BEFORE THE
UNITED STATES DEPARTMENT OF JUSTICE
AND THE UNITED STATES ATTORNEY
FOR THE DISTRICT OF COLUMBIA
AND THE SPECIAL GRAND JURY

PETITION PURSUANT TO THE UNITED STATES CONSTITUTION AND 18 U.S.C. § 3332(a) TO REPORT TO SPECIAL GRAND JURY, OR IN THE ALTERNATIVE TO GRAND JURY, FEDERAL CRIMES AND GOVERNMENT MISCONDUCT CONCERNING THE 2001 POST-9/11 ANTHRAX ATTACKS

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

Dated: September 11, 2021

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I. EXECUTIVE SUMMARY

This Petition is a formal request to the Special Grand Jury, via the U.S. Attorney, pursuant to the Constitution of the United States, including the First Amendment, for a new federal grand jury investigation of the 2001 post- 9/11 anthrax attacks. These attacks against Congress and the media involved use of a lethal biological warfare agent. This lethal agent killed 5 individuals, injured at least 17 others, and was used to attempt the assassination of two United States Senators.

This Petition centers on multiple lines of evidence supporting the conclusion that the FBI's 2001-2010 investigation of the anthrax attacks was intentionally obstructed and that the FBI's public reports and conclusions were knowingly deceptive. The Lawyers' Committee has concluded, based on the detailed evidence presented in this Petition and the Exhibits hereto, that there is an urgent need for a new Special Grand Jury investigation because the FBI failed to identify and bring to justice the real perpetrators of these horrible crimes, **perpetrators who remain at large**.

This Petition presents more than sufficient facts and evidence, and an adequate legal basis, to support a new inquiry by a federal special grand jury into the several yet-to-be-prosecuted federal crimes, and associated government misconduct, related to the 2001 post-9/11 anthrax attacks. These federal crimes were committed not only in the course of these attacks, but also in preparation for the anthrax attacks and in the aftermath of these attacks (during the FBI's investigation).

The Lawyers' Committee has reluctantly concluded, based on the detailed facts and evidence presented in this Petition, that the FBI's investigation of the post-9/11 anthrax attacks, which the FBI named "Amerithrax," was intentionally misdirected, obstructed, and corrupted.

Not only did the FBI's investigation fail to identify the real perpetrators of the anthrax attacks, the actions of certain FBI and DOJ officials had the effect, and apparent intent, of obstructing an effective investigation of these federal crimes.

The conclusions reached by the Lawyers' Committee in this Petition include:

1. The FBI's sole identified suspect, Dr. Bruce Ivins, a distinguished scientist with a 28-year career at U.S. Army's Medical Research Institute, was apparently innocent, and at minimum an unfortunate scapegoat of FBI contrivance.

2. The FBI intentionally, by concealing and avoiding key evidence, steered its investigation away from the most likely sources of the attack anthrax, Dugway Proving Grounds, Battelle Memorial Institute and their contractual CIA partner, and institutions and individuals associated with them, and concentrated instead on the least likely sources, scientists from Fort Detrick at the United States Army Medical Institute of Infectious Diseases (USAMRIID).

3. The FBI prematurely concluded its investigation upon the untimely and suspicious death of Dr. Ivins.

4. Those responsible for the anthrax attacks are still at large and the Nation remains in peril.

5. The anthrax attacks appear to have been intended to rush the passage of the United States Patriot Act, thus undermining civil liberties, facilitating a War on Iraq predicated on nonexistent weapons of mass destruction, and inaugurating the War on Terror, the longest war in the nation's history.

6. The assignment of an independent Special Counsel to this new grand jury inquiry is necessary because the Department of Justice and the FBI have a conflict of interest, or at least the appearance of a conflict of interest, in investigating their own alleged misconduct.

The renewed Special Grand Jury investigation which the Lawyers' Committee is requesting via this Petition should include an inquiry into the yet-to-be-prosecuted federal crimes that involved the attempted assassination of two United States senators by apparently domestic terrorists using anthrax, a biological weapon. Such federal crimes may well include the crime of treason. The Special Grand Jury's investigation should also include an inquiry into whether certain government officials acted to obstruct the FBI's Amerithrax investigation, and to cover up evidence material to the investigation.

This Petition draws 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 (NAS) National Research Council (NRC), entitled "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 portion of the FBI's Amerithrax records. https://vault.fbi.gov/Amerithrax.

This Petition also summarizes the law defining the powers and obligations of a federal special grand jury, and the obligations of a United States Attorney to relay citizen reports of federal crimes to a special grand jury.

In addition, specific Exhibits referenced in support of this Petition include:

A. Documents provided by Arthur Anderson, M.D. (Col. U.S. Army, retired) including memoranda concerning: 1) A high-level Army order to squelch internal investigations and criticism of the FBI's problematic anthrax attacks investigation; 2) The possibility of tampered evidence, involving use of white-out and forged handwriting on a key Army form regarding anthrax storage, to falsely incriminate Dr. Ivins; 3) The conflict of interest of Bruce Ivins' counselor who filed for a restraining order against Dr. Ivins with the overt assistance and

apparent heavy influence of the FBI; and 4) The harassment of Dr. Ivins by the FBI, and the FBI's failure to pursue more likely suspects.

B. Documentation that the DNA "fingerprint" of the attack anthrax found in the "RMR 1029" anthrax stock at Fort Detrick that the FBI falsely claimed Dr. Ivins solely controlled actually came from the Army's Dugway Proving Ground, and that one of the anthrax samples submitted by Battelle Memorial Institute was also found by the FBI to contain this DNA "fingerprint."

C. Declarations under penalty of perjury by four USAMRIID scientists, three of whom are retired United States Army Colonels, pertaining to the innocence of Dr. Bruce Ivins and his being scapegoated by the FBI as the anthrax killer.

D. The Federal Court Complaint of former FBI Inspector Richard Lambert, who oversaw the FBI's Amerithrax investigation for four years (2002-2006), which details the obstruction by FBI superiors of his investigation and their suppression of significant exculpatory evidence regarding the bureau's scapegoat, Dr. Ivins.

E. The above referenced NAS NRC Report which was critical of the FBI's scientific investigation and concluded that the scientific evidence presented by the bureau to support its conclusions did *not* definitively show, contrary to the FBI's public assertions, that the immediate source of the anthrax used in the attacks (after being subjected to sophisticated processing under the bureau's theory) was a flask used by Army microbiologist Dr. Bruce E. Ivins of Fort Detrick, whom the FBI alleged, after his death, to be the sole perpetrator.

F. Published peer-reviewed scientific papers on the anthrax attacks by Dr. Martin Hugh Jones, Dr. Barbara Hatch Rosenberg and Dr. Stuart Jacobson analyzing the attack anthrax and the sophistication of the processing to which those anthrax spores had been subjected, and

the likely connection to highly technologically advanced biological defense institutions other than USAMRIID, such as the U.S. Army's Dugway Proving Ground and CIA contractor Battelle Memorial Institute.

G. The Transcript of USAMRIID scientist Dr. Patricia Worsham's federal court testimony that USAMRIID at Fort Detrick did not have the facilities or equipment needed for Dr. Ivins to have made the attack anthrax there, contrary to the FBI's prior public allegations.

H. Editorials from *The Washington Post* and *The New York Times* calling for a Congressional and an independent commission inquiry into the anthrax attacks due to important questions left unanswered by the FBI's investigation, commissions which have yet to be established.

I. Statements by United States Senator Patrick Leahy and United States Senator Chuck Grassley in 2011 calling for further investigation of the anthrax attacks.

J. A Government Accountability Office Report which found that the FBI's attempt, utilizing then-cutting-edge scientific methods, to trace the source of the attack anthrax using tests of genetic mutations in submitted anthrax samples at times lacked precision, consistency, and adequate standards.

K. House Resolution 720, co-sponsored by Congressmen Rush Holt and Jerrold Nadler in 2011, which called for a Congressional Investigation (which has yet to be conducted).

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 contain an active hyperlink to each full exhibit document, which are posted and can also be accessed

directly via the menu at the top of the Lawyers' Committee's website

(https://www.lawyerscommitteefor9-11inquiry.org).

II. THE 2001 POST-9/11 ANTHRAX ATTACKS KILLED FIVE PEOPLE AND ATTEMPTED THE ASSASSINATION OF TWO U.S. SENATORS

On September 4, 2001, an article entitled "U.S. Germ Warfare Research Pushes Treaty Limits" appeared in the *New York Times*. That article gave the historical context, with uncanny timing, to the anthrax attacks that were about to occur:

> Over the past several years, the United States has embarked on a program of secret research on biological weapons that, some officials say, tests the limits of the global treaty banning such weapons . . .
>
> The projects, which have not been previously disclosed, were begun under President Clinton and have been embraced by the Bush administration, which intends to expand them.
>
> A senior Bush administration official said all the projects were 'fully consistent' with the treaty banning biological weapons and were needed to protect Americans against a growing danger. 'This administration will pursue defenses against the full spectrum of biological threats,' the official said . . .
>
> Some Clinton administration officials worried, however, that the project violated the pact. And others expressed concern that the experiments, if disclosed, might be misunderstood as a clandestine effort to resume work on a class of weapons that President Nixon had relinquished in 1969 . . .
>
> Administration officials said the need to keep such projects secret was a significant reason behind President Bush's recent rejection of a draft agreement to strengthen the germ-weapons treaty, which has been signed by 143 nations . . .
>
> Among the facilities likely to be open to inspection under the draft agreement would [have been] the West Jefferson, Ohio, laboratory of the Battelle Memorial Institute, a military contractor that has been selected to create the genetically altered anthrax . . .
>
> Several officials who served in senior posts in the Clinton administration acknowledged that the secretive efforts were so poorly coordinated that even the White House was unaware of their full scope . . .

> In the 1990's, government officials also grew increasingly worried about the possibility that scientists could use the widely available techniques of gene-splicing to create even more deadly weapons . . .
>
> Eventually the C.I.A. drew up plans . . . but intelligence officials said the agency hesitated because there was no specific report that an adversary was attempting to turn [an anthrax] superbug into a weapon.
>
> This year, officials said, the project was taken over by the Pentagon's intelligence arm, the Defense Intelligence Agency . . . Officials said the research would be part of Project Jefferson, yet another government effort to track the dangers posed by germ weapons.
>
> A spokesman for Defense Intelligence, Lt. Cmdr. James Brooks, declined comment. Asked about the precautions at Battelle, which is to create the enhanced anthrax, Commander Brooks said security was "entirely suitable for all work already conducted and planned for Project Jefferson."

"*U.S. Germ Warfare Research Pushes Treaty Limits*," by Judith Miller, William Broad, & Stephen Engelberg, New York Times, September 4, 2001.

On September 11, 2001, the terrorist attacks on the World Trade Center and Pentagon and the Shanksville, Pennsylvania crash occurred. According to news reports, that evening in Washington D.C., Vice President Dick Cheney's staff was alerted to start taking Cipro, the antibiotic then approved to treat anthrax, by former New York City Office of Emergency Management Director Jerome Hauer. Also on September 11th, on the return flight to Washington, President Bush's Physician, Col. Dr. Richard Tubb, distributed Cipro to the President, his staff, and the passengers on board Air Force One, as reported in The Only Plane In The Sky: An Oral History of 9/11, by Garrett Graff (2019) based on an interview with Dr. Tubb.

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 warfare agent *Bacillus anthracis* (*B. anthracis* or "anthrax")[1] in envelopes with letters sent

[1] 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.

through the public mail. 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 of 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, such as Cipro, as a preventative measure. **Exhibit 21,** p. 3; **Exhibit 25**, p.1; **Exhibit 55**. These attacks exacerbated the fear and trauma that had begun with the 9/11 attacks.

Yet even before these 2001 post-9/11 anthrax attacks had commenced, and became known, there was serious concern within the Bush Administration and in the press regarding the possibility of such bioterrorism attacks. The source of those publicly reported early concerns about anthrax attacks that had yet to, but were about to, occur deserves some further inquiry.

What many may have forgotten is that two of these anthrax attack letters were addressed to United States senators, Senator Patrick Leahy and Senator Tom Daschle, in addition to other anthrax attack letters sent to television and newspaper reporters. **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 destruction***.

The evidence strongly indicates that the anthrax attack letters sent to the two Senators were not the result of random mailings but that Senators Leahy and Daschle were specifically targeted. The evidence also supports the conclusion that the anthrax attack letters mailed to Senators Daschle and Leahy were not merely intended as a scare tactic as they contained highly processed anthrax designed to be lethal.

The first wave of anthrax attack letters, postmarked on September 18, 2001, went to news media offices. **Exhibit 55**; **Exhibit 21**, p.4. On September 18, 2001, anthrax laden letters sent to the New York Post and to NBC TV news anchor Tom Brokaw in New York City were postmarked in Trenton, NJ. Three other letters that were never recovered are believed by the FBI to have been sent at the same time, one to ABC News, one to CBS News, and one addressed to America Media International in Boca Raton, Florida.

On September 20, 2001, in St. Petersburg, Florida a "hoax" letter containing a powder other than anthrax was mailed to NBC news anchor Tom Brokaw. This was the second threat letter mailed to Brokaw, the first having been postmarked two days prior and which did contain anthrax.

On October 1, 2001, an aide to Dan Rather at CBS News in New York City, who had handled his mail, reported a swelling on her face later found to be from cutaneous anthrax and was treated with antibiotics. CBS delayed reporting the incident until October 18th. (https://abcnews.go.com/Entertainment/story?id=101724&page=1#:~:text=October%2018%2C%202001%20%2D%2D%20Anthrax,cutaneous%20form%20of%20the%20disease)

Robert Stevens, a Florida resident, was the first to be killed in the anthrax attacks. Mr. Stevens died on October 5, 2001. **Exhibit 21**, p.4. Although no anthrax-laden letter was recovered in his case, he is presumed to have received an anthrax letter. Whether that letter was mailed as part of the first wave of attacks or the second wave has not yet been established.

According to the FBI, between 3 p.m. on October 6, 2001, and noon on October 9, 2001, anthrax attack letters to Senator Tom Daschle and Senator Patrick Leahy were mailed. These letters, part of the second wave of attacks and which contained a more sophisticated form of anthrax spores (compared to that in the letters to the New York City media), were postmarked

October 9, 2001. **Exhibit 21**, pp. 1-4. These anthrax attack letters were mailed to Senator Leahy and Senator Daschle during the time the Bush Administration was pressing for rapid passage of the Patriot Act. Senator Tom Daschle to some extent early on, and Senator Patrick Leahy in particular, were holding up the final vote due to their concerns about more draconian parts of the bill and the rush to pass it into law.

Although the Patriot Act was initially presented to Congress as a response to the September 11th attacks, the follow-on anthrax attacks were used to pressure Congress to pass the bill when hesitation and resistance to it were beginning to grow. The Bush Administration wanted the Patriot Act passed asap by early October 2001. The Administration was reported by the New York Times on October 3, 2001, as putting pressure on Senate Democrats, including Senator Tom Daschle (Democrat, South Dakota), then Senate Majority Leader, and Senator Patrick Leahy (Democrat, Vermont), then Chairman of the Senate Judiciary Committee, to rush passage of the Act. The New York Times reported some of the details of this pressure and Senator Leahy's concerns and resistance in response:

> The Bush administration and its Republican allies in the Senate sharply increased pressure today on Senate Democrats to act more quickly on antiterrorism legislation.
>
> One day after a bipartisan agreement on the legislation was reached in the House, Attorney General John Ashcroft said he was "deeply concerned" with the pace of deliberations in the Senate.
>
> "I think it is time for us to be productive on behalf of the American people," Mr. Ashcroft told reporters. He said he had delivered that message earlier today to Senator Patrick J. Leahy, the Vermont Democrat who is chairman of the Senate Judiciary Committee.
>
> Mr. Leahy fired back, asserting that a compromise was within reach until the Bush administration abruptly reversed itself and withdrew agreement on the issue of criminal investigative agencies' sharing information, including evidence from grand juries, with other agencies in the government.

Congressional staff aides said that Alberto R. Gonzales, the White House counsel, opened a meeting with Mr. Leahy this morning by declaring that the administration would not accept restrictions Mr. Leahy thought had been agreed to on Sunday about sharing information from criminal investigations throughout the government.

Senator Tom Daschle of South Dakota, the majority leader, said he still believed an agreement would be reached within a few days.

After so much bipartisanship in the aftermath of Sept. 11, the language of Republicans as they pursued swifter consideration of the legislation today was striking.

Senator Trent Lott of Mississippi, the Republican leader, said, "It's time we get on with it." If another attack occurs, he warned the Democrats, "people are going to wonder where have you been in giving the additional tools that are needed to, you know, find these terrorists and avoid plots that may be in place."

