

Accreditation Visit, Review of Case Work in the Offing

# FBI Crime Lab Faces Key Tests

BY TIMOTHY J. BURGER

This week, some 28 outside forensics experts are set to begin a descent on D.C.'s J. Edgar Hoover Building for an unprecedented top-to-bottom review of the FBI's crime laboratory that could give the Department of Justice an opportunity to polish the lab's tarnished reputation. At worst, DOJ officials expect the two-week review to identify specific areas for improvement at the lab.

But winning accreditation from the American Society of Crime Laboratory Directors Laboratory Accreditation Board, which has given its blessing to more than 150 labs across the country, isn't the DOJ's only battle on the crime lab front.

The department is still cleaning up the mess left by a scandal that broke in early 1997 after an FBI whistleblower accused some lab workers of incompetence and malfeasance. These complaints spurred a major audit that confirmed serious problems in what once was considered the nation's premier forensic laboratory. The allegations were feared to endanger hundreds—perhaps thousands—of criminal convictions that involved the lab's work.

DOJ still hasn't determined exactly how



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many convictions may have been tainted by the shoddy work that was criticized in an April 1997 report by Inspector General Michael Bromwich—although it has uncovered at least 61 possible instances. Nor has the FBI completed its process of hiring the outside experts who are to re-evaluate the validity of the lab's work on evidence that contributed to guilty verdicts.

Critics in the criminal defense bar charge that Justice is moving far too slowly and devoting grossly inadequate resources to the task, while innocent people may remain in prison for crimes they didn't commit. Some of the affected cases even involve inmates now sitting on death row, though DOJ officials say their top priority is to closely monitor the capital cases to ensure that no one is executed unjustly.



Lucy Thamsan leads the internal DOJ task force on the laboratory.

## TOO SLOW

Gerald Lefcourt, president of the National Association of Criminal Defense Lawyers, says the department's response to the lab's problems has been inadequate. "To delay a year or two is just unconscionable," he says.

Justice should have vetted the questionable convictions "within 30 to 90 days . . . I think the Department of Justice should be exposed for the dragging of the feet on this issue," Lefcourt adds.

Justice officials insist that they have set up a fair system to deal with the problem: and are moving with sufficient dispatch. Kevin DiGregory, a deputy assistant attorney general in the Criminal Division who is supervising a task force on the lab, says the department is handling the review appropriately.

The task force is led by Criminal Division senior attorney Lucy Thomson. DiGregory says the task force also includes one other Justice lawyer, whom he declines to name; three paralegals; and a student. Justice officials note that only the lawyers make determinations on the materiality of any lab mistakes to a case's disposition.

In the audit released in April 1997, Bromwich charged that lab workers had at various points given inaccurate testimony, mishandled evidence, done work for which they were not properly certified and testified on topics beyond their expertise. The IG began his investigation after then FBI agent Frederic Whitehurst, who worked for years in the lab, made a raft of sensational allegations of malfeasance and incompetence.

Bromwich's report ultimately supported some of Whitehurst's allegations and disproved others. It identified 13 lab examiners as involved in the malfeasance. Justice officials have determined that those peo-

ple worked on as many as 6,000 cases since 1985, half of them state and local cases and half federal.

Justice had set up the task force in January 1996 to deal with the FBI lab problems. But it began its inquiry on most of the 6,000 cases about a year ago, using results from Bromwich's report.

On the task force, Thomson gets help from U.S. attorneys' and state and local prosecutors' offices, which are reviewing cases that came out of their jurisdictions, according to DiGregory.

Thomson can also requisition the services of other Justice lawyers of various stripes—from the Criminal or Appellate Divisions, for example—as needed for specific tasks.

The task force has cost about \$800,000 since its inception, officials say.

Along with a June 6, 1997, memo explaining the task force's plans for dealing with the FBI lab problems, DOJ's acting Criminal Division chief, John Keeney, sent U.S. attorneys across the country a list of the cases that the 13 questioned lab examiners had worked on since 1985.

Keeney asked the U.S. attorneys to check that list and determine whether any cases in their jurisdictions had resulted in guilty pleas or verdicts. FBI field offices were to help state and local prosecutors determine which of their cases had been handled by the examiners.

Keeney asked the law enforcement officials to examine the suspect cases that ended in convictions to determine which guilty pleas or verdicts involved evidence handled by the FBI lab. By late April, 61 such cases had been identified.

For those cases, Keeney told prosecutors, the FBI would contract with "qualified forensic scientists" who would conduct an "independent, complete review of the laboratory's findings and any related testimony" to check its scientific integrity.

DiGregory acknowledges that the FBI has yet to retain the outside experts, but a Justice official says prosecutors are notifying the defense about the DOJ review in most, if not all, of the 61 cases—even before the scientific re-evaluations are conducted.

DiGregory said that, by late April, the DOJ task force had reviewed about 46 percent, or roughly 2,765, of the 6,000 suspect cases.

By that time, DOJ's task force had heard back from U.S. attorneys' offices on 662 of the 3,000 federal cases under review. Of those cases, 308 had ended in findings of guilt. DiGregory says that 155 of the 308 have been examined and FBI lab work was deemed material in 17 of them, while it was found nonmaterial in 138 cases.

As of late April, the evaluation was continuing for the other 153 cases, he said.



Donald Kerr, the new head of the FBI lab, says that it recently beefed up such areas as the training of its staff.

Of the 3,000 state and local cases that the 13 lab examiners handled, DOJ had reviewed 2,103 through late April, learning that 1,010 of them resulted in findings of guilt. The department has scrutinized about 444 of those 1,010 cases, finding that FBI lab work was material to just 44 convictions. Evaluations of the lab work's materiality is still in progress on 566 cases.

For cases in which a guilty verdict is found to have been based on faulty evidence, the last step in the DOJ review process is to notify the prosecutor who handled the case. The prosecutor then must alert the defendant or his defense lawyer that exculpatory evidence has turned up.

Members of the criminal defense bar have taken exception to that arrangement. In a March letter to Attorney General Janet Reno, Lefcourt suggested that prosecutors may have a "personal stake in preserving the conviction," and thus should perhaps have their discretion reviewed—by having the DOJ task force handle notifications, for example. Lefcourt sought a meeting with Reno on the matter but says he hasn't received a formal response.

Many in the criminal defense community also think the task force is understaffed and moving too slowly. Told that DOJ has yet to deal with nearly 54 percent of the 6,000 cases in question, Lefcourt says the task force "sounds like a half-hearted effort."

Lefcourt says he was surprised to learn that DOJ had assigned only two lawyers to this task force on a full-time basis.

Lefcourt says, "If you think of the number of attorneys they put on trying to kill Ted Kaczynski, somebody obviously emotionally unstable, it is shocking. When they want to kill somebody, they know how to apply resources. When they want to save

somebody, perhaps wrongly convicted, they proceed like snails."

DiGregory replies that the task force has access to all the lawyers it needs: "The task force draws on the resources of every U.S. attorney, state and local prosecutors around the country, and other parts of the Criminal Division at Justice."

The defense bar has also gone to court

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