI has yet to publicly release this key document.

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 as to what extent that IMCS corroborates the Lawyers' Committee's findings and conclusions here (and vice versa) regarding the FBI's treatment of Dr. Ivins. 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 or an independent commission.

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

It is difficult to overstate the importance of solving the 2001 anthrax attacks. These attacks were intended to kill or threaten at least two U.S. Senators. There is a pattern of circumstantial evidence, which will be discussed in the Lawyers' Committee's soon-to-be-filed federal grand jury petition, supporting the conclusion that one of the likely motives for the anthrax attacks on these senators was to either rush the vote on the Patriot Act or ensure its passage. The 2001 anthrax attacks, as noted, were the first time biological weapons had been used against the

United States Congress. Offensive bioweapons research in the 1950's and 1960's led U.S. bioweapons experts such as William Patrick to conclude that a bioweapons attack could, depending on the biological agent used, sicken or kill hundreds of thousands of people, or more. *See, e.g., Exhibit 66.* These facts loom large given, as noted, that the perpetrators of the 2001 anthrax attacks remain at large.

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. *See, e.g., Exhibit 65* (Senator Chuck Grassley); *Exhibit 10* (Senator Patrick Leahy); *Exhibit 26*, pages 15-17 (Congressman Jerrold Nadler); and *Exhibit 24* and *Exhibit 69* (Congressman Rush Holt). 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. *See, e.g., Exhibit 01; Exhibit 02; Exhibit 15; Exhibit 31; Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 46.* And, they are not alone.

On August 9, 2008, the Washington Post editorial board published an editorial stating their position on the issue. This Post 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.**

Further, on October 18, 2011, the New York Times editorial board also published an editorial stating their position 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 DOJ, and likely by the Army and Department of Defense 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. Further, as the NRC noted, there is also a need for a review of all of the FBI’s Amerithrax investigation documents that are classified, a critical task that neither the NRC nor the GAO performed, but a task Congress or an independent commission could perform.

The FBI was clearly not forthright in responding to Congress, and Congress may not have been the only government entity that was misled. One of the significant questions to be answered in a new independent investigation is whether the FBI and DOJ misled the federal grand jury to

the same extent the FBI and DOJ misled Congress and the public. Although some significant pieces of the puzzle regarding the anthrax attacks have been put together by the scientists and investigators who studied the attacks previously, and the Lawyers' Committee in this Petition has put a few more important pieces of this puzzle together, neither the public nor the Congress (nor the Lawyers' Committee) yet knows the full extent of the FBI's misconduct and lack of candor in this case.

**It bears repeating that the real biological weapons attackers in this post-9/11 anthrax case remain at large.** These perpetrators are presumably capable of launching another bioweapons attack at any time when it suits their purposes. The FBI's mishandling of the anthrax attacks offers little hope that the FBI could or would deal effectively or in a timely fashion with a future biowarfare attack. The perpetrators of the anthrax attacks need to be identified and brought to justice before they can strike again.

Neither the public, nor the press, nor Congress have had their legitimate questions about the FBI's Amerithrax investigation addressed, and there is too much at stake to allow those questions to remain unanswered. Both the New York Times and the Washington Post have stated that there remains the 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, and/or an independent commission, and/or an independently appointed special counsel could accomplish this critical undertaking. The Lawyers' Committee respectfully requests that Congress take all actions necessary to see that such independent

investigations are conducted.

## **V. CONCLUSION**

Based on the evidence and scientific expert opinions referenced herein and attached, and based on further evidentiary details that will be described in an upcoming federal grand jury Petition anticipated to be filed in October 2020 by the Lawyers' Committee, the Lawyers' Committee concludes, regrettably, that the FBI's Amerithrax 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, as noted, still remain at large today.

The NRC report found that the scientific evidence developed by the FBI was not sufficient to support with reasonable scientific certainty the FBI's stated conclusion that the anthrax in the attack letters must have been grown and processed after being taken from RMR 1029, or after being taken from another Ames anthrax stock that was itself grown from material taken from RMR 1029. That is, there is no reasonable scientific certainty that the attack anthrax could not have been grown and processed at Dugway or Battelle, or grown and processed after being taken from any lab that had a supply of Ames anthrax, including Dugway or Battelle.