Democratic staff aides from the Senate Judiciary Committee have held several long negotiating sessions with officials from the White House and Justice Department over the last 10 days in an effort to resolve their differences. With Mr. Leahy taking the lead, Democrats have said that they will not be rushed by the crisis atmosphere into approving a package they believe could improperly curtail civil liberties.

But administration officials apparently felt that the swifter movement in the House gave them an opportunity to increase pressure on the Senate.

In the House, Representative F. James Sensenbrenner Jr. of Wisconsin, chairman of the Judiciary Committee, and Representative John Conyers Jr. of Michigan, the committee's ranking Democrat, introduced the compromise legislation they agreed to on Monday. With a quickly swelling list of sponsors, leadership aides in both parties said it was likely to pass the House easily, probably early next week.

The House bill would give law enforcement authorities wider powers to wiretap suspected terrorists, share intelligence about them throughout the government and make it easier to seize their assets.

But the Democratic and Republican negotiators in the House scaled back or dropped several provisions sought by the White House, notably the ability to detain foreign nationals suspected of terrorism indefinitely. Under the compromise, authorities could detain terrorism suspects for a maximum of seven days, after which they would have to be released or charged with a crime.

The package was reached after agreement that most of the expanded wiretap authorities would expire at the end of 2003, a so-called sunset provision, unless

> Congress explicitly renewed them. Today, Representative Dick Armey of Texas, the Republican leader in the House, praised the compromise and said that the sunset provision was sensible.
>
> In the Senate, Mr. Leahy has successfully fought off arguments to speed the legislation. Today he told reporters that he did not want to repeat what he called the mistakes made after the bombing of Oklahoma City in 1995, when many found [that the] quickly enacted antiterrorism legislation was greatly flawed.

A NATION CHALLENGED: LEGISLATION; Democrats In Senate Are Pressured On Terror Bill, Neil A. Lewis and Robin Toner, New York Times, October 3, 2001. Passage of the Patriot Act was delayed, but not long. It was enacted October 26, 2001. It was between October 6 and October 9, 2001, that letters containing the sophisticated and lethal preparation of anthrax spores were mailed specifically to these two senators.

The letters in the more lethal second wave of attacks, that were postmarked October 9, 2001, contained a highly processed sophisticated form of anthrax spores. 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 dispersible in air and capable of being inhaled 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 produced by a highly technical 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 anthrax in this second wave of attack letters, which included the letters addressed to Senator Leahy and Senator Daschle, had a 1% to 2% silicon content. Significantly, virtually all

of this silicon in the second attack anthrax was *inside* the exosporium on what is called the spore coat. **Exhibit 40**, pp. 82, 86-87.

"According to the FBI lab, 1.4% of the powder in the Leahy letter was silicon. 'This is a shockingly high proportion,' explained Stuart Jacobson, an expert in small particle chemistry. 'It is a number one would expect from the deliberate weaponization of anthrax, but not from any conceivable accidental contamination.'" "*The Anthrax Attacks Remain Unsolved*" by Edward Jay Epstein, Wall Street Journal, January 24, 2010.

On October 12, 2001, an FBI supervisory special agent (SSA) contacted forensic language analysis expert Don Foster and disclosed that anthrax had been discovered at NBC. The FBI SSA advised Foster that an NBC aide had been diagnosed with cutaneous anthrax 17 days after opening a powder-filled letter addressed to NBC News anchor Tom Brokaw. The letter being referenced at that time by the FBI SSA was postmarked on September 20th in St. Petersburg, Florida and turned out to be a "hoax" letter that did not contain anthrax but did contain a powder. This "hoax" letter was handwritten and threatened bioterror attacks on New York, Chicago, Los Angeles, and Washington, D.C. The Florida letter writer warned of the destruction of Tampa Bay's Sunshine Skyway Bridge and Chicago's Sears Tower. "The Message in the Anthrax" by Don Foster, Vanity Fair, pp. 180-200, October 2003.

On October 12, 2001, the anthrax-laden letter sent to NBC national TV news anchor Tom Brokaw was recovered by the FBI.

On October 12, 2001, Judith Miller of the New York Times opened a "hoax" letter addressed to her office at the Times.

On October 15, 2001, the Wall St. Journal editorialized that Al Qaeda had perpetrated the mailings, and that Iraq was the source of the anthrax. This theory would later be acknowledged

by the FBI as unfounded, and the bureau would concede that the source of the attack anthrax used in the attacks was domestic, originating in the U.S. military-intelligence-industrial complex, as the Army's scientific experts were discovering.

On October 15, 2001, an anthrax laden letter addressed to Senator Daschle was opened in the Hart Senate Office Building. It came in a taped-up envelope ostensibly sent by schoolchildren. When it was opened, a cloud of powder burst into the air.

The anthrax in the letter sent to Senator Daschle (and in the later discovered letter to Senator Leahy) was highly unusual. The late Dr. John Wm. Ezzell, Jr., an expert who worked with the bacteria at USAMRIID at Fort Detrick, gave his original account of the attack anthrax to Marilyn Thompson, reported in her book The Killer Strain (Harper Collins: 2003). Dr. Ezzell described his encounter with the Daschle anthrax provided to him by the FBI in October of 2001:

> The FBI called Ezzell on October 15 [2001] to alert him that evidence would be brought from the Daschle crime scene straight to USAMRIID for testing. . . . [A]s Ezzell worked, he noticed a bit of white powder tucked into one of the letter's folds. Almost as soon as he saw it, the powder dispersed, spreading invisibly through the safety cabinet. After years of researching anthrax, he had never seen the bacteria in its weaponized form -- . . . a material that could blanket a city or annihilate an enemy. This was a powder so virulent that normal laboratory rules did not apply. Both he and his team could be at risk despite their precautions. . . . 'After all these years of looking, here it is. This is the real thing, in the right form,' he recalled. . . . To protect himself, Ezzell started antibiotics to guard against infection. He also took another precaution. Ezzell went to a sink and mixed a solution of diluted bleach. Bracing himself, he lifted it to his nose and took a deep snort. The pain that surged through his sinuses almost knocked him to the ground . . . Later in one of the regular interagency conference calls, Ezzell described what he had seen when he looked into the Daschle letter. He used the term weaponized anthrax. That night a friend who worked for the CIA woke him from a deep sleep to tell him that his assessment of 'weaponized' anthrax in the Daschle letter had been passed on to the President of the United States.

The Killer Strain by Marilyn Thompson (Harper Collins: 2003) (Pages 116-118).

On October 16, 2001, Dr. Richard Spertzel, the former chief bio-inspector for the United Nations Special Commission (UNSCOM) search for weapons of mass destruction in Iraq,

described the powder in the Daschle letter as "weapons grade" in speaking to the press. Spertzel told ABC that he knew of fewer than five experts in the United States with the capability to produce such a fine dry powdered material, some of whom were U.S. Army Dugway Proving Ground scientists. “The Message in the Anthrax” by Don Foster, Vanity Fair, pp. 180-200, October 2003.

On October 18, 2001, Johanna Huden, an assistant for the New York Post editorial page, was diagnosed with cutaneous anthrax.

Another book, The Demon in the Freezer by Richard Preston (Oct. 2002, Random House), reports observations made during the first examinations of the Daschle letter anthrax by Army scientists and officials:

> October 18, 2001 - . . . [During an Interagency Conference Call with individuals from National Security Council, FBI, CDC, and Army], Peter Jahrling replied that USAMRIID’s data indicated that the Daschle anthrax was ten times more concentrated and potent than any form of anthrax that had been made by the old American bio-warfare program at Fort Detrick in the 1960s. He said that the anthrax consisted of pure spores, and that it was ‘highly aerogenic’ . . . The spores of anthrax went straight through the paper of the Daschle envelope and other anthrax envelopes full of ultra-fine powder that were mailed, though they had been sealed tightly with tape.

The Demon in the Freezer by Richard Preston (Oct. 2002, Random House).

> October 19, 2001 - . . . Before dawn on Friday morning, four days after the Daschle letter was opened, Peter Jahrling put on a space suit and went into the Submarine and got a tiny sample of live, dry Daschle anthrax. He gave the sample to Tom Geisbert so that he could look at the dry anthrax in a scanning electron microscope. Geisbert carried the tube of dry anthrax into his microscope lab . . . [Geisbert] stared at the bone-colored particles. Now he saw them climbing the wall of the tube, dancing along the wall of the tube heading upward. His assistant, Denise Braun, was working nearby. ‘Denise, you’ll never believe this.’ The anthrax was like jumping beans; it seemed to have a life of its own. He began preparing a sample for the scope. He opened the tube and tapped a little bit of the anthrax onto a piece of sticky black tape that would hold the powder in place. But the anthrax bounced off the tape. The particles wouldn’t stick. Eighty percent of the Daschle particles flittered away in air currents up into the hood.

Id.

> That was when he understood that the Hart Building was utterly contaminated . . . [Geisbert] had a national-security clearance, and he knew something about anthrax, but he could not imagine how this weapon had been made. It looked extremely sinister. He started feeling shaky. He called Jahrling. 'Pete, I'm in the scope room. Can you come up here, like right now?' Jahrling ran upstairs, closed the door, and stared at the skull anthrax for a long time. He didn't say much. Geisbert's security clearance was rated secret, and the details of how this material could have been made might be more highly classified.

Id.

> Not long afterward, Jahrling apparently went to the Secure Room and had the classified safe opened. He studied a document or documents with red-slashed borders that would appear to contain exact technical formulas for various kinds of weapons-grade anthrax. … Jahrling refers to the secret of skull anthrax as the Anthrax Trick although he won't discuss it . . . [Geisbert] was afraid that his findings about the skull quality of the anthrax meant that it had come from a military biowarfare lab . . .

Id.

> In fact, federal investigators found that the anthrax Daschle received was virtually indistinguishable from the kind William Patrick had made in the old U.S. program -- up to one trillion spores per gram . . . Fort Detrick had shipped a sample of its Ames strain to the Dugway Proving Grounds in the Utah desert, an army facility. Dugway subsequently made powdered anthrax . . . One year's experiments, the army said, did not involve the Ames strain. But it was silent on whether the potent variety had been used in other years.

Germs Biological Weapons and America's Secret War, Touchstone, Simon & Schuster, 2002, pages 330-331.

> Scientists estimate that the letter sent to Senate Majority Leader Tom Daschle originally contained about 2 grams of anthrax, about one-sixteenth of an ounce, or the weight of a dime. But its extraordinary concentration - in the range of 1 trillion spores per gram - meant that the letter could have contained 200 million times the average dose necessary to kill a person. Dugway's weapons-grade anthrax has been milled to achieve a similar concentration, according to one person familiar with the program. The concentration exceeds that of weapons anthrax produced by the old U.S. offensive program or the Soviet biowarfare program, according to Dr. Richard O. Spertzel, who worked at Detrick for 18 years and later served as a United Nations bioweapons inspector in Iraq . . . [M]any bioterrorism experts argue that the quality of the mailed anthrax is such

> that it could have been produced only in a weapons program or using information from such a program. . . .

Baltimore Sun, December 12, 2001.

On October 19, 2001, an anthrax laden letter to the New York Post was discovered and recovered.

During the week of October 14-20, 2001, in New York, a staffer at CBS and the infant son of an ABC News producer were diagnosed with cutaneous infections, but no contaminated letters were recovered.

On October 21, 2001, Thomas Morris, a Brentwood Postal Facility employee in Washington, D.C., died after contracting anthrax.

On October 22, 2001, Joseph Curseen, Jr., a Brentwood Postal Facility employee in Washington, D.C., died after contracting anthrax.

> October 24, 2001 - Early in the morning, nine days after the Daschle letter was opened, Major General John Parker got a call from Tommy Thompson at Health and Human Services. Thompson had been hearing rumors that the Daschle anthrax was really bad stuff, but he still hadn't heard much about it from the FBI laboratory . . . [At the White House, that evening:] John Ashcroft led off the meeting. He didn't mince words. There was an obvious lack of communication between the Army, the FBI, and the CDC, he said, and the purpose of this meeting was to determine why the CDC hadn't realized that the anthrax was weapons-grade material and hadn't taken action faster on the Brentwood mail facility . . . Ashcroft was Robert Mueller's boss and he looked straight at the FBI director. Mueller turned his gaze to General Parker. Mueller thanked the Army for bringing the nature of the anthrax to the FBI's attention. He said that the FBI had received conflicting data on the anthrax. The FBI had been trying to sort this issue through, but Mueller now acknowledged that the Army had been right: the Daschle anthrax was a weapon.

The Demon in the Freezer by Richard Preston (Oct. 2002, Random House).

> October 25, 2001 - Tom Geisbert drove his beat-up station wagon to the Armed Forces Institute of Pathology, in northwest Washington, carrying a whiff of sterilized dry Daschle anthrax mounted in special cassette. He spent the day with a group of technicians running tests with an X-ray machine to find out if the powder contained any metals or elements. By lunchtime, the machine had shown

> that there were two extra elements in the spores, silicone and oxygen. Silicone oxide. Silicone dioxide is glass . . . The glass was slippery and smooth, and it may have been treated so that it would repel water. It caused the spores to crumble apart, to pass more easily through the holes in the envelopes, and fly everywhere, filling the Hart Senate Office Building and the Brentwood and Hamilton mail-sorting facilities like a gas.

Id. (Pages 200-234).

On October 31, 2001, Kathy Nguyen of New York City, NY died after contracting anthrax. Swabs were taken from her home, her workplace, and her mailbox, but not a single spore was discovered. However, FBI consultant Don Foster reports that he inquired with a friend in the FBI's New York field office and was informed that "they think Nguyen got a real snout full of anthrax." The FBI never determined, or never disclosed, how she came to have such a significant exposure.

Another anthrax-laden envelope, this one addressed to Senator Patrick Leahy, was later discovered, on November 16, 2001, in mail that had been sequestered as part of the FBI's investigation. **Exhibit 39**. This letter had also been mailed, like the Daschle letter, during the October 6 to October 9, 2001, time frame. The circumstantial evidence strongly supports the conclusion that one of the likely motives for the anthrax attacks on Senator Leahy and Senator Daschle was to either rush the vote on the Patriot Act or to ensure its passage by any means necessary, including assassination.

On November 21, 2001, Ottilie Lundgren died in Oxford, Connecticut after contracting anthrax, believed to have been the result of cross-contaminated mail. She was ninety-four years old. She was the fifth and last known fatality from the anthrax attacks.

The text of the handwritten letters accompanying the anthrax spores mailings 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, advanced by certain government officials and news media. *See, e.g.*, **Exhibit 49; Exhibit 21,** p. 5. The initial assumption by many was that the September 11th attacks were being followed by a second wave of attacks organized and carried out by the same perpetrator, and that this perpetrator was Al Qaeda.

The letters in the envelopes included the date at the top as follows: "09 – 11 – 01". That is, the letters claim to have been written *on* "9/11," the date of the plane attacks in New York and Washington. The letters ended with the with the lines:

"DEATH TO AMERICA

DEATH TO ISRAEL

ALLAH IS GREAT"

Since the first batch of these letters were sent in the immediate wake of the 9/11 attacks, it is clear that the anthrax attacks perpetrators wanted to be seen as the same terrorist organization suspected as having perpetrated those 9/11 attacks. In addition to the September 11 date and the signs of Islamic extremism, the letters implied their authors were rough foreigners unacquainted with English. Everything appeared initially as intended, before the scientific analysis of the evidence, to point to radical Al Qaeda foot soldiers – violent, fanatical, and keen to continue the attacks that began on September 11. In framing Al Qaeda for this attack, the perpetrators were also framing Afghanistan, which was claimed to be the country from which Al Qaeda was operating.

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 attack anthrax had come from a U.S. military facility, but not before this false narrative misled the Congress while Congress was being pressured by the Bush Administration to pass the USA Patriot Act. **Exhibit 21**, p. 5. The USA Patriot Act, which was well over 100 pages in length and enacted within 45 days of the 9/11 attacks, gave substantially increased power to the federal government, including the intelligence agencies and law enforcement, while curtailing the rights and freedoms of the general population of the United States.

Throughout October of 2001 the theory was put forward and published widely in the mainstream media that Iraq, which was known in the past to have had a facility for producing weaponized anthrax, was the source of the spores in the letters. One of the main promoters of this Iraq theory was ABC News journalist Brian Ross who claimed in October 2001 that he had four independent experts alleging that the substance bentonite had been found with the spores in the letters and that, since bentonite was used exclusively by Iraq to weaponize spores, this proved that country's involvement. Bentonite, it turned out on analysis, was not in the attack anthrax, and ABC Reporter Brian Ross later acknowledged that his report was incorrect. But this widely disseminated false claim remains serious evidence of an organized attempt to frame Iraq for the attacks. See **Exhibit 28**, "*Troubling Anthrax Additive Found*," Brian Ross, ABC News, Oct. 29, 2001, https://abcnews.go.com/US/story?id=92270&page=1. Also see "*The unresolved story of ABC News' false Saddam-anthrax reports*," Glenn Greenwald, April 9, 2007, https://www.salon.com/2007/04/09/abc_anthrax/.

