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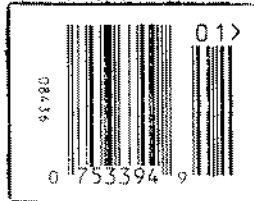
MARY A. FISCHER

## The FBI's Dirty Tricks

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IS IRRESISTIBLE  
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# THE FBI'S JUNK SCIENCE

IF YOU'RE ACCUSED OF A CRIME THE LAST THING YOU WANT TO SEE IS AN FBI FORENSIC EXPERT TESTIFYING FOR THE PROSECUTION. WITH THEIR AURA OF INDEPENDENCE AND INTEGRITY, THESE AGENTS EXERT A POWERFUL SWAY OVER JURIES. BUT AS THE CASES OF RALPH PLOTNER AND OTHERS SHOW, THESE WITNESSES ARE TOO OFTEN THE PURVEYORS OF CONTAMINATED EVIDENCE AND UTTER FALSEHOOD. AS DNA TESTING INCREASINGLY SPRINGS FROM PRISON THOSE FALSELY CONVICTED OF CRIMES, INVESTIGATIVE REPORTER MARY A. FISCHER EXAMINES THE PHONY FORENSICS THAT SOMETIMES PUTS INNOCENT PEOPLE THERE IN THE FIRST PLACE

**D**uring a rape investigation seventeen years ago in Oklahoma City, a jovial millionaire oilman named Ralph Plotner took off his \$15,000 gold-and-diamond Rolex watch and handed it to a policewoman. Plotner willingly cooperated with police because, he told his family, he had done nothing wrong. He had already given some of his head and pubic hairs and his fingerprints. Police carefully wrapped the watch and some paint chips taken from the alleged victim's front door and sent them by registered mail to the FBI crime lab in Washington, D.C. Back then the lab had the reputation of doing the finest forensic detective work in the world. Each year the lab's 160 examiners analyzed roughly 600,000 pieces of physical evidence for local, state and federal law-enforcement agencies, and their courtroom testimony strongly influenced jurors in hundreds of criminal trials annually.

Over the years, though, something on the inside had gone wrong, and even before the FBI chemist began tests to determine whether microscopic particles on Plotner's watchband were similar to paint chips from the complainant's door, the oilman's fate had been sealed.

What happened to Ralph Plotner is a story about one family's tragedy and the fundamental errors within the FBI that led to that tragedy. Six years ago, the public got a glimpse into a number of the bureau's problems when the FBI crime lab came under heavy fire after a whistle-blower went public with his complaints. A flurry of news articles ensued, followed by an eighteen-month internal government investigation that produced conclusions scathing to the FBI. In various lab cases, investigators found instances of contaminated evidence, sloppy work and inaccurate, scientifically flawed trial testimony about forensic evidence.

One examiner and a unit chief were removed from the lab, a new director was brought in, the whistle-blower left

town, and the lab was accredited for the first time by an outside group of lab professionals. The FBI's leadership acknowledged the problems and assured Congress they had been fixed. But then they went further. Even though the lab had analyzed evidence from thousands of cases over a twenty-year period, the FBI asserted that no defendant had received an unfair trial. The implication was clear: No one who was actually innocent had been convicted. Then the scandal seemed to disappear.

But a lengthy investigation by this magazine suggests the FBI did not look deep enough before concluding that no one had been wrongly convicted, nor did the bureau fix the most serious problem of false testimony that can have dire consequences on the lives of the accused. From interviews with FBI lab supervisors and former agents, senators, criminal lawyers, Justice Department officials, independent forensic scientists and paint experts, a DNA specialist and the original whistle-blower, I became aware of and reviewed a dozen past and recent lab cases with significant

testimony errors. In at least four of them—the cases of Ralph Plotner in Oklahoma, Michael Behn in New Jersey and Brett Bogle and James Duckett, both in Florida—it appears the defendants might well have been innocent. That four such

**■ A PRICE TOO HIGH** Ralph Plotner did jail time but believes his real penalty was the loss of his son by suicide.

questionable verdicts could be uncovered raises the question of how many more problematic lab cases there may be.

