

SJC TO CONSIDER RE- CONFIRMATION OF GUY WHO LET MAJOR DOMESTIC TERROR ATTACK GO UNSOLVED

At 10, the Senate Judiciary Committee will consider the extension of Robert Mueller's term at FBI by two more years. You'll no doubt hear Ranking Member Chuck Grassley make all sorts of complaints about FBI in his wonderful grouchy Iowa voice. You'll hear Jim Comey recount the dramatic hospital confrontation from 2004.

But you're unlikely to hear Chairman Patrick Leahy ask Mueller why he has let Leahy's own attempted murder in the 2001 anthrax attack go unsolved.

Oh sure, the FBI claimed they had solved the anthrax attack last year when they closed the investigation. But as I first reported in 2008, Leahy doesn't (or at least didn't) believe that accused anthrax killer Bruce Ivins acted alone.

The FBI's case against Ivins started eroding right after his death, as Ivins' own will made it clear that the motive the FBI had attributed to him made no sense. Then it became more and more clear that FBI claims about the record and anthrax keeping standards at USAMRIID were overly optimistic, meaning their assertion that Ivins had control of a flask of anthrax couldn't be trusted. But the real blow for the FBI's claims about the anthrax came after—having spent three years waving the shiny object of the cool science they used to “solve” the case—the National Academy of Science poked a bunch more holes in their case. Not only were the FBI's claims about Ivins' flask not as certain as the FBI claimed they were, but the FBI had never answered lingering problems about the chemicals involved in the anthrax, which made the FBI's

failure to talk about how Ivins could have made the anthrax all the more problematic, not to mention made one of FBI's most compelling pieces of evidence against Ivins—his time in his lab—meaningless.

Pretty much what the FBI is left with are a few suspicious incidents and Ivins' weird obsession about a probably unrelated sorority, which a bunch of self-interested shrinks have helpfully sensationalized.

And the failure to really solve the anthrax case comes on top of the earlier failure in targeting Steven Hatfill for several years.

Now, I wouldn't necessarily hold the FBI's failure to solve the most serious terrorist attack in the US since 9/11 **against** Mueller—it is a tougher case to solve, after all, than 9/11 itself.

But rather than allow Congressional overseers to examine the FBI's work to both see what went wrong and what leads they may have ignored, Mueller has been refusing such oversight. He (and the FBI generally) have stonewalled and lied when members of Congress asked questions about the weak points in the FBI case against Ivins. More galling still, to me, is that he out and out lied to Chuck Grassley in 2009, telling Grassley that an independent review of the investigation would be detrimental to ongoing litigation. What Mueller didn't tell Grassley is that he had already secretly engaged the Shrinks-4-Hire to do their own purportedly independent review of the investigation, a report apparently designed to rebut the obvious weaknesses the NAS would find.

Mueller was fine to do an "independent" review, apparently, so long as the FBI could game the outcome.

Mind you, Mueller's refusal to accept any real oversight on this case has been assisted by President Obama, who used a veto threat to discourage a true congressional inquiry.

In short, under Mueller's leadership, the FBI badly fucked up the anthrax investigation. And rather than review why the FBI fucked up so badly, Mueller has been obfuscating to prevent any real review of the that fuck up.

Mueller's single biggest job as FBI Director in the last decade has been to make sure the FBI is able to investigate terrorism. And yet his FBI has badly screwed up the second biggest terrorist attack in the US—and he doesn't think Congress should know why.

And yet SJC will no doubt vote to reconfirm Robert Mueller for another two years today.

WHO IS REHASHING THE SHRINKS-4-HIRE REPORT ON BRUCE IVINS?

Slightly over a week after McClatchy focused new attention on evidence that Bruce Ivins may not have been able to produce the anthrax used in the 2001 attacks, and just days after Jerrold Nadler called attention to the FBI's obfuscations about the technical data McClatchy used, the LAT has decided to ignore such technical problems with the FBI's case and return to claims that Ivins must be the killer because he was mentally unstable.

Of note, much of the LAT story fleshes out the Shrinks-4-Hire report, complete with names, a detailed description of how Bruce Ivins' mother tried to abort Ivins by bouncing down the stairs, and descriptions from his psychiatrists.

Ivins grew up in Lebanon, Ohio, a small town 30 miles northeast of Cincinnati. His parents had planned the arrivals of their first two children, both sons, but by late 1945 the couple had no desire to

add to the family. In conversations with a sister-in-law, Mary Ivins described how she tried to abort the unwanted third pregnancy:

Over and over, she descended a series of steps by bouncing with a thud on her buttocks.

Bruce Ivins, born April 22, 1946, would eventually hear the story himself.

[snip]

A psychiatrist who treated him in the late 1990s, Dr. David Irwin, confided to a therapist that Ivins was the “scariest” patient he had ever known.

It’s as if someone leaked the LAT an unredacted copy of the report in an effort to drown out increasing focus on the many problems with the case. And it’s as if the LAT simply used that as a template for their story, without consulting the information released since the Shrinks-4-Hire was completed that poses problems for it: not the National Academy of Sciences report and the McClatchy stories raising key technical questions about the case, and not Noah Shachtman’s story raising doubts about the FBI’s claim no one else could have accessed Ivins’ anthrax.

I guess some people tied to the anthrax case believe if you keep repeating the story, “Bruce Ivins stalked women, so he must have tried to kill Patrick Leahy” enough times, people will continue to believe it.

THE CIRCUMSTANTIAL

CASE AGAINST BRUCE IVINS GETS WEAKER

It seems we're going to be discussing anthrax in detail again. And in anticipation of those discussions, I wanted to challenge the notion that the circumstantial evidence against Ivins remains strong.

The whole case depends on the FBI's contention that a flask Ivins had—RMR-1029—was “the murder weapon.” But in fact, the FBI only has proof that Ivins had what might be one of eight or more potential precursors to the murder weapon. Their efforts to equate the two ignore some interim steps about which they seem to have little evidence (and what they have they're not examining very closely).

So here's my summary of the circumstantial case against Bruce Ivins. (Jim White gave me a ton of scientific help with this, but the errors surely result from my own misunderstanding.)

When US Attorney Jeff Taylor announced FBI was closing the investigation in February 2010, he gave the following 7 pieces of evidence that Ivins was the culprit.

