

NEW STANDARD FOR JUSTICE: INNOCENT UNTIL A SECRET SHRINK STUDY PROVES YOU GUILTY AFTER YOUR DEATH

Our country apparently has a new standard for justice: innocent until a secret study—headed by a guy who may have had some responsibility for screwing up an earlier investigation and conducted entirely after your death—finds you were psychologically capable of committing a crime.

The LAT reports on a just such a report conducted on Bruce Ivins. It was initiated in late 2009 (remember, Ivins died in July 2008), at the suggestion of Dr. Gregory Saathoff, a psychiatrist who consulted on the investigation itself. And it was completed on August 23, 2010. Among the details the report apparently found that should have disqualified Bruce Ivins from having the security clearance he did is the fact that he put question marks next to some questions on a form he filled out in 1987 (those question marks should have raised eyebrows, definitely, but it's funny they're looking at them in this context now).

Mostly, though, LAT writer David Willman seems to suggest (and I'm not sure how much of this is speculation, off the record reporting, or reading the report itself) that the redacted parts of the report show that Ivins' obsession with the KKG sorority in the 1980s should have disqualified him from getting clearance.

Some of the “disqualifying” behaviors that the panel said should have prompted Army officials to reconsider Ivins' fitness to work in a secure biodefense facility were redacted from the report

by Justice Department lawyers because of privacy concerns. However, based on investigative documents made public more than a year ago by the FBI and on remarks by Ivins' acquaintances, this much is known:

Ivins became obsessed with Kappa Kappa Gamma in the 1960s, when a member of the sorority turned him down for a date. In the late 1970s and early 1980s, Ivins twice burglarized houses affiliated with the sorority.

Over the same period, he tormented a former member of the sorority, Nancy Haigwood, by stealing her laboratory notebook, which was integral to her pursuit of a doctoral degree, and by vandalizing her residence. Ivins was a postdoctoral researcher at the University of North Carolina in the 1970s when Haigwood was a graduate student there.

"Despite criminal behavior and sabotage of his colleague's research," the panel said, "Dr. Ivins was hired by USAMRIID and received a security clearance, allowing him to work with potential weapons of mass destruction."

Now, I believe the report itself had as its stated goal assessing whether Ivins should have been able to retain his clearance. Still, the fact that people are still using Ivins' KKG obsession as "proof" that he was the anthrax killer—without offering any explanation why that obsession led him to allegedly mail anthrax from outside of a KKG office 3 hours and 25 minutes from his home rather than mailing it from the actual KKG chapters closer to his home—is just blind faith.

Willman also describes the National Academy of Sciences report on the anthrax this way, to fluff up the case against Ivins.

Last month, a committee appointed by the National Academy of Sciences at the FBI's request concluded that the scientific evidence implicating Ivins was not definitive but "is consistent with and supports" the bureau's finding of a genetic match between his batch of anthrax and the material in the letters.

As Jim White has pointed out, the scientific panel was not so convinced—and provided a great deal of evidence as to why Ivins probably couldn't have made the anthrax in his lab at Ft. Detrick.

Overall, the importance of the primary conclusion of the NAS report cannot be overstated (p. 4 of the report as marked, all references will use internal page numbers, not pdf numbers from my pre-publication copy):

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.

It's bad enough that DOJ is using what was intended to be a lessons learned study (to prevent bioterrorism in the future, even though we're not sure Ivins committed this crime; note that DOJ closed the case during the period of this study) to try to shore up their shaky case against Ivins.

But what really pisses me off is that DOJ was off contracting secret studies at the same time as it was repeatedly refusing to accept an independent review of their work on the case. Pat Leahy, one of the targets of the attack, declared the case against Ivins to be inadequate in August 2008. Rush Holt tried to get an independent review of the case in March 2009. Jerry Nadler did the same in March 2010. In that

same month, Obama actually issued a veto threat to prevent Congress from insisting on doing an independent review of this investigation.

And before they started this study, apparently, in September 2009, DOJ outright refused to submit to an independent review of the case because it might hamper ongoing litigation in the case.

Because of the importance of science to this particular case, investigative steps were often taken to address leads developed by newly evolved science. In addition, the significance of information or evidence we acquired often took on new or enhanced meaning as scientific advances were made. Consequently, a review of the scientific aspect of this case would be the logical first step. There is also ongoing criminal and civil litigation concerning the Amerithrax investigation and information derived therefrom, and an independent review of the FBI's "detective work" at this time could adversely affect those proceedings.

So that's what DOJ has come to: secret studies to try to prove their case, but under no circumstances an actual review of all the things FBI did wrong that might reveal that they still haven't found the killer.