

EXECUTIVE SUMMARY

The bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, on April 19, 1995, was, at the time, the most significant act of terrorism that had ever taken place in the United States. Government agencies, led by the Federal Bureau of Investigation (FBI), immediately began an extensive investigation to identify and prosecute the culprits. The investigation, known as OKBOMB, was run by a Task Force that consisted primarily of FBI investigators and support personnel and Department of Justice prosecutors. Within a few months, three individuals – Timothy McVeigh, Terry Nichols, and Michael Fortier – were indicted for crimes relating to the bombing. McVeigh and Nichols were convicted after trials, and Fortier pled guilty as part of a plea agreement with the government. McVeigh, who had devised the plot to bomb the Murrah Building and had planted the bomb, was sentenced to death.

On May 8, 2001, one week before McVeigh's scheduled execution date, the Department of Justice and the FBI revealed to McVeigh's and Nichols' attorneys that over 700 investigative documents had not been disclosed to the defendants before their trials. The government acknowledged that it had violated a discovery order in the case, and the Attorney General stayed McVeigh's execution for one month in order to resolve the legal issues arising from the belated disclosure.

Following the public revelation of the problem, and after finding and releasing more than 300 additional OKBOMB documents to the defense, the FBI came under severe criticism for its handling of the OKBOMB documents. Allegations were made that FBI personnel intentionally failed to disclose exculpatory information to the defense.

When the problem of the belated documents was first disclosed, the Attorney General requested that the Office of the Inspector General (OIG) investigate the circumstances leading to the untimely production. This report details the results of the OIG's investigation.

I. The OIG Investigation, Scope of the Report, and Conclusions

To conduct the investigation the OIG assembled a team of five attorneys, two special agents, two auditors, a paralegal, and support personnel. We conducted approximately 200 interviews of current and former FBI and Department of Justice officials. OIG investigators traveled to 13 FBI field offices to conduct interviews, view the physical premises, and review the

offices' processes for handling documents. These 13 offices accounted for over 50 percent of the belated documents. The OIG also surveyed the 43 other FBI field offices for explanations about how they handled OKBOMB documents and why they failed to provide the material deemed to be belated to the Task Force during the OKBOMB investigation.

In general, our investigation sought to answer the following questions:

- Why were discoverable items not produced before the McVeigh and Nichols trials?
- Did government employees intentionally conceal exculpatory information from the OKBOMB defendants?
- Did the FBI act appropriately and timely upon learning that items sent by FBI field offices to Oklahoma City in 2001 might not have been disclosed properly to the defense before the McVeigh and Nichols trials?

We investigated why more than 1,000 discoverable items had not been disclosed to the defense before McVeigh's and Nichols' trials. Although the media reported that some FBI officials were blaming the FBI's computer system for causing the problem, we did not conclude that the computer system was the cause of the belated production of documents. The FBI's computer system is antiquated and in need of substantial improvement, but we found that human error, not the inadequate computer system, was the chief cause of the failure to provide the defense with these items. The failures that we observed stemmed from individual mistakes, the FBI's complex document processing systems, inconsistent interpretations of FBI policies and procedures, agents' failures to follow FBI policies, agents' lack of understanding of the unusual discovery agreement in this case, and the tremendous volume of material being processed within a short period of time.

Shortly after the documents problem became public, FBI Headquarters asserted that the primary reason the defendants did not receive materials to which they were entitled was because the FBI field offices had failed to send the material to the OKBOMB Task Force. We found in many instances that personnel in the field offices did fail to send OKBOMB material to the Task Force. We also found that in some instances these errors could have been caught and remedied if the field offices had conducted appropriate searches for OKBOMB material in their files as requested by the Task Force. Significantly, however, we also found that the Task Force lost or mishandled some of the

material sent by the field offices. Therefore, both the field offices and the OKBOMB Task Force share responsibility for the incomplete document production.

