U.S. Department of Justice
Office of the Inspector General

An Investigation of the Belated Production of Documents in the Oklahoma City Bombing Case

Office of the Inspector General
March 19, 2002

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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.

III. Chronology of Events Leading to the Discovery of the Belated Documents

We describe in the report the events of 2000 and 2001 that led to the discovery of the belated documents, and we also describe the process that personnel used to determine whether the documents had been disclosed previously to the defense. Essentially, the belated documents were discovered when FBI personnel began an archival process designed to ensure the long-term maintenance of the historically significant OKBOMB materials.

The OKBOMB defendants were tried in separate trials in 1997 in Denver, Colorado, after the trial judge moved the cases from Oklahoma City. Following the trials, the evidence was packed, transferred back to Oklahoma City, and stored in a large warehouse. In early 2000, personnel in the FBI's Oklahoma City Field Office became concerned that the heating and cooling capacity of the warehouse was insufficient to maintain the OKBOMB evidence, and they sought the advice of the FBI's archivist. The archivist agreed that the warehouse was not suitable for long-term storage, and he also agreed to assist in the preservation process.

In December 2000, the archivist sent an electronic communication to the FBI's 56 field offices authorizing them to destroy copies of OKBOMB documents that met specific guidelines the archivist provided. The field offices were to send a list of the remaining OKBOMB materials to the Oklahoma City Field Office. By late January 2001, two field offices sent their OKBOMB files, not just a list, to Oklahoma City. When the files were examined, two Oklahoma City Field Office analysts, both of whom had worked on OKBOMB and one of whom had been involved in the discovery process, immediately became concerned because they found what they believed to be original documents in the field office boxes. Because they did not believe that the field offices should have been in possession of any original OKBOMB documents, the analysts promptly advised an Oklahoma City supervisor and two FBI managers in the Dallas, Texas, Field Office, one of whom had been the OKBOMB Inspector in Charge, that some of the material might not have been disclosed during the discovery process.

On January 30, 2001, the Oklahoma City analysts sent a communication to all FBI field offices instructing the field offices not to destroy OKBOMB documents and to send OKBOMB materials to Oklahoma City. As the material came into Oklahoma City, the two analysts plus a few additional Oklahoma City personnel reviewed every document to determine whether they had been

disclosed previously to the defense. As we describe in the report, the databases used by the FBI for the OKBOMB investigation made this process difficult and inexact.

Because the Oklahoma City employees learned that the field offices had not complied completely with the January directive to send all OKBOMB material, they sent yet another directive in March 2001 again requesting that all OKBOMB material be sent to Oklahoma City. During the review process, the two analysts kept their Oklahoma City supervisor and the two Dallas Field Office OKBOMB supervisors informed about the progress of their review. In March 2001, the analysts showed the Dallas supervisors a box of problem documents that they had not been able to find in the databases that listed which documents had been disclosed to the defense. Throughout March and April, the Oklahoma City personnel continued their review. By the end of April 2001, they finished their examination of all the documents sent by the field offices and concluded that over 700 documents had never been disclosed to the defense. Concerned about the approaching execution date, the Oklahoma City personnel sent the documents to Dallas so the OKBOMB Inspector in Charge could determine how to handle the issue.

On May 7 and 8, 2001, the OKBOMB Inspector in Charge notified for the first time FBI Headquarters and an OKBOMB prosecutor that documents that had not been turned over in discovery had been found in FBI files. The prosecutor disclosed 715 documents to the defendants' attorneys on May 9. Yet, the FBI continued searching for and finding additional documents in its field offices. These documents also were reviewed, and by the end of May over 300 more documents were released to the defense. In total, 1,033 documents were provided to the defense.

IV. Causes of the Belated Production of Documents

The OIG found that both the field offices and the OKBOMB Task Force were responsible for documents not being disclosed timely to the defendants. With respect to most of the documents, we were unable to determine definitively the exact cause of the problem because of FBI employees' inability to either know or recall exactly what they did with a document that they handled over six years ago. Nonetheless, we were able to determine a number of factors that likely caused the problem.

First, the FBI's system for handling documents is complex. Many different employees are involved in processing documents, including agents,

supervisors, and various administrative personnel. Documents are stored in many different locations, various databases are used to track the documents, and information is placed on different types of forms, which are handled in various ways depending on the type of form.

Second, certain procedural breakdowns added to the complexity of processing the OKBOMB documents. For example, in order to get information to the Task Force as quickly as possible, agents used teletypes (a form of instant communication similar in some ways to a facsimile) to send information. Yet, FBI and OKBOMB procedures required that information be placed in a different format – an FBI FD-302 or an insert. Some of the document-handling problems arose because field offices believed information had been sent to the Task Force (because they had sent a teletype) but, because the Task Force did not disclose teletypes, the information did not ultimately get to the defense.

We also found that some offices purposefully did not send information to the Task Force because an agent or supervisor believed the information was not pertinent to the OKBOMB investigation. The Task Force became aware of this problem and sent instructions to the field that all information relating to the bombing was to be reported to the Task Force regardless of the field office's view of its significance. Nonetheless, despite these instructions, some agents still failed to send documents to the Task Force because they deemed the information to be insignificant. Although these agents erred in making these decisions, we believe they acted from a mistaken view of the discovery requirements, which were substantially broader than in the usual case, not with the intent to hide exculpatory information.

Other factors also played a role. Agents in Resident Agencies (that is, FBI satellite offices) created many of the belated documents. We found that offices and individual employees differed as to whether Resident Agency personnel or personnel in the primary FBI field office were responsible for sending material generated in the Resident Agency to the Task Force. In some cases personnel assumed that someone else had sent the document to the Task Force when in fact no one had.

A version of this same problem – incorrect assumptions about other employees' actions – likely caused documents relating to confidential informants, about 10 percent of the belated documents, to not be disclosed. Documents relating to confidential informants are kept separately from other field office files, different personnel are involved in handling the documents,

and the database used to track confidential informant documents is particularly difficult to use effectively.

We found, however, that many of these problems might have been caught if the field offices had responded properly to the Task Force's document requests. In 1995, 1996, and 1997, the Task Force repeatedly requested that the field offices send *all* OKBOMB materials to it. Indeed, a sternly worded communication from the FBI Director was sent to the heads of all the field offices in November 1996 directing them to ensure that all investigative activity had been documented properly and forwarded to the Task Force. The directive even listed various locations in the field offices to be searched for OKBOMB material. The evidence showed that many field offices did not follow these instructions, however. In 2001 original documents were found in many of the same locations that the field offices had been directed to search.

Although the field offices failed to send all OKBOMB materials to the Task Force, the Task Force also shares responsibility for documents not being disclosed to the defense. We found some of the belated documents in the Task Force files misfiled in subfiles that were not used to compile discovery. In other instances, although we could not find the actual document, the evidence strongly indicated that the field office had sent the document to the Task Force. In those cases, the evidence suggests that Task Force personnel misfiled, mislaid, or lost the document.

The massive quantity of documents coming into the Task Force placed enormous stress on a document-handling process that utilized hundreds of employees (many of whom were on temporary duty), involved multiple databases, and required documents to travel to an assortment of teams for processing. Under these circumstances, it was inevitable that some documents would be mishandled. The problem was compounded, however, by several factors. First, the Task Force did not have a routine policy of checking to ensure that items a field office said were being sent actually arrived at the Task Force. Also, documents easily could be accidentally lost or placed in the wrong filing cabinet drawer at the Task Force, and the error would not be noticed. Task Force supervisors did not recognize the deficiencies in their document processing, and they gave little consideration to whether any measures should be taken to plug the gaps.

In addition, the FBI did not have an effective automated quality control system to help the Task Force track documents when they were generated. Although the FBI assigns a serial number to every document, in 1995 each field

office assigned its own set of serial numbers to the documents stored in its files, resulting in duplicate serial numbers. In order to generate a unique number for each document, the OKBOMB Task Force gave an OKBOMB serial number to each document sent by the field once the Task Force had received the document. Consequently, the Task Force could only track documents once they had been received and serialized at the Task Force. The Task Force developed several manual quality control projects to help it identify missing documents, but these were limited, prone to human error, and unable to ensure that all discoverable documents were received from the field offices.

We carefully examined the allegation that the government intentionally withheld exculpatory information from the defense. We concluded that the evidence did not support a finding that government personnel deliberately withheld exculpatory information from the defense. For the reasons stated previously, the evidence showed that mistakes and inadequate document handling systems were the chief cause of the failure to properly disclose documents. In addition, the vast majority of the documents contained information of no significance or information that had been disclosed to the defense in other forms. In a few instances, we did find that agents had made the decision not to send certain items to the OKBOMB Task Force. As previously stated, however, we determined that in those cases the agents mistakenly believed that documents they judged to be non-pertinent to the OKBOMB investigation did not need to be sent to the Task Force. We did not find that the agents intended to hide evidence from the defense.

As part of our investigation regarding intent, we investigated eight belated documents that McVeigh's attorneys asserted were particularly significant and were evidence of the government's intentional misconduct. We interviewed the agents who drafted the documents, their supervisors, and in some cases the administrative personnel who processed the documents. As a result of this review, we did not find evidence showing intentional misconduct. Rather, as with the other belated documents, the evidence indicated breakdowns in the document-handling process due to human error.

V. Analysis of FBI Officials' Actions in 2001

As part of the OIG investigation, we examined and analyzed the actions of FBI officials in reacting to and managing the belated documents problem after it first arose. Three FBI managers were aware of the potential problem as early as January 2001 – Danny Defenbaugh, the Inspector in Charge of the OKBOMB

investigation who later became the Special Agent in Charge of the Dallas, Texas, Field Office; OKBOMB Supervisory Special Agent Mark White, who became a Supervisory Special Agent in the Dallas Field Office; and William Teater, a Supervisory Special Agent in the Oklahoma City Field Office.

We concluded that Defenbaugh and White did not effectively manage the review process of the OKBOMB documents. The Oklahoma City personnel who were reviewing the documents kept White, and through him Defenbaugh, informed that they were unable to find evidence establishing that many of the documents they were examining had been disclosed before the defendants' trials. Both White and Defenbaugh traveled to Oklahoma City in March 2001 and examined some of the documents that had been set aside as "problems." Yet, despite McVeigh's fast approaching execution date, neither White nor Defenbaugh set any deadlines or timetables by which the review process was to be concluded, nor did they involve themselves in the process of getting the documents from the field offices to Oklahoma City for review. And they failed to notify the prosecutors or anyone at FBI Headquarters about the potential problem until May 7, approximately one week before the scheduled execution date. We believe their failure to take timely action to resolve, or report, the problem of the belated documents was a significant neglect of their duties, and we recommend that the FBI consider discipline for these failures.

We also concluded that Oklahoma City Supervisory Special Agent Teater did not adequately supervise the document review project. Although Teater kept apprised of the status of the project and periodically asked the Oklahoma City employees whether they needed more resources, he did not consult with either Defenbaugh or White to ensure that the review process was completed expeditiously.

A closer question was the inaction of Oklahoma City Special Agent in Charge Richard Marquise. In March and April 2001, Teater sent Marquise e-mails describing the activities of his squad. The e-mails reference the OKBOMB review project, although not in a particularly detailed or descriptive fashion. We concluded that under the unusual circumstances of this case, Marquise should have questioned Teater further regarding the review project and the meaning of his e-mails.

We also concluded that the reactions of FBI officials at Headquarters following the public disclosure of the belated documents problem contributed to confusion within the agency. Early statements about the cause of the problem incorrectly placed blame for the problem solely on the field offices.

Communication with the field offices was deficient and led to some field office Special Agents in Charge learning of the problem from the media. In addition, Headquarters officials gave instructions to the field without a complete understanding of the nature of the problem, thereby resulting in field offices having to complete multiple and duplicative time-consuming searches.

VI. Inadequate Responses by Field Offices to Requests for Information in 2000-2001

During our investigation, we reviewed hundreds of communications between and among FBI Headquarters, the OKBOMB Task Force, and the field offices. We found that a significant number of the communications contained inaccurate information, many of the responses were untimely, and in some cases offices did not respond at all to urgent requests for information. Although these failures did not cause the belated documents problem, they raise serious questions regarding the FBI's attention to detail, managerial accountability, and the reliability of information sent by field offices to Headquarters and to other field offices.

In some instances, we found that FBI personnel responded to the Oklahoma City Field Office's requests for OKBOMB documents in January and March 2001 by making inaccurate entries in the FBI's central database indicating that they had completed the task requested by Oklahoma City. In fact, our investigation showed that the personnel had taken no steps to search for, examine, or send the OKBOMB documents as requested by Oklahoma City. We also found that some field offices reported to Oklahoma City in January 2001 that they had no OKBOMB documents, only to send boxes of documents to Oklahoma City in May 2001.

We also found that some field offices appeared to have "lost" the FBI archivist's December 2000 request for OKBOMB documents and never took any action on it. Additionally, although the January and March 2001 requests from Oklahoma City for OKBOMB documents were marked as requiring "immediate" action, in many instances the field offices took weeks or months to respond.

VII. Destruction of Documents

As described earlier, through an electronic communication dated December 20, 2000, the FBI archivist authorized FBI field offices to destroy copies of OKBOMB documents that remained in their files, if the field office

followed guidelines set out in the communication. Our investigation found that 13 field offices destroyed some portion of their OKBOMB files following the archivist's authorization, and two offices had destroyed files even before the archival process had begun. Of the 13, only one reported following the archivist's guidelines regarding destruction.

We attempted to determine whether these field offices had destroyed any FD-302s or inserts – in other words, the type of documents that were covered under the discovery agreement. Nine field offices either acknowledged destroying such documents or could not rule out the possibility that they had been destroyed.

These nine offices insisted, however, that they destroyed only copies of materials that had been sent to the OKBOMB Task Force. While probably true with regard to most of the destroyed documents, it is difficult to verify that the destroyed documents had been sent to the Task Force previously. Furthermore, even if the documents had been sent to the Task Force before the defendants' trials, the information might not have been disclosed to the defense. If the field offices had sent their files to Oklahoma City for analysis rather than destroying them, some of the documents may not have been found in the Oklahoma City databases that listed what documents had been disclosed to the defense. In other words, without the actual documents to compare with the FBI databases, it is difficult to determine whether all the destroyed documents had been disclosed to the defense.

We also discuss in the report the failure of the FBI and the Department of Justice to bring the fact of the document destruction to the attention of the trial court and the defense attorneys in May and June 2001 when McVeigh's stay of execution motion was being litigated. We attributed this failure to a breakdown in communication within the FBI and between FBI officials and prosecutors, the fact that senior FBI officials did not understand the role that copies played in the belated documents problem, and the intense focus on finding the remaining OKBOMB documents in the field offices.

VIII. Recommendations

Although our investigation revealed numerous problems with the FBI's handling of the documents in this case, we believe the failings also need to be placed in context. The OKBOMB Task Force and the field offices were dealing with what, at that time, was the largest criminal investigation ever undertaken by a United States law enforcement agency. The FBI processed millions of

documents and items of physical evidence, conducted thousands of interviews, and managed an investigation that involved thousands of investigators and support personnel from the FBI and other agencies. The belated documents problem should not diminish their efforts. Rather, the problems encountered in this case should be used to help ensure that the FBI's record management system is substantially improved so that information can be obtained, stored, and retrieved efficiently and effectively in the future.

To aid in that effort, our report makes a series of systemic recommendations, most of which relate to FBI computer systems and document management. The FBI initiated an automation system in 1995 that could address, in large part, the problem that we saw in OKBOMB – the inability of the case investigators to know what documents have been created by other investigators. The Automated Case Support (ACS) system utilizes "universal serialization" for document management. In any given case, all documents are given serial numbers that follow sequentially regardless of the field office that created the document. Accordingly, case investigators can easily tell if they are missing the hard copy of a particular document because there will be a gap in the sequence.

We found, however, that ACS is so difficult to use that many agents and supervisors have abandoned the effort. As a result, the FBI has both a paper and an electronic information management system in place, neither of which is both reliable and effective.

The FBI is trying to develop upgraded information technology systems as part of a project it calls Trilogy. We did not investigate Trilogy as part of this review and therefore cannot state whether ultimately it will solve the FBI's substantial information management problems. But the success of any system depends on the FBI's full commitment to its use. All FBI employees must be fully trained on the system, and the efficient use of automation must become part of the basic job requirements for all employees, not only administrative support personnel but also agents and managers.

We recommend that the FBI simplify its record keeping process as part of the development of the new information management system. The FBI uses a multitude of forms, and various record keeping procedures are used depending on the form. We believe that some of the forms could be eliminated. In addition, sending documents through an office electronically might help to reduce the number of opportunities for documents to go astray simply by

reducing the number of employees and steps involved in processing the documents.

Over the years, the FBI has developed various independent databases to perform tasks that ACS does not perform or does not perform well. The OKBOMB investigators used at least three major information management systems, none of which were linked to each other. We believe that any new automation system must be flexible and expandable so that independent systems can be eliminated.

We make other specific recommendations regarding document tracking and lead management and tracking. We also recommend substantially enhanced computer training and suggest that the FBI should consider making computer usage part of the core skills needed to graduate from the new agents training academy.

As part of our investigation we also interviewed prosecutors and senior investigators who participated in other major FBI cases. We found that there is no formal process in place for learning from these prior experiences. We recommend that the FBI and the Department of Justice initiate a post-case review process and develop case management protocols for large investigations like OKBOMB. Substantial time and effort can be saved if the case investigators and prosecutors do not have to reinvent administrative and substantive solutions to problems and issues that commonly arise during major cases.

We believe that implementation of these recommendations will help address the significant problems with the FBI's computer systems and document handling. These problems are not new. The FBI has known about many of them for some time, either because the OIG has discussed them in other reports or because the FBI has found them through their own reviews. But the FBI has not done enough to address these problems.

As the tragic attacks of September 11 revealed, the FBI continues to be faced with cases of the scale and dimensions of OKBOMB, and the lessons learned from OKBOMB continue to be important. To adequately fulfill its responsibilities in major cases, as well as in smaller ones, the FBI must significantly improve its document handling and information technology. This requires a sustained commitment of resources and effort, but we believe the FBI must make this commitment if it is to avoid the serious problems that occurred in the OKBOMB case.

CHAPTER ONE

INTRODUCTION

I. Background

The Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, exploded on April 19, 1995, following the detonation of a bomb. One hundred and sixty-eight individuals died and several hundred more were injured in the explosion. The Federal Bureau of Investigation (FBI) began an international investigation to identify and capture the perpetrators.

Just 77 minutes after the explosion at the Murrah Building, an Oklahoma State Trooper stopped Timothy McVeigh for a traffic offense less than 80 miles from the bombing site and subsequently arrested him for unlawfully carrying a handgun. Within 48 hours, the FBI identified McVeigh as a prime suspect in the attack on the Murrah Building. Federal officials charged McVeigh with unlawful destruction by explosives.