First, we were able to identify in early 2005 the genetically-unique parent material of the anthrax spores used in the mailings. As the court documents allege, the parent material of the anthrax spores used in the attacks was a single flask of spores, known as “RMR-1029,” that was created and solely maintained by Dr. Ivins at USAMRIID. This means that the spores used in the attacks were taken from that specific flask, regrown, purified, dried and loaded into the letters. No one received material from that flask without going through Dr. Ivins. We thoroughly investigated every other person who could have had access to the flask and

we were able to rule out all but Dr. Ivins.

Second, as a renowned expert in the production and purification of anthrax spores, Dr. Ivins was one of a handful of scientists with the capability to create spores of the concentration and purity used in the attacks. The affidavits allege that, not only did Dr. Ivins create and maintain the spore batch used in the mailings, but he also had access to and experience using a lyophilizer. A lyophilizer is a sophisticated machine that is used to dry pathogens, and can be used to dry anthrax. We know others in Dr. Ivins' lab consulted him when they needed to use this machine.

Third, in the days leading up to each of the mailings, the documents make clear that Dr. Ivins was working inordinate hours alone at night and on the weekend in the lab where the flask of spores and production equipment were stored. A review of his access records revealed that Dr. Ivins had not spent this many "off hours" in the lab at any time before or after this period. When questioned about why he was in the lab during these off hours prior to each of the mailings, Dr. Ivins was unable to offer any satisfactory explanation.

Fourth, the affidavits indicate Dr. Ivins had engaged in behavior and made a number of statements that suggest consciousness of guilt. For example, one night shortly after a search warrant was executed on his house, Dr. Ivins took highly unusual steps to discard a book and article on DNA coding while under 24/7 surveillance. In addition, he had submitted a questionable sample of anthrax from his flask of parent spores to the FBI, presumably to mislead

investigators. He had also made far-reaching efforts to blame others and divert attention away from himself, and had made threatening e-mail statements to a friend regarding the case.

Recently, he had detailed threats in his group therapy session to kill people who had wronged him, after learning he might be indicted.

Fifth, as reflected in the court documents, Dr. Ivins had a history of mental health problems and was facing a difficult time professionally in the summer and fall of 2001 because an anthrax vaccine he was working on was failing. The affidavits describe one e-mail to a co-worker in which Dr. Ivins stated that he had "incredible paranoid, delusional thoughts at times," and feared that he might not be able to control his behavior.

Sixth, throughout his adult life Dr. Ivins had frequently driven to other locations to send packages in the mail under assumed names to disguise his identity as the sender. He had also admitted to using false names and aliases in writings. In addition, he was a prolific writer to Congress and the media, the targeted victims in the anthrax attacks. Law enforcement recovered 68 letters to such entities from his house in a Nov. 1, 2007 search.

I'll conclude with one more point. The envelopes used in the attacks were all pre-franked envelopes, sold only at U.S. Post Offices during a nine-month window in 2001. An analysis of the envelopes revealed several print defects in the ink on the pre-printed portions of the envelopes. Based on the analysis, we were able to conclude that the envelopes used in the mailings were very likely sold at a post office in the greater

Frederick Maryland, area in 2001. Dr. Ivins maintained a post office box at the Post Office in Frederick, from which these pre-franked envelopes with print defects were sold.

Here's what remains of each of these 7 pieces of evidence:

1. The spores in the attack came from RMR-1029 and Ivins controlled access to that flask

The certainty of this claim was seriously challenged by both the National Academy of Sciences report and subsequent reporting on several grounds.

First, the NAS study concluded only that the genetic analysis was consistent with the spores being derived from RMR-1029.

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.

That only says that whoever prepared the (probable) two separate batches of anthrax may have started with anthrax obtained at some point from that flask. NAS holds out the possibility the anthrax producer may have gotten it from somewhere else, that it was possible to get similar genetic results from other means (that is, suggesting that's not the only way to have produced the samples found in the letter).

An even bigger problem is the complete lack of attention on what happened to the anthrax *after* it came from Ivins' flask, if it did. The NAS later emphasizes this interim step.

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.

What would have to happen to prove that Ivins took spores from his flask and prepared the anthrax used in the attacks is to prove, first of all, that his lab and his skills could have produced the differences from the RMR-1029 flask (for example, could have introduced the silicon and tin found in the attack samples). In addition, you'd have to explain the variables introduced into the NY samples but not the DC ones. And you'd have to prove that all those procedures were possible in Ivins' lab.

But there's another problem with the claim that the anthrax had to have come from Ivins' flask. Remember, what the FBI did was identify four morphological characteristics of the Leahy anthrax, then see which of the samples of anthrax in their repository had those same characteristics, which turned out to be 8-10 samples. It then investigated everyone who had access to those samples, and basically eliminated everyone but Ivins.

But such a process of elimination only works if you're sure the repository of anthrax samples the FBI had represented all the possible samples from which the anthrax could have come. The NAS wasn't convinced that the repository was that comprehensive.

The FBI repository was developed from an intensive effort to identify laboratories having access to the Ames strain; however, we cannot conclude that this approach identified every laboratory or was a comprehensive representation.

For good reason. To develop the repository, the FBI depended on the records of transfers between labs. But as Noah Shachtman reported, the FBI had proof their repository was incomplete in 2003.

In December 2003, while conducting an inventory of one of USAMRIID's biocontainment suites, investigators discovered 22 undocumented Ames anthrax samples. They began to fear that the repository they had spent nearly two years assembling might have gaping holes in it. So for the first time, the FBI decided to scour USAMRIID for any vials they had missed.

The institute staff fumed at the search—ongoing experiments would be disrupted, they shouted. (Hank) Heine, Ivins' coworker, decided to exact a bit of revenge on his FBI handler. While the agent was collecting samples in his lab—dressed in full protective gear—Heine handed her a vial and told her it was a deadly plague strain. The vial started shaking in the agent's gloved hand. Heine cracked up. "They were entirely dependent on me to identify everything in every box," he says. "I could've held up a critical piece of evidence, said it was something else, and put it aside. There's no way they would've known."

That was almost two years after they first got samples for their repository, and there's no indication the FBI did this kind of census of samples in Batelle (which had the one non-USAMRIID sample that matched RMR-1029) or Dugway (from which Ivins' precursor samples derived). And as Heine pointed out—and NAS did, too—since the FBI was completely dependent on the scientists to collect their samples, it meant that anyone trying to hide a sample could have done so easily.

A final challenge was that the repository collection process was based on the integrity of the individuals asked to provide samples. If the motive for the repository was to identify the source of the letter material, standards of custody of evidence would dictate that agents of the FBI should have obtained the samples. In most instances, holders of the material were asked to provide samples and send them in. The sender could have been the instigator and may not have complied with instructions, as the FBI alleges with respect to Dr. Ivins.

