

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 progress 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.

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.

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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 government-wide 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.

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Fourth, Senator 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 Senator 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.*

[From the Hill, June 4, 1997]

SEN. GRASSLEY LOOKS FOR MISSING \$50
BILLION AT DoD

AGE-OLD PRACTICE OF COOKING THE BOOKS AT
THE PENTAGON IS ALIVE AND WELL

(By Sen. Charles E. Grassley)

Between 1989 and 1993, a man named James Edward McGill was paid \$3,025,677.99 by the United States Navy for phony claims. With nothing more than a mailbox, a couple of rubber stamps and blank government forms, McGill set up a business to cheat the taxpayers. He delivered no goods. He did no work. But he had no trouble doing business with the Navy. Pure chance, rather than internal controls at the Defense Department (DoD), put an end to this scam. Unfortunately for the taxpayers, the McGill case does not stand alone.

The sad truth is, the books at the DoD are in such shambles that as much as \$50 billion cannot be traced. The department flunks every single audit by its chief financial officer (CFO). And the inspector general (IG) expects the DoD to continue falling short "well into the next century." When you can't audit the books, you don't know how money is being spent. The result is a multi-million dollar money pipe left vulnerable to theft and abuse.

The problem described here is exacerbated by an illegal operation used by the Pentagon to make progress payments on contracts. Under this policy, payments are deliberately charged to the wrong accounts. Once payments are made, the DoD attempts to "adjust" the accounting ledgers to make it look as though the checks were charged to the right accounts when the money was, in fact, charged to some other account. The entire

process leads to over-, under-and erroneous payments.

Presiding over this scheme since October 1993 has been the comptroller and CFO for the DoD, John J. Hamre. In his official position, Hamre is responsible under the Chief Financial Officer Act of 1990 "to strengthen internal controls and improve financial accounting." However, instead of meeting a pledge to reform the process, Hamre tried to legalize the crime. Earlier this year, he circulated for comment draft legislation to sanction the payment procedures declared illegal by the IG and authorized by Hamre at CFO.

A fundamental issue is at stake. In 1992, the IG stated that the DoD's progress payment procedures "result in the rendering of false accounts and violations" of Title 31, Section 1301 of the U.S. Code. This law embodies a sacred constitutional principle. Only Congress decides how public money may be spent. Section 1301 requires that public money be spent as proscribed in the appropriations acts. Congressional committees spend considerable effort each year segregating public money in different accounts. For example, the DoD appropriations bill might require procurement money be used for production work and not for R&D purposes. Hamre's payment policy shatters the integrity of the appropriations accounts. It spends money according to an arbitrary scheme dreamed up by DoD bureaucrats.

While this payment scheme was in place before Hamre's time, he had a golden opportunity to fix this problem. But every time the issue has popped up on his radar screen he's protected the scheme. Under his leadership, the DoD's progress payment operation has flourished and achieved a new level of sophistication.

When Hamre became CFO he, in fact, did declare war on financial mismanagement. Today, he cites "steep drops in contract overpayments." But his claims are not supported by the facts. Three reports of the General Accounting Office (GAO) issued during the last three years contradict Hamre's success stories. The most recent analysis of the GAO concludes that the DoD's progress payment scheme is the biggest single driver behind overpayments. And each of these reports shows that the DoD has no check in place to detect overpayments. Virtually every overpayment ever examined by the GAO was detected by recipients of checks, not by the government. In most cases, contractors voluntarily refunded the overpayments.

If Hamre was serious about eliminating overpayments, why didn't he shut down the progress payments operation? If he has no capability whatsoever to detect overpayments, where does he get the data that shows a steep drop in such payments? How does he know they are going down if he doesn't know how many there are? Perhaps this means the contractors are no longer making voluntary refunds.

Hamre also has claimed his financial reforms have produced sharp drops in unmatched disbursements. Again, the claims don't stand up to scrutiny. In fact, Hamre has used a clever bureaucratic trick to make the problem look a lot smaller than it really is. In December 1996, he issued a decree that arbitrarily redefined the entire universe of problem disbursements. He simply made the universe smaller by excluding huge numbers of unreconciled disbursements from the totals appearing in official reports. This was not missed by the GAO. In yet another report, the independent analysts challenged Hamre's approach. The GAO concluded that the DoD is understating the size of problem disbursements by at least \$25 billion. So, instead of the \$18 billion claimed by Hamre, at

least \$50 billion of tax dollars are unaccounted for.

Because of these facts, I stand opposed to the nomination of Hamre for deputy secretary of defense. My personal feelings have absolutely nothing to do with my position, as charged by some. Rather, I have reached my conclusion based on the facts. If government does not hold accountable the official who is responsible by law, then who?

