Questions from Senator Chuck Grassley
Senate Committee on the Judiciary
Oversight of the U.S. Department of Justice
Tuesday, July 24, 2007

FBI Oversight

I have a list here of outstanding requests for documents and information from the FBI. Notably, requests for documents and information related to oversight involving Special Agent Jane Turner, Special Agent Cecilia Woods, the Amerithrax investigation, and e-mails related to the "exigent letters" that we detailed in the National Security Letters report.

I continue to await these responses, some of them months overdue. As the FBI is a component of the Department of Justice, I ask that you ensure the prompt delivery of all information requested. Mr. Chairman, I ask unanimous consent that this list and attached letters be made a part of the hearing record.

List of Outstanding FBI Oversight Request from Senator Grassley

1. FBI Internal e-mails related to "exigent letters".[1]
2. Questions related to FBI Special Agent Jane Turner[2]
3. Documents related to FBI Special Agent Cecilia Woods.[3]
4. Documents related to Amerithrax investigation.[4]

[1] Requested March 19, 2007. (see Attachment 1) (Also requested at 3/27/2007 FBI Oversight Hearing).

[2] Requested February 26, 2007 (see Attachment 2 and 3) (Response received to 2/26/2007 letter, response is outstanding for follow-up questions for the record from 3/27/2007 FBI Oversight Hearing).

[3] Requested January 23, 2006 (see Attachment 4). (Note: FBI response of 3/08/2006 states, "The FBI is a party in a pending administrative proceeding relating to the allegations raised by Ms. Woods. Given that, and considering the confidentiality of the administrative process, it would be inappropriate for us to comment further." However, information received indicates the "pending administrative proceeding" is now closed, indicating the FBI should be able to respond in detail to this request.

[4] Requested October 23, 2006 (see Attachment 5) (Also requested as questions for the record at 12/06/2006 FBI Oversight Hearing) (Note: FBI did provide members only briefing on Amerithrax but has not produced requested documents sought in 10/23/2006 letter).

United States Senate

WASHINGTON, DC 20510

March 19, 2007

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Mueller:

I am writing today in response to the Justice Department Inspector General's March 9, 2007, report entitled "A Review of the Federal Bureau of Investigation's Use of National Security Letters" and in anticipation of the Inspector General's testimony next week before the Judiciary Committee. In my view, the most troubling section of the report begins on p. 86 and is entitled "Using 'Exigent Letters' rather than ECPA National Security Letters." That section describes how an FBI headquarters division known as the Communications Analysis Unit ("CAU") obtained information on about 3,000 telephone numbers by issuing 739 so-called "exigent letters."

In exercising our oversight responsibilities, it is critical for the Judiciary Committee to obtain a fuller understanding of who at the FBI knew what about these exigent letters, and when they knew it. Therefore, in order to prepare for next week's hearing, please provide copies of any and all unclassified e-mails related to the exigent letters issued by CAU.

If you have any questions about this request, please contact Jason Foster at (202) 224-4515. A copy of all correspondence in reply should be sent electronically in PDF format to thomas_novelli@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,

Charles E. Grassley
U.S. Senator

cc: Senator Patrick Leahy, Chairman
Committee on the Judiciary

Senator Arlen Specter, Ranking Member
Committee on the Judiciary

United States Senate

WASHINGTON, DC 20510

February 26, 2007

Electronic Transmission

Honorable Robert S. Mueller, III
ector
eral Bureau of Investigation
Pennsylvania Avenue, N.W.
shington, D.C. 20535

ear Director Mueller:

On many occasions you have assured me that you will not tolerate retaliation ainst FBI whistleblowers. A federal jury sitting in Minneapolis, nnesota, recently returned a substantial judgment against the FBI in a civil suit brought former Special Agent Jane Turner. The jury found merit in Agent Turner's allegations t FBI supervisors falsified negative performance reviews in retaliation for filing an ual employment opportunity complaint.

Given that her allegations have now been substantiated, I am writing to you to for formation about how you intend to hold supervisors accountable for the acts of taliation. Please provide detailed written answers to the following questions:

1. During the past five years, how many FBI supervisors have been disciplined for acts of retaliation? Please provide a description of the facts in each case and the discipline imposed.
2. What disciplinary actions, if any, will be taken against FBI employees for their involvement in and/or approval of the acts of retaliation against Agent Turner?
3. Please describe the role of Supervisory Special Agent Craig Welkin in the retaliation against Agent Turner and explain whether Welkin will be subject to discipline, and why or why not.
4. Please describe the role of Supervisory Special Agent James "Chip" Burris in the retaliation against Agent Turner and explain whether Burris will be subject to discipline, and why or why not.
5. Please describe the role of Supervisory Special Agent James Casey in the retaliation against Agent Turner and explain whether Casey will be subject to discipline, and why or why not.

Actions speak louder than words. Now that a jury has substantiated retaliation by the FBI in this case, I am anxious to find out what the FBI will do to demonstrate that your commitment to protecting FBI whistleblowers is more than just words. Unless

retaliators are held accountable, the FBI culture will not change. Please provide me with written responses to these questions before March 7, 2007. If you have any questions concerning this request for information, please contact Emilia DiSanto or Jason Foster at (202) 224-4515. Please send your written responses in electronic format to thomas_novelli@finance-rep.senate.gov.