Over the course of the next several months, the FBI dedicated enormous resources to identifying the perpetrators of the bombing and obtaining the necessary evidence to indict and convict them. The FBI's 56 domestic field offices, as well as its foreign offices, were involved in the investigation. A task force coordinated the efforts of the FBI, prosecutors, and agents from other law enforcement agencies. The investigation, known as OKBOMB, led to the arrests of two additional suspects: Terry Nichols and Michael Fortier. McVeigh and Nichols were indicted on August 10, 1995, for 11 counts of violating Title 18 of the United States Code relating to unlawful use of explosives and weapons of mass destruction as well as first degree murder. Fortier was indicted for conspiracy, false statements, and other crimes.[1]

In criminal trials, the government must provide to the defense some of the information contained within its files. This is known as the discovery process. The discovery rules that govern all federal trials require that statements of witnesses testifying at trial, evidentiary items to be used at trial, and information exculpatory to the defendants be disclosed. See Rule 16, Federal Rules of

[1] Fortier ultimately accepted a plea agreement and testified on behalf of the government. He was sentenced to 12 years in prison and fined $200,000.

Criminal Procedure; Brady v. Maryland, 373 U.S. 83 (1963); Jencks Act, 18 U.S.C. § 3500. Early in the OKBOMB discovery process, however, the United States agreed to go beyond these requirements and disclose all investigative reports. Over 27,000 investigative reports, 13,000 items of physical evidence, and millions of pages of hotel, motel, and telephone records were produced or made available to the defense before or during the trials.

McVeigh's and Nichols' trials were severed. McVeigh was convicted on all 11 counts on June 2, 1997. On August 14, 1997, following a sentencing hearing, McVeigh was sentenced to death. On December 23, 1997, Nichols was convicted of eight counts of involuntary manslaughter and one count of conspiracy. He was sentenced to life imprisonment. Both McVeigh and Nichols appealed their convictions, but the United States Court of Appeals for the Tenth Circuit upheld the convictions and sentences. In December 2000, McVeigh ended his appeals, and his execution was set for May 16, 2001.

Independent of the trial and appellate process, in February 2000, personnel in the FBI's Oklahoma City, Oklahoma, Field Office recognized that the warehouse being used to store the OKBOMB investigative materials was probably inadequate for long-term storage. They sought advice from the FBI's archivist on February 18, 2000. After viewing the warehouse storage facility in May 2000, the archivist agreed that the storage facility was inadequate, and he initiated an archival process to preserve the OKBOMB documents. As part of that process, on December 20, 2000, the archivist sent a memorandum to all FBI field offices instructing them to identify their OKBOMB files, permitting them to destroy copies of certain documents previously sent to the OKBOMB Task Force, and requiring them to send a list of the items that had not been destroyed to the Oklahoma City Field Office.

In January 2001, several field offices responded to the archivist's memorandum by destroying some of their OKBOMB documents as they had been authorized to do. Two field offices sent their entire OKBOMB files to Oklahoma City. When Oklahoma City Field Office personnel examined the material sent by the two field offices, they observed documents that they suspected had not been sent previously to the OKBOMB Task Force and that might not have been disclosed to the OKBOMB defendants as part of the discovery process. The Oklahoma City Field Office personnel notified three FBI supervisors about the potential problem: OKBOMB Inspector in Charge Danny Defenbaugh, who was then the Special Agent in Charge of the Dallas, Texas, Field Office; OKBOMB Supervisory Special Agent Mark White, who

was then a Supervisory Special Agent in the Dallas Field Office; and Oklahoma City Field Office Supervisory Special Agent William Teater. After consulting with the archivist, the Oklahoma City personnel sent a memorandum on January 30, 2001, to the field offices instructing them not to destroy any material and to send all OKBOMB materials to Oklahoma City.

Over the course of the next several months, FBI personnel in Oklahoma City received OKBOMB files from FBI field offices and foreign offices. Personnel carefully compared the incoming material to OKBOMB records to determine whether the material had been disclosed to defense counsel. By March 2001, FBI personnel determined that a significant number of items sent in by the field offices likely had not been disclosed to defense counsel even though they were within the categories of items that should have been disclosed pursuant to the discovery agreement. By the end of April 2001, when the review process was completed, the number of suspected undisclosed items was over 700.

On May 7, 2001, nine days before McVeigh's scheduled execution, OKBOMB Inspector in Charge Defenbaugh first notified FBI Headquarters about problems with the discovery in the case, and on May 8 he notified the OKBOMB prosecutor. On the same day, the prosecutor contacted the defense attorneys to notify them of the issue. By the next day, May 9, 2001, the OKBOMB prosecutor provided 715 documents, consisting of approximately 3,100 pages, to the defense attorneys.

The problem with the documents in the McVeigh case was immediately disclosed to the press, and on May 10, 2001, the media reported that the FBI had failed to disclose thousands of pages of documents to the defense. On May 11, 2001, Attorney General John Ashcroft postponed McVeigh's execution until June 11, 2001. The Attorney General stated that he was taking the extraordinary action to allow defense attorneys adequate time to review the documents and to "protect the integrity of our system of justice." Also on May 11, the Attorney General requested that the Department of Justice Office of the Inspector General (OIG) investigate the circumstances surrounding the FBI's belated production of OKBOMB documents.

Within a few days following the initial disclosure, over a hundred more documents that had not been disclosed previously were found in two FBI field offices. As a result, concerns arose as to whether the field offices possessed still more OKBOMB material that needed to be reviewed to determine whether the items had been properly disclosed. During the week following the public

disclosure of the problem, FBI Headquarters on several occasions instructed all FBI field offices to send OKBOMB material to Oklahoma City for review. The field offices sent in boxes of additional material, which the FBI also reviewed to determine if any discoverable items had not been disclosed properly. As a result, the FBI determined that a "second wave" of discoverable items, consisting of almost 200 documents, likely had not been disclosed to the defense before the trials. By the end of May, a total of 1,033 items were provided to the defense.

The failure to produce discoverable material timely can have serious consequences. The government commits prosecutorial error if it fails to disclose information to which the defense is entitled, and the defense may allege that the government has violated its discovery obligations even after a conviction. In some instances, the error may be so egregious that the court determines that the defendant did not receive a fair trial, reverses the conviction, and grants the defendant a new trial. After learning about the belated documents, McVeigh's defense attorneys began proceedings to stop his execution. In media reports and in their legal pleadings, the defense attorneys accused the government of intentionally withholding evidence that would have assisted them to prepare for trial.

During the weeks following the government's disclosure of the belated documents, the media reported critically on the issue, and members of Congress, the bombing victims, and the victims' families expressed dismay at what they perceived as bungling by the FBI. The press also reported that many in the public believed the government had intentionally withheld important evidence and that the FBI's reputation had suffered as a result of the perceived mismanagement of one of its most important cases.

II. OIG Investigation and Report

A. Staffing and Investigative Process

On May 11, 2001, Attorney General Ashcroft requested that the Inspector General investigate the circumstances surrounding the belated production of the documents.[2] Immediately following the Attorney General's request, the

[2] Under a jurisdictional order issued by Attorney General Reno in 1994 (AG Order No. 1931-94), responsibility for investigating allegations of misconduct in the FBI was assigned (continued)

Inspector General assembled a team consisting of five attorneys, two special agents, two auditors, a paralegal, and support personnel to conduct this investigation. The team began conducting interviews that day.

The team conducted almost 200 interviews involving personnel from FBI Headquarters, Main Justice, United States Attorneys' Offices, and numerous FBI field offices. The OIG also interviewed many former FBI and Department employees. OIG investigators traveled to 13 field offices to interview personnel, view the physical premises, and see the process for handling documents in those offices: Atlanta, Baltimore, Buffalo, Columbia, Dallas, Denver, Detroit, Los Angeles, Miami, New Orleans, New York City, Oklahoma City, and Philadelphia. These field offices accounted for over 50 percent of the belated documents.[3]

The OIG sent a survey to the remaining 43 field offices not visited by OIG investigators. The survey requested information regarding the procedures used in 1995-1997 by the field offices during the OKBOMB investigation, how the field offices responded to the 2000 and 2001 requests for documents, and any document destruction. The OIG also requested explanations for why field offices had failed to provide material to the OKBOMB Task Force during the course of the OKBOMB investigation.

FBI employees fully cooperated with the OIG investigation. Oklahoma City Field Office personnel, in particular Linda Vernon and Peggy Richmond, provided substantial assistance to the OIG. We also appreciate the significant

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(continued)
to the FBI's Office of Professional Responsibility. Under this order, the Inspector General could investigate allegations of FBI misconduct only when assigned by the Deputy Attorney General or the Attorney General. This order was changed by Attorney General Ashcroft in July 2001 to permit the OIG to conduct investigations of the FBI without receiving prior approval. See 28 C.F.R. § 0.29c.

[3] The Columbia, South Carolina, Division had only one belated item. However, it had notified the FBI's Office of Professional Responsibility in May 2001 that it was unable to find 11 volumes of OKBOMB files and that it had no record of destroying the files. The OIG traveled to Columbia primarily to investigate the circumstances of these missing files.

assistance provided by Kevin Perkins, Section Chief, Inspection Division, who was the FBI's liaison with the OIG for this investigation.[4]

The OIG provided a draft of this report to individuals in the FBI and the Department whose conduct was at issue for comments. Several individuals provided comments, and the OIG made several minor revisions. We discuss these revisions throughout the report, and in some instances discuss why we did not make other requested changes.

B. Organization of this Report

This report is organized into eight chapters. This chapter, Chapter One, provides a summary of the belated documents problem and the OIG investigation. Chapter Two provides an overview of the FBI's organizational structure, the FBI's document management system, and the terminology used throughout this report.

After these introductory chapters, the report is divided into two time periods: Chapter Three discusses events occurring from 1995 to 1997 – that is, the period concerning the investigation of the crime and the prosecution of McVeigh and Nichols; Chapters Four, Five, and Six address events occurring in 2000 and 2001, the period involving efforts to archive the OKBOMB documents and the production of documents not disclosed to the defense during the earlier period.

In Chapter Three we analyze why discoverable material was not disclosed to the defense. First, we discuss the discovery agreement, the discovery process, and the OKBOMB Task Force's efforts to obtain investigative documents from the field. We then move to our analysis of the causes for the belated production of discoverable material. In this portion of the chapter, we explain that both the field offices and the OKBOMB Task Force share responsibility for the failure, and we discuss the many factors that contributed to the problem. We then discuss and analyze the evidence pertaining to a key issue in our investigation – whether the government intentionally withheld exculpatory information. We set

[4] The events of September 11 did slow the FBI's ability to respond to our requests for interviews and documents, which delayed to some extent the completion of our investigation. In light of the understandable impact of September 11, we appreciate the FBI's full cooperation with our review.

forth the evidence cited by the defense as supporting their allegation, the OIG's investigation of that evidence, and our conclusion that the government did not intentionally withhold exculpatory evidence.

Chapter Four begins with a chronology of the events occurring in 2000 and 2001 that led to the discovery that over 1,000 documents had not been provided to the defense prior to McVeigh's and Nichols' trials. We describe the archival project, how potentially discoverable documents were discovered, and the process that was used to determine whether discoverable documents had, in fact, been disclosed. After the chronology, we analyze the conduct of the managers who supervised the review project.

In Chapter Five, we discuss and analyze FBI Headquarters' response after it was notified of the belated documents problem, including its attempts to ensure that all OKBOMB materials were found and sent to Oklahoma City.

In Chapter Six, we first discuss the failure of various field offices to properly respond to requests for information, specifically the difficulties encountered by Oklahoma City personnel when trying to obtain documents from the field offices. On many occasions field offices responded untimely to the requests, failed to respond at all, or provided inaccurate information. We also discuss the destruction of OKBOMB documents by the field offices and the effect that destruction might have on the number of belated documents.

In Chapter Seven, we set forth our recommendations for systemic improvements, and Chapter Eight summarizes our conclusions.

CHAPTER TWO

DOCUMENT MANAGEMENT IN THE FBI

This chapter sets forth the basic terminology and procedures used in the FBI's document management system. We describe the relevant aspects of the FBI's field structure, the OKBOMB Task Force, the documents at issue, and the procedures used by the FBI to process documents. We also describe the computer systems used by the FBI to assist its document management.

I. The FBI Field Structure

The FBI is a component of the United States Department of Justice. The FBI is headed by a Director. During the time period under review, the second in command was the Deputy Director.[5] Included in the FBI's organizational structure are its Headquarters operations, which are located in Washington, D.C., 56 field offices, and 44 foreign offices, known as Legal Attaché offices or Legats. The field offices are located in major cities throughout the United States. Each is headed by a Special Agent in Charge (SAC).[6] The field offices are also known as divisions, and we use the terms interchangeably. We show an FBI organizational chart in effect in 1995 at Exhibit 1 in the Appendix at p. A-1.

A field office consists of an office in the "Headquarters City," which is the primary office, and Resident Agencies. The Resident Agencies are located in over 700 smaller cities and towns and may be staffed by only a few agents.

Field offices are divided into squads that have specific subject matter responsibilities, for example the drug squad, the counterterrorism squad, and so forth. A Supervisory Special Agent manages each squad and supervises the agents assigned to the squad.

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[5] On December 3, 2001, the FBI announced a reorganization of FBI Headquarters that created four new Executive Assistant Director positions to oversee FBI functions. The FBI's Deputy Director, Thomas Pickard, retired in November 2001, and the FBI has not decided whether the Deputy Director position will be filled.

[6] Very large field offices, such as Los Angeles and New York City, are headed by Assistant Directors in Charge (ADIC), rather than SACs.

The field offices also have personnel who are assigned to handle administrative support functions. The chief administrative employee is the Administrative Officer. The size of the office dictates how many additional administrative supervisors and support employees are needed.

In addition to a secretary, each squad has an Information Management Assistant (IMA), or "rotor," assigned to maintain a squad's pending case files.[7] Although the rotor works for the investigators on the squad, the rotor's direct supervisor is on the administrative side of the office. The rotor handles all tasks associated with documents, such as filing and entering documents into the FBI's computer system. The rotor is assigned to at least one and often two squads and will handle these tasks for all the agents assigned to those squads. We show an organizational chart for the counterterrorism and administrative operations (the operations most relevant to this report) in a typical field office at Exhibit 2 in the Appendix at p. A-3.

II. Documents and Other Physical Items

The primary documents at issue in this investigation consist of FD-302s and inserts. FD-302s are the forms used by the FBI to record investigative activity, particularly, although not exclusively, the results of interviews. Inserts also record investigative activity, although they are usually used for information that is believed to be "non-testimonial" or "negative," that is information that is not significant to the investigation. For example, an insert might be used to document that a criminal records check was negative.

The FBI also uses "1As," "1Bs," "1Cs," and "Elsur" material. A "1A" is an envelope in which small physical items are placed, such as photographs, computer printouts of license checks, and agents' handwritten notes of interviews. Items placed in 1A envelopes do not require that the chain of custody be tracked even though some of the items in the 1A envelopes may be used at trial. A "1B" identifies evidence for which there is a chain of custody. For example, this category of evidence includes material to be tested by the

[7] IMA is the current official title for this support staff position. These employees were originally called "rotors" because the "rotor" is the storage area where the pending case files are kept. The rotor is a large horizontal filing cabinet that can rotate, allowing files to be stored on both sides of the cabinet. The colloquial title is still used frequently throughout the FBI to refer to the IMA, and we use that term in this report.

laboratory. We note that for the purposes of FBI information management the term "evidence" has a specific meaning to FBI personnel and refers to 1B items. The "1Cs" are used for 1A-type items that are too large to place in a 1A envelope, such as a large map or photograph. Elsur material, also known as 1Ds, consists of items relating to electronic surveillance, such as tapes and transcripts of intercepted or recorded communications. (Examples of FD-302s are shown at Exhibit 3 at p. A-5; inserts are shown at Exhibit 4 at p. A-8; and 1A envelopes are shown at Exhibit 5 at p. A-11. For each document, we show both a sample form and a mock completed form.)

In 1995 and 1996, the FBI used "teletypes" to send instructions and other information that needed to be immediately disseminated to its field offices, Legats, and Headquarters offices. A teletype machine instantly dispatched the teletype to the receiving office. For communications that did not need to be instantly dispatched, the FBI used an "airtel," which was essentially a memorandum. For example, when one field office sent items through the mail to another field office, the sending field office often would attach an airtel describing the items being sent. Both the teletype and the airtel have been replaced by the "Electronic Communication" or "EC" that is currently in use. The EC is transmitted instantly through the FBI's computer system. (We show sample and completed forms of a teletype at Exhibit 6 at p. A-14; an airtel at Exhibit 7 at p. A-18; and an EC at Exhibit 8 at p. A-21.)

III. Document Processing in the Field Offices

We set forth in this section a general description of the process used by the FBI to manage documents and evidence. However, as we found during the investigation, despite FBI procedures supposedly governing the process, field offices differed in the methods by which they handled documents and 1A items.[8] We found that a clear understanding of the FBI's document-handling process and, in particular, an understanding of the factors distinguishing "originals" from "copies" was necessary to determine where the breakdown in the OKBOMB case occurred. Because the FBI changed computer database systems

[8] The FBI has many procedures governing document and evidence processing, including such minutiae as prescribing when pencil or specific colored ink should be used for certain tasks. Despite these detailed procedures, we nonetheless found considerable variation among the field offices.

in October 1995, many of the procedures that were used during some parts of the OKBOMB investigation are not in use currently.

When different field offices are involved in an investigation, one office, the office with primary responsibility for conducting the investigation, is known as the Office of Origin. Other offices that assist in conducting specific investigative tasks are known as Auxiliary Offices.[9] For OKBOMB, the Office of Origin was a separate entity, which we refer to as the OKBOMB Task Force.[10]

If the Office of Origin needed investigative assistance from another office, the Office of Origin sent instructions to the Auxiliary Office specifying either generally or specifically what investigation was to be conducted. This is known as sending a "lead." (In Exhibit 8, pp. A-23-24, we show an example of an EC that contains a lead.) In 1995 and 1996, leads and other written communications were sent by teletype. In OKBOMB, leads usually were sent to the field offices from the OKBOMB Task Force. Though the Office of Origin "set" or assigned most leads, an Auxiliary Office also could set leads, both for its own agents and for other Auxiliary Offices. The investigation of a lead might generate a new lead within a field office or within the jurisdiction of another field office. Similarly, unsolicited phone calls from the public directly to the field offices generated leads within that field office or in other field offices.

An Auxiliary Office agent conducted the necessary investigation and memorialized his actions in an FD-302 or insert. The agent signed or initialed the FD-302 or insert, thereby marking the document as the "original."[11] The

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[9] The FBI currently uses the term "Lead Office" to describe the offices that are assisting the Office of Origin. As a matter of simplification, we use the term Auxiliary Office throughout this report.