The FBI's entire case against Ivins relied on their claim that the sample had to be the precursor to the attack anthrax based on process of elimination. But not only does FBI not have the record-keeping to prove they had accounted for all samples nor the proof that their repository represented a valid cross-sample, they've got little to prove that the differences between the anthrax used in the attacks could have been introduced in Ivins' lab, as they suggest they were.


2. Ivins was one of a handful of scientists with capability to make the anthrax and he had access to the equipment—a lyophilizer—to make the spores

NAS refuted the claim that you could conclude anything about the scientific skill or equipment needed to produce the anthrax used in the attack.

The committee finds no scientific basis on which to accurately estimate the amount of time or the specific skill set needed to prepare the spore material contained in the letters. The time might vary from as little as 2 to 3 days to as much as several months. Given uncertainty about the methods used for preparation of the spore material, the

committee could reach no significant conclusions regarding the skill set of the perpetrator.

This is again the problem of pointing to Ivins' flask as a precursor without explaining how that precursor anthrax was prepared to result in the two different samples used in the attack. And while FBI points to the lyophilizer, they don't consider things like the equipment needed (perhaps a fermenter) to produce the volume used in the attack, nor the skills and equipment to introduce things like silicon into the samples. These issues might disqualify Ivins just as readily as a lyophilizer would disqualify other scientists.

 **3. In the days leading up to the mailings, Ivins spent an unusual amount of time alone in his lab at night, giving him the opportunity to make the anthrax**

This gets back into the problem of explaining how Ivins' sample was purportedly prepared. As noted, NAS' experts gave the range of time it would take to prepare this sample as between 2 days and several months.

As a result of the different possible production schemes that might have yielded product with the observed characteristics of the evidentiary materials, the committee finds that the time required for this work could be as little as 2 or 3 days to as much as several months. The differences are based on different estimates of the time required for propagation, purification, and drying, among other variables, as well as the state of the starting material.. In particular, it is not known whether some of the initial steps might have occurred well in advance of the letter attacks. The committee cannot resolve these distinctions because it had no information identifying a production method or the steps involved

in production.

Even the guy in charge of this investigation, Edward Montooth, admits they don't have the timeframe nailed down.

"We still have a difficult time nailing down the time frame," he says. "We don't know when he made or dried the spores."

But the value of the evidence about Ivins spending time in his lab in the nights before the mailing window for the anthrax relies on the short end of this time frame: it assumes that Ivins made the anthrax in 3 or 8 day windows leading up to the two dates the anthrax was mailed.

If it turns out the anthrax prep took much longer—two months, for example—then the same lab records that are one of the most incriminating pieces of evidence given the FBI's original theory would then work in reverse, showing that Ivins *wasn't* in his lab during the key period needed to culture the attack anthrax.

4. Ivins acted guilty by, among other things, submitting a questionable sample of anthrax to the FBI

There are a number of key reasons FBI argues Ivins acted suspicious. A key one is that he gave a sample purported to be RMR-1029 in April 2002 that tested negative for the four morphological variations ultimately used to ID the anthrax.

As a threshold matter, NAS argues that the proof this was a doctored sample is weaker than the FBI maintains, partly because the FBI's statistics were off and partly because it didn't account for problems with the FBI's own repository protocol or aspects of colonies.

The genetic evidence that a disputed sample submitted by the suspect came from a source other than RMR-1029 was

weaker than stated in the Department of Justice Amerithrax Investigative Summary.

That said, the chances of it being doctored are still significant.

But even assuming the later sample was doctored, there are a couple of other odd details about this. First, Ivins submitted a sample in February 2002 that, though it didn't comply with the FBI's sampling protocol, did ultimately test positive for the four morphological variations in question. Then, after being asked to resubmit, he submitted the questionable sample in April, which tested negative for the morphological variations. Ultimately, in 2004, after discovering USAMRIID's record-keeping was a clusterfuck, they found additional samples that Ivins should have turned over as well as RMR 1029.

But if Ivins submitted a dummy sample in April 2002, then why did he submit what appears to be a good sample of RMR-1029 in February 2002?

5. Ivins was mentally ill

Ivins apparently was mentally unstable. But I'm not sure how you distinguish between someone who was mentally ill and therefore tried to kill a bunch of people and someone who responded to being in the middle of a WMD attack who therefore reacted in unpredictable fashion that appeared suspicious?

6. Ivins has a history of driving places to mail things as well as writing letters to politicians and the press

There are two parts to this argument: an explanation for why Ivins would have driven to Princeton to mail the anthrax, and an explanation for why Ivins allegedly chose to send Daschle and Leahy, in particular, deadly anthrax.

The former invokes the whole theory about Ivins trying to attract attention from the sorority

KKG. That whole story was pretty shaky from the start, not least because it doesn't explain why Ivins would drive to Princeton to mail anthrax from a mailbox somewhat close to a KKG office, rather than sending it from closer to DC from a place directly associated with a KKG house. The psychological profile of Ivins did add one potential explanation for this: "Princeton represented his father," who had mocked Ivins when he was a child. Whatever. I still find the whole KKG theory a big stretch, particularly given that the FBI hasn't figured out how Ivins made the anthrax in the first place.

But then there's the question of why he would send anthrax to Leahy and Daschle. The FBI affidavit supporting search warrants suggests that Ivins targeted them, in part, because they were pro-choice.

In 2001, members of the Catholic pro-life movement were known to be highly critical of Catholic Congressional members who voted pro-choice in opposition to the beliefs of the Catholic Church. Two of the more prominent members of Congress who fell in this category were Senator Tom Daschle, then Senate Majority Leader; and Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, both recipients of the 2001 anthrax mailings.

Ivins' will—which threatened to give a third of his estate to Planned Parenthood if his wife prevented him from being cremated—pretty much refuted that as a motivating factor. The psychological profile did refer to a letter Daschle sent DOD in June 2001 raising concerns about the anthrax vaccine.

They also suggest that Ivins wanted to press for an anthrax vaccine—a theory which would incriminate a number of other people in government to a much greater degree, and a theory which—as Shachtman writes—doesn't have much evidence as far as Ivins.