Sincerely,

Charles E. Grassley
United States Senator

cc: Chairman Patrick Leahy
Senate Committee on the Judiciary

Ranking Member Arlen Specter
Senate Committee on the Judiciary

United States Senate

WASHINGTON, DC 20510

January 23, 2006

Via Electronic Transmission

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Mueller:

In 2001, the Senate Judiciary Committee conducted oversight hearings into the double standard of discipline imposed by the Federal Bureau of Investigation's Office of Professional Responsibility (OPR). The Committee inquired into allegations that OPR routinely imposed harsher disciplinary sanctions on rank-and-file agents than on supervisors, even when the misconduct was similar. In 2002, the Justice Department's Inspector General also reviewed the issue and determined the following: "that in several FBI disciplinary matters, including several important and well-known cases, senior managers were afforded different and more favorable treatment than less senior employees."[1] In February 2004, the Bell-Colwell Commission issued its study on the FBI OPR, which concluded:

> [A] number of continuing issues contribute to the perception of disparity in punishment between management and lower level FBI employees. Actual disparate treatment in highly publicized, historic OPR cases (e.g., Ruby Ridge, Waco), initially created the well-justified perception that management received favorable consideration in disciplinary matters.[2]

I recently learned about the outcome in two more cases that reinforce the appearance that a double standard is still in effect. These cases illustrate the classic double standard where supervisors seem to "get off easy." However, these cases also give the impression of a different kind of double standard engrained in the FBI culture. In this second double standard, agents whose alleged misconduct is seen as in any way "disloyal" to the FBI get harsher treatment than more serious misconduct by so-called "loyal" agents.

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[1] U.S. Department of Justice, Office of Inspector General, *A Review of Allegations of a Double Standard of Discipline at the FBI*, p. 70 (November 15, 2002).
[2] Griffen B. Bell, Lee Colwell, *A Study of the FBI's Office of Professional Responsibility*, 2 (Feb. 2004).

The Robert Wright Case

As you know, Senator Leahy and I have written to you numerous times (July 14, 2004, April 22, 2005, and May 17, 2005) expressing concerns about the case of Special Agent Robert Wright and attempting to conduct oversight of his case by both the Justice Department and FBI OPR. The Justice Department and FBI have consistently refused to provide adequate answers to our questions or even limited access to the documents we requested. After our letters alerting you to clear evidence that FBI OPR could not objectively handle the case because its officials had hatched a plan to "take out" Agent Wright, you asked DOJ OPR to handle the investigation. DOJ OPR's recommendation for Wright's alleged misconduct — failing to obtain approval for a public statement despite having previously obtained approval for nearly identical statements — was a 30 to 100 day suspension. However, FBI OPR proposed that he be dismissed instead, citing an alleged pattern of misconduct. The letter proposing his dismissal however, lists three previous instances of discipline, none of which occurred within the last four years and none of which involve unauthorized disclosures.

On Friday, October 14, 2005, I learned that the DOJ official assigned to decide Agent Wright's case determined that he should receive a six month suspension without pay, a demotion from GS-13 to GS-12, and a one-year probation. The official did not comment on whether the FBI should reinstate Agent Wright's security clearance at the end of his suspension. So, the FBI could still deny him the ability to continue working as an agent, even though his clearance was not suspended for cause. Moreover, I understand that Agent Wright must have permission from the FBI before accepting any other employment or income during his unpaid suspension. This decision could amount to a virtual dismissal — an unusually harsh penalty given the nature of Agent Wright's actions and his motivation for speaking out. I am unaware of any evidence that Agent Wright had a bad intent for acting as he did. His purpose was to improve the FBI through criticism. Unfortunately for the Bureau and the country, that approach is still unacceptable in the FBI culture.

The Cecilia Woods Case

The contrast between the treatment of Robert Wright and the supervisor of Special Agent Cecilia Woods is stark. Wood's supervisor is the former FBI Legal Attaché (Legat) in Panama and was the FBI's highest ranking official in Panama. He admitted under oath that, while in that position, he repeatedly engaged in sexual relations with foreign nationals during business hours. According to Woods, one of those individuals was someone to whom he also paid taxpayer funds as an FBI informant, even though the informant was not providing any useful information to the Bureau. Moreover, he admitted to failing two polygraph examinations and OPR found that he admitted to giving the informant gifts, including lingerie. According to Woods, the Legat engaged in pattern of misconduct regarding misuse of government vehicles and extramarital affairs.

The former Legat's admissions came during a sworn deposition, dated November 4, 2003, in the Equal Employment Opportunity Commission (EEOC) case of *Woods v. Ashcroft*:

Question: Do you recall what issue he thought you were lying about?

Former Legat: I believe the issue with the improper relationship *with the informant.*

Question: Okay. So you denied the relationship in the polygraph test?

Former Legat: Yes, I did.

Question: And he believed you to be lying about that relationship?

Former Legat: I later learned that he did, yes.

Question: Did you engage in extramarital affairs in Panama?

Former Legat: Yes, I did.

Question: How many?

Former Legat: I related that I had had a relationship with an attorney who worked for one of the ministries and that I had - - well, that I had – the attorney in one of the ministries.

Question: And was that the subject of one of the OPR charges?

Former Legat: No, that was something I volunteered.

Question: And was that the only extramarital affair? In Panama?

Former Legat: No, it was not.

Question: How many other affairs did you have?

Former Legat: I had affairs with two other women.

Question: And what were their positions?

Former Legat: One was a [Panamanian government official].

Question: And the other one?

Former Legat: The other one was a civilian who I met years earlier on a TDY [Temporary Duty].

Question: Did she live in Panama?