What led to these defendants' convictions was apparently inaccurate testimony by lab examiners about forensic evidence such as paint, hair and bullet lead. Far from being rectified, false testimony by FBI lab agents is still being presented in criminal trials around the country, influencing jurors and compromising trials to the point where it's difficult to determine the guilt or innocence of some defendants.



the attacker's face but not his name. A nurse recalled that Benham told her she had "come in from dinner and somebody jumped her, but she couldn't remember who did it, and she didn't see his face."

Ultimately, she accused Ralph Plotner of attempting rape and forcibly performing oral sex on her. When he proposed mutual oral sex, Benham testified, she bolted from the bed, ran down the stairs and attempted to escape through the front door. But Plotner pulled her back inside, she claimed, and in the struggle, her arm was broken.

Instead of going to police initially, Benham retained a civil attorney, Frank Miskovsky III. On a Saturday in late November 1983, according to Plotner, in a telephone conversation, the lawyer presented him with a proposal: Benham would not go to the police and press rape charges if Plotner paid her \$800,000 by the following Monday.

"I wasn't going to pay one cent, because I didn't do anything wrong," Plotner told me. "Two mules could have figured this one out. It was always about money." (Miskovsky was disbarred in 1992 for a pattern of ethical violations.)

Two days after Miskovsky's offer, Benham went to the police. Still believing he had nothing to worry about, Plotner voluntarily gave them hair samples, fingerprints, his bracelet and, later, his Rolex. Using a flashlight and a magnifying glass, a detective carefully combed the beige living-room carpet where, Benham claimed, Plotner had tried to rape her. But no blood or semen was found. Police also lifted fingerprints from the glass that Benham said Plotner drank from, but the prints didn't match his. Curiously, the police did not check the fingerprints against those of the men closest to Benham—the gynecologist and two other new paramours of hers.

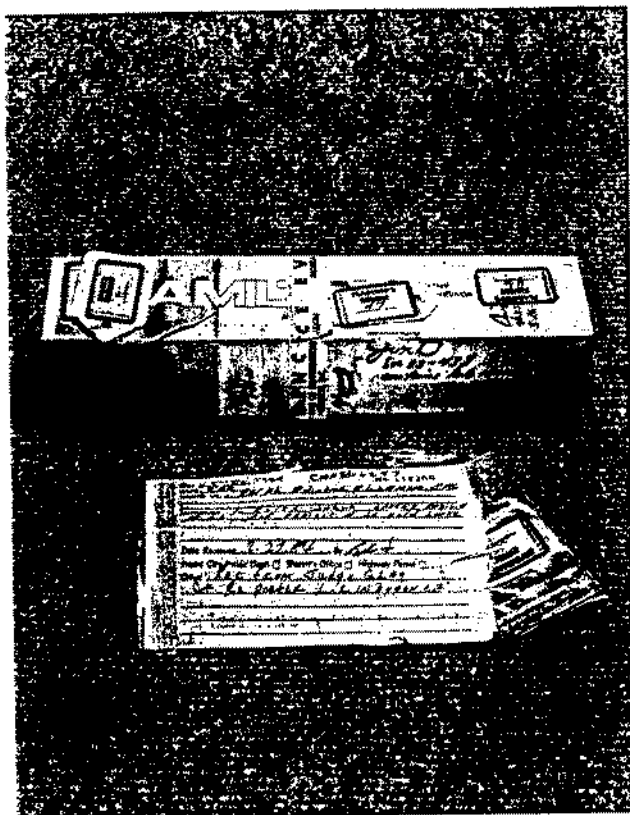
With no other evidence to go on, police theorized that Plotner might have dented the door with his watch hand during the alleged struggle with Benham. To test their theory, police removed a section of Benham's front door, took some paint scrapings from it and sent the items, along with Plotner's watch, to the FBI crime lab. When I met Barry Albert, the prosecutor in the case, he reiterated what he had told his colleagues back in 1984: He did not intend to pursue the case against Plotner unless the FBI crime lab came up with some forensic evidence to support Benham's version of the events.

ON MANY MORNINGS leading up to the 1995 FBI scandal, Fred Whitehurst, a Georgetown-educated lawyer with a doctorate in chemistry, could be found on his hands and knees in the trace lab, wiping the floor with a damp cloth that often turned black by the time he was finished. An explosives expert in the lab since 1986, Whitehurst was troubled, among other things, by the ventilation system that belched out black dust. "There was dust and dirt everywhere, on the floor and ceiling," he now says. "It just blew me away." In a trace lab, where examiners look for things that can't be seen with the human eye, any con-

tamination can cause errors in the final test results.

