

# Bumblers in the Bureau

## **TAINTING EVIDENCE** **Inside the Scandals at the** **FBI Crime Lab**

By John F. Kelly and Phillip K. Wearne  
Free Press, 355 pp., \$25

*Reviewed by DAVID BURNHAM,*  
*who specializes in writing about the*  
*operations of enforcement agencies including*  
*the New York Police Department, the Nuclear*  
*Regulatory Commission, the IRS, the Justice*  
*Department and the FBI.*

Partly because of America's near-religious faith in science and technology, a good part of the FBI's crime fighting reputation has long rested on the bureau's legendary ability to get its man through crime-solving techniques such as the matching of fingerprints, the study of blood stains and the chemical analysis of explosive residues.

During the last few years, however, the FBI's standing as a world leader in the scientific analysis of crime artifacts has taken some very hard hits. Among the most damaging critics has been Frederick Whitehurst, a PhD chemist and FBI agent who charges that the FBI Crime Laboratory has too often performed in unacceptably sloppy and biased ways. Other critics have included a surprising number of FBI agents, the Justice

Department's inspector general and what appears to be a significant scattering of federal prosecutors, judges and independent forensic scientists.

Because most of the critics have aimed their fire at the processing of individual cases brought in geographically dispersed jurisdictions over the last decade or so, however, the collective weight of these negative judgments has not been obvious. *Tainting Evidence*, a powerful new book by John F. Kelly and Phillip K. Wearne, has now provided this disturbing perspective. The documented failures of the lab, they argue, are not isolated events. Rather, they are strong evidence of systematic bureaucratic rot.

The Federal Bureau of Investigation has been a powerful presence in American life for more than three quarters of a century. In the early 1920s, a very young J. Edgar Hoover masterminded the unlawful roundup of thousands of alien residents for their allegedly radical beliefs. During the Cold War of the 1950s and the civil rights movement and anti-Vietnam War protests that followed, the bureau's profoundly authoritarian mindset peaked with COINTELPRO, a secret FBI program to discredit tens of thousands of political dissenters.

But the continuing FBI effort to expand its reach beyond its original mandate—the

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investigation of federal crimes—has included a number of less obvious and seemingly benign programs. Chief among them has been the bureau drive to broaden the role of the FBI Crime Laboratory in the processing of evidence for investigators and prosecutors throughout the United States. This has become a formidable operation. In 1996, for example, the lab conducted 696,543 examinations of “evidentiary items” for federal, state and local investigative agencies and prosecutors. In addition, it performed more than two million latent fingerprint examinations and processed 8,307 polygraph or lie-detector tests.

FBI employees also testify in a significant number of trials. During the last five years, bureau experts presented the results of their investigations in 2,813 cases, including high-profile matters such as the World Trade Center bombing, the siege at Ruby Ridge, and the impeachment of Alcee Hastings, then a federal district court judge in Florida.

The bottom line here is that the quality of work done by the FBI’s laboratory has come to be a significant factor in the quality of justice in America. To the extent that the lab does careful, balanced work, the guilty are convicted, the innocent are not, and public confidence in the fairness and effectiveness of the system of justice is enhanced. But

when the lab does sloppy, biased or scientifically unjustified work, society suffers, and representative democracy is weakened.

Through extensive interviews, detailed analyses of the FBI’s forensic work in selected cases, and the intense mining of government documents obtained under the Freedom of Information Act, Kelly and Wearne persuasively argue that the lab has frequently failed to meet the scientific and ethical standards required of such an important institution. They further contend that when these problems have been disclosed, the agency’s typical response has been denial and coverup rather than meaningful corrective action. They finally assert that the recent remedial steps ordered by FBI Director Louis Freeh, largely as a result of Whitehurst’s very public disclosures, are not adequate.

The FBI lab, they say, is a scandal that “has affected hundreds, maybe thousands of lives. A scandal of atrocious forensic science that not only threatened to punish the innocent, but to free the guilty. A scandal that demonstrated that J. Edgar Hoover lived on, that the FBI was unaccountable even to the FBI, let alone Congress, the scientific community, or the general public.”

To back up this judgment, Kelly and

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# Tainting Evidence

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Wearne tell scores of carefully footnoted horror stories. Here is one example: A few years ago, an examiner in the FBI's Hairs and Fibers Unit testified before a committee of five judges investigating allegations that Alcee Hastings, then a federal judge in Florida, had accepted a bribe. Although Hastings has always denied the charges and had been cleared by a jury, the committee was preparing an official statement for Congress, which some months later would impeach him.

The FBI's scientific testimony to the special judicial panel was subsequently reviewed by William Tobin, another FBI agent and PhD metallurgist who, like Whitehurst, had become broadly concerned about the overall performance of the lab. Tobin's analysis concluded that the FBI examiner in question had provided the judges with "inaccurate and deceptive information." In summary, he wrote, "the transcript reveals a pattern of complete omission of crucial conditions, caveats, premises and/or assumptions

which may be viewed as tending towards exculpatory in nature."

Although Tobin's immediate boss at the lab agreed with this highly critical analysis of the Hastings testimony, the FBI took no action. Several years later, the authors report, the Justice Department's Office of Inspector General also supported Tobin's criticism, classifying parts of the examiner's testimony to the judges as false. Although internal inspector general documents indicate that the FBI tried to challenge this finding on the grounds that there was no intent to lie, the I.G. stuck by his judgment, arguing that the word "false" had been used "to describe something that is untrue or not in accordance with the facts."

Examining how well or poorly a powerful and secretive agency like the FBI performs its work is one of the most difficult and important tasks that any reporter can take on. Kelly and Wearne have met this difficult challenge, successfully documenting a shocking condition that should outrage every American concerned with justice. ■