

FBI hasn't searched computer space for documents

WASHINGTON (AP) — In an oversight that could impact cases nationwide, the FBI hasn't routinely searched a special computer space where agents store investigative documents to see whether those materials should be sent to defense lawyers, Congress or special investigative bodies like the Sept. 11 inquiry.

The existence of the unsearched "I-drive" computer files, brought to the attention of The Associated Press by concerned FBI agents, could give lawyers an avenue to reopen numerous cases to determine whether documents that could have aided the defense of criminal defendants were withheld.

The FBI is uncertain about the nature or breadth of the documents on the computer space and has asked its internal investigation unit, its inspection division, to determine how many documents on I-drives in FBI offices across the country did not make it into official case files, officials said Monday.

If a large number are found, a review would begin to determine whether they should have been turned over to defense lawyers, bodies like the Sept. 11 commission

or Congress, officials said. FBI supervisors said they were unaware of the problem until it was brought to their attention by AP.

"The only official records system the FBI has is our paper records. At no time did we ever ask anyone to look at the I-drives," said Robert J. Garrity Jr., the FBI deputy assistant director in charge of records management.

"We'll correct whatever we need to, learn from it and make sure it doesn't happen again," he added.

Garrity said the I-drive was created in 1996 and is used by agents to upload investigative documents like interview reports, investigative inserts and teletypes so their supervisors can approve putting them into the FBI's official case files, which still are in paper format.

He acknowledged that those documents that do not get into the FBI's official case files or its automated computer case system would not be searched for materials that should be turned over to defense lawyers or Congress.

Under a landmark Supreme Court case known as Brady v. Maryland, prosecutors and police are required to disclose all materi-

als they possess that might help defense lawyers prove the innocence of clients.

Prosecutors operate under an honor system, and numerous times in recent years there have been prominent cases in which relevant or exculpatory documents haven't been produced, touching off legal battles.

Lawrence Barcella, a prominent Washington defense attorney and former federal prosecutor, said the discovery of the FBI's unsearched computer storage space could affect current cases in which guilt or innocence still is at issue and past cases where questions of the fairness of sentences or credibility of witnesses might be impacted.

"Under criminal case law, the failure to disclose may well result in a defendant being denied a fair trial. So it doesn't matter if it was negligence or willful, if potentially exculpatory information was not produced," Barcella said.

Barcella said FBI agents have complained for years that they have inadequate computer systems, and that remains a problem despite recent improvements under FBI Director Robert Mueller.

The FBI acknowledged last week that some documents unearthed by AP for a story Wednesday about the Oklahoma City bombing were inexplicably never turned over to its own investigators or to lawyers for Timothy McVeigh, who was executed for the April 1995 attack.

The documents included at least one teletype that clearly mentioned McVeigh's name, yet never were produced to defense lawyers. And in 2001, FBI officials belatedly found about 4,000 pages of relevant documents that also never were turned over, prompting a one-month delay in McVeigh's execution.

The retired chief of the FBI's Oklahoma City investigation, Dan Defenbaugh, said he learned of the existence of the I-drive during the 2001 controversy and was surprised the FBI wasn't searching it for materials required to be turned over to defense lawyers.

"I did not know prior to 2001 that agents were storing documents on this I-drive and that it was not routinely being searched," Defenbaugh said. "There are a number of executives who I have talked to since then that were as dumbfounded as myself."