[10] We describe the structure of the OKBOMB Task Force at Section IV in this chapter.

[11] According to FBI procedure, the agent is to sign only one version of the document, thereby distinguishing that document as the original. However, we found inconsistencies throughout the field offices, and even within field offices, regarding whether agents signed copies of documents or only originals. For example, one former Boston Division special agent told us that he only signed originals while another Boston Division special agent said that agents often signed multiple copies. This inconsistent adherence to FBI policy hampered the ability of the OIG to distinguish between originals and copies and thereby to determine the (continued)

original and an unsigned copy were then sent to a supervisor for review. The copy was "block stamped" by the supervisor (in some offices the rotor would apply the block stamp prior to the supervisor's review), and the supervisor initialed the copy to indicate that the supervisor had reviewed it. (We show a mock original FD-302 at Exhibit 3, p. A-7, and an insert with a block stamp at Exhibit 4, p. A-10.)

After the supervisor's review, the document went to the rotor, who entered key information about the FD-302 or insert into the FBI's computer system, and if the agent or supervisor requested, indexed important information.[12] To enter the document into the computer, the rotor typed in the case number, the type of document, who the document was to and from, the office of origin, and the date the document was entered into the system.

The computer system in use at the time of the bombing until October 16, 1995, was known as the Field Office Information Management Support (FOIMS). Each case entered into FOIMS was given an individual case number. The OKBOMB case number is 174A-OC-56120. The first three numbers of the case number signify the case classification; "174" denotes a bombing matter (the letter "A" signifies a high priority matter). The middle initials denote the Office of Origin, in this case, "OC" meaning Oklahoma City.

The FBI attempts to track every case-related item in its possession through a system of "serialization."[13] All case-related information, such as FD-302s, inserts, internal communications, and physical evidence, are assigned "serial numbers." FBI files are organized by serial number. When a document was entered into FOIMS, the computer assigned a serial number to it. For example, the file began with serial 1, serial 2 was put on top, and so forth.

(continued)
cause of the belated documents. (We discuss the significance of originals and copies in Chapter Three, Section III B 1.)

[12] Names and other information can be "indexed" in the FBI's computer system, thereby allowing FBI personnel to determine, for example, whether an individual has been the subject of or involved in other investigations. An agent or a supervisor underlines in red on a copy the names or other information that should be indexed.

[13] We conducted a limited inquiry into the systems used by other large federal law enforcement agencies. The agencies that we contacted did not have any system comparable to the FBI's for tracking every individual item received.

Under FOIMS, while each case had its own unique case number, each field office had its own set of serial numbers. In other words, in the Atlanta Field Office OKBOMB files, the first item was numbered 174-OC-56120, serial 1. But there also would be an item numbered 174-OC-56120, serial 1 in Buffalo, in Miami, and in every other office that handled OKBOMB documents. The case number and serial number were handwritten or typed on each document.

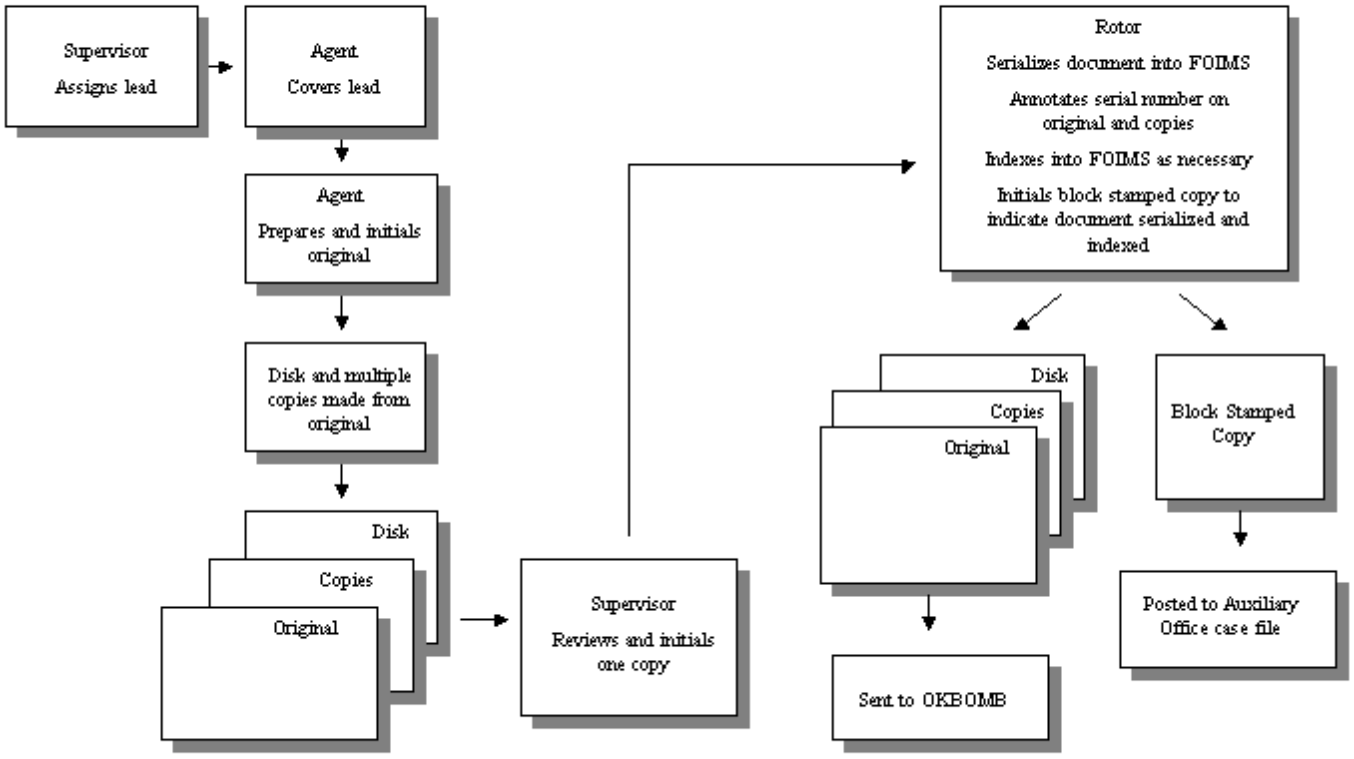
In FOIMS, items could be located by serial number or by the limited information that was entered into the computer, but the text of the document was not uploaded into the system. The actual text of any particular document could be retrieved only through a search of the hard copy files.

Once the item was entered into FOIMS, the Auxiliary Office was supposed to send the original FD-302 or insert to the Office of Origin.[14] In OKBOMB, the Auxiliary Offices were required to send the original, multiple copies, and a floppy disk containing electronic versions of FBI-generated documents (usually FD-302s and inserts) to the OKBOMB Task Force. At least one copy of the FD-302 or insert was supposed to be kept in the Auxiliary Office files. An "airtel," which was essentially a cover memorandum, was usually attached and listed the documents that were being sent to the OKBOMB Task Force.

A flowchart of this process is shown on the following page.

[14] The FBI's administrative manual specifically states that original FD-302s are to be sent to the Office of Origin at the time they are prepared. See FBI Manual of Administrative and Operative Procedures 2-4.3.2. However, FBI employees in a few field offices told the OIG that originals were kept in the Auxiliary Office. FBI employees in other offices stated that they initially filed the originals and the copies in their Auxiliary Office files until a certain number had been generated. At that time, they sent a package of documents to the Office of Origin.

OKBOMB FD-302 and Insert Processing
At Auxiliary Offices



If, in responding to the lead, the Auxiliary Office agent collected physical items (other than chain of custody or 1B material), the agent placed the items in a 1A envelope and filled out the required information on the envelope. We received differing views about the procedures for handling 1As. The FBI's Manual of Administrative and Operative Procedures (MAOP) specifies that original 1As should be sent to the Office of Origin unless the contents of the 1A envelope are to be returned to someone in the jurisdiction of the Auxiliary Office. Nonetheless, we were told by FBI personnel in some offices that original 1As usually were not sent to the Office of Origin but rather kept in the Auxiliary Office.

In the field offices, material pertaining to a particular case may be kept in various locations. Files for pending cases are kept on the squad's rotor. Files for closed cases are kept in a separate closed files area. Evidence (1B material), Elsur, and materials pertaining to confidential informants are also kept in separate locations. In addition, agents occasionally keep "work files" at their desks, which contain items that may be needed by the agents for cases that they are working. We also learned that some offices maintain "workbox" areas where agents keep materials related to cases that they are working on and want to have readily accessible.

IV. The OKBOMB Task Force

Immediately following the bombing, the FBI established a command post in Oklahoma City to organize and lead the investigation. In the early stages of the investigation, eight command posts were established throughout the country to coordinate activity in regions where substantial investigation was being conducted.[15]

The Oklahoma City Command Post was located in a different building from the Oklahoma City FBI Field Office, and the command structure for OKBOMB was separated from the Oklahoma City Field Office as well. Inspector in Charge Danny Defenbaugh headed the OKBOMB investigation. Defenbaugh was a 26-year veteran of the FBI with extensive experience in

[15] Command posts were located in Oklahoma City; Atlanta, Georgia; Buffalo, New York; Chicago, Illinois; Detroit, Michigan; Kansas City, Missouri; Phoenix, Arizona; and Washington, D.C.

explosives analysis. At the time of the Oklahoma City bombing, he was assigned to FBI Headquarters as one of six FBI Inspectors.

In April 1996, the Oklahoma City Command Post relocated to Denver, Colorado, after the trial judge moved the venue for the trials of McVeigh and Nichols to Denver. Throughout this report, we refer to the OKBOMB command, investigative, and support structure as the OKBOMB Task Force.

Although the FBI was the lead agency conducting the investigation, federal prosecutors were involved in the investigation as well. A team of prosecutors, first consisting of senior prosecutors from Main Justice and later headed by Joe Hartzler, an Assistant United States Attorney from the United States Attorney's Office for the Central District of Illinois, joined the investigation shortly after the bombing. The prosecutors worked closely with the FBI, primarily with Defenbaugh and a limited number of senior FBI personnel.

The field offices and FBI Headquarters contributed personnel to work on the Task Force on temporary duty. Hundreds of FBI employees worked at the Task Force either in investigative or administrative capacities. At its peak, over 250 FBI employees were working at the OKBOMB command post.

A. Document Processing at the Task Force

Many different individuals were involved in processing OKBOMB documents. The field offices sent the items to the Oklahoma City Field Office, which transported them to the OKBOMB Task Force for processing.

When the OKBOMB Task Force received items sent from Auxiliary Offices, rotors separated the original item, the disk, and the copies. Because FOIMS assigned duplicate serial numbers (i.e. Atlanta 174-OC-56120-1, Buffalo 174-OC-56120-1, and so forth), the OKBOMB Task Force re-entered the document into FOIMS to produce a unique OKBOMB serial number. An OKBOMB rotor entered a description of the item into FOIMS, received an OKBOMB serial number, and wrote the serial number on the original and the copies.

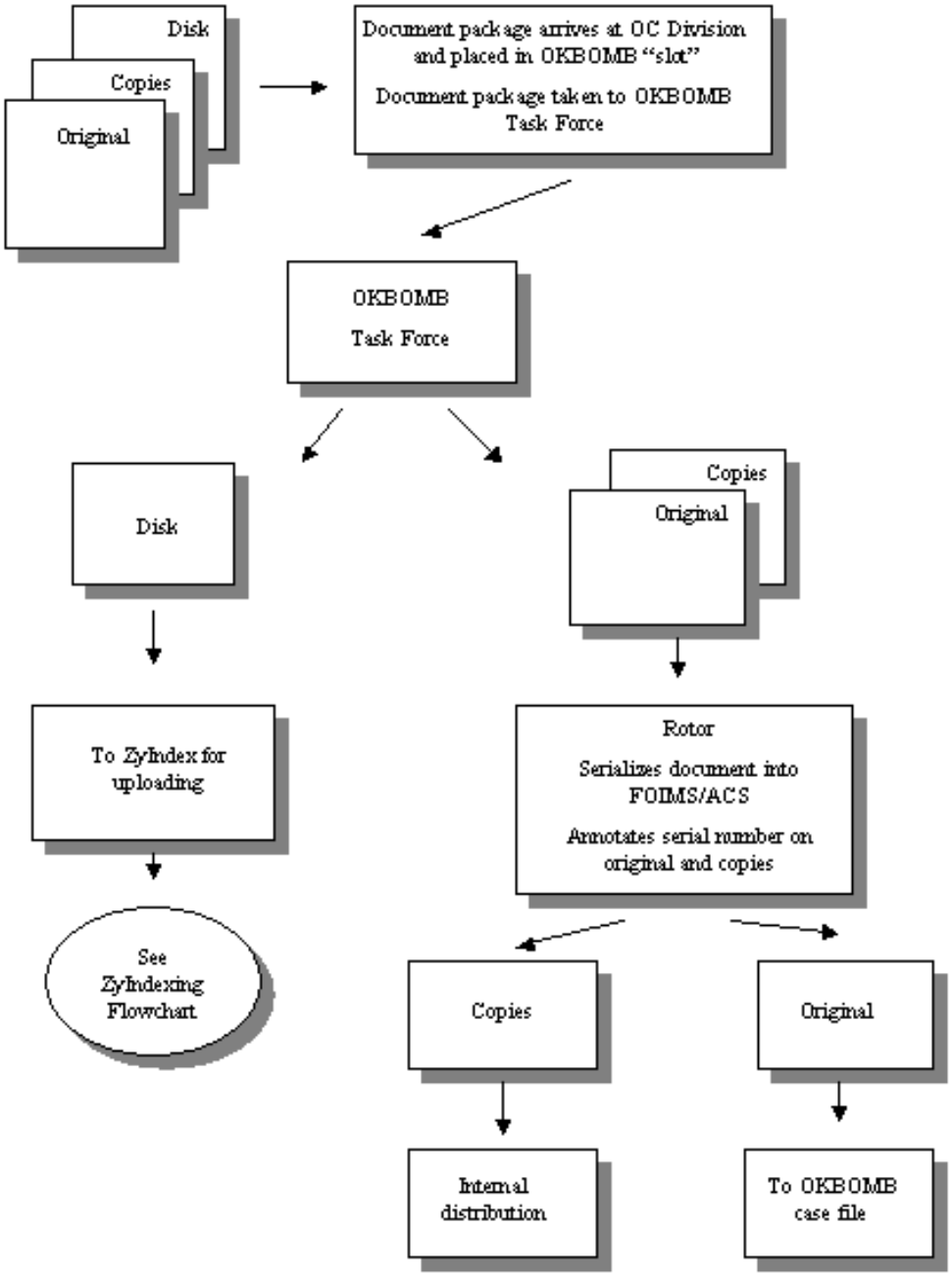
The original document was then filed in the OKBOMB files by serial number. Subfiles were established to aid document management. For example, all FD-302s were located in subfile D and had serial numbers that began with D; all inserts went to subfile E and had serial numbers beginning with E. This subfiling system was critical to the discovery process.

Documents that were not filed in subfiles, such as teletypes and airtels, went to the OKBOMB Main File. Copies of documents were sent to various teams that were responsible for handling specific subject matter tasks, such as a lead team, teams responsible for the investigation of individuals identified as subjects, a team to review rental truck records, and so forth. The floppy disk was sent to a team responsible for uploading information in a database called "ZyIndex." Unlike FOIMS, ZyIndex stored and personnel could retrieve the full text of documents. We discuss ZyIndex and the Task Force's system for processing documents further in Chapter Three, Section IV C 3. We show a flowchart of the Task Force's document management process on the next page.

B. Automated Case Support

In October 1995 the FBI changed to a new computer system, Automated Case Support (ACS). Although the change was traumatic for the OKBOMB Task Force, and for the FBI as a whole, it did not change the overall document processing system at the Task Force in any significant way. We discuss ACS in more detail in Chapter Three, Section IV C 3 b.

FD-302 and Insert Processing At OKBOMB Task Force



CHAPTER THREE

ANALYSIS OF THE CAUSES FOR THE BELATED PRODUCTION OF DISCOVERABLE ITEMS

The OIG investigated why more than 1,000 items that were within the FBI's possession never reached the defense before McVeigh's and Nichols' trials. In particular, we carefully investigated the question of whether the United States had intentionally withheld exculpatory material from the defense, something the defense asserted and a significant portion of the public appeared to believe.

In seeking to determine the cause of the belated production of the OKBOMB documents, we examined the FBI's explanations for the failure. In the days immediately following the revelation of the OKBOMB documents problem, the press reported that FBI officials were blaming the FBI's "outdated" computer system for the failure. Some FBI officials cited the transition from one computer system to another during the OKBOMB investigation as the chief cause of the problem. In addition, senior FBI officials also placed the blame for the mess squarely on the field offices. A press statement from OKBOMB Inspector in Charge Danny Defenbaugh emphasized that the OKBOMB Task Force had repeatedly instructed the field offices to send all investigative material to the Task Force. Defenbaugh also stated that the FBI's 2001 review of the field offices' OKBOMB material "was the first time the OKBOMB task force had seen these materials…." This statement was reiterated in FBI Director Louis Freeh's testimony to Congress during a May 16, 2001, hearing. Although at one point Freeh acknowledged that the Task Force may not have properly accounted for documents it received, Freeh's primary explanation was that the field offices had failed to perform in a variety of ways.

To the OIG, the field offices denied that they were responsible for the problem. For the most part, they insisted that they had sent OKBOMB material to the OKBOMB Task Force as required. In fact, they noted that they often sent the same material multiple times to the Task Force. The field offices blamed the OKBOMB Task Force for losing the items they had sent. We heard many times during the course of our investigation that field office personnel were incensed at being blamed for the belated production of the documents.

Significantly, and contrary to FBI Headquarters' initial claims, we found that both the OKBOMB Task Force and the field offices were responsible for

the defense not receiving the material. Most of the breakdown was caused by mistakes by individuals, failures to follow FBI procedures, inconsistent interpretations of FBI procedures, lack of an adequate quality control system, and by the immense volume of material that put stress on a complicated document management system. As we describe more fully in the following sections, document flow in the field offices, in the Task Force, and between the field offices and the Task Force was complex. These complexities increased the opportunities for documents to be mislaid and lost.

With respect to intentional misconduct, we found no evidence that the FBI or the prosecutors intentionally withheld information they knew to be discoverable from the defense. In a very few instances, individual FBI case agents failed to submit items to the OKBOMB Task Force because they believed that the information was non-pertinent, and they erroneously assumed that the information was therefore non-discoverable. Although these items should have been disclosed to the defense, we do not believe that the incidents evidence anything other than the mistaken judgment of a few agents.