The Lawyers Committee, for the reasons stated herein, now joins the 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, but 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 and/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 a crime defined in Article III Section 3 of the Constitution.

Whether the acts of then-government officials to corrupt and obstruct the “Amerithrax” investigation, and to 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. And 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 consequences apparently intended by the perpetrators. First, the anthrax attacks were used, disingenuously, to throw false suspicion on Iraq and thus helped facilitate the United States’ invasion of Iraq and the garnering of political and public support for that war and the ongoing war on terror.

Second, the anthrax attacks may have been used to ensure an unreasonably rushed passage of the USA Patriot Act. That Act might not have passed, at least not in the constitutionally troublesome form that this Act did pass, had Congress had time to be more thorough and thoughtful in reviewing the Act’s implications for, and impacts on, civil and constitutional rights.

The Patriot Act, as we now better understand, gave substantially increased power to the federal government, including intelligence agencies and law enforcement, while reducing rights and freedoms of the general population of the United States.

Thus, a new thorough inquiry, by Congress itself, an independent commission, and a special counsel (appointed independently of the DOJ and FBI), into these anthrax attacks and public exposé of the truth regarding these attacks is urgently needed. Such new independent investigations are necessary to bring the perpetrators of these crimes to justice, and to prevent these perpetrators from committing future attacks against government officials and the public using biological warfare agents. Further, such independent investigations may also result in the development of ways to more rapidly identify and stop perpetrators of similar bioweapons crimes in the future. Such independent investigations may 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.

Respectfully submitted,

A handwritten signature in black ink that reads "Mick G. Harrison". The signature is written in a cursive style with a horizontal line underneath the name.

---

Mick G. Harrison, Attorney at Law  
Litigation Director, Member, Board of Directors  
Lawyers' Committee for 9/11 Inquiry, Inc.  
Phone: 812-361-6220  
[mickharrionesq@gmail.com](mailto:mickharrionesq@gmail.com)  
For the Lawyers' Committee

*David R. Meiswinkle*

David R. Meiswinkle, Esq. Executive Director, and President  
Lawyers' Committee for 9/11 Inquiry, Inc.

908-420-2943

drmeiswinkle@aol.com

*Edward Asner*

Ed Asner, Vice President, Board of Directors

*Jane A. Clark*

Jane Clark, Attorney at Law, Treasurer, Board of Directors

*Barbara Honegger*

Barbara Honegger, M.S., Secretary, Board of Directors

*Bill Jacoby*

Bill Jacoby, Attorney at Law, Vice President, Board of Directors

*John O'Kelly*

John O'Kelly, Attorney at Law, Member, Board of Directors

*Dr. Graeme MacQueen*

Graeme MacQueen, Ph.D., Anthrax Attacks Investigation Committee

*Kristina Borjesson*

Kristina Borjesson, M.S., Anthrax Attacks Investigation Committee

*Meryl Nass*

Meryl Nass, M.D., Anthrax Attacks Investigation Committee

## EXHIBIT LIST<sup>12</sup>

- Exhibit 01**, Dr. Jeffrey J. Adamovicz Declaration.
- Exhibit 02**, Colonel (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 Colonel Anderson comments.
- Exhibit 06**, Colonel Arthur O. Anderson, M.D. 2008 MFR re WSJ.
- Exhibit 07**, Colonel Arthur O. Anderson, M.D. 2008 MFR re Investigation Hearings (Redacted).
- Exhibit 08**, Colonel Arthur O. Anderson, M.D. 2008 MFR re Perry Mikesell and Battelle.
- Exhibit 09**, FBI Director Mueller's answer to Congress with Colonel Anderson comment.
- Exhibit 10**, NY Times, Sept. 18, 2008, Senator, Target of Anthrax Letter, Challenges FBI Finding.
- Exhibit 11**, Colonel Arthur O. Anderson, M.D. Sept. 18, 2008 memo.
- Exhibit 12**, Colonel Arthur O. Anderson, M.D. 2009 Analysis of Anthrax Letter Evidence, corrected.
- Exhibit 13**, Colonel Arthur O. Anderson, M.D. Message re different RMR 1029 forms.
- Exhibit 14**, Colonel Arthur O. Anderson's Curriculum Vitae.
- Exhibit 15**, Colonel Arthur O. Anderson Declaration.
- Exhibit 16**, 2001 Oct 16 FBI Director Mueller statement on Anthrax Investigations, noting more than 2,300 fake anthrax and other dangerous agents incidents during October 1-16, 2001.
- 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.

