

Woman who worked on McVeigh appeals not surprised at FBI bungle

by Tom Mooney and Mark Arsenault
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PROVIDENCE, R.I.-The Oklahoma City bombing investigation generated thousands of tips, which FBI agents from around the country followed up, generating tens of thousands of pages of field notes and reports.

Cathleen McCauley, a Warwick, R.I., native who investigated the 1995 bombing and worked on Timothy McVeigh's early appeals, says it's no surprise that McVeigh went to trial for mass murder without seeing all the evidence the FBI had collected, given the volume of material, and what she called prosecutors' reluctance to share it.

McVeigh was scheduled to die this Wednesday for destroying the Alfred P. Murrah Federal Building and killing 168 people. Attorney General John Ashcroft postponed McVeigh's execution to June 11, after revelations that the FBI failed to turn over 3,100 pages of investigative files to McVeigh's defense.

"They've done this all along," McCauley said. "The (defense) team would ask for material and it wouldn't be handed over."

The revelation that the FBI mistakenly withheld documents illustrates a defense attorney's worst fear: basing your defense on information controlled by the people trying to put your client in prison.

Several local lawyers said the case shows that even when the government had unlimited resources, and perhaps proper intentions, a fundamental right was violated.

"It makes you wonder," said Providence lawyer C. Leonard O'Brien, "whether in cases that don't get the same sort of publicity and don't carry the same weight, whether or not someone looks at a pile of (withheld) documents and says, 'Gee I should have given that over,' " but doesn't.

"Generally speaking, we don't know how often it happens," said Kevin Bristow, a former state prosecutor. "You'd like to think it's never done intentionally."

Said Thomas G. Briody, a Providence defense lawyer: "One thing about this business is it makes you cynical, and when you read a story like (McVeigh's) it only reinforces your cynicism. The fact is, you are always wondering if something like that is happening."

"At rock bottom," said Briody, "you're always going to have to, not necessarily trust, but accept, to some degree, the word of law-enforcement agents. And it's only when you can make some kind of showing that they have been less than forthcoming—which is very difficult to do—that the court may get angry enough to allow you to probe for further information."

"There's some people who play dirty," and willfully withhold evidence, said defense lawyer Robert Mann. "Most of the time they don't do that. But there's a chance people make mistakes. People on both sides make mistakes."

The revelation in the McVeigh case, Mann said, is "another walking advertisement as to why we shouldn't have the death penalty."

In this case, the withheld evidence probably won't change the verdict. But perhaps in another case, said Mann, it would. "They had all the resources available to them and they still made a mistake."

McCauley, in investigating the McVeigh case, has plowed through "boxes and boxes" of material similar to the paperwork the FBI failed to turn over, she said. Much of it originated from phone tips from the public.

"In a case when you have this much emotional upheaval, everything but the kitchen sink comes flying in on the 800 number," she said. "From there, the agents decide, what do we have to follow up on? The agents go out and conduct interviews. I've heard a number of over 20,000."

She doubts any evidence will arise in notes and interview reports that could overturn McVeigh's conviction.

"The bar for this is extremely high," McCauley said. "You have to bring in something that would basically have changed the jurors' minds. I've seen comments from the jurors that say, no, there was enough evidence."

"Quite frankly, 3,000 (pages) in the great scheme of things is a small percentage. I think the inevitable will be the inevitable, but heaven knows now when (the execution) will happen."

McCauley, 42, a freelance graphic designer, last spoke to McVeigh by telephone in early April. She is one of five people McVeigh invited to watch him die, and she acknowledges that she struggles to reconcile McVeigh's crime with the funny, intelligent man she knows.

She doubts she will be allowed to speak to him again before the execution, and figures McVeigh was furious at the delay.

"After preparing for death, do you think you'd want to wait and do it all over again?"

"The victims too; these people are getting mentally prepared. They have to get mentally prepared all over again. It's not just Tim McVeigh. It's everybody else involved."

Including McCauley, who will witness the final chapter from the Oklahoma City bombing when McVeigh is put to death for his crime. "I'm on a roller coaster from hell," she said.

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