We found no particular pattern associated with the belated documents other than the date of creation. The items came from almost all the field offices, one Legat, and one office in FBI Headquarters. Hundreds of different agents, supervisors, and support personnel were involved. Items that later were determined to be belated came from different sets of files: the main Auxiliary Office file, subfiles, Elsur, and confidential informant materials were all involved. We did find that the vast majority of the belated documents had been created in the beginning of the OKBOMB investigation. As shown on the following page, in our analysis of 837 belated documents (the "first wave"), we found that 83 percent originated in April and May 1995.

Table 1: Date Belated Documents Created

Period	Number of Documents	Percent of Total
Pre OKBOMB	2	0.2%
April 1995	351	41.9%
May 1995	345	41.2%
June 1995	46	5.5%
July 1995	6	0.7%
August 1995	17	2.0%
September 1995	9	1.1%
October 1995	9	1.1%
November 1995	9	1.1%
January 1996	7	0.8%
February 1996	1	0.1%
March 1996	1	0.1%
May 1996	2	0.2%
August 1996	3	0.4%
September 1996	3	0.4%
November 1996	1	0.1%
June 1997	1	0.1%
November 1997	1	0.1%
Date Cannot Be Determined	23	2.7%
Total	**837**	

The most plausible explanations for this singular finding are that a significant quantity of the investigation occurred in the months immediately following the explosion and because the investigation was unusually intense and fast-paced in those months. During this period, the focus was primarily on getting the information to the Task Force rather than document management in anticipation of discovery.

In Chapter Four we describe in depth the chronology of events leading to the discovery of the belated documents. We briefly describe a few of those events here, however, so the reader will understand some of the references that we make in this chapter. We refer to "first wave" and "second wave" materials. The first wave consists of materials that were sent from the field offices to Oklahoma City prior to May 11, 2001. The second wave consists of materials sent after May 11 when the belated documents problem became public knowledge and FBI Headquarters instructed the field offices to send *all* OKBOMB materials to Oklahoma City. We also refer to a May 12, 2001, EC from FBI Headquarters that instructed 46 field offices and 1 Legat to explain in writing why they had failed to send OKBOMB materials to the Task Force before the OKBOMB trials. We refer to the field offices' responses to the EC in this chapter and throughout this report. ZyIndex, the OKBOMB Task Force's full-text retrieval database system, was a critical part of the 2001 review project that led to the determination that documents had not been properly disclosed to the defense. We also used ZyIndex as part of our analysis of the belated documents, and we periodically refer to that system.

We begin our analysis with a discussion of the discovery agreement and the process used to compile discovery.

I. Discovery

A. Federal Discovery Rules

In all criminal trials, the government, which is prosecuting the defendants, must provide certain information to the defense prior to trial. In the federal system, discovery is governed by Rule 16 of the Federal Rules of Criminal Procedure; the Jencks Act, codified at 18 U.S.C. § 3500; and case law, the most significant of which is the Supreme Court decision of Brady v. Maryland, 373 U.S. 83 (1963). In general, these rules and court decisions require that the government provide the defense with all evidence that will be used at trial, the statements of individuals who will testify during the trial, and evidence in the

possession of the government that is materially favorable to the defense, including information indicating that the defendant did not commit the crime charged and evidence that could be used by the defense to impeach the government's witnesses. In essence, these rules require the government to disclose some information about its case to the defense, but the defense is not entitled to review the government's entire case file.

Although the broad outlines of discovery are the same in all federal trials, actual discovery practices vary considerably depending on the practices of district courts and the United States Attorneys' Offices. In some areas, federal prosecutors allow the defense to view most of the case file while in other jurisdictions the discovery is limited.

The question of what constitutes exculpatory information required to be disclosed to the defense, commonly referred to as Brady information, is the source of most discovery problems. The main responsibility for reviewing the prosecution file and disclosing Brady information rests with the prosecutors. In certain instances, a judge may review material and make a ruling as to whether it needs to be disclosed to the defense. The government commits prosecutorial error if it fails to disclose information to which the defense is entitled, and the defense may allege that the government has violated its discovery obligations even after a conviction. In some instances, the error may be so egregious that the court determines that the defendant did not receive a fair trial, reverses the conviction, and grants the defendant a new trial.[16]

B. OKBOMB Discovery Agreement

After the defendants' indictment in August 1995, the Task Force began preparing for the discovery process. The government agreed to provide the defense with all FD-302s and inserts, which went far beyond the usual discovery practice in federal criminal trials. Initially, the prosecutors only intended to provide FD-302s. After reviewing numerous inserts, however, they realized that many of the inserts memorialized substantive interviews and were substantively

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[16] The standard for reversal is a high one, however. In order for a conviction to be overturned for a discovery violation, the court must find that the prosecution suppressed information favorable to the defendant and that there exists a reasonable probability that if the material had been disclosed to the defense, the result of the trial would have been different, i.e., the defendant would not have been convicted. Kyles v. Whitley, 514 U.S. 419 (1995).

indistinguishable from the FD-302s. The government also agreed to provide the defense with a list of 1As, 1Bs, and 1Cs from which the defense could determine whether it wanted to see the actual physical item. Agents' notes and internal communications such as teletypes were not discoverable.

We were told by the participants that the prosecutors and the senior FBI officials on the Task Force agreed that the government should provide more discovery than was required by federal discovery rules. The prosecutors believed that broader discovery would reduce the number of discovery issues that would likely arise in a case of this magnitude. The prosecutors also told the OIG that they believed the trial judge would have ordered them to make expansive discovery because a substantial percentage of the government's file consisted of information pertaining to the possible complicity of other individuals. They also believed that it would show the government's desire to ensure a fair trial for defendants accused of committing such a heinous crime and facing the death penalty.

The discovery agreement was not set forth in writing. According to the prosecutors, the government was unable to get the defense to agree in writing to the terms of a reciprocal discovery agreement. Nonetheless, OKBOMB Task Force personnel understood that the government was obligated to provide to the defense all FD-302s and inserts and allow access to physical items, such as 1As and 1Bs.

C. Discovery Process

The FBI primarily handled the logistics for compiling and disclosing the discoverable material. Beth Wilkinson, an attorney from Main Justice, handled most of the legal issues involved in the discovery process. Wilkinson told the OIG that she did not have to make many decisions about what would be turned over, since the government agreed to provide the defense with essentially everything. Linda Vernon, an FBI Financial Analyst with the Oklahoma City Division, assisted with the discovery process beginning in September 1995 and by April 1996 had assumed responsibility for organizing the process.

The material that was to be turned over in discovery was compiled by copying the serialized FD-302s and inserts that were contained in OKBOMB Task Force subfiles D and E. Vernon created a database to keep track of the items produced during discovery.

For the 1As, Vernon transferred the information identifying the 1As from ACS into a separate database. OKBOMB Task Force agents reviewed the database information to identify which 1As were discoverable. Printouts of the database were provided to the defense, and the defense could select the items it wished to view.

The government made its first large discovery production in January 1996 when it disclosed approximately 11,000 items. Thereafter, additional discovery material was provided on a "discovery day" once a month.

D. Task Force Attempts to Obtain Discoverable Material From the Field

By August 1995 the Task Force realized that it was not receiving everything it needed from the field offices, and it tried to remedy the problem by sending out numerous teletypes instructing the field offices to provide *all* OKBOMB materials to the Task Force. These repeated requests for documents sought to address two problems. First, in some instances, the Task Force had no record of receiving any information from the field in response to a lead that the Task Force had sent. Second, the Task Force had received information (generally by teletype) but not in the form that it wanted (an FD-302 or insert).

The Task Force's requests to the field varied in specificity and clarity, but taken as a whole they expressed the point that all original FD-302s, inserts, and 1As were to be sent to the Task Force. Although we do not describe every one of the teletypes going to the field, we set forth many of the most relevant.[17]

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[17] After the press reported the belated documents problem in May 2001, FBI Director Louis Freeh testified about the issue before several congressional committees. Director Freeh blamed the belated documents problem on the field offices and stated that they had failed to adequately respond to 11 teletypes in 1995 and 1996 requesting that all OKBOMB information be sent to the Task Force. In examining the 11 teletypes referred to by Director Freeh, the OIG observed that many of these teletypes were not broad requests for all investigative information but rather were requests for specific types of information such as grand jury material or "evidence," which was meant to include and which was interpreted by the field as including only 1B items. Several of the 11 teletypes were so confusing that the field would likely have been unclear as to what materials they were being asked to send. However, during the course of the OIG investigation, OIG investigators examined hundreds of OKBOMB teletypes by hand rather than doing a computer search. We found teletypes in addition to the 11 cited by Director Freeh that we believe were clear and broadly requested (continued)

A teletype from OKBOMB to all field offices dated August 11, 1995, stated:

> For information of all divisions, on August 10, 1995, a federal indictment was returned against Timothy McVeigh, Terry Nichols and Michael Fortier. Discovery in this matter is tentatively set for the last week of August. It has come to the attention of the Oklahoma CP [Command Post] that there are still instances where leads previously set have not been covered, original copies of FD-302's have not been forwarded to Oklahoma CP, 1A and 1B material has not been forwarded to Oklahoma CP, and executed copies of subpoena's [sic] have not been returned to Oklahoma CP. All field divisions are requested to have all leads covered, original copies of reports, 1A and 1B material … to Oklahoma City CP no later than August 15, 1995.

On September 6, 1995, the Task Force instructed the field that all OKBOMB information was to be reported to the Task Force even if the field believed the information had no investigative importance.

Because of the need to get information to the Task Force quickly, field offices routinely sent information via teletype. In December 1995, the Task Force instructed the field offices that FD-302s and inserts had to be prepared for information that the field had reported by teletype. A December 11, 1995, teletype from the Task Force explained that it was reviewing all teletypes sent by the field to ensure that all interviews reported in teletypes corresponded to an FD-302 or insert. The Task Force reported that 450 leads had been sent to the field requesting FD-302s or inserts. It estimated that as many as 2,000 to 3,000 interviews may not have been properly reported by FD-302 or insert.

On January 15, 1996, the Task Force reminded field offices that all investigative results must be reported by FD-302 or insert: "It is absolutely imperative that results of investigation, reported via FD-302 or insert, be provided to the OKBOMB CP in the most expeditious manner possible." This

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(continued)
that the field offices send in all OKBOMB materials to the Task Force. The fact that the FBI was unable to find the most compelling examples the Director needed to make his point during his congressional testimony highlights the deficiencies of the search capabilities of the FBI's computer systems, which we discuss later in this report.

teletype was sent to the personal attention of each SAC. The Task Force also instructed the field to send in all originals, 14 copies, and a disk. In a teletype dated February 23, 1996, the Task Force noted that 1500 leads had been sent out requesting FD-302s or inserts. The Task Force also pointedly reminded the field that FBI policy required that the interviews be memorialized on either FD-302s or inserts.

An October 31, 1996, teletype sent to the personal attention of each SAC requested that each SAC ensure that all FD-302s and inserts had been sent to the Task Force because the documents had to be turned over to defense counsel.

On November 13, 1996, Judge Richard Matsch, the trial judge in the McVeigh and Nichols cases, held an extensive hearing to address complaints by the defense about discovery issues.[18] Judge Matsch ruled that FD-302s, inserts, lab reports, and other miscellaneous reports must be disclosed to defense counsel by December 15, 1996. The Task Force informed the field offices by teletype dated November 13, 1996, that any investigation requested by the Task Force before November 1, 1996, that was not completed and reported to defense counsel by December 15, 1996, could not be used during trial. The Task Force instructed the field offices and the FBI laboratory to complete and send to Oklahoma City any outstanding investigative work and documentation by December 1, 1996. During the discovery hearing the prosecutors advised the court that all documents and items of evidence had been disclosed.

Yet, on November 14, a defense attorney alleged to the court that the government had not disclosed surveillance logs. When the OKBOMB Task Force checked with the Phoenix Division, the Task Force learned that Phoenix had not sent the surveillance logs to the Task Force. This incident led to a

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[18] Despite the prosecution's belief that broad discovery might alleviate discovery problems, the defense had continuing complaints regarding the discovery process, in particular regarding the pace of discovery. We reviewed numerous letters, starting in November 1995, between defense counsel and the prosecutors in which the defense complained about the government's failure to provide discoverable materials. Much of the correspondence dealt with the parties' inability to come to any agreement regarding the scope of discovery. In a hearing held on November 13, 1996, McVeigh's attorney, Stephen Jones, raised numerous discovery issues that he wanted the court to remedy, including what he believed were inexplicable delays in production of discoverable material, confusing laboratory reports, issues with telephone records, and other matters.

November 15, 1996, teletype from the office of the FBI Director to all FBI field offices and Legal Attachés stating:

> It will be the responsibility of all SACs and Legal Attaches to ensure any FD-302, insert, memo, EC, 1A, 1B, 1C, Elsur recording or document, bulky evidence log/document, photo, photo log, surveillance log, polygraph report, and any other item, not specifically described which pertains to the OKBOMB investigation, be forwarded to the OKBOMB command post in Denver by COB 11/29/96.
>
> It will further be the responsibility of each SAC and Legal Attache to confirm by telephone, then follow-up with a teletype, advising the OKBOMB Command Post what items are being forwarded, or that their specific division/Legat has no pertinent items remaining under their care and control.

The teletype also stated that the heads of the offices were to check various components within their offices to "make absolutely sure no OKBOMB related material, not previously forwarded to OKBOMB, remains within their divisions." (We show this teletype at Exhibit 9 at p. A-25.)

II. Number and Description of Belated Documents

Despite the Task Force's attempts, as set forth above, to gather OKBOMB material from the field offices, organize it, and disclose it to the defense in a timely fashion before trial, numerous documents were first disclosed to the defense in May 2001, just prior to McVeigh's scheduled execution. Any analysis of the belated documents should include a description of the number of documents at issue. We found, however, that it was impossible to identify the exact number of OKBOMB documents in the possession of the FBI from 1995 to 1997 that were not disclosed to the defense until 2001.

In May 2001 the government provided the defense with 1,033 documents and physical items that the government conceded should have been disclosed to the defense pretrial but which had not been disclosed. Initially, on May 9, 2001, 715 items were disclosed to the defense.[19] These items constituted the materials

[19] FBI records show an initial production of 709 items. Our analysis shows that the initial disclosure actually consisted of 715 items.

sent to the Oklahoma City Field Office by the field offices and Legats prior to May 9, 2001. The Denver and Baltimore Divisions submitted materials to Oklahoma City a few days after the disclosure of the 715 items, and their materials added another 122 items for a total of 837 "first wave" items. The field office "second wave" consisted of 196 additional items. These were the items found in the files sent by the field offices in May 2001 after the belated documents problem became public. It also includes 39 items found when the OKBOMB files and the materials kept in the storage warehouse were reviewed. In sum, by the end of May 2001, 1,033 items, consisting of over 4,000 pages, had been disclosed to defense counsel.

Table 2: Belated Documents by Type and Wave

Document Type	Wave One	Wave Two	Total
Insert or 302	583	189	772
1A	201	3	204
Other	53	4	57
Total	**837**	**196**	**1,033**

Table 3: Belated Documents by Office

Division	First Wave	Second Wave	Total
Albany	14	3	17
Albuquerque	15	3	18
Anchorage	5		5
Atlanta	39	1	40
Baltimore	7		7
Birmingham	5	1	6
Boston	16		16
Buffalo	27	5	32
Charlotte	1		1
Chicago	18	5	23
Cincinnati	2		2
Cleveland	6	1	7
Columbia		1	1
Dallas	20	2	22
Denver	114	4	118
Detroit	49	1	50
Domestic Terrorism Operations		15	15
El Paso	17	3	20
Honolulu	5		5
Houston	20	4	24
Indianapolis	4		4
Jackson	18	5	23
Jacksonville			0
Kansas City	7	4	11
Knoxville	3		3
Las Vegas		1	1
Little Rock	13	7	20
Los Angeles	128	4	132
Louisville	3	1	4

Division	First Wave	Second Wave	Total
Memphis		1	1
Miami	27		27
Milwaukee	2		2
Minneapolis	2	2	4
Mobile	20		20
New Haven	18		18
New Orleans	34	1	35
New York		47	47
Newark			0
Norfolk	1	6	7
Oklahoma City		43	43
Omaha	6	1	7
Paris	1		1
Philadelphia	27	4	31
Phoenix	2	3	5
Pittsburgh	2		2
Portland	4	1	5
Richmond	5		5
Sacramento	30	1	31
St. Louis	8	1	9
Salt Lake City	18		18
San Antonio	30		30
San Diego	20		20
San Francisco	2	10	12
San Juan		2	2
Seattle	15	2	17
Springfield			0
Tampa	5		5
Washington F/O	2		2
Totals	**837**	**196**	**1033**

Table 4: Belated Documents for the 13 Field Offices Visited by the OIG

Division	First Wave	Second Wave	Total
Atlanta	39	1	40
Baltimore	7		7
Buffalo	27	5	32
Columbia		1	1
Dallas	20	2	22
Denver	114	4	118
Detroit	49	1	50
Los Angeles	128	4	132
Miami	27		27
New Orleans	34	1	35
New York		47	47
Oklahoma City		43	43
Philadelphia	27	4	31
Total	**472**	**113**	**585**

Only three field offices – Jacksonville, Newark, and Springfield – did not possess in their files discoverable documents that had not been disclosed. Two of the three (Jacksonville and Springfield), however, reported to the OIG that they had destroyed some portion of their OKBOMB files prior to sending the file to Oklahoma City.

We found that the 1,033 number overstated the problem by at least 38 documents because some documents that were included in the list had in fact been disclosed to the defense before trial or were duplicates of other belated documents. The actual number of belated documents is probably even smaller due to other factors that we discuss in Exhibit 10 at p. A-31.

On the other hand, the 1,033 does not reflect other documents that possibly should have been included on the list. Thirteen field offices destroyed documents following the December 20, 2000, EC from the FBI archivist that authorized field offices to destroy OKBOMB documents, and two other field offices destroyed documents prior to the archival process starting. As we discuss further in Chapter Six, if the documents had been analyzed rather than destroyed, the number of belated documents might have increased.

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

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[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.

production was the fault of the Task Force. We did not agree entirely with the field offices' assessment of their performance. The evidence shows that the field offices must shoulder some, although not all, of the responsibility for the belated production of the documents.

In the discussion to follow, we first discuss the FBI field offices' explanations as to why they believed documents were not disclosed to the defense. These explanations were provided in the field offices' responses to an FBI Headquarters' EC dated May 12, 2001, OIG interviews in 13 field offices, and responses to the OIG survey that was sent to 43 field offices.

We then discuss the evidence that leads us to conclude that the field offices failed to send some items to the OKBOMB Task Force as required. The last part of this section on field offices discusses the causes for the field offices' failures. Although we could not identify the definitive cause with respect to most documents, we identified a number of factors that we believe contributed to the problem.

