# FBI Crime Lab's fatal flaws aired

by Mary Jane Freeman

On April 15, the U.S. Justice Department Inspector General Michael Bromwich released a 500-page report confirming that the FBI Crime Lab, from 1989 to 1995, produced "scientifically flawed and inaccurate testimony" in some of the nation's most sensitive legal cases—allegations made by FBI whistleblower and forensic scientist Dr. Fredric Whitehurst. Up until January 1997, when the FBI suspended him, Whitehurst was one of the FBI's most highly qualified bomb residue examiners and explosives experts. Bromwich led the team of prosecutors, investigators, and forensic experts from Canada, Northern Ireland, and the Commonwealth of Virginia, which conducted hundreds of interviews and reviewed more than 60,000 pages of documents to produce the report.

The most prominent cases in which Bromwich's team found serious evidentiary flaws include: the bombing cases in Oklahoma City (1995) and at the World Trade Center in New York (1993), the mail bomb assassinations of Judge Robert Vance and Alabama civil rights attorney Robert Robinson (1989), and the impeachment proceedings against then-U.S. District Judge Alcee Hastings (1989). Hastings is now a member of the U.S. House of Representatives from Florida, and a member of the Congressional Black Caucus.

The report's findings make it clear that a most vital interest of our nation—protection against terrorism—is shown to have been jeopardized by the corruption within the FBI, and may well lead to hundreds, if not thousands, of cases being reopened.

Charles Grassley (R-Iowa), a member of the Senate Judiciary Committee, and recently a prominent critic of the FBI, especially concerning the failings at the Crime Lab, called the Bromwich report "a wake-up call" mandating that "Congress and the public rein in the FBI's errant leadership." The senator had high praise for Whitehurst's courage to come forward, and for Bromwich's efforts to bring the Crime Lab failings to light. But he also was quick to note that Bromwich's investigatory mandate was limited. He was not authorized to look at criminal acts. Grassley said, "Perjury and evidence tampering is something criminal," and the Inspector General (IG) "told me that he was not investigating anything criminal. . . . Now, he could say that they never found any evidence of that, but in the first place they didn't investigate it. And the fact that they didn't investigate anything and prove it, doesn't mean it is a fact."

Grassley's caution about the limits imposed on the Bromwich probe were not, unfortunately, seconded by Attorney General Janet Reno. In an official statement following the release of the Bromwich report, she said that while the report "does identify significant instances of testimonial errors . . . and deficient practices" at the FBI, it does "not [find] evidence" of "perjury, obstruction of justice, and suppression of evidence." But, as Grassley said, such findings were precluded.

The investigation's primary focus was on three units in the FBI laboratory: Explosives, Materials Analysis, and Chemistry-Toxicology. All of these were in the Scientific Analysis Section, which is one of five sections in the FBI lab. Although not stated by the Department of Justice (DOJ), it is believed that the inquiry reviewed hundreds of cases in which lab reports were at issue. In the report, 20 cases are specifically identified, including, in addition to those already mentioned, the April 1993 alleged assassination attempt on George Bush in Kuwait, the 1989 Avianca flight 203 mid-air bombing, and the O.J. Simpson case. There are nine principal findings concerning alleged misconduct, such as "scientifically flawed testimony," "testimony beyond the examiner's expertise," "insufficient documentation of test results," and "scientifically flawed reports." The report makes specific recommendations for reorganizing the FBI lab, and for the censure, reassignment, or other disciplinary action against specific agents whose work was criticized.

## DOJ role untouched

The report, while the first crack in the cover-up of government misconduct, raises many more questions than it answers. For instance, there is no mention of the role of key people in the DOJ permanent bureaucracy. Yet, the types of cases examined—for the most part, terrorism or assassination cases—were ones in which such DOJ veteran bureaucrats had oversight. Specifically, Deputy Assistant Attorney General Mark Richard supervised the Internal Security and the Terrorism and Violent Crime Sections at all times relevant to the cases mentioned.

Even more to the point, Bromwich wrote in his report that his probe involved "experienced prosecutors from . . . the [DOJ] Criminal Division," which was then, and is today, headed by John C. Keeney. Likewise, the DOJ Criminal Division has been directly involved in the management of any information coming from the IG investigation which may have to be disclosed to defendants and their attorneys. While the Bromwich investigation was technically only of FBI improprieties, the omission of any mention of the DOJ's role in the tolerance of, or use of, tainted evidence from the FBI Crime Lab, is noteworthy.

## 'No perjury, just bad judgment'

Because of the limited scope of Bromwich's inquiry, predictably, he does not find that perjury was committed or that false testimony was given "intentionally." Rather, false testimony or stretching the truth is deemed "bad judgment" or

lack of "objectivity" on the part of the offending FBI agent. Similarly, intentional misconduct becomes simply "bad practice or procedure" in the Bromwich findings. Two examples from the report demonstrate the point.