The Center for Public Integrity conducted a study which reported that eight high-ranking members of the U.S. executive branch made 935 false statements over a two-year period relating to claims that Iraq had weapons of mass destruction and was prepared to use them against the United States, and that Iraq and Al Qaeda were allied and were working together. See https://publicintegrity.org/politics/false-pretenses/.

By December 2001/January 2002, after the enactment of the USA Patriot Act on October 26, 2001, both the al Qaeda hypothesis and the Iraq-al Qaeda hypothesis were replaced in the media by the theory that the anthrax letters were a domestic attack by a perpetrator associated with a U.S. military facility. This development was based in significant part on the work of independent scientist Dr. Barbara Hatch Rosenberg. **Exhibit 50; Exhibit 53.** The FBI, unable to ignore the undeniable evidence reported by Dr. Rosenberg and her colleagues, as early as December 2001 publicly announced, based on the FBI's own scientific analysis of the attack anthrax, that it had originated from a U.S. military source. In December 2001 and January of 2002, the media were reporting that the FBI was pursuing the theory that the anthrax used in the attacks was of domestic origin, i.e., that it had come from inside the United States from one of several ostensibly highly secure military or government contractor labs. **Exhibit 50; Exhibit 55**.

> The FBI's investigation into the anthrax attacks is increasingly focusing on whether U.S. government bioweapons research programs, including one conducted by the CIA, may have been the source of deadly anthrax powder sent through the mail, according to sources with knowledge of the probe. The results of the genetic tests strengthen that possibility. The FBI is focusing on a contractor that worked with the CIA, one source said. . . .The scientists are still planning to do genetic testing on anthrax bacteria from the Defense Research Establishment Suffield, a Canadian military research facility, the University of New Mexico in Albuquerque, and the Battelle Memorial Institute in Columbus, Ohio, a government contractor doing research on anthrax vaccines. Those are the only other facilities [besides Dugway] known to have received samples from USAMRIID . . .

> The CIA's biowarfare program . . . involved the use of small amounts of Ames strain, an agency spokesman said yesterday. The CIA declined to say where its Ames strain material came from . . . Nevertheless, the FBI has turned its attention to learning more about the CIA's work with anthrax, which investigators were told about by the agency within the past few weeks, government officials said . . . The anthrax contained in the letters under investigation 'absolutely did not' come from CIA labs, the spokesman said . . . Law enforcement sources, however, said the FBI remains extremely interested in the CIA's work with anthrax, with one official calling it the best lead they have at this point. The sources said FBI investigators do not yet know much about the CIA program.

"*Capitol Hill Anthrax Matches Army's Stocks: 5 Labs Can Trace Spores to Ft. Detrick*," Washington Post, December 16, 2001.

> Federal anthrax researchers are attempting to match the strain that killed a Boca Raton man and four others to a weaponized strain secretly manufactured at a U.S. military facility in the Utah desert, according to sources familiar with the probe. Agents are examining lab workers and researchers who had access to the weaponized, powdered anthrax grown at the U.S. Army's Dugway Proving Grounds and later supplied to Battelle Memorial Institute, a military research company based in Columbus, Ohio . . . It is clear that a strong theory has emerged that the refined powder used in the anthrax attacks bears striking similarities to U.S. military grade anthrax manufactured only at Dugway . . .'The anthrax at Dugway is the only known sample they intend to check right now. The investigation is clearly focused on the Dugway anthrax,' said Dr. Ronald Atlas, dean of the University of Louisville Biology Department, and incoming president of the American Society of Microbiology. 'The word in the scientific community is that they are very close to something.' Homeland Security Director Tom Ridge said Thursday the FBI has 'winnowed' the field of its investigation . . .

"*Anthrax investigators focusing on strain from military facility,*" by David Kidwell, Miami Herald (Knight Ridder), December 21, 2001.

The totality of the evidence supports the conclusions that the mailing of anthrax attack letters to Senator Leahy and Senator Daschle was not the result of coincidence, accident, or random chance. These two Senators were specifically targeted with a highly processed bioweapon that was specifically designed to be lethal. The attack anthrax in the letters to Senators Leahy and Daschle was in fact lethal, having not only killed the unfortunate Mr. Stevens who worked at American Media, Inc. (AMI) in Florida but also several postal workers

who had the misfortune of working in facilities which processed the letters. The only accidental, and fortunate, aspect of the anthrax mailings was that they did not achieve the intended goal of assassinating these two United States senators.

III. THE ANTHRAX ATTACKS PERPETRATORS REMAIN AT LARGE

A. The FBI Prematurely Closed Its Anthrax Attacks Investigation, and the Prior Grand Jury Inquiry

1. The FBI Accused the Wrong Man, Army Scientist Dr. Bruce Ivins, Who Lacked the Means, Motive, and Opportunity to Commit the Crime

The FBI, after being forced to back off the Al Qaeda and Iraq theories by hard scientific evidence, and after abandoning other lone wolf suspects initially pursued, eventually accused Dr. Bruce Ivins of being the sole perpetrator of the anthrax attacks. Dr. Ivins was a long-time microbiologist who worked for the Army at USAMRIID at Fort Detrick. Dr. Ivins specialized in anthrax vaccine development. On close analysis however, as detailed below, the FBI never had sufficient evidence to make a case against Dr. Ivins. The bureau relied entirely on circumstantial evidence (at best), exaggeration, fabrication, and speculation.

The FBI's DNA evidence argument started with the work of Dr. Paul Keim and his lab at Northern Arizona University. After having confirmed the attack anthrax as the Ames strain (a U.S. military strain), Dr. Keim also 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 (from Ames anthrax samples other than the attack anthrax). **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 also noticed some rare variances, colonies that looked different from the others. **Exhibit 36,** p. 6. They were able to identify multiple 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 decided to collect into a repository Ames anthrax samples from all labs in the U.S. and a few outside the U.S. known to possess that strain. The bureau then selected four of the detected DNA variants or morphs as the targets for a large-scale analysis of the collected Ames anthrax samples in its repository. **Exhibit 21,** p. 24.

The FBI contracted for this DNA analyses to be performed on more than one thousand Ames anthrax samples 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. They attempted to determine the presence or absence in the collected repository samples of what the FBI considered the four "fingerprint" morphs (DNA variants) that had been found in the attack anthrax. These four morphs when occurring together in the same sample, were considered to be a "fingerprint" that the FBI concluded could point to the source of the attack anthrax. The anthrax taken from the source was at some point in time processed into the sophisticated form of the attack anthrax, either before the perpetrators acquired it or after. **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, after which the bureau asserted that PCR tests

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 [the anthrax in Flask] RMR-1029." **Exhibit 21**, p. 28. The FBI also stated this conclusion another way, in a heading in its Amerithrax Investigation report "RMR-1029 is the source of the murder weapon." *Id*. (emphasis in original).

After working through and apparently rejecting a series of lone wolf "suspects," reportedly including Perry Mikesell who had worked with Dr. Ivins at USAMRIID and then worked at Battelle Memorial Institute (aka Battelle), see **Exhibit 58**, the FBI eventually focused its investigative attention on Dr. Ivins. **Exhibit 21,** pp.6-11, 25-91; **Exhibit 19**.

Dr. Ivins, and others at USAMRIID, had access to Ames anthrax stocks for use in work developing anthrax vaccines. 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 issues and to enable the AVA vaccine 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) was used in the vaccine studies at USAMRIID. It is noteworthy that the USAMRIID RMR 1029 Ames anthrax stock started with a batch of spores manufactured at the U.S. Army's Dugway Proving Ground (Dugway) laboratory using Dugway's large fermentor. However, some of the Ames anthrax spores produced at and sent from Dugway to Dr. Ivins were contaminated with *Bacillus subtilis*

(*B. subtilis*) and so could not be used. As a result, Dr. Ivins had to use small shaking flask incubators at USAMRIID to make enough wet spores to bring the reference material in Flask RMR-1029 up to the required 1000 ml volume for use in the vaccine tests.

Dr. Ivins made small batches of Ames Anthrax using the flask incubator system, which had much less output than a fermentor. Numerous runs were needed to fill the RMR 1029 flask up to the 1000 ml of wet spores. **Exhibit 15.** That 1000 ml of Ames anthrax spores was divided and stored in two flasks both labelled RMR 1029. This RMR 1029 Ames anthrax stock was closely monitored by USAMRIID's research quality (regulatory studies) branch to ensure compliance with Good Laboratory Practices (GLP) FDA requirements related to vaccine tests.

Dr. Ivins also grew, from the same USAMRIID stock of Ames anthrax he had used to add to RMR 1029, another stock of Ames anthrax labelled RMR 1030.[2] By the time the RMR 1029 reference material reached the targeted quantity of 1000 ml, most of the anthrax in the two RMR 1029 flasks had come from Dugway production runs (approximately 85%) and only a small amount was RMR 1030 anthrax directly produced by Ivins (approximately 15%). **Exhibit 12.**

Early in its investigation, Dr. Ivins provided expert assistance to the FBI. The bureau eventually, after failing to make a case against several other suspects, began treating Dr. Ivins as a suspect, increasingly subjecting him to intense scrutiny, which some have characterized as harassment. The bureau knew that 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 a press conference that was described as a science briefing in August of 2008, after Dr. Ivins had died, the FBI and the Department of Justice declared him to have been the sole

[2] Ivins also had another stock of anthrax called RMR 1028, which was a different strain of anthrax, the Vollum strain. **Exhibit 04; Exhibit 15**.

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**.

The only purported evidence the FBI produced that arguably pointed to Dr. Ivins as a suspect that was not speculative on its face was: 1) Evidence that the FBI claimed showed that Dr. Ivins controlled access to the RMR 1029 stock of Ames anthrax at USAMRID at Fort Detrick, and 2) DNA PCR analysis of the FBI's Repository's samples which the FBI claimed showed that the attack anthrax could be tracked to RMR 1029 via a DNA "fingerprint."

However, the FBI's DNA PCR "fingerprint" turned out, upon close examination of FBI records as explained *infra*, *not* to single out Dr. Ivins. Rather, this DNA evidence also pointed equally towards Dugway and Battelle personnel and other personnel at USAMRIID. In addition, scientific evidence that the FBI avoided and did not want to discuss regarding a silicone coating and tin found in some of the attack anthrax, and *Bacillus subtilis* contamination found in some of the attack anthrax, also pointed away from Dr. Ivins and towards Dugway and Battelle.

Even if one were to adopt the FBI's exaggerated view of the reliability and validity of its DNA PCR testing methodology (see discussion of the National Research Council's critique *infra*), there still was no valid evidentiary basis for the FBI to have focused only on Dr. Ivins. The bureau's assertion that he controlled access to the RMR 1029 Ames anthrax was simply false. A few hundred people beyond Dr. Ivins actually had access to this RMR 1029 Ames anthrax at USAMRIID, and hundreds more Dugway and Battelle personnel had access to the RMR 1029 Ames anthrax that had been provided to these other facilities by USAMRIID and Dr. Ivins for their government projects and research. Battelle is documented in USAMRIID records

to have received shipments of Ames anthrax material from the USAMRIID RMR 1029 stock, including in May 2001.

The FBI's assertion that Ivins was justifiably treated as the prime suspect because he purportedly controlled access to the USAMRIID RMR 1029 Ames anthrax stock, *see* **Exhibit 21,** pp. 5, 8, 26-27; **Exhibit 19**, pp. 1-2, was baseless. 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 due to their having access to Ames anthrax from RMR 1029 or other Ames anthrax containing the fingerprint morphs, the bureau also had no reason to exclude an additional 100 or more USAMRIID employees who also had such access to RMR 1029 at USAMRIID.

The FBI claims Dr. 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 allegedly 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 in

fact made it. This form may have been tampered with by someone other than Ivins in an effort to create false evidence in support of the FBI's factually incorrect claim that Dr. Ivins controlled all access to RMR 1029 at USAMRIID.

The FBI's lone wolf theory, whether focused on Dr. Ivins or other prior suspects, was speculative from the beginning given that there were two sets of letter attacks separated in time, each containing a significantly different form of anthrax. The anthrax used in the first of the two attack waves was notably different in size of particles and chemical and physical characteristics (including regarding 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 financial and political interests within certain quarters of the military-industrial-intelligence complex, and the biowarfare related industries, including the vaccine and pharmaceutical industries, that may have motivated the anthrax attacks as well as the soon-to-be-initiated attacks on Afghanistan and Iraq and subsequent endless war on terror. These financial and political motives dwarfed the speculative personal motives the FBI attributed to Dr. Ivins. Obvious financial consequences of the anthrax attacks included huge government expenditures during and after the anthrax attacks for antibiotics as an anthrax prophylactic and treatment, and a subsequent billion-dollar boom in the biowarfare and pharmaceutical vaccine industries. 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 (the Biological Weapons Convention). *See* **Exhibit 56**.

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 are scientist Dr. Barbara Hatch Rosenberg, biological warfare epidemiologist Dr. Meryl Nass, veterinary epidemiologist Dr. Martin Hugh-Jones, and the late 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 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 also 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, then 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 and Inspector who *directed* the FBI's Amerithrax investigation for four years, from 2002-2006. **Exhibit 47**.

These public critiques of the FBI's anthrax attacks investigation, 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. One of the more important and, when compared to the FBI's assertions, disturbing pieces of the evidentiary puzzle regarding the FBI's handling of the anthrax attacks was the FBI-commissioned report from the NAS NRC issued in 2011.

The NRC's 2011 report, issued after the FBI had closed its investigation, made clear that there was no valid scientific basis for the FBI's anthrax-DNA-based case against Dr. Ivins. The FBI-commissioned 2011 report from the NAS NRC, issued after the close of the FBI's Amerithrax investigation, among other significant findings noted 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 the 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 bureau'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).[3]

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, **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).

Several Army scientists at USAMRIID at Fort Detrich conducted their own analysis of the anthrax attacks and the possibility that Dr. Ivins was involved and concluded that he could not have produced the attack anthrax, contrary to the FBI's assertions. One of these scientists is Arthur Osmund Anderson, M.D., Colonel, U.S. Army Medical Corps (Retired). From 1975 until March 2007, Dr. 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

[3] 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**.

research and to make sure all 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, Dr. 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.**

As the FBI's Amerithrax investigation dragged on, and the FBI started focusing on USAMRIID and Dr. Ivins, Dr. 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 Dr. Anderson described as Dr. Ivins' self-consciousness and need for affirmation, Dr. Ivins himself continued to maintain he was innocent. Dr. Ivins' colleagues concluded that a truly independent analysis of the entire FBI anthrax attacks investigation, not just the science, was needed. **Exhibit 11**.

Dr. 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**. In addition, the anthrax contained in the first wave of attack letters was contaminated with *B. subtilis*, but Ivins' colleagues did not believe any of 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**.

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. **Exhibit 11**. However, when he went to present his analysis and findings to the USAMRIID Commander he was told that a high-level DOD official had directed the Commander to squelch both USAMRIID personnel's internal investigations regarding the anthrax attacks and any criticism of the FBI's anthrax attacks investigation.

On February 24, 2010, the New York Times ran an article "*Haste Leaves Anthrax Case Unconcluded*" by Richard Bernstein which reported additional facts which are consistent with Dr. Anderson's and his colleagues' conclusions, undercutting the validity of the FBI's conclusion that Dr. Ivins was responsible for the post-9/11 anthrax attacks, noting, *inter alia*:

> Aerosol Science and Technology reported on an attempt by a group of scientists at the Dugway Proving Ground in Utah to reproduce the dry, powderized substance that was found in one of the anthrax-laden envelopes … The title of the paper, "Development of an Aerosol System for Uniformly Depositing Bacillus Anthrax Spore Particles on Surfaces," demonstrated that to create anthrax in a dry aerosol form of the sort that can be dispersed through the air is a long and difficult process involving a lot of highly specialized machinery.