The defense attorneys alleged that the government had intentionally failed to disclose information exculpatory to the defendants. We concluded that the evidence does not support such claims. As part of our investigation into this issue, the OIG examined the evidence cited by the defense as supporting its claims; however, this evidence revealed primarily unintentional errors, not any intentional effort by government employees to withhold discoverable documents from the defense. The direct and circumstantial evidence supports the conclusion that the government did not willfully withhold material known to be discoverable.

In addition to determining the reasons why the documents had not been timely disclosed to the defense, we also investigated the conduct of FBI personnel in 2001. The evidence shows that the belated documents problem was revealed to defense counsel and to the public only one week before McVeigh's scheduled execution because several FBI supervisors did not effectively address the situation when the issue was discovered in January 2001. The supervisors failed to aggressively manage the document review process and failed to set any deadlines for completing the project. The supervisors also failed to timely notify OKBOMB prosecutors, FBI supervisors, and Department of Justice officials. This belated disclosure of the problem only one week before McVeigh's execution created a firestorm of criticism, made it appear that the FBI was hiding documents until the last moment, and led to the last-minute rescheduling of the execution date.

In addition, we found that FBI Headquarters failed to effectively manage the aftermath when the problem became public on May 10, 2001. Headquarters was too quick to assign blame without sufficient facts, and it did not adequately communicate with its field managers, many of whom found out about the issue and that they were being blamed for the problem from press reports. Headquarters also issued instructions to the field that were not well considered, contributing to a sense of confusion throughout the agency.

The belated documents issue provides an opportunity to shine light on several of the FBI's long-standing problems: antiquated and inefficient computer systems; inattention to information management; and inadequate quality control systems. Although the belated documents issue was presented as a discovery problem, the FBI's troubled information management systems are

likely to have a continuing negative impact on its ability to properly investigate crimes. At the end of this report, we set forth several recommendations that address these systemic weaknesses. The recommendations address, among other issues, improved planning for complex, document intensive cases; computer system enhancements; and increased automation training.

II. Background

Immediately following the bombing of the Murrah Building, the FBI and the Department of Justice established a Task Force to investigate the crime. An FBI Inspector in Charge and a Department of Justice prosecutor led the Task Force, which at its peak consisted of over 200 investigators, prosecutors, and support personnel. The Task Force initially was located in Oklahoma City but later moved to Denver, Colorado, when the defendants' trials were moved. In addition to the personnel assigned to the Task Force, thousands of other investigators from the FBI's 56 field offices, its foreign offices, and other law enforcement agencies also participated in the OKBOMB investigation.

The belated documents consist primarily of "FD-302s" and "inserts," forms used by the FBI to record investigative activity such as witness interviews. After FBI agents in the field offices memorialized their investigative activity on the appropriate form, the documents were supposed to be sent to the Task Force. Task Force personnel organized the evidentiary material, entered a brief description of the material into appropriate databases, and filed the hard copies.

In every federal criminal trial, the defendants are entitled to have access to some, but not all, of the prosecution's files. After the OKBOMB defendants were indicted, the government decided to go beyond the discovery rules routinely used in federal criminal trials and agreed to provide the defense with all the FD-302s and inserts. The agreement was not formalized in writing, but we found no dispute about this obligation.

As the OKBOMB investigation progressed in 1995 and 1996, the Task Force realized that it was not receiving all of the documents generated in the field offices. On many occasions, the Task Force sent sternly worded instructions to the field offices that *all* OKBOMB-related materials were to be sent to the Task Force and directed the field offices to search their offices for OKBOMB materials. At the same time, however, some field offices complained to the Task Force that they were receiving multiple requests from the Task Force for documents that the field offices had sent previously.

Accordingly, although the FBI and prosecutors disclosed 1,033 items to the defense in May 2001, the OIG investigation determined that the actual universe of discoverable items that should have been disclosed to the defense could not be determined with complete accuracy.

The items disclosed reflect a wide variety of information. Some of the documents memorialize interviews while others reflect different activity performed by agents, such as conducting records checks or reviewing magazine articles. Over 100 documents concern individuals who were reported to resemble John Doe #2.²⁰ Approximately 30 items mentioned McVeigh, Nichols, or Fortier in some manner, including interviews of their family members. Physical items that were disclosed include photographs, printouts of records checks, and drivers' licenses.

