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For Immediate Release

Wednesday, March 19, 2003

Grassley Questions FBI, Customs Seizure of Reporter's Documents

WASHINGTON — Sen. Chuck Grassley today demanded information from the FBI and Customs about the seizure of unclassified documents being sent to an Associated Press reporter.

In a letter sent to Federal Bureau of Investigation Director Robert Mueller and Bureau of Customs and Border Protection Commissioner Robert Bonner, Grassley expressed concern about the Customs Service interception of a package selected for "routine" inspection.

"It appears the government may have overstepped its bounds by improperly seizing private property to censor and stymie the media," Grassley said. "The seizure of the AP's package without a warrant or notification is a very serious matter. "

Here is Grassley's letter to Director Mueller and Commissioner Bonner.

March 19, 2003

The Honorable Robert S. Mueller
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

The Honorable Robert C. Bonner
Commissioner
Bureau of Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Director Mueller and Commissioner Bonner:

The purpose of this letter is to express concern and inquire about the government's seizure and continued possession of unclassified documents that are the property of a news organization, namely, the Associated Press (AP).

According to Customs, this package was selected for "routine" inspection, as reported in a March 13, 2003 AP article (see attached).

Reportedly, Customs alerted the FBI because the package contained an FBI lab report characterized by one official in the article as "sensitive."

While Customs has discretion in selecting packages for inspection, for any agency to then seize and hold property without a warrant or notification is a different and very serious matter – a potential Constitutional infringement.

It is my understanding that the lab report is not identified as "law enforcement sensitive" or "classified," and a copy of the report in my possession certainly is not. A review of the report by my staff found nothing that could compromise public safety or national security.

Moreover, it is my understanding that the report has been and is in the public domain, namely court records, for some time. As court records show, the lab report was entered into evidence for a lawsuit by Oklahoma City bombing victims and in the trial of Ramzi Yousef.

As is often the case, the attempt to stop information and censor the media failed. This has only exacerbated the embarrassment for the government that started with the AP's publication in February of stories showing that government agencies had received information about threats to federal buildings in Oklahoma City prior to the 1995 bombing of the Murrah building.

A preliminary review of the available facts suggests that the government overstepped its bounds by improperly seizing private property to censor and stymie the media. Indeed, it now appears we are dealing with a violation of the First and Fourth Amendment.

I take such incidents seriously. A free and uncensored media play an important role in the checks and balances of our constitutional republic, providing valuable oversight of all three branches of government. Any government interference with this activity warrants close scrutiny.

I am also troubled by what seems to be conflicting accounts from the government on the one hand, and by Federal Express, the delivery company, on the other hand.

A FedEx official in the story said the company was unable to track the package after it arrived in Indianapolis and it had no records showing the package was seized by Customs. The story reported that FedEx sent a letter of apology to the AP, compensated AP \$100 and suggested that the package had “fallen off a delivery van.” The official also stated that the company’s policy is to notify a customer if Customs seizes a package, and to provide a number for the customer to contact Customs.

Yet the Customs Service acknowledged in the AP article that it did seize the package and provide it to the FBI. So it remains unclear if FedEx was aware of the government’s seizure and just failed to follow its own policy, or if Customs somehow intercepted the package and gave it to the FBI without FedEx’s knowledge.

I also have questions about exactly how and why the Customs Service actually selected the package for inspection, especially because an identical package – except for not having the receiving reporter’s name on it – with the same FBI lab report was sent to the AP’s United Nations office and was not intercepted or inspected.

Most importantly, your agencies need to account for why the package was seized and kept, why no warrant was sought or obtained, and why no notification was made to the AP.

I ask that each of you make the necessary and relevant officials available to brief my staff on this matter by Friday, April 11, 2003. The officials should be able to address fully the circumstances surrounding this incident and answer the concerns and questions raised in this letter. I also ask that they provide any and all records concerning this incident to my staff at the briefing.

If there are any questions or concerns about this request, please have the appropriate officials contact John Drake of my staff at (202) 224-4515.

Sincerely,

Charles E. Grassley
Member

cc:
Frederick W. Smith
Chairman, President and Chief Executive Officer

Gina F. Adams
Corporate Vice President, Government Affairs
FedEx