Obsessively precise, Whitehurst tested some of the black soot and found it contained lead particulate matter, which is also a key element in residue from bomb explosions, bullet lead and paint. In actual testing, then, how certain could an examiner be about the source of lead particles?

That was just the beginning. Lab examiners didn't wear latex gloves or regulation hairnets to avoid cross contamination when they handled fibers and hairs—among the



■ **EXHIBIT A** The forensic evidence that sent Plotner to jail consisted of no more than the microscopic paint specks found on his watch, which were said to "match" paint on the alleged victim's door.

most easily transferred particles in everyday life. Even worse, Whitehurst noticed the wording in his analytical reports was intentionally altered without his permission by lab supervisors David Williams and Tom Thurman. Whitehurst says that Thurman always used language that favored the prosecution.

But there was an even bigger problem. In case after case, lab examiners (called special agents) were giving inaccurate testimony, with little or no scientific basis, about trace evidence that could link a suspect with a crime scene. Whitehurst called it "junk science," and most jurors, even most judges, didn't have the knowledge to realize it wasn't real science and were impressed by the agents' authoritative-sounding language and by their affiliation with the FBI. In the complex world of mass spectrometers and atomic-absorption spectroscopy, who would know, for example, that it can't be said, at least not scientifically, that two different paint samples, two bullet fragments or two



shards of glass matched or came from the same source? The wording about "matches" and "common source" has been rejected outright by forensic scientists around the world as being seriously misleading, yet the incriminating language is being used repeatedly in courtrooms around the country.

Bill Tobin, an FBI agent for eighteen years who rose to become the lab's chief metallurgist, acknowledges the problem. "When you think about the consequences of this, it's a disaster," he says. "I was screaming for years that there needed to be a system whereby court testimony could be monitored, because you've got a person who has the aura of the FBI surrounding him, and anything he says or does is not questioned." Tobin left the lab nearly three years ago and now heads an independent forensic consulting firm in Virginia. "FBI agents are like gods to some people," he adds, "and jurors figure they must know what they're talking about, yet most of them are not scientists. They are basically people the bureau gets off the street, trains them for a year and then calls them bomb experts."

IN FEBRUARY 1994, Robert Webb, a chemist and paint examiner in the lab since 1976, inventoried the paint samples and Rolex watch from the Plotner case and began testing them, using various instruments to identify their elemental composition. Webb did not return my call, but according to Fred Whitehurst, who worked with Webb in the lab, "He was the epitome of what an FBI agent should look like. He was good-looking and very fit from being a triathlete. Like many people I worked with in the lab, I considered Bob a friend, but when it came to things like paint and duct tape, he didn't know what he was talking about."

Webb sent his conclusions back to Oklahoma City seven weeks later. In his report, he found that present on the watchband were "smeared and crushed deposits of paint matching the [door's] paint finish."

At Plotner's trial in April 1984, Webb arrived in the courtroom wearing black cowboy boots. On the witness stand, he spoke confidently about the lab's scanning electron microscope that "takes a tiny little bit of material and expands it...30,000 to 60,000 times." He analyzed the "tiny bits" by using a gas chromatography process that he said enabled him to conclude "the paints in the watchband and the paints and scrapings from the door match in colors, in textures, in types and in layer structure."

The devastating moment of the trial came at the end of Webb's testimony, when he said: "The paints have to be from the same batch."

Webb's entire trial testimony was reviewed by four independent forensic scientists and paint experts, who all

told me the errors were significant. At times "it was so bad," says one of them, former lab supervisor Bill Tobin, that "it's clear he was making things up as he went along."

According to Darlene Brezinski, a well-known forensic paint expert who also reviewed Webb's testimony, "not only is it the prevailing opinion worldwide that you can't say things are from the same batch but anybody who has a day or two of training knows better." She describes Webb's testimony as "false and misleading. The instrumentation didn't exist in 1984, nor does it exist even today, that could reliably analyze particles that small, and most people in the field know this."

John Thornton, professor emeritus of forensic science at U.C. Berkeley and an independent consultant, says: "You

wouldn't be able to make statements like that unless something very, very unusual got dumped in the paint formulation pretty much by mistake. And I've never, in thousands of samples of paint, encountered such a situation."

