

AP: Nichols Says FBI Withheld Documents

By JOHN SOLOMON, Associated Press Writer

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WASHINGTON - Terry Nichols' attorneys say more than a dozen FBI (news - web sites) documents that raise the possibility of additional accomplices in the 1995 Oklahoma City bombing weren't turned over by state prosecutors or the federal government for Nichols' murder trial defense.

The documents, which were cited in a recent series of Associated Press stories, include two 1990s teletypes from then-FBI Director Louis Freeh's office citing possible connections between Timothy McVeigh and a gang of white supremacist bank robbers, the lawyers said.

The judge in Nichols' trial has said he will dismiss the state murder charges against McVeigh's co-conspirator with prejudice — making it very hard for prosecutors to resurrect the case — if the lawyers can prove that documents that could have aided their defense were withheld.

Under a Supreme Court ruling, prosecutors and the government are obligated to turn over to defense lawyers all materials that could help clear a defendant, such as evidence that points to other suspects or casts doubt on prosecution witnesses.

Nichols' attorneys agreed to review the materials cited in the AP story and identify which they could not find among the massive files prosecutors and the government provided them. In all, they identified 13 FBI documents and a handful of other materials. "To our knowledge, we have not received these documents from the state or federal government," lead Nichols' attorney Brian Hermanson said Wednesday.

In addition, the lawyers said they did not receive any information from prosecutors concerning the FBI's unsuccessful efforts to get permission to interview McVeigh in 2001 to resolve lingering questions before his execution.

The prosecutor, Oklahoma County District Attorney Wes Lane, said, "Everything the federal government has provided to us has either been given or made available to the Nichols' defense team."

FBI officials declined comment, citing the trial and an ongoing internal investigation into issues raised by AP's stories.

Last month, the former chief of the FBI's Oklahoma City investigation, Dan Defenbaugh, said a small number of documents and evidence cited in the stories had not been sent to him to pursue possible links between McVeigh and the robbers, and he called for the bureau to reopen the investigation.

The FBI agreed, asking its Inspection Division to review some aspects of the nine-year-old case to determine if evidence of possible unpunished accomplices may have been

mishandled during the original probe. The judge, however, refused to delay Nichols' trial, and jury selection began last week after prosecutors insisted the defense had all materials that could aid its case.

Nearly all the documents cited by Nichols' attorneys involved FBI efforts to link McVeigh to the Aryan Republican Army bank robbery gang.

At least two gang members and one gang member's ex-girlfriend claimed to have knowledge of the bombing plot, but the FBI dropped the inquiry after the robbers denied their involvement and provided an alibi.

The documents at issue include two 1996 teletypes from Freeh's office. One teletype from January 1996 said McVeigh had been trying to recruit a second conspirator two weeks before the bombing conspiracy when he called a white supremacist compound in Oklahoma that was frequented by the robbery gang.

The teletype also included informant information that McVeigh may have had more regular contacts with someone at the compound.

The second teletype from August 1996 stated two of the bank robbers were present when McVeigh made the call to the Elohim City compound. Defenbaugh said he was unaware of that information, and that the teletype should have been shared with his investigators so they could interview the robbers about what they knew.

FBI officials confirm they found no evidence the August 1996 teletype from Freeh's office was sent to Defenbaugh's team.

Other documents Nichols' attorneys said they did not receive:

_FBI reports showing the bank robbers possessed construction-style blasting caps similar to those McVeigh stole for his bomb and an Arkansas driver's license with the alias name of a gun dealer who was robbed to provide the proceeds for McVeigh's bombing.

_Lab analyses showing the FBI tried unsuccessfully to match photos and fingerprints of McVeigh to evidence from some of the gang's bank robberies to see if the convicted Oklahoma City bomber participated.

_A memo stating a sketch of one of the bank robbers resembled that of a mystery man seen with McVeigh and Nichols eight months before the bombing.

McVeigh was executed in 2001. Nichols, 48, is serving a life prison sentence for the April 19, 1995, bombing of the Alfred P. Murrah Federal Building, which killed 168 people. He was convicted in 1997 on federal charges involving eight federal employees. The state charges, which carry the death penalty, are for the 160 other victims and one victim's fetus.