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BY THE COMPTROLLER GENERAL

112808

Report To The Congress

OF THE UNITED STATES

Special Agents Should Be Phased Out As FBI Crime Laboratory Examiners

The FBI is the only Federal crime laboratory which employs special agents as lab examiners. This is a costly practice, because special agents are higher graded than civilian personnel and receive special retirement benefits.

The benefits the FBI claims from using special agents do not justify the added costs. GAO's analysis and discussions with Federal, State, and local laboratory officials, users of the laboratories, and Federal prosecutors showed that the use of agent/examiners is not essential.

The Attorney General should direct the FBI to phase out its special agent examiners in favor of a civilian workforce. While significant cost savings are likely, firm estimates of the potential cost savings depend on decisions regarding staffing and compensation.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the merits of using special agents as Federal Bureau of Investigation laboratory examiners. The Bureau is unique among four Federal agencies in its use of special agents as laboratory examiners.

We are also sending this report today to the Speaker of the House of Representatives. Copies are being sent to the Director, Office of Management and Budget; the Attorney General; the Director, Federal Bureau of Investigation; the Administrator, Drug Enforcement Administration; the Director, Bureau of Alcohol, Tobacco and Firearms; and the Postmaster General of the United States Postal Service.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Luther B. Austin".

Comptroller General
of the United States



COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

SPECIAL AGENTS SHOULD BE
PHASED OUT AS FBI CRIME
LABORATORY EXAMINERS

D I G E S T

Within the criminal justice community, the high costs of the special pay and retirement benefits granted to law enforcement officers have prompted analysis of the need for officers to staff support positions. The FBI crime laboratory represents an untapped opportunity to achieve economies by replacing special agents with civilian examiners.

Of the four major Federal crime laboratories, only one--the FBI--uses special agents as laboratory examiners. The others--the Bureau of Alcohol, Tobacco and Firearms; the Drug Enforcement Administration; and the Postal Service--use civilian examiners.

The FBI believes that special agent examiners bring an "extra dimension" to the analysis of physical evidence. It claims that agent/examiners provide superior examination services, make better court witnesses, and perform better field support functions. These views are not fully shared by the heads of other Federal laboratories, nor are they supported by the users of the laboratories, the majority of laboratory examiners, and Federal prosecutors.

While having special agents as examiners has some benefits, the benefits are largely intangible and infrequent and, therefore, do not outweigh the added costs.

Specifically:

--Officials at other Federal laboratories believed the use of agent/examiners was not essential. (See pp. 8 to 9).

- 2 --Laboratory examiners, FBI agent/examiners included, did not believe that investigative experience was useful in performing the majority of physical evidence analyses, and investigative experience did not alter the nature of laboratory examinations. (See pp. 9 to 10 and pp. 14 to 16).
- 3 --Investigators who used Federal laboratories were equally satisfied with the services provided by all laboratories. (See pp. 16 to 17).
- 4 --Federal prosecutors believed examiners from all Federal laboratories provided effective court testimony. (See pp. 21 to 24).
- 5 --FBI agent/examiners rarely performed field investigative support. (See pp. 18 to 21).

The FBI laboratory is concerned that civilian staffing would lead to personnel turnover, resulting in an unstable workforce and high training costs. However, other Federal crime laboratories report no problems in retaining personnel. (See pp. 24 to 25).

Finally, the use of special agent personnel imposes significant additional costs compared to civilian personnel. These costs arise because criminal investigators are usually higher graded and receive special retirement benefits. GAO conservatively estimates that annual cost savings of over \$.5 million are possible. Firm estimates of the potential cost savings depend on decisions regarding staffing and compensation. (See pp. 25 to 29).

RECOMMENDATION

The Attorney General should direct the FBI to develop and implement a plan leading to the orderly transition to a civilian workforce in the crime laboratory.

AGENCY COMMENTS

The Department of Justice response to GAO's report takes strong exception to its recommendation, asserting that GAO did not adequately consider (1) the nature, scope, and quality of the work performed in the FBI laboratory and (2) the costs involved in a conversion to civilian examiners. Its arguments do not change GAO's position. GAO tested all of the major assertions FBI laboratory officials made regarding the benefits of using special agents in the laboratory and found little support for them. And the preliminary cost savings identified in the report provide ample justification for a detailed position classification and staffing study conducted by personnel specialists to develop a final cost savings estimate. The Department of Justice formal comments are in Appendix I (see pp. 42 to 56) and are discussed in Chapter 3. (See pp. 31 to 38).



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ABBREVIATIONS

ATF	Bureau of Alcohol, Tobacco and Firearms
DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
OPE	Office of Planning and Evaluation
SAC	Special Agent in Charge
USPS	United States Postal Service

CHAPTER 1

INTRODUCTION

Within the criminal justice community, the high costs of the special pay and retirement benefits granted to law enforcement officers have prompted analysis of the need for officers to staff support positions. The FBI crime laboratory represents an untapped opportunity to achieve economies resulting from replacing special agents with civilian examiners.

As part of a comprehensive review of four major Federal crime laboratories, we explored the merits of using special agents as laboratory examiners. The Federal Bureau of Investigation (FBI) is the only one of the four agencies to use special agents as laboratory examiners. The other three agencies: The Bureau of Alcohol, Tobacco and Firearms (ATF) of the Department of the Treasury; the Drug Enforcement Administration (DEA) of the Justice Department; and the United States Postal Service (USPS) employ nonagent examiners. Some of the examiners of these three agencies have investigative experience or training; however, they do not function as investigators and do not have special agent status.

CRIME LABORATORY FUNCTIONS AND ORGANIZATION

The four Federal crime laboratories we reviewed provide criminalistics 1/ services to their own agencies and, to varying degrees, also provide examination services to other Federal and to State/local law enforcement agencies. These laboratories provide such services as physical evidence examination, court testimony on examination results, technical advice to investigators, and field support in the form of crime scene searches.

1/That profession and scientific discipline directed to the recognition, identification, individualization, and evaluation of physical evidence by application of the natural sciences in law-science matters.

The FBI crime laboratory offers the most complete examination services among Federal crime laboratories. ATF and USPS crime laboratories are also considered to be full service laboratories supporting the investigative mission of their respective agencies. With minor exceptions, they perform the same types of analyses as the FBI crime laboratory. The drug analysis specialization of the DEA crime laboratory is unique among the four crime laboratories. The examination capabilities demonstrated in our review of the case work in the four crime laboratories are shown in the following table. 1/

Examination category	Agency			
	FBI	ATF	USPS	DEA (note b)
Chemistry-Toxicology (note a)	X	X	X	X
Microscopic Analysis	X	X	X	
Mineralogy	X		X	
Serology	X	X		
Explosives	X	X	X	
Firearms/Toolmarks	X	X	X	
Instrumental Analysis	X	X	X	
Elemental Analysis	X	X		
Questioned Document	X	X	X	

a/Only the FBI among the four laboratories performs toxicology analyses.

b/While not appearing in our sample, the DEA laboratory also performs microscopic, instrumental and elemental analyses.

1/Because the Federal crime labs use different terminology, we have assigned uniform definitions to avoid confusion. In this report, an examination is the general category of work conducted in a particular laboratory unit; tests are the actual analyses performed on a specimen. For example, a weapon identification examination in the Firearms and Toolmarks unit may include a number of comparison tests involving several pieces of evidence.

The FBI is the largest of the four laboratories reviewed. The Laboratory Division is staffed with 441 persons, including 123 special agents. Agent/examiners are responsible for all laboratory analyses, and the working grade is GS-14. An agent/examiner is extensively assisted by a civilian technician. The normal working grades for technicians are GS-5 through GS-10, although some of the most experienced progress higher.

The FBI Laboratory Division provides services beyond those listed in the previous table, including polygraph examinations, foreign language translations, construction of court exhibits, and photographic support. We limited our review to the Scientific Analysis Section and that portion of the Document Section concerned with such analyses as handwriting and typewriting comparisons. These sections account for 93 percent of all special agents in the division and 54 percent of total division personnel.

FBI special agents with science backgrounds are initially assigned to field offices to gain investigative experience. This field experience is generally of short duration due to concern that the state-of-the-art knowledge of trained scientists quickly diminishes during absences from their field of expertise. Agents move laterally into the laboratory, often at the GS-11 or GS-12 level, and qualify for accelerated advancement to the GS-13 level as incentive for the agents to pursue vigorously their 1- to 2-year examiner training programs. Once qualified as examiners, special agents are expected to serve in the laboratory for a minimum of 4 years. Agent/examiners have the discretion to remain in the laboratory or seek administrative advancement through an investigative assignment.

In contrast to the FBI, the ATF, DEA, and USPS crime laboratories employ scientists with nonagent status as examiners at lower grade levels. The DEA laboratory system is staffed by 189 supervisory, professional, and support personnel. The entry level for a forensic chemist is GS-5/7. The journeyman level is GS-12. Grades of GS-13 and higher are reserved for supervisory personnel, research chemists, or personnel who have achieved national recognition in an examination area.

The ATF laboratory system employs 110 professional and support personnel. Examiners without prior laboratory experience begin at the GS-5/7 level and can progress to the

GS-13 level, although the GS-13 level is reserved for persons who have achieved national recognition in an examination area.

The USPS laboratory system employs 55 professional and support personnel. Inexperienced questioned document examiners start work at approximately the equivalent of the GS-9, Step 3, level. Beginning forensic chemists start at the equivalent of a GS-10, Step 2. The journeyman level for both specialties is the equivalent of a GS-12. 1/

To explore the merits of using special agents as laboratory examiners, we reviewed a randomly selected sample of requests made to the four laboratories for physical evidence analysis. We also interviewed the laboratory examiners who performed the tests requested and the law enforcement officials making the requests. A complete presentation of the scope of our review and the methodology used is presented in chapter 4.

1/To facilitate comparison with other laboratories, we converted the USPS pay structure to that of the general schedule.

CHAPTER 2

FBI CRIME LABORATORY EXAMINER DUTIES

DO NOT JUSTIFY THE USE OF SPECIAL AGENTS

The benefits of using FBI special agents as laboratory examiners do not justify the added costs. FBI officials believe that agent/examiners provide superior examination services, make better witnesses, and better perform field investigative support functions.

However, we found that:

- Officials at other Federal laboratories do not believe that agent/examiners are essential.
- Federal laboratory examiners, FBI agent/examiners included, do not believe investigative background is useful in performing the majority of physical evidence analyses.
- Investigative experience does not alter the nature of laboratory examinations.
- Investigators who use Federal laboratories are just as satisfied with services provided by the DEA, ATF, and USPS laboratories as are those investigators who use the FBI laboratory.
- Agent/examiners rarely perform field investigative support functions.
- Examiners from other Federal crime laboratories also provide effective court testimony.
- Federal laboratories employing nonagent examiners maintain stable workforces.
- Use of special agents as examiners imposes substantial additional costs.

WHY THE FBI USES SPECIAL AGENTS AS EXAMINERS

Although the current justification for use of agents as examiners is based on the perception that they provide superior service, the practice originated for reasons unrelated to job performance. The FBI laboratory, created in 1932, was originally staffed by civilians. The examiner's apprenticeship in the laboratory was supplemented by attendance at Training Division lectures to new agents and police on rules of evidence, presentation of testimony and similar subjects, as well as by brief periods of field experience.

During World War II, laboratory examiners were converted to special agent positions to obtain draft-exempt status. The practice of filling examiner positions with special agents continued following the war as an expedient means of filling vacancies during a period of limited funding. Since women were not then eligible for the special agent position, and because FBI officials felt women might not be well-received giving court testimony, FBI officials saw this as another reason for continued use of special agents as examiners.