- World Trade Center bombing case: Whitehurst alleged that FBI Explosives Unit (EU) examiner David Williams had "misrepresented the truth" and "biased in favor of the prosecution" his testimony in the first World Trade Center trial, the Salameh trial.

A critical measure to discover in a bombing investigation is the velocity of detonation (VOD). The VOD denotes the speed at which the detonation wave propagates through a column of explosive and, once determined, is the basis for determining the type of explosive used. The IG investigation examined Williams's "method of determining the VOD," and found that while "he considered numerous factors bearing on VOD," and "filtered" these "through his experience to produce his VOD estimate," Williams's method was "an unscientific, and unverifiable process of intuition." The Bromwich report quotes Williams's description of determining the VOD as one of "rough . . . feel[ings]," "guess[es]," and "impression[s]." Bromwich concludes, "There was a complete absence of empirical data to support any of the inferences made." While the World Trade Center bombing analysis is over 60 pages long, the central finding vis-à-vis Williams's work is "that Williams gave inaccurate and incomplete testimony and testified to invalid opinions that appeared tailored to the most incriminating result."

- Oklahoma City bombing case: Again, it was the work of FBI EU examiner Williams which was challenged by Whitehurst. As in the World Trade Center case, the Bromwich findings center on Williams's surmise as to what the VOD was, and thus his conclusion that the explosive used was ammonium nitrate fuel oil (ANFO). During the IG's investigation, Williams explained that "he reached his VOD opinion by considering the explosive damage at the crime scene in light of his experience." The only problem, as noted in a footnote in the report, was that "although Williams's VOD opinion was based on his 'experience,' he did not have much experience with the situation he faced at Oklahoma City."

Without documentation or experimental evidence to support his determination, Williams's "categorical identification of the main charge as ANFO was inappropriate based on the scientific evidence available to him. . . . Williams did not draw a valid scientific conclusion but rather speculated from the fact that one of the defendants purchased ANFO components. . . . The errors he made were all tilted in such a way as to incriminate the defendants." Thus, Bromwich concludes that there was no perjury, just lack of objectivity: "Although we did not find that Williams had perjured himself in the World Trade Center case, his work in that case and in the Oklahoma City investigation demonstrate that he lacks objectivity, judgment, and scientific knowledge that should be possessed by a Laboratory examiner."

## Keeney's control of the fallout

Such sloppiness, at best, or deliberate frauds, at worst, began to backfire on the FBI and DOJ. By January 1996, news media leaks began to appear indicating that there may be credibility and evidentiary problems with previously used FBI Crime Lab evidence, which could trigger disclosure obligations by the government. Attorney General Reno's press release states: "After the [Whitehurst] allegations were made, the Justice Department's Criminal Division began reviewing cases to comply with the Supreme Court's 1963 *Brady* decision, which requires disclosure of information . . . favorable to a defendant." She reveals that for more than a year, "career attorneys" reviewed "thousands of cases involving work by lab employees."

What Reno doesn't say, but which is found in a memo released under the Freedom of Information Act to Whitehurst, is that it was Keeney who set up a top-down national task force to "liaison" with prosecutors to determine what, if anything, would be given to the defense. The January 1996 Keeney directive notifying U.S. Attorney's offices around the country that the task force had been established, also states that no disclosure of information is to occur without "prior" coordination with the DOJ Criminal Division. It is they who will "provide appropriate technical assistance . . . to evaluate . . . whether the government should disclose information to the defense."

Reno continued, "So far, only 55 cases have been identified nationwide where prosecutors needed to be alerted of the need for a possible *Brady* disclosure. Upon receiving those materials, prosecutors decided that disclosure was needed in only 25 of those 55 cases." Note, however, that it is the government's wanton violation of *Brady* obligations which led U.S. District Judge Falcon Hawkins to sanction the government by dismissal of five Operation Lost Trust cases (see *EIR,* April 11, p. 70).

## FBI 'has squandered our trust'

In March, Senator Grassley declared, "The ranks of us [U.S. senators] who are perturbed" with FBI malfeasance "are growing swiftly. . . . The FBI has shown, beyond a shadow of a doubt, that it cannot police itself. This institution—the U.S. Congress—has bent over backwards over the years to give the FBI what it says it needs. We have done it in good faith. . . . We put too much trust in the FBI. The FBI has squandered our trust." After the release of the Bromwich report, Grassley contrasted the "serious investigation" done by Bromwich, to that done in 1994 by the FBI of the lab problems, which he called a "whitewash." Calling for "independent oversight," Grassley said it is time to "restore the public's confidence in federal law enforcement." He noted that "a lot of this happened before Louis Freeh came" to the FBI, but said, "the real test for Director Freeh and the senior FBI—are they going to stonewall or are they going to carry [the Bromwich recommendations] out?"