

FBI in tainted

by Ed Vulliamy New York
and Peter Marshall Washington

THE world of Patricia Cornwell's FBI — a demimonde of second-guessing, sharp analysis and scientific brainpower dedicated to the pursuit of truth — was in shreds this weekend, with the US Justice Department saying 50 cases may have ended in improper prosecutions due to questionable forensic procedure at the FBI laboratory.

The announcement was made by Deputy Attorney-General Jamie Gorelick on Friday; it is a devastating official undermining of the FBI, and of the running of the most expensive forensic laboratories in the world. This is the first time the Justice Department has ordered the reopening of specific cases.

The *Observer* has been informed that the department has identified only the tip of an iceberg of twisted and contaminated forensic evidence, generating a challenge to the veracity of US justice. A leading source at the core of the scandal said 'every major bombing case and every minor bombing case handled by the FBI needs reviewing'. That could total thousands of cases.

The chairwoman of the forensic science committee of the National Association of Criminal Defence Lawyers, Julie Aimen, said: 'The FBI laboratory has always enjoyed such a fine reputation that prosecutors could represent its reports confident that they had absolute credibility with juries. Now, it is no longer above reproach, and everything they have done for the past few years is going to be questioned.'

Senator Charles Grassley, Republican chairman of the Judiciary Subcommittee which is leading Capitol Hill's probe into FBI ineptness, says the agency is 'more interested in image than product'.

'My father brought us kids up to respect the FBI,' he said. 'The FBI was so careful about

what it did. You didn't have to worry about the FBI. What we see now is that reputation has led them to feel they could be a law unto themselves — too much power without self-criticism can corrupt.'

Cracks in the foundations of the once-renowned — and still glorified — FBI operation have appeared as a number of high-profile cases come to court, or are up for revision and dominating public attention. Last week the defence for Oklahoma bomb suspect Timothy McVeigh said it would question the admissibility of prosecution forensic evidence at his trial, due to start next month.

The evidence is being handled by the the British Ministry of Defence laboratory in Kent, which was involved in the prosecution of the Maguire Seven, later found innocent.

McVeigh's defence team is drawing on a wide network of British expertise, including Brian Caddy, a leading forensic scientist at Strathclyde University. A British expert working on the case, who asked not to be identified, said the FBI labs were dealing with 'rubbish in, and rubbish out'.

The family of Martin Luther King has broken its 30-year silence and called for a re-trial of James Earl Ray, convicted of his murder. Ray has protested his innocence and retracted a confession. A re-trial would focus on forensic evidence collected under primitive technology.

The defendants convicted in two trials for the bombing of the World Trade Centre in 1993 are appealing. One of the central figures in exposing the FBI, a suspended former agent and scientist, Frederick Whitehurst, will testify for the defendants.

Whitehurst's lawyer, Stephen Kohn, says that since the Justice Department announcement on the 50 cases: 'We put a formal request to the FBI to reopen 1,200 cases in 1994. Now, from the documents we have, it will have to be a lot more.'

The FBI scandal was spawned last month by a series of complaints by Whitehurst, although the Justice Department had begun an investigation last year. The report that followed is still sealed, but sources say it shows that the agency knew about inadequacies in its forensic lab for a decade, but took action only when threatened with exposure.



evidence scandal

The *Observer* and BBC's *Newsnight* have learnt that the Justice Department found FBI agents were not bagging evidence properly at the scene of a crime, that the people in charge of investigations were not scientists, and that pressure was put on scientists for incriminating results.

Whitehurst set up a 'sting' on the World Trade Centre investigation: he filled a flask

**Oklahoma suspect
Timothy McVeigh
will question the
admissibility of
forensic tests**

with urine, boiled it dry and scraped it out to be unrecognisable. He told colleagues it had come from the crime scene, and it was certified as being Urea Nitrate — the explosive used in the bomb attack. His colleagues reportedly said: 'Another great piece of evidence; another great result.'

Experts say the FBI was forced into the open by advances in DNA-tracking equipment. A former Democratic congressman for California, Don Edwards, oversaw the development of the FBI's DNA analysis programme until 1994 and says: 'DNA forced them to confront the fact you could not run a lab like a private club, with no outsiders allowed to look in.'

After his protests, White-

hurst was demoted to the FBI's paint analysis department, and was this month suspended with three of the agents involved in the scandal, one being scientist James Thurman, who was instrumental in solving the Pan Am 103 Lockerbie bomb case.

The FBI's response to the Justice Department report is due by Friday. Sources said that it had been completed and was due for delivery any time now. It is secret but its general approach can be gauged by remarks from Deputy Director Walter Kennedy, who told a source close to the investigation the report 'would not impact on any specific case'. The source thought Kennedy's robust position was 'at least a case of misleading the public'.