> The original culture has to be incubated; spore pellets are then collected with a centrifuge; those spores are dried "by a proprietary azeotropic method," before an "amorphous silica-based flow enhancer" is added to turn the otherwise sticky anthrax spores into an aerosol, after which the material has to be passed through a series of ever finer mesh screens that are activated by a pneumatic vibrator.
>
> The point, as one scientist specializing in fine particle chemistry told me, blows a large hole through the 92-page summary of the investigation released last week by the F.B.I. and the Justice Department, the main conclusion of which is that Bruce E. Ivins, a scientist at the U.S. Army Medical Research Institute of Infectious Diseases at Fort Detrick, in Maryland, was the anthrax mailer. 'Note that the proprietary azeotropic drying technique and the pneumatic mill are both super-specialized pieces of equipment, neither of which is at Detrick,' the specialist in fine particles, Stuart Jacobsen, said in an e-mail message …

"*Haste Leaves Anthrax Case Unconcluded*," by Richard Bernstein, New York Times, February 24, 2010.

Dr. Anderson remains convinced that Dr. Ivins was not capable of producing the attack anthrax. The DOD and DOJ eventually came to admit as much in later court proceedings. Before and shortly after Dr. Ivins' death, the FBI and DOJ accused him of having prepared the attack anthrax spores at the USAMRIID labs working late at night at USAMRIID using lab equipment there. *See, e.g.*, **Exhibit 19.** But in a later lawsuit the DOJ itself advised a federal court that no one could have made the attack anthrax at USAMRIID given its properties and the specialized equipment required. **Exhibit 43,** pp. 4-8; **Exhibit 44,** pp. 3-6 of pdf. After Dr. Ivins' death, the DOJ, by statements of DOJ attorneys in its Civil Division, made this admission 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)**.** 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.[4] **Exhibit 44**; **Exhibit 43**.

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. All of this evidence pointed away from Dr. Ivins and USAMRIID.

Regarding 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 that type of dry, fine powder anthrax with an internal silicon compound coating, nor would he have had access to that type of anthrax or the necessary equipment to make it. **Exhibit**

[4] The DOJ's new position as stated in the Stevens case appears to be that Dr. 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.

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 Dr. Ivins' lab. *Nor*, as noted *supra*, was anthrax found in Dr. Ivins' lab that had high levels of silicon. But each these characteristics *was* present in some or all of the attack anthrax.

In light of the evidence offered by independent scientists and Army scientists that Dr. Ivins simply could not have made the attack anthrax given its properties, that hundreds of other personnel had access to the RMR 1029 anthrax stock, and that the DNA "morph" evidence did not narrow the field of suspects but the silicone and *Bacillus subtilis* contamination did (by pointing away from Dr. Ivins and towards Dugway and Battelle personnel or former personnel), the FBI's remaining attempts to incriminate Dr. Ivins can be seen as mere speculation (speculation that is contrary to hard evidence).

For example, the FBI overstated its evidence that Ivins mailed the attack letters, and erroneously eliminated other suspects from consideration based on alibis restricted to too small of a time window of opportunity. The FBI identified a mailbox in Princeton, New Jersey as the place from which the attack letters were mailed (this FBI claim has never been proved). The Bureau argued merely that Ivins *could* have made the drive between USAMRIID and the New Jersey mailbox in his car, but they had no eyewitness or other evidence to support that 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, also *assumes* a lone wolf attacker. But the FBI had no basis to rule out

more than one perpetrator or 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 before the public, or the government for that matter (at least publicly), 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 during the first two to three weeks of October 2001. **Exhibit 16**. Such "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 whomever 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 that 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 narrowly defining the window of opportunity a presumed sole perpetrator would have had 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 regarding its determination of a 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, for the purpose of ruling out suspects, on proffered alibis by potential perpetrators that covered the bureaus' two one-week windows was completely misplaced.

Unlike for potential USAMRIID suspects, the FBI's report gives the impression that the bureau assumed a longer window of opportunity for potential perpetrators to have accessed the RMR 1029 samples sent by 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 within a three-year window of opportunity.

Further, it appears that, at least for Battelle, the FBI did not insist on Battelle personnel providing alibis to cover a 3- to 4-year window. Instead, as noted *supra*, the bureau assumed

there was only one perpetrator and that Battelle's two-man rule for working with pathogens like anthrax would have prevented any lone wolf perpetrator from accessing and removing samples from Battelle's stocks of anthrax. The FBI's assumptions, 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 highly speculative and questionable 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 an allied perpetrator on the East Coast who could assist with 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 already 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 New York Times reported in late 2001 that Dugway had in fact produced anthrax in powdered form.

As the investigation into the anthrax attacks widens to include federal laboratories and contractors, government officials have acknowledged that Army scientists in recent years have made anthrax in a powdered form that could be used as a weapon. Experts said this appeared to be the first disclosure of government production of anthrax in its most lethal form since the United States

> renounced biological weapons in 1969 and began destroying its germ arsenal. Officials at the Army's Dugway Proving Ground in Utah said that in 1998 scientists there turned small quantities of wet anthrax into powder to test ways to defend against biowarfare attacks. . . . Government records show that Dugway has had the Ames strain since 1992. Dugway officials said in a statement that the Federal Bureau of Investigation was looking into "the work at Dugway Proving Ground," along with that of other medical facilities, universities and laboratories.

"*The Investigation: U.S. Recently Produced Anthrax in a Highly Lethal Powder Form*" by William J. Broad and Judith Miller, New York Times, December 13, 2001.

The FBI's assumptions did not have a basis in fact. These assumptions were, however, convenient for drawing attention away from those labs that had produced or worked with weapons-grade anthrax.

The FBI's lack of zeal in pursuing leads on other suspects is also reflected in how the bureau handled the incident of an anonymous letter mailed to the Quantico police. On September 21, 2001, an anonymous letter was mailed to the Town of Quantico Police, alleging that a scientist who formerly worked at USAMRIID was a fanatic with the will and means to launch a bioterror attack on the United States. The Quantico letter postmark of September 21st was a day after receipt of the Florida Brokaw hoax letter and three days after the arrival of the New Jersey Brokaw letter that contained anthrax, but those prior letters had not yet been publicly reported. *The Message in the Anthrax,* by Don Foster, Vanity Fair, pp. 180-200, October 2003.

On October 2, 2001, the former USAMRIID scientist accused in the anonymous letter was at home in Frederick, Maryland when he received a call from an FBI agent summoning him to a meeting the next morning. During his interview by the FBI about the Quantico letter, this scientist's attorney informed the bureau that her client had a discrimination lawsuit in progress against USAMRIID. *Id*. When the attorney sought, under the Freedom of Information Act, to obtain a copy of the Quantico letter, the Justice Department denied her request on the asserted

basis that releasing the document "could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties" and "disclose the identities of confidential sources."

In December 2001, a Hartford Courant story by Dolan and Altimari reported that a letter had been sent to Quantico police alleging that a former USAMRIID scientist was a potential bioterrorist. An FBI S.S.A. on the bureau's anthrax investigation, according to FBI consultant and language expert Don Foster, had not heard of this letter. Foster asked to examine a copy of the letter and was given a copy by FBI headquarters. Searching through documents by some 40 USAMRIID employees, Foster found writings by a female Army officer that looked like a perfect match. He wrote a detailed report on the evidence, but the anthrax task force declined to follow through on Foster's findings. The Quantico letter had already been declared a hoax and "zero-filed" as part of the 9/11 investigation. According to Foster, many "questioned documents" pertinent to the anthrax case had been "zero-filed." *Id*.

On the night of March 12, 2002, according to FBI consultant Don Foster, the former USAMRIID scientist who was accused in the anonymous Quantico letter of being a bioterrorist threat received a call from a person representing himself as a Louisiana FBI agent. The caller demanded to know if this scientist had been told who wrote the Quantico letter. To prove his credentials, the caller rattled off personal information regarding the scientist from as far back as high school. The scientist believes he recognized the caller's source of information: the scientist's confidential SF-171, a U.S.-government employment application form that had been on file at USAMRIID. In the opinion of FBI consultant Don Foster, a few people's recorded voices should have been played back to this scientist too see if he recognized one of them as the anonymous caller. Though it is a felony to impersonate an FBI agent, the FBI's anthrax task

force decided not to investigate. According to Foster, when the scientist finally called the FBI, he was told to get caller ID. *Id*.

Regarding 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, the bureau's theory was the least likely explanation consistent with the circumstances. The FBI made much of Dr. Ivins having submitted a *second* sample from RMR 1029 (at the FBI's request) that did not show the "fingerprint" morphs, arguing that he was trying to conceal his guilt, but Dr. 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 Dr. Ivins of tampering with or concealing evidence as opposed to Dr. 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.

As another example of the FBI's lack of any real case against Dr. Ivins, the motives the bureau 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 huge increases in federal budgets and government contracts, covering for their lax bio-containment security, covering up or justifying potential biowarfare treaty violations, and promoting a war on terror that reaped huge profits for military contractors as well as the biowarfare and vaccine industries.

The FBI apparently hoped to obtain incriminating evidence against Dr. Ivins by giving him at least one polygraph (lie detector) test, but Dr. Ivins passed. The FBI's response was that he may have simply been skilled at fooling the polygraph machine. **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 (opposite) outcome. It shows 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 it is not willing to stand by the results equally, whether they point towards innocence or guilt.

In short, there is an abundance of evidence that Dr. Ivins could not have been responsible for the anthrax attacks and only speculation or worse supporting the FBI's contrary view.

The FBI appears to have dishonestly made an effort to make all exculpatory evidence regarding Dr. Ivins disappear. 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, based on the FBI and Agent Lambert having compiled a substantial body of exculpatory evidence regarding Dr. Ivins. There is reason to believe that someone higher up 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 Agent Lambert's 2,000-page IMCS report was found there, and only there, is an interesting question. **The FBI has yet to publicly release this key document which contains Agent Lambert's compilation of exculpatory evidence regarding Dr. Ivins (evidence tending to show Ivin's innocence).**

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 Special Grand Jury, Congress, or the public, it will remain unknown to what extent former Agent Lambert's IMCS corroborates the Lawyers' Committee's findings and conclusions here (and vice versa) regarding the FBI's improper handling of the anthrax attacks investigation in general and regarding Dr. Ivins in particular. 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 the Special Grand Jury.

For all the foregoing reasons, it is apparent that the FBI accused a man of committing the anthrax attacks who lacked the capability to have perpetrated those attacks and who, due to the presence of substantial exculpatory evidence, the Department of Justice had no basis to expect it could convict as guilty beyond a reasonable doubt of the anthrax crimes. It is likewise apparent that the FBI prematurely closed its anthrax investigation without getting to the bottom of who was actually responsible for the attacks. **That is, by both its actions and omissions the FBI has allowed the real perpetrators to remain at large.**

2. 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 Fort Detrick

a. The FBI Knew that Dugway and Battelle Personnel, Not Just Fort Detrick Scientists, Had Access to Ames Strain Anthrax that Contained What the FBI Considered to be the "Fingerprint" DNA "Morphs" Found in the Attack Letters but Concealed Key Material Evidence Confirming this Fact

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 *did* send 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 purported 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 (deceptively de-emphasizing 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 that evidence of this was covered up by the FBI. The FBI accomplished this cover-up by choosing not to perform the DNA PCR testing on the RMR 1029 production run samples

from Dugway (on the pretext that these samples were not viable, i.e. dead). 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 an honest use of the FBI's "fingerprint morphs" methodology, whether that methodology was scientifically 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" (were dead and therefore would not grow). **Exhibit 40,** pp. 129.

Further, the NRC reported that the results of over one hundred of the PCR tests of the FBI Repository's lab samples were excluded from the FBI's analysis and reported findings due to inconsistency in the results, inconclusive results, or no results reported 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 for only 947 of the 1,070 lab samples submitted. *Id*.[5]

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 sole and 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 found in the attack anthrax (Battelle), or, based on government documentation, could be deduced (i.e., concluded with certainty) to contain the "fingerprint" DNA morphs

[5] And three of these samples excluded from the final analysis showed three of the four "fingerprint" morphs found in the attack anthrax. *Id*.

(Dugway).

The FBI bases its assertion that RMR 1029 must have been the immediate source of the attack anthrax on its DNA PCR testing of samples of *B. anthracis* submitted 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 these labs submitted to the FBI's Amerithrax investigation repository[6] 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 **either directly** taken from **or were derived from the RMR 1029 stock of Ames strain anthrax at USAMRIID**. **Exhibit 21**, pp. 25, 28-29; **Exhibit 18**; **Exhibit 19**.

Although FBI documents show that one of the Ames anthrax samples the bureau obtained from Battelle did show all four of the "fingerprint" morphs found in the attack anthrax, 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 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 strongly point to the Army's Dugway Proving Ground's production runs as the source of the "fingerprint" morphs found in the USAMRIID RMR 1029 stock that the FBI erroneously asserts Dr. Ivins solely controlled.

As noted, the NRC report made clear that there was no valid scientific basis for the FBI to have relied on the DNA morphs PCR testing as capable of producing a true "fingerprint," i.e., as a method that could point with reasonable scientific certainty to the source from which the anthrax attackers obtained their anthrax (either before they processed it into the final form of the

[6] As a result of the issuance of subpoenas and the conduct of consent searches.

attack anthrax, or after some other person or entity had already processed it). **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 misunderstanding of that newly developing science or whether the FBI knowingly overstated or misrepresented its non-dispositive DNA PCR test results in order to mislead the public and Congress. The Lawyers' Committee was again surprised and disappointed to determine that the latter was the case.

While comparing details in some of the voluminous and numerous FBI Amerithrax case documents to the detailed information in the lengthy NRC report, including its footnotes, the Lawyers' Committee discovered *dispositive* evidence that the DNA "fingerprint" morphs the FBI relied on to point the finger at Dr. Ivins as the purported sole perpetrator of the anthrax letter attacks actually pointed the finger, if these "fingerprint" morphs were reliable at all, to Dugway as the source of the attack anthrax (either prior to it being processed by the perpetrators into the sophisticated form used in the attacks, or after already having been processed into a dry fine powder at Dugway).

The first key fact of 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 mixture made up of a total of 1000 ml of Ames anthrax, approximately 85%, the great majority, of which had been shipped 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% of the contents of RMR 1029 was from Ivins second stock of Ames anthrax, "RMR 1030," 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. Based on this analysis, the FBI reported that tests on RMR 1029 revealed all four of the morphs to be present. **Exhibit 21,** pp. 25, 28-29, 79; **Exhibit 18**; **Exhibit 19**; **Exhibit 40,** p. 140. However, significantly, the tests on RMR 1030 did *not* find *any* of the "fingerprint" morphs. **Exhibit 40,** p. 85, footnote 3**.** Ignoring this critical fact of which it was fully aware, the FBI mentioned RMR 1029 more than one hundred times in its 96-page Amerithrax Investigative Summary report but didn't mention RMR 1030 *even once*.

Therefore, even absent direct evidence from first-hand observations of the Dugway Ames anthrax RMR 1029 production run samples or results from DNA PCR testing on Dugway samples, it can be logically deduced *with certainty* that it was the Dugway-produced Ames anthrax provided *to* USAMRIID for RMR 1029 that made up 85 percent of the RMR 1029 mixture which contained 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 acknowledges, and the NRC confirmed, that RMR 1029 had only two inputs. Those two inputs were: 1) Dugway-produced Ames anthrax (85%), and 2) Ivins' RMR 1030 Ames anthrax stock (15%). **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 only possible source for the attack anthrax "fingerprint" morphs found 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 in the two RMR 1029 flasks. They did. The point here is that, contrary to the FBI's public representations, they were not the *only* ones who did, and that the FBI made a knowing material misrepresentation to the public and Congress,[7] when it stated that the FBI had legitimately, based on what the FBI misrepresented to be dispositive scientific evidence, narrowed the field of suspect sources of the attack anthrax to USAMRIID where Dr. Ivins worked, and to RMR 1029. The FBI's purported scientific basis for eliminating Dugway and Battelle personnel from suspicion was disingenuous, and so also was the FBI Director's illogical and evasive response to the questions from members of Congress as to how the FBI had ruled out Dugway and Battelle as the source of the attack anthrax.

Anyone with access to Dugway's or Battelle's Ames anthrax stocks could no more validly 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 actual suspects remained, even after the FBI's DNA PCR "fingerprint" morphs testing, quite large, still including hundreds of personnel at Dugway, Battelle, and others besides Dr. Ivins at USAMRIID (not to mention the CIA and DIA, agencies that contracted with Dugway and Battelle for anthrax-related biowarfare work).

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

[7] 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 the field of suspects not having been narrowed, and still including hundreds of USAMRIID, Dugway, and Battelle personnel.

Investigative Summary report and its press statements have unfortunately misled the public, the press, and Congress to believe that such DNA "morph" testing of Dugway's RMR 1029 production runs samples was actually performed and the results included in the FBI's investigation and analysis, which they were not. The evidence discovered by the Lawyers Committee, explained in detail below, disturbingly indicates the contrary.