Plotner's defense lawyers tried to rebut Webb's testimony with their own expert, who said he found no paint from Benham's door in Plotner's watchband and that contact with the door should have damaged or destroyed the watch. But it apparently had little effect on the jurors, and in closing arguments prosecutor Barry Albert further swayed them when he pointed out that the paint evidence had been



**INSIDE STORY** FBI lab examiner Fred Whitehurst was expelled from the agency after he blew the whistle on forensic practices.

"analyzed by the finest criminal forensic lab in the world."

Plotner was convicted and sentenced to twenty years, but the attempted-rape charge was overturned on a technicality, and he ended up serving twenty-five months on the oral-sodomy charge.

It would take two more years, after Plotner went to prison, for a completely different version of Janice Benham's story to emerge—an account that implicated her ex-lover Dr. Fraley. In a subsequent \$8.75 million civil trial initiated by Benham to recover monetary damages from Plotner for the alleged attack, nurse Peggy Catton testified for the first time that Benham had said her injuries resulted from a struggle with the doctor-boyfriend. "She told me that he [Fraley] came back to her apartment. And they had a big fight, and he was drunk, and it was just a shove-push fight." (The jury's modest award to Benham was eventually overturned, and Plotner was required to pay nothing.)

The incriminating "same batch/common source" language used by Robert Webb and other lab examiners goes back to 1970, when it entered the FBI's internal publications and was never corrected. Several scientists from Quantico, Virginia, the site of the bureau's training and research facilities, developed and applied certain



methods for testing bullet lead and glass in the lab "that don't work in real life," says forensic scientist Erik Randich. "But no one from the government ever challenged the ideas and, to paraphrase [renowned scientist and author] Isaac Asimov, once a phrase or idea enters the literature, it is hard to change, no matter how inappropriate or wrong it is."

The misconceptions about paint composition go back to the manufacturing process. Even when a paint manufacturer makes two batches using the same recipe, the chemistry in them is variable and can be considerably different because concentrations of the basic ingredients are far from the same.

"All they can say is the items of evidence could have come from the same source, but we can't be certain," Randich adds. "The FBI and prosecutors have left that out because it doesn't win convictions."

**T**he jail where Plotner served some of his time, on the outskirts of Oklahoma City, had leaks in the roof and an endless infestation of cockroaches and rats. At another prison, he watched an inmate beat another inmate to death with a baseball bat. The hardest part, he recalls today, was not seeing his 5-year-old son, Kyle, for the entire time of his incarceration. "We talked on the phone, but I didn't want him seeing how I lived in jail. I know it was hard on him not having his father around. Things were never the same with Kyle after my conviction."

While Plotner was still in jail, his wife sued for divorce and wound up with the majority of the couple's assets, including the mansion and most of the oil-well property. When Plotner got out, there was only \$1,200 left in his savings account. The real tragedy, though, came ten years later, when Kyle, then 17, shot and killed himself. Plotner is convinced his earlier absence was a factor in the youth's depression and alienation. "He needed me, and I wasn't there," he says, turning his face away and starting to cry. "I've never gotten over it. When people say they know how I feel, I tell them, no, they can't possibly know how it feels to lose a child in that way."

In the decade after his conviction, Plotner got back into the oil business and fought to vindicate his name in one court hearing after another.

In 1997 he got his first break, through a mistaken phone call from the Inspector General's office in Washington, D.C. One day late that year, Plotner's defense attorney from the trial, Mac Oyler, received a phone call from an official who told Oyler he was investigating improper practices at the FBI lab and that Robert Webb was one of the examiners under investigation for having given inaccurate testimony in a number of cases. The IG said Webb had stated conclusions about the common origin of certain tape, paint, sealant and glue more strongly than was justified by the results of his examinations. Another qualified examiner had been ordered to review all of Webb's analytic work used in future cases.

