

McVeigh, Nichols Attorneys React To IG Report

by Howard Pankratz , Denver Post | March 20, 2002

In the months before Timothy McVeigh's execution, FBI supervisors knew the agency hadn't turned over dozens of documents to McVeigh's lawyers, yet failed to notify FBI headquarters or federal prosecutors, the Justice Department said in a highly critical report released Tuesday.

The report also said agents "purposefully" refused to send information to the Oklahoma City Bombing Task Force, despite repeated requests, and even destroyed investigative files on the bombing probe.

McVeigh was convicted of blowing up the Alfred P. Murrah Building in Oklahoma City on April 19, 1995, a blast that killed 168 and injured hundreds more.

He was executed in Terre Haute, Ind., on June 11, 2001, after his original execution date was postponed because of the disclosure of the documents.

Almost six months before, in an internal FBI e-mail written on Jan. 29, 2001, FBI Agent Mark White said the discovery of the photographs and reports could be a "big problem."

White, supervisory agent for the Oklahoma City bombing investigation, and Danny Defenbaugh, the FBI inspector in charge of the bombing investigation, were aware of a potential problem as early as January 2001, said the 192-page report by the Justice Department's inspector general.

Yet despite McVeigh's "fast-approaching execution date," White and Defenbaugh didn't notify FBI headquarters of the problem until May 7, approximately one week before McVeigh's first scheduled execution date.

"We believe these delays by the FBI supervisors were a significant neglect of their duties," said Glenn A. Fine, Justice Department inspector general.

Fine recommended the FBI consider disciplinary actions for White and Defenbaugh.

More than 4,449 pages of documents were turned over to the defense in the weeks just before McVeigh's execution.

McVeigh's Denver lawyer, Nathan Chambers, said he was "unimpressed" by the report.

"We wanted to investigate the circumstances that existed that caused all these documents not to be turned over," Chambers said. "We were not able to do that because of time constraints."

While the report said some agents did not send information requested, sometimes thinking it was insignificant, it found that the FBI employees didn't intentionally withhold documents.

The failure to turn over 1,033 documents was attributed to inconsistent interpretations of FBI policies, agents' lack of understanding of the unusual agreement to share information with the defense, and the volume of material, said the report.

But that finding upset Chambers.

"You have the Department of Justice conducting an investigation and coming to the conclusion that the Department of Justice has done nothing intentionally wrong," said Chambers.

He was also upset about the admission that evidence was destroyed.

"We will never know what was in those," said Chambers.

Denver-based federal prosecutor Sean Connelly, who has handled appeals in both the McVeigh case and that of co-defendant Terry Nichols, requested permission Tuesday from the 10th U.S. Circuit Court of Appeals to file two copies of the report with the judges.

The judges will decide if the Nichols case should be sent back to U.S. District Judge Richard Matsch for a hearing into the FBI's failure to turn over the documents to Nichols' lawyers sooner.

"I think there are a lot of lessons to be learned from the report in this and future investigations. But I don't believe any of those lessons undercut the validity of Terry Nichols' conviction," said Connelly.

Nichols' lawyer, John Richilano, wants the 10th Circuit to send the Nichols case back to Matsch. He also wants Matsch to hold a hearing at which FBI and federal prosecutors will testify. Their testimony, in part, would "put flesh on the bones of this report," said Richilano.