The Justice Department asserts in its investigative summary that Ivins mailed the letters to gin up support for an anthrax vaccine, offering a few ambiguous emails and comments to friends and investigators as proof. If there's any further, credible evidence to support this notion, *Wired* couldn't find it in the thousands of pages of case documents released by the government or in the hours of interviews conducted with the investigators. Montooth concedes it's a placeholder rationale at best

All of these details—the KKG theory and the Daschle-Leahy theory—remain very very weak. At the very least, they suggest the FBI should have looked harder for accomplices to Ivins, which, having been confronted with a convenient suicide in 2008, they appear not to have done.

7. Franking evidence shows the envelopes used in the attacks could have been purchased in Frederick, MD

The franking evidence, which shows that the envelopes used in the attacks came from a particular print run, is some of the stronger evidence in this case.

But the franking evidence doesn't lead exclusively to the Frederick, MD, post office. Envelopes from that print run might have been sent to a whole slew of MD and VA post offices serviced by the Dulles Stamp Distribution Office, including at a minimum Cumberland, Elkton, Glen Burnie, Lutherville, Severna Park, and Galena, MD, and Machipongo, Arlington, and Fairfax, VA. In other words, this evidence, while it might include Ivins, would also include a great many other possible suspects.

And all of this lacks anything that ties Ivins specifically to the Princeton mailboxes, like anthrax residue in his car or fibers from his car in the envelopes.

At a minimum, this suggests the FBI would have had a hard time proving their case against Ivins (just the abysmal record-keeping of USAMRIID alone would have introduced a great deal of doubt).

The big problem, though, is that the interim step in this case—the process by which something genetically like RMR-1029 had the significant changes introduced as it was turned into a murder weapon—remains significantly unexamined. That’s precisely the area where new questions are being asked. Or more accurately, questions that were asked in 2008 remain unanswered.

That, and the guy who has been refusing a more broadbased examination of the FBI’s work on this case for years is about to get two more years as FBI Director.

NADLER WANTS TO KNOW WHY FBI LIED TO HIM ABOUT ANTHRAX

That’s a very good question, Congressman Nadler:

On September 16, 2008, the House Committee on the Judiciary, on which I sit, conducted an oversight hearing of the FBI at which you testified. At that hearing, I asked you the following: “[W]hat was the percentage of weight of the silicon in the powders that your experts examined?” You testified that you would get back to me. On November 26, 2008, I sent to you this follow-up question in writing: “What was the percentage of weight of the silicon in the powder used in the 2001 anthrax attacks?”

On April 17, 2009, then-Acting Assistant Attorney General M. Faith Burton, of the DOJ Office of Legislative Affairs, responded with the following answer:

FBI Laboratory results indicated that the spore powder on the Leahy letter contained 14,470 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.

A February 15, 2011 report by the National Academy of Sciences ("NAS report"), in which the NAS included its review of the FBI's data and scientific analysis in the anthrax investigation, raises three questions about this DOJ/FBI response to me. First, with respect to the anthrax on the letter sent to Senator Leahy, the NAS report shows on pages 66 and 67 (Table 4.4) that the silicon content found by the FBI was 1.4% in one sample and 1.8% in a second sample. Why were both figures not provided to me in response to my questions?

Second, the NAS report shows on pages 66 and 67 (Table 4.4) that the FBI found the silicon content in the New York Post letter anthrax to be 10% when the bulk material was measured by mass and 1-2% when individual spore coats were measured by mass per spore. Why was neither piece of data provided to me in response to my questions?

Third and finally, the NAS report raises questions about the appropriateness of the measurements taken of the anthrax on

the letter to the New York Post. Specifically, on page 77, the NAS report says:

ICP-OES analysis indicated a silicon content of the bulk New York Post letter material of 10 percent by mass, while SEM-EDX performed by SNL demonstrated silicon in individual spore coats at a level corresponding to 1 percent by mass per spore. At the January 2011 meeting, the FBI attributed this difference to a limited amount of sample available (only one replicate was performed for ICP-OES analysis) and the heterogeneous character of the New York Post letter. An explanation based on the heterogeneous character implies that the specific samples analyzed were not representative of the letter material. In such a case, additional samples should have been analyzed to determine representativeness. If such data exist, they were not provided to the committee. Lacking this information, one cannot rule out the intentional addition of a silicon-based substance to the New York Post letter, in a failed attempt to enhance dispersion. The committee notes that powders with dispersion characteristics similar to the letter material could be produced without the addition of a dispersant.

Were additional samples tested to determine the extent to which the ones examined were representative of the New York Post letter material? If not, why not? And, if the FBI does not have this data, how would you respond to the NAS that, without it, one cannot rule out the possibility that silicon was intentionally added? If the FBI did do

these additional tests, please provide the resulting data to me and NAS.

As I noted the other day, the questionable silicon data seems to have come from the same lab that claims to have found proof that the 9/11 hijackers tested positive for anthrax, too.

WHY DIDN'T FBI INVESTIGATE AFIP'S ROLE IN STARTING THE IRAQ-ANTHRAX RUMORS?

I've been reading the National Academy of Sciences Anthrax Report and noted something odd in follow-up to the McClatchy report of the other day describing unexplained tin and silicon in one of the anthrax samples. (Here's Jim White's post on the report.) As McClatchy reported, there's some weird data about silicon and tin in some of the samples.

The lab data, contained in more than 9,000 pages of files that emerged a year after the Justice Department closed its inquiry and condemned the late Army microbiologist Bruce Ivins as the perpetrator, shows unusual levels of silicon and tin in anthrax powder from two of the five letters.

[snip]

To arrive at that position, however, the FBI had to discount its own bulk testing results showing that silicon composed an extraordinary 10.8 percent of a sample from a mailing to the New York Post and

as much as 1.8 percent of the anthrax from a letter sent to Democratic Sen. Patrick Leahy of Vermont, far more than the occasional trace contamination. Tin – not usually seen in anthrax powder at all – was measured at 0.65 percent and 0.2 percent, respectively, in those letters.

But it turns out that the weirdest data—showing the 10.8 silicon in the NY Post sample—didn't come from FBI. As NAS explained, that data came from the Armed Forces Institute of Pathology.

Early in the investigation, AFIP performed [scanning electron microscopy-energy-dispersive X-ray] SEM-EDX analysis of a New York Post letter sample and found regions in the sample having high silicon content but no oxygen, suggesting the presence of silicon-rich material that was not related to nanoparticulate silica. While this observation could have led to an explanation for the difference between the bulk and individual spore measurements, follow-up experiments apparently were not performed.

A release from AFIP describing their analysis of the Daschle letter (not the NY Post letter) is one of the most cited sources of the claim that the anthrax was weaponized in a uniquely Iraqi fashion.