The lives of two men now on death row in Florida may hinge on single hairs misidentified by FBI examiner Michael Malone, formerly head of the crime lab's hair-and-fiber unit, who retired two years ago. In 1992, when he was 23, Brett Bogle was convicted of raping and beating his girlfriend's sister to death. The strongest piece of physical evidence against Bogle was a single strand of hair. At the trial, FBI agent Malone testified that he found no head hair of the victim on the white pants Bogle was wearing on the night of the crime. Instead, Malone claimed he found one of the victim's pubic hairs on Bogle's pants, which, prosecutors argued, could not have gotten there by casual contact. Because Bogle had frequent contact with the victim—she lived with Bogle's girlfriend—there were many explanations for the presence of head hair, but not so with pubic hair. Convicted, Bogle has been on death row ever since. But now his conviction is being seriously questioned. After the crime lab scandal broke in 1995, a Justice Department task force reviewed many of Malone's cases. It sent his hair analysis in the Bogle case to an independent forensic scientist, who made a stunning discovery in



September 1999: Malone's testimony contradicted the scientist's findings. The single strand of hair was not a pubic hair from the victim after all; it was a head hair. Compounding the error, the crucial findings sat on a shelf in the Florida state attorney's office for nearly a year before Bogle's defense attorney, Terri Backhus, was notified last July. With the new hair evidence, Backhus is hopeful her client will get a new trial once the case goes before a circuit judge this month. Policeman James Duckett was on duty in May 1987 when he received a missing-persons call. An 11-year-old girl had gone to a convenience store and not come home. Duckett began an investigation, but the girl was found dead in a nearby lake. In a surprise twist, sheriff's deputies wound up arresting Duckett after they matched tire prints at the lake to his police car's tread pattern. The most damning evidence, though, came from a 16-year-old eyewitness and from FBI hair expert Michael Malone. The witness, who was in jail and pregnant at the time of the trial, claimed she saw Duckett leave the store with a child in his car. The defense argued that the girl's account was motivated by her desire to get out of jail in time to deliver her baby. Agent Malone testified that a single pubic hair found in the underwear of the victim had "exactly the same characteristics" as twenty samples taken from Duckett, who has always claimed he never touched the girl. Duckett was sentenced to death in 1988 and has been awaiting execution since then. After the trial, however, the case began to unravel. Once released from jail, the eyewitness recanted her statements, and Malone's findings about the single strand of hair have recently proved unreliable and suspiciously biased toward prosecutors. The hair was first submitted to a Florida state crime lab, whose tests—which proved "inconclusive"—could not link Duckett to the victim. Dissatisfied with the test results, prosecutors then sent the hair to the FBI lab, where Malone's analysis helped cinch Duckett's conviction. Now, in a motion pending before a circuit judge in Florida, Beth Wells, Duckett's new attorney, argues that because of the hair test—shopping and the unreliability of Malone's testimony, James Duckett deserves a new trial.—M. A. F.



Oyler listened to his caller with rapt attention. Until the call came, few people in the legal community had known there was a problem of FBI agents giving inaccurate testimony.

Several minutes into the conversation, the official asked Oyler: "Now, you are the prosecutor in this case, correct?"

"No," Oyler said. "I'm the defense attorney." Several seconds of awkward silence passed before the official acknowledged his mistake and hung up. In (continued on page 148)



(continued from page 17) trying to determine how deep the lab problems went, the IG's office only contacted prosecutors in problematic cases under review, leaving them with control of whether or not to notify defense attorneys.

"You're not going to believe what just happened," Plotner eagerly told his civil lawyer when he learned about the phone call. "We finally got the ammunition we've been looking for."

IN 1993, WHEN his complaints about the lab were repeatedly ignored by management, a frustrated Fred Whitehurst finally went outside the bureau—an agency taboo—and contacted the Senate Judiciary Committee, which oversees the FBI. Committee staffers brushed him off initially. "People's lives were being seriously affected, and I couldn't get anyone to pay attention," Whitehurst says. "By that time, I had lost all faith and trust in the Justice Department." As a last resort, he began writing letters to the Inspector General's office—the division that investigates government wrongdoing.

The FBI initially responded to the crisis, one congressional observer said, by "circling the wagons." The bureau initiated a

bureau eventually suspended Whitehurst with full pay for a year and ordered him not to enter any FBI facilities. "I wanted to come back, but they made it impossible," he says today. He ultimately resigned and returned to his hometown in North Carolina.

THE QUESTION OF whether Robert Webb and other agents knowingly give false information under oath (a felony) remains open to speculation. Fred Whitehurst is convinced "some of these guys are liars," but in its report the IG said some agents "overstated" their conclusions but there was no evidence of perjury or prosecutorial bias. "That's because they didn't really look for it," says former lab supervisor Bill Tobin, who analyzed agent Tom Thurman's misstatements and found that nearly all of them (from twenty-four cases) favored the prosecution. "You don't have to be a statistician to figure out there is clearly a bias. If there were no bias and the mistakes were due strictly to incompetence and they just didn't know any better, then there should have been as many errors for the defense as there were for the prosecution. It should be closer to a fifty-fifty split."