Former Legat: Yes.

Question: Was she a Panamanian national?

Former Legat: Yes.

Question: And the [Panamanian government official], was she also a national?

Former Legat: Yes.

Question: Would that be considered inappropriate?

Former Legat: Yes.

Despite this behavior, the Legat received only a 14 day suspension, a demotion, and a transfer to his office of choice. He remains employed with the FBI as an agent.

According to papers filed in an appeal to the FBI Inspections Division, even though the former Legat's misconduct was far more egregious than Wright's, his punishment was much more lenient than Wright's. But, that isn't the end of it. Not only did the Legat get off with a slap on the wrist by comparison to Wright, he also received more lenient treatment than the person who reported his misconduct to the FBI in the first place.

Cecilia Woods, the Assistant Legat, became suspicious of his pattern of behavior when they met with the FBI informant to deliver payments. Former Agent Woods told my investigative staff that the Legat always made her exit the meetings first, leaving him and the female informant alone together in a hotel room. These meetings generally occurred at the end of the day, and Woods was instructed to turn in her key and go home, with no idea how long the Legat and the informant remained alone together in the room and no way to return to the room later. After one such meeting with the informant, Agent Woods asked an acquaintance working in the hotel bar (who is related to a previous FBI Legat in Panama) to let her know if and when she noticed the Legat leaving the hotel. Woods says that she was retaliated against for this attempt to confirm her suspicions and was charged with misconduct. She was later accused of unauthorized disclosures to her attorney. I am aware of no evidence that her alleged disclosures, either to the acquaintance in the hotel bar or to her attorney, had any actual negative impact on the security of FBI operations.

For these two alleged violations, Woods received a total of 24 days suspension, 10 more days than her supervisor, and was subjected to what appears to be a retaliatory transfer to an undesirable position. Rather than face further retaliation, she voluntarily retired from the FBI after over 23 years of service. Yet, the person whose misconduct her actions exposed received fewer days of suspension and is still employed at the FBI.

The Double Standards

The double standards are clearly demonstrated by these cases. How can other agents who watch these events avoid getting the impression that "loyalty," seniority, and

personal connections matter most at the FBI? The lesson is this: if you are loyal to the FBI and you are a supervisor, it is possible to engage in conduct that dishonors the Bureau and undermines its mission while keeping your job. However, if you show any sign of disloyalty to the FBI or your supervisors, they will try to fire you — even if your "disloyalty" consists of reporting misconduct or concerns about national security.

You have described the FBI's core values as being:

> "Adherence to the rule of law and rights conferred to all under the United States Constitution; integrity through everyday ethical behavior; accountability by accepting responsibility for our actions and decisions and the consequences of our actions and decisions; fairness in dealing with people; and leadership through example, both at work and in our communities. ...[T]hese priorities represent the expectations that the American people, the law enforcement community, the Congress, and the Admistration hold for the FBI."[3]

Given these core values, it is difficult to understand how misconduct like having sex with a paid informant should not warrant immediate removal. Tolerating such misconduct while punishing those who report it gives the appearance that the FBI simply does not take it seriously. I cannot imagine a situation where any agent having sex with an informant should continue to be employed with the FBI. The FBI should enforce an absolute zero-tolerance policy on this issue, and explain why one has not been enforced thus far.

In light of this continuing and disturbing pattern of double standards, Congress needs to examine the policies and procedures of FBI OPR even more closely than we have in the past. To begin that process, therefore, please answer the following questions, in writing, by February 6, 2006.

1) How and when did the FBI first become aware of the Legat's misconduct?

2) Prior to Agent Woods' arrival in Panama, I understand that the Legat had no Assistant Legat, but was still making regular payments to the informant. I understand further that FBI policy requires two witness signatures to verify payment to informants. Is it true that the Legat made payments to the informant not witnessed by Agent Woods? If so, how many, for how much, and who co-signed as the witness? What is the total amount of money paid to the informant?

3) Please describe what role the former Legat has had in working with informants since the FBI first became aware of his misconduct?

4) Has the FBI conducted an inquiry to see if the former Legat's actions resulted in the compromise of national security or sensitive FBI matters?

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[3] *Oversight Hearing on Counterterrorism: Hearing before the Comm. on the Judiciary*, 107th Cong. 920 (June 6, 2002) (Statement of Robert S. Mueller, III).

5) My understanding is that official charges sustained against Robert Wright were insubordination, unprofessional conduct, and unauthorized disclosures to the media. Please provide the number of agents disciplined for these charges within the last five years, summaries of the facts of each case (excluding the name of the agent), and the penalties imposed for each violation.

6) Please provide the number of agents disciplined for sexual relations with an informant within the last five years, summaries of the facts of each case (excluding the name of the agent), and the penalties imposed for each violation.

7) Please provide any charts, tables, lists, or other records available to FBI agents describing potential penalties for particular misconduct.

If it is necessary to provide classified information, please forward any and all *un-redacted* materials to the United States Senate, Office of Senate Security. All responses should be faxed to (202) 228-0554 with original to follow by U.S. Mail. Should you have any questions regarding this matter, please contact Jason Foster at (202) 224-4515.