---

<sup>12</sup> The exhibit references in both the Exhibit List and in the body of this Petition should appear in blue font and should contain an active hyperlink to the full exhibit document.

- 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**, Oct 2001 Tom Ridge, Other Federal Officials Brief on Anthrax.
- Exhibit 26**, Transcript FBI Mueller testimony to Congress September 16, 2008.
- Exhibit 27**, Anthrax Sent Through Mail Gained Potency by the Letter, New York Times. May 7, 2002.
- Exhibit 28**, Troubling Anthrax Additive Found; Atta Met Iraqi - ABC News October 29, 2001.
- Exhibit 29**, FBI USPS Search Warrant re Ivins.
- Exhibit 30**, GAO Anthrax Report December 2014.
- Exhibit 31**, Dr. Henry S. Heine Declaration.
- Exhibit 32**, Rosenberg BH, Hugh-Jones ME, 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,” National Academy of Sciences, National Research Council, 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 Federal Court Complaint.

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

**Exhibit 49**, FBI was told to blame Anthrax scare on Al Qaeda by White House officials, Aug. 2, 2008.

**Exhibit 50**, “A NATION CHALLENGED\_ BIOTERRORISM; F.B.I. Has a 'Short List' of Names In Its Anthrax Case, the U.S. Says,” New York Times, February 26, 2002.

**Exhibit 51**, “A NATION CHALLENGED\_ BIOTERRORISM; Report Linking Anthrax and Hijackers Is Investigated,” New York Times, March 23, 2002.

**Exhibit 52**, “Myroie, Evidence Shows Saddam Is Behind Anthrax Attacks,” Nov. 9, 2001.

**Exhibit 53**, Feb. 8, 2002, Salon, Laura Rosen - Is a US bioweapons scientist behind last fall's anthrax attacks.

**Exhibit 54**, Iraq 'behind US anthrax outbreaks' \_ World news \_ The Guardian.

**Exhibit 55**, Timeline\_ How The Anthrax Terror Unfolded \_ NPR.

**Exhibit 56**, “U.S. Germ Warfare Research Pushes Treaty Limits” Judith Miller, Stephen Engelberg and William J. Broad, New York Times, September 4, 2001.

**Exhibit 57**, The oversight joke \_ Salon.com September 16, 2008.

**Exhibit 58**, Anthrax Case Had Costs for Suspects - The New York Times August 9 2008.

**Exhibit 59**, National Biodefense Analysis and Countermeasures Center \_ Homeland Security and NBFAC.

**Exhibit 60**, Battelle Wins \$250M Contract To Operate National Biodefense Analysis & Countermeasures Center; 120 New Jobs \_ BioSpace.

**Exhibit 61**, Barry Kissin detailed critique of the FBI's Amerithrax investigation.

**Exhibit 62**, "Anthrax Redux: Did the Feds Nab the Wrong Guy?" Noah Shachtman, Wired, March 24, 2011.

**Exhibit 63**, Answers in 2001 anthrax attacks are still elusive Washington Post Feb. 18, 2011.

**Exhibit 64**, Washington Post, "Sen. Leahy on anthrax case: 'It's not closed,'" February 16, 2011.

**Exhibit 65**, "US Sen. Grassley: Response to National Academy of Sciences Amerithrax report", February 16, 2011.

**Exhibit 66**, "Of Microbes and Mock Attacks Years Ago, The Military Sprayed Germs on U.S. Cities," Jim Carlton, Wall Street Journal, October 22, 2001.

**Exhibit 67**, BILLS-112hr720ih, Anthrax Attacks Investigation Act House Bill, 2011, by Cong. Holt and Cong. Nadler.

**Exhibit 68**, (Congressman) "Holt on anthrax mailings \_ Investigate the investigators," Daniel Tencer, Raw Story.com, August 1, 2009.

**Exhibit 69**, "Congressman Calls for Broader Probe in FBI's Handling of Anthrax Case," Joby Warrick and Carrie Johnson, Washington Post, August 1, 2009.