**Experts in the field of forensics choose their words carefully when addressing the issue of possible perjury within the FBI. "I think it's borderline perjury," says one forensic scientist.**

criminal investigation of Whitehurst and conducted its own internal probe, which concluded that his allegations were unfounded. But Whitehurst had better luck with the Inspector General's office. After an eighteen-month investigation, Attorney General Janet Reno noted in the final report that there were "significant instances of testimonial errors, substandard analytical work and deficient practices." A Justice Department task force was set up to review lab cases, and by last October the number had swelled to more than 3,000 cases.

In the end, the FBI transferred David Williams, Tom Thurman and Roger Martz, the lab's chief chemist, to other positions within the bureau; Robert Webb had already been transferred out of Washington at his own request. The

Several of the most troubling examples of FBI testimony center around Michael Malone, previously the FBI's top hair-and-fiber examiner. In 1991, during a Pennsylvania murder trial, Malone testified that a hair on a white blanket—taken from the van of the suspect's alleged accomplice—belonged to the victim. As it turned out, the evidence had been mislabeled and Malone had actually tested another blanket that had never been anywhere near the crime scene or the victim. The defendant was ultimately acquitted, and when confronted with proof of the error, Malone persisted in his conclusions. "I don't know how [the hair] got there," he said. "All I know is...it's consistent with coming from her [the victim]."

"My client could have been electrocuted based on Malone's testimony if I

hadn't discovered the wrong blanket had been shipped to the lab," defense lawyer Barry Lee Smith told me recently.

Throughout his career with the FBI, Malone testified in more than 500 trials, which has some observers worried when they see what happened to two defendants now on death row in Florida (see "By a Hair").

In 1999, another dubious lab analysis was performed during the FBI's investigation of the murder of three women sightseers in Yosemite National Park. The FBI closed in on the prime suspects. Or so they thought. Agents sent two acrylic fibers to the crime lab, including one from a victim's body bag and another found in the truck of one of the suspects. The lab quickly conducted tests and reported back to the agent in charge that the fibers matched, one former FBI agent told me. As things turned out, Cary Stayner, the hotel handyman, confessed to the murders—an embarrassment to the FBI, who had been focusing on the wrong suspects all along. The original suspects had never come in contact with the women, raising questions about how the lab had come up with its findings about the fibers.

EXPERTS IN THE field of forensics choose their words carefully when addressing the issue of possible perjury within the FBI. "I think it's borderline perjury," says forensic scientist John Thornton. "FBI agents have done this for years. They get around the issue of actual perjury by expressing an opinion: 'It's my opinion the paint came from the same batch.' 'Well, [Mr. FBI agent], that's a crock.' 'Well, maybe it's a crock, but it's my opinion.'"

"Only under the guise of the FBI could it not be considered perjury," says Bill Moffitt, former president of the National Association of Criminal Defense Lawyers. "Sufficient criminal statutes—obstruction of justice, giving false testimony—have been violated, yet the bureau hasn't done anything about it." The reason, say critics of the FBI, is that accountability is not routinely enforced. The bureau is reluctant to discipline its agents, which has led to growing support in Congress for the so-called Fair Justice Act that would create an independent agency to investigate government wrongdoing.

"In the case of Webb and other agents," says Bill Tobin, "there is a serious



question of intent. I think it's more an effort to look good, to be the hot dog or the hero instead of being scientifically accurate. Some examiners in the lab were so incompetent that where do you draw the line between knowing and unknowing?"

LAST MAY I took a tour of the FBI crime lab, located on the third floor of the J. Edgar Hoover Building. It won't be the lab's address for long, since a brand-new, \$120 million facility is nearing completion in Quantico. I was accompanied by Janine Arvizu, a nationally known forensic scientist who specializes in auditing labs. I was interested in her assessment of the current state of the lab—how it had changed, how it had stayed the same. Several of the most controversial agents have left. Robert Webb transferred to the North Platte, Nebraska, FBI office in 1991, and after reassignment to the bureau's Norfolk, Virginia, field office in 1994. Michael Malone retired two years ago. Fred Whitehurst sued the bureau for, among other things, whistle-blower retaliations and won a \$1.46 million settlement. He started the Forensic Justice Project, which critiques lab testimony from past cases, and as the project's head, Whitehurst now testifies as an expert witness in criminal cases, some of which involve going up against FBI lab practices.