Sincerely,

Charles E. Grassley
United States Senator

cc: Chairman Arlen Specter
Committee on the Judiciary

Inspector General Glenn Fine
U.S. Department of Justice

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

October 23, 2006

Via Electronic Transmission

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20535

Dear General Gonzales:

Five years ago, on October 15, 2001, a letter laced with anthrax and addressed to Senator Tom Daschle was opened, and Congress became one of the targets in the first bio-terrorist attack on the United States. In the wake of 9/11, the anthrax letters took the lives of five more Americans and infected another 17. The FBI took primary responsibility for investigating the attacks and has expended hundreds of thousands of hours on it in the past five years. Yet, it appears from publicly available information that despite all those resources, the FBI has little in the way of results to show for its work.

According to public reports, the head of the FBI's investigation, Richard Lambert, was recently transferred to the FBI's Knoxville, Tennessee office following the completion of a comprehensive report prepared for the U.S. Attorney's office in charge of the case. This raises questions about why he was replaced, the focus of the FBI's investigation under his leadership, and whether that focus shifted following the report and the assignment of new leadership to the case. There have also been suggestions in the press that scientific advances have shown that the anthrax spores were less-sophisticated than was originally believed, and that this may have caused the focus on potential suspects to be too narrow for too long.

While this is all troubling, I am concerned that a detailed examination of the FBI's handling of the anthrax case may point to deeper issues than just lack of progress on a difficult, if not impossible-to-solve whodunit. Those issues include (1) the FBIs institutional resistance to criticism and dissent, (2) the challenges of integrating law enforcement and domestic intelligence gathering functions into one agency, (3) the misallocation of resources toward protecting the FBI's image first and foremost, rather than protecting the United States, and (4) the FBI's unwillingness to submit to oversight by the elected representatives of the American people. Perhaps an independent review would show that the public version of events that leads to my concern about these issues is not accurate or that the reality is less alarming than the perception. However, in order to find out, there must be independent Congressional review of the FBI's actions.

Many of the resources devoted to the anthrax investigation over the last five years were aimed at attempting to prove that Dr. Stephen Hatfill was involved in the attacks.

Congress ought to know exactly what the price tag on those efforts has been. I have previously expressed my concern over the Justice Department's unprecedented use of the term "person of interest" to cast suspicion on an individual citizen without any formal policy or evidentiary standard. I have also previously expressed concern over the Justice Department's actions in orchestrating the firing of Dr. Hatfill from his employment with Louisiana State University, where he was training first responders.

As you know, Dr. Hatfill is suing the Justice Department, alleging that in an effort to counter the perception that it was incapable of solving the case, the FBI "intentionally and willfully leaked to innumerable reporters" information about investigative interest in him. He alleges that these leaks have "numbered in the hundreds since 2002 and have continued even into [2005]." In particular, within minutes of Dr. Hatfill giving his consent to the FBI to search his apartment, the building was surrounded by reporters, camera crews, and helicopters from the news media. The complaint in his lawsuit alleges that "According to one FBI agent on site at the time," cameras arrived so quickly that "it was obvious that they had been tipped off[.]" Of the many searches of scientists' homes, the lawsuit alleges that, "this was the first time that the name of any of these scientists had been purposefully leaked to the media." Instead of making any serious effort to identify and punish the FBI officials for leaking investigative information, the lawsuit alleges that on one occasion, Director Mueller actually reprimanded an FBI official for suggesting that it might have been inappropriate for Attorney General Ashcroft to publicly name Hatfill as a "person of interest."

In light of all this, I was shocked to see press reports that the FBI recently announced a blanket prohibition on any further anthrax briefings to Congress. In response to a letter from Congressman Rush Holt requesting a classified briefing before the House Permanent Select Committee on Intelligence, the FBI's Assistant Director for Congressional Affairs flatly refused. She wrote, "After sensitive information about the investigation citing Congressional sources was reported in the media, the Department of Justice and the FBI agreed that no additional briefings to Congress would be provided." The implication is clear: "We won't brief you because you will leak."

This is an outrageous response to a legitimate oversight request from Congress. Given the allegations about FBI leaks related to Stephen Hatfill and its similar leaks related to Richard Jewell in the Centennial Park Bombing Case, for the FBI to withhold information from Congress for fear of leaks seems a bit hypocritical, to say the least.

The harm caused by the alleged FBI leaks was to instigate a media frenzy and cast suspicion on an individual citizen entitled to the presumption of innocence. What was the harm of the alleged Congressional leak? The FBI's letter doesn't say. However, if some individual did act inappropriately by speaking to the media about an FBI briefing, stiff-arming Congress on all future requests is an unacceptable overreaction. The FBI doesn't become exempt from scrutiny just because there may have been an inappropriate disclosure by someone on Capitol Hill. If that happened, the FBI should prove it and the individuals involved should be held accountable, but the institution of Congress has a vital and continuing need for detailed information about the conduct of one of the largest investigations in FBI history.

The FBI's letter also stated, "Since we regard this as a criminal law enforcement matter, rather than an intelligence activity, a briefing [to the Intelligence Committee] would not be appropriate[.]" Why isn't it both? The failure of the FBI to treat the case as both a criminal and intelligence matter illustrates how far the FBI is from understanding its core post-9/11 mission. In order to effectively integrate the law enforcement and intelligence gathering functions, all law enforcement matters must be viewed as potential sources of valuable intelligence. This is especially true for a case the size and scope of Amerithrax. Since the FBI investigation is cloaked in grand jury secrecy, it is unclear to what extent the vast amount of information it must have gathered in the last five years is being shared with the rest of the intelligence community. Congress needs to have a better understanding of this issue in order to assess the effectiveness of its post-9/11 legislation, such as the USA PATRIOT Act, the Homeland Security Act, and the Intelligence Reform and Terrorism Prevention Act.