While Hamre inherited a major problem caused by years of neglect, he took aggressive action to perpetuate the mess. True, Hamre has made a lot of promises and statements about reforming the process. But good intentions never get the job done at the Pentagon. The bottom line is, these kinds of problems cannot be corrected unless those in charge are held accountable. Awarding promotions to leadership that drops the ball is a green light for con artists like James Edward McGill.

Mr. GRASSLEY. Mr. President, I think it would be very helpful to make a side-by-side comparison of these two letters.

It would help bring my main point about Mr. Hamre into sharper focus.

Mr. Bacon's two letters are identical in every respect but one.

A major discrepancy exists between the last paragraph on the first page of the first letter and the same paragraph in the second letter.

I would like to quote from that portion of the first letter.

This is Mr. Bacon talking:

Senator GRASSLEY claimed Hamre presided over a scheme to make illegal progress payments. Again, the facts are quite different. Mr. Hamre, working with the DoD IG, 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 IG.

Mr. Bacon's statements do not square with the facts. They are inaccurate.

Mr. President, I pride myself on always doing my homework and always sticking to the facts.

My article on Mr. Hamre's illegal progress payment policy is no exception.

I have documents to back up every point I have made.

From day one, I have never strayed from the facts and conclusions presented by the DoD IG.

From day one, the IG and legal counsel have maintained that the department's progress payment policy "results in the rendering of false accounts and violation of the law."

Nothing has changed since the IG issued its report in March 1992.

The illegal progress payment policy remains in effect at this very moment.

The IG has consistently maintained that the "status quo is unacceptable" and that the policy must be brought into compliance with the law.

After 5 years of unproductive meetings, the IG recommended that the department seek "legislative relief."

The IG proposed a temporary exemption from the law, while the progress payment operation was being overhauled.

But when the draft language hit the street late 1996, it was not at all what the IG had in mind.

This language was drafted by the Defense Finance and Accounting Service but was Mr. Hamre's brain child.

It was far reaching, comprehensive and permanent.

The IG and legal counsel came unglued when they saw it and killed it in the end.

Mr. President, those are the facts—according to the IG—not according to the Senator from Iowa.

Mr. Bacon's first letter is out of sync with the facts.

When the IG, Ms. Eleanor Hill, saw Mr. Bacon's first letter, I am told, she blew her top.

She picked up the phone and called Mr. Bacon. He was on travel, but his principal deputy, Mr. Bernath, was in his office over at the Pentagon.

She confronted him with the truth.

He agreed right then and there to retract the false and misleading statements in Mr. Bacon's first letter.

Mr. President, that's how we ended up with Mr. Bacon's second letter.

I would now like to quote from the revised portion of his second letter:

Mr. Hamre, working with the DOD IG, is working to carry out the IG's recommendations on progress payments. Senator Grassley claimed Hamre tried to legalize the crime by proposing legislative changes concerning progress payments. Prior to proposing legislation, Mr. Hamre had discussed with the DOD IG the possibility of seeking legislative relief if it was too difficult for the department to comply with the current statute.

These revisions give Mr. Bacon's letter an entirely new meaning.

"Is working to carry out" is a far cry from "has carried out."

"Discussed with the DOD IG" is a far cry from "first proposed by the DOD IG."

The revisions—demanded by the IG—strengthen my main point, Mr. President. They showcase Mr. Hamre's shortcomings.

I need to thank Mr. Bacon.

His letters make my case:

Mr. Hamre has failed to carry out the IG's recommendations and bring his policy into compliance with the law.

Mr. Hamre's policy continues to operate outside the law at this very moment, and that's exactly why he felt like he needed legislation.

He needed to cover his back side.

He needed legal cover for his illegal policy.

Now, I would like to commend Mr. Bacon for being more truthful and accurate.

But there's one little problem.

His first letter still stands as a matter of record.

Where did the misinformation come from in the first place?

Did Mr. Bacon dream it up by himself? Or did someone set him up? If so, who? Did Mr. Hamre have any knowledge of this letter?

Mr. President, I have written Mr. Bacon. He needs to answer my questions.

Mr. President, I ask unanimous consent to have this letter printed in the RECORD.

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

U.S. SENATE,

Washington, DC, June 18, 1997.

Hon. KENNETH H. BACON,

Assistant Secretary of Defense for Public Affairs, Washington, DC.

DEAR MR. BACON: I am writing in response to your letters of June 11, 1997 and June 13, 1997, to Mr. Albert Eisele, Editor of The Hill.

Your letters attempt to address some of the points I raised in an editorial piece, which appeared in the June 4, 1997 issue of The Hill.

Mr. Bacon, you suggest that I have distorted the truth and ignored the facts. On the contrary, I pride myself on doing my homework and always sticking to the facts, and my article on Mr. Hamre's illegal progress payments policy is no exception. Ironically, it is clear from the revisions you were forced to make in your second letter—to correct errors you made in your first letter—that it is you who has ignored the facts and distorted the truth.