"Ft Detrick sought our assistance to determine the specific components of the anthrax found in the Daschle letter," said Florabel G. Mullick, MD, ScD, SES, AFIP Principal Deputy Director and department chair. AFIP experts utilized an energy dispersive X-ray spectrometer (an instrument used to detect the presence of otherwise-unseen chemicals through characteristic wavelengths of X-ray light) to confirm the previously

unidentifiable substance as silica. "This was a key component," Mullick said. "Silica prevents the anthrax from aggregating, making it easier to aerosolize. Significantly, we noted the absence of aluminum with the silica. This combination had previously been found in anthrax produced by Iraq."

This was the analysis that a USAMRIID scientist used to declare that the anthrax was weaponized—which said scientist retracted after later Sandia analysis was done (from the NAS report).

An initial finding by the Armed Forces Institute of Pathology (AFIP) found, upon gross examination, that the spores exhibited a silicon signal and sometimes exhibited an oxygen signal. Subsequent studies conducted by Sandia National Laboratories (as described in Chapter 4 of this report) determined that the silicon was localized to the spore coat within the exosporium—that is, it was incorporated into the cell as a natural part of the cell formation process. The USAMRIID scientist who first reviewed the AFIP results and made statements regarding the presence of silicon and possible weaponization retracted those earlier statements.

So some of this was known before—that AFIP served a key role in early rumors that the anthrax was weaponized in a way that pointed to Iraq. But the NAS report seems to confirm that the Iraq rumors originated at least in part from AFIP.

That's all very interesting for several reasons. First, because FBI claims to have gotten data on AFIP's SEM-EDX tests just last year.

The committee notes that this information was not made available to it

or to the FBI until spring 2010.

That would mean FBI didn't get (or ask for?) the information until after it had closed the investigation (they closed the investigation in February 2010)!

It would also suggest—rather incredibly—that FBI didn't hunt down this information when they were stonewalling Jerry Nadler about it (as McClatchy reminds).

New York Democratic Rep. Jerrold Nadler asked FBI Director Robert Mueller how much silicon was in the Post and Leahy letters at a hearing before the House Judiciary Committee in September 2008. The Justice Department responded seven months later that silicon made up 1.4 percent of the Leahy powder (without disclosing the 1.8 percent reading) and that "a reliable quantitative measurement was not possible" for the Post letter.

More interesting still, NAS can't explain what relationship existed between FBI and AFIP.

The committee also reviewed reports of work carried out in parallel at the AFIP although it is not clear how closely AFIP and the FBI investigative and scientific teams worked together or coordinated their efforts.

I'm also confused about when AFIP did these tests. In its list of official tests, NAS describes the AFIP SEM-EDX tests as having taken place in November 2001.

But somewhere along the way, perhaps along with information about the investigation of a claimed al Qaeda anthrax site explored in 2004, NAS got additional materials from AFIP dating to October 2001.

AFIP Materials related to USAMRIID

And still more interesting is the reference to documents provided to NAS in December 2010—at the time when FBI was trying to stall the release of this document—showing AFIP, along with USAMRIID, purportedly conducted anthrax studies on the remains of the Flight 93 9/11 hijackers.

Finally, in the new materials provided to the committee it is noted that [polymerase chain reaction] PCR analysis was performed on human remains from United flight 93 on 9/11/2001 that were identified as those of the hijackers (B3D1). Analysis was performed at USAMRIID and at AFIP for sequences diagnostic of *B. anthracis*. **One assay at USAMRIID gave positive results, but these results were believed by the FBI to be due to laboratory contamination.** All other results were negative. As the committee learned at the January 2011 meeting, there were no tests done on remains from any of the other September 11, 2001 hijackers. [my emphasis]

So let's see. At some point during the anthrax attacks in 2001, USAMRIID and AFIP decided to do anthrax tests on material from Flight 93. They purportedly found the hijackers tested positive for anthrax! But on second thought, FBI tells us, that positive result came from "lab contamination." And then, presumably just after those tests, USAMRIID and AFIP, perhaps working outside the chain of the official FBI investigation of anthrax, discover evidence implicating Iraq in the anthrax attacks. Results that, once again, further testing suggested was inaccurate.

Another example of lab contamination, I guess. Funny how that happens.

And the FBI wants us to believe that over the

course of a 9 year investigation, they never decided to investigate the circumstances surrounding this partnership that somehow always resulted in convenient propaganda?

USAMRID LOST VIALS IN 2003 AND 2009

Back in 2009, I noted that a report that USAMRID had lost track of its vials of anthrax sort of undermined the entire FBI case against Bruce Ivins.

One key to the FBI case against Ivins, after all, is that he had complete control over the sole flask that contained the strain of anthrax used in the attack. But now we come to find out that, more than six months after his death, they still don't have a sound inventory of what they have where?

Well, as this important long Wired article on the FBI's growing doubts about their case reveals, 2009 was not the first time USAMRID realized they didn't have an adequate inventory of their anthrax. Discovering they had missed some samples is actually how they discovered the Ivins strain they claimed had been the source of the attack anthrax.

In December 2003, while conducting an inventory of one of USAMRIID's biocontainment suites, investigators discovered 22 undocumented Ames anthrax samples. They began to fear that the repository they had spent nearly two years assembling might have gaping holes in it. So for the first time, the FBI decided to scour USAMRIID for any vials they had missed.

The institute staff fumed at the search—ongoing experiments would be disrupted, they shouted. Heine, Ivins' coworker, decided to exact a bit of revenge on his FBI handler. While the agent was collecting samples in his lab—dressed in full protective gear—Heine handed her a vial and told her it was a deadly plague strain. The vial started shaking in the agent's gloved hand. Heine cracked up. "They were entirely dependent on me to identify everything in every box," he says. "I could've held up a critical piece of evidence, said it was something else, and put it aside. There's no way they would've known."

During the search, investigators took Ivins' primary RMR-1029 store—not just a sample of the stuff, all of it. They skimmed a small amount into a vial, labeled it with an identification number, and sent it to Pat Worsham down the hall for analysis.

Now, it appears that investigators decided to focus on Ivins because 1) he had withheld the RMR-1029 in the past, and 2) he had concerning tendencies.

(And, probably, 3) their case against Hatfill was falling apart.)

But what Shachtman doesn't explain is what happened to the other 22 vials they had missed ... at USAMRID. Plus the ones (such as, at Dugway, which would be a more likely laboratory to have produced this anthrax) not declared elsewhere?