The government asserted that much, although not all, of the information contained in the belated documents had been disclosed to the defendants before their respective trials through other means. For example, the government asserted that information obtained from an interview of an individual who knew McVeigh was substantially provided through another interview of the same individual that had been disclosed to the defense. All of the courts that reviewed McVeigh's claims regarding the belated documents concluded that the contents of the belated documents did not negate his guilt. (See, for example, Order, June 6, 2001, Judge Richard Matsch, United States District Court, "Whatever may in time [be] disclosed about possible involvement of others in this bombing, it will not change the fact that Timothy McVeigh was the instrument of death and destruction.")

III. Causes of the Belated Documents: The Field Offices

In interviews with the OIG and in their written explanations to FBI Headquarters, the field offices asserted that they had followed procedures, that they had sent all materials to the OKBOMB Task Force, and that the belated

²⁰ Shortly after the bombing, the FBI publicized composite sketches of two individuals who were believed to have rented the truck used in the bombing. One of the sketches was known as John Doe #2. Many of the belated documents were interviews of individuals reporting that the sketch resembled their sons-in-law, brothers-in-law, ex-boyfriends, ex-school classmates, and unknown individuals seen in bars, among others.

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CONCLUSION

The disclosure of hundreds of OKBOMB documents one week before the scheduled execution of McVeigh raised questions as to whether the FBI had intentionally failed to disclose the documents and how the belated disclosures could have occurred. Because of the importance of these issues, the OIG expended significant resources to investigate the circumstances surrounding the belated production of documents. These issues have critical implications not only for the Oklahoma City bombing case, but also for how the FBI handles documents in its other investigations.

Based on our investigation, we concluded that the FBI had not intentionally withheld discoverable documents. Rather, the evidence showed that the FBI's failure to disclose these documents resulted primarily from individual errors in document handling, failures to follow FBI policies, failures to fully comply with directives from the OKBOMB Task Force, and cumbersome and complex document handling procedures. The failures were widespread and not confined to one office or a few individuals. Nor was the fault confined to either the FBI field offices or the Task Force; both share responsibility for the problems.

We are most critical of the way certain senior FBI managers responded when they became aware of the belated documents problem. In January 2001, the belated documents were initially identified as a potential problem by two conscientious employees in the FBI's Oklahoma City field office. Yet, the managers to whom they reported the problem failed to address the issue in a timely way, or notify FBI Headquarters or the prosecutors in the case until the beginning of May, one week before McVeigh's scheduled execution. We believe these delays were a significant neglect of their duties. We therefore recommend that the FBI consider disciplinary action for these managers' failure to resolve and disclose the problem in a timely way.

Because of the passage of time, the number of documents involved, and the inability of individuals to recollect exactly how they handled one document out of the many they created or gathered, it was impossible for us to ascertain with clarity the path of each belated document or why each such document failed to be turned over to the defense. What is clear, however, is that the FBI's system and procedures for handling documents was – and still is – inordinately cumbersome and badly in need of change. The OIG, and

others, have pointed out some of these problems in the past, but until recently the FBI has made insufficient efforts to correct the deficiencies.

This case highlights the significant weaknesses in the FBI's computer systems. They are antiquated, inefficient, and badly in need of improvement. Although we do not believe that the failures in this case were caused by its computer system, the FBI's computer system cannot handle or retrieve documents in an efficient, useful, or comprehensive way. FBI employees need, and deserve, better computer systems and support.

In this report, we offer systemic recommendations to help address the problems we found in this case. They include recommendations for computer system enhancements, improved planning in document-intensive cases, additional and repeated training for FBI employees on its automated systems, and improvements and simplification of record keeping systems. The FBI's handling of documents, including disclosing them when required, is an essential part of the FBI's mission. The FBI must ensure that this issue receives concerted and long-term attention, particularly after the focus on this case recedes. Improved handling of documents and information will require resources and significant effort, but we believe that the FBI must make this critical commitment to avoid the serious problems that occurred in this case.

Glenn A. Fine
Inspector General