The most significant change happened in 1999, when the lab was accredited by the American Society of Crime Laboratory Directors, a process the FBI had long resisted. Arvizu calls the ASCLD review "a perfunctory exercise. Accreditation is not a gold seal. And the ASCLD, whose members are all affiliated with the prosecution, has the least rigorous accreditation program I've ever seen."

The lab has twenty-three units, three of which were investigated by the Inspector General in 1996. The most controversial, the materials-analysis unit where Fred Whitehurst used to work, is closed off from public view by a drawn curtain. In several units, small clusters of black dust were imbedded in the overhead air-handling systems, and none of the examiners we saw wore gloves.

"They've made a dent in the problems," Bill Tobin says, "but there's still a big piece missing."

That "piece" is an audit by independent scientists that would establish

quality controls and standardize testing procedures in the lab. Even when the new Quantico lab opens next year, it may be that the most serious problems will never be fixed unless a lab is set up independently of law enforcement, made up of experts who don't have a vested interest in either the prosecution or the defense.

For its part, the ongoing Justice Department task force set up to review more than 3,000 past lab cases has identified faulty lab work and testimony problems in several cases—among them Brett Bogle's case and nineteen others in Florida—in which examiner Michael

**"The whole purpose of FBI lab work should be to seek the truth and let the truth convict or find people innocent. But when agents change their analysis to fit a prosecution, then the FBI culture hasn't changed enough."**

Malone frequently testified. Once a case is flagged, however, only prosecutors are notified—a practice that has inflamed defense attorneys. Says a Justice Department official: "We're operating on the assumption that once a prosecutor is told [about lab problems in a particular case], they will act on the information properly, as they should." So far, no questionable verdicts have been overturned, as the ultimate decision rests with judges who are currently reviewing several lab cases.

In October, however, a judge in Florida made a remarkable finding in the death-penalty case of George Trepal, who was convicted in 1991 of murdering his neighbor by poisoning her Coke. Former FBI chief chemist Roger Martz had testified at the original trial about the poison that linked Trepal to the murder. Although he did not overturn Trepal's conviction, the judge did conclude that Martz "testified falsely" and his "conduct at the trial was outrageous and shocking."

To further implement change, in 1997 the FBI named a new lab director, Donald Kerr, formerly head of the Los Alamos National Laboratory. But Senator Charles Grassley, whose committee oversees the FBI, is skeptical the changes are sufficient: "I think Mr. Kerr's heart is in

the right place, but changing an administrator, in and of itself, does not change the culture. The whole purpose of FBI lab work should be to seek the truth and let the truth convict or find people innocent. But when agents change their analysis to fit a prosecution, then clearly the culture within the FBI has not changed enough, and the promises that have been made to us by the FBI have not been kept."

Back in Oklahoma, Ralph Plotner is again successful with his new oil company, but he has slowed down some from the stroke he had in 1999. He is remarried and has a 2-year-old daughter. He has also retained a new civil lawyer,

Scott Adams, who has a reputation for challenging the federal government. In July, Adams served Robert Webb in North Platte—and at the FBI headquarters—with a civil lawsuit that accuses the agent of "intentional, willful and fraudulent creation of false evidence to influence the jury." The federal government won the first round in November, and the case is being appealed in the 10th Circuit Court. Regardless of that lawsuit's outcome, Plotner is moving forward on another front to try to prove his innocence in state court. And based on what Barry Albert, the man who prosecuted Plotner, said four months before he died, Plotner's chances for success seem almost assured. "Now that I know about the problems with Robert Webb and the lab, I think Ralph Plotner deserves a new trial," the prosecutor told me.

Given the facts of Plotner's case—and the other cases I reviewed—I wanted to find out if it was still the FBI's position that no defendant had been unfairly convicted. No one at headquarters would respond.

As he again waits for his day in court, Ralph Plotner is hopeful yet wistful. "I have a boy out in the graveyard, and nothing will bring him back. But I need to do this for him and for me."

Mary A. Fischer is a GQ senior writer.