Although *some other* Ames anthrax samples from Dugway may have been subjected to the FBI's DNA PCR testing,[8] Dugway samples from its RMR 1029 production runs with virtual 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.

The FBI reported that only 8 samples showed all of the "fingerprint" morphs, 7 of those

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

came from USAMRIID, and that the 8th came from Battelle. Therefore, only these possibilities remain: 1) The FBI did not test the Dugway RMR 1029 production runs samples for the "fingerprint" morphs (on the excuse they were not viable); 2) The FBI tested the Dugway RMR 1029 production runs samples for these "morphs" and concealed the results; or 3) The FBI tested the Dugway RMR 1029 production runs samples but the tests resulted in false negatives for *all* of those samples, which would mean that the agency's DNA PCR "fingerprint" methodology, the foundation of its case against Dr. Ivins, was highly unreliable for the FBI's purpose.

The NRC report confirms that a Dugway official involved in the RMR 1029 production runs at Dugway admitted he had visually observed the presence of many morphs in Dugway's initial small-scale cultures that were then fed into Dugway's large fermentors for the large-scale production runs of the RMR 1029 Ames anthrax that Dugway sent to USAMRIID. **Exhibit 40,** pp. 131-132. Given that Dr. Ivins' RMR 1030 Ames anthrax stock was found not to have any of the "fingerprint" morphs, and that 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," i.e., all four of these FBI-selected morphs, and were thus the source of these morphs in RMR 1029. Therefore, the FBI's DNA PCR tests, if such tests were actually conducted on Dugway RMR 1029 production run samples, would have shown these "fingerprint" morphs (assuming the FBI's DNA PCR methodology itself 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, USAMRIID and Dr. Ivins could not have been singled out by the FBI as, allegedly, having the only Ames anthrax that contained the "fingerprint" morphs. The answer, the Lawyers' Committee has concluded, based on the evidence detailed below regarding key Dugway samples being reported to be non-viable (dead), *id*., and the FBI having consciously adopted a testing protocol that unjustifiably 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 reveals that in the FBI's report of their consensual search of Dugway it is noted, without any emphasis, 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 consciously adopted a testing protocol that excluded non-viable samples altogether. **Exhibit 40,** pp. 127, 129-130.

The NRC report noted, 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* also have been tested using the PCR method, but were not due to the FBI's adoption of a scientifically unjustified viable-samples-only testing protocol that required each repository sample to be grown twice 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**. [emphasis added]

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, in order to avoid documenting that the Dugway RMR 1029 production runs Ames anthrax contained the fingerprint morphs. The above documented events support the conclusion that the FBI created the testing protocol criticized by the NRC in order to give the bureau's decision to avoid testing the Dugway samples the false appearance of validity. This pseudo-scientific slight of hand enabled the FBI to give at least an appearance of validity to its false conclusion that Dr. Ivins' RMR 1029 flask had to have been the sole source of the letter attacks anthrax.

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 (allegedly) not tested because they were not viable, the NRC does not explicitly state that it 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 in fact viable. The NRC report makes also 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 its 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.[9] 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.

Second, according to one DPG [Dugway Proving Ground] scientist, the

[9] 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 seed stock 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 possessed 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 that all 7 tracked backed 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 seed stock 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 possessed 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, the 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 therefore not added directly into RMR 1029. The forensic conclusion of importance 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 could have been obtained.

> 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 [at Dugway] 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, 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 the use of a DNA PCR testing protocol that resulted in the bureau 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, they needed to grow their 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 re-growth 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 its 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 the viable-samples-only testing protocol resulted in the bureau 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 its 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's 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 Dugway Ames anthrax stocks contained

the FBI's "fingerprint" morphs (unless such evidence had been intentionally destroyed). Such a finding, if reported by the FBI, would have completely undermined the its 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 containing 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 define just 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, as well as other entities that received RMR 1029 Ames anthrax, or that received other Ames anthrax containing the "fingerprint" morphs, from either of these two labs.

FBI documents, as noted, showed that one sample from Battelle contained the "fingerprint" (i.e., 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 (Battelle was 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 Battelle's two-man rule for 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 its 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 bureau's investigation. The Lawyers' Committee presumes that when Director

Mueller commissioned the NRC to undertake this review of the FBI's investigation science that he intended to use the results of its review to improve the investigation and ensure that the FBI completed its inquiry using valid scientific methods. Instead, 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 from which the attack anthrax was derived, directly or indirectly, and given the evidence discussed herein that the FBI went to extraordinary lengths to avoid disclosing that Dugway's Ames anthrax production runs contained the "fingerprint" morphs that went into USAMRIID's RMR 1029 stock of anthrax, the FBI's decision to close its investigation prior to the completion of the NRC review appears not only premature and ill advised, but suspicious.

First, the FBI imposed significant constraints on the NRC's review, and then the FBI ignored the significance and clear implications of the NRC's findings. The constraints included the NRC not receiving or being allowed to review 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" on the criminal investigation or that the NRC's question went beyond the scope of its mandate under its contract with the bureau; 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 its investigation before the NRC 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 to definitively identify 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, however, then the centerpiece of the FBI's case against Dr. Ivins falls apart for lack of reliable scientific evidence. On the other hand, if the FBI's DNA PCR analytical methodology for identifying the "fingerprint" morphs is sufficiently scientifically reliable, then the disturbing fact remains that the FBI disingenuously and arbitrarily came up with a protocol that allowed only viable or live samples to be tested, thereby conveniently avoiding testing Dugway's Ames anthrax RMR 1029 production runs samples (on the excuse that these samples were not live), even though the DNA PCR technique could have been used to test those non-viable samples for fingerprint morphs. 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 as the sole possible anthrax attacks perpetrator falls apart.

So, only two possibilities remain regarding the FBI's conduct regarding the DNA PCR testing and evidence. Neither is flattering to the FBI, and each supports the Lawyers' Committee's request in this Petition for a thorough grand jury investigation.

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 its 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.

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 the anthrax stock used to make the attack anthrax. Under this scenario, given the facts discussed above, all of which were known to the FBI, the FBI knew that its presumed-reliable DNA PCR "fingerprint" morphs evidence pointed as much to Dugway and Battelle personnel as to Dr. Ivins and USAMRIID personnel, and even more towards Dugway and Battelle when the silicon content and *B. subtilis* contamination evidence was 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 to 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 that this Dugway anthrax constituted 85% of the contents of USAMRIID's RMR 1029 flask used by, but not solely by, Dr. Ivins.

Had the FBI not engaged in this cover-up tactic it would have found itself in the embarrassing 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 as possible suspects, the bureau would had to have acknowledged that there were still hundreds of suspects. And this unenviable interpretation of the facts, among those consistent with the evidence, is the one *most exculpatory* for the FBI.

There is, unfortunately however, a worst-case alternative consistent with the evidence. That worst-case alternative is that the FBI, or the Department of Justice, was improperly ordered or 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 by government or government-contracted laboratories and military facilities that worked with the anthrax, see e.g., **Exhibit 56**.

b. The FBI Had Evidence that *B. Subtilis* Found in the First Wave of Anthrax Attack Letters Pointed Towards Dugway and Not Fort Detrick, and that the Silicon Content of the Attack Anthrax Pointed Towards Battelle and Dugway, But Chose Not to Disclose These Facts

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 was true. There are at least four "smoking gun" reasons for this: 1) The FBI's concealment of the fact that Dugway's RMR 1029 production runs anthrax contained the "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 letter attack waves; and 4) The fine dry powder nature of the anthrax used in the second wave of letter attacks. These four lines of evidence turn the spotlight of suspicion 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**.

As noted, the first of these smoking guns was discussed above. Regarding 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 were contamination with

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 fermentor, but Dugway did. *Id*. The B. subtilis contamination (referred to as *B. globigii* in the FBI Dugway search report) was so great during the Dugway production runs for RMR 1029 that the anthrax produced in 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 using such anthrax simulants. With some involvement of the CIA, 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.[10] *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 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

[10] *B. atrophaeus* is the current 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/.

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 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:

> 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 source of the *B. subtilis* contaminant in the attack anthrax purportedly could not 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 facilities working with anthrax that Congress had inquired about to FBI Director Mueller. As noted *supra*, Director Mueller was asked by Congress to explain how Battelle and Dugway came to be eliminated in 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 a number of follow up questions for Director Mueller (see discussion *infra* regarding the fox guarding the henhouse).

Regarding 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. Silicon compounds were also found in the second attack wave letters but they were inside the anthrax spores – virtually all of the silicon was inside the exosporium on what is called the spore

coat – and the anthrax in this second wave of attack letters, which were addressed to Senator Leahy and Senator Daschle, had a 1% - 2% silicon content. **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 bureau 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% of 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 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 in the attack letters.

The NRC, significantly, noted that Ivins' RMR 1030 Ames anthrax stock did not resemble the attack anthrax either chemically or physically. **Exhibit 40**, p. 85 footnote 3**.** The NRC reported that **only a few spores of the RMR 1030 had silicon** and that **the RMR 1029 had no silicon**. **Exhibit 40**, pp. 82, 85, 87**.** The NRC therefore concluded the obvious, **that the attack letter anthrax (the actual "weapon") could not have been taken directly from RMR 1029 (or from RMR 1030)**. *Id.*, p. 87. A separate growth of RMR 1029 anthrax would have to have been prepared by the perpetrators to account for the B. subtilis contamination, the silicon content, and the fine dry powder form of the attack anthrax used in the letters. *Id*.

In addition to generally inquiring about the FBI's basis for eliminating Dugway and Battelle from its investigation of possible sources of the attack anthrax, Congress also specifically asked the bureau 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 its silicon content as 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 yet 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 not to have 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 [letter anthrax] 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**.**

Regarding the fourth "smoking gun," neither Dr. Ivins nor his colleagues at USAMRIID could have produced the fine dry powder attack anthrax or the silicon compound inner spore 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 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 Dr. Anderson. Dr. Ivins 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. 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 now deceased 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 federal agency-funded 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 exposed these DOD/Defense Intelligence Agency-funded studies that were being conducted at the Battelle Laboratory involving "enhanced anthrax." **Exhibit 56**. Perry Mikesell is reported to have begun drinking heavily and to have died of complications of alcoholism October 19, 2002.

FBI Director Mueller, in his testimony to Congress and in the FBI's months-later responses to the questions submitted to the bureau by Congress, should have disclosed the above "smoking gun" evidence. Congress had specifically requested the basis the FBI had used to eliminate Dugway and Battelle as possible sources for the attack anthrax (which does not equate *per se* to a list of potential suspects). Had the FBI been forthright, the proper response to Congress' inquiry would have been that it had been in error and that 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 towards Dugway and Battelle and away from Dr. Ivins and USAMRIID.

But the FBI was not forthright. For the reasons thus far stated, the Special Grand Jury should conduct a comprehensive inquiry into the anthrax attacks which used biowarfare agents against Congress and the free press, and involved the attempted assassination of two United States Senators.

B. The Anthrax Attacks Involved Several Federal Crimes, But No Indictments Have Been Issued, No Arrests Have Been Made, and No Prosecutions Have Been Commenced

1. No Arrests Have Been Made for Violations of 18 U.S.C. § 351(c), which Criminalizes Attempts to Kill a Member of Congress, or for Violations of 18 U.S.C. § 1114, which Criminalizes Attempts to Kill a Federal Official

Unsurprisingly, federal law criminalizes attempts to kill, or the killing of, a Member of Congress.

> Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties
>
> **(a)** Whoever kills any individual who is a Member of Congress or a Member-of-Congress-elect, a member of the executive branch of the Government who is the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Principal Deputy Director of National Intelligence, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of the Central Intelligence Agency, a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title), or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination, shall be punished as provided by sections 1111 and 1112 of this title.
>
> * * *
>
> **(c)** Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.
>
> **(d)** If two or more persons conspire to kill or kidnap any individual designated in subsection (a) of this section and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.
>
> **(e)** Whoever assaults any person designated in subsection (a) of this section shall be fined under this title, or imprisoned not more than one year, or both; and if the assault involved the use of a dangerous weapon, or personal injury results, shall be fined under this title, or imprisoned not more than ten years, or both.

> **(f)** If Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated.
>
> **(g)** Violations of this section shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.
>
> **(h)** In a prosecution for an offense under this section the Government need not prove that the defendant knew that the victim of the offense was an individual protected by this section.
>
> **(i)** There is extraterritorial jurisdiction over the conduct prohibited by this section.

18 U.S.C. § 351.

> Federal law also criminalizes attempts to kill, or the killing of, other federal officials.
>
> Protection of officers and employees of the United States
>
> Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished--
>
> **(1)** in the case of murder, as provided under section 1111;
>
> **(2)** in the case of manslaughter, as provided under section 1112; or
>
> **(3)** in the case of attempted murder or manslaughter, as provided in section 1113.

18 U.S.C. § 1114. The facts of the post-9/11 anthrax attacks described above make clear that the perpetrators sent lethal amounts of anthrax through the mail to two United States senators in an attempt to murder them which, due only to chance and circumstance, led to the death of others and not the two senators, in violation of both 18 U.S.C. § 351 and 18 U.S.C. § 1114. No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for the violations of 18 U.S.C. § 351(c) and 18 U.S.C. § 1114 committed during the

anthrax attacks.

2. No Arrests Have Been Made for Violations of 18 U.S.C. § 2332a, which Criminalizes Use of Weapons of Mass Destruction

Also unsurprisingly, it is a federal crime to use a weapon of mass destruction (which includes use of a biological warfare agent), within the United States or against a national of the United States.

> Use of weapons of mass destruction
>
> **(a) Offense against a national of the United States or within the United States.**--A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction--
>
> **(1)** against a national of the United States while such national is outside of the United States;
>
> **(2)** against any person or property within the United States, and
>
> **(A)** the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;
>
> **(B)** such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;
>
> **(C)** any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or
>
> **(D)** the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;
>
> **(3)** against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States; or
>
> **(4)** against any property within the United States that is owned, leased, or used by a foreign government,
>
> shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

* * *

(c) Definitions.--For purposes of this section--

* * *

(2) the term "weapon of mass destruction" means--

(A) any destructive device as defined in section 921 of this title;

(B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(C) any weapon involving a biological agent, toxin, or vector (as those terms are defined in section 178 of this title); or … .

18 U.S.C. § 2332a. The facts of the post-9/11 anthrax attacks described above make clear that the perpetrators made use of anthrax, federally defined as a weapon of mass destruction, within the United States, in violation of 18 U.S.C. § 2332a. No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for the violations of 18 U.S.C. § 2332a committed during the anthrax attacks.

3. No Arrests Have Been Made for Violations of 18 U.S.C. § 1111, which Criminalizes Murder

Federal law also criminalizes murders that occur within the special maritime and territorial jurisdiction of the United States (state law criminalizes murders elsewhere within the United States).

Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; **or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason,** espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; **or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any**

human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

18 U.S.C. § 1111 (emphasis added). The facts of the anthrax attacks described above make clear that the perpetrators intentionally sent lethal amounts of the biological agent anthrax through the mail to numerous targets including two United States Senators resulting in the deaths of at least five persons, including postal employees, which constitutes murder in the first degree in violation of 18 U.S.C. § 1111. No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for the violations of 18 U.S.C. § 1111 committed during the anthrax attacks.

4. No Arrests Have Been Made for Violations of 18 U.S.C. § 1716, which Criminalizes the Mailing of Poisonous and Dangerous Materials, Including Infectious Biological Agents

Mailing biological warfare agents such as anthrax through the mails is also a violation of federal law.

Injurious articles as nonmailable

(a) All kinds of poison, and all articles and compositions containing poison, and all poisonous animals, insects, reptiles, and all explosives, hazardous materials, inflammable materials, infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode, and all disease germs or scabs, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property, whether or not sealed as first-class matter, are nonmailable matter and shall not be conveyed in the mails or delivered from any post office or station thereof, nor by any officer or employee of the Postal Service.

* * *

(j)(1) Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon, or at any place at which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, unless in accordance with the rules and regulations authorized to be prescribed by the Postal Service, shall be fined under this title or imprisoned not more than one year, or both

(2) Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail, according to the direction thereon or at any place to which it is directed to be delivered by the person to whom it is addressed, anything declared nonmailable by this section, whether or not transmitted in accordance with the rules and regulations authorized to be prescribed by the Postal Service, with intent to kill or injure another, or injure the mails or other property, shall be fined under this title or imprisoned not more than twenty years, or both.

(3) Whoever is convicted of any crime prohibited by this section, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life.

(k) For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

18 U.S.C. § 1716. The facts of the post-9/11 anthrax attacks described above make clear that the perpetrators made use of the mails to distribute anthrax to numerous targeted individuals and institutions in violation of 18 U.S.C. § 1716. No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for the violations of 18 U.S.C. § 1716 committed during the anthrax attacks.

