

the role of the lab and the conclusions of FBI examiners. Thus, the actual leveling of the charges became the subject of an investigation by the AAFS's ethics committee.

Ultimately it was decided that there was not "sufficient evidence of misrepresentation of data" by the authors to support the FBI's allegation. "The FBI's allegations were preposterous. I think we made them look ridiculous," says Ed Blake, a longtime critic of the FBI's forensic science.¹⁸ "We chose the FBI lab to show that crime labs could get it wrong because we thought they were big enough to take a little criticism," chuckles Robert Ogle, Jr. "Fortunately, there was someone with a scientific background on the ethics committee. They just said: 'Look, this is bullshit. You can't bring ethics charges against people for giving a scientific paper at a scientific meeting.'" ¹⁹

Years later, Whitehurst's charges and his treatment would mirror those of these three, whose observations, along with Whitehurst's, would be vindicated by the inspector general's report. As the three critics pointed out in a letter to Professor Starrs's quarterly newsletter, *Scientific Sleuthing Review*, their paper cited "errors or insufficiencies on the part of the original examiner . . . management deficiency, . . . [and] a lack of knowledge." The IG report, sixteen years later, cited "failures by management" and "significant instances of testimonial errors, substandard analytical work and deficient practices."²⁰ The damage done to confidence in crime labs in general and the FBI lab in particular might have been avoided if the substance of their charges—not the fact that they had been made—had been addressed back in 1981, the three pointed out. But the FBI lab was incapable of addressing these issues or indeed of changing anything about the way it operated. Indeed, the very manner in which the FBI handled Whitehurst's complaints—dismissing them, burying them, then attacking the messenger rather than the message—illustrated how little the culture of the FBI lab had changed since 1981.

At the core of what the critical experts were alleging is the poor practice that riddles the FBI lab and much forensic science in the United States. Documentation is a case in point. Examiners have proven remarkably loath to write up their bench notes in any adequate scientific manner. No names, no chain of custody history, no testing chronology, no details of supervisory oversight, no confirmatory tests, no signatures—such omissions are quite normal in FBI lab reports. What the reports do contain is

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Initially it was decided that there was not “sufficient evidence of fabrication of data” by the authors to support the FBI’s allegation. The allegations were preposterous. I think we made them look silly,” says Ed Blake, a longtime critic of the FBI’s forensic science.¹⁸ “The FBI lab to show that crime labs could get it wrong because they were big enough to take a little criticism,” chuckles Robert L. “Fortunately, there was someone with a scientific background on the ethics committee. They just said: ‘Look, this is bullshit. Charging ethics charges against people for giving a scientific paper a bad review.’”¹⁹

After Whitehurst’s charges and his treatment would mirror those of three, whose observations, along with Whitehurst’s, would be cited by the inspector general’s report. As the three critics wrote in a letter to Professor Starr’s quarterly newsletter, *Scientific Review*, their paper cited “errors or insufficiencies on the part of the examiner . . . management deficiency, . . . [and] a lack of oversight.” The IG report, sixteen years later, cited “failures by management in significant instances of testimonial errors, substandard analytical practices.”²⁰ The damage done to confidence in the inspector general and the FBI lab in particular might have been less if the substance of their charges—not the fact that they had been addressed back in 1981, the three pointed out. But the FBI was incapable of addressing these issues or indeed of changing the way it operated. Indeed, the very manner in which the FBI handled Whitehurst’s complaints—dismissing them, burying them, attacking the messenger rather than the message—illustrated the toxic culture of the FBI lab had changed since 1981.

At the core of what the critical experts were alleging is the poor quality of evidence that troubles the FBI lab and much forensic science in the United States. A recent presentation is a case in point. Examiners have proven remarkably careless in writing up their bench notes in any adequate scientific manner. Missing chain of custody history, no testing chronology, no details of procedures, oversight, no confirmatory tests, no signatures—such omissions are normal in FBI lab reports. What the reports do contain is

obfuscation and overstated conclusions written in an often incomprehensible style that some experts have termed “forensonics.” Undefined terms such as “match” or “identical to” are common; chronicled scientific procedures and protocols to justify them are not.

The motive seems to be to say as little as possible as unintelligibly as possible with what passes for scientific jargon and process. Numerous conversations with former FBI lab personnel and attorneys have left no doubt why. Since lab reports are “discoverable” and have to be handed to the defense, the FBI lab believes that as little as possible should be given away. The approach to research is no different. The publication of findings or methodologies might be used to undermine the prosecution of cases, so the rule that has evolved is to avoid dissemination. In short, the FBI’s interpretation of the adversarial approach on which the U.S. judicial system is based works to serve neither science nor truth.

As such, the FBI lab’s reports have shocked those outside the U.S. forensic science community. “If these are the ones [reports] to be presented to court as evidence then I am appalled by the structure and information content. . . . [T]he structure of the reports seems to be designed to confuse,” concluded Professor Brian Caddy, head of the forensic science unit at Strathclyde University in Scotland on being shown the FBI lab’s forensic reports in the Oklahoma City bombing case.²¹

Much the same goes for protocols or established procedures. Traditionally, many FBI forensic scientists have not used protocols—the recipes for analyses and the touchstones of scientific procedure—despite the fact that all scientists accept that not using them produces only experimental, not proven, outcomes. Indeed, in some crime labs, established protocols do not even exist. “Basically what we’ve got is a kind of oral tradition, like medieval English, the Venerable Bede, instead of a regular scientific protocol manual,” claimed Stephen Jones, Timothy McVeigh’s first defense lawyer in the Oklahoma City bombing case, who has looked into FBI lab procedures in some depth. “The advantage of the oral tradition, of course, is that no one knows what it is.”²²

Such shortcomings are often accentuated in court. Here pressure from prosecutors is direct. All too often the important caveats that punctuate forensic science, phrases such as “including but not excluding,” “possible but not certain,” “compatible with but not incompatible with,” are forgotten. All too often “could” becomes “did,” an opinion becomes

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