The present practice of requiring the special agent to serve a period of time in an investigator capacity in a field office before assignment to the laboratory originated in the early 1950s. It began as a means to provide agent/examiners with the necessary experience to be considered for field supervisory positions.

The former Assistant Director of the FBI's Laboratory Division summarizes the benefits of using the special agent examiner as bringing an "extra dimension" to the analysis of physical evidence. By blending investigative experience with scientific training, FBI officials believe FBI examiners can provide superior evidence examination services. FBI officials believe the agents' investigative experience permits them to establish a rapport with the investigator, enabling the agent/examiner to discuss the circumstances of the case and provide guidance to the investigator. FBI officials believe the investigative experience of the agent/examiner eliminates barriers to communication which can exist between civilians and police, and thus permits the agent/examiner to grasp how various tests may or may not be useful to the requester.

FBI officials also believe special agents provide a more qualified and stable workforce than civilian personnel. In part, they believe this derives from the process of selecting special agent personnel, which officials believe attracts some of the most dynamic and competent people from American society. In contrast, officials believe that a civilian workforce would require the FBI to accept a lesser caliber of personnel. FBI officials also believe special agents are more likely to be counted upon to work longer hours than civilian personnel.

THE USE OF SPECIAL AGENTS IN THE FBI CRIME
LABORATORY HAS NEVER BEEN FULLY STUDIED

The justification for using special agents as laboratory examiners has never been fully analyzed. The Office of Personnel Management (formerly the Civil Service Commission) has never performed a position classification review or examined the FBI's position description for classification purposes.

Although never subjected to independent review, the policy of using FBI agents as examiners in the laboratory has been questioned numerous times by the FBI. Most recently, the issue was studied by the Office of Planning and Evaluation (OPE) in 1975 and again in 1976 by the Laboratory Division.

The OPE study was instigated by questions raised by the FBI's Administrative Division. The Division argued that (1) the use of agents as laboratory examiners could not be justified on a cost basis and (2) the use of nonagent examiners would attract well-qualified people who desired to make criminalistics a career rather than forcing reluctant agents to transfer to the laboratory from the field.

The 1976 study, conducted as part of an FBI review of opportunities to replace agents with civilian personnel, was designed to determine whether it was possible to convert the laboratory staff from special agents to civilians. The study led the Laboratory Division to conclude that a shift

to nonagent examiners could be implemented if desired. Following the study, the FBI's two Deputy Associate Directors recommended on April 15, 1977, that the Laboratory Division undertake a trial program using civilian examiners in the laboratory to assess the cost effectiveness and the impact on the quality of the work product resulting from the use of civilian examiners.

The FBI Laboratory Division, however, opposed the replacement of special agents with civilian examiners. The Division argued that no change should be made in a successful system unless the work product quality is improved or the quality is maintained while costs are significantly decreased.

In both instances, the Director supported continuation of the present policy, concluding that "* * * the fact examiners are agents is most helpful in that they have prestige and they understand field investigative problems."

OFFICIALS AT OTHER FEDERAL LABORATORIES
DO NOT BELIEVE AGENT/EXAMINERS ARE ESSENTIAL

Officials at the ATF, DEA, and USPS crime laboratories do not believe the use of investigative personnel as examiners is essential to perform the work of a laboratory examiner. The Assistant Director, Technical and Scientific Services Division of ATF, sees no advantages to the agency in using special agents in the laboratory. He noted that agents are eligible for early retirement and is concerned that agents may lose their technical proficiency while working in the field. The Assistant Director did not believe special agent/examiners provide any better physical evidence examinations than civilian examiners.

The former General Manager of the General Crimes Division, who had administrative responsibilities for the Postal Service crime laboratory system, said training an investigator as a laboratory examiner is not a productive use of personnel. This position was echoed by the Director of the Postal Service crime laboratory.

The Chief of DEA's Forensic Science Division said DEA's laboratories are staffed with civilians because of an early decision that it is not essential to have special agents serve

as examiners. He recognized that a certain mystique surrounds special agents, but he felt that DEA chemists are sufficiently competent and motivated to be fully accepted by DEA agents.

EXAMINERS DO NOT BELIEVE INVESTIGATOR
EXPERIENCE IS USEFUL FOR THE
MAJORITY OF EXAMINATIONS

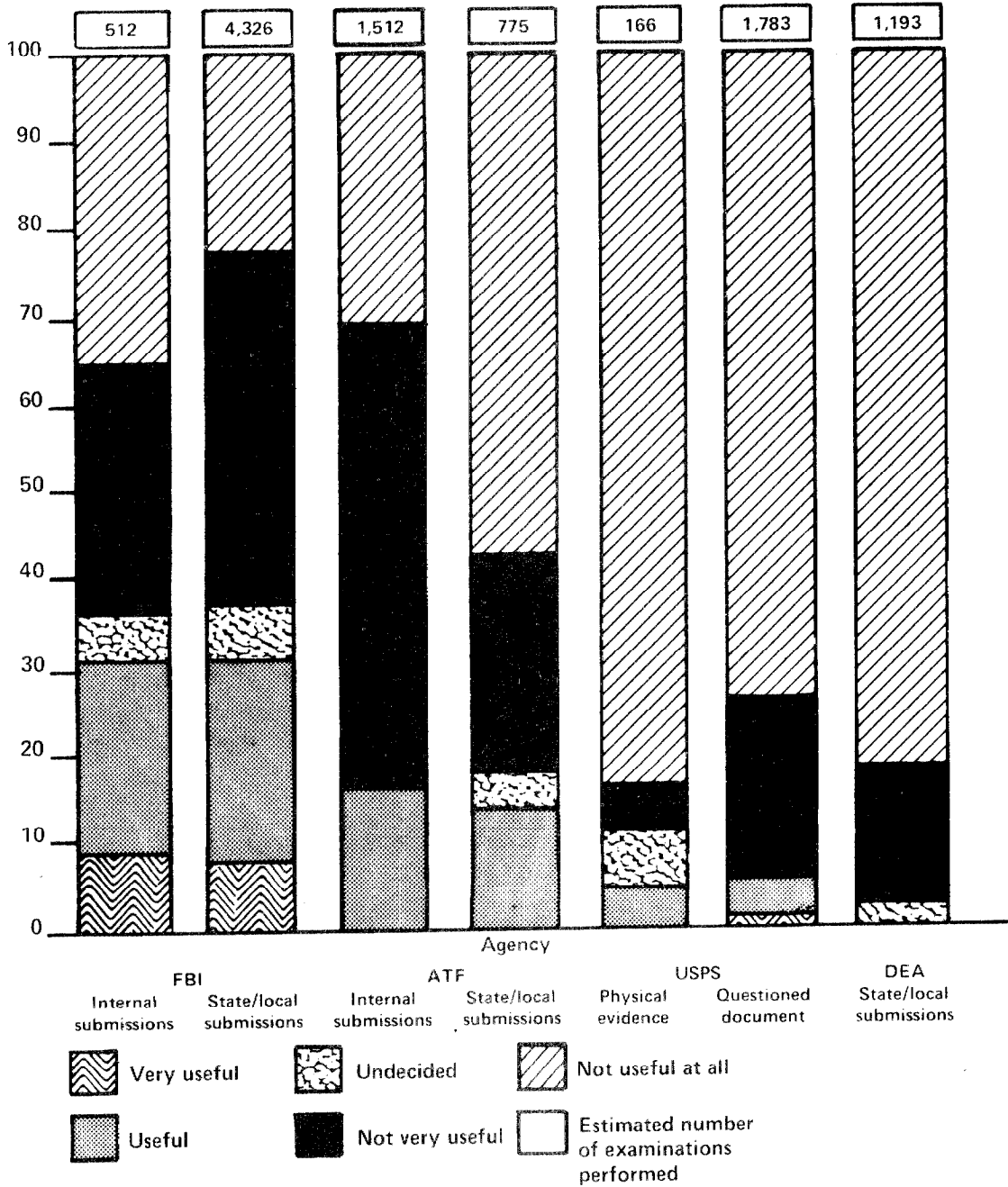
FBI agent/examiners do not believe investigative experience is useful in performing many laboratory examinations. Agent/examiners said investigator training was useful in performing the analysis requested in 30.5 percent of the FBI laboratory examinations in our sample. They felt the training was not useful in 63.5 percent of the sampled examinations. Agent/examiners were undecided in an additional 6 percent of the examinations. 1/ As shown below, responses from examiners in the other three laboratories showed considerably less sentiment that investigative experience would be useful in performing laboratory examinations. 2/

1/These estimates are subject to a sampling error of ± 4.5 percent at the 95 percent confidence level.

2/Because of the few number of examinations where investigator experience was cited as useful, we could only test for the influence such experience had on the usefulness response for three strata, two at the ATF laboratory and submissions to the Postal Service questioned document unit, Washington, D.C. Over 80 percent of both groups, those with and without investigator training, said it was not needed to do the examination. The results did not show a statistical difference between the respondent groups.

EXAMINER VIEWS ON THE USEFULNESS OF INVESTIGATIVE TRAINING/EXPERIENCE IN PERFORMING LABORATORY EXAMINATIONS

Percentage of Examinations Performed



The major reasons given by Federal examiners for responses that investigative experience was not useful in performing the tests were that mainly scientific/technical training and experience is used, the tests are straightforward, and the request was specific.

The major reason given for responses that investigative experience was useful in performing tests was that the experience was useful in deciding upon the proper scope and depth of the tests. The next most common reason was comprised of responses we characterized as being useful in a general/unspecified way. By such responses, examiners seemed to say that their investigative experience was useful even though they could not attribute this to any particular factor. Examples of such responses from FBI agent/examiners are:

- Reading background material in a request, the examiner gets a good idea of how the investigator is pursuing the case. Often the examiner can give the investigator some other possibilities to explore on the basis of prior investigative background. On the basis of his experience and contacts with police agencies where only scientific types were in crime labs (e.g., Scotland Yard in England), the examiner believes it is essential that examiners have investigative experience to assure successful results.
- Investigative experience is generally useful in knowing how to handle evidence and the importance of evidence in crimes.
- Field experience enables examiners to understand the circumstances of cases. Special agent status aids in dealing with other police agencies. It does not help in actually performing tests.

FBI technicians exercise significant discretion on the scope and depth of tests

As noted above, the major reasons given by agent/examiners for their investigative experience being useful in

performing laboratory duties were that the experience was useful in deciding upon the proper scope and depth of the tests. However, 14 of the 16 civilian technicians we spoke with said that they perform the initial analyses and determine the scope and depth of the tests.

Among the four Federal laboratory systems, the FBI is unique in its widespread use of technicians to support examiners. Often, one agent and one technician work as a team.

According to the FBI's official position descriptions that set forth the duties and responsibilities of the technicians, they are responsible for independently performing highly technical and complex tests. The technicians are to apply a high degree of initiative, resourcefulness, and judgment in planning and accomplishing tests in their entirety.

We interviewed technicians in the Document Section and in each unit in the FBI's Scientific Analysis Section to determine their role in the laboratory. The technicians' description of their duties corresponds closely with the official position description.

Although their duties and responsibilities, as well as the nature of the examinations, vary in the different laboratory units, the technicians explained that they generally receive and log in evidence, prepare paperwork, maintain reference files, perform tests, and write notes for the agent/examiners' review. If the test results are negative, the laboratory report may be prepared and proofread by the technician for the examiner's signature.

The agent/examiners provide general supervision, review the work of the technicians, evaluate test results, write the laboratory reports, and, if necessary, testify in court on the results of the examinations.

The following are examples of technician descriptions of their responsibilities.

--A senior Scientific Analysis Section technician told us that most tests in his unit are performed by technicians. This involves reviewing the request letter, deciding what tests to perform,

conducting the tests, and preparing analysis notes. He said he would also discuss the case with the requester if necessary. The technician said the tests do not destroy the evidence, and the completed tests are reviewable. However, he asserted that the technicians' work is not generally reviewed for technical competence; the agent merely uses the notes to prepare the final report. The technician said the longer a technician works with an agent, the more independent the technician is.

- In separate interviews, three technicians from one unit within the Scientific Analysis Section expressed agreement on their work responsibilities. They said they receive the case, review the request letter, determine what tests to perform, set up and perform the tests. Because the agent may have to testify on the findings, he is present to interpret the test results. The senior technician told us that less experienced technicians are more likely to seek guidance from an experienced technician than from the special agent to whom they are assigned.
- A senior technician from a unit within the Scientific Analysis Section told us she typically receives and catalogs the incoming evidence, reads the accompanying submission letter, and exercises discretion as to what tests will be performed. She performs the sophisticated tests, analyzes the results, and forwards the results to the agent/examiner for review and signature.
- In yet another unit of the Scientific Analysis Section, two technicians in separate interviews similarly described their function in the laboratory. They said that they receive the incoming evidence, read the transmittal letter, prepare paperwork, determine what tests have to be done, operate laboratory equipment, perform the tests, and write notes. Agent/examiners review the work done by the technicians.

--Civilian analysts in the laboratory's Questioned Document Section told us that they receive the incoming evidence and read the accompanying letter before deciding what tests to perform or which files to search. They may perform comparison handwriting analyses, bank note or fraudulent check file searches, as well as indented writing tests. The document analysts conduct preliminary tests; they bring possible identifications to the attention of agent/examiners who review the findings and sign the report.

INVESTIGATIVE EXPERIENCE DOES NOT AFFECT
THE NATURE OF LABORATORY EXAMINATIONS

Although FBI officials believe agent/examiners can provide better examinations due to their understanding of the criminal investigative process, we could detect little difference in the nature of the work performed by Federal crime laboratory examiners. Nor could we detect any greater discretion being exercised by FBI agent/examiners than by other Federal examiners in deciding that some requested tests were not needed or that tests beyond those requested were required.

"Were there tests the requester
wanted but which you did not do?"

Federal examiners rarely did not perform the specific tests requested. In only 4.5 percent of the examinations covered by our sample did the examiner not perform requested tests. ATF examiners did not perform tests in 8 percent of sampled examinations. The FBI agent/examiners did not perform requested tests in 5.3 percent of the examinations sampled. USPS examiners did not perform requested tests in 1.3 percent of the examinations sampled. DEA examiners performed all requested tests. Overwhelmingly, Federal examiners perform the tests requested with no discernible difference for FBI agent/examiners.

"Did you perform tests
beyond those requested?"

Among all examinations we reviewed, the examiner performed tests beyond those requested 20.2 percent of the

time. The additional tests performed in our sampled cases were generally routine, and, we believe, generally were performed as a result of examiners' scientific and technical training.

<u>Agency</u>	<u>Percentage of examinations in which tests were performed beyond those requested</u>
DEA	43
FBI	24
ATF	11
USPS	7

DEA examiners performed tests beyond those requested 43 percent of the time, attributing this to the fact that, generally, the State/local requesters only ask them to identify the suspected drug. Therefore, they must use judgment in deciding for which drugs to test.

FBI agent/examiners performed additional tests in 24 percent of the examinations. The principal reasons given for performing additional tests were that "better results could be obtained with additional tests" and "the request was not specific as to the exams to be done."

A further breakdown of FBI responses indicated that FBI questioned document examiners were more likely to say they performed additional tests than FBI scientific analysis examiners. Our case review shows that when questioned document examiners said they performed additional tests, they characterized these additional tests as routine procedure. Characteristically, these involved tests for indented writing and comparison of questioned writing against signatures on fingerprint cards and writing samples in files, such as the anonymous letter file and the bank robbery note file. Such tests are routinely performed by FBI nonagent technicians. We believe such tests involve mostly scientific and technical training and do not justify the use of special agents in the crime laboratory.

Most evidence examinations do not require contact with requesters

Federal laboratory examiners seldom contact requesters to seek additional information concerning the investigation

or the evidence submitted. Examiners told us that contact with the requester is not generally necessary, because the requests are straightforward and do not require additional clarification. Contact was made for only 16 percent of the examinations. The highest incidence of contact with the requester occurred at ATF (24 percent). USPS examiners contacted requesters regarding 17 percent of the examinations. FBI agent/examiners made contact concerning 14 percent of the examinations. DEA examiners made contact for only 4 percent of the examinations.

Examiners generally provide results only

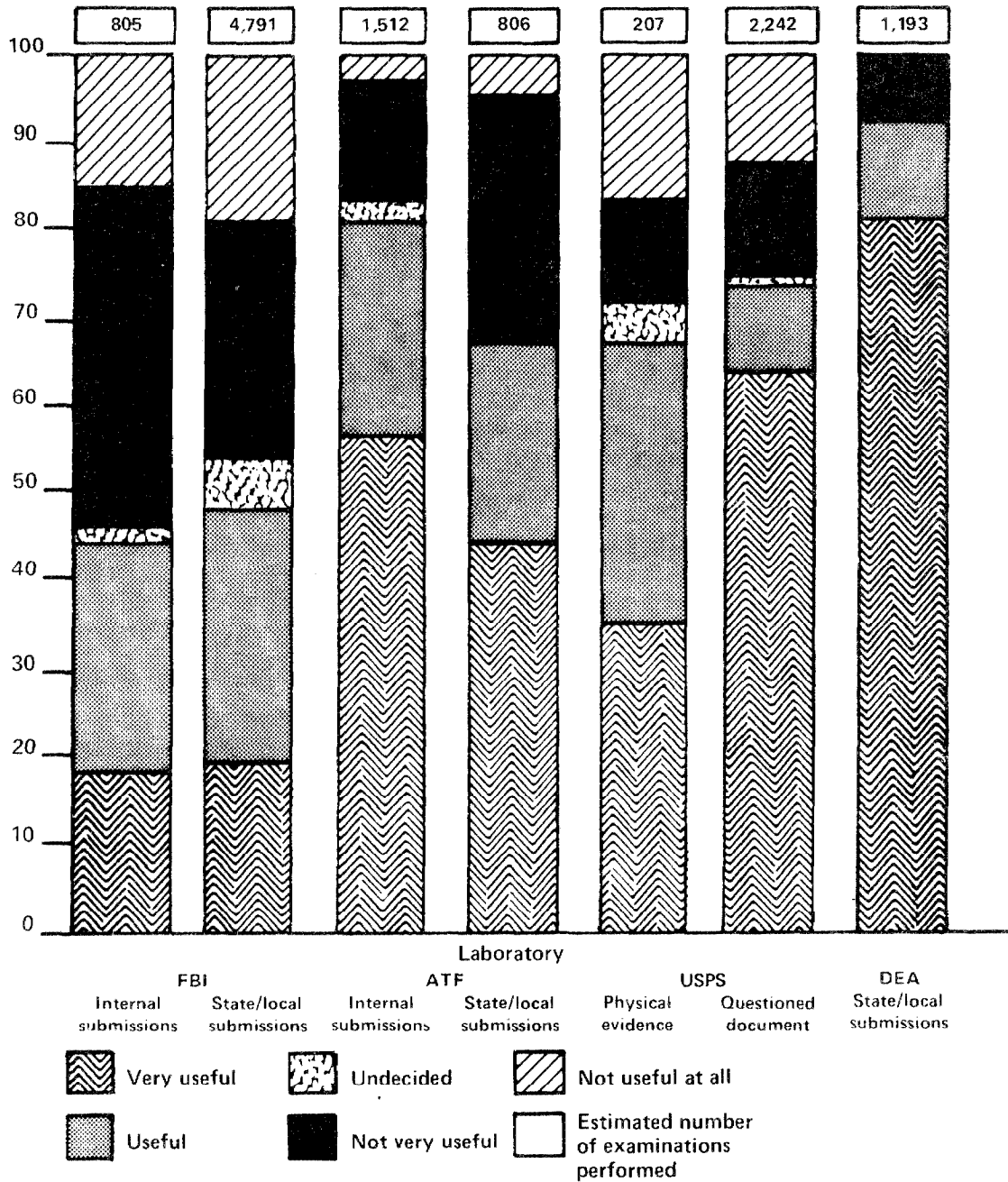
Our review showed that special agents generally do not provide any additional guidance or perspective on physical evidence analysis as a result of their backgrounds. For 84 percent of the examinations we reviewed, Federal examiners provided requesters with only the examination results. Both FBI agent/examiners and USPS examiners provided only examination results in 84 percent of the examinations. ATF examiners provided only examination results for 76 percent of the examinations, while DEA examiners did so 98 percent of the time. Even for those instances in which the laboratory response included more than just the examination results, it was merely either a routine statement that the evidence is prepared for future analysis or a request for additional evidence or known samples for comparison.

USERS ARE SATISFIED WITH THE SERVICES OF ALL FEDERAL CRIME LABORATORIES

To determine if special agents provided any special benefits to laboratory analyses which would be apparent to users, we asked requesters whether the examination results were useful to the investigation. Users of ATF, DEA, and USPS crime laboratories were more likely than users of the FBI to say that the examination results were useful to the investigation. At a minimum, we believe that these results show that laboratories which operate without special agents in the crime laboratory can provide useful results to investigators.

USEFULNESS OF LAB WORK

Percentage of Examinations Performed



FBI FIELD INVESTIGATIVE SUPPORT DOES
NOT REQUIRE INVESTIGATOR STATUS

FBI officials believe special agent status is essential to provide direction to investigative operations. The nature and frequency of laboratory field support activities, however, do not justify the use of special agents. Field support is a very minor component of an agent/examiner's work. Certainly investigative experience can be beneficial, but scientific and technical experience appear to be the primary requirements.

The position description for the GS-14 working grade for agent/examiners states agent/examiners are to:

"Provide direction by reviewing reports or memoranda dealing with the particular investigative situation and issuing instructions to the appropriate office as to the scientific or technical procedures required to bring the investigation to a successful conclusion. Frequently it may be necessary for incumbents to proceed to the field to provide on-the-scene direction of the scientific and technical aspects of highly important and involved cases, e.g., may proceed to the scene of a major kidnapping case to take full charge of the many complicated technical aspects of such investigations."

The agent/examiner position description and the examples of field investigative support presented by FBI officials clearly show that the agent/examiner's scientific and technical training and experience is the key element in field support activities. The FBI's Legal Counsel Division has concluded that special agent status is not required to perform crime scene searches or most other field support activities. This is in keeping with the practice of the ATF, DEA, and USPS laboratories where civilian examiners participate in investigative support operations.

FBI estimates of field support activities for the past two fiscal years show this to be a small component of the total workload.

<u>Section</u>	<u>FY 1978</u> <u>workdays</u>	<u>% of total</u> <u>workdays</u>	<u>FY 1979</u> <u>workdays</u>	<u>% of total</u> <u>workdays</u>
Document	46	.57	61	.72
Scientific Analysis	106	.50	109	.51

In pursuing the issue of field support from the crime laboratory, we have previously presented our findings that 84 percent of laboratory examinations were completed without contacting the requester, and examiners provided examination results only in 84 percent of the examinations.

However, in pursuing this issue further, we reviewed FBI records of field support provided between October 1977 and June 1979. We discussed with unit chiefs within the FBI laboratory the nature of the field support activities of their personnel.

The Assistant Chief of the Document Section told us the vast majority of document field support involves analysis of evidence incidental to a trial. The Assistant Chief said that tight time frames prior to trial may require the examiner to examine the evidence onsite and then stay to testify. In this regard, the Document Section provided us with a letter from the Special Agent in Charge of the Houston field office expressing appreciation for the efforts of an agent/examiner who examined evidence onsite and then testified before a grand jury. The SAC specifically expressed appreciation for the scientific and technical support of the examiner. The Chief of the Document Section raised the possibility of an agent/examiner assuming investigative duties to examine evidence in a sensitive case, such as a foreign counterintelligence investigation. However, neither he nor his assistant could provide specific examples.

Field support of the Scientific Analysis Section is heavily concentrated in the explosives and firearms/toolmarks units. The Chief of the FBI's Explosives Unit said field support generally involves response to major bomb scenes where the examiners gather material to bring back to the laboratory for analysis. The Chief's predecessor told us the majority of crime scene investigations are after the bombs have exploded. The current chief said the local bomb squad normally secures the crime scene, including searching for additional bombs and defusing them.

However, if a local bomb squad does not exist, the FBI will take charge of the crime scene. The unit chief noted that FBI technicians accompany examiners to the crime scene and participate in gathering and segregating the evidence.

The unit chief believes special agent status is valuable for explosives examiners. He recalled one case in which a local law enforcement officer asked him to conduct a search of an area near the scene of a bombing. Because of his special agent training, he asked whether a search warrant had been obtained. From this he learned that one had not been obtained. The unit chief felt a possible illegal search was prevented.

In contrast to the FBI, ATF explosive enforcement officers are nonagents. Like FBI agent/examiners in the explosives unit, they have explosives ordinance experience, defuse explosive devices, and reconstruct and explode them. They respond to crime scenes, but this seldom involves disarming bombs. Their working grade is GS-11/13.

The Chief of the FBI's Firearms/Toolmarks Unit said assistance provided to investigators is characterized as mainly scientific and technical. Regardless, the unit chief and agents in the unit felt investigative experience is very useful in assisting requesters.

The Chief of the FBI's Mineralogy/Metallurgy Unit has also been involved in field support activities to some degree. One such activity involved field tests of an airplane's steering mechanism in a suspected sabotage case, and the location of altered identification numbers in a bank fraud and embezzlement case. The unit chief provided another example of field support, a suspected sabotage case involving a train derailment, which he said best illustrated the marriage of laboratory and investigative training. The unit chief reviewed the crime scene and examined evidence at the scene. He provided investigative guidance in the form of technical background to agents interviewing employees. With the case agent, he participated in certain interviews. Finally, he arranged for and supervised simulation tests to determine whether the incident could have occurred accidentally.

The Chief of the Mineralogy/Metallurgy Unit believes special agents are essential to handle field support. However, we view his examples cited above as demonstrating that mainly scientific and technical experience is required.

Some FBI laboratory unit chiefs told us that much of their field support activities came in responding to telephonic requests for assistance. Again, we believe such assistance is primarily scientific and technical. For instance, the Chief of the Mineralogy/Metallurgy Unit recalled a fraud case in which he determined that the most economical means of performing required technical tests was by contracting with a private firm. The Chief of the Elemental Analysis Unit recalled serving as a technical intermediary between the FBI investigator and the Department of Energy on a nuclear extortion case. The Chief of the Chemistry/Toxicology Unit suggested field support might be advising an agent whether evidence can be analyzed effectively at a local laboratory, or advising a field agent to send a comparison sample to match with a questioned substance. Again, although investigative experience can be beneficial, scientific and technical experience appear to be the primary requirements to perform field investigative support.

OTHER FEDERAL EXAMINERS AS WELL AS
FBI EXAMINERS ARE HIGHLY REGARDED
BY FEDERAL PROSECUTORS

FBI laboratory officials believe that the special agent/examiner makes a more effective witness than the examiner without investigative experience. They attribute this edge to the dynamic personality traits of persons who qualify for the special agent position, as well as to the exposure to the criminal justice system which the special agent receives through investigative training and field experience. Our discussions with Federal prosecutors support the FBI's contention that its agent/examiners are good witnesses; however, these prosecutors also spoke well of examiners from other Federal crime laboratories.

Testimony should be looked at in the context of the overall work of crime laboratory examiners. Although courtroom testimony regarding laboratory findings represents an important element of the work of an examiner, testimony

occurs in a small minority of cases. Among the 7,992 cases in our review, Federal examiners testified an estimated 436 times, or in 5.4 percent of the cases. At the FBI, we estimate that agent/examiners testified in 9.4 percent of the cases represented by our sample.

Federal prosecutors believe all Federal examiners are competent witnesses

We interviewed 10 assistant U.S. attorneys in 7 U.S. attorney offices. Eight attorneys had experience with the FBI and of these, seven also had experience with examiners from at least two other Federal crime laboratories. The consensus opinion was that all Federal crime laboratories provide competent analytical services and good witnesses. The views of the prosecutors are summarized below.

- DEA has been competent. ATF has provided fantastic service with fast service and a very good performance by an examiner/witness. The FBI is good but has provided slow service at times. The FBI's reputation may carry a lot of weight with juries, but the fact that a lab examiner has investigative experience has no impact on juries. It provides defense counsel with the opportunity to attempt to convince the jury that the witness is an investigator testifying for the prosecution. Quite often, defense counsel will stipulate to having reports from any Federal laboratory read to the jury rather than have the examiner testify in court.
- The prosecutor's experience is limited to DEA. DEA examiners are competent witnesses, and defense counsel have never challenged a DEA lab report in his experience.
- The prosecutor has been receiving fast, professional service from all Federal crime laboratories. He has not had any problem qualifying witnesses before the judge through reference to the individual's scientific and technical training.

- The services from FBI, USPS, and Secret Service have always been good. Although he doesn't have extensive experience with all labs to base a definite conclusion, FBI and Secret Service examiners seem to make better witnesses.
- The services provided by Federal labs have always been adequate, and examiners have been competent witnesses. There is little difference in competency among agencies. He did feel FBI examiners are very dynamic and convincing witnesses, attributing this to the constant influx of new examiners. He feels more experienced examiners tend to become less enthusiastic and explanatory.
- The services from DEA, ATF, and USPS are very prompt, but the FBI is too slow. He doesn't have any problems with the competency of examiners from DEA, FBI, USPS, or ATF. All the examiners make good witnesses, but the FBI examiners make the best witnesses.
- Examiners must have the ability to provide a clear, concise, factual, convincing testimony on the stand. From that perspective, FBI examiners have not been very impressive in comparison to Secret Service and ATF.
- Scientific capabilities of the FBI examiners are as proficient as the ATF and Secret Service examiners. FBI examiners normally make the best witnesses, although FBI questioned document examiners are becoming known for their elusive, indefinite testimonies in the courtroom.
- FBI examiners are very good witnesses. He has had one experience with the USPS laboratory, and the examiner was a very professional witness.

--In his experience, all examiners from Federal laboratories have made excellent witnesses. He has never had a defense counsel challenge the qualifications of an expert witness. He does not feel that examiners with investigative backgrounds make better or more credible witnesses because their investigative skills are not relevant to the courtroom presentation.

PERSONNEL TURNOVER IS NOT REGARDED AS A
PROBLEM IN FEDERAL CRIME LABORATORIES

The FBI laboratory is concerned that civilian staffing would lead to personnel turnover, resulting in an unstable workforce and high training costs. The FBI Director considered personnel turnover a major factor in his 1977 decision to continue the practice of using special agents in the laboratory. However, other Federal crime laboratories report no problems in retaining personnel.

The OPE study noted that because of the FBI's splendid pension system, agent/examiners are less likely to leave the agency than their civilian counterparts. However, the use of special agents does impose some built-in personnel turnover. Special agents are required to retire at age 55 and may qualify for retirement before reaching that age. Regular civil servants can work beyond age 55. Additionally, the present FBI staffing policy has turnover built into it. Agent/examiners are encouraged to consider returning to field offices after completing their minimum tour of duty in the crime laboratory to pursue advancement. FBI officials believe the infusion of agents fresh from field office assignments helps maintain a close working relationship between the laboratory and field investigators. The Assistant Director in charge of the FBI laboratory told us he encourages greater rotation than has been experienced in the past.

Two FBI unit chiefs, however, expressed reservations about this rotation policy, observing that it can result in a great loss of expertise. One unit chief estimated that 5 years are required for an examiner to fully learn the

instrumentation and reference files in his unit. When examiners are just fully realizing their potential, they are eligible to leave. Since 1976, three agent/examiners have rotated back to the field from this unit with a complement of seven agent/examiners.

There is no indication that the personnel turnover rate would increase at the FBI laboratory if civilian examiners were used in place of special agents. In fact, other Federal crime laboratories report minimal personnel turnover. DEA laboratory officials told us there has been little personnel turnover in the DEA laboratory system. The Chief of the Forensic Science Division said 7 chemists from a complement of 142 have left for other employment since fiscal year 1976. Officials of ATF's Technical and Scientific Services Division told us turnover has been minimal in the ATF laboratory system since fiscal year 1976, with only three examiners leaving for other employment. The Director of the Postal Service laboratory told us personnel turnover was not a problem in that laboratory system. He said five questioned document examiners have left for other employment since 1976. Prior to 1976, the Director said the laboratory system experienced a long period of no staff turnover.

FBI officials told us that they did not have a turnover problem in their laboratory. However, we note that the FBI's staffing system has personnel turnover built into it. Since fiscal year 1976, 25 agents have transferred from the Document and Scientific Analysis sections, and 13 have retired. Considerable technician turnover results from technicians being accepted into special agents training. According to the FBI, 46 technicians left the laboratory since fiscal year 1976 for special agents class.

USE OF SPECIAL AGENTS IMPOSES SUBSTANTIAL COSTS

The use of special agent personnel imposes significant additional costs compared to civilian personnel. These costs arise because criminal investigators are usually higher graded and receive special retirement benefits. Firm estimates of the potential cost savings depend on decisions regarding staffing and compensation.

Reduced personnel costs

Personnel cost reductions will occur because of the reclassification of examiner positions from the criminal investigator series to the chemist and questioned document examiner series. This action will lower the grade structure and reduce retirement costs.

Employment of civilian scientists in the crime laboratory is expected to reduce the working grade from GS-14 to GS-13. Civilian laboratory examiners would not have supervisory investigative responsibilities, which is the present justification for the GS-14 working grade in the crime laboratory. FBI officials told us that they expect nonagent examiners would achieve a working grade of GS-13. This would still leave the FBI with a higher grade structure than the ATF, DEA, or USPS crime laboratories.

Lower retirement costs will also result when civilian personnel replace criminal investigators. Under the provisions of the special retirement policy for Federal law enforcement and firefighter personnel (5 U.S.C. 8331-8339), criminal investigators can retire earlier, with fewer years of service, and at higher annuities than most civil service personnel. The estimated annual cost to the Government of these benefits--assuming annual 6.5 percent pay and 6 percent annuity increases--is 42.54 percent of pay. This compares with 29.46 percent of pay for civil service personnel not eligible for the special benefits. These costs are portrayed in the following chart.

Cost Comparison of Agent/Examiner Versus
Civilian Examiner Pay and Retirement

<u>Pay</u>	FBI special	<u>Civilian grades</u>		
	<u>agent</u> <u>GS-14/1</u>	<u>GS-14/1</u>	<u>GS-13/1</u>	<u>GS-12/1</u>
Salary	\$34,713	\$34,713	\$29,375	\$24,703
Premium pay (note a)	4,690	-	-	-
<u>Agency retirement contribution</u>				
Salary	2,603(7.5%)	2,430	2,056	1,729(7%)
Premium pay	352(7.5%)	-	-	- (7%)
<u>Cost to Government for unfunded retirement liability (note b)</u>				
Salary derived benefits	12,163(35.04%)	7,797	6,598	5,548(22.46%)
Premium pay	<u>1,643(35.04%)</u>	<u>-</u>	<u>-</u>	<u>- (22.46%)</u>
Total annual cost to the Government per position	<u>\$56,164</u>	<u>\$44,940</u>	<u>\$38,029</u>	<u>\$31,980</u>

a/Agent/examiners regularly work a minimum of 1 hour and 49 minutes overtime per day to qualify for the maximum rate of administratively uncontrollable overtime (25 percent of GS-10 Step 1).

b/Only a portion of retirement costs are borne by the employing agency; 7.5 percent of pay for the criminal investigator and 7 percent of pay for civilian personnel. The remainder of the accruing costs are additions to the Government's unfunded retirement liability. The Government partially meets this obligation through additional annual contributions to the civil service retirement fund.

In June 1979, there were 96 agent/examiners, excluding supervisory personnel, in the FBI laboratory's Document and Scientific Analysis sections. Seventy-four percent of these agent/examiners were at the GS-14 level, 8 percent at the GS-13 level, 10 percent at the GS-12 level, and 8 percent at the GS-11 level. The chart which follows provides the cost comparison of staffing all 96 positions with civilians.

<u>Alternative staffing structure (note a)</u>	<u>Total annual cost, pay, and retirement benefits for 96 positions</u>	<u>Difference agents or civilians</u>
Agent/examiners	\$5,041,677	
GS-14 - 71 agents		
GS-13 - 8 agents		
GS-12 - 9 agents		
GS-11 - 8 agents		
Civilian examiners (note b)	3,505,575	\$1,536,102
GS-13 - 79 positions		
GS-12 - 9 positions		
GS-11 - 8 positions		

a/All calculations are based on pay at the Step 1 level.

b/This staffing approximates the FBI's June 1979 staffing structure, assuming that all agent/examiners at the GS-14/GS-13 levels will be replaced with civilians at the GS-13 level. It assumes agent/examiners at lower grade levels will be replaced with civilians at the same grade level. It also assumes agents work 2 hours overtime per day.

GAO expects that additional civilian examiners would have to be employed to replace the overtime now worked by agent/examiners. Agent/examiners regularly work a minimum of 1 hour and 49 minutes overtime per day. We estimate that five civilian examiners might be required to replace four agent/examiners, assuming 2 hours of overtime are worked by agent/examiners. With this ratio, 120 civilian examiners would

be required to replace the 96 agents. If we assume that agent/examiners at the GS-14/1 and GS-13/1 levels would be replaced with civilians at the GS-13/1 level and that agent/examiners at lower grade levels would be replaced with civilians at the same level, annual cost savings of \$664,245 are possible.

The FBI reports in its comments that our cost savings would be reduced because it now has only 78 examiners in anticipation of the funding level for fiscal year 1981. We agree that cost savings would be reduced as staffing declines. However, the FBI fails to include seven positions in its research and training units which we believe would logically be staffed by civilian examiners. Even with only 78 positions, however, staffing with 98 civilian examiners rather than 78 agents (assuming 5 civilians replace 4 agents) results in annual savings in salary and retirement benefits of \$498,000.

Our estimated cost savings provide only the order of magnitude of the potential cost savings. Firmer estimates would result from an extensive analysis of position classifications and alternative staffing possibilities. We believe OPM's Agency Compliance and Evaluation Group is a logical group to assist the FBI in such a study.

Additional cost savings are possible

Additional cost savings are possible through employment of civilian examiners. Civilian examiners would not receive the 4-month FBI special agent training course which was estimated to cost \$10,756 per trainee in fiscal year 1978. As the FBI pointed out in its comments, some of the subjects included in this course would also be necessary for civilian examiners. Consequently, only a portion of this cost could be reduced.

The present practice of moving agents from a field office and back to the FBI laboratory after having obtained their field experience would be eliminated at a cost savings of \$8,000 to \$10,000 per agent. Since examiners would no longer be agents, they would not be eligible for transfers back to the field after 5 or 6 years, a savings in terms of moving costs (another \$8,000 to \$10,000) and lost experience in the laboratory.

CONCLUSIONS

FBI laboratory officials strongly believe that the investigative experience of special agents benefits physical evidence analysis. However, given the nature of laboratory work, we question whether these benefits, which appear to us to be infrequent and largely intangible, are worth the cost. FBI concerns that nonagent examiners would not be as effective as agent/examiners are not supported by our review of crime laboratory cases. Likewise, Federal laboratories employing civilian examiners have not experienced personnel turnover problems which FBI officials anticipate if agent/examiners are replaced.

RECOMMENDATION

We recommend that the Attorney General direct the FBI to develop and implement a plan leading to the orderly transition to a civilian workforce in the FBI crime laboratory. Such a plan would necessarily include a position classification and staffing study, and it would be useful to request the services of the Justice Department's Position Classification and Pay Management Group, or the Office of Personnel Management's Agency Compliance and Evaluation Group. Both groups have expertise in performing classification studies and in developing cost estimates for alternative staffing practices.

CHAPTER 3

AGENCY COMMENTS AND OUR EVALUATION

The Department of Justice response to our report (see appendix I) takes strong exception to our recommendation that the FBI phase out agent/examiners employed in the crime laboratory and replace them with a civilian workforce. The Department questions many of the facts and statements contained in the report. The Department asserts that we did not adequately consider (1) the nature, scope, and quality of the work performed in the FBI laboratory and (2) the costs involved in a conversion to civilian examiners.

The arguments presented by the Department do not dissuade us from our position. Our analysis of the work of other Federal examiners compared to the FBI shows little support for FBI arguments justifying agent/examiners. In particular, we found that when reviewing specific cases

- Federal examiners, including FBI agent/examiners, did not believe that investigative experience was useful in performing the majority of laboratory examinations (pp. 9-11);
- investigative experience did not affect the nature of laboratory examinations (pp. 14-16); and
- investigators and prosecutors were satisfied with the services provided by all four Federal laboratories (pp. 16-17, 21-23).

As for our cost savings estimates, the FBI acknowledges the present staffing system is more expensive than employing civilian examiners. We present various staffing scenarios and the anticipated cost savings associated with them. We acknowledge that a final cost savings estimate must await a detailed position classification and staffing study which must be performed by personnel specialists. However, the preliminary cost savings we identified are ample justification for such a study to proceed.

In our view, the nature of the duties of Federal crime laboratory examiners are sufficiently similar, in practice, to justify a conclusion that civilians can effectively perform these duties at the FBI, just as they do in other Federal crime laboratories. We again draw attention to the

clear majority of responses by FBI agent/examiners that investigative experience was not useful in performing laboratory examinations in specific cases (pp. 9-11). The creation of a rewarding, professional career for FBI civilian examiners would end an expensive practice of staffing essentially non-investigative positions with agents who continue to receive special pay and retirement benefits. The Department's specific comments are addressed below.

Nature, scope, and quality of work

The Department of Justice contends that we did not seek to identify the benefits of field investigative experience, but chose only to establish that such experience was not essential to the performance of technical analyses. We disagree. Our review tested all of the major assertions FBI laboratory officials made regarding the benefits of using special agents in the laboratory and found little support for them. Thus, although the FBI is quoted as having testified that the agent/examiner frequently performs not only a test activity but also suggests and advances the investigative effort of State and local law enforcement, we found this not to be the case in our randomly selected sample of cases. Agent/examiners told us they

- rarely communicate with requesters (pp.15-16);
- rarely communicate other than the results of examinations specifically requested (p. 16); or
- rarely exercise discretion in modifying the request by doing more or fewer tests than were requested (pp. 14-15).

Agent/examiners rarely perform field investigative support functions and when they do, investigative experience is not essential (pp. 18-21). Thus, it is evident that we did not limit our review only to the performance of the technical aspects of crime laboratory examinations.

The Department of Justice states that we failed to identify the substantial differences in the Federal laboratories surveyed in terms of the scope of responsibilities; and the nature, quantity, and quality of the work performed. In this regard, the FBI argues that agent/examiners are justified because of its broad investigative jurisdiction, its research and training effort, and its broad technical

capabilities. We acknowledge that as the major Federal investigative agency, the FBI has broader investigative responsibilities than other Federal agencies. However, we found high levels of user satisfaction with the services of other Federal laboratories (pp. 16-17, 21-23), and our review of cases shows that the characteristics of the work performed by agent/examiners varies little from other Federal examiners and does not require agent status. Thus, we believe the FBI's arguments are irrelevant to the issue of whether the laboratory should be staffed by agents or civilians.

Although the FBI argues that its research and training program justifies agents in the laboratory, we see no requirement for special agent status to conduct research or provide training. The training referred to by the FBI is of a technical/scientific nature being given to other laboratory examiners who may or may not have investigative experience.

The FBI argues that agent/examiners are justified because they directly supervise the collection and preservation of evidence, sometimes conducting on-site examinations. However, FBI's Legal Counsel Division has concluded that special agent status is not required to perform crime scene searches or most other field support activities (p. 18). This is in keeping with the practice of the ATF, DEA, and USPS laboratories where civilian examiners participate in investigative support operations (p. 18). To a limited extent, FBI laboratory technicians now participate in crime scene searches (p. 20).

The FBI implies that its foreign counterintelligence jurisdiction demands special agent status. However, the examinations it sets forth are the same as those conducted in support of other investigative activity. While we were not permitted to review counterintelligence cases, our review of other cases showed little evidence of examiner/investigator communication and examiner discretion. Even if there is a need for investigative perspective, this could be supplied by agent supervisors. We have not recommended that these positions in the laboratory be staffed by civilians.

The FBI contends agent/examiners are justified because of circumstances in which an agent/examiner may become operational in a field investigative situation. Acknowledging this as infrequent, the FBI states there were approximately 35 cases during the past year. We interviewed laboratory officials regarding field support activities for a 21-month

period, October 1977-June 1979. These discussions elicited examples of field support which emphasized the scientific and technical nature of the support provided to responsible field investigators (pp. 18-21). The agent/examiner position description specifically refers to the scientific and technical guidance agent/examiners may provide to investigators (p. 18). The FBI also states that agent/examiners while operational, may prepare affidavits, execute search and arrest warrants and participate directly in subject interviews. We see little reason for examiners to perform the first two functions as other agents assigned to the cases can perform these tasks, and no requirement for agent status as a prerequisite to perform the third function. Since the FBI never discussed any situations in which an agent/examiner operated undercover, we cannot adequately comment on that argument except to note that it apparently is very infrequent.

The Department of Justice says we failed to identify the substantial difference between the FBI and other Federal crime laboratories in the quality of work performed. In this regard, the FBI reports that it successfully completed all tests which it attempted as part of a LEAA-sponsored crime laboratory proficiency project. It also reports that prosecutors were highly complimentary of testimony given by agent/examiners.

The proficiency project mentioned by the FBI was a test of technical capabilities and we have not questioned the technical competency of the FBI laboratory or its examiners. If there is a difference in the quality of work between the FBI laboratory and the other Federal laboratories, it is not apparent to the users of these laboratories as they were all highly regarded (pp. 16-17, 21-23).

