ORDER FOR ADJOURNMENT

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order, following remarks that I will make.

The PRESIDING OFFICER. Without objection, it is so ordered.

CALLING FOR FURTHER INVESTIGATION OF THE FBI CRIME LAB

Mr. GRASSLEY. Mr. President, I have spoken before this body several times about the serious problems in the FBI crime lab. The Justice Department's Inspector General has done the country a great service by uncovering the sloppiness and wrongdoing of certain lab examiners.

A dozen such examiners are criticized in the IG's April 15 report for testifying beyond their expertise, and for changing lab reports. The IG found no criminal violations. Yet the wrongful testimony and the altering of reports by these examiners almost all redounded to the benefit of the prosecution, rather than to the defendant.

This is a curious phenomenon, in my mind. Why weren't the changes more randomly distributed? How come they all benefitted the prosecution? Those are rather obvious questions.

And so I thought a lot about what was done by the IG to determine motive or intent on the part of the examiners whose actions he criticized. And I have come to the conclusion that the IG's methodology was insufficient for determining motive or intent. And so, further investigation is warranted.

The reasons for why further investigation is warranted were laid out in a letter I sent to the Attorney General on June 11. For starters, there was the April 16 Wall Street Journal front-page story on lab examiner Michael Malone. In that article, Agent Malone is cited for improper testimony in several cases, by judges and others.

The Wall Street Journal broke new ground in uncovering problems in the FBI lab. First, it showed that wrongdoing by lab examiners has not been relegated to the three units investigated by the IG. Malone was assigned to a fourth unit—hairs and fibers. And second, it underscored the fundamental flaw in the IG's investigative methodology; namely, that it failed to review, for patterns of wrongdoing, all the cases of each examiner who was severely criticized in his report.

To illustrate the point, it is interesting to note that in the IG's report, Agent Malone is criticized for wrongdoing in only one case—that of ALCEE L. HASTINGS. Yet, the Journal reporter researched open-source case data and found numerous instances of apparent wrongdoing by Malone in other cases. If an enterprising reporter could do such a review, why couldn't the IG?

And so I asked the Attorney General to conduct further investigation of those examiners, including Malone, who were severely criticized in the IG report. All cases worked on by each one of these examiners should be reviewed independently to determine if there is a pattern similar to what the Journal found in the case of Malone. Only then would we see the full scope of each agent's actions. If any patterns exist, those cases should be reviewed for administrative action, for undisclosed Brady material, for civil liability, or for misconduct involving obstruction of justice or perjury.

There's some importance and urgency attached to my request. I understand that the IG has referred the findings of his report to the Pubic Integrity Section for possible criminal prosecution. In my view, they have been referred without sufficient follow-up investigation, thereby increasing the likelihood of declinations. I do not intend to stand by and watch declinations being handed out when some very obvious stones have been left unturned.

My request was that the following agents' cases be reviewed by DOJ prior to any decision by Pubic Integrity:

For possible involvement in altering reports: J. Thomas Thurman; J. Christopher Ronay; Wallace Higgins; David Williams; Alan Jordan.

For possible false testimony: David Williams, Roger Martz; Charles Calfee; Terry Rudolph; Michael Malone; John Hicks; Richard Hahn.

For possible undisclosed Brady material: Robert Webb.

On April 16, I met with the IG, Michael Bromwich, and raised with him the subject of the Wall Street Journal article on Malone. I discussed my belief that his methodology was flawed, and that I would request in writing, after studying his report, that all cases involving lab examiners whose work he severely criticized in his report be investigated further. Thus, the IG has been aware for some time that my request would be forthcoming.

In my discussions with the IG on April 16, one notable issue came up. I asked the IG if he had found possible criminal wrongdoing on the part of any of the lab personnel. He said ''no.'' I then asked him if he had detected a patter of wrongdoing by any agent, as the Journal seemed to find with Malone. He said ''no.'' I asked him if he even reviewed all the cases of any of the criticized agents. He said ''no.''

These responses are troubling to me because the IG has gone out of his way to say he found no possible criminal activity by lab personnel. It sounds to me like he didn't even look for it. In fact, he told me in my office way back in February—well after his investigation was finished—that it wasn't in his charter to look for possible criminal activity. Therefore, due diligence requires further investigation such as I have requested. Otherwise, the public's full confidence cannot be restored.

In a specific instance, for example, the IG had critized Agent Williams for ''backwards science''; i.e., tailoring evidence at the crime scene to evidence found elsewhere, such as at a suspect's home. I asked the IG if his finding of backwards science conducted by Williams didn't warrant further investigation for possible criminal intent.

