## Time bomb in the crime lab

FBI evidence-test squabbles may give McVeigh's lawyers a new break

By Stephen J. Heinles

ince his arrest hours after a manmoth bomb ripped through an Oklahoma City federal building and hilled 168 people, Timothy McVeigh has seemed to face an uphil fight in court. The prosecution case against him is bolstered by alleged accumplices, McVeigh's rubid hatred of government and his knack for being in the wrong place at the wrong time.

But with his trial set to begin in just two weeks, McVeigh is coming up with a defense inspired by an unlikely source; the FBI. His attorneys will focus on the claims of FBI agents, technicians, and other law enforcement officials who have raised substantial doubts about the bureauts own evidence gathering, its control of the crime seene, and its analysis of debris. Those troublesome statements were given as part of a Justice Department investigation of the FBI's renowned crime laboratory.

Some examples: Ed Kelso, an evidence response team chief, has stated that evidence from the Oklahoma City bomb scene either had not been examined or was not analyzed properly. Fit metallurgist William Tobin has told investigators that the lab's explosives unit, which is responsible for finding bomb evidence, generally engages in "forensic prostitution," "hidicrous science," and "unethical behavior." Another lab employee, R. Patrick Welch, stated that there are "potentially lingo problems" with the investigative report written by David Williams, the lab's erincipal examiner on Oklahoma City and

the special agent who was in charge of the crime scene. In particular, federal sources say, Williams's estimate of the bomb's strength was not supported by scientific analysis. In fact, the government has since decided not to produce the report or Williams as a witness, and has brought in a bomb expert from Britafain.

Prosecutors state firmly that concerns

about the F8I lab will not affect the outcome of their case against McVeigh, who will stand trial in Denver, or of codefendant Terry Nichols, who will be tried separately. They contend there was no contamisation of evidence by the tab. And the lab's work is only part of the chain of evidence that the government says ites both men to the April 1995 blast.

Watching the watchers. Still, doubts about the FBI lab, a world-renowned institution that conducts 600,000 tests each year for federal, state, and local law enforcement agen-

cies, have given McVeigh's attorneys an opening. And the problems encountered in the Oikhhoma City case raise a larger question about the FBI itself and how good it is at gathering and analyzing evidence, a crucial tool in an era of sophisticated criminals and high-tech crimes. Recently, the Justice Department announced that 50 cases are under scrutiny because of the lab's methods. They include the impeactment of U.S. District Judge Alees Hastings, the 1989 explosion of an Avianca Ahlines jet in Colombia, and the convic-

ONLAHOMA CITY, 1995. An Fai technician (top) surely evidence near the blast site. Befense altoreeys are expected to argue that the Fai was sloppy in galacting evidence and that its lab reports have been written to bring in convictions. THE WORLD TRADE CENTER, 1993. An Fai lab whistle blower said the lab made errors in the chemical actorysts of the bomb brast (above), but lederal prosecutors point out that a jury still convicted all defendants.



ATLANTA, 1989. Left, a policerman remuves a bould from the downtown reduces a bould from the downtown reduces courthease. The FB's tests on the bounds have been called into question. ALCEE HASTINGS, 1983. Once a federal judge and new a congressman, liastings (right) was acquitted of tribery conspiracy charges but impeached in 1991. Part of the impeachment was based on furantalysis of a strap on a bag. BGGGTA, 1989. Below, wreckage of an Avianca 727 crash. Important information about the force of the bomb biast was developed by the FBI tab's technicians.



tion of Walter Leroy Moody, who is now serving a life term for killing a U.S. Circuit Court judge and a civil rights lawyer by sending then bombs.

The Instice Department inspector gen eral is just completing a two year internal examination of claims that lab employees-especially those working in the explosives unit-were pressured to stant their reports to favor prosecution cases and that others misrepresented their work. FBI sources insist the lab's problents have been overstated and that a dealt of the te's report found on significant falseboods, But the allegations have put the F81 on the defensive and have already led to changes. The bureau has reassigned Williams and two other senior agents working in the fab. And recently, FBI 14rector Louis Fresh said he would hire a new lab director, restructure the explosives and analysis sections, and issue new guidance on how to interpret results.

The whistle blower. McVeigh's attorneys began to focus on their defense strategy after learning of the allegations of Frederic Whitchwest, an intense, persistent For chemist assigned to the lab's explosives unit. Since 1989, Whitchwest has peppered his superiors with more than 200 lengthy, single-spaced memors alleging scientific impropriety within the lab. Whitchurst's skepticism got him into trouble in 1989, when he greatforned the

lab's test results in a Sun Francisco bombing trial. The defendant was acquitted and White larger got an 1-18 reprinted and that prosecutor faoited another lab employee.

All in all, the Whitehurst mentus contain a host of sorious allegations that are central to the current inspector general's prode. Whitehurst said

there were times when the results of tests lie performed on crime scene evidence were altered by supervisors without his knowledge. Other employees have supported the charge in interviews with the Io. He also argued that the lab lacked an adequate database on which to track its work, and that close quarters and sloppy evidence handling invited sample containation. Finally, be complained that the way the lab does its tests meant scientists might think they had found sound chemical proof but would miss ofter



## U.S. NEWS

evidence that could change the nature of a case.

Often it was the way "Doubting Frederic" made his point, not necessarily the point itself, that rankled FBI bosses. In the World Trade Center bombing case, for instance, Whitehurst felt the lab's method of testing for the presence of urea nitrate—believed to be a key element in the bomb—was flawed. To prove his case, he urinated in a beaker and slipped the beaker in among the evidence. Sure enough, lab tests showed the presence of urea nitrate. Whitehurst came clean, proving his point—that urea nitrate can be found in urine and lots of other places. But he angered some colleagues.

"Deficiencies." The FBI assigned a string of investigators to check Whitehurst's allegations. One review found only "minor deficiencies." A 1994 study recommended few changes, but allowed that the lab "would not meet minimal accreditation standards until changes were made in several areas." The lab still isn't accredited, though FBI sources insist that will occur by the time the bureau moves its 623 employees from cramped quarters at its Washington, D.C., headquarters to a new facility in several years.

It is unclear how much damage the lab's problems may have done. Whitehurst's lawyer, Stephen Kohn, argues that the lab's past work brings up to 1,000 cases into doubt. Defense lawyers tend to agree. "Given the number of cases the lab has been involved in, this could spawn a lot of litigation," says Neal Sonnett, a Miami defense attorney and a past president of the National Association of Criminal Defense Lawyers. The FBI, however, says that no cases have been compromised, and, of the 50 reviewed so far, prosecutors have found just 20 instances in which prosecutors had to give defendants new information about lab work. None of those disclosures, bureau sources say, have changed a case's outcome.

The Oklahoma bombing trial may prove who is right. The defense is expected to attack the FBI's recovery of evidence and tests of bomb residue on a single piece of wood at the crime scene and on McVeigh's clothing. They will also call Whitehurst and try to plant doubt in jurors' minds about the lab's practices in general.

As for Whitehurst, he has sued the FBI and, true to form, is unequivocal in his belief that great wrongs have been committed. "There are a lot of good, honest people in the lab who are just as frustrated as I am by what's gone on there," he says. "But they're afraid to speak up, because they've seen what can happen, what happened to me."