The FBI points out that its examiners are highly regarded, drawing support from a survey it conducted of United States, State and district attorneys. We do not dispute the fact that FBI agent/examiners provide effective testimony. At the same time, we believe the results of the FBI survey must be viewed with caution as its sole purpose was to support a rebuttal to our position. The survey was conducted by FBI personnel of respondents whose identities were known, who require continued FBI support, and who were asked to generalize about their entire experience with FBI agent/examiners. Under these circumstances, it would have been almost impossible to respond negatively. Additionally, the survey elicited

only generalized responses rather than focusing on specific instances of support given. Where comparisons among laboratories were made, they were to State and local laboratories rather than to other Federal laboratories. Federal prosecutors we interviewed also spoke well of examiners from other Federal laboratories which do not use agent/examiners (pp. 21-23). Finally, because few cases require testimony, it is important to obtain the reaction of the investigators who requested the laboratory work. Our survey found investigators to be equally appreciative of the work performed at other Federal laboratories (pp. 16-17).

Cost and personnel issues

The Department of Justice claims our estimates of savings from a conversion to civilian personnel are too high and do not consider all appropriate costs. We believe that our estimates of annual recurring savings are conservative. As we pointed out in our report, however, our estimates of cost savings provide only the order of magnitude of the potential cost savings and that firmer estimates would result from an extensive analysis of position classifications and alternative staffing possibilities.

Our cost estimates for pay and retirement benefits were calculated on the number of agent/examiners in the Document and Scientific Analysis Sections as of June 1979. Since that time, the FBI points out that the complement of agent/examiners dropped to 78 as of May 1980 through attrition and in preparation for the funding levels anticipated for fiscal year 1981. Naturally, any reductions in the personnel complement of the FBI laboratory will also reduce the potential cost savings. Using only 78 positions, staffing with civilian examiners rather than agents (assuming 5 civilians replace 4 agents) results in annual savings in salary and retirement benefits of \$498,000. However, the FBI's figure fails to include 7 agents who serve in the research and training units of the Scientific Analysis Section. Assuming that these positions would be filled by civilians as well, cost savings would increase proportionally.

The FBI maintains that by calculating the average administratively uncontrollable overtime worked by agents as 2 hours per day rather than 2 hours and 7 minutes, we underestimated the number of civilian examiners needed by 6 percent. The FBI's figures represent a work week of 50.5 hours contrasted with our estimate of 50 hours, a difference of

only 1 percent. This does not materially change our estimate, nor the need to conduct a detailed study of the staffing required.

Following a February 13, 1980, letter inquiring into the application of administratively uncontrollable overtime in the laboratory, the FBI began compiling records of staff hours worked outside of regular working hours for travel in testimony and field support functions. Based upon two months experience, the FBI estimates that an average of 10.5 hours of overtime were incurred per trip. Projecting this for an entire year, the FBI estimates that additional annual overtime costs of \$175,000 would be incurred under our proposal. Because the FBI included trips made by agents not covered by our recommendation, it overstated the estimate by \$12,000. Also, since the FBI has only been accumulating this information for 2 months, we have no way of knowing how representative these months are. However, even if these overtime costs were incurred, the annual cost savings are still substantial. Finally, as discussed below, these costs can be avoided entirely if alternative staffing decisions are made.

In developing our cost estimate of the impact of a conversion to civilian examiners in the FBI laboratory, we used one staffing scenario which we regarded as reasonable. Various other scenarios can and should be considered. For example, the Department has concluded that administratively uncontrollable overtime is not restricted to criminal investigators. To the extent that the overtime work performed qualifies for administratively uncontrollable overtime (AUO), the FBI may pay AUO to civilian examiners just as it does to agent/examiners. 1/ Civilians would replace agents one for one with a cost savings of over \$800,000 per year for 78 positions. Under this alternative, examiners would not receive regular overtime for travel, and the \$163,000 added costs for overtime cited above would be avoided.

1/To qualify for administratively uncontrollable overtime, an employee's hours of duty cannot be scheduled or controlled administratively. The employee is responsible for recognizing, without supervision, the circumstances which require him/her to remain on duty. Also, the employee must work substantial amounts of the unscheduled overtime on a regular basis.

We believe the estimates of cost savings presented in this report are conservative. Although the working grade in other Federal laboratories is GS-12, we calculated cost savings based on a the working grade at the FBI laboratory of GS-13. We also assumed that agent/examiners at lower grade levels would be replaced with civilians at the same grade level, rather than at lower grade levels. If the cost calculations assumed staffing at the lower grade levels, higher cost savings could be projected. A position classification study is needed to determine whether higher grade levels are justified in the FBI laboratory.

The FBI also claims, without providing specific documentation, substantial costs for a transition to a civilian workforce. We question the significance of costs cited by the FBI such as recruitment, selection, and processing of new examiner personnel as such costs are already incurred to hire agents and laboratory personnel. Similarly, additional equipment costs claimed by the FBI appear unwarranted since existing equipment is capable of handling the FBI's workload. Just as the FBI notes that reductions in the size of the agent/examiner complement reduces the possible annual cost savings associated with civilian examiners, so the reduction should also minimize the FBI's concerns about space and new equipment requirements. If agent/examiners are replaced on a one for one basis, certainly no additional space and equipment would be needed. While some transition costs are to be expected, these will vary with the staffing arrangements considered. However, it is difficult to see how they could approach the magnitude of the annual cost savings from a conversion.

The FBI anticipates that staffing examiner positions with nonagent personnel would lead to an acute personnel turnover problem as examiners opt for the greater prestige and personnel benefits of the special agent position. As we point out in the report, other Federal laboratories have not faced a problem with personnel turnover and the FBI's existing staffing system has built-in turnover (pp. 24-25). Also, the benefits of an examiner with a 30 year career compared with an agent eligible for early retirement cannot be overlooked. Thus we continue to believe that if there was a legitimate civilian examiner career ladder, there would not be a significant turnover problem. Laboratory examiners could then have the potential of obtaining a GS-13 working grade, the same working grade of special agents in the field.

The FBI maintains a conversion could not be accomplished without a sacrifice in the quality of the personnel in the laboratory and in its quoted congressional testimony advanced the view that agent/examiners are superior to "mere technicians." While we recognize that special agent status conveys prestige within the FBI, we propose staffing the laboratory with professionals as well trained in the forensic sciences as existing agent/examiners and who would be responsible for all aspects of examination work. As shown by the empirical data in this report, the frequently cited benefits of the agent/examiner are in fact rarely realized, and then only in intangible ways that do not, in our view, support a conclusion of superiority of agent/examiners over civilians.

The FBI raises the possibility of an adverse impact on employee morale during a transition period as civilian examiners would be working along side agent/examiners making more money. Since civilian examiners would be aware that the situation would not be permanent, we are reluctant to ascribe great weight to this problem. It merely speaks to the desirability of making the transition period no longer than necessary. However, the FBI's concern about morale raises the question of why there would be a morale problem if special agent/examiners really performed duties beyond the capability of civilian examiners.

CHAPTER 4

SCOPE OF REVIEW

This report is one product of a comprehensive review of the management of four major Federal crime laboratory systems--ATF, DEA, FBI, and USPS. This report addresses the merits of the FBI's use of special agents in its laboratory. Other review objectives, to be covered in a subsequent report, were to assess the contribution of the crime laboratory to the criminal justice process, and to explore the relationship of Federal, State, and local crime laboratories.

Our work included analyzing requests for physical evidence analysis, interviewing management officials and examiners in the four Federal laboratories, reviewing policies and procedures manuals and management reports, and interviewing law enforcement officials.

We reviewed a stratified sample of requests made to Federal crime laboratories by Federal investigators and by State/local jurisdictions. For all Federal cases and for State/local requests to the ATF laboratory, only requests regarding closed cases were sampled. Our samples of requests made by State/local jurisdictions to the FBI and DEA laboratories included both pending and closed cases. Our strata were as follows:

<u>Crime laboratory</u>	<u>Origin of request</u>
FBI	1. New York Field Office
	2. Atlanta, Miami, and Minnesota Field Offices
	3. Florida Law Enforcement Agencies
	4. Connecticut, Georgia, Illinois, Maryland, Minnesota, and New York Law Enforcement Agencies
ATF	5. ATF Special Agents

6. State/Local Law Enforcement Agencies

USPS - strata drawn from requests made by Postal Inspectors to the:

7. Physical/Chemistry Unit,
Washington, DC

8. Questioned Document Unit,
Chicago

9. Questioned Document Unit,
Washington, DC

10. Questioned Document Unit,
New York

DEA

11. Florida Law Enforcement
Agencies

12. Illinois Law Enforcement
Agencies

13. Maryland Law Enforcement
Agencies

The basis of stratification was the agency and geographic location of the laboratory. The purpose of geographic stratification was to provide broad geographic coverage of laboratory operations and to provide a cross section of the type of examinations performed.

We used different selection procedures at the various laboratories depending upon how the request files were kept, but all samples were randomly selected. The total number of requests reviewed was 451.

Once our samples of requests were selected, we contacted the laboratory examiners who were assigned the request and asked them a series of questions regarding the examination, including the question of how useful investigator experience/training was, or would have been in doing the work required. Because a single case could have required more than one type of examination, we frequently talked to more than one examiner on a case. In those instances when the same examiner did multiple examinations on a single case,

the examiner was questioned about the circumstances surrounding each examination performed. This procedure allowed for instances where, for example, investigator training was useful in one examination but not in another. Our analysis reflects the experience of laboratory examiners in more than 10,000 examinations done in the universe from which our sample was drawn. The overall maximum sampling error is ± 4.7 percent at the 95 percent confidence level.

Additional interviews were conducted with the Federal and State/local law enforcement officers at the requesting agency pertaining to the sampled cases. Finally, we interviewed officials in seven U.S. attorneys offices (the Northern and Middle Districts of Georgia; the Eastern and Southern Districts of New York; Minnesota; North Dakota; and the Southern District of Florida) regarding sampled cases which were presented for prosecution.



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

JUN 04 1980

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Special Agents Should Be Phased Out As FBI Crime Laboratory Examiners."

The Department does not agree with the General Accounting Office (GAO) recommendation that the Federal Bureau of Investigation (FBI) should phase out the Special Agent examiners employed in the FBI Crime Laboratory and replace them with a civilian workforce. The basis upon which the Department has made this decision is set forth in the enclosed FBI response, which takes issue with many of the facts and statements of the report. The Department supports the logic of the FBI's conclusions and believes that deviation from the Special Agent/Examiner concept would be imprudent. It would require a trade-off of a proven quality product for a chance of minimal cost savings--an exchange the criminal justice system can ill afford.

As recently as March 11, 1980, the FBI Director testified before the Senate Subcommittee on Appropriations that: "It has been our experience thus far that the trained FBI Agent, trained in forensic work, is frequently able not only to perform a test activity, but also to suggest and advance the investigative effort of state and local law enforcement in a way that is superior to a mere technician. He then is called as an expert at trial and as a general rule is a more credible witness." While certain intangibles are most definitely a factor contributing to the Special Agent/Examiner impact, the Department maintains that the position of pre-eminence the FBI Crime Laboratory enjoys in the forensic science community in particular, and in the criminal justice system in general, is directly attributable to the unique qualifications of its examiners and the high quality of their work product.

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Historically, FBI examiners have been and continue to be scientifically trained Special Agents who possess knowledge and experience in law enforcement field operations. Their work product encompasses a broad area which includes the identification, collection, and preservation of evidence, the examination or analysis thereof, and testimony thereto. It also includes research and training of both an internal and external nature.

GAO, by comparing the FBI Crime Laboratory with three other federal laboratories, has concluded that the FBI's use of Special Agents as examiners is not warranted and, in view of the added cost, cannot be justified. The report suggests that conversion to a civilian non-Agent staff of examiners would result in significant cost savings and recommends such action be taken. The Department strongly disagrees.