FBI Role in Impeachment Probed

Justice Dept. Looks at Possibly Misleading Testimony in Judge Hastings Case

By Pierre Thomas

Washington Post Staff Writer

The Justice Department inspector general has been investigating whether the FBI intentionally gave misleading testimony to a judicial panel that was deliberating whether to recommend that then-U.S. District Judge Alcee L. Hastings be impeached.

The Justice Department probe has uncovered evidence that an FBI examiner who worked on the case of Hastings, now a Democratic representative from Florida, vigorously challenged the bureau's laboratory analysis of a key piece of evidence relating to the judge's truthfulness in a bribery trial in the early 1980s. But Justice Department investigators found that FBI supervisors largely ignored the examiner's critique and never provided the dissenting information to Congress, which later removed Hastings from the bench.

The revelation is the first detailed account supporting allegations by FBI whistleblower Frederic Whitehurst about shoddy FBI laboratory work. Whitehurst claims that bureau officials routinely manipulated forensic work and allowed flawed expert testimony during court proceedings if it helped prosecutions.

"It is not just Dr. Whitehurst who has alleged wrongdoing in the FBI crime lab," Sen. Charles E. Grassley (R-Iowa) said yesterday. "... I fear the FBI has covered up the lab's shortcomings."

Documents obtained by The Washington Post in connection with the Hastings investigation raise questions about the bureau's willingness to address criticisms of its laboratory procedures, even when their own employees raised them, Grassley and others said.

"The misrepresentations and misstatements in the transcript (regarding FBI forensic testimony in the Hastings case) . . . represent a glaring pattern of conversion of what should have been

presented as neutral data into incriminating circumstances by complete reversal of established laboratory test data with scientifically unfounded, unqualified and biased testimony," wrote frustrated FBI examiner William A. Tobin in 1989.

Tobin wrote that, while he agreed with the FBI's overall forensic assessment in the Hastings case, he was concerned that the bureau's testimony had gone too far in an apparent attempt to bolster the case against Hastings. Tobin's memorandum noted no fewer than 27 exceptions, or challenges, to



FILE PHOTO BY RAY LUSTIG—THE WASHINGTON POST

REP. ALCEE L. HASTINGS
"astounding beyond belief"

bureau testimony against Hastings, Florida's first black federal judge, after he was acquitted of federal bribery charges. The judicial inquiry begun after his acquittal raised allegations of racism from African American leaders.

During an interview with the Justice Department inspector general's office, Tobin reiterated his concerns to investigators, according to sources familiar with the inspector general's ongoing review. He also told investigators that he turned his memorandum in to his supervisor, but the bureau apparently did nothing to address his concerns. In fact, he never heard back from his superiors on the matter, Tobin said. In addition, sources said that investigators have been unable to find Tobin's original forensic report, which should have been used to prepare for the testimony in the Hastings case.

"Alcee Hastings and I have believed for some time that a fair amount of evidence against him was manipulated or manufactured," said Terence Anderson, Hastings's attorney during impeachment proceedings. Hastings called the revelation "astounding beyond belief. I need to understand who withheld this information, why they withheld it and what effect it would have had if it were presented to Congress," which impeached and convicted him.

Whitehurst's attorney, Stephen Kohn, agreed, saying that "if the FBI could put forth false evidence regarding a sitting judge, every American is at risk to FBI lawlessness."

In response to a broad inspector general investigation of the FBI crime laboratory, Justice Department officials have notified at least 50 state and federal prosecutors of potential problems in their cases.

Hastings was charged in 1981 along with friend and Washington lawyer William A. Borders Jr. of engaging in a conspiracy to accept a \$150,000 bribe from an undercover FBI agent posing as the brother of two men convicted of racketeering. In exchange, Hastings was to reduce the men's sentences and return nearly \$1 million in forfeited property.

Borders was convicted of the crime. Hastings, in a separate trial in 1983, was acquitted of the same charges. He has steadfastly maintained his innocence.

But after a 3½-year investigation prompted by an ethics complaint from several of his fellow judges, successive judicial panels concluded that Hastings had not only engaged in a bribery conspiracy, but lied and manufactured evidence at the trial to win acquittal.

Investigators sought to challenge Hastings's truthfulness on a number of fronts.

Hastings testified he was with Borders at the time he was alleged to have taken the bribe in part because he was trying to find a leather shop to repair a men's purse whose strap had broken.

FBI forensic experts were asked to test the strap to see if it could be snapped by accident, as Hastings described, or whether it was too strong and would have had to have been cut. The FBI's lab experts concluded the strap had been cut. The inference was that Hastings had cut the strap in an attempt to concoct an alibi.

Tobin generally agreed with that conclusion but said he was deeply troubled about FBI testimony in the case and believed it "revealed a pattern of complete omission of crucial conditions, caveats, premises and or assumptions which may be viewed as tending toward exculpatory."