

Judge denies stay of McVeigh execution

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Federal District Court Judge Richard Matsch denied a stay of execution Wednesday to Oklahoma City bomber Timothy McVeigh. The man convicted of setting off a truck bomb that killed 168 people in April of 1995 is scheduled to die by lethal injection in Terre Haute, Indiana next Monday, June 11. His attorneys are appealing Judge Matsch's decision to the 10th Circuit Court of Appeals.

The appeals court is expected to rule quickly on McVeigh's appeal of Matsch's decision. Should it uphold the ruling of the trial judge, the matter will go to the US Supreme Court prior to the June 11 execution date.

In seeking the stay, McVeigh's attorneys argued that the federal government perpetrated a "fraud upon the court" by withholding more than 4,000 pages of documents from the defense prior to McVeigh's 1997 trial. McVeigh's lawyers also requested that Judge Matsch conduct an evidentiary hearing to determine why the documents were not turned over and to insure that other evidence is not still being withheld.

In the fall of 2000, McVeigh had instructed his attorneys to waive any further appeals on his behalf. However, based on the government's failure to disclose all evidence to the defense as directed by the judge at trial, McVeigh instructed his defense to request Judge Matsch to allow him to reopen his appeal.

In denying the stay, Matsch said there was nothing in the documents that showed McVeigh was not guilty. The judge had commented earlier that he found it "shocking" that the Federal Bureau of Investigation had withheld the evidence, but stated at Wednesday's hearing, "I am not going to try the FBI."

Arguing for the stay, McVeigh's defense team charged that the government withheld evidence that pointed to the involvement of other people besides McVeigh and his army buddy Terry Nichols in the bombing of the federal building in Oklahoma City. "Specifically, counsel believes that the government—at least some FBI agents—knew ... that other people in addition to Mr. McVeigh and Mr. Nichols were responsible for the

bombing," they stated.

McVeigh's lawyers also alleged that federal law enforcement officers were told by informants about the bombing before it occurred. In a filing prior to Wednesday's hearing they wrote: "The defense believes that the government had a significant volume of such information, yet chose not to disclose critical portions of it to the defense, and chose not to present it at trial for fear of diminishing the responsibility that would be assigned to Mr. McVeigh during his trial, or for fear of shifting some of the responsibility to itself by revealing that federal informants had advised federal law enforcement officers of the bombing several days or weeks before it occurred."

On May 11, just five days before McVeigh's original May 16 execution date, Attorney General John Ashcroft announced he was delaying the execution until June 11 due to the discovery of the new evidence. The government maintains that the withholding of the evidence was an "oversight." But at Wednesday's hearing, McVeigh's attorneys stated that the prosecution knew of the existence of the documents six months before they were turned over to the defense.

New evidence has emerged that suggests the government's withholding of material may not be as innocent as it claims. Included in the evidence that was not provided to the defense—which now amounts to 4,449 pages of documents and 11 CDs—are leads concerning "John Doe No. 2," an unidentified man who reportedly accompanied McVeigh at the site of the bombing and was sought by the FBI early in the investigation as a possible accomplice. Within a few days of the bombing, however, the government declared there was no John Doe No. 2, and has maintained since that McVeigh detonated the truck bomb by himself, with the prior collaboration of Terry Nichols. Evidence pointing to the existence of John Doe No. 2 could potentially contradict the government's version of events.

In recent days federal agents involved in the bombing investigation have made public statements criticizing the

government's handling of evidence. On May 29, one current and three former FBI agents appeared on the CBS News program 60 Minutes II. One of these men, former Special Agent Rick Ojeda, said that evidence he developed in the Oklahoma City bombing case that might have helped the defense was ignored or not documented by FBI officials.

Ojeda told CBS News: "I talked to a couple of agents that worked the case and asked them about leads that I had done, whether they were ever brought up. And I even asked them to check to see if some of the 302s [reports] that I had mentioned had ever been turned over. And they couldn't find them. And so I started to wonder if the stuff had been withheld."

In March 2000, Ojeda wrote a letter to Senator Charles Grassley (Republican of Iowa) in which he said he was aware of instances, including the Oklahoma City bombing case, where evidence that would have helped the defense was ignored or not documented, including exculpatory information he gathered from leads assigned him in the bombing case. Ojeda told 60 Minutes II: "I thought they were leads that should have been investigated."

Special Agent Dan Vogel, a career FBI agent assigned to the Oklahoma City field office, told CBS News that he felt the FBI's handling of the evidence in the case amounted to obstruction of justice. "It would be something that needs to be presented to a federal grand jury as a criminal case," Vogel commented.

Jim Volz, an FBI agent for 27 years, also appeared on the 60 Minutes II program. Volz, who worked on the Oklahoma City bombing case, reviewing thousands of FBI investigation sheets, said, "It's extremely surprising to me that these documents all of a sudden show up." Volz was eventually forced into retirement after intervening to defend Jeff Jenkins, a black FBI agent who charged his superior with making racist statements. Volz says that Danny Defenbaugh, the FBI agent who oversaw the Oklahoma City bombing case, threatened him with retirement if he didn't back off from defending Jenkins.

The appearance of these government agents on national television—and their allegations of misconduct on the part of the FBI—reveals a state of internal discord within the agency charged with investigating the Oklahoma City bombing. Their statements raise as a plausible scenario the possibility that the Justice Department only acknowledged the existence of the documents out of fear that these agents, or other whistle-blowers, might come forward with damaging information on the eve of McVeigh's execution.

The government has maintained that the withheld evidence is of no interest to the defense. But McVeigh attorney Rob Nigh told reporters that one of the newly released documents included information on a potential witness who was unknown to the defense.

The *New York Times* reported on May 27 that one of the documents pertains to Morris John Kuper, Jr., who was called as a witness in the trial of bombing suspect Terry Nichols. Kuper was one of a number of witnesses called by Nichols' defense in an effort to show that someone other than Nichols worked with McVeigh to carry out the bombing.

At Nichols' trial, Kuper testified that he saw a man resembling McVeigh walking with another man along the sidewalk of the federal building at 8:02 a.m. the morning of the bombing. He said he saw the two men get into a car similar to the vehicle in which McVeigh was arrested later that morning. Kuper described the second man as muscular and dark-haired, a depiction similar to that of a number of other witnesses who described the unidentified suspect referred to as John Doe No. 2 in the initial stage of the FBI investigation.

Under cross-examination, government prosecutors sought to discredit Kuper's testimony by asserting that he had waited more than six months to come forward with the information. But according to a newly revealed document, Kuper called the FBI on April 21, 1995, two days after the bombing, to recommend that they check cameras that might have surveyed a parking lot a block away from the Alfred P. Murrah federal building an hour before the bombing. He suggested the cameras might have captured suspicious activity pertinent to the investigation.

Kuper told the *Times* that the FBI "took my name and phone number and never contacted me again." October 24, 1995 Kuper again provided his description of the two men in response to a request by his employer, the Kerr-McGee Corporation, for information that might impact the bombing investigation. Because Nichols' defense team had never been given the report documenting Kuper's initial phone call, it was unable to challenge the prosecution's effort to discredit Kuper's testimony on the grounds that he had waited so long to come forward.



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