A. Field Office Explanations

In determining the reasons why documents had not been disclosed to the defense timely, we carefully considered the written explanations provided by the field offices to the FBI and to the OIG, as well as information we learned during our interviews of field office personnel. The field offices generally offered explanations that touched on two themes:

- the field office believed that it had sent all material to the OKBOMB Task Force during 1995-1997;
- the field office did not know whether it had sent the material or not and had no explanation for its failure, if there was a failure.

Many field offices stated that they could not provide any explanation because they no longer had access to their OKBOMB files, they were unable to access ACS, or ACS did not contain the needed information.[21] A number of

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[21] In May 2001, FBI Headquarters ordered the field offices to send every scrap of paper relating to OKBOMB to Oklahoma City for review. As a result, the field offices had no files to check to see what they had done in 1995-1997. In its May 14, 2001, response to FBI Headquarters, the Seattle Division pointedly noted the problem of trying to explain its actions without its file. As Seattle explained:

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field offices did attempt to interview individuals who had been involved in processing OKBOMB documents. Some of the offices were successful in this effort, but others were hampered by retirements and transfers of staff.

In a few instances, field offices provided a specific explanation for the failure to transmit the documents previously. For example, the Baltimore Division stated that a copying error had caused its failure. In a very few instances, the field office acknowledged or implied that an agent made or may have made a specific decision not to send the material to the OKBOMB Task Force because the agent believed that the material was not pertinent to the OKBOMB investigation.

Some offices argued, however, that the problem was not their failure to send items to the OKBOMB Task Force in the 1995 to 1997 time frame, but rather that the item should not have been disclosed to the defense in 2001 and not counted as a belated document. For example, the San Francisco Division stated that one of its belated documents was really a draft that would never have been disclosed during discovery and therefore should not have been counted as a belated document.

The vast majority of the field offices said they believed they had sent everything to the OKBOMB Task Force before the defendants' trials as they had been required to do. One field office strongly responded to FBI Headquarters by rejecting a statement made in a communication sent from FBI Headquarters to the field offices: "SAC [ ] notes that HQ EC received Sunday 5/13/2001 … states '… never forwarded to Oklahoma City until recently' is entirely inaccurate."

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> The reason Seattle maintained a working file on OKBOMB was the continuing problem of trying to reconcile with [Oklahoma City] what documents and other investigative material had or had not been sent to [Oklahoma City]…. Seattle no longer has access to the working file in order to be able to affirmatively establish if the documents in question were sent to [Oklahoma City] – which was the main reason in establishing the working file in the first place.

B. Did the Field Offices Fail to Send Material to the Task Force?

Despite the field offices' strong assertions that they timely sent all OKBOMB materials to the Task Force, we believe the evidence shows that some material that should have been sent to the Task Force remained in the possession of the field offices.[22]

In determining whether an item had been sent to the OKBOMB Task Force, two factors were most probative:

- Was the item an original or a copy?
- Did the field office send an airtel to the OKBOMB Task Force referencing the item?

1. Originals

We considered whether a belated document contained indicia indicating that it was more likely an original or more likely a copy. If it appeared to be an original item, the OIG believed that more likely than not, the field office had not sent the document to the OKBOMB Task Force. We reached this conclusion because FBI policy required originals to be sent to the Office of Origin and the field offices appeared to generally follow that policy. The presence of an original in an Auxiliary Office file indicated to us that procedures had broken down.

In determining whether a document was an original, we first looked to see whether the document contained markings consistent with the document being a copy, that is, a block stamp or index markings. If the document did not have those markings, we looked for agent initials in original ink. Only if original ink initials were present did we consider the document to be presumptively an original. With respect to the first wave FD-302s and inserts, we found that 305 (52 percent) have indicia indicating they are originals.

We examined this issue more closely with respect to the 13 field offices that we visited. We showed the field offices the items that we believed were

[22] We also found that some of the offices' more specific explanations about how they had processed the documents were inaccurate. We discuss this further in Chapter Six, Section I B.

originals.[23] In a few cases, the offices agreed that the items appeared to be originals. They conceded that the items should have been sent to the OKBOMB Task Force, and they stated that they had no explanation as to why the items had not been sent. In other cases, the offices asserted that the documents, while appearing to be originals, could actually have been copies because in some instances agents placed original initials on document copies.[24] Some offices also asserted that even if the document was an original, they nonetheless might have sent a copy to the OKBOMB Task Force. We acknowledge that for any particular document this speculation of what could have happened might be true.[25] However, since we had no evidence to support these theories with respect to most of the documents, we considered a document that bore the indicia of an original to mean that more likely than not the field office had failed to send the item to the OKBOMB Task Force.

2. Airtels

We also looked for airtels referencing the belated items to determine whether they had been sent to the Task Force before the defendants' trials. When sending items to the OKBOMB Task Force, the field offices generally sent an attached airtel, essentially a cover memorandum, describing the items being sent.[26] In some cases, either the field office or the OIG found airtels sent

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[23] We did not want to disturb the files that remained in the Oklahoma City Division. Nonetheless, we wanted to ensure that the field offices would be able to see all the relevant markings, including colored ink and pencil. Accordingly, we made color copies of all the belated documents for these field offices.

[24] Agents told us that occasionally they did not want to wait to get access to a copy machine and therefore would print multiple copies from the computer and sign all the copies. In those cases, a copy might appear to be an original.

[25] We found some evidence supporting the theory that field offices would send copies to the Task Force rather than originals. The chief OKBOMB Task Force rotor told the OIG that the Task Force on occasion received uninitialed items, indicating that some field offices may have been sending copies. While the alternatives suggested by the field offices might be true, they also indicate violations of FBI policy. The MAOP 2-4.3.2 states that agents' initials should be on the original. Sending a copy rather than the original also would be a violation of FBI policy and of the specific requests made by the OKBOMB Task Force.

[26] Field offices differed in the detail they used in the airtel to describe the items they were sending. Some field offices specifically described each item, such as the date of the FD-302, (continued)

from a field office to the OKBOMB Task Force that referenced documents that later were construed as being belated documents. In those instances, we agreed with the field office that the item probably had been sent.[27] Of the 305 original items, we found airtels or teletypes referencing 4 of them and stating that the field office was sending the document to the Task Force. For these 4 items then, either the field office sent a copy to the Task Force and kept the original, or it had failed to send the document even though it sent an airtel saying the document was attached. Because we could find no evidence indicating that the remaining 301 had ever been transmitted to the Task Force, we believe that at least 301 FD-302s and inserts were originals that had never been sent to the Task Force and remained in the field offices' possession until 2001.

C. Reasons Why OKBOMB Materials Were Not Sent to the Task Force

The OIG interviewed agents, supervisors, and administrative personnel in 13 field offices, including former employees. We also reviewed the explanations provided by the field offices in response to the OIG survey and Headquarters' May 12, 2001, EC. While we were very successful obtaining information regarding the field offices' actions in 2000 and 2001 (see Chapter Six), we were less successful in determining why material was not sent to the OKBOMB Task Force in 1995-1997. Many of the key participants are no longer with the FBI and even those that we were able to interview understandably have little recollection of their actions with respect to particular documents.

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the interviewing agent, and the person being interviewed. Other field offices, however, only provided general descriptions, such as that "five FD-302s are enclosed." We did not consider an airtel as evidence that an item had been sent unless the airtel included a sufficient description of the item.

[27] OKBOMB personnel asserted that an airtel describing the document did not definitively resolve the issue because an item might not have been sent even though it was referenced in the airtel. We agree that is a possibility, but even in those cases the OKBOMB Task Force must bear some responsibility for the failure because OKBOMB personnel should have been checking to make sure that all the items listed as being enclosed were, in fact, enclosed.

Accordingly, with regard to most of the individual documents, we could not identify for certain the specific reasons why they were not sent to the Task Force. However, we did identify a number of factors that likely contributed to the problem, including the use of teletypes, the involvement of Resident Agencies, and difficulties with whether non-pertinent information should be sent to the Task Force.

The one theme that emerged from our analysis of these factors is that the flow of paper in the FBI is complicated and various OKBOMB procedures added to that complexity. Breakdowns could have occurred easily because of the number of employees involved in handling OKBOMB documents. Various investigating agents, each office's OKBOMB case agent (and over time there may have been more than one case agent for any particular field office), squad supervisors, agents and supervisors in Resident Agencies, secretaries, rotors, and other support personnel all had responsibilities for ensuring that the paper flowed properly. Generally, we found that while individuals knew what to do, they occasionally made mistakes, such as believing that they were processing a copy rather than an original or mistakenly assuming that someone else had sent a document to the Task Force. Adding to the complexity in this case was the fact that paper often traveled back and forth between the field offices and the Task Force, thereby increasing the opportunities for documents to be mislaid or lost.

We note that many of the employees that we interviewed expressed surprise that documents they drafted or handled wound up as part of the belated documents. They emphasized that they had diligently tried to follow procedures and had put great effort into ensuring that all OKBOMB investigative tasks were performed correctly and timely.

1. Use of Teletypes Rather than FD-302s and Inserts

One significant factor contributing to the belated documents was the use of teletypes to transmit information to the OKBOMB Task Force. Teletypes were used frequently in the early stages of the investigation when the primary goal was to get information to the OKBOMB Task Force as quickly as possible. When responding to an OKBOMB lead, the field office would summarize the interview and send it to the Task Force using a teletype. However, FBI policy and the discovery procedures used by the Task Force required that investigative activity be recorded on an FD-302 or insert. As a result, while information on the teletypes was provided to the Task Force, it was not in a form that was used

for discovery and, therefore, the information in the teletypes was not provided to the defense. We found 171 belated FD-302s and inserts where the OKBOMB Task Force received a teletype with the information but not the corresponding FD-302, insert, or 1A.

In December 1995 the OKBOMB Task Force realized that it had a problem with the teletypes and tried to remedy it. The OKBOMB Task Force sent a lead (lead number 13725) to the field offices instructing them that the information contained in teletypes had to be converted to FD-302s or inserts.

> A review of teletypes forwarded to Oklahoma City Command Post has revealed several instances where interviews have been reported.
>
> A check through Rapid Start system and serials within the Oklahoma City Command Post has failed to locate a copy of an FD-302 or insert to correspond with the reported interview. It is believed in many cases the interview was reported by teletype, but that no FD-302 or insert was generated. It is necessary that all interviews be reported in FD-302 or insert format.

Further, the Task Force specifically identified with respect to each field office the teletypes at issue. Eventually, the Task Force sent over 1500 leads to accomplish this project.

Yet, many field offices did not provide the requested FD-302s or inserts.[28] For the 171 mentioned above, the FD-302s or inserts had been created, as shown

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[28] Two Buffalo belated 1As also illustrate this problem. Buffalo sent a teletype to the OKBOMB Task Force dated May 11, 1995, referencing an interview, a resume, a receipt, and photographs. On December 15, 1995, the Task Force sent a teletype to Buffalo asking for an FD-302 of the interview and, in response, the agent prepared one and submitted it to the Task Force. The agent, however, did not submit the two 1As associated with the interview that contained the resume, receipt, photographs, and interview notes. The two 1As were subsequently sent from Buffalo to Oklahoma City in March 2001 and were determined to be belated.

We only obtained limited information about what happened to the 1As in the intervening six years. When Buffalo personnel were boxing up material to send to Oklahoma City in March 2001, they included four 1A envelopes with enclosures. On top of the 1A envelopes was an undated "routing slip" from the OKBOMB case agent to the rotor. On the routing slip, the case agent had written, "Nancy – These literally 'came out of nowhere'! Could you please (continued)

by the fact that they were later found in the Auxiliary Office file and determined to be belated. Accordingly, these were not situations where the field office failed, for whatever reason, to move the information from the teletype to the FD-302. Of the 171 belated documents that have corresponding teletypes, 56 have indicia indicating they are originals and have no associated airtels showing the document was sent to the Task Force.

We do not know whether the field offices were ignoring the requests, disagreed with the Task Force regarding the necessity for the documents, or did not fulfill the request because of the crush of work or for some other reason. One of the OKBOMB supervisors, Mark White, recalled an incident where he called a field office supervisor because the OKBOMB Task Force was having trouble getting an FD-302. White said the supervisor resisted sending the FD-302 because, in the supervisor's view, the information was not "testimonial." White said he eventually had to read the FBI's operations manual to the supervisor to prove that there was no requirement that information be "testimonial" before it was placed on an FD-302. White also said that he believed that some offices probably thought they had put information on FD-302s and transmitted them when they actually had not.

2. Resident Agencies

Resident Agencies generated many of the documents that were determined to have not been disclosed to the defense.[29] The involvement of Resident Agencies added additional steps, increased the number of individuals involved in processing documents, and furthered the complexity of getting documents and other items to the Task Force.

(continued)
put them into the appropriate sub-file at your convenience? Thanks, Mike L." The rotor sent the materials to Oklahoma City personnel and attached a yellow post-it note dated March 12, 2001, to the routing slip with the following message: "Linda [Vernon] – the case agent just found these 1A's. Please handle. Thx Nancy." The case agent told us that he believed he had provided the 1As to the rotor in 1997 or 1998; the rotor stated that the agent provided the 1As to her as part of the March 2001 production. All four of these 1A envelopes were identified as belated documents.

[29] We did not calculate the precise number of belated documents associated with Resident Agencies; however, as an example, approximately half of Detroit's 50 belated documents were generated by agents working in Resident Agencies.

Generally, the "Headquarters City" was responsible for handling the paperwork of the Resident Agencies.[30] An agent in a Resident Agency would draft the FD-302, usually a supervisor in the Headquarters City would review it, and the Headquarters City rotor would process the paper. The Resident Agency's files regarding pending cases were kept on the rotor in the Headquarters City, although Resident Agency agents frequently kept "working copies" in the Resident Agency. However, seven offices reported in response to the OIG's survey that the Resident Agencies sent OKBOMB material directly to the OKBOMB Task Force without going through the Headquarters City.

The process broke down in some instances. In a few offices, we received contradictory answers regarding Resident Agency procedures, indicating that confusion over who was doing what might have caused some documents to be filed in the Auxiliary Office files rather than sent to the Task Force. The Boston OKBOMB case agent told us that the Resident Agencies sent materials directly to the OKBOMB Task Force. Yet, an agent who had drafted one of the belated documents and who had worked in a Boston Division Resident Agency told us that the Boston Division Resident Agencies sent OKBOMB materials to Boston. As we discuss in Section V B 6 of this chapter, the belated document found in the Boston files was likely an original that was mistakenly treated by the rotor as a copy and filed in the Auxiliary Office files. In addition to Boston, our interviews with personnel in Los Angeles and New Orleans also revealed inconsistencies about whether the Resident Agency or the Headquarters City was responsible for sending documents to the OKBOMB Task Force.[31]

Many agents speculated that the rotors somehow erred and failed to forward the document to the Task Force. And indeed, although we do not know exactly how the process broke down with respect to each document, one possible explanation is that a rotor mistakenly assumed that what the rotor had received was a copy and that the original had been sent to the OKBOMB Task Force. Accordingly, the rotor might have incorrectly filed the item in the

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[30] As previously noted, the Headquarters City in a division is the primary office. The SAC and other high-level supervisors are located in the Headquarters City.

[31] In responding to the OIG survey, 17 field offices reported both that Resident Agencies sent OKBOMB material directly to the OKBOMB Task Force and that Resident Agencies sent OKBOMB material to the Headquarters' City, which was responsible for forwarding the material to the Task Force.

office's OKBOMB files without sending it on to the Task Force. One field office supervisor suggested that the problem may lie with the Resident Agency sending the material to the wrong place in the Headquarters City. In his field office the Headquarters City case agent was responsible for sending material to the Task Force; therefore, if the material went directly to the rotor, it would be filed but not sent to the Task Force because it never got to the Headquarters City case agent.

3. Leads Generated from Auxiliary Offices

We found instances among the belated documents where the document in question had been generated in response to a lead generated by an Auxiliary Office rather than the OKBOMB Task Force. Although most leads came from the OKBOMB Task Force, some leads were generated by Auxiliary Offices, particularly other command posts. The Indianapolis-Detroit documents discussed in Section V B 7 are an example of this problem. Detroit sent the lead to Indianapolis. Indianapolis responded and sent the original FD-302 to Detroit. Detroit, however, failed to send it on to the Task Force. Because we found so few examples involving this chain of events, we believe that field office personnel generally understood how to handle documents associated with Auxiliary Office leads.

4. Confidential Informant Files

Confidential informant files added another set of complexities to the document production process. Over 10 percent (108 documents) of the belated documents recorded agent contact with confidential informants. For documents relating to information provided by a confidential source, the original insert or FD-302 contained the source's name and was placed in the secure confidential informant files. A copy with an identifying source number rather than the source's name should have been placed in the field office's OKBOMB file and another copy with the identifying source number sent to the OKBOMB Task Force. The agent responsible for drafting the document was usually responsible for indicating on the FD-209 what files the document should be placed in, and the agent, the rotor, or the confidential files support employee was usually

responsible for ensuring that the copies were distributed to the proper locations.[32]

If the process broke down and the insert did not get to the Task Force, then the error would almost certainly be missed. Indeed, the office would have a hard time even locating material related to OKBOMB in its confidential informant section absent a file-by-file search. The computer system used for tracking confidential informant files has severe limitations (see footnote 85) and is extremely difficult to search.

5. Non-Pertinent Information

In the prior examples, agents intended to send the documents to the OKBOMB Task Force but because of inadvertent mistakes, the documents were not sent. We did find that in some instances agents made conscious decisions not to send material to the Task Force. In such instances, agents perceived information they had gathered to be non-pertinent or insignificant to the OKBOMB investigation, and they believed the document did not need to be sent.

For example, the Charlotte Division stated that its OKBOMB case agent had determined that a statement referencing the bombing that was written on a postcard was a political statement and did not meet the standards for sending to Oklahoma City.[33] The Albany Division OKBOMB case agent did not provide a letter from an inmate referencing the Oklahoma City bombing because he did not believe the letter was connected to the OKBOMB investigation. (We discuss this document further in Section V B 5 of this chapter.) In a written explanation to the OIG, the Miami Division stated that it had not provided the contents of several 1As (such as photographs and investigative notes) to the Task Force because Miami personnel deemed the documents to have not been pertinent to the OKBOMB investigation.

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[32] An FD-209 is a form used in processing paperwork associated with confidential informants. The FD-209 identifies, among other things, the files in which the FD-302 or the insert is to be placed. We show an FD-209 at Exhibit 11 at p. A-38.

[33] The belated document was a postcard written to a United States congressman. The writer expressed support for the Michigan militia, criticized the Bureau of Alcohol, Tobacco and Firearms, and speculated that the Oklahoma City bombing was "an inside job."