The GAO cost estimates exceed costs developed by FBI Crime Laboratory management and do not consider substantial transitional costs should GAO's recommendation be implemented. It is highly questionable whether realization of the rather minimal cost savings projected in support of the GAO recommendation would offset the impact that implementation of the recommendation may have upon the FBI Crime Laboratory and its responsibilities to the criminal justice system. It is the Department's contention that no change in FBI policy can be made without a corresponding sacrifice in the caliber of personnel and/or the quality of the work performed.

Some conclusions contained in the report are not supported by the material presented and are inconsistent with results of surveys recently conducted by the FBI Crime Laboratory. It is apparent the GAO survey did not seek to identify the benefits attributable to the FBI Crime Laboratory examiners' field investigative experience and chose only to establish that such experience was not essential to the performance of their technical analyses. GAO failed to identify the substantial differences in the federal laboratories surveyed in terms of the scope of their responsibilities, the nature and quantity of work performed and, most importantly, the quality of work performed. As a consequence of not having addressed these differences and the resultant differences in personnel needs of the agencies surveyed, the validity of the conclusions expressed in the GAO report is subject to question.

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Contrary to GAO's findings, a recent survey of the U.S. Attorneys and a representative number of District and States Attorneys from throughout the United States disclosed an overwhelming support for the FBI's continued utilization of Special Agent laboratory examiners, with a general expression of appreciation for the quality of service now being provided and a concern that such a drastic change could prove detrimental to the nation's criminal justice system. The Department shares their concern in recognizing that such a change could reduce the FBI's capability to provide the best possible service to the investigators, prosecutors and crime laboratories throughout the nation who depend on the support of the FBI Crime Laboratory.

Since its inception, and now well into its 48th year, the expansion and development of the FBI Crime Laboratory has steadily kept pace with that of law enforcement. Its achievements have been chronicled in the records of courts throughout the country. Its reputation of forensic excellence has been built upon the dedication of scientifically trained law enforcement professionals.

The system is a proven one as its record demonstrates. The question of the use of sworn versus non-sworn personnel as examiners has withstood scrutiny over the years, including two recent self-initiated internal surveys in October 1975 and November 1976. These studies concluded, in essence, that transition to a civilian workforce would not be cost effective, that there was "no sound basis to support a change from a successful system . . . and that anticipated money savings are not offset by the probable loss of prestige of the Laboratory"

We appreciate the opportunity to comment on the draft report. Should you desire any additional information, please feel free to contact us.

Sincerely,



Kevin D. Rooney
Assistant Attorney General
for Administration

Enclosure

Federal Bureau of Investigation Response
to
The General Accounting Office Draft of
A Proposed Comptroller General's Report to
The Congress of the United States
On the Use of Special Agents as FBI Laboratory Examiners

Contents:

Background

Nature and Scope of Responsibilities of Laboratories Surveyed

- technical capabilities
- training responsibilities
- investigative jurisdiction

Work Quality

- proficiency
- user satisfaction

Cost Analysis

- turnover of examiner personnel
- costs

BACKGROUND

The question of sworn personnel vs. non-sworn personnel in the position of FBI Laboratory examiners is not a new one. A 1974 survey of crime laboratories in the United States conducted by the Federal Bureau of Investigation (FBI) Laboratory disclosed that 90 sworn officials and 104 civilians served as the heads of those laboratories. The laboratories were staffed by 1,194 civilians and 894 sworn officers. The merits of utilizing sworn Special Agent (SA) personnel in such positions have been considered several times by FBI management. FBI Laboratory examiners have held SA status since as early as 1934. An FBI memorandum dated June 30, 1936, indicated that the desirability for technical employees to receive SA training was discussed at an executive conference during that time. It was noted that such experience "would be of considerable assistance to these men in the consideration and preparation of their reports following examinations made in the Laboratory...." The most recent and in-depth analysis was completed on November 19, 1976, and was conducted by a Task Force Committee comprised of both SA personnel and support personnel from the Laboratory Division. The Task Force report addressed considerations for actual implementation of a civilian laboratory staff and included personnel selection criteria, training programs for non-Agent examiners, a schedule for phasing out SA examiners and an analysis of costs associated with the transition. Inasmuch as their mandate was to develop a plan for transition to a civilian laboratory examiner staff, no conclusion is expressed on the appropriateness of such a move in their report. However, the facts developed by that Task Force suggest that the costs of maintaining the SA laboratory examiner are not sufficient to justify making the transition to a civilian work force.

The Task Force study followed an October 23, 1975 report prepared by the FBI's Office of Planning and Evaluation (OPE), which found "no sound basis to support a change from a successful system...and anticipated money savings are not offset by the probable loss of prestige of the Laboratory...." A recommendation was made to the FBI Director by OPE "that the Laboratory continue the present staffing procedure using only Special Agent personnel as examiners." The Director concurred with that recommendation.

During testimony before the Senate Subcommittee of the Committee on Appropriations, on March 11, 1980, Judge William H. Webster stated "It has been our experience thus far that the trained FBI Agent, trained in forensic work, is frequently able not only to perform a test activity, but also to suggest and advance the investigative effort of state and local law enforcement in a way that is superior to a mere technician. He then is called as an expert at trial and as a general rule is a more credible witness."

It is the position of the FBI that its status of preeminence within the forensic science community and the entire criminal justice system is attributable to its qualified, high-caliber personnel who possess broad and varied experience in law enforcement and who produce a high-quality work product. It is further held that no change in current policy can be made without some sacrifice in either the caliber of personnel or the quality of work product.

Based on a review of four federal crime laboratories and their staffing policies, the General Accounting Office (GAO) has concluded that the use of Special Agent/examiners is not justified. The thrust of the GAO report is that a cost savings in personnel could be anticipated by converting to a civilian (non-Agent) staff of laboratory examiners.

There are considerations which do not appear to have been fully explored by GAO. Some of these include the nature and quantity of work performed by the laboratories surveyed and an evaluation of the quality of their work products. The FBI Laboratory has broad responsibilities and diverse functions in contrast to the responsibilities and function of other federal laboratories.

Some conclusions contained in the report are not supported by the material presented and are inconsistent with results of surveys recently conducted by the FBI Laboratory. Specifically, our surveys indicate that FBI SA Laboratory examiners do feel that investigative experience is useful in the performance of their Laboratory duties, U.S. Attorneys favor the continued use of SAs as FBI Laboratory examiners as opposed to civilian examiners, and officials of the other federal laboratories surveyed by GAO indicated that while they do not feel investigative experience is essential for the laboratory examiner, "there are obvious benefits..." One official added during our survey that he is not in a position to comment on whether or not the use of SAs as laboratory examiners is justified on a cost basis. In addition, if the GAO proposal were to be implemented, there are substantial problems which could be anticipated in personnel turnover and in employee morale, a reduction in productivity, and an overall loss of expertise, none of which were addressed in the GAO report.

NATURE AND SCOPE OF RESPONSIBILITIES OF LABORATORIES SURVEYED

The FBI Laboratory, through its SA examiners, conducts forensic examinations on all types of physical evidence obtained during the investigation of criminal matters. It also provides on-site technical support, conducts crime scene searches in FBI field investigations and, as requested, provides similar services for other federal, state and local jurisdictions in major cases of national scope and impact. In addition, the FBI Laboratory conducts research to develop new methods for examinations of physical evidence and participates in the upgrading of the nation's crime laboratory community by providing forensic training to federal, state and local crime laboratory personnel. None of the federal laboratories used in the GAO survey is committed to the performing of services in these areas to the same extent as the FBI.

Technical Capabilities. The examination capabilities of the other federal laboratories as described in the GAO report are misleading and inaccurate. For example, it is indicated that the United States Postal Service (USPS) Laboratory has the same examination capabilities as the FBI Laboratory with the exception of serology and elemental analysis. However, the entire staff of the USPS Laboratory is dedicated to the examination of questioned documents and latent fingerprint examinations with the exception of four "forensic chemists." The forensic chemists conduct limited examinations in the remaining forensic disciplines. In the FBI Laboratory, these categories of forensic examinations are handled within the Scientific Analysis Section, which consists of specialty units with up to twelve SA examiners being dedicated to one particular forensic discipline. USPS examinations are conducted almost exclusively for that agency and are performed in matters relating to USPS burglaries, stolen checks, re-used stamps and the sending of explosives, drugs or poisons in the mail.

Laboratory examinations in the Bureau of Alcohol, Tobacco and Firearms (ATF) Laboratory are conducted in support of their regulatory functions in addition to their limited jurisdictional responsibilities in criminal law enforcement. From recent contacts with officials at ATF, it was learned the ATF Laboratory does not have the capability to conduct serology examinations and does not conduct examinations of paints as suggested in the GAO report. Paint examinations comprise the major portion of the work in the FBI's Instrumental Analysis Unit. ATF has only one firearms examiner and possesses limited capabilities in areas of elemental analysis.

The Drug Enforcement Administration (DEA) Laboratory conducts examinations which are limited to qualitative and quantitative drug analyses in response to a request made by the contributor of that evidence.

During fiscal year 1979 the FBI Laboratory honored 54 requests for laboratory examinations from ATF, DEA and the USPS. In these requests, 2,823 examinations were conducted on 313 specimens submitted. A total of 257,911 examinations were conducted by the Scientific Analysis and Document Sections of the FBI Laboratory on 57,289 specimens submitted by other federal (non-FBI cases), state and local law enforcement agencies.

Training Responsibilities. The FBI Laboratory is looked to as the leader in providing training to other federal, state and local laboratory examiners. Since fiscal year 1975, approximately 1,500 laboratory examiners from other federal, state and local agencies attended specialized laboratory schools at the FBI Academy at Quantico, Virginia, in various areas of forensic science organized and instructed by FBI Special Agent laboratory examiners. These numbers do not include those who attended specialized schools which covered such topics as crime scene photography, crime scene search, latent fingerprint, etc., or those who attended Crime Laboratory Management schools or seminars such as those held for the American Society of Crime Laboratory Directors. It should be noted that many of these FBI specialized laboratory courses are accredited by the University of Virginia's College of Continuing Education and attendees are eligible for graduate level credit.

Several of the FBI specialized laboratory courses have been attended by examiners and officials of the ATF, DEA and USPS laboratories. Since fiscal year 1975, 189 examiners from other federal laboratories have attended one or more of these schools.

Investigative Jurisdiction. The investigative jurisdiction of the agencies surveyed in the GAO report are not comparable. In addition to its responsibilities in over 200 criminal investigative classifications, the FBI has sole responsibility for foreign counterintelligence investigations (FCI) within the United States. Due to the sensitivity of these matters, GAO could not be given access to specific cases; however, in support of our position, the following information is being set forth. Since the beginning of fiscal year 1979, the FBI Laboratory received 106 separate requests for FCI investigative support from FBI field divisions and the Intelligence Division at FBIHQ. These requests include laboratory examinations of questioned documents, chemical analyses, instrumental analyses, toolmarks, microscopic analyses, X-ray examinations, photographic materials and equipment examinations, as well as other types of examinations. It is important to note that while the results of these examinations in scientific terms are significant, the interpretation of these results by the SA laboratory examiner for the benefit of the field investigator is vital. His investigative experience provides him with the background to offer sound and valid interpretations in these matters with an understanding of the significance of the material being examined.

Historically, the FBI Laboratory has been called upon for forensic assistance in criminal matters of national and even international interest. Some of these cases have required the presence of an SA laboratory examiner at the crime scene to directly supervise the collection, preservation and under some instances, on-site examination of evidence. In those major investigations where jurisdiction exists concurrently with other federal, state or local agencies, the resources and expertise of the FBI Laboratory have consistently been called upon to assume responsibility for the forensic aspects of the matter even though the other agency's laboratory may possess similar technical capabilities.

