

McVeigh papers released

Execution stay may be sought

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The Boston Globe

WASHINGTON — The Justice Department acknowledged Thursday night that the FBI failed to give Timothy McVeigh's lawyers all the information that its agents had gathered during the investigation of the

Oklahoma City bombing, raising questions about whether McVeigh's execution will proceed on schedule.



McVeigh

McVeigh was to be put to death by lethal injection

on May 16 for the bombing, which killed 168 people in 1995.

Under federal court rules, defense attorneys in the case were entitled to the raw material gathered by FBI investigators in the days and weeks after the bombing.

That said, it is difficult under federal rules to overturn a death sentence or rehear a capital case unless the withheld information proved highly relevant to McVeigh's guilt.

The Justice Department said Thursday night that the withheld material came nowhere close to

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casting doubt on McVeigh's guilt.

If McVeigh wants to delay the execution — he has to this point declined to ask the courts to intervene — his lawyers could ask the court for a stay so that U.S. District Court Judge Richard Matsch could examine the withheld information and determine if McVeigh received a fair trial.

Clark Brewster, whose Tulsa law firm is defending McVeigh, said that attorney Robert Nigh had spoken with McVeigh by telephone and was traveling Thursday night to Terre Haute, Ind., to find out whether McVeigh wants to seek a stay of execution.

"Mr. Nigh has been delivered government documents that were not delivered to us during the trial," said Brewster. He added that Nigh "will have an open discussion to decide whether Mr. McVeigh wants to seek a stay of execution or not."

Stephen Jones, who was McVeigh's lawyer during his 1997 trial, said in a telephone interview from Enid, Okla.: "I don't think we should rush to judgment, but it's clearly embarrassing to the government. You would think, if they should get anything right, it would be this case. I think Judge Matsch will review this case, and if there's more to review, he will stay the execution."

Dr. Paul Heath, a bombing survivor who attended 58 funerals of victims, said in a phone interview from Oklahoma City: "I can't speak for every survivor, but I can speak for my own family. I have every confidence Judge Matsch will adjudicate this new bump in the road to justice."

Heath said he would respect the judge's decision if he granted a stay.

According to the Justice Department, the information was discovered by an FBI archivist who was routinely collecting information from around the country for the bureau's archives. The Justice Department told McVeigh's defense team on Tuesday.

"On Tuesday, May 8, the Department of Justice notified Timothy McVeigh's attorneys of a number of FBI documents that should have been provided to them during the discovery phase of the trial. While the Department is confident the documents do not in any way create any reasonable doubt about McVeigh's guilt and do not contradict his repeated con-

fessions of guilt, the Department is concerned that McVeigh's attorneys were not able to review them at the appropriate time," said Justice Department spokesperson Mindy Tucker.

"The documentation has been made available to McVeigh's attorneys and the Department has asked for notification if they believe any of the documents create any reasonable doubt about McVeigh's guilt," said Tucker.

The department said that the withheld information — which includes the "302" forms that agents fill out after completing interviews or checking out leads in an investigation, photographs and other forms of evidence — was not exculpatory.

Much of the material — which was collected by FBI agents from across the country as part of the manhunt for the bombers — involved interviews and information regarding people who bore a resemblance to the sketches of the bombing suspects that were widely circulated in the weeks after the tragedy.

The Justice Department released a letter from Sean Connelly, of the Denver U.S. Attorney's office, to the McVeigh appeals lawyers.

"We do not believe anything being produced is ... material bearing on the federal convictions or sentences of Timothy McVeigh or Terry Nichols. Similarly, we do not believe anything in the materials makes even a prima facie showing of either man's actual innocence," Connelly wrote.

"Nonetheless," Connelly wrote, "many of the materials — in particular the FBI 302s and inserts — should have been produced under the reciprocal discovery agreement."

McVeigh was convicted of constructing and planting the 4,800-pound bomb that destroyed the Alfred P. Murrah Federal Building in Oklahoma City. He claimed to be avenging the 1993 federal raid on the Branch Davidian compound in Waco, Texas.

After a tense and emotionally charged trial, McVeigh was convicted in federal court in Denver of conspiracy, using a weapon of mass destruction, destroying a federal building and murdering eight federal agents and was sentenced to death.

Last December McVeigh told his lawyers to end their appeals. He has not asked for executive clemency. His accomplice — Terry

Nichols — is serving a life sentence.

From the media trailer now set up on the sprawling field fronting the penitentiary in Terre Haute, Bureau of Prisons spokesman Daniel Dunne said all plans remain in place, pending a court order or official stay of execution. As usual, he noted, those orders could be received by telephone up to the last seconds of McVeigh's life.

Bob Papovich, a Michigan friend of both McVeigh and Terry Nichols, the convicted co-conspirator now serving a life sentence, said he has been trying unsuccessfully for months to have McVeigh restart the appeals process. The two exchange letters regularly, and Papovich said he feels he knows McVeigh well enough to know that he is unlikely to ask to have his life spared or his death delayed.

"Even if (the FBI documents) were favorable to his case, he waived his appeals," said Papovich, who had spoken regularly to McVeigh by telephone when calls were easier to place from prison. "That should give you a clue right there. I've been begging Tim to ask for a stay. But we'll just have to wait and see, I can't speak for him."

Tom Kight, whose 23-year-old stepdaughter was killed by McVeigh's bomb, had been readying himself for the execution, which he planned to watch on closed-circuit TV in Oklahoma City. Thursday, he worried about a delay — and about the possibility that the federal government had made a minor mistake that would work in McVeigh's favor. Still, he said even a mass murderer deserved to have had a fair day in court.

Aware that federal agencies have tainted evidence before, he said some questions were racing through his mind: Was the information withheld intentionally? Was it an oversight? Was it crucial to the defense's case? Would it have changed the outcome, either verdict or sentencing?

"There's no question it's infuriating," said Kight, who is devoted to the young granddaughter his stepdaughter Frankie Merrell left behind. "To go through all this, the build-up to it.

This has been six years in the making. Could this mean a postponement of a few days, a few weeks, a few years? It would be an emotional rollercoaster and certainly a setback for those of us who would like to get this chapter closed."