In other words, no matter how good the science was analyzing the specimens of anthrax they got, there's abundant evidence that they didn't do a comprehensive inventory in the early days of the investigation (at which point, legally, it was probably too late to apply this kind of analysis), and they can't guarantee that the

labs have an accurate inventory of their anthrax, much less that that anthrax all stayed in the official labs.

As one source for the story says,

“It would’ve been very easy to take the anthrax out, to steal some,” a former USAMRIID officer says. “Anybody could do that.”

So when they did analysis like this:

But of the 1,059 viable samples in the FBI’s Ames anthrax repository, eight regularly produced all of the mutants. One of those eight was Ivins’ RMR-1029 flask. The other seven were its subsamples. This ruled out Hatfill, who did not have access to RMR-1029 during his time at USAMRIID. (Later, the Justice Department agreed to pay Hatfill a \$5.8 million settlement and issued an official letter exonerating him. Condè9 Nast also agreed to an undisclosed settlement. *The New York Times* case was dismissed.) And while dozens of other scientists did have access to the RMR-1029 subsamples, they were being slowly crossed off the list. As each alibi and exculpatory story checked out, the investigators gravitated closer to Ivins.

They weren’t necessarily starting from a valid initial list of suspects.

It’s a problem Wired’s article—and the scientists who did the analysis—admit.

But the National Research Council found that the FBI’s collection can’t be fully trusted: Too many of the samples were intermingled or descended from other labs’ *anthracis* to provide a truly representative cross-section of Ames anthrax. This may also be a reason why

nearly one in 10 samples in the repository tested positive for at least one mutant. Paul Keim, who helped assemble the FBI's Ames collection, still wonders how much to trust an anthrax repository that relied on scientists (and potential murder suspects) submitting their own samples. "We don't know if people did it correctly, and there's no real way to control for that," Keim says.

Even if everyone was aboveboard, it's unclear whether the FBI accounted for every last anthrax sample. Each time Ivins gave his colleague Hank Heine a batch of spores for an experiment, for example, Heine would save a milliliter or two, in case the experiment went wrong. "It's just good scientific practice," Heine says. "I had numerous samples of RMR-1029." It's hard to imagine he was the only scientist with such a collection. Because the subsamples were so small and largely undocumented, it took the FBI nearly three years to stock its repository—plenty of time for a researcher to dispose of an incriminating batch.

Which is why I think that—for all the value in this article—Wired is too credulous.

But despite all these flaws, the circumstantial evidence remains compelling. It could just be a coincidence that the killer spores were ultimately traced back to a single parent flask and that this flask just happened to be overseen by a depressed scientist with occasional violent fantasies. It could just be a coincidence that this same scientist screwed up his anthrax submission to the FBI—even though he helped develop the submission protocols. It could just be a

coincidence that his after-hours work spiked right before the mailings. But put all of those coincidences together and something stronger than happenstance emerges. For the Justice Department, it's enough to prove Ivins was the anthrax mailer.

Put it this way. There's one question—who made the anthrax. And the NAS has said only that it is likely tied to Ivins' flask, but that it is at least one generation removed from that, and that they don't know that the suspicious days would have provided nearly enough time to make the anthrax (not to mention the fact that my impression is that the FBI only showed that Ivins was spending a lot of time at the lab in their proposed production nights, not that his time there had spiked over time).

But that is entirely independent of the question of who stuck it in an envelope and mailed it to some explicitly political targets and some well-chosen media types (plus Judy Miller and her fake stash).

There is an entirely plausible scenario in which Ivins realized, because he was cooperating so closely with the FBI and because he was telling them to do the right thing, that his anthrax was a likely strain (though, as the NAS points out, that's only one of the strains used in the attack—it doesn't account for the journalists' attacks). But Ivins' behavior—particularly for a weird socially maladjusted science type—is as easily explained by a panic because he had no explanation for what happened. Or, alternately, he could have been covering for people who ordered him to give them a sample.

There are a whole lot of possibilities. But one thing's clear. The FBI used faulty investigative work to equate biological evidence developed under evidentiarily inadequate conditions with guilt for the crime itself. And that's really not what we're paying the FBI to do.

FBI'S SHRINKS-4-HIRE: STALKERS ARE LIKELY BIOTERRORISTS

The FBI has linked to a redacted executive summary of the report some shrink contractors did on Bruce Ivins. While it is just the executive summary and even that is partly redacted, the report basically paints Bruce Ivins as a stalker which therefore makes him a possible bioterrorist.

Unfortunately for the shrinks who did the report, they start by endorsing the FBI's now questionable anthrax theory.

Dr. Ivins acknowledged that he was the sole custodian of the "RMR-1029" flask that held the anthrax used in the attacks, and had unrestricted and unobserved access to the "hot suites" where work with anthrax could be conducted anytime day or night. From his own laboratory writings we know that the quality and spore concentration of the anthrax he produced matched that contained in the letters. In addition, he had the equipment necessary to produce the non-weaponized dried spores found in the letters.

The National Academy of Science had this to say about the source of the anthrax:

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.

And this to say about whether or not anyone could comment on how the anthrax was prepared.

The committee finds no scientific basis on which to accurately estimate the amount of time or the specific skill set needed to prepare the spore material contained in the letters. The time might vary from as little as 2 to 3 days to as much as several months. Given uncertainty about the methods used for preparation of the spore material, the committee could reach no significant conclusions regarding the skill set of the perpetrator.

In other words, because the shrinks based their entire report on the claim that Ivins had the “means and opportunity” to commit the attack based on the scientific claims about the anthrax, they pretty much undermine their entire argument from the start (and undermine their claim that they had “no predispositions regarding Ivins’ guilt or innocence”).

But what I’m even more intrigued by is their apparently shoddy explanation for one of the FBI’s claims that has been subsequently debunked.

In its report on the investigation, the FBI claimed that Ivins targeted Senators Leahy and Daschle because they were pro-choice Catholics.

In 2001, members of the Catholic pro-life movement were known to be highly critical of Catholic Congressional members who voted pro-choice in opposition to the beliefs of the Catholic Church. Two of the more prominent members of Congress who fell in this category were Senator Tom

Daschle, then Senator Majority Leader; and Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, both recipients of the 2001 anthrax mailings.