FBI SA laboratory examiners have the capability of performing in undercover assignments in direct contact with principals under investigation, of preparing affidavits and executing search and arrest warrants, and of participating directly in the interview of subjects. Such services have been rendered in approximately 35 cases during the past year. While this may represent a relatively small commitment of the SA laboratory examiners' total time, the significance of their contributions in terms of investigative man-hours saved and in consideration of the national impact of those cases cannot be underestimated. Under circumstances where it becomes necessary for an examiner to become operational in a field investigative situation, it would be ill-advised to place non-sworn civilian personnel into a potentially hazardous situation in view of liability considerations.

Clearly the personnel needs of the other federal laboratories surveyed by GAO are dissimilar to the needs of the FBI Laboratory. To provide the flexibility and expertise to be responsive in these areas as well as continue to provide needed leadership requires a high-caliber individual who is highly professional and dedicated to law enforcement. There is significantly more to the role of the FBI Crime Laboratory examiner than simply the technical, analytical aspects.

WORK QUALITY

Proficiency. In October 1978, the Law Enforcement Assistance Administration published the results of a 3-year crime laboratory proficiency program which was conducted under a grant to the Forensic Sciences Foundation. Approximately 240 laboratories participated in this program during the period 1974 to 1977. The FBI Laboratory participated in 18 of 21 different tests administered during this period. There were no improper conclusions made by the SA examiners in the FBI Laboratory as reflected by the results published by the Forensic Sciences Foundation.

Among other findings, this study group concluded that "a wide range of proficiency levels among the nation's laboratories exists, with several evidence types posing serious difficulties for the laboratories." Among the recommendations made by the Forensic Sciences Foundation and the Project Advisory Committee was that "law enforcement agencies at all levels of government must recognize that the problems identified in the research findings are symptomatic of inadequate budgets in both physical and human resources and should allocate the necessary funds to correct such deficiencies." In other words, it is the opinion of the Project Advisory Committee that inadequate funding for personnel consequently affects the quality of the work performed.

Inasmuch as the identities of those laboratories which participated in this program were not revealed by the study group, it is not possible to compare the FBI Laboratory with any other. The fact remains, however, that among "a wide range of proficiency levels" the FBI Laboratory reported no improper conclusions.

User Satisfaction. A recent survey was conducted of U.S. Attorneys and District and States Attorneys from throughout the United States. As of this writing, a total of 31 U.S. Attorneys responded to the survey and all favored the continued use of SAs with previous investigative experience as FBI Laboratory examiners. Each was asked to evaluate the performance of the FBI SA examiner based on his experiences. Their responses indicate FBI Laboratory expert witnesses are very capable and highly effective. It is significant that the highest marks were in maturity, judgement, professionalism, objectivity and the examiner's ability to translate the technical nature of his examination and results into terms easily understood by the lay jury. It is the investigative experiences of the SA which contribute to the development of these attributes. Written remarks of the U.S. Attorneys surveyed include: "...[SA Laboratory examiners] are very helpful in developing leads during the investigations." "...[other experts] are not so helpful in the investigations, are not down-to-earth and able to explain esoteric matters to a jury in understandable terms." "...the participation of Special Agents/experts in the investigative process, particularly in complex cases (such as the Armed Forces for National Liberation of Puerto Rico [FALN]), substantially contribute to successful conclusions." "Investigative experience is a valuable asset because no laboratory work occurs in a vacuum; it must be seen in the context of the complete investigation. The possible sacrifice in quality...is not worth the budgetary savings."

This expression of confidence in the FBI Laboratory and support for the SA examiner position was repeated by over 50 District and States Attorneys surveyed who have utilized FBI services. A number of these prosecutors advised that FBI SA examiners make a very definite positive impression on jurors and that a degree of their impact is attributable to the SA title itself. Among the written comments of the District and States Attorneys surveyed were: "The investigative experience is invaluable! SAs know what to look for because of that investigative experience and oftentimes think of things even the police forget or overlook." "The present [FBI SA laboratory] examiners are highly respected...for their competence as scientists as well as their pragmatic knowledge of their respective fields. To lower these standards to save a few dollars... would be a foolish mistake." "...local departments would suffer from the loss of such insight contributed by Special Agent Laboratory examiners."

PERSONNEL/COST ANALYSIS

Turnover of Examiner Personnel. Should the FBI Laboratory begin staffing examiner positions with non-Agent personnel, it is anticipated an acute problem would develop with the frequent turnover of examiner personnel. If the FBI is to maintain a semblance of its present stature, civilian examiner personnel would necessarily be selected who possess many of the attributes desirable in SA applicants. The individual with a bachelor's degree and no experience would be hired at the GS-5 or perhaps the GS-7 level and within 3 years progress to the GS-11 level. At this point the individual would qualify for the SA position under the current modified program. Undoubtedly, the benefits of the SA position would be attractive to that individual. These benefits, in addition to monetary compensation, include retirement benefits, opportunity for advancement within the FBI, prestige, etc. It is these benefits which now assist the FBI in recruiting the very best people. Contrary to GAO's findings, since fiscal year 1976, a total of 46 Physical Science Technicians left the Laboratory Division to enter the New Agent's Class.^{1/} Approximately 30 percent of these individuals who were academically and technically qualified to become examiners were contacted and asked if given the opportunity to remain in the FBI Laboratory as a GS-13 examiner, would they have elected to do so. Their unanimous response was "no." This is consistent with the experience of the FBI Laboratory that the best technicians aspire to be Agents first, then examiners; not just examiners.

^{1/}The FBI data was incorporated into the report on page 25.

Of the 46 Physical Science Technicians mentioned above who became Special Agents, eleven are now examiners or examiner trainees in the FBI Laboratory. Each of these individuals was asked whether he believed his capabilities as an FBI Laboratory examiner had been enhanced by his investigative experience. Several commented that as laboratory technicians, they oftentimes did not recognize the significance of a particular piece of evidence, nor understand for what purpose it was being examined. Others stated that their experiences as field investigators have given them increased confidence in their ability to effectively communicate on the same level with other law enforcement professionals either in furnishing guidance in their investigations, in discussing testimony presentation and strategy with prosecutors, or in the training and lecturing of police officers. One reported that he believed his experience as an investigator was not helpful to him as an FBI Laboratory examiner. The fact that these individuals have had previous experience in the FBI Laboratory as technicians has made it possible in some instances to shorten the one- to two-year training program normally required for new examiners.

The current turnover of lower grade support personnel in the Laboratory Division is acceptable and even desirable in terms of its benefit for FBI career-oriented individuals. It is a benefit to the individuals themselves in that they are provided the opportunity to upgrade their salary and position. The FBI gains the benefit of their varied experience in several assignments within the FBI. It has been found that the exposure of career personnel to different assignments within the FBI helps to produce a balanced, well-rounded and versatile cadre of law enforcement professionals.

Costs. The analysis set forth in the GAO report pertains to the cost of salaries and benefits of SA examiner personnel as compared to civilian examiner personnel. Using the schedules and calculations presented within their report, the Cost Analysis Unit of the FBI's Budget and Accounting Section attempted to verify the potential savings suggested by GAO. There was not sufficient data within the report to reconstruct their figures. The difference may be attributable to built-in "shadow" estimates included in the GAO calculations. Nonetheless, the GAO analysis does not represent a complete study with due consideration to all costs which would accrue if their recommendation to convert to a civilian examiner concept were to be implemented.

The GAO cost calculations are based on 96 examiner positions in the FBI Laboratory. Based on the fiscal year 1981 funded SA complement for the Scientific Analysis and Document Sections of the FBI Laboratory, the actual number* of examiner positions is 78, or 18 positions less than GAO estimated.¹The on-board SA complement in these sections is now at the funded 1981 level. Using the GAO figures for total cost to the government per position of \$56,164 for the GS-14/1 SA and \$38,029 for the GS-13/1 civilian, the difference per position is \$18,135. This difference would translate into a reduced savings over that calculated by GAO.

GAO estimated that additional personnel would be necessary to handle work now being performed by SA examiners on an Administratively Uncontrollable Overtime (AUO) basis. Their estimates were based on an average AUO of 2 hours per day. Using the actual current average for AUO, we calculate that 6 percent more positions than those determined by GAO would be necessary. It should be noted that SA personnel are compensated for AUO at a rate limited to 25 percent of the GS-10/1 level, regardless of grade.

Based on a review of expense vouchers and figures provided by SA examiners, it was estimated that on an annual basis there were 12,713 man-hours required for work outside of regular working hours for travel in testimony and field support functions which were not included in the AUO figures used by GAO and which would be eligible for overtime pay. The maximum rate for overtime pay for a GS-13/1 civilian employee is \$13.53/hour. This computes to an increased annual cost for overtime pay which was not included in the GAO cost analysis.

In consideration of the above factors alone, the anticipated savings estimated by GAO would be substantially reduced.

To place the anticipated savings in proper perspective, such savings would translate into an amount equal to approximately 1 percent in Laboratory Division fiscal year 1979 personnel compensation and benefit costs with an all civilian examiner force. From another perspective, the Scientific Analysis Section's fiscal year 1982 budget request for equipment at the enhanced level is in excess of \$387,000.

*Does not include SA supervisory personnel, nor SA personnel assigned to research or training function at the FBI Academy at Quantico, Virginia.

¹/The report was modified on page 29 to reflect the new staffing figure.

Additional costs, very substantial in amount, not considered by GAO are the costs associated with the transition to a civilian work force should such a work force be implemented. Transition costs include those required for transfers of SAs to other offices, those required for applicant recruitment, selection and processing of new examiner personnel, and those required for space and equipment for the 25 percent increase in examiner personnel proposed by GAO. These costs represent a considerable albeit one-time expense which would take years to recover given the marginal annual anticipated cost savings with a civilian examiner work force.

There are additional personnel problems associated with a transition which could have a serious adverse effect on employee morale and a concomitant adverse effect on work quality and productivity. These problems would develop during the operation of a dual system of compensation for the period required to phase out SA examiners. The irreplaceable loss of many years of experience and state-of-the-art expertise within the FBI Laboratory, should present personnel be ordered out, would have a serious impact on other crime laboratories who rely on the FBI's training programs and on the investigators and prosecutors who depend on the FBI's services. An official from one of the other federal laboratories surveyed by GAO stated that as a Laboratory manager, "...one can foresee significant problems in trying to implement [a civilian examiner] system in an environment which has operated under a [Special Agent examiner] system."

The potential "additional savings" alluded to in the GAO report pertain to 3 months training and transfer expenses.

The 3 months New Agent's Training Program includes crime scene search techniques, certain basic legal considerations, and orientation to the FBI administrative procedures, all of which would be necessary for new civilian examiners and therefore little savings could be anticipated in that regard.^{1/}

Many of the recent transfers of new examiners to the FBI Laboratory have been from nearby offices such as Baltimore and New York, where minimal transfer costs are incurred, or from the Washington Field Office, where no transfer costs are incurred. This type situation is subject to administrative control to insure minimum transfer costs. It would not be consistent with the personnel needs of these offices to flood them within a relatively short time with SAs with specialized scientific backgrounds should the FBI Laboratory be required to convert to a civilian examiner concept.

^{1/}This comment prompted a change in the report on page 29.

In summary, some cost savings may be possible with civilian laboratory examiners. They would not receive AUO and would not be eligible for liberalized retirement benefits; however, they would be eligible for increased regular overtime compensation for testimony travel and field support functions and additional examiner personnel would be required. A lack of flexibility and control would result with a diminishing of the FBI Laboratory examiners' status as witnesses. The marginal cost savings which may be possible are certainly not worth this sacrifice.

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