The IG responded that Williams gave a plausible explanation in his defense; namely, that Williams actually believed that was the proper way to conduct an investigation—in other words, ''backwards.'' The IG said the five blue ribbon scientists who investigated the lab believed Williams' explanation.

Mr. President, I could not believe my ears. First of all, the scientists are not prosecutors. Second, whether Williams' explanation was believed or not, the IG should have reviewed the rest of Williams' cases.

Such a review would have shown one of two things: Either he did do all of his investigations backwards, in which case his explanation would hold up but all of his cases should be considered suspect; or, he did some investigations correctly and some backwards, in which case his explanation would be undermined, and intent would be an issue. At the moment, because of the IG's flawed methodology, we don't know which is correct.

The IG did not even review the second World Trade Center case to see if Williams gave similarly false testimony in court, as he had in the first World Trade Center case. I understand Williams' testimony in the second case was the same as in the first case. If so, this might have established a pattern in the IG's investigation.

Meanwhile, at a May 13 hearing before the House Subcommittee on Crime, the IG admitted, under questioning from Congressman ROBERT WEXLER, that alterations to lab reports appeared to be biased in favor of the prosecution's position. This is a serious matter because it could go to the issue of motive.

It is also not clear to me whether the IG was aware of an FBI internal review in 1994 and 1995 of alterations and changes of lab reports after allegations were made by two lab scientists. James Corby, chief of the Materials Analysis Unit, conducted the review. Dr. Corby verified numerous instances of alterations, many of which were material changes. He concluded that they were clearly intentional. In a memo to his section chief, J.J. Kearney, dated January 13, 1995, Dr. Corby stated the following, with respect to the intentional changes:

> A[n] FBI Laboratory report is evidence. Often times the report itself is entered into evidence during the trial proceedings. The fact that SSA [redacted name] did make unauthorized changes in these reports could have resulted in serious consequences during legal proceedings and embarrassment to the Laboratory as well as the entire FBI.

The FBI's Office of the General Counsel [OGC] apparently concurred. A memorandum from General Counsel Howard Shapiro to the Lab's director, M.E. Ahlerich, dated June 12, 1995, reiterated the lab's policy of not altering

reports, and warned that, ''* * * failure to follow this policy could subject the FBI and/or individual employees to civil or criminal liability.''

Mr. President, I previously placed these documents in the RECORD on March 20, 1997.

The documents and arguments I have advanced on this issue present a compelling case for further investigation. We have yet to hear an equally compelling counter-argument from either the Attorney General, or the IG. The issue of my request came up at the Attorney General's weekly press conference of June 12. A wire story later that evening by the Associated Press, quoted Ms. Reno as simply saying the following:

> We have not seen any basis for criminal inquiry.

Mr. President, I don't know whether or not the Attorney General had read my letter before giving that quote. But I assure you, that if the AG had read it, she would see there is plenty of basis for criminal inquiry.

I also asked Ms. Reno for a response by last week. I have yet to hear a peep out of her office. In my view, the Attorney General needs to act quickly and provide a compelling rebuttal to the facts I laid out in my June 11 letter to her. To simply say ''We have not seen any basis for criminal inquiry'' is simply not credible. I, for one, have seen sufficient basis.

In the same June 12 AP story, the IG took issue with my statement that he did not do a criminal investigation. The IG said he did a hybrid, criminal/administrative inquiry. The IG may not recall the conversation we had in my office in February. He was asked to respond to a comment in a letter I had received dated February 21, 1997 from then-Deputy FBI Director Weldon Kennedy. The comment was the following:

> * * * [T]he Department of Justice Office of the Inspector General found no instances of perjury, evidence tampering, evidence fabrication, or failure to report exculpatory evidence.

In my office, the IG was asked if he even looked for that. He responded no, because that wasn't in his charter.

Regardless of what is or isn't in his charter, the fact is the IG did nothing to establish intent. If he wants to cite the questioning of David Williams and the backwards science as a probing of intent, well I'll simply rest my case.

It is not my intention to criticize the IG's work. To the contrary, I consider it a landmark effort and an important service for the American people. I have nothing but praise for Mr. Bromwich, his team of investigators, and the five blue ribbon scientists.

But it cannot stop there. There are too many stones left unturned. There is a culture that needs reforming. There's still a cowboy element running loose in that lab.