For all these reasons, I request that you direct the FBI to provide a comprehensive briefing on the status of the anthrax investigation to all interested Congressional committees. In preparation for that briefing, please provide: (1) a copy of the comprehensive report prepared for the U.S. Attorney's office prior to the recent replacement of the lead FBI investigator, (2) any and all final reports and/or closing memoranda of the DOJ and FBI Offices of Professional Responsibility and/or the DOJ Office of Inspector General in matters relating to the Amerithrax investigation, and (3) detailed, written answers to the following questions:

1. (a) Why was Richard Lambert removed as the head of the Amerithrax investigation? (b) Was it related in any way to disagreements between him and others working on the investigation about the proper scope and focus of the FBI's inquiry? If so, please explain. (c) Please identify and describe any and all documents related to Richard Lambert's transfer.

2. (a) Has the FBI been able to narrow the possible source of the anthrax used to a finite number of labs? If so, how many? (b) What basis, if any, does the FBI have to believe that the anthrax was obtained directly from a lab by the terrorist?

3. (a) How many "persons of interest" other than the Dr. Stephen Hatfill are still of interest to the FBI? (b) How many, if any, individuals have been removed from the "persons of interest" list in the last five years? (c) Describe what criteria, if any, are used to determine when someone is removed from the "persons of interest" list.

4. (a) What has been the total cost of the investigation so far? (b) Of the 9,100 interviews, 67 searches, and 6,000 grand jury subpoenas in the Amerithrax investigation, how many were unrelated to Dr. Stephen Hatfill? (c) How many were related to the potential that foreign-born terrorists were involved in the attacks? (d) How many were related to leads not consistent with the initial FBI suspect profile? (e) Has the FBI altered its initial suspect profile in any way in the last 5 years? Please explain why or why not.

5. Are the public reports true that Dr. Christos Tsonas at Holy Cross Hospital in Fort Lauderdale, Florida treated Ahmed al-Haznawi, one of the 9/11 hijackers for a lesion that he thought "was consistent with cutaneous anthrax" and that a 2002

memorandum prepared by experts at the Johns Hopkins Center for Civilian Biodefense Strategies concluded that the diagnosis of cutaneous anthrax was "the most probable and coherent interpretation of the data available?"

6. In March 2002, John E. Collingwood, an FBI spokesman, was quoted dismissing the possibility that the 9/11 hijackers handled anthrax, saying: "This was fully investigated and widely vetted among multiple agencies several months ago. Exhaustive testing did not support that anthrax was present anywhere the hijackers had been." (a) Has exhaustive testing been conducted where Dr. Stephen Hatfill has been? (b) Did those test results support that anthrax was present in any of those locations? (c) If not, then please explain why those test results have not been announced publicly, just as the 9/11 hijacker test results were four years ago?

7. (a) What are the names of the officials responsible for determining that the anthrax attacks would be treated solely as a criminal law enforcement matter and not as an intelligence matter? (b) On what date was that decision made? (c) Please describe what criteria are used to classify a case as a criminal matter rather than an intelligence matter. (d) Please identify and describe any and all records, documents, or memoranda related to that decision.

8. (a) Please describe the procedures for sharing information about the anthrax investigation with the rest of the intelligence community. (b) Please describe the types and volume of information about the anthrax investigation that has been shared with the intelligence community. (c) Please describe the types and volume information about the Anthrax investigation withheld from the intelligence community, including a description of each occasion in which another government agency has requested information about the investigation and the request was declined.

9. (a) On how many occasions, and with what agency, has grand jury or other information gathered during the Amerithrax investigation been shared outside the Justice Department pursuant to Section 203 of the USA PATRIOT ACT? (b) On how many occasions has information gathered during the course of the Amerithrax investigation been shared outside the Justice Department pursuant to Section 905(a)(1) of the USA PATRIOT ACT? (c) On how many occasions has information gathered during the course of the Amerithrax investigation been withheld under Section 905(a)(2)?

10. (a) Other than the FBI's Amerithrax investigative team, is there anyone else in the U.S. government tasked with examining the anthrax attacks and making a judgment about their likely origin? (b) If so, please explain. If not, why not?

11. (a) Has the FBI ever employed a "red-teaming" strategy in which a second group of investigators is tasked with looking at the evidence with the freedom to pursue alternative theories of the case? (b) If so, please explain. If not, why not?

12. (a) What are the names of the officials responsible for the decision to impose a blanket prohibition on all Congressional briefings related to the Amerithrax investigation? (b) On what date was that decision made? (c) What is the legal

justification for such a decision? (c) Please identify and describe any and all records, documents, or memoranda related to that decision.

13. (a) What steps have been taken to determine who was responsible for the alleged Congressional leak? (b) Did the alleged Congressional leak involve the disclosure of classified information? (c) Did it involve the violation of an agreement not to further disseminate the information? (d) If the FBI believes that a Congressional leak damaged its investigation, as was implied it its September 28, 2006, letter, what steps, if any, has it taken to describe the nature of the damage and communicate its concern to the appropriate leadership or other authorities in Congress? (e) If none, then please explain why not.

14. On how many occasions have Justice Department and/or FBI personnel leaked investigative information about Stephen Hatfill or the Amerithrax case? (b) What steps have been taken to investigate those leaks and discipline those responsible? (c) Please provide a list of the names of each government official interviewed, questioned under oath, or subjected to a polygraph examination regarding Amerithrax-related leaks, along with the dates of their testimony and the results of any polygraphs. (c) How many Justice Department and FBI personnel have been reprimanded or punished for leaking such information? (d) If any, please provide a detailed explanation of each instance. (e) What steps have been taken to prevent or deter future leaks by DOJ or FBI personnel of information related to the Amerithrax investigation?

Please provide the requested documents, written answers to these questions, and a proposed briefing date no later than November 21, 2006, the fifth anniversary of the death of Ottilie Lundgren, the last known fatality among the victims of the anthrax attacks. Any classified material responsive to this request should be sent to the Office of Senate Security. Any non-classified responsive material should be faxed to the attention of Jason Foster at (202) 228-0554 or hand-delivered to Room 203, Hart Senate Office Building.

Sincerely,

Charles E. Grassley
Chairman

cc: Max Baucus
Ranking Member, Committee on Finance
United States Senate

Arlen Specter
Chairman, Committee on the Judiciary
United States Senate

Pat Roberts
Chairman, Select Committee on Intelligence
United States Senate

James Sensenbrenner
Chairman, Committee on the Judiciary
U.S. House of Representatives

Pete Hoekstra
Chairman, Permanent Select Committee on Intelligence
U.S. House of Representatives

Congressman Rush Holt
U.S. House of Representatives

Robert S. Mueller, III
Director, Federal Bureau of Investigations

Questions from Senator Chuck Grassley
Senate Committee on the Judiciary
Oversight of the U.S. Department of Justice
Tuesday, July 24, 2007

False Claims Act and Iraq Contracting

On June 20, 2007, *The Boston Globe* printed an article titled, Justice Department Opts out of Whistle-blower Suits: Cases Allege Fraud in Iraq Contracts. This article noted that the Department has declined to intervene in ten False Claims Act whistleblower cases raising allegations of fraud, waste, and abuse in contracts during the reconstruction of Iraq. Further, the article states that the Department has only reached two civil settlements with contractors in Iraq totaling $6.1 million.

Congress has appropriated hundreds of billions of dollars to fund our troops and support contractors, as well as reconstruction projects. I find it hard to believe that only $6.1 million has been lost to fraud or abuse by government contractors. For instance, in government programs such as Medicaid, we know that fraud in the program is around 5 percent, maybe even higher. It's hard to imagine that the fraud in Iraq would be less, but I'll leave the numbers to the experts.

In addition, an April 19, 2006 *Wall Street Journal* article quotes critics of the Department as saying the current Administration's use of the judicial seal of False Claims Act cases is unprecedented. Critics argue that the Department is using the judicial seal as a means to mask the true extent of possible fraud in Iraq.

- Attorney General Gonzales, how many False Claims Act cases alleging fraud in Iraq has the Department joined since 2003?

- Is the *Boston Globe* article accurate in stating that the Department has declined intervention in ten False Claims Act cases alleging contracting fraud in Iraq? If so, why?

- Does the declination of intervention signal an unwillingness to pursue Iraq contracting fraud cases?

- Are there currently any False Claims Act cases under seal relating to Iraq fraud contracting?

- How do you respond to the criticism outlined in the *Wall Street Journal* article? Is the Department trying to escape accountability by using the seal as a shield?

Justice Dept. opts out of whistle-blower suits

Cases allege fraud in Iraq contracts

The Boston Globe

By Farah Stockman, Globe Staff | June 20, 2007

WASHINGTON -- The Justice Department has opted out of at least 10 whistle-blower lawsuits alleging fraud and corruption in government reconstruction and security contracts in Iraq, and has spent years investigating additional fraud cases but has yet to try to recover any money.

A congressional subcommittee heard testimony on the matter yesterday, as lawmakers sought to determine why the federal government has not done more to recover tens of millions of dollars that allegedly have been misused or misspent in Iraq.

"I would expect, given the talent that the Justice Department has available to it, . . . that they could have done more," Representative William D. Delahunt, Democrat of Quincy, said at the hearing. "I have the uneasy feeling like we're missing something here, a potential substantial recovery."

The government's reluctance to join in any of the civil suits has sparked allegations of political interference.

One witness, Alan Grayson , a lawyer who represents several whistle-blowers, told the House subcommittee on Crime, Terrorism, and Homeland Security that the Justice Department has been stonewalling and dragging its feet in investigating the whistle-blowers' claims of fraud.

"In our fifth year in the war in Iraq, the Bush administration has not litigated a single case against any war profiteer under the False Claims Act," Grayson said.

Tens of millions of dollars -- and perhaps far more -- allegedly have gone into the pockets of contractors who overbilled for services, paid bribes, and received kickbacks. Under the federal False Claims Act of 1863, employees who say they witnessed such corruption can sue their employers for defrauding the US government and reap a percentage of any money that's recovered.

The federal government normally investigates such cases to determine whether to participate in the suit and bring its investigative and legal resources to bear against the accused company. But if the government declines, whistle-blowers often face an uphill battle in court and often decide to drop the matter -- which has happened in at least three of the Iraq whistle - blower cases.

"The [presiding] judge asks himself, 'If the Justice Department doesn't care about this case, why should I?' " Grayson said.

The government has relied on private contractors in Iraq, issuing contracts for everything from meals for troops to armed security for visiting government officials. Since the 2003 invasion, contractors have come under increasing scrutiny due to allegations of millions, if not billions, of taxpayer dollars that are unaccounted for.

Historically, the False Claims Act has served as an important tool in recovering money defrauded from the federal government. Last year, it was used to return more than $3 billion in domestic cases, but has recovered only about $6.1 million from Iraq since the war began.