Other field offices implied that they intentionally retained documents because personnel did not believe the documents were pertinent to the OKBOMB investigation. Milwaukee gave as one of two possibilities the explanation that the documents may not have been given to the OKBOMB Task Force because they contained only "negative" information (for example, that no information was obtained after a name had been checked through an informational database). Omaha implied that its belated documents may not have been sent because of the irrelevance of the information contained in them. Similarly, the Mobile Division noted that the November 15, 1996, Director's EC instructed field offices to send all "pertinent" information. Mobile stated that while its belated documents may have been inadvertently overlooked, it also was possible that the items were not sent because they were non-pertinent. In addition, we found written contemporaneous references in teletypes from the OKBOMB Task Force and ECs from the field indicating that in 1995 some field offices were sending only what they deemed as pertinent information.

We did not attempt to determine whether these field offices correctly assessed that the documents were not pertinent to the OKBOMB investigation because the Task Force instructed the field offices to send even non-pertinent information to it. In a teletype dated August 17, 1995, the OKBOMB Task Force wrote to the field offices:

> Oklahoma City CP has received telephone calls from various divisions questioning the need to send in 1A and 1B material which those divisions do not deem important. Additionally, it has been revealed some divisions have not produced FD-302s or inserts reflecting interviews in which the information was deemed unimportant by that division.
>
> To clarify this situation, all field offices are requested to send all 1A and 1B material to Oklahoma City CP. Additionally, if an interview was conducted, an FD-302 or insert must be generated and sent to Oklahoma City CP as soon as possible.

On September 6, 1995, the OKBOMB Task Force reiterated this request:

> Oklahoma City Command Post has received telcalls from certain divisions concerning the following situation: during the course of the OKBOMB investigation field divisions received information directly at that division, mostly through telephone calls from local citizens. These divisions conducted investigations into these

> matters without notifying Oklahoma City Command Post. Additionally, no lead control number was obtained. These field divisions determined these investigations were of no investigative importance to the OKBOMB matter and therefore have not sent copies of these reports to Oklahoma City Command Post.
>
> For information, all investigation in captioned matter requires control numbers and all reports must be forwarded to Oklahoma City Command Post. Should divisions have reports from unproductive investigations that were not previously reported to Oklahoma City, these divisions must contact Oklahoma City Command Post, obtain lead control numbers, indicate those numbers in their reports and forward these reports to Oklahoma City.

Yet, the explanations provided by the field offices show that, despite the Task Force's specific instructions, some offices and agents still used their discretion to determine whether to send certain items to the OKBOMB Task Force. Charlotte's, Albany's, and Miami's explanations specifically acknowledged that personnel made decisions not to send items to the OKBOMB Task Force. In addition, the survey responses from other field offices indicated that there could have been other belated documents that were intentionally not sent to the OKBOMB Task Force because an agent did not believe it was sufficiently significant.

We acknowledge, however, that the issue is a complicated one, particularly with respect to the second wave documents because they were coming from places other than the Auxiliary Office OKBOMB file. Because the field offices were being extremely broad in their judgment of what constituted OKBOMB material, some of the belated documents include items that do not have an OKBOMB case number, and their relationship to the OKBOMB investigation is hard to discern. Accordingly, with respect to a few of the belated items, it is not entirely clear to us today whether the problem was that the items should have been sent to the Task Force and disclosed to the defense or whether they *should not* have been disclosed to the defense in 2001 and not counted as belated items.

6. Failure to Respond Properly to OKBOMB Task Force Teletypes in 1995-1997

Even if field offices sent a teletype but not an FD-302, put the original FD-302 in the file instead of sending it to the Task Force, or sent the original to another field office instead of the Task Force, most of these documents would have been sent to the Task Force anyway if the field offices had responded properly to multiple document requests from the Task Force. The evidence showed that many field offices did not follow the Task Force's instructions to search their files and to ensure that all leads had been documented properly and sent to the Task Force.

The written record showed that throughout 1996 the Task Force continually reminded the field offices to send material. In addition to the instructions we set out previously in this chapter, Section I D, a July 7, 1996, teletype stated:

> Due to discovery concerns, it is necessary that all interviews be reported in FD-302 or insert format. In some instances, *previous requests to place interview results into FD-302 or insert format have elicited no response from the field, thereby necessitating an additional communication restating the request.*

(Emphasis added.)

> On October 3, 1996, the OKBOMB Task Force told the field:
>
> Steven [sic] Jones, counsel for OKBOMB subject, Timothy McVeigh has filed a large number of motions alleging government prosecutors are withholding evidence and FD-302/inserts which could be critical to the defense of his client. In furtherance of insuring all, repeat, all FD-302s and inserts have been turned over during discovery, as ordered by trial judge Richard Matsch, *we have found 1As with agent investigative notes where no FD-302 was generated.* [Inspector in Charge] OKBOMB would like to remind each division that it is imperative to the successful prosecution of this important case that all investigation be recorded as required in either an FD-302 or insert as applicable to prevent further defense allegations.

(Emphasis added.) And, as previously discussed, the Director's November 15, 1996, teletype not only sternly directed the SACs to ensure that all OKBOMB

material had been sent to the Task Force, it also specified the numerous locations where field office personnel were to look.

Yet, many field office personnel that we interviewed could not recall receiving the teletypes from the Task Force, nor could they recall conducting any type of officewide search for material. In addition, 29 field offices responded to our survey question about what they did in response to the Director's November 15, 1996, EC by stating that they did not know what was done because they currently lacked access to their files.[34]

Because most field office personnel believed they had sent everything in to the Task Force, we believe it is likely that in many field offices no further search was conducted in response to the subsequent teletypes or at best only a superficial search. For example, Los Angeles acknowledged that it failed to send 18 1Bs (consisting of audio and video tapes) to the OKBOMB Task Force as required. Los Angeles, like the other field offices, had received a September 16, 1995, request from the OKBOMB Task Force for all 1B evidence and had responded by stating that they had no such evidence. The Los Angeles personnel to whom we spoke could not explain why Los Angeles responded that it had no evidence when, in fact, it did. They also could not explain why Los Angeles incorrectly responded to the Director's November 15, 1996, EC by

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[34] In a few instances, field office personnel described extensive searches they conducted in response to these teletypes. Jacksonville described responding to the Director's November 15, 1996, EC by conducting a hand search of 60 volumes of documents, reviewing all 1As and 1Bs, checking ACS for uncovered leads and evidence, and requiring all supervisors to check with agents. San Diego reported conducting an extensive file review in November 1995; San Francisco sent original inserts and FD-302s to the Task Force in November 1996 after conducting a file review; St. Louis also reported sending nine original inserts and FD-302s as well as other material to the Task Force in November 1996 after conducting a file review in response to the Director's November 15, 1996, EC. Minneapolis reported sending approximately 300 original documents to the Task Force after a file review, although the case agent could not recall the directive to which they were responding. A Columbia, South Carolina, Division agent recalled conducting file reviews when he received teletypes from the Task Force. Although these responses indicated that some field offices reviewed their files to locate information that had not been sent previously to the Task Force, these responses also show that many field offices were keeping original material in their Auxiliary Office files, contrary to FBI policy and the Task Force's requests.

stating that all documents and evidence had been submitted to the Denver Command Post.

The fact that over 300 original items were found in field office files is compelling proof that the field offices did not adequately respond to the Task Force's and the FBI Director's instructions to provide original items to the Task Force. The presence of so many originals in field offices' files indicates that the field offices failed to conduct searches despite the instructions, conducted inadequate searches, mistakenly assumed a copy of an original item had been sent to the Task Force previously, or mistakenly concluded that the original did not have to be sent.

In addition to missing items that might have been discovered if the field office had performed appropriate searches in 1995-1996, the field offices' failure to respond properly to Task Force requests had other consequences. For one thing, the Task Force had to expend valuable time and effort repeating requests that it had made previously and reminding field offices to follow instructions that had been sent previously. For example, on September 16, 1995, the Task Force requested that field offices send all evidence in their possession to the Task Force or respond to the Task Force that no evidence was being stored in the field office. On October 25, 1995, the Task Force sent a teletype to 11 field offices stating that no response had been received pursuant to the September 16 teletype and requesting a response. On November 11, 1995, the Task Force sent a teletype to three field offices, including Baltimore, stating that those field offices had not responded to the previous two teletypes. Neither the Baltimore OKBOMB case agent nor the squad supervisor recalled the teletypes, and they had no explanation as to why Baltimore repeatedly failed to respond to Task Force requests. Even the communication from the office of the FBI Director did not generate timely responses. A December 14, 1996, teletype to the field stated that the OKBOMB Task Force was still waiting for responses from some offices to the Director's November 15, 1996, directive requiring the heads of all offices to certify that all original FD-302s, evidence, 1As, logs, and other documents had been forwarded to the Task Force.[35]

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[35] Three days after the Director's teletype, the OKBOMB Task Force sent another teletype referencing the Director's instructions and describing the continued problems in getting all investigative material to it. In response, Buffalo sent six ECs, all enclosing specific responses to outstanding leads. According to the Buffalo OKBOMB case agent, a number of (continued)

As another example, *eight months* after the Task Force's request that non-pertinent information be sent as soon as possible, Dallas sent an EC dated May 7, 1996, stating that it was forwarding the non-pertinent results of investigation conducted by the Dallas Division. Attached to the EC were the original and 10 copies of 44 FD-302s and inserts. Apparently explaining the delay in responding, a Dallas agent wrote in an undated memorandum that although the OKBOMB Task Force had requested all non-pertinent information, "No specific dates or priority was provided," although the agent also acknowledged in the memorandum that "the priority was implied."[36]

The field offices' failures to follow instructions also increased the complexity of the Task Force's document management process. An August 1, 1995, teletype reminded field offices that it was essential to place "lead numbers" on all communications, FD-302s, and inserts.[37] Yet, by teletype dated September 1, 1995, the Task Force had to repeat the instructions because some field offices were not complying:

> Although previous teletypes have been sent to all field divisions advising lead control numbers need to appear on all communications, including FD-302's and inserts, Oklahoma City CP continues to receive a number of FD-302's without this information.
>
> *Because of the voluminous amount of reports generated, hundreds of man hours have been spent identifying lead numbers*

(continued)
the outstanding leads had been assigned to a particular agent. The agent had not closed the leads because he considered them unimportant. When the case agent received the outstanding leads sheet in November 1996, he and another agent completed most of the leads themselves.

[36] The agent further explained in the memorandum that Dallas had begun the project to locate the non-pertinent information in March 1996 and had been trying to assist the Task Force by linking up certain documents with lead control numbers and other information. In response to a complaint from McVeigh's defense attorney, the Task Force contacted Dallas on April 30, 1996, and instructed Dallas to send the material without conducting any further research. The agent concluded in his memorandum, "It is hoped that [the OKBOMB Task Force] recognize the thousands of hours worked on this matter by Dallas and not focus on a few instances where matters could have worked smoother."

[37] Each lead was given a tracking number. The lead numbers were necessary so that the Task Force could track whether a lead had been completed.

> *for these FD-302's to insure leads have been covered.* There are still many FD-302's which can not be matched to any specific lead control number.
>
> *Due to this situation, all communications, including FD-302's and inserts, which do not contain lead control numbers … will immediately be returned to that field division to have the lead control number added.*

(Emphasis added.)

In addition, the Task Force received FD-302s and inserts that had not been initialed by the agent, requiring the Task Force to send the documents back to the field office for initialing. Sending documents back and forth increased the chances that documents would be lost.[38]

7. Other Incidents Involving Discovery Problems

During our investigation, we learned of other incidents where field offices had failed to send material timely to the OKBOMB Task Force. These incidents involved documents that were turned over to the defense in 1996 before McVeigh's trial but past the discovery deadline set by the court. We discuss these incidents because they show that the "belated documents" were not the only items that were delayed in getting to the Task Force.

In December 1996 the OKBOMB Task Force received three FD-302s after the discovery deadline of December 15, 1996, had passed. Two of the FD-302s were from the Anchorage Division and one was from the Seattle Division. Prosecutor Beth Wilkinson requested a written explanation from the FBI.

In a letter to Wilkinson dated January 8, 1997, Defenbaugh explained that as part of the "OKBOMB FBI's continued quality control efforts,"[39] they had discovered on December 9, 1996, that Anchorage had interviewed two

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[38] The Task Force also had to spend considerable time reviewing and correcting errors in the FD-302s. A teletype dated May 2, 1996, requested that several field offices correct obvious errors usually involving inconsistencies in dates, such as when the date of transcription of the FD-302 was listed as occurring before the date of the interview.

[39] In November 1996, the OKBOMB Task Force reviewed their database and found 157 leads that had not been investigated by the field offices.

individuals on September 7, 1996, and reported the information by teletype the same day. Anchorage, however, had failed to draft FD-302s or inserts.[40] The OKBOMB Task Force instructed Anchorage to draft FD-302s of the interviews and send them immediately. Defenbaugh wrote in his letter that although Anchorage complied, the FD-302s were not received by the Task Force until December 19, 1996. In explaining the Seattle problem, Defenbaugh wrote that on December 12, 1996, the OKBOMB Task Force discovered that Seattle had failed to draft an FD-302 for an interview it had conducted on May 25, 1995. According to Defenbaugh, "[a]lthough Seattle forwarded copies of the FD-302 almost immediately, the FD-302 did not arrive at the [command post] until [December 19, 1996]." The persons whom we interviewed could not recall why it took ten days in the Anchorage matter and seven days in the Seattle matter for the Task Force to receive documents that were needed urgently.

IV. Causes of the Belated Documents: The OKBOMB Task Force

While we found significant evidence that field offices failed to send documents to the Task Force in a timely manner, it is also true that the OKBOMB Task Force bears some responsibility for the failure to get the materials to the defense before trial. The volume of material coming into the Task Force made it likely that some items would not be included in the discovery process, particularly given the FBI's computer systems used for handling these documents. But it does not appear that Task Force supervisors recognized the deficiencies in their own document processing. Consequently, they gave little consideration as to whether any measures could or should be taken to plug the gaps in the Task Force's document management system.

A. Did the Task Force Receive Documents From the Field that the Task Force Failed to Disclose to the Defense?

We concluded that as many as 48 percent of the belated FD-302s and inserts disclosed in the first wave could have been sent timely to the Task Force by the field offices. We reached this conclusion based upon: (1) instances where we located the belated document in a Task Force file other than the D or E subfiles; (2) airtels sent by the field offices stating that they were sending the

[40] By September 1996, field offices had repeatedly been reminded by the Task Force to use an FD-302 or insert to transmit the results of interviews.

belated document; and (3) a presumption that the original had been sent to the Task Force if only a copy was found in the field office files.

1. Belated Documents Found in the OKBOMB Files

The strongest evidence supporting the field offices' claims that they had sent a particular belated document to the Task Force was to find the actual document somewhere in the Task Force files. The OIG found nine of the belated documents in OKBOMB files other than the D or E subfiles. In other words, the field office had sent the document to the Task Force, which in turn had filed it somewhere other than the D or E subfile, and it therefore had not been disclosed to the defense. Because FD-302s and inserts were compiled for discovery only from the D and E subfiles, if an FD-302 or insert was misfiled, the document was not disclosed.

In addition, as part of the second wave review in May 2001, the FBI found 39 items that had not been disclosed to the defense in the OKBOMB Main File, the warehouse storage facility, and the Oklahoma City confidential informant files. Although these were called "Oklahoma City Division belated documents," in reality the documents illustrated that field offices had sent FD-302s and inserts to the Task Force but that the documents had not made it to the defense.

Table 5 sets forth the documents and where they were located.

Table 5: Belated Documents Sent by Field Office to Task Force (TF) in 1995-1997

Bates Stamp	Document Type	Originating Field Office	Location Where Discovered
376	Insert	Boston	TF Main File
537	1A	Buffalo	Contents of 1A were found attached to a 302 in the TF Sub D file
561	1A	Buffalo	Contents of 1A were found attached to an EC in the TF main file
785	302	Detroit	In ZyIndex unserialized
803	302	Detroit	Leadworld
1314	302	Los Angeles	TF Main File
1704	302	Kansas City	In ZyIndex unserialized
2483	1A	Richmond	Leadworld
2623	Insert	Sacramento	In ZyIndex unserialized
3788	Insert	Oklahoma City	Informant (137) Files
3974	302	Houston	Warehouse
3975	302	Phoenix	Warehouse
3976	Insert	Louisville	TF Main File, attached to serial #504
3978	Insert	Oklahoma City	TF Main File, Sub S4-2
3979	Insert	Phoenix	TF Main File, Sub S-43
3980	Insert	Dallas	TF Main File, serial 330
3982	302	Dallas	TF Main File, serial 334
3983	302	Charlotte	TF Main File, Sub O-492
3984	302	Oklahoma City	TF Main File, Sub F-942
3987	302	Oklahoma City	TF Main File, Sub S-1401
3989	302	Dallas	Warehouse
3990	302	Dallas	Warehouse
3991	302	Charlotte	TF Main File, Sub O-232
3992	302	Philadelphia	TF Main File, Sub O-119
3993	302	Philadelphia	TF Main File, Sub O-117

Bates Stamp	Document Type	Originating Field Office	Location Where Discovered
3994	302	Philadelphia	TF Main File, Sub O-118
3995	302	Philadelphia	TF Main File, serial 1686
3996	302	Atlanta	TF Main File, Sub O-642
3997	Insert	Oklahoma City	Warehouse
3998	302	Sacramento	Unknown
3999	302	Philadelphia	TF Main File, Sub O-734
4000	Insert	Montgomery	Warehouse
4009	302	Oklahoma City	Warehouse
4010	302	Oklahoma City	Warehouse
4011	302	Oklahoma City	Warehouse
4012	Insert	Oklahoma City	Warehouse
4013	Insert	Boston	TF Main File, Sub UU-250
4014	Insert	Charlotte	Warehouse
4015	302	St. Louis	Warehouse
4016	Insert	Oklahoma City	Warehouse
4017	Insert	Phoenix	Warehouse
4019	Insert	Phoenix	Warehouse
4020	302	Oklahoma City	Warehouse
4021	302	St. Louis	TF Main File, Sub L-324, second 302
4022	302	St. Louis	TF Main File, Sub L-321
4025	302	Oklahoma City	Warehouse
4026	302	Philadelphia	Warehouse
4028	Insert	Montgomery	Warehouse

2. Airtels

As previously discussed in Section III B 2 of this chapter, the OIG concluded that an airtel that described a belated document warranted a strong presumption that the field office had sent the document to the Task Force. While many field offices asserted that airtels would show that they had sent the belated documents to the Task Force, in most cases they did not provide the airtels. The field offices stated that because their files were in Oklahoma City and because they could not get access to ACS, they could not find the appropriate airtels.[41]

We did not just rely on the field offices, however. We conducted our own search for evidence that the documents had been sent to the OKBOMB Task Force as the field offices claimed. We searched extensively in ZyIndex for airtel records that would correspond to the belated documents. We found airtels for 58 documents. The majority of those airtels related to documents sent by Buffalo and Detroit.