5. No Arrests Have Been Made for Violations of 18 U.S.C. § 175, which Criminalizes Production, Retention, or Transfer of a Biological Agent or Toxin

It is a violation of federal law to, *inter alia*, produce, retain, or transfer a biological agent such as anthrax for use as a weapon.

Prohibitions with respect to biological weapons

> **(a) In general.**--Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.
>
> **(b) Additional offense.**--Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both. In this subsection, the terms "biological agent" and "toxin" do not encompass any biological agent or toxin that is in its naturally occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.
>
> **(c) Definition.**--For purposes of this section, the term "for use as a weapon" includes the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for other than prophylactic, protective, bona fide research, or other peaceful purposes.

18 U.S.C. § 175. The facts of the post-9/11 anthrax attacks described above make clear that the perpetrators either produced the biological agent anthrax used in the post-9/11 anthrax attacks, or retained such anthrax for a time in preparation and planning for these attacks, or transferred the attack anthrax to others who placed it in the envelopes and/or in the mail, or some combination of these acts, all of which acts were in violation of 18 U.S.C. § 175. No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for the violations of 18 U.S.C. § 175 committed during the anthrax attacks.

6. No Arrests Have Been Made for Violations of 18 U.S.C. § 1363, which Criminalizes Destruction or Injury to Federal Property

It is a violation of federal law to destroy or injure federal property.

Buildings or property within special maritime and territorial jurisdiction

> Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously destroys or injures any structure,

> conveyance, or other real or personal property, or attempts or conspires to do such an act, shall be fined under this title or imprisoned not more than five years, or both, and if the building be a dwelling, or the life of any person be placed in jeopardy, shall be fined under this title or imprisoned not more than twenty years, or both.

18 U.S.C. § 1363. The facts of the post-9/11 anthrax attacks described above make clear that the perpetrators mailed the attack anthrax to the United States' Hart Senate Office Building, addressed to two senators. These attacks resulted in significant contamination to that building. In addition, 35 postal facilities and commercial mailrooms were contaminated. Decontamination of the Hart Building (where 50 Senators have their offices) closed the building for three months and cost $42 million. Decontamination of the Brentwood facility took 26 months and cost $130 million. Such contamination constitutes injury to federal property in violation of 18 U.S.C. § 1363. No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for the violations of 18 U.S.C. § 1363 committed during the anthrax attacks.

7. No Arrests Have Been Made for Violations of 18 U.S.C. § 2381, which Criminalizes Treason

Treason is both a violation of a federal criminal statute and a crime specified in the Constitution.

> Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.
>
> The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

U.S. Const. Art. 3, Sec. 3.

> Treason
>
> Whoever, owing allegiance to the United States, levies war against them or

> adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States.

18 U.S.C. § 2381. No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for violations of 18 U.S.C. § 2381, or for the crime of Treason specified in the Constitution, committed during the anthrax attacks. However, the above referenced facts regarding the anthrax attacks support the conclusion that these attacks constituted commission of the crime of Treason.

The perpetrators of the anthrax attacks sent lethal amounts of anthrax through the mail to two United States Senators to attempt to murder them. The most probable motive, based on the circumstantial evidence available, for these attempted political assassinations was to achieve an alteration of the political party balance of the Senate to get the Patriot Act passed and passed quickly and/or to instill sufficient fear in the Senate's then current members so as to achieve the same objective, and to reduce opposition in the Senate to the planned attacks on Iraq and Afghanistan. As the case law noted below makes clear, this use of deadly force against the United States government and elected federal officials to achieve such government-altering and "political"-military goals constitutes treason in violation of both 18 U.S.C. § 2381 and U.S. Const. Art. 3, Sec. 3.

Any insurrection or rising of any body of the people, within the United States, to attain or effect by violence any object of a great public nature, or of a public and general (or national) concern, is a levying of war against the United States. *Case of Fries*, 9 F. Cas. 924 (C.C. Pa. 1800) (No. 5,127).

A conspiracy to prevent by force the execution of any law of the United States is a treasonable conspiracy, and an assemblage of people for the purpose of carrying this intention

into effect and preventing by force the execution of the law constitutes a levying of war and involves the crime of treason. *In re Charge to Grand Jury,* C.C.R.I.1842, 30 F.Cas. 1046, No. 18275.

The words "levying war" embrace not only those acts by which war is brought into existence, but also those acts by which war is prosecuted. The offense is complete, whether the force be directed to the entire overthrow of the government throughout the country, or only in certain portions of the country, or to defeat the execution and compel the repeal of one of its public laws. *U.S. v. Greathouse,* 26 F. Cas. 18, 4 Sawy. 457 (C.C. N.D.Cal. 1863) (No. 15,254).

"If the assembly is arrayed in a military manner, if they are armed and march in a military form, for the express purpose of overawing or intimidating the public, and thus they attempt to carry into effect the treasonable design--that will, of itself, amount to a levy of war, although no actual blow has been struck or engagement has taken place." *Charge to Grand Jury*, 30 F. Cas. 998 (C.C. Md. 1836) (No. 18,257). *See, also, U.S. v. Burr*, 25 F. Cas. 2 (C.C. Va. 1807) (No. 14,693).

Opposing, by force of arms, an act of Congress, with a view to defeating its efficacy, and thus defying the authority of the government, is levying war against the United States, and constitutes treason. *U.S. v. Fries,* 9 F. Cas. 826, 3 U.S. 515, 3 Dall. 515, 1 L.Ed. 701 (C.C. Pa. 1799) (No. 5,126).

"'A levying of war' without having recourse to rules of construction or artificial reasoning would seem to be nothing short of the employment, or at least of the embodying of a military force, armed and arrayed, in a warlike manner, for the purpose of forcibly subverting the government, dismembering the Union, or destroying the legislative functions of Congress. The troops should be so armed and so directed as to leave no doubt that the United States or their

government were the immediate object of their attack." *U.S. v. Hoxie*, 26 F. Cas. 397 (C.C. Vt. 1808) (No. 15407).

"This language ['adhering to the enemies,' etc.] leaves no room to doubt that treason may be predicated of [on] acts which are not a direct levying of war according to the construction of that phrase, as just indicated." *In re Charge to Grand Jury*, 30 F. Cas. 1036 (C.C. S.D. Ohio 1861) (No. 18,272).

A person present, directing, aiding, abetting, counseling, or countenancing the violence, or if, though absent at the time of its actual perpetration, directed the act, or devised or knowingly furnished the means for carrying it into effect, and instigated others to commit the act, is guilty of treason. *In re Charge to Grand Jury- Treason*, 30 F. Cas. 1047 (C.C. E.D. Pa. 1851) (No. 18,276).

Taking concrete actions to prepare for or initiate the use of force in aid of a rebellion against the United States are overt acts of treason. *U.S. v. Greathouse*, 26 F. Cas. 18, 4 Sawy. 457 (C.C. N.D. Cal. 1863) (No. 15,254).

Rebellion, whether conducted on land or sea, is felonious and treasonable, and punishable by death. *The Ambrose Light*, 25 F. 408 (S.D.N.Y. 1885).

The act of revolutionizing a territory of the United States, though only as a means for an expedition against a foreign power, is treason. *U.S. v. Burr*, 25 F. Cas. 2, 4 Cranch 455, 8 U.S. 455, 2 L.Ed. 677, (C.C. Va. 1807) (No. 14,692A), note.

Levying war against the United States by citizens of the republic is treason against the United States. *Shortridge v. Macon*, 22 F. Cas. 20 (C.C. N.C. 1867) (No. 12,812).

Military weapons are not necessary to make an insurrection or uprising amount to a levying of war, because "numbers may supply the want of military weapons, and other

instruments may effect the intended mischief and the legal guilt of levying war may be incurred without the use of military weapons or military array." *Case of Fries*, 9 F. Cas. 924 (C.C. Pa. 1800) (No. 5,127). *See, also, U.S. v. Burr*, 25 F. Cas. 2 (C.C. Va. 1807) (No. 14,693); *Charge to Grand Jury-Treason*, 30 F. Cas. 1039 (D.C.Mass.1861) (No. 18,273).

In addition to there having been no indictments, arrests, or prosecutions of *principals* for the crime of treason, there also have been no indictments issued, no arrests made, and no prosecutions commenced for violations of 18 U.S.C. § 2381 and the constitutional crime of treason committed before, during, or after the anthrax attacks that involved *aiders and abettors or accessories.* Although those who aid and abet federal crimes other than treason before or during such crimes' commission are treated like principals, accessories after the fact to those federal crimes are not treated like principals. However, as the case law noted below makes clear, in the case of treason any conduct that would constitute being an accessory after the fact also equates to being a principal.

All who engage in rebellion or who knowingly give it any type of aid and comfort are principals. *U.S. v. Greathouse*, 26 F. Cas. 18, 4 Sawy. 457 (C.C. N.D. Cal. 1863) (No. 15,254). *See, also, Case of Fries*, 9 F. Cas. 924 (C.C. Pa. 1800) (No. 5,127); *U.S. v. Hanway*, 26 F. Cas. 105 (C.C. E.D. Pa. 1851) (No. 15,299).

In treason there are no accessories, all participants being principals. *U.S. v. Fries*, 9 F. Cas. 826, 3 U.S. 515, 3 Dall. 515, 1 L.Ed. 701 (C.C. Pa. 1799) (No. 5,126). *See, also, Case of Fries*, 9 F. Cas. 924 (C.C. Pa. 1800) (No. 5,127); *U.S. v. Hanway*, 26 F. Cas. 105 (C.C. E.D. Pa. 1851) (No. 15,299); *U.S. v. Greathouse*, 26 F. Cas. 18, 4 Sawy. 457 (C.C. N.D. Cal. 1863) (No. 15,254).

Every act, which, in the case of felony, would render a person an accessory, will, in the

case of treason, make that person a principal and all persons present, aiding, assisting, or abetting any treasonable act are principals. *U.S. v. Fries*, 9 F. Cas. 826, 3 U.S. 515, 3 Dall. 515, 1 L.Ed. 701 (C.C. Pa. 1799) (No. 5,126).

Every species of aid and comfort which, if given to a foreign enemy, would constitute treason within provision of Const. Art. 3, § 3, would if given to the rebels in insurrection against the government constitute a levying of war under § 3. *U.S. v. Greathouse*, 26 F. Cas. 18, 4 Sawy. 457 (C.C. N.D. Cal. 1863) (No. 15,254).

"If an American citizen commits an act which weakens, or tends to weaken, the power of the United States to resist or to attack the enemies of the United States, that is in law giving aid and comfort to the enemies of the United States." *U.S. v. Fricke*, 259 F. 673 (S.D.N.Y. 1919).

An act which intentionally strengthens or tends to strengthen enemies of the United States or which weakens or tends to weaken power of the United States to resist and attack such enemies, constitutes "adhering" and gives "aid and comfort" to such enemies within the definition of treason in Const. Art. 3, § 3, cl. 1. *U.S. v. Haupt*, 47 F. Supp. 836 (N.D. Ill. 1942), reversed on other grounds 136 F.2d 661.

The words "adhering to their enemies, giving them aid and comfort," include not only "giving information or other direct aid" to enemies, but also "acts which tend and are designed to defeat, obstruct, or weaken our own arms." *In re Charge to Grand Jury-Treason*, 30 F. Cas. 1049, (C.C. Mass. 1861) (No. 18,277).

Overt acts which, if successful, would advance the interests of a rebellion, amount to aid and comfort, even if they failed. *U.S. v. Greathouse*, 26 F. Cas. 18, 4 Sawy. 457 (C.C. N.D. Cal. 1863) (No. 15,254).

If war is levied against the government, all citizens who perform any part, however

minute, and who are actually involved in the general conspiracy are considered traitors. *Tomoya Kawakita v. U.S.*, 343 U.S. 717 (1952), rehearing denied 73 S.Ct. 5, 344 U.S. 850, 97 L.Ed. 660.

8. No Arrests Have Been Made for Violations of 18 U.S.C. § 2 which Imposes Criminal Liability on Those Who Aided and Abetted These Crimes

Any person who aides or abets any of the eight federal crimes referenced *supra* (as distinguished from those who were accessories after the fact) have the same criminal liability and are subject to the same punishment as the principals who acted directly to commit the crimes.

> Principals
>
> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2.

The facts of the post-9/11 anthrax attacks described above make clear that in order for these anthrax attacks to have been carried out as they were there must have been persons who planned the attacks, and also persons whose role was to process the crude wet anthrax spores into the more highly processed and highly purified dry spores to obtain the concentration of one trillion spores per gram of anthrax that also had an unusual coating inside the outer spore coat of a silicone compound, as was observed regarding the attack anthrax mailed to the senators. Or, in the alternative, in addition to the planners, there must have been persons whose role was to steal or purchase or obtain under false pretenses this highly sophisticated attack anthrax from some government or corporate facility that had already created it (in apparent violation of an international biological weapons treaty). The perpetrators would also have had to have included those who acted directly to carry out the post-9/11 anthrax attacks by placing the anthrax in the

envelopes and mailing those envelopes containing lethal amounts of this anthrax through the mail to the designated targets.

It is not only the latter category of perpetrators who have criminal liability under the eight federal criminal statutes discussed *supra*. 18 U.S.C. § 2 and the federal cases applying it make clear that all those who aided and abetted these crimes by planning them, financing them, or assisting in the preparation for these attacks in any manner have the same criminal liability and are subject to the same punishment as those who placed the anthrax in the envelopes and mailed them.

In identifying who was really behind the anthrax letter attacks it is important to note that whoever produced the anthrax may not have been the same person(s) who gave it to the letter writer and/or to the letter mailer; that whoever produced and/or obtained the anthrax may not be the same person(s) who added the anthrax and the letters to the envelopes and put them in the mail; and that the person(s) who hand wrote the attack letters may not be the same person(s) who put the letters and anthrax into the envelopes before mailing.

No indictments have been issued, no arrests have been made, and no prosecutions have been commenced for anthrax attacks related violations of 18 U.S.C. § 2.

C. No Statute of Limitations Bars the Investigation or Prosecution of These Federal Crimes Now

Although the crimes being reported in this Petition were initiated in 2001 and at least some of them may have been planned well before 2001, these crimes may still be prosecuted under federal law because there is no statute of limitations for these crimes. Generally, an indictment for any offense punishable by death may be found at any time without limitation.[11]

[11] 18 U.S.C. § 3281.

18 U.S.C. § 1111 (murder) provides for a death penalty as does 18 U.S.C. § 1716 (mailing biological agents), 18 U.S.C. § 2381 (treason), and 18 U.S.C. § 1114 (attempts to kill a federal official). Further, for terrorism offenses, if the act of terrorism causes or risks death or serious bodily injury, then there is also no time limitation on the prosecution of that crime.

> Extension of statute of limitation for certain terrorism offenses
>
> * * * *
>
> (b) No limitation.--Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense listed in section 2332b(g)(5)(B), if the commission of such offense resulted in, or created a forseeable risk of, death or serious bodily injury to another person.[12]

The offenses listed in 18 U.S.C. section 2332b(g)(5)(B) include 18 U.S.C. § 2332a (use of weapons of mass destruction), 18 U.S.C. § 351(c) (attempt to kill a Member of Congress), 18 U.S.C. § 175 (production, retention, and transfer of biological agents), and 18 U.S.C. § 1363 (causing injury to federal property).[13]

IV. WITHOUT A NEW GRAND JURY INQUIRY, THE CONGRESS AND THE NATION WILL REMAIN AT RISK

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. The 2001 anthrax attacks, although not the first time the U.S. Capitol was attacked (the British attacked the Capitol during the War of 1812) and not the last (there was an insurrection at the U.S. Capitol on January 6, 2021), were the first (and thus far only) time biological weapons have been used against the United States Congress. A bio-weapons attack is not a trivial matter. Offensive bioweapons research in the 1950's and 1960's led U.S. bioweapons experts such as William Patrick to conclude that a

[12] 18 U.S.C. § 3286.
[13] 18 U.S.C. § 2332b(g)(5)(B).

bioweapons attack could, depending on the biological agent used, sicken or kill hundreds of thousands of people, or more. *See, e.g.,* **Exhibit 66**. The 2001 anthrax attacks could have been much more devastating than they were, and so could future attacks. 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 by Congress itself into the anthrax attacks or an inquiry 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 its 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 its 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 former director of the FBI's Amerithrax investigation unless Congress or a grand jury exercises its subpoena power. 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 could accomplish, but one that Congress or a grand jury would have the power to do.

It bears repeating that the real perpetrators of the biological weapons attacks 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 on the Capital, or elsewhere in the nation. The perpetrators of the anthrax attacks urgently 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 anthrax attack 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. A Special Grand Jury working with a Special Counsel as federal prosecuting attorney could accomplish this critical undertaking.

A new thorough inquiry by a Special Grand Jury into these anthrax attacks, and a public exposé of the truth regarding these attacks via a public report of government misconduct from the Special Grand Jury is urgently needed. Such a new grand jury investigation is necessary to bring the perpetrators of these crimes to justice, and to prevent these perpetrators from again attacking the government or the public using biological warfare agents, or other means.

V. CITIZENS HAVE A RIGHT TO REPORT THESE FEDERAL CRIMES TO A SPECIAL GRAND JURY

Allegations of crimes or "[a]lleged offenses" are usually brought to the attention of the grand jury by a court or by a federal prosecutor "appearing on behalf of the United States for the

presentation of evidence" pursuant to federal statutory procedure.[14] However, citizens have a right under common law regarding grand juries that pre-existed the Constitution, and which was incorporated into the Constitution, to report crimes to the grand jury. This right encompasses the right to make a request to appear before a special grand jury or a grand jury and to report potential crimes via testimony directly to either, with the qualification that, pursuant to federal statute, a citizen may not attempt to influence the actions or decisions of any grand jury.[15]

Citizens have the right as well to report information regarding potential federal crimes to a United States Attorney and have this information relayed to a special grand jury.[16] The federal crimes and murders committed in the post-9/11 anthrax attacks are no exception. Indeed, crimes so heinous as these behoove citizens to come forward with any information they possess in defense of their nation and liberty.

Further, because the grand jury is a government entity, citizens also have the right to petition the grand jury, as they might any other government entity, for redress of grievances under the First Amendment of the United States Constitution. The First Amendment right of citizens and organizations to petition the government is well established and applies to all branches of the federal government.

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

[14] "(a) … Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence." 18 U.S.C. § 3332(a).
[15] "Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined under this title or imprisoned not more than six months, or both. Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury." 18 U.S.C. § 1504. Influencing juror by writing.
[16] 18 U.S.C. § 3332(a).

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.[17]
>
> 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. This First Amendment Right to Petition, of course, also allows citizens to petition the DOJ and the U.S. Attorney.

VI. THE DEPARTMENT OF JUSTICE HAS A DUTY TO RELAY CITIZEN REPORTS OF FEDERAL CRIMES TO A GRAND JURY

A federal statute requires any attorney appearing on behalf of the United States – whether a U.S. Attorney, Assistant U.S. Attorney, or a specially appointed federal prosecutor – who receives information concerning an alleged federal crime from any person, if requested by that person, to inform a special grand jury of:

a. the alleged crime or offense;

b. the identity of the person reporting the information; and

c. the prosecutor's action or recommendation.[18]

[17] 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.

[18] "Any such [United States] attorney receiving information concerning such an alleged offense **from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person**, and such attorney's action or recommendation." 18 U.S.C. § 3332(a) (emphasis added).

According to the federal courts, including the U.S. District Court for the Southern District of New York, this federal law "creates a duty on the part of the United States Attorney," and "remove[s] the prosecutor's discretion in deciding whether to present information to the grand jury."[19] The Department of Justice acting through the U.S. Attorney must, pursuant to federal statute, present the information provided in this Petition to a special grand jury. The DOJ's duty to do so is a mandatory one by statute.

But even if it were not mandatory, the scope, magnitude, and import of the anthrax attacks crimes justify this information being presented to a special grand jury forthwith. No U.S. Attorney should ignore any information or evidence shedding light on the murders of five people and the attempted assassination of two United States senators in the Post- 9/11 Anthrax Attacks. Anyone who had any involvement in these murders and attempted assassinations of United States Senators should be held fully accountable. The DOJ and the grand jury have a legal and a moral imperative to follow this post-9/11 anthrax attack evidence wherever it may lead.

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 Special Grand Jury Inquiry is whether the FBI and DOJ misled the prior 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

[19] *In re Grand Jury Application*, 617 F. Supp. 199, 201, 206 (S.D.N.Y. 1985); *Simpson v. Reno*, 902 F.Supp. 254, 257 (D.D.C. 1995) ("Plaintiffs are correct when they claim that 18 U.S.C. § 3332(a) requires a United States Attorney to present information concerning criminal activity to a special grand jury upon the request of an individual."); cf *Sargeant v. Dixon*, 130 F.3d 1067, 1070 (D.C. Cir. 1997).

and lack of candor in this case, and the prior federal grand jury may have been misled by this same FBI misconduct and lack of candor.

VII. A FEDERAL GRAND JURY HAS BOTH A DUTY TO INVESTIGATE THESE CRIMES, AND THE BROAD POWERS NECESSARY TO CONDUCT SUCH INVESTIGATION

A. A Special Grand Jury Has the Duty to Thoroughly Investigate the Federal Crimes Reported to It

According to federal law, it is the "duty" of a special grand jury "to inquire into offenses" that violate "the criminal laws of the United States."[20] The murder of five persons and the attempted assassination of two United States senators by use of biological weapons clearly warrant a full special grand jury inquiry.

B. A Federal Grand Jury, and the Department of Justice, Each Have Broad Investigative Powers

Both a federal grand jury and a federal special grand jury, in the District of Columbia as in other federal jurisdictions, have broad powers to investigate any federal crime committed by anyone, including federal crimes related to the post-9/11 anthrax attacks. It is well established by the courts and our federal law that both a grand jury and a special grand jury have the power to investigate crimes and the power to return and present an indictment for signature and prosecution by the United States Attorney.[21] Indeed, the United States Supreme Court has decided that "[t]he investigative power of the grand jury is necessarily broad if its public

[20] 18 U.S.C. § 3332(a): "(a) It shall be the duty of each such [special] grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district."

[21] *See, e.g., U.S. v. Cecerrelli,* 350 F. Supp. 475, 479 (W.D. Pa. 1975). *See also,* 1970 U.S. Code Cong. and Adm. News, p. 4007 et seq.; *U.S. v. Forsythe*, 429 F. Supp. 715, 730 (W.D. Pa. 1977) ("any duly constituted federal grand jury can validly return a conventional indictment for violation of any provision of the federal criminal law"), rev'd on other grounds, 560 F.2d 1127 (3d Cir. 1977).

responsibility is adequately to be discharged."[22] Historically, and by statute, the special grand jury has broad powers to investigate government misconduct that might not rise to the level of a felony and to issue public reports on its findings. It is difficult for the Lawyers' Committee to imagine a more profound public responsibility for a grand jury to discharge than that of investigating and initiating the prosecution of the post-9/11 anthrax attack crimes.

In order to achieve its mandate, a grand jury "necessarily holds broad powers of inquiry into any conduct possibly violating federal criminal laws."[23] A grand jury also holds "broad power" over the "charges it returns."[24] The "investigation of crime by the grand jury" is "fundamental" to secure the safety of persons and property of all citizens.[25] In the context of the post-9/11anthrax attacks, an investigation by a grand jury is not only of fundamental importance, it is paramount that the truth behind these murders and the attempted assassination of two United States senators be discovered and made public, and that the perpetrators, who remain at large, be brought to justice.

The roles of a grand jury are to determine "whether a crime has been committed and who committed it."[26] These roles are particularly suited to the investigation of the post-9/11 anthrax attack crimes when so many questions remain unanswered almost two decades later. A grand jury serves society's interests best when it conducts a "thorough and extensive investigation."[27] According to the United States Supreme Court: "a grand jury investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way

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[22] *Branzburg v. Hayes*, 408 U.S. 665, 700 (1972) (citing *Costello v. United States*, 350 U.S. 359, 364 (1956)).
[23] *In the Matter of Special 1975 Grand Jury*, 565 F.2d 407, 411 (7th Cir. 1977) (emphasis added) (citing *United States v. Bukowski*, 435 F.2d 1094, 1103 (7th Cir. 1970), *cert. denied*, 401 U.S. 911 (1970)).
[24] *In re Report and Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence to the House of Representatives*, 370 F. Supp. 1219, 1222 (D.D.C. 1974).
[25] *Branzburg v. Hayes*, 408 U.S. at 700.

[26] *Branzburg v. Hayes*, 408 U.S. at 701.
[27] *Branzburg v. Hayes*, 408 U.S. at 701 (citing *Wood v. Georgia*, 370 U.S. 375, 392 (1962)).

to find if a crime has been committed."[28] Furthermore, a grand jury's investigation may arise from almost any evidence and "may be triggered by tips, rumors, evidence offered by the prosecutor, or the personal knowledge of the grand jurors."[29] The evidence in this Petition goes far beyond rumor and innuendo. It includes compelling forensic data, government investigative and scientific reports, and expert analysis.

Additionally, a grand jury "may act independently of any branch of government."[30] A special grand jury may pursue an investigation on its own without the consent or participation of a prosecutor.[31] "Furthermore, the grand jury may insist that prosecutors prepare whatever accusations it deems appropriate and may return a draft indictment even though the government attorney refuses to sign it."[32] This kind of investigatory independence is particularly important for the post-9/11 anthrax attack crimes which have had, and continue to have, major political and national security implications.

For all these reasons, grand juries play a "fundamental role in our criminal justice system"[33] and have the broadest powers to investigate everything and indict anyone. Therefore, given the broad powers of the special grand jury and the grand jury and the paramount importance of the post- 9/11 anthrax attacks, any evidence of previously undiscovered and/or unprosecuted crimes related to these tragic events should be presented to a special grand jury, or

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[28] *Branzburg v. Hayes*, 408 U.S. at 701 (emphasis added) (citing *United States v. Stone*, 249 F.2d 138, 140 (2d Cir. 1970)).
[29] *Branzburg v. Hayes*, 408 U.S. at 701 (citing *Costello v. United States*, 350 U.S. 359, 362 (1956)).
[30] *In re Report and Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence to the House of Representatives*, 370 F. Supp. 1219, 1222 (D.D.C. 1974). The grand jury is a pre-constitutional institution given constitutional stature by the Fifth Amendment but not relegated by the Constitution to a position within any of the three branches of government, as the federal grand jury is a constitutional fixture in its own right. *U.S. v. Chanen*, 549 F.2d 1306, 1312 (9th Cir. 1977) quoting *Nixon v. Sirica*, 487 F.2d 700, 712 n.54 (D.C. Cir. 1973). *Also see, United States v. Williams*, 504 U.S. 36, 47 (1992).
[31] *In re Report and Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence to the House of Representatives*, 370 F. Supp. 1219, 1222 (D.D.C. 1974).
[32] *Id.*
[33] *Id.*

in the alternative to a grand jury, to review, assess, investigate further and return indictments, where warranted.

Although there are no limitations on the type of evidence a grand jury may consider, the types of evidence provided in this Petition, including scientific evidence and expert analysis, are among the most reliable of all the types of evidence that grand juries are allowed by law to receive and consider. No constitutional provision prescribes the kind of evidence on which grand juries must act.[34] The grand jury's work is not circumscribed by technical requirements such as those which govern ascertainment of guilt of defendants once a grand jury has finished its inquiries and an indictment has been issued, but rather may consider any evidence that a reasonable person might use to reach logical conclusions.[35] In this case, the evidence is not only reasonable, it is compelling and disturbing. The evidence presented in this Petition raises serious questions about who perpetrated the post-9/11 anthrax murders and attempted assassinations of two senators, and why, and proves that perpetrators other than the FBI's convenient scapegoat of Dr. Ivins were involved.

A grand jury is not blocked in its investigation by rules of evidence which operate at a criminal trial. It may hear and consider any testimony including hearsay, and an indictment returned by a legally constituted, unbiased grand jury, if valid on its face, is enough to call for a trial of a charge on the merits.[36] The Fifth Amendment allows a defendant to be tried on

[34] *Costello v. U.S.*, 350 U.S. 359, 361-62 (1956), rehearing den. 351 U.S. 904.
[35] *Arrington v. U.S.*, 350 F.Supp. 710, 712 (E.D. Pa. 1972), aff'd 475 F.2d 1394.
[36] *U.S. v. Garnes*, 156 F.Supp. 467, 470 (S.D.N.Y. 1957), aff'd 258 F.2d 530, cert. den. 359 U.S. 937. Even an indictment based on hearsay, incompetent, or inadequate evidence would not be void or violate defendant's constitutional rights. *U.S. ex rel. Combs v. Denno*, 231 F. Supp. 942, 944 (S.D.N.Y. 1964), aff'd 357 F.2d 809, cert. den. 385 U.S. 872.

minimally sufficient allegations of an offense if a grand jury makes a determination that it considers those allegations sufficient to warrant exercise of its prosecuting discretion.[37]

A federal special grand jury in this case is empowered to investigate the evidence presented by this Petition, to issue subpoenas and compel people with knowledge to testify, to draw its own conclusions and to indict as it sees fit to hold anyone to account for any role they played in the federal crimes related to the Post-9/11 Anthrax Attacks.

The requirement in Const. Art. 3, § 3, cl. 1, regarding a conviction for Treason, that the prosecution must have two witnesses is inapplicable to proceedings before grand juries. *In re Charge to Grand Jury*, 30 F. Cas. 1036 (C.C. S.D. Ohio 1861) (No. 18,272). *See, also, U.S. v. Fries*, 9 F. Cas. 826, 3 U.S. 515, 3 Dall. 515, 1 L.Ed. 701 (C.C. Pa. 1799) (No. 5,126); *U.S. v. Greiner*, 26 F. Cas. 36 (E.D. Pa. 1861) (No. 15,262).

The Lawyers' Committee does not have the DOJ's or the grand jury's subpoena power. The Lawyers' Committee does not have the DOJ's or the grand jury's power to grant immunity. The Lawyers' Committee does not have the DOJ's power to make plea deals. Nor does the Lawyers' Committee have the resources of the DOJ or a grand jury. As a consequence, the Lawyers' Committee does not have the same opportunities and ability that the DOJ and a grand jury have to acquire physical evidence, to fully test the credibility of witnesses, and to fully develop and elicit relevant testimony from all material witnesses.

The Lawyers' Committee is not, therefore, in a position to guarantee that every part of every witness' testimony and prior statements referenced in this Petition are fully accurate or completely truthful. Having made this disclaimer, and notwithstanding it, the Lawyers' Committee is convinced that the testimony of each of the colleagues of Bruce Ivins and each of

[37] *U.S. v. Cirami*, 510 F.2d 69, 72 (2nd Cir.1975), cert. den. 421 U.S. 964.

the experts cited herein is truthful and as accurate as the memories and abilities of these witnesses allow. One reason for this conclusion is that the testimony of each of these witnesses is corroborated by the testimony and/or expert analysis and opinion of one or more other witnesses, which is also corroborated by scientific evidence. Given this corroboration among witnesses and the scientific evidence, even if one or a few witnesses had memory failures or decided for their own reasons to exaggerate the truth (and there is no apparent motive for these witnesses to have done so at the time of their testimonies and prior statements), there would still remain more than sufficient evidence to support the conclusion that the federal crimes reported herein were in fact committed and remain unsolved, warranting a grand jury investigation.

VIII. THE SPECIAL GRAND JURY ALSO HAS THE POWER TO, AND SHOULD, INVESTIGATE AND ISSUE A REPORT ON ANY GOVERNMENT MISCONDUCT IDENTIFIED DURING ITS INVESTIGATION

A. The Special Grand Jury Has the Power to Investigate and Issue a Report on Any Government Misconduct Identified During Its Investigation

By statute, a federal Special Grand Jury may issue a report detailing any government misconduct it finds during the course of its inquiry.

> a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—
>
> (1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or
>
> (2) regarding organized crime conditions in the district.
>
> (b) The court to which such report is submitted shall examine it and the minutes of the special grand jury and, except as otherwise provided in subsections (c) and (d) of this section, shall make an order accepting and filing such report as a public record only if the court is satisfied that it complies with the provisions of subsection (a) of this section and that—

(1) the report is based upon facts revealed in the course of an investigation authorized by subsection (a) of section 3332 and is supported by the preponderance of the evidence; and

(2) when the report is submitted pursuant to paragraph (1) of subsection (a) of this section, each person named therein and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) of subsection (a) of this section, it is not critical of an identified person.

18 U.S.C. § 3333.

Powers and Limitations of Grand Juries—The Functions of a Grand Jury
A special grand jury impaneled under Title 18 U.S.C. § 3331 is authorized, on the basis of a criminal investigation (but not otherwise), to fashion a report, potentially for public release, concerning either organized crime conditions in the district or the non-criminal misconduct in office of appointed public officers or employees. This is discussed at USAM 9-11.300 and USAM 9-11.330, and the Criminal Resource Manual at 158-59. *See Jenkins v. McKeithen*, 395 U.S. 411, 430 (1969); *Hannah v. Larche*, 363 U.S. 420 (1960). Whether a regular grand jury enjoys a comparable authority to issue a report is a difficult and complex question. *Cf. United States v. Briggs*, 514 F.2d 794 (5th Cir. 1975).

U.S. Attorneys' Criminal Resource Manual Section, § 9-11.101 (emphasis added).

The "misconduct," "malfeasance," or "misfeasance" that may be the subject of a report (provided it is related to organized criminal activity) must, to some degree, involve willful wrongdoing as distinguished from mere inaction or lack of diligence on the part of the public official. Nonfeasance in office, however, if it is of such serious dimensions as to be equatable with misconduct, may be a basis for a special grand jury report. *See* S.Rep. No. 617, 91st Cong., 1st Sess. (1969), *reprinted in* 1970 U.S.C.C.A.N. 4007.

Reports involving public officials must connect "misconduct," "malfeasance," or "misfeasance" with "organized criminal activity." **"Organized criminal activity" should be interpreted as being much broader than "organized crime;" it includes "any criminal activity collectively undertaken."** This statement is based upon the legislative history of 18 U.S.C. § 3503(a), not of 18 U.S.C. § 3333, but both sections were part of the Organized Crime Control Act of 1970, making it logical to construe the term the same way for both sections. *See* 116 Cong. Rec. 35,290 (October 7, 1970).

U.S. Attorneys' Criminal Resource Manual (emphasis added).

B. The Special Grand Jury Should Exercise Its Powers in This Case to Issue a Report on Government Misconduct, Malfeasance, and Misfeasance Including Obstruction of Justice and Cover-up by Federal Officials

A Special Grand Jury report on government misconduct related to the anthrax attacks is appropriate in this case. This Petition alleges that the anthrax used in the post-9/11 anthrax attacks came from a U.S. government or U.S. government contracted source, and that DOJ and FBI officials engaged in an intentional pattern of misconduct involving the cover up of material evidence and obstruction of the FBI's own investigation, and of the investigation by Congress, of the anthrax attacks, which had the effect if not the intent of protecting the perpetrators of these federal crimes from discovery, investigation, arrest, and prosecution. Further, the misconduct at issue has had immense consequences for the American people beyond the tragic consequences for the individual victims and their families.

As noted at the beginning of this Petition, the anthrax attacks were used to cast (false) suspicion on Iraq and Afghanistan and thus helped facilitate the United States' invasion of these two countries and the garnering of political and public support for those wars and the ongoing war on terror. The anthrax attacks were also used to ensure rapid passage of the USA Patriot Act, which gave increased power to U.S. intelligence agencies while reducing the rights and freedoms of the general population of the United States. Thus, an effective grand jury investigation into the anthrax attacks and public exposé of the truth regarding these attacks via a Special Grand Jury report could not only bring the perpetrators of these horrible crimes to justice but be the catalyst to get our nation back on a more just, peaceful, and constitutional course, and re-establish badly needed transparency and accountability in the Executive Branch of the government of the United States.

It would clearly be in the public interest to have the Special Grand Jury report on any government misconduct found during its investigation of the federal crimes alleged in this Petition due to the importance of the matters at stake and the other extraordinary circumstances of this case. The anthrax attack crimes at issue involved the only attack on Congress using a biological warfare agent or other weapon of mass destruction in the history of the United States. The anthrax attacks were used as a pretext to justify military actions against at least two sovereign nations not involved in the crimes and to justify an ongoing war on terror that has cost and destroyed countless lives and imposed a huge burden on American taxpayers.

Further, given the almost 20 years that have elapsed since these anthrax attack crimes were perpetrated, although the specific federal crimes addressed in this Petition are not barred from prosecution due to any expired statute of limitation, a Special Grand Jury investigation into these attacks is likely to uncover additional federal crimes that were committed that may no longer be subject to prosecution because an applicable limitations period has expired and no tolling provision applies.[38] Even in such cases, though, a Special Grand Jury still has the power

[38] The Third Circuit in *United States v. Midgley,* 142 F.3d 174, 178–79 (3d Cir. 1998) noted that tolling doctrines may be applied to criminal statutes of limitation on appropriate facts:

> We have observed that criminal statutes of limitations are subject to tolling, suspension, and waiver. *United States v. Levine,* 658 F.2d 113, 119–121 (3d Cir.1981). Equitable tolling of a statute of limitations may apply where a complaint succeeds a filing deadline through ... an adversary's misconduct. *Irwin v. Department of Veterans Affairs,* 498 U.S. 89, 96, 111 S.Ct. 453, 457–58, 112 L.Ed.2d 435 (1990). "[E]quitable tolling may be appropriate if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has "in some extraordinary way" been prevented from asserting his rights, ..." *Kocian v. Getty Refining & Marketing Co.,* 707 F.2d 748, 753 (3d Cir.1983) (citations omitted). Although the doctrine of equitable tolling is most typically applied to limitation periods on civil actions, *see Irwin,* 498 U.S. at 95, 111 S.Ct. at 457, "there is no reason to distinguish between the rights protected by criminal and civil statutes of limitations." *Powers v. Southland Corp.,* 4 F.3d 223, 233 (3d Cir.1993). ... Absent a showing of intentional inducement or trickery by the defendant, a statute of limitations should be tolled only in the "rare situation where equitable tolling is demanded by sound legal principles as well as the interests of justice." *Alvarez–Machain v. United States,* 96 F.3d 1246, 1251 (9th Cir.1996) ... ; *Lewis v. United States,* 985 F.Supp. 654, 657 (S.D.W.Va.1997) (finding circumstances "sufficiently extraordinary" to warrant equitable tolling ...).

to report its findings of government misconduct whether the misconduct found rises to the level of being a prosecutable federal crime, a federal crime no longer subject to prosecution, or other misconduct.

One specific area of potential government misconduct that would be important for the Special Grand Jury to investigate and report on concerns the Army and/or Department of Defense (DOD) officials' conduct during the FBI's investigation. High level DOD 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. Dr. 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**.

Id. The Supreme Court has held that the doctrine of tolling of the statute of limitations based on fraudulent concealment is read into every federal statute of limitations.

> The Court concluded in *Bailey* that fraudulent concealment, which was at issue in that case, tolls the running of the statute of limitations when the fraud "has been concealed, or is of such character as to conceal itself." *Id.*, at 349–350. To hold otherwise, reasoned the Court, would "make the law which was designed to prevent fraud the means by which it is made successful and secure." *Id.*, at 349. In *Holmberg v. Armbrecht,* 327 U.S. 392, 397, 66 S.Ct. 582, 585, 90 L.Ed. 743 (1946), the Court extended the reach of this tolling doctrine when it observed that it is to be "read into every federal statute of limitation."

Taylor v. Freeland & Kronz, 503 U.S. 638, 647–48 (1992) citing *Holmberg v. Armbrecht*, 327 U.S. 392, 396–98 (1946).

One of these documents provided by Dr. Anderson, **Exhibit 11**, recounts that Colonel Anderson was told in the Fall of 2008 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. Around mid-September of 2008, Colonel Anderson compiled information that he believed would have absolutely transferred the responsibility for the anthrax in the attack letters to two labs other than USAMRIID. **Exhibit 11**. However, Colonel Anderson's information was never reviewed or acted on by the USAMRIID Commander.

Dr. Anderson was in the process of bringing his information to the Commander's attention when he 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 the 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**.

Another appropriate area of inquiry by the Special Grand Jury regarding potential government misconduct during the anthrax investigations involves the FBI hiring contractors to perform key steps in the Amerithrax investigation even though the contractors had a conflict of interest or at least the appearance of a conflict of interest. At critical points in the FBI's anthrax attacks investigation the bureau 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

themselves – that is, the FBI allowed potential foxes to guard the national henhouse.

As the NRC pointed out, there was a major flaw in the FBI's investigatory approach regarding collecting the anthrax samples from the seventeen U.S. labs and three 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 that aspect of 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 due to 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 Battelle or Dugway to participate in a study of key evidence that could point towards or away from themselves 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 press conference was that the Department of Homeland Security had contracted **with Battelle** to manage and operate the National Bioforensic Analysis Center at Fort Detrick, **Exhibit 59**, **Exhibit 60,** and that 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 – confusion 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 forensically key 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 the evidence should not be sent to the TIGR lab or processed further. The NRC describes the 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. [emphasis added]**

* * *

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 of the samples in the experiment ordered by the FBI that involved 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 identify the variability in the results and to use that data to determine the probability that Ivins' second RMR 1029 sample could have been honestly submitted and not show any of the four "fingerprint" morphs. The NRC noted that the FBI misstated the outcomes in this experiment when it asserted 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 necessarily equate 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.

An additional important area for the Special Grand Jury to examine for government misconduct, misfeasance or malfeasance (whether or not the conduct literally violated criminal laws) is the FBI's conduct in managing the Amerithrax investigation. Former Director of the FBI's Amerithrax investigation, former FBI Inspector Richard Lambert, 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 investigation of the anthrax attacks. In Lambert's retaliation Complaint, at pages 24-26, *see* **Exhibit 47**, 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.

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.

When the Lawyers' Committee obtained the information referenced above from Dr. 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 on USAMRIID personnel that Colonel Anderson reported was imposed by or on behalf of the Secretary of the Army. As is clear from the information presented *supra*, the Lawyers' Committee did find such evidence, including the evidence detailed above regarding the obstruction and corruption of the FBI's anthrax investigation. It would clearly be in the public interest for the Special Grand Jury to exercise its authority in this case to make a report to the supervising District Court and to the public of its findings regarding government misconduct within the DOJ, FBI, and/or the DOD related to the anthrax attacks investigation.

IX. A SPECIAL PROSECUTOR SHOULD BE APPOINTED TO HANDLE THIS PETITION AND THE GRAND JURY'S INVESTIGATION, DUE TO THE INVOLVEMENT OF FBI AND DOJ OFFICIALS IN OBSTRUCTION OF THE ORIGINAL FBI AMERITHRAX INVESTIGATION

The facts of the 2001 post-9/11 anthrax attacks described and documented above make clear that in addition to the perpetrators who acted directly to carry out these attacks by sending lethal amounts of anthrax through the mail to two United States Senators and members of the media in an attempt to murder them, that there was a pattern of later actions by others that had the effect and apparent intent to protect those original perpetrators from discovery, investigation,

and prosecution. Among those others involved in the pattern of post-attacks actions that had the effect and apparent intent to cover up material evidence are some within the United States Department of Justice and the FBI.

In response to this Petition, the new Special Grand Jury should conduct a thorough inquiry into whether there was an intentional obstruction of the FBI's and the prior federal grand jury's Amerithrax investigation by persons within the FBI and DOJ at the time, and if so whether that conduct constituted misfeasance, malfeasance, nonfeasance, or criminal conduct. This is a question that warrants a serious investigation. In addition to obstruction of justice being a crime generally, an intentional obstruction of an investigation and prosecution of treasonous conduct, such as the anthrax attacks, could itself constitute treason in violation of both 18 U.S.C. § 2381 and U.S. Const. Art. 3, Sec. 3.

Given the apparent involvement of DOJ and FBI officials in a cover-up of material evidence regarding the anthrax attacks, appointment of an independent Special Counsel is necessary to make decisions regarding this Petition and to assist and oversee the Grand Jury's inquiry. Pursuant to Department of Justice regulation 28 C.F.R. § 600.1, in cases where the investigation or prosecution of a criminal matter is warranted and such investigation or prosecution if performed by a United States Attorney and/or the Department of Justice would present a conflict of interest, the Attorney General or an Acting Attorney General may and should appoint a Special Counsel to handle that investigation and/or prosecution.

Grounds for appointing a Special Counsel.

> The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, will appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and -
> (a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would

> present a conflict of interest for the Department or other extraordinary circumstances; and
> (b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

28 C.F.R. § 600.1. This DOJ regulation was promulgated under the authority of a federal statute.

> Delegation of authority
>
> The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

28 U.S.C. § 510.

Appointment of a Special Counsel is necessary and appropriate in this case because this Petition presents facts supported by multiple compelling and converging lines of evidence showing the requisite conflict of interest, or in the alternative, the requisite extraordinary circumstances. These facts include that the anthrax used in the 2001 post-9/11 anthrax attacks came from a federal government source, and that DOJ and high level FBI officials engaged in an intentional pattern of misconduct to cover up material evidence and obstructed the FBI's investigation into the anthrax attacks. Consequently, the FBI and DOJ should not be placed in a position where they are having to investigate themselves.

An appointment of a Special Counsel would clearly be in the public interest due to the importance of the matters at stake, the DOJ and FBI conflicts of interest involved, and other extraordinary circumstances of this case. As noted, the anthrax attack crimes at issue involved the only attack on Congress using a biological warfare agent or other weapon of mass destruction in the history of the United States. The anthrax attacks were used as a pretext for military actions against at least two sovereign nations and to justify an on-going war on terror that has cost and destroyed countless lives and imposed a immense burden on American taxpayers.

For all of the reasons stated in this Petition, a Special Counsel should be appointed with the mandate to handle the decisions regarding this Petition and all special grand jury matters related to this Petition, including the conduct of any resulting investigation and/or prosecution.

X. CERTAIN PERSONS MAY POSSESS INFORMATION MATERIAL TO THE GRAND JURY'S INVESTIGATION OF THE ANTHRAX ATTACKS

The Lawyers' Committee has made the decision to not reference in this Petition suspected perpetrators by name. However, there are obvious categories of persons who may have material information regarding the federal crimes reported herein that would be helpful to a special grand jury, or in the alternative to a grand jury, and to a Special Counsel. Some of those categories of persons have been identified herein. The Lawyers' Committee is prepared and willing to present to the Special Counsel, or to the DOJ, and to appear before a special grand jury, or in the alternative to appear before a grand jury, and present directly the additional and more specific information available to the Lawyers' Committee regarding such persons known to the Lawyers' Committee who may have information material to the Special Grand Jury's inquiry, and the material information they may have.

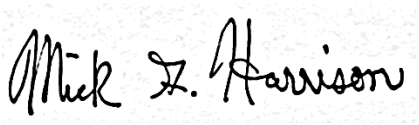
XI. SUMMARY, CONCLUSION, AND RELIEF REQUESTED

For all the reasons presented herein, The Lawyers' Committee for 9/11 Inquiry, Inc., a non-profit organization dedicated to promoting transparency and accountability with regard to 9/11, the events leading to 9/11, and the 9-11 related events that have transpired post-9/11, together with the co-signatories to this Petition, hereby respectfully request, pursuant to the United States Constitution, and 18 U.S.C.§ 3332(a), that the United States Department of Justice present to a federal special grand jury, or in the alternative to a federal grand jury, the facts and evidence presented herein and in the accompanying Exhibits concerning the federal crimes

described in this Petition. The Lawyers' Committee is willing to present this evidence, including relevant expert testimony, directly to a special grand jury, or in the alternative to a grand jury.

The undersigned respectfully request that the United States Attorney and the DOJ advise the Lawyers' Committee within 30 days of their receipt of this Petition of the actions either or both intend to take on this Petition.

Respectfully submitted,



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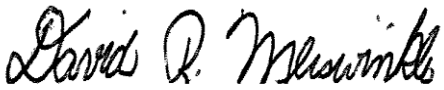

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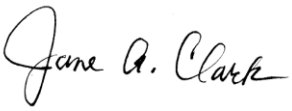

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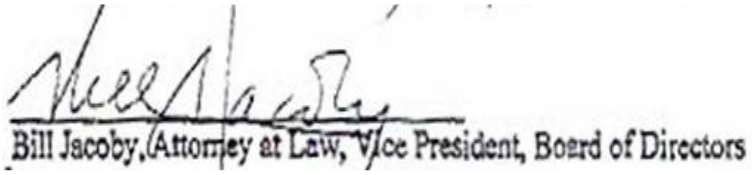
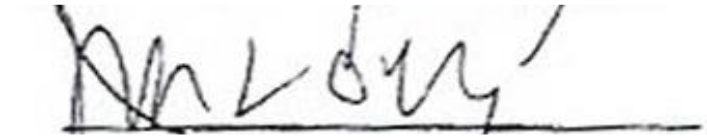
Barbara Honegger, M.S., Member, Board of Directors



Kristina Borjesson, M.S., Member, Board of Directors



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

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

Note: The work of Graeme MacQueen, Ph.D., Anthrax Attacks Investigation Committee Member, contributed significantly to this Petition.

XII. EXHIBIT LIST[39]

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.

Exhibit 20, FBI Amerithrax Fact Sheet undated.

[39] The exhibit references in both the Exhibit List and in the body of this Petition should contain an active hyperlink to the full exhibit document.

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 Fermentor 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, "Mylroie, 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, Attorney 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, 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.