

Monday, October 23, 2006

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 FBI's 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 in 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. (a) 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