3. Copies Found in the Field Offices

The OIG concluded that when the belated document consisted of only a copy that had been found in the field office files rather than an original, it was reasonable to presume that the original had been sent to the Task Force. This presumption is warranted, we believe, even though the original document was not found in the Task Force files during any of the searches conducted in 2001 and there was no reference to the document in ZyIndex or other databases.

A number of factors lead us to believe that it is more likely that the original was sent by the field office to the Task Force and misplaced after it arrived rather than that the original was misfiled or lost in the field office's OKBOMB file and never sent. These factors include: the volume of documents the OKBOMB Task Force was attempting to process relative to those in the field offices; the fact that document processing at the Task Force was different and more complex than the standard protocols the field office staff followed;

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[41] On the other hand, Buffalo performed an extensive, labor-intensive search and was able to find supporting airtels for many, although not all, of the belated documents it generated. Of Buffalo's 32 problem documents, the Buffalo Division and the OIG were able to locate transmittal airtels or ECs for 19.

and the fact that a substantial portion of the document processing in Oklahoma City was being handled by personnel from other field offices who were stationed at the Task Force on temporary duty. We examine these factors in the discussion in the following section.

In summary, we found conclusive evidence that 48 belated documents had been sent timely by the field offices because we found the documents in the Task Force files. Airtels provide strong evidence that 54 belated documents were sent timely by the field offices to the Task Force. We also concluded that 218 FD-302s and inserts that were copies (and that had no corresponding airtels) were more likely than not timely sent by the field offices to the Task Force.[42]

B. Indicia of Problems with Document Management at the Task Force

Although OKBOMB Task Force personnel told the OIG they were frustrated from trying to get material from the field offices, there were some indicators that the Task Force was having its own document management problems that were frustrating field office personnel. For example, many field office personnel told us that they received repeated telephone calls from the Task Force asking for documents that the field office personnel said they knew had been sent to the Task Force. They said that the Task Force would ask them for the same document two or three times.

In addition to telephone calls, field offices sometimes noted in writing that it had previously sent information to the Task Force. For example, a Detroit EC transmitting 10 copies of an insert stated, "Detroit does not have the original insert reflecting this interview inasmuch as it was previously furnished to [OKBOMB Task Force]." A Dallas EC stated:

> [Witness was] interviewed on 04/25/1995. That interview was reported on Dallas teletype dated 05/03/1995. Later when requested by OCCP [Oklahoma City Command Post] under LCN

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[42] To reach the number of 54 airtels, we subtracted the four airtels that corresponded to original documents (see Section III B 2 of this chapter) because in those instances the presence of the original in the field office file negated the presumption in favor of the field office. We reached the number of 218 copies by subtracting the 60 FD-302s and inserts for which we had strong or conclusive evidence from the total number of copies of FD-302s and inserts in the first wave (278).

> 13725II-05 (not 13725II-05/06, as stated in OCCP-Denver's 07/05/1996 teletype), Dallas advised OCCP that this lead had already been covered; however, to assist OCCP, Dallas forwarded 10 copies of the Insert and the diskette version via Dallas EC dated 02/06/1996. Dallas also sent a teletype dated 07/25/1996 advising OCCP of the coverage of this lead. The instant EC is the fourth communication to OCCP to advise that this lead has been covered, and is the second to send photocopies of the original Insert.

Task Force personnel acknowledged that the field complained about having to send documents repeatedly. They said that rather than arguing about whether a document had been sent, they would simply ask the field to resend it.

Although it did not relate to a belated document, we also found reference in writing indicating that the Task Force had "lost" a document for some period of time. The document was ultimately found and disclosed but after the discovery deadline had passed. Defenbaugh's January 8, 1997, letter to prosecutor Wilkinson stated that the Phoenix Division had included an FD-302 in a box of materials that it sent to the Task Force in November 1996. As Defenbaugh wrote:

> Normally, the inserts and FD-302s would be forwarded to the Discovery team for copying, and the Rotor to be serialized. In this particular instance, it is unknown what happened to [this] FD-302. On 1/5/1997, the FD-302 … appeared in the "in" box at the Rotor's desk. The Rotor had been previously cleared, so there is no possibility the report had been sitting in the Rotor area. The … FD-302 did arrive at OKBOMB [Command Post] prior to 12/1/1996, was misplaced at the [Command Post] and failed to make the 12/15/1996, deadline.

C. Reasons Why Items May Have Arrived at the Task Force But Not Been Disclosed to the Defense

Much like the field offices, OKBOMB personnel could not identify the reason why a particular document was not disclosed to the defense. One explanation is that massive quantities of documents were coming into the Task Force and some of the documents were misplaced. The OIG found that at least 20 documents were serialized (meaning a Task Force rotor had processed the

document) but filed in locations other than the D or E subfiles from which discovery was made.

We discuss in the following sections issues that we believe were contributing factors.

1. Complex Paperflow System

The process used to move paper around the Task Force was cumbersome and the opportunities to have a document go awry were numerous. Although the filing system used by the Task Force was, in a broad sense, the same as that used in other FBI cases, the volume of material required extra steps and extra personnel. For example, instead of a single rotor completing the entire process, the process was compartmentalized into small steps that were handled by several personnel, most of whom were on temporary duty. In addition, because each person handled only a very small part of the process, it was more difficult to determine if a mistake had been made during one of the steps.

As previously discussed, all documents received at the Task Force had to be serialized into FOIMS and later ACS. First, field offices were required to send an original, multiple copies, and a disk for each of the hundreds of thousands of documents generated in OKBOMB. These documents were sent to the Oklahoma City Field Office and were transported daily to the Task Force. According to the lead OKBOMB rotor, she reviewed all incoming mail and then sorted it. First, the disks were separated from the documents and routed to the ZyIndex team. Next, she routed copies to agents who determined to which subfiles the documents would be serialized. Once the rotor received a document back from the agents with filing instructions, the rotor sorted the documents into particular filing cabinets in order for other rotors on temporary duty to serialize and file.

The original cover communication (usually an airtel) was separated from the original FD-302 or insert and copies and was placed in a filing cabinet to be serialized to the OKBOMB Main File. The original FD-302 was placed in another filing cabinet for serializing to the FD-302 subfile. Copies of the FD-302 also might be placed in other file cabinet drawers, such as the "McVeigh" subfile drawer, for serialization. The serialization was handled by several rotors on temporary duty who were assigned a particular subfile to handle. According to the lead rotor, for many weeks they had three shifts a day running the operation.

This filing system could break down in many ways. First, the Task Force did not have a routine policy of checking to ensure that items the field office said were being sent had actually arrived at the Task Force. Also, as the description above shows, documents easily could be accidentally lost or placed in the wrong filing cabinet drawer, and the error would not be noticed. Because discovery was created from particular subfiles, the system depended on the rotors correctly serializing every FD-302 and insert. A mistake meant that the document would be placed in the wrong file and therefore not be disclosed.

Field agents sending documents directly to OKBOMB Task Force agents also may have contributed to the problem. We were told that field agents sometimes faxed documents to a particular agent at the Task Force. It is possible that the Task Force agent believed the field would send the original through regular channels while the field considered the document as having been sent.

2. Temporary Duty Personnel

During the course of the investigation, the Task Force used hundreds of FBI personnel on temporary duty (TDY). These personnel came from the field offices for limited tours, in some cases as little as two weeks. While OKBOMB personnel spoke highly of the efforts of many TDY personnel and appreciated the sacrifices of the field offices and the individuals involved, we also were told that some of the TDY personnel were incapable of performing the work and some failed to perform their tasks competently. Indeed, personnel from one of the field offices admitted to the OIG that they had removed a support employee from working the OKBOMB file in their field office because the employee had performed poorly. Yet, they then sent that employee to work TDY at the OKBOMB Task Force.

We note that even for those individuals who were trying to do a good job, problems developed because field offices vary in their document management procedures. Accordingly, the TDY personnel were receiving on-the-job training in the middle of a crucial case. The OKBOMB personnel also told us that the rapid turnover created problems for the supervisory personnel because they constantly had to train new personnel. In addition, most of the administrative personnel were unfamiliar with ZyIndex.

3. Computer Systems

In the immediate aftermath of the disclosure of the belated documents problem, the media reported that FBI officials blamed the FBI's computer systems for causing the problem. Some officials specifically cited the transition from FOIMS to ACS as the cause of the difficulty.

The evidence shows that the FBI's computer system did not *cause* the Task Force to fail to turn over discoverable items to the defense, but the inadequate computer systems failed to assist the Task Force in realizing that they had a problem. Because of the limitations in FOIMS, the Task Force began the investigation without adequate quality control measures in place. They relied to some extent on manual quality control measures but these too had their limitations.

a. FOIMS computer system lacked document management capabilities

As discussed previously, the computer system in place at the time of the OKBOMB investigation was FOIMS. Documents were serialized individually by field offices and then a second time when they reached the Task Force. The two serial numbers were not cross-referenced, however. Consequently, the Task Force did not know what documents had been generated in the field until they received a hard copy of the document. As a result, the Task Force had no easy method of determining whether it was missing documents created by the field.

Indeed, items could be lost in the mail, and no one would know it. The Task Force would be unaware that something was on its way and therefore would not realize when it did not arrive. The field offices also had no way of knowing that the OKBOMB Task Force did not receive items because they had no system for acknowledging receipt of an item.

Quality control measures could have been devised to compensate for the Task Force's inability to easily determine what documents the field offices had generated. One method would have been to cross-reference the OKBOMB serial numbers and the local serial numbers generated in each field office by FOIMS. By tracking the local serial numbers, the Task Force could have determined if they were missing documents because the local serial numbers would be sequentially incomplete. This method would have had to have been instituted at the beginning of the case, however. Another method that could have been initiated later would have been to determine all the local serial

numbers in FOIMS and then use ZyIndex to determine whether those documents were in the OKBOMB files. Either of these methods would have made it possible, albeit in a time consuming manner, to trace whether the OKBOMB Task Force was in possession of the field offices' documents.[43]

Neither the OKBOMB Task Force nor FBI Headquarters instituted such a quality control system. Task Force personnel told the OIG that they did not believe that they had a serious problem getting documents from the field as opposed to isolated instances of documents not arriving at the Task Force. Although the prosecutors acknowledged being aware of some issues, such as the Phoenix surveillance logs that were not disclosed, they also believed the problems were isolated and did not reflect broader failings.

b. ACS

On October 16, 1995, the FBI initiated a major change to its automation system when the entire agency moved from FOIMS to ACS. ACS was designed as a comprehensive and integrated system that would automate case management and allow for complete access to investigative information throughout the FBI. At the time of the transition, the data on every item listed in FOIMS was automatically transferred into ACS. Although there were many differences between the two systems, the two most notable for OKBOMB were the addition of full-text retrieval and universal serialization.

The full-text retrieval capacity was an important upgrade because it allowed greater and more convenient access to documents and information. In ACS, any FBI-generated document, such as FD-302s, inserts, and ECs, could be uploaded into ACS, and employees throughout the FBI could review the document using the computer system. Despite this capacity, the OKBOMB Task Force continued to use its stand-alone program, ZyIndex, which also had full-text retrieval capabilities.[44]

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[43] Following their review of the OIG draft report, Oklahoma City personnel suggested that these quality control measures would have worked only if the field office personnel placed the serial numbers on the documents and correctly entered the document into FOIMS. We agree that the success of these suggested measures would have depended upon FBI personnel correctly following FBI procedures.

[44] We would not have expected the OKBOMB Task Force to discontinue its use of ZyIndex given that the database was already built and had thousands of entries. Subsequent (continued)

The addition of universal serialization also was an important upgrade. When a document is entered into ACS, it is assigned a universal serial number. In other words, in any given case, there is only one serial number 1 rather than a serial number 1 in every field office that participates in a particular case. If, for example, Buffalo uploads a document on a case into ACS, the system automatically gives the document a serial number, for example, serial 100; if Atlanta serializes the next document, the document is serial 101. If such a system had been in use in 1995-1997, the OKBOMB Task Force would easily have been able to recognize if it was missing serial 100 in its hard copy files because there would have been a skip in the numerical sequence.[45]

c. Transition to ACS

Universal serialization would have substantially improved the Task Force's ability to track all documents, particularly documents generated by the field offices. The Task Force, however, did not effectively utilize this feature because the Task Force prohibited the field offices from serializing or uploading documents into ACS. Instead, the Task Force primarily relied on the system it had used before ACS, which was to reserialize the documents once they arrived at the Task Force.

Some field agents recalled confusion during the OKBOMB investigation as to how the field was supposed to use ACS for processing OKBOMB documents. After examining numerous teletypes concerning this issue, we agree that there was cause for substantial confusion in the field about using ACS for OKBOMB documents. The following series of communications shows that the OKBOMB Task Force was reacting to and trying to fix various problems as they arose, but when they did other problems often developed.

When ACS initially came on line, the Task Force prohibited the field from uploading documents into ACS and serializing them. A teletype dated October 13, 1995, informed the field offices that:

(continued)
cases still use ZyIndex or equivalent systems because of the considerable deficiencies in ACS. We discuss these deficiencies further in Chapter Seven.

[45] Of course, universal serialization would not catch the problem of the field generating a document and failing to upload it into the computer system.

> Only the … OKBOMB Task Force[]… will serialize and index information into the ACS…. All divisions should continue to maintain their own paper file…. [C]ontrary to other pending investigative files, … OKBOMB will not be uploading any case documents to the electronic case file in ACS. There will be no full text retrieval for OKBOMB….

Defenbaugh told the OIG that he made the decision to prohibit the field from uploading documents into ACS. He said that he had learned from other major cases, such as the UNIBOMB case, that the Task Force had to maintain "command and control" over the information. Defenbaugh said that his decision upset a lot of field offices. In addition, because documents were being leaked to the press, Defenbaugh restricted the field's access to OKBOMB documents through ACS's full-text retrieval capacity.

However, one month later on November 18, 1995, the Task Force changed the instructions and permitted serialization and uploading.

> Effective immediately all offices may start serializing in the OKBOMB file number 174-OC-56120. Uploading is not mandatory, but if you wish to do so you may.

On December 28, 1995, the Task Force changed its instructions and told the field to serialize but not to upload:

> Due to the large volume of documents, Oklahoma City CP does not have the capacity at present to download documents and requests documents not be uploaded into ACS. It is also imperative documents be serialized into the correct subfiles, as set forth….

By teletype dated February 23, 1996, the instructions were changed again. The field offices were now required to serialize and upload:

> Due to the discovery process, effective immediately, all field offices are requested to upload all FD-302's and inserts into the ACS system. All FD-302's are to be serialized into 174A-OC-56120-D. All inserts are to be serialized into 174A-OC-56120-E.

And on November 16, 1996, the instructions changed one last time:

> It is as previously requested imperative that [Auxiliary Office] does not upload/serialize documentation into ACS. Serializing

and uploading will be conducted by [the OKBOMB Task Force].[46]

The OIG was told by the lead OKBOMB rotor that the field offices were prohibited from serializing documents in 1996 because they often uploaded documents incorrectly (for example, into the wrong subfile), which caused substantial problems during the discovery process. None of the participants to whom we spoke could recall why Defenbaugh's initial decision to prohibit the field offices from serializing and uploading documents into ACS was changed in December 1995 to allow it.

While prohibiting the field offices from serializing solved one discovery problem (the problems created by uploading into the wrong subfile), it impeded the resolution of another. The lack of universal serialization meant that the OKBOMB Task Force continued to be without the ability to comprehensively track documents generated by the field offices. We did not find evidence that this consequence was discussed or considered when the decision was made to prohibit use of the universal serialization feature. We were told that when the decision was made, the Task Force was not aware that the field offices were not sending all of their documents to the Task Force as they were instructed to do. Although the Task Force could be criticized for failing to take advantage of such an important quality control measure, because the vast majority of the belated documents came from the FOIMS period, ACS's universal serialization feature would not have significantly improved the system for most of the belated documents.

We also note that the transfer to a new computer system in the middle of this mammoth investigation created other technical difficulties, although these difficulties do not seem to have affected or caused the belated documents problem. For example, ACS had trouble accepting OKBOMB's subfiling

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[46] The November 16, 1996, teletype referred to a previous teletype, although no date for the previous teletype was given. A December 3, 1996, teletype strongly reminded the field offices not to serialize or upload documents into ACS and again referred to an unidentified teletype sent out prior to November 16, 1996. Despite extensive searching, we were unable to find any communication prohibiting the field from serializing and uploading between February 23, 1996, and November 16, 1996. While this could be an indication that the Task Force was mistaken about what it had asked the field offices to do, it also indicates deficiencies in document management at the Task Force and the search capacities of ZyIndex.

system, and it also created duplicate 1A numbers during the transition from FOIMS.[47] FBI Headquarters had to develop specific solutions for these problems.

d. Other information management systems and quality control measures

(1) Rapid Start Information Management System

The primary automated system used by the OKBOMB Task Force to manage the investigation was the Rapid Start Information Management System (Rapid Start). Rapid Start is used to track leads and lead responses. Rapid Start was developed in 1992 to provide information management services in crisis situations, special events, or major cases. Immediately after the bombing a Rapid Start team was sent from FBI Headquarters, and the system was in place and running by April 20, 1995. In addition to a core group in FBI Headquarters, the FBI also trains numerous personnel throughout the field who can be deployed in a crisis to organize Rapid Start.

Leads, whether they are reported by telephone, complaint, or investigation, are recorded on a "lead sheet." Certain information about each lead is recorded into Rapid Start, such as the office to whom the lead is assigned, the date assigned, and the task assigned. A "lead number" is assigned automatically by Rapid Start to assist in tracking the lead, and the computer system is updated when responses arrive. The system can be used to generate reports, such as the number of outstanding leads for a particular field office. The team known

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[47] A December 9, 1995, teletype from the OKBOMB Task Force to the field offices captured some of the Task Force personnel's feelings about ACS:

> For information of receiving offices, at present and since the onset of the OKBOMB investigation, … incoming/outgoing communications are loaded into ZyIndex by Rapid Start team members for search purposes. Lead control numbers are noted on each communication allowing for furtherance of quality control. This system of operation has proven to be extremely reliable, efficient and effective, as well as user friendly…. FBIHQ has mandated utilization of Automated Case Support (ACS) by all field offices, a system which presently proves to be grossly inadequate. However, executive management and all other personnel at the [OKBOMB Task Force] will fully support ACS….

colloquially as "Lead World" was responsible for setting the leads, tracking them, and reviewing and organizing the responses.