From day one, I have never strayed from the facts and the conclusions presented by the Department of Defense (DOD) Inspector General (IG). From day one, the IG and legal counsel have maintained that the department's progress payment policy "results in the rendering of false accounts and violation of the law." Nothing has changed since the IG issued its report in March 1992. The illegal progress payment policy remains in effect at this moment. From day one, the IG has maintained that "the status quo is unacceptable" and the policy must be brought into compliance with the law. After five years of endless meetings and "seeing no light at the end of the tunnel," the IG recommended that the department consider seeking "legislative relief." The idea was to obtain a temporary exemption from the law—while the progress payment operation was overhauled. The language itself was drafted at Mr. Hamre's direction—not by the IG but by the Defense Finance and Accounting Service. When that language hit the street, it was not at all what the IG had envisioned. It was far reaching and comprehensive and permanent. The IG and legal counsel expressed strong objections to it and killed it in the end.

Those are the facts, Mr. Bacon. If you have any questions about the facts, I suggest you contact the IG. You need to talk with Mr. Bob Lieberman. He is the Assistant IG for Auditing. His number is 703-604-8901. He will set you straight. He knows the progress payments issue from top to bottom and beginning to end. He's the expert.

When you speak to Mr. Lieberman, you will quickly discover that you are the one who departed from the facts. You will quickly discover that your first letter contains inaccurate, misleading, and even false information. This is the most offensive portion of your letter:

"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."

After you signed and mailed this letter to the Hill, I was given a copy. I immediately realized that your primary assertion was false. The suggestion that Mr. Hamre had brought his progress payments policy into compliance with the law was totally and completely wrong. It did not square with the

facts—as I know them. So I sent your letter to the IG for comment to make sure I wasn't off base. I have been told that the IG, Ms. Eleanor Hill, was enraged when she saw that statement. She called your office to complain. You were on travel, but she spoke with your deputy. He agreed to retract your false and misleading statements. As a result of the IG's complaint, you sent a second, revised letter to The Hill. This one is dated June 13, 1997. The false statements have been removed from this letter. They have been replaced by statements that constitute a fairly accurate reflection of the facts. The revised statement is as follows:

"Mr. Hamre, working with the DOD Inspector General, is working to carry out the IG's recommendations on progress payments. Senator Grassley claimed Hamre 'tried to legalize the crime' by proposing legislative changes concerning progress payments. Prior to proposing legislation, Mr. Hamre had discussed with the DOD Inspector General the possibility of seeking legislative relief if it was too difficult for the Department to comply with the current statute."

Mr. Bacon, your second letter takes a big step in the right direction. "Is working to carry out" is a far cry from "has carried out," and "discussed with the DOD IG" is a far cry from "first proposed by the DOD IG." Those corrections conform with the facts as I understand them.

Mr. Bacon, the corrections you made in your second letter strengthen my main point and showcase Mr. Hamre's shortcomings. In fact, they make my case: Mr. Hamre has failed to carry out the IG's recommendations and bring his progress payment policy into compliance with the law. His progress payment policy continues to operate outside of the law at this very moment, and he knows it. That's exactly why he proposed legislation. He wanted legal cover for an illegal operation. He wanted to sanction a policy that the IG had declared illegal and that he had personally authorized. As I said, he wanted to legalize the crime. And finally, this legislation was not dreamed up by the IG. It was the brain child of Mr. Hamre and the Defense Finance and Accounting Service.

I commend you for trying to be more accurate and truthful, but your original letter still stands as a matter of record. You signed and mailed it. How did that happen? Was the misinformation of your own making, or did someone else set you up? I would like some answers.

Mr. Bacon, I would like to understand the true origins of the false information contained in your first letter. Is this something you dreamed up on your own? If not, where did you get the information? What organization within the department provided this information? Please provide the name and title of the person who supplied this information. And did you discuss this particular piece of information with Mr. Hamre? Did Mr. Hamre have any knowledge of this information? Was Mr. Hamre aware of your letter before it was mailed to The Hill?

I request a response to my questions by June 24, 1997.

Your cooperation in this matter would be appreciated.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

Mr. GRASSLEY. Mr. President, I hope my colleagues will take the time to make a side-by-side comparison of Mr. Bacon's first and second letter.

A side-by-side comparison of the two letters will help them to understand who is sticking to the facts and telling the truth, and who isn't.

I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 tomorrow morning.

Thereupon, the Senate, at 10:11 p.m., adjourned until Thursday, June 26, 1997, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 25, 1997:

THE JUDICIARY

SONIA SOTOMAYOR, OF NEW YORK, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT, VICE J. DANIEL MAHONEY, DECEASED.

DEPARTMENT OF DEFENSE

RUDY DELEON, OF CALIFORNIA, TO BE UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS, VICE EDWIN DORN, RESIGNED.