But the claim was primarily based on his wife's beliefs (the wife who, we now know, Ivins was trying to cheat on at every opportunity). More importantly, Ivins figured out a way to foil his wife's beliefs after his death by mandating that if he were not cremated, then \$50,000 of his estate would be donated to Planned Parenthood. In other words, the notion that Ivins targeted the two guys standing in the way of unquestioning passage of the PATRIOT Act because they are pro choice Catholics never really added up.

The shrinks, however, boldly assert they have identified the real themes that motivated Ivins.

As the Analysis section of this report explains in greater detail, Dr. Ivins had multiple motives in launching what he later called [redacted] through the mail. The key themes were revenge, a desperate need for personal validation, career preservation and professional redemption, and loss. These themes guided him not only in making the attacks, but in choosing his targets and shaping his methods.

The attacks above all enabled Dr. Ivins to gain retribution against his various perceived enemies. Some of those enemies, like Senators Daschle and Leahy, had directly incurred his wrath; others, like the New York Post, which to him represented the media and New York City, appeared to have been symbolic stand-ins for broader targets.

They explain (sort of) why Ivins might view Daschle as an enemy.

In June 2001, Senator Daschle, the

Senate majority leader, sent a letter to the Department of Defense that heightened concerns about the vaccine.

But nowhere does the report provide an explanation for why Leahy would be a target. Nor why Ivins would target the other newspapers. And as all the crappy explanations for this crime do, the report apparently ignores the question of why Judy Miller received a fake version of the anthrax; particularly for conservatives, you'd think the NYT, not the Post, would be the symbol of evil decadent New York.

Now maybe the explanation of why Pat Leahy is such an evil man that Bruce Ivins allegedly tried to kill him appears in the redacted section. But at least in this summary, it appears the shrinks' report doesn't answer some of the most basic questions raised about the attack.

Update: Pro choice/life error fixed thanks to W0.

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.

HATFILL AND WEN HO LEE AND PLAME AND AL- AWLAKI AND ASSANGE

Last night I appeared on a panel on the Scooter Libby case. It was Judge Reggie Walton, Peter Zeidenberg, Alexandra Walsh from the Libby team, Lee Levine (who represented Andrea Mitchell and Tim Russert), Walter Pincus and I.

The panel itself was good. My high point came after Walsh had explained why the Defense had argued that bloggers might embarrass the nice people who had written leniency letters for Libby. I said, "well I was flattered we were considered such a threat. But there were at least three people who submitted letters who were implicated in the case. And I was shocked that I was one of only two or three people who demonstrated the many conflicts of those who wrote letters."

But I also had several weird moments when we were talking about reporter's privilege, when I

was acutely aware that I was sitting between Judge Walton—who had forced journalists to reveal who had blamed Steven Hatfill for the anthrax case [see Jim White's post for an update on the anthrax case]—and Walter Pincus—who said he had had eight or nine sources for his stories implicating Wen Ho Lee in security leaks. Walton made the very good point that if he hadn't held AP reporter Toni Locy in contempt, then Hatfill might not have gotten the huge settlement he did for having had DOJ ruin his life. Walton's comment suggested he had had to choose between reporter's privilege or government impunity for attacking one of its citizens.

The collection of people sitting there had all touched on three major cases recently where the government had ruined civil servant's lives and then hid behind reporter's privilege to try to get away with it.

I had that in mind when I read this Jay Rosen piece, in which he suggests the behavior best incarnated by the Judy Miller-Michael Gordon aluminum tubes story created the need for Wikileaks.

The aluminum tube story, Rosen suggests, marks the moment when top journalists came to see their role as simply repeating what the government said.

This was the nadir. This was when the watchdog press fell completely apart: On that Sunday when Bush Administration officials peddling bad information anonymously put the imprimatur of the New York Times on a story that allowed other Bush Administration officials to dissemble about the tubes and manipulate fears of a nuclear nightmare on television, even as they knew they were going to war anyway.

The government had closed circle on the press, laundering its own manipulated intelligence through the by-lines of two experienced reporters, smuggling the

deed past layers of editors, and then marching it like a trained dog onto the Sunday talk shows to perform in a lurid doomsday act.

Rosen argues that the NYT was not only on the wrong side of the facts with that story, but also on the wrong side of secrecy.

But it has never been recognized that secrecy was itself a bad actor in the events that led to the collapse, that *it* did a lot of damage, and that parts of *it* might have to go. Our press has never come to terms with the ways in which it got itself on the wrong side of secrecy as the national security state swelled in size after September 11th. (I develop this point in a fuller way in my 14-min video, [here](#).)

The failures of skepticism back then, Rosen argues, creates the need or opportunity for Julian Assange today.

Radical doubt, which is basic to understanding what drives Julian Assange, was impermissible then. One of the consequences of that is the appeal of radical transparency today

Now, I think Rosen actually misses a key step here: from where the press sees itself as the neutral conduit of what the government is thinking, to where the press thinks its leaks from the government can stand-in for due process in the Anwar al-Awlaki case, and from there to Assange. Recall how Dana Temple-Raston, a very good national security journalist, lectured Glenn Greenwald about how the leaks she had received justified the government's targeting of al-Awlaki.

Glenn Greenwald on his exchange with NPR's **Dina Temple-Raston**:

At roughly 53:00, the Q-and-A session with the audience began, and the first questioner was NPR's national security reporter Dina Temple-Raston, whose Awlaki reporting I had criticized just a couple days earlier for uncritically repeating claims told to her by anonymous Pentagon officials. She directed her rather critical multi-part question to me, claiming, among other things, that she had seen evidence of Awlaki's guilt as a Terrorist (which she had not previously reported or described in any detail), and that led to a rather contentious – and, in my view, quite revealing – exchange about the role of journalists and how Awlaki can and should be punished if he is, in fact, guilty of any actual crime.

It's really an amazing exchange – Temple-Raston snaps at Greenwald, asking him, "Isn't it possible that I've seen something you haven't seen?" When asked about the evidence of al-Awlaki's operational role in al-Qaeda in the Arabian Peninsula, she smugly tells him that "he doesn't do national security for a living."

Temple-Raston is a good reporter, and hardly **ignorant** of the civil-liberties side of the national-security equation. I have no doubt that government officials have shown her evidence of al-Awlaki having an operational role in AQAP. But that's really beside the point when we're discussing whether or not the government has the authority to kill an American citizen without due process based on secret evidence. So it's

interesting to me that she felt obligated to back Greenwald down, since that suggests the kind of analytical conclusion “objective” reporters aren’t supposed to make: Al-Awlaki is guilty therefore targeting him is ok.

