

McVeigh's lawyers not told about allegations

FBI lab employees said in letter to Ashcroft key witness might have lied

WASHINGTON (AP) — Less than two weeks before Timothy McVeigh was executed, the Justice Department received a letter suggesting a key prosecution witness had given false testimony. Prosecutors didn't disclose the allegations to McVeigh's lawyers and later sought to recover all copies of the letter in exchange for a lawsuit settlement.

The letter, marked "urgent," was sent by fax and courier to the attention of Attorney General John Ashcroft on June 1, 2001, by a law firm representing several current and former FBI lab employees. At the time, a judge was deciding whether to delay McVeigh's execution because of evidence the government withheld from his trial.

The letter's allegations involved Steven Burmeister, now the FBI lab's chief of scientific analysis, and were recently turned over to bombing conspirator Terry Nichols, who faces another trial on Oklahoma state murder charges.

"Material evidence presented by the government in the OKBOMB prosecution through the testimony of Mr. Burmeister appears to be false, misleading and potentially fabricated," said the letter to Ashcroft obtained by The Associated Press.

The letter cited Burmeister's testimony in a civil case as evidence contradicting his earlier McVeigh testimony. It specifically challenged Burmeister's testimony that chemical residues

found on evidence came only from McVeigh's bomb, not other sources such as lab contamination.

Prosecutors are obligated by law to disclose any potentially exculpatory evidence to the defense.

Justice officials said Wednesday they believed the allegations against Burmeister were false and that the letter was routed to Ashcroft's clerical office in the Maryland suburbs of Washington, where it sat for nearly two months before being forwarded to the FBI — well after McVeigh was executed.

Neither Ashcroft nor other top officials in the Justice Department who handled the McVeigh case saw the letter, spokeswoman Barbara Comstock said. It was never reviewed to determine if it should be handed over to McVeigh's lawyers, officials said.

Comstock said the Justice Department does not believe the allegations would have affected the outcome. "Court after court has found that the evidence of guilt against McVeigh was overwhelming," she said.

Law enforcement officials, however, divulged that last year Justice Department lawyers made a lawsuit settlement offer to the law firm and one of its clients, a fired FBI lab employee, that would have required the firm to give up all copies of the letter. The offer was eventually dropped.

McVeigh's lawyers expressed dismay that they weren't told of the letter. At the time it was sent, a judge had dramatically delayed McVeigh's execution by one month because of other evidence the FBI failed to turn over during his trial.