Those recoveries, however, were the result of settlements between the Justice Department and two contractors -- not civil lawsuits or prosecutions. EGL Inc., based in Houston, agreed to pay a $4.3 million settlement after being accused of padding invoices on military cargo shipments, while Force Protection Industry, based in South Carolina, paid $1.8 million after allegedly withholding payments meant to speed the delivery of armored vehicles in Iraq.

At yesterday's hearing, Deputy Assistant Attorney General Barry Sabin of the Justice Department's criminal division, said the department has done its best to investigate the cases, but has not been able to collect enough evidence in Iraq to prove the whistle - blowers' claims. "The difficulty of locating witnesses in an active combat zone cannot be overstated," he told the committee.

Sabin said that the Justice Department is using other means to root out corruption in Iraq, and pointed to the criminal prosecutions of 25 individuals accused of fraud who were also ordered to pay hundreds of thousands of dollars in restitution.

Yet others wonder why the government has not been more aggressive in filing civil suits against allegedly corrupt companies.

"Basically, they have done nothing , and it is hard to explain what is going on there, other than direct orders from the very top of government," said Patrick Burns , director of communications for Taxpayers Against Fraud, a center that advises whistle-blowers on filing suits to recover government funds. "It can no longer be explained by incompetence alone."

If companies are merely asked to pay settlements when they are caught stealing or overbilling, Burns said, "that isn't much of an incentive not to steal. At this point, there is nothing more profitable than fraud."

Besides the two cases that were settled for $6.1 million, the Justice Department has declined to join in 10 other cases. One was against Custer Battles , a politically connected military contractor in Iraq that was accused of supplying the military with trucks that didn't work and overcharging the US government by as much as $50 million. When the government chose not to participate, the whistle - blower went on with the suit anyway , and a federal jury ordered Custer Battles to pay $10 million in damages.

That judgment, however, was overturned. The case is currently on appeal.

A second, new whistle - blower lawsuit alleges that the company was renamed and sold to former acting Navy secretary Hansford T. Johnson and former acting Navy undersecretary Douglas Combs . It is unclear if it is still doing business.

In April, the Justice Department opted out of a lawsuit against heavyweight military contractor Kellogg Brown & Root and three of its subcontractors. The lawsuit, launched by a former supervisor in Iraq, alleged that the company billed the government for almost 10,000 meals per day that were never served, adding up to more than $10 million in excess charges.

The whistle-blower in that case, Barrington T. Godfrey , alleges that he was forced out of his job after he tried to stop the over billing.

His case, filed in 2005, had been kept secret for two years while the government investigated it. Under the False Claims Act, cases remain secret until the Justice Department decides whether or not to join them.

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THE FIGHT FOR IRAQ

Attorney Pursues Iraq Contractor Fraud

Lawyer Uses Civil War-Era Law To Go After Firms for Corruption, But Administration Won't Help

By YOCHI J. DREAZEN
April 19, 2006

ORLANDO, Fla. -- From his home office in a pink-painted mansion here, lawyer Alan Grayson is waging a one-man war against contractor fraud in Iraq.

Mr. Grayson has filed dozens of lawsuits against Iraq contractors on behalf of corporate whistle-blowers. He won a huge victory last month when a federal jury in Virginia ordered a security firm called Custer Battles LLC to return $10 million in ill-gotten funds to the government. The ruling marked the first time an American firm was held responsible for financial improprieties in Iraq. But it also highlighted the limits of the broader efforts to stem contractor abuses there.

The False Claims Act that Mr. Grayson used in the Custer Battles case is a Civil War-era statute allowing whistle-blowers to sue contractors suspected of defrauding the government and then keep a chunk of any recovered money. There are an estimated 50 such cases pending against Iraq contractors, including large firms like **Halliburton** Co.'s Kellogg Brown and Root subsidiary. A technicality in the statute, however, has allowed the Bush administration to prevent the other lawsuits from moving forward. Cases filed under the statute are automatically sealed, which means that they can't proceed to trial -- or even be publicly disclosed -- until the administration makes a formal decision about whether to join them.

The law says such decisions are supposed to be made within 60 days, but with the exception of the Custer Battles case, which it declined to join, the administration has yet to take a position on any of the suits, some of which were filed more than two years ago. The law allows the Justice Department to ask for extensions, which are almost always granted, for as long as it sees fit. The department has kept the other False Claims Act cases from proceeding by repeatedly asking for extensions in each one.

That has left the cases in legal limbo, with lawyers like Mr. Grayson unable to bring them to trial or detail them publicly.

Contracting experts say previous administrations often declined to join in False Claims Act lawsuits but that the Bush administration's refusal to unseal the cases is unprecedented. Justice Department spokesman Charles Wilson says he can't discuss sealed cases or comment on why the department has yet to act on them. "All of the cases are examined on their merits," Mr. Wilson

says. With the Bush administration sitting on the sidelines, primary responsibility for pursuing the Iraq fraud cases rests with plaintiffs' lawyers like Mr. Grayson, a Harvard-educated lawyer who began his career defending federal contractors but now makes his living going after them.

FIGHT FOR IRAQ

See continuing coverage[1] of developments in Iraq, including a look back at three years of war. Plus, see an interactive map[2] of major insurgent attacks.

"With the sheriff asleep in the office, the only way you get justice is with private lawyers like Alan Grayson willing to step up and take down these fraudulent companies," says Patrick Burns, the spokesman for the advocacy group Taxpayers Against Fraud. "Alan Grayson showed that you can do that even without help from the government."