The story of al-Awlaki’s targeting started when senior government officials repeatedly and very deliberately leaked to reporters that the Yemeni-American had been targeted, first by JSOC and then by CIA. Yet when his father sued to find out whether he had been targeted appropriately, the government sort of kind of invoked state secrets, allowing the judge in the case to sort of kind of say state secrets would apply but he didn’t need that to dismiss the suit. Meanwhile, Temple-Raston argues her access to secrets—because she “does national security for a living”—gives her adequate knowledge to certify the government’s assassination order against al-Awlaki. Whereas before, journalists were used as a star chamber to condemn Hatfill and Lee and Plame to lose their livelihoods, they’re now serving as the government’s star chamber to condemn an American citizen to death.

And we come full circle with Assange. Now, many (not all) journalists are condemning someone who has committed the “crime” of facilitating the publication of unfiltered news. In this odd new economy, it’s the relationship built on secrets that seems to be defended, not the First Amendment (and certainly not the Fifth).

Rosen seems optimistic Wikileaks will make some difference here. Me? I’m still skeptical that the Bill of Rights will win out over the culture of secrecy.

RANDOM FRIDAY AFTERNOON LINKS

I've had a frazzled few days (dealing with stuff like dodgy cars) and I'm about to bury myself deep in the weeds. So I thought I'd throw up a few links to keep you all occupied so as to ensure there's still something left in the likker cabinet for when I come out of the weeds later today.

Silicon inside the anthrax

First, if you didn't already see JimWhite's link to his diary on yet more evidence that the FBI didn't solve the Amerithrax case, here's another link. Jim discusses recent developments in the enduring questions regarding whether there was silicon in the anthrax or not, and does so in terms that non-scientists can understand.

The telecoms and the government making googly eyes again

Then there's this article about a bill that Jay Rockefeller and Olympia Snowe have introduced to make it easier for the government and owners of critical infrastructure to collaborate.

If passed, the legislation would enhance collaboration between US intelligence agencies and the private sector. First, it would require the White House to designate certain technology systems as critical if their disruption threatened strategic national interests. If intelligence officials received information about a forthcoming attack targeting a specific company or critical part of the US infrastructure, a top-level private sector official with security clearance would be provided with "enough" information to defend or mitigate the attack, a congressional aide said.

The threat to critical infrastructure

has become a flashpoint in the broadening debate about overall cybersecurity issues. More than 85 per cent of infrastructure that is deemed to be critical is owned or operated by the private sector.

I'm mildly sympathetic to the need to make sure the private sector cooperates in cybersecurity efforts. But I would feel a lot better about the issue if the same "critical infrastructure" companies—the telecoms—hadn't collaborated with the Bush Administration to illegally spy on Americans. And heck, as cooperation with the Feds becomes a bigger and bigger cash cow for these companies, shouldn't we just take them over and get better service for a reasonable price?

GAO begs to disagree

Then there are two posts on Obama's threat to veto the intelligence authorization bill if it allows GAO to conduct investigations of the intelligence community. POGO has a good summary pointing out that this really shouldn't be that big of a deal. And Steven Aftergood has a post with a link to and discussion of the letter the head of GAO, Gene Dodaro, sent to Intelligence Committee leadership informing him that claims made in the veto threat are inaccurate.

OMB warned that the President's senior advisors would recommend that the President veto the bill if it included any of several provisions, including the sections concerning GAO. I write to clarify what I view as several misstatements of law and fact within OMB's letter as it relates to GAO.

OMB's letter posits that the passage of the GAO provisions would result in sweeping changes to the current statutory framework and provide GAO with authority it currently lacks to conduct reviews of intelligence activities. GAO

strongly disagrees. GAO has well-established statutory authority to evaluate agency programs and investigate matters related to the receipt, disbursement, and use of public money under 31 U.S.C. §§ 712 and 717 and to access agency records under 31 U.S.C. § 716. These statutes and others provide GAO with the required authority to perform audits and evaluations of IC activities. Within GAO's authority, specific safeguards exist to reflect the particularly sensitive nature of certain intelligence activities and programs.¹ The proposed legislative provisions in essence reaffirm GAO's existing authority in order to address the lack of cooperation GAO has received from certain elements of the IC in carrying out work at the specific request of the intelligence committees, and other committees of jurisdiction as defined by the rules of the Senate and House.

GAO acknowledges and does not seek to displace the special relationship between the congressional intelligence committees and the IC. However, GAO does not agree with the Administration's view, originating in a 1988 opinion of the Department of Justice's Office of Legal Counsel, that the creation of the congressional intelligence oversight structure (codified at 50 U.S.C. § 413) implicitly exempted reviews of intelligence activities from the scope of GAO's existing audit authority.² Neither the language of section 413 nor its legislative history provides support for this position. Moreover, the executive branch has expansively applied the 1988 opinion as precluding GAO reviews of matters that extend well beyond traditional intelligence activities. This has resulted in GAO frequently being unable to obtain the access or cooperation necessary to

provide useful information to the Congress on matters involving the IC.

GAO is basically saying the Obama Administration is taking an expansive read of an old OLC opinion that—GAO claims—ignores the relevant law to try to prevent competent oversight of the intelligence community.

Not much to say about the War now...

Finally, there's this, from Mark Hosenball. Not surprisingly, the UK's Iraq War Inquiry wants to ask Bush Administration leaders why they brought us into an optional war in Iraq. Also not surprisingly, those Bushies have no intention of cooperating.

British government sources tell Declassified that investigators for Britain's official Iraq War inquiry panel—which has been conducting a lengthy probe into the origins and conduct of the war—want to make a fact-finding trip to the United States. One sensitive item on the agenda: trying to get interviews with former Bush administration officials.

But the sources, who asked for anonymity when discussing private information, said there are already indications that Bush administration “principals”—senior policymaking officials including George W. Bush and Dick Cheney—have indicated that they have no intention of talking to the British investigators.

[snip]

Bush and Cheney are not the only ones who are expected to turn down the Brits' invitation. The U.K. source acknowledged that other top-tier Bush administration officials—including Condoleezza Rice and Donald Rumsfeld—are unlikely to speak with the U.K. inquiry, which has no power to compel their cooperation. *The*

Washington Post reported that Stephen Hadley, Bush's former national-security adviser, has been among those "voicing a strong disinclination to participate." If the higher ups won't talk, the panel hopes at least to secure interviews with lower-level U.S. officials who had a hand in planning and carrying out the invasion.

Golly! What ever might Dick and Bush and Condi and Rummy and Hadley have to hide?