

Document Erases Doubts About a McVeigh Witness

By JO THOMAS

DENVER, May 26— One of the newly discovered F.B.I. documents handed over to lawyers in the Oklahoma City bombing case was a report about a witness on the day of the bombing whose testimony at trial was later discredited. The witness's credibility came under attack, in part, because lawyers on both sides did not know about the document, a person familiar with the case said.

The missing document, known as a lead sheet, was one of about 4,000 pages of information turned over to lawyers for Timothy J. McVeigh and Terry L. Nichols in recent weeks after the Federal Bureau of Investigation sought to close down its case in preparation for the execution of Mr. McVeigh.

Mr. McVeigh's execution was delayed this month after embarrassed Justice Department officials acknowledged the existence of all the documents and said they should have been provided to the lawyers before the two men were tried.

The lead sheet pertained to Morris John Kuper Jr., a witness who called the F.B.I. on April 21, 1995, two days after the bombing, to suggest that the bureau investigate activities in a parking lot a block away from the Alfred P. Murrah Federal Building an hour before the bombing.

Mr. Kuper, who was called as a witness by the defense at the trial of Mr. Nichols, testified that he saw a man resembling Mr. McVeigh walking with another man along the sidewalk near the Federal Building in Oklahoma City at 8:02 a.m. the morning of the bombing. He said he saw the two men getting into an old, light-colored car similar to the Mercury in which Mr. McVeigh was arrested later that morning.

In court, Mr. Kuper described the other man as being muscular and dark-haired, a description that was similar to that of a number of witnesses who have described the unidentified suspect who came to be known as John Doe No. 2.

Mr. Kuper also testified that he called the F.B.I. on April 21 to suggest that they check cameras at the Public Library and Southwestern Bell that might have caught something in that area, "but they took my name and phone number and never contacted me again."

But in the fall of 1995 Mr. Kuper responded to an e-mail request for information about any activity in the parking lots from his employer, the Kerr-McGee Corporation.

In his cross-examination, Patrick Ryan, then the United States attorney in Oklahoma City and one of the prosecutors, emphasized that the date of the first F.B.I. interview report with Mr. Kuper was Oct. 24, and repeatedly challenged his credibility, saying that he had made no attempt to reach the bureau until then.

In an interview on Friday, Mr. Ryan said that he had had no idea the document existed and that he would have treated the issue much differently if he had. "I certainly would never intentionally tell the jury someone had not come forward for six months if I knew they had come forward a couple of days after the bombing," Mr. Ryan, now a lawyer in private practice, said.

On Friday, Chris Watney, a spokeswoman for the Department of Justice, said she could not comment on the details of any of the documents. "We have reviewed all of the documents carefully and remain confident that nothing in them undermines Mr. McVeigh's admission or the justice of his sentence," she said.

On Thursday, Attorney General John Ashcroft said that "nothing in any of the documents links anyone else to this bombing" and that he saw no reason to delay any further beyond June 11, the date on which the execution is now

scheduled.

Lawyers for Mr. McVeigh say that they are still examining the documents and that Mr. McVeigh has not yet decided whether to seek a new trial or a stay of execution. Mr. Kuper was among a number of witnesses who were called by lawyers at Mr. Nichols's trial, in an effort to show that someone other than Mr. Nichols helped Mr. McVeigh.

"It was my feeling they were fairly unreliable," Mr. Ryan said. "The problem with any of these witnesses, even if some were right, you didn't know which were the right ones and which were the wrong ones."

Beth Wilkinson, another prosecutor, likened such accounts to "Elvis sightings," and Mr. McVeigh has subsequently been quoted as saying that John Doe No. 2 does not exist.

During his testimony, Mr. Kuper, a data communications specialist for Kerr-McGee, an energy and chemical company, said he was confident of the time of his sighting because he was late to work that day and was checking his own watch, which he set against the atomic clock at the Naval Observatory in Washington, a service provided by a local radio station.

He noticed the car, he said, because he restored cars as a hobby, and added that "it was not the type of car you would normally see in that parking lot." The driver, he said, was white, with short light-colored hair, and was wearing a white or light T-shirt and dark pants. The other man was shorter and stockier, with a dark complexion and dark hair. He was also more muscular than the other man, Mr. Kuper said.

Mr. Ryan drew attention to discrepancies between Mr. Kuper's testimony in court and what he had told the F.B.I. two years earlier, when he said the passenger was not as muscular as the driver.

In a filing with the Supreme Court last week, Michael E. Tigar, the lead lawyer for Mr. Nichols, said he had found at least two instances in which prosecutors tried to impeach the credibility of defense witnesses with assertions that were contradicted by the newly disclosed F.B.I. files. Mr. Tigar did not provide details, and the documents are covered by a protective order forbidding disclosure by any of the lawyers involved.