Though it is unclear when the cases will proceed to trial, Mr. Grayson is continuing to press ahead as best he can. He and other lawyers in his firm travel the country taking depositions, gathering documents and interviewing prospective witnesses for the dozens of currently pending lawsuits. Mr. Grayson says he also regularly passes information to the federal investigators probing the cases and the prosecutors deciding whether the government will participate in them.

A fierce critic of the war in Iraq, Mr. Grayson drives an aging Cadillac emblazoned with antiadministration bumper stickers such as "Bush Lied, People Died." He says the administration's botched handling of Iraq opened the door for corrupt contractors to improperly reap fortunes there. At a hearing in February 2005 held by Democratic senators, Mr. Grayson asserted that the administration had "not lifted a finger to recover tens of millions of dollars our whistle-blowers allege was stolen from the government."

His opinions on the matter haven't shifted since. "The Bush administration has made a conscious decision to sweep the cases under the rug for as long as possible," he says today. "And the more bad news that comes out of Iraq, the more motivation they have to do so."

For the contractors in his cross hairs, Mr. Grayson, 48, is a formidable opponent. He received his undergraduate, master's and law degrees from Harvard. He made millions during a two-year stint as the president of **IDT** Corp., a start-up that has since grown into one of the nation's largest providers of discount telecommunications services. Mr. Grayson says he has poured hundreds of thousands of dollars of personal funds into his small eight-person law firm to help defray the costs of pursuing Iraq fraud cases that may not make it to trial for years. "I have deep enough pockets to subsidize the legal work," he says.

If he prevails, he might fill those deep pockets. Whistle-blowers generally receive 30% of any penalty, although the exact portion of every award is set by the judge in each case. Lawyers like Mr. Grayson, in turn, receive 30% to 50% of whatever the whistle-blowers get. "It's really a financial crapshoot," he says.

Mr. Grayson's firm switched its focus from working for contractors to representing individual whistle-blowers shortly after U.S. forces swept into Iraq in March 2003. He says the firm made the move because they began to be contacted by whistle-blowers who were referred by former clients and others.

Two of his first clients were William D. Baldwin, a former manager for Custer Battles, and Robert J. Isakson, a construction subcontractor who had worked with the firm. The company, run by a pair of politically connected military veterans, had won security contracts in Iraq worth more than

$100 million. But the two men told Mr. Grayson that they had evidence the firm was substantially overcharging the U.S. occupation authority.

Mr. Grayson filed suit against the company under the False Claims Act in February 2004, but it languished under seal until that fall, when the Justice Department formally declined to join the case. The government never explained its decision. The case finally went before a judge in February.

After a contentious three-week trial, a federal jury on March 9 found the company's two founders, along with a business partner, guilty of using fake invoices from shell companies to overcharge the authorities by millions of dollars. The jury ordered the men to pay $10 million in penalties, with Mr. Grayson's clients standing to receive about $3 million of the money. Mr. Grayson declined to say how much money he will be paid. David Douglass, a lawyer for Custer Battles, says the company has appealed the verdict.

While waiting for the government to act on the other lawsuits, Mr. Grayson is weighing a career change. His congressional district is represented by a conservative Republican, and Mr. Grayson is strongly considering seeking the Democratic nomination to oppose him. He says his campaign, if he chooses to run, would center on the war in Iraq.

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Questions from Senator Chuck Grassley
Senate Committee on the Judiciary
Oversight of the U.S. Department of Justice
Tuesday, July 24, 2007

United States ex rel. DRC, Inc., et al., v. Custer Battles

On February 17, 2005, I wrote to you regarding United States v. Custer Battles urging the Department to comply with the request of the District Court judge to file a brief on the issue of whether the Coalition Provisional Authority was a government entity under the False Claims Act. On April 1, 2005, the Department filed a brief stating the Government's position that knowingly false claims presented to the Coalition Provisional Authority by Custer Battles, if proven, would violate the False Claims Act.

The Department also stated that notwithstanding the brief, they declined to intervene with the whistleblowers. Ultimately, a jury found Custer Battles violated the False Claims Act and should return $10 million to the U.S. Government. However, the Judge overturned the verdict and dismissed the case finding that the Plaintiff's failed to prove the false claims were actually submitted to the government.

The Department has filed a brief supporting the whistleblowers position on appeal to the Fourth Circuit Court of Appeals.

- Why did the Department decline to intervene in the District Court, yet continue to support the appellate litigation?

- Is the Department concerned that failing to intervene at an earlier time may lead to decisions that are detrimental to the False Claims Act?

Questions from Senator Chuck Grassley
Senate Committee on the Judiciary
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Federal False Claims Act (Rockwell/Totten Decision)

As a longtime supporter of the False Claims Act, I am concerned that recent court decisions have limited application of this law. For example, in Rockwell International v. United States, the Supreme Court limited the definition of an "original source" under the False Claims Act. Further, in United States ex. rel Totten v. Bombardier Corp, the D.C. Circuit Court of Appeals limited the application of the False Claims Act to grantees because they are not government employees under the False Claims Act.

- In your opinion, were these cases decided incorrectly?
- Will the Rockwell decision limit the number of qui tam whistleblower suits filed?
- Has the Totten decision limited the ability of the Federal government to recover money lost to fraud of abuse by contractors working for government grantees?
- Have these decisions hampered the ability of the Department of Justice to go after bad actors?