It seems to me that the IG investigation is merely a point of departure. It identified individuals whose work should be more thoroughly scrutinized. Failure to conduct follow-up investigation can only further erode the public's dwindling confidence in Federal law enforcement.

Meanwhile, Mr. President, I await the Attorney General's overdue response to my letter.

IGNORING THE FACTS AND TWISTING THE TRUTH

Mr. GRASSLEY. Mr. President, today I would like to talk about two letters from the Department of Defense, DOD.

The first letter is dated June 11, 1997.

The second one is dated June 13, 1997—just 2 days later.

Both letters are addressed to the editor of The Hill newspaper, Mr. Albert Eisele.

Both are signed by the Assistant Secretary of Defense for Public Affairs, Mr. Kenneth H. Bacon.

Both were written in response to an article I wrote about Mr. John Hamre in the June 4 issue of the Hill.

Mr. Hamre is the Chief Financial Officer at the Pentagon.

He has been selected by Secretary Cohen to become the next Deputy Secretary of Defense.

I oppose this nomination for the reason I gave in the Hill article.

Mr. Hamre is aggressively pursuing a progess payment policy that the inspector general has declared illegal.

Mr. Bacon charges that my article ignores the facts and twists the truth.

Ironically, Mr. Bacon's letters prove he is the one who ignores the facts and twists the truth.

He sent the second letter to correct misinformation in the first one.

Mr. President, I ask unanimous consent to have his letters and my article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, June 11, 1997.

ALBERT EISELE,
Editor, The Hill, Washington, DC.

LETTER TO THE EDITOR: Last week Senator Charles Grassley authored an article condemning John Hamre, currently the Comptroller at DoD and the nominee to be Deputy Secretary of Defense (''Sen. Grassley looks for missing $50 billion at DoD,'' June 4, 1997). It is a serious distortion of Mr. Hamre's record. The facts actually prove the opposite of Senator Grassley's contentions. It is imperative that The Hill publish a correction.

First, Senator Grassley stated ''the books at DoD are in such shambles that as much as $50 billion cannot be traced.'' DoD's books were in very bad shape when Mr. Hamre signed on back in 1993, and they are still troubled, but the facts show that the situation is dramatically improved. Back in 1993, DoD's so-called ''problem disbursements'' exceeded $34 billion. Last month the total was under $8 billion, a 74% reduction in three years.

Second, Senator Grassley stated that Mr. Hamre has left DoD's funds vulnerable to theft and abuse. The facts are quite different. Mr. Hamre created a dedicated organization—Operation Mongoose—to undertake fraud detection and prevention. He and the DoD Inspector General have hosted governmentwide conferences on fraud prevention. Mr. Hamre is the first, and to my understanding the only, Comptroller that ever initiated an anti-deficiency investigation on himself, asking the DoD Inspector General to review accounts under his jurisdiction.

Third, Senator Grassley claimed Hamre ''presided over a scheme'' to make illegal process payments. Again, the facts are quite different. Mr. Hamre, working with the DoD Inspector General, has carried out the IG's recommendations on progress payments. Senator Grassley claimed Hamre ''tried to legalize the crime'' by proposing legislative changes concerning progress payments. That legislation was first proposed by the Inspector General.

Fourth, Sen. Grassley claims Hamre understated his problems through ''a clever bureaucratic trick to make the problem look a lot smaller than it really is.'' The facts are rather different. Rather than report three categories of problem disbursements together, he reported all three categories in two separate tables. None of the data has been dropped and all of it is made available every month to the General Accounting Office.

Reading Sen. Grassley's article is like looking at a distortion mirror in an amusement park. The image he paints is wildly distorted and in most cases is totally reversed from the truth. Facts do matter, even in Washington, and Senator Grassley has not presented the facts.

KENNETH H. BACON,
Assistant Secretary of Defense for Public Affairs.

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, June 13, 1997.

ALBERT EISELE,
Editor, The Hill, Washington, DC.

DEAR MR. EISELE, I am sorry we have not been able to establish phone contact. In the interim, I thought it would be useful to send you the attached clarification to the letter Ken Bacon sent to The Hill on Wednesday, June 11.

In reviewing the letter we felt that some points were not clear and we want to ensure that our response is as accurate as possible. We hope you will publish this revised letter.

I can be reached at 703–697–0713. Thank you for your assistance in this matter.

Sincerely,

CLIFFORD H. BERNHATH,
Principal Deputy Assistant Secretary of Defense for Public Affairs.

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, June 13, 1997.

ALBERT EISELE,
Editor, The Hill, Washington, DC.

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