Rapid Start is not a document management system, however. It was designed to ensure that the persons making the decisions about the direction of the investigation had the necessary information to make those decisions. It was not designed to track whether documents were created in field offices, whether documents had been sent to the Task Force, or whether documents had been generated correctly. Rapid Start was not linked to FOIMS, ACS, or ZyIndex; therefore, a document could be listed in Rapid Start but not in the other databases and therefore not make it to the subfiles used to compile discovery.[48]

Even for tracking leads, Rapid Start had its limitations. In addition to being used by the OKBOMB Task Force, Rapid Start was used in many field offices that were generating significant investigative leads, particularly other FBI command posts. These Rapid Start systems in the field offices, however, were not linked to the Rapid Start system used by the Task Force. This meant that if a field office, such as Detroit, generated its own leads, the leads would not be tracked automatically by the Task Force. Accordingly, the Task Force would not know what locally generated leads the field offices had failed to pursue or if they had failed to submit documentation after completing the lead. Although the Task Force instructed the field offices to obtain a Task Force lead number for all leads, including locally generated leads, it had no way to ensure that the field offices complied.

In addition, although Rapid Start was designed to help track outstanding leads, the Task Force relied heavily on a manual lead tracking system that utilized binders.[49] When the lead was set, the lead control sheet was filed in a binder for outstanding leads. When the response was received, it was attached to the lead control sheet and the package was filed in a different set of binders.

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[48] We found two of the belated documents in the "Lead World" binders even though they were not in ZyIndex or in the D or E subfiles.

[49] We were told that senior FBI personnel supervising Lead World did not trust the accuracy of the information in Rapid Start. We did not determine whether this was a problem with the system or whether additional training of the personnel entering the data into the system might have improved the situation.

Task Force personnel attempted to use Rapid Start in some ways as a document management tool by initiating several quality control projects to assist them in obtaining documents they believed were missing. One such project was designed to ensure that all agent interview notes that the Task Force received in 1A envelopes were matched to a corresponding FD-302. Another was Project 13725. The OKBOMB Task Force initiated the project to ensure that the field converted the information in teletypes into FD-302s and inserts (13725 was the lead number under which the Task Force's instructions were sent). OKBOMB Task Force personnel conducted a labor intensive review to manually match teletypes with FD-302s and inserts. If no FD-302 or insert was found, the OKBOMB Task Force sent a lead to the field office instructing the field office to send the FD-302 or insert. (See Chapter Three, Section I D.)

These projects were prone to human error, however. Some of these errors did have an impact on the belated documents issue because some of the belated documents might have been located before the defendants' trials if the quality control projects had been more successful. For example, the Task Force sent over a thousand leads to field offices specifically identifying teletypes that needed to be turned into FD-302s or inserts. Yet, we found that approximately half of Atlanta's belated documents were FD-302s that contained information that had been sent previously by teletype but we did not find any specific request by the Task Force for those FD-302s or inserts – which was the point of project 13725. Although the field offices had the primary responsibility for ensuring that information was reported in the proper format, the error could have been caught with a more effective quality control project.

(2) ZyIndex

Another automated system component used by the OKBOMB Task Force was ZyIndex. FBI Headquarters recognized the need to be able to electronically search and retrieve the text of documents, which was not possible under FOIMS. ZyIndex was used instead. ZyIndex is not, however, a document management tool. It is an off-the-shelf software application that indexes words and phrases to allow for electronic retrieval of documents. For example, ZyIndex allows an investigator to quickly retrieve all documents that mention a particular person's name. It did not track what was generated in the field offices, whether documents had been sent to or received by the Task Force, or how many documents were being generated. In addition, ZyIndex had no impact on the discovery process. Discovery production of documents was made based on the hard copies of documents that were in the FD-302 and inserts subfiles.

Early in the process, documents were sent from the field offices to the OKBOMB Task Force and were retyped into ZyIndex. By May 1, 1995, the field offices were instructed to load all FBI generated documents, such as FD-302s and inserts, onto floppy disks and send the disks along with the hard copies to the Task Force. The documents contained on the disks were then uploaded into ZyIndex along with the OKBOMB serial number and descriptive information.

However, because of the enormous volume of material that was being sent to the Task Force, the OKBOMB rotors who were responsible for serializing the documents quickly became inundated and fell behind in the serialization process. In order not to delay the entire process, the OKBOMB administrative supervisors altered the process so that the disks were sent to the ZyIndex team even though the documents had not been serialized. Consequently, documents were uploaded into ZyIndex without serial numbers.

Although this kept documents flowing into ZyIndex, it also increased the complexity of the process because the serial numbers had to be entered into the computer separately. A quality control measure was instituted to attempt to solve the problem. After the serialized hard copy documents were filed into volumes, personnel took one volume at a time and tried to match each hard copy document with a document in ZyIndex. If the document was found in ZyIndex, the serial number was entered into the database. If the document was not found, it was retyped into ZyIndex. After each document in a volume of FD-302s and inserts was matched to an entry in ZyIndex, a notation was written on the outside of the volume – "Quality Control Rapid Start" – along with the date of the review.

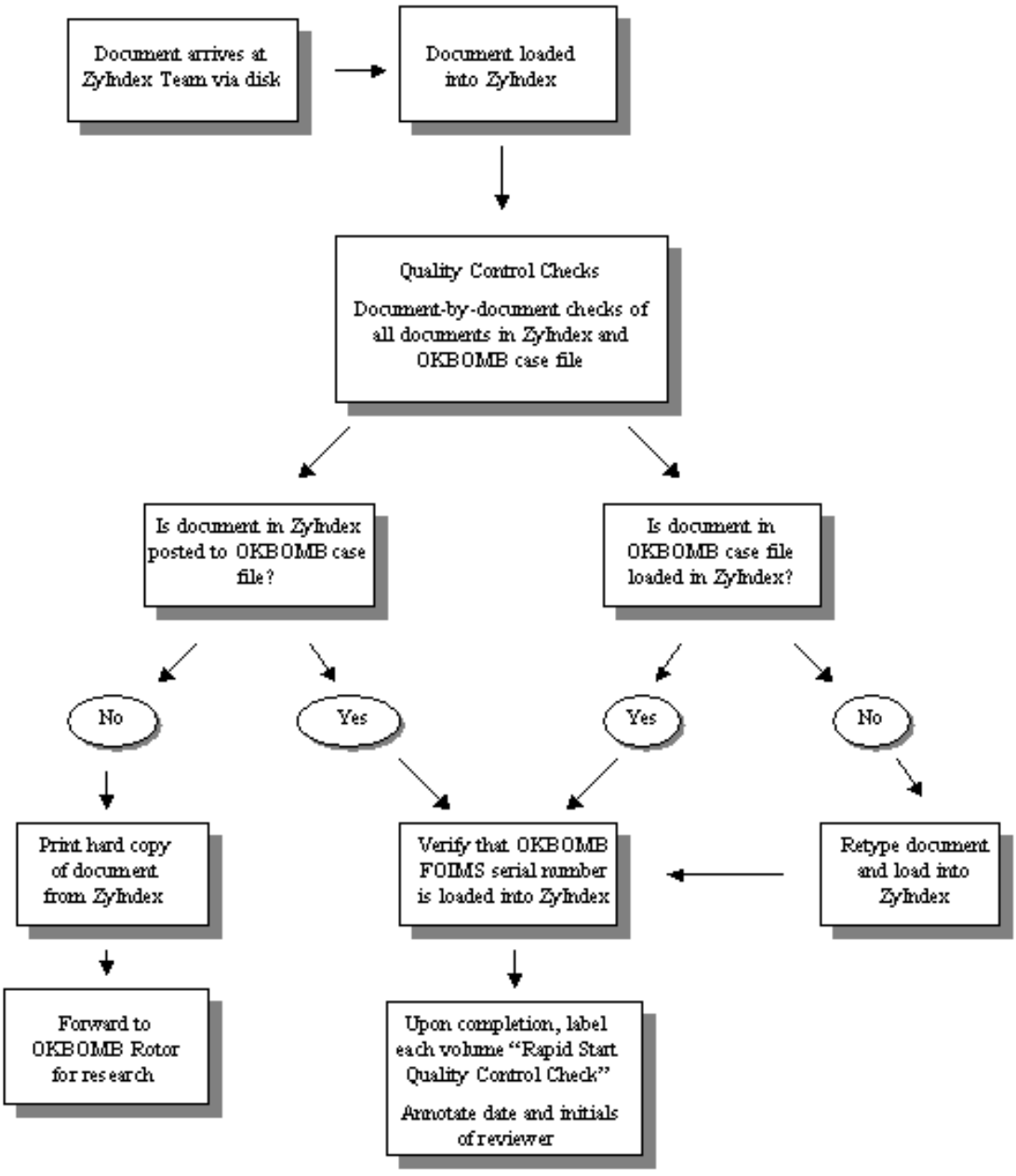
The ZyIndex team implemented other quality control measures. Since the ZyIndex team received only disks and not the hard copies, the ZyIndex team could upload documents into ZyIndex that the Task Force had never received in hard copy. After a few weeks of uploading into ZyIndex, the ZyIndex supervisor realized that there continued to be documents in ZyIndex that had no serial numbers. Two possible explanations were that the Task Force either never received the hard copy or received and lost the hard copy. The ZyIndex team identified electronic files for which there was no serial number and provided those documents to the lead rotor. Rather than try to go through thousands of hard copies of documents to see if the document had in fact been serialized (because FOIMS was cumbersome and had no full text retrieval), field offices were contacted and agents were asked to send the document to the Task

Force even if it had already been sent. This resulted in complaints from the field offices that the documents had already been sent and more work for the Task Force to serialize the documents again. It did, however, ensure that some documents that had been lost for whatever reason were received and serialized.[50]

A diagram of this process is shown on the following page.

[50] The OIG did find a few belated documents that were listed in ZyIndex without a serial number, indicating that this review process was not completely successful. The primary significance of these unserialized items was that for those items, it was hard to establish in 2001 whether they had been turned over in discovery. It also showed that some of the belated items had made it from the field offices to the OKBOMB Task Force, at least in electronic form.

ZyIndexing of OKBOMB Documents
(FD-302s and Inserts)



V. Did the Government Intentionally Withhold Exculpatory Evidence from the Defense During 1995-1997?

We questioned FBI employees and former employees, analyzed circumstantial evidence, and investigated evidence the defense alleged showed that the government intentionally withheld exculpatory evidence. We concluded that the failure to provide timely all OKBOMB documents did not result from an intent to conceal exculpatory material.

D. Evidence Showing Lack of Intent to Conceal Exculpatory Information

We examined both direct and circumstantial evidence in reaching our conclusion. First, we received no direct evidence that any FBI or Task Force personnel intended to conceal exculpatory information. Second, the evidence showed that, for the most part, the failure to provide documents and other items to the defense was caused by mistakes on the part of various individuals. As previously discussed, we did find a few instances where agents acknowledged that they decided not to send material to the OKBOMB Task Force. These items included a letter from an inmate referring to the bombing and a political statement on a postcard sent to the FBI following the bombing. The agents who made the decisions not to send the material to the Task Force stated that they did so because they believed the items were completely irrelevant to the OKBOMB investigation. We believe that, at worst, those incidents reflected an erroneous view of the discovery agreement and the agents' failure to follow instructions from the Task Force. We do not believe the incidents showed any intentional decision to withhold exculpatory information from the defense.

Third, the belated documents did not contain a significant quantity or quality of previously unknown exculpatory information. We found that a significant portion of the belated documents concern utterly useless information and would not have been discoverable in most cases. For example:

- A tape of an unidentified male stating, "Test, 5, 4, 3, 2, 1";
- An interview reporting that someone had seen an unknown woman photographing a federal building in Atlanta;
- An interview of an individual who suggested that the composite sketch of a bombing suspect looked like singer Garth Brooks;

- A letter from an inmate offering to locate John Doe #2 within 95 days if released from prison; and
- 15 FD-302s reporting that agents had reviewed newspaper and magazine articles.

Although the OIG did not analyze each document to make a judgment whether it met the definition of exculpatory material, we did rely heavily on the fact that in his Petition for a Stay of Execution, McVeigh only pointed to eight belated documents (Defense Exhibits 9-14, 16-17[51] and 19) as being particularly significant. In addition, in many instances the information contained in the belated document had been disclosed in a different format.

Fourth, the fact that the government disclosed information pretrial regarding allegations that persons other than McVeigh and Nichols had bombed the Murrah Building is evidence that the government was willing to disclose potentially exculpatory information. Fifth, most of the belated documents were still maintained in the field offices' Auxiliary Office File where they could easily be found if anyone looked for them.

E. OIG Investigation of Defense Claims

Because the defense identified eight of the belated documents as particularly significant and a strong indicator of the government's intentional misconduct, we examined those documents specifically to determine why they had not been produced. We interviewed the agents who drafted the documents, their supervisors, and in some cases the rotors who processed the documents. In one instance, we found that an agent had determined that the item was not pertinent to the investigation and failed to send it to the OKBOMB Task Force. In the other instances, the individuals responsible for the document believed they had acted appropriately and could not explain why the document had not been disclosed to the OKBOMB defendants.

In the discussion that follows, we identify the documents by the exhibit number given to the document in McVeigh's Petition for Stay of Execution.

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[51] Exhibits 16 and 17 are identical, but the documents were found in different field offices' materials.

1. Defense Exhibit 9

Defense Exhibit 9 is a 2-page insert that documented an interview conducted on March 13, 1997, by the Salt Lake City Field Office. In the insert, a confidential informant provided the agent with secondhand information about McVeigh and other individuals that had been provided to the informant by a militia member. Defense counsel argued that the information in this insert would have provided a "critical lead" to exculpatory evidence. The insert was produced by Salt Lake City in May 2001 in the "second wave." The insert was not located in Salt Lake City's Auxiliary Office file and was found only after the office conducted a hand search through their confidential informant files.

We initially obtained information from the Salt Lake City Chief Division Counsel (CDC) and the File Supervisor. The CDC explained that typically when an agent prepares an insert (or FD-302) involving a confidential informant, the original of the insert is filed in the informant's file located in the confidential files section of the office. A copy of the insert is placed in the office's investigative file for that case.[52] For OKBOMB, an additional copy should have been sent to the Task Force. According to the CDC and the File Supervisor, based on the file numbers on the insert, the agent who drafted the insert did not make a copy of it for the Salt Lake City OKBOMB file. Given that a copy was not made for the Auxiliary Office file, the CDC concluded that a copy of the insert also was never sent to Oklahoma City.

The agent who prepared the insert was assigned to the Coeur D'Alene, Idaho, Resident Agency and was the case agent for an investigation involving the Aryan Nation, a white supremacist organization. The insert has only the Aryan Nation file number although the FD-209, a form used with confidential source information, identifies the file numbers for the OKBOMB and Aryan Nation investigations.

When we interviewed the agent who prepared the insert, he stated that he did not recall the insert but did recall the informant. The agent said that one copy of the insert should have been sent to the Aryan Nation investigative file and one copy to the OKBOMB Auxiliary Office file. He explained the

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[52] The "original" contains the name of the informant. The copy contains a confidential informant number rather than a name. All originals are kept in a separate, secure location apart from the main investigative files.

paperflow as follows: He would prepare the insert, a typist would provide two copies to him for his initials, he would then give the inserts to a supervisor, who would pass them to a rotor, and the rotor was responsible for placing the inserts in the proper files. The agent speculated that the problem may have occurred because the Coeur D'Alene Resident Agency did not have a rotor and the documents were sent to Salt Lake City for processing.

The agent told the OIG that although he did not believe the information provided by the informant was credible, he would have sent the insert on to the OKBOMB Task Force because it was the Task Force's responsibility to determine the relevancy of the information.

2. Defense Exhibit 10

Defense Exhibit 10 is a 2-paragraph insert dated April 24, 1995, from the Colorado Springs Resident Agency relaying information from a confidential informant that a prison inmate had information that someone other than McVeigh and Nichols was involved in the bombing. The former agent who drafted the insert told the OIG that he believed he would have followed normal procedure, which was to send the original to the confidential source file in Denver, the Headquarters City for the Denver Division, and a copy to the OKBOMB Auxiliary Office file, also located in Denver. He could not recall who in the office was responsible for sending information to the OKBOMB Task Force. He stated that he knew that "everything" was supposed to be sent to the OKBOMB Task Force, and he had no explanation for why this particular insert had not been sent.

3. Defense Exhibit 11

Defense Exhibit 11 is a 1-page insert provided by the Kansas City Field Office. In the insert, a confidential informant provided information on October 10, 1997, about individuals other than McVeigh and Nichols who the informant described "as persons behind the scenes of the Oklahoma City bombing." The defense stated that it never received this information during the trial.[53] Kansas City located this document as part of the second wave after receiving a telephone call from FBI Headquarters on May 16, 2001, directing Kansas City to provide all informant serials bearing the Oklahoma City case

[53] McVeigh was convicted in August 1997, prior to the document's creation.

number. The FD-209 contains the OKBOMB case number and a 266G-0 number, which is Kansas City's domestic terrorism miscellaneous file.[54]

According to the Kansas City Assistant SAC (ASAC), the original of the insert should have been maintained in the informant's file and a copy sent to the OKBOMB Task Force. In addition, a copy of the insert should have been maintained in the Kansas City OKBOMB Auxiliary Office file and the Kansas City 266G-0 file. Because a copy could not be located in either the Auxiliary Office file or the 266G-0 file, the ASAC concluded that copies were never created.

The special agent who prepared the insert explained to the OIG that his normal practice would have been to prepare the insert, put the original in his confidential informant's file, and send a copy directly to the OKBOMB Task Force along with a transmittal EC or airtel. When asked if he recalled sending this particular insert to the OKBOMB Task Force, the agent said that "part of me thinks I did" send the material. The agent said he only prepared one insert for the OKBOMB case. Although he said he typically would have sent the insert directly to the OKBOMB Task Force, the agent speculated that he could have sent the transmittal EC to the employee who maintained confidential informant files in Kansas City and asked her to send a copy of the insert along with the transmittal EC. The agent said it was possible that the administrative employee failed to send the insert to the Task Force.

The confidential files clerk told us that she did not recall this particular insert. She said that her normal practice was to take copies of the document to the rotor for the squads handling the cases listed on the FD-209. She said that she was not responsible for filing the documents or sending them to the Office of Origin.

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[54] The "0" (zero) files are essentially miscellaneous files relating to particular crime categories. They contain complaints, ECs, or other information regarding matters that the office does not then intend to investigate. The supervisor may decide not to investigate the matter because it does not meet the standards for opening a case or because the information was too vague to be investigated.

4. Defense Exhibit 12

This 2-page FD-302 from the Philadelphia, Pennsylvania, Field Office memorializes an interview conducted on June 14, 1996. The individual interviewed was associated with militia members but stated that he had no information about the bombing. The document could be a copy because it bears no agent initials. The agent who drafted the FD-302 said that he recalled the interview, and he recalled initialing the FD-302 because it had been returned to him for review and signing in an unusually expeditious manner. However, he did not specifically recall what happened after he signed the document. He could only speculate that he followed standard procedure, which was to return the signed original, