

BOMBING INVESTIGATORS TRANSFERRED JUSTICE DEPARTMENT INQUIRY PROMPTS REMOVAL OF AGENTS

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WASHINGTON -- Three senior FBI agents who evaluated evidence in the Oklahoma City bombing case have been removed from their jobs in the bureau's crime lab after a Justice Department investigation.

Because of problems uncovered by that probe, federal prosecutors have decided against calling one of the three as an expert witness on explosive residues when Timothy McVeigh goes on trial in Denver March 31 for the 1995 truck-bombing that killed 168 people, officials said.

Justice Department officials, speaking on condition of anonymity, expressed confidence that other experts can present all the forensic evidence they will need in the Oklahoma City case.

McVeigh attorney Stephen Jones said the report may have a devastating impact on the government's ability to present its theory at trial.

Prosecutors have contended that the device that destroyed the Alfred P. Murrah Federal Building was a large but relatively simple ammonium nitrate and fuel oil bomb that could be assembled for about \$1,000. Jones has suggested that it may have been a more complex device that co-defendant Terry Nichols and others designed.

Further, the defense is prepared to argue that traces of the high explosive PETN detected on McVeigh's clothing after the bombing could have come from laboratory

error or contamination.

The defense has based that theory in part on the allegations of scientist-agent Frederic Whitehurst, a whistle-blower who prompted the investigation by the Justice Department's inspector general.

Whitehurst, who gave a deposition last month in Denver, was suspended from his job last Friday. Jones has indicated he may call him as a defense witness.

Federal law enforcement officials identified the three other officials removed from the lab as:

- * Dave Williams, a supervisory agent in a lab explosives unit.
- * Roger Martz, chief of a lab chemistry and toxicology unit.
- * James T. "Tom" Thurman, chief of a lab explosives unit.

They were transferred to other work but not suspended, officials said.

Officials and sources familiar with the case described their roles in the Oklahoma City case this way:

Williams supervised collection of explosives evidence in Oklahoma City and its removal to the FBI lab in Washington. Prosecutors have dropped plans to call him as an expert witness.

Thurman was quoted in an FBI affidavit supporting the arrest and search warrants against McVeigh.

Martz conducted some tests on Oklahoma City evidence at the lab.

Only one microscopic trace of ammonium nitrate from Oklahoma City is expected to be presented at McVeigh's trial. It allegedly comes from a piece of wood that was part of the Ryder truck that encased the bomb.

The FBI said it "does not believe any of the problems cited by the inspector general will preclude anyone from receiving a fair trial" and disputes those who say the problems "have compromised any past, present or future prosecutions."

Until now, most attention on the FBI crime lab in connection with the bombing case has focused on Whitehurst. He has charged that some evidence in the Oklahoma case, the 1993 World Trade Center bombing and other cases was tainted

by procedures in the FBI crime lab.

Whitehurst also said some lab experts had a bias in favor of the prosecution.

Whitehurst also was the subject of a separate Justice Department investigation of media leaks about his charges.

After meeting Tuesday with FBI officials, Sen. Charles Grassley, R-Iowa, said, ``There is still a question that the administrative action taken against Mr. Whitehurst is the proper one. I haven't finished investigating it yet. I still am convinced . . . Mr. Whitehurst . . . is committed to the truth."

Grassley had said the suspension looked like retaliation for whistleblowing.

FBI Deputy Director Weldon Kennedy said the move ``was not done in retaliation."

``The FBI's removal of four persons from their jobs was not done in retaliation for the actions of any employee," Kennedy said. ``The actions were taken for good and valid reasons, based on the findings about some of their work by the inspector general and other information."

Grassley said he wanted to talk to the inspector general and others about the matter but had not decided whether to hold hearings.

The draft reports of both investigations are still secret. The FBI said all four would receive pay and benefits while it decided whether they had engaged in misconduct.

Whitehurst has alleged that Martz was not properly trained to conduct experiments and testify about high explosives and that Thurman had only a degree in political science.

The government has said it never intended to call Martz or Thurman as expert witnesses in the Oklahoma case, but Martz may be called to testify about the chain of custody of evidence.

The deposition Whitehurst gave in Denver has not been made public.

According to Jones, Whitehurst was prepared to testify last June that Thurman and Martz swore that a fertilizer bomb had been used to blow up the building, even though Thurman had no experience in determining the composition of explosive devices and Martz ``was neither an expert nor qualified to perform an assessment of evidence found at the scene of the explosion."

But Jones' first effort to use Whitehurst to attack the government's case was not successful. Defense attorneys challenged the affidavits and argued that warrants obtained as a result should be thrown out. Denver U.S. District Judge Richard Matsch ruled the affidavits sufficient and allowed the evidence to stand.

Prosecutors say results of FBI tests on bombing evidence support their contention that the lab was not contaminated with bomb chemicals and residues from other cases. If the lab were contaminated with bomb chemicals, they say, the contamination should have shown up on some of the evidence from the blast scene.

The justice department's report comes at a particularly sensitive time for the prosecutors, who have identified only one witness who might place McVeigh in Oklahoma City the day of the bombing.

Defense attorneys are challenging other eyewitness testimony linking McVeigh to the renting of the Ryder truck.

With eyewitness testimony under attack, the prosecution needs reliable direct forensic evidence.

Jones was almost beaming Tuesday at news of the result of the Justice Department investigation. Said Jones: ``I have said for many months that once this trial started what actually would be presented at the trial would look much different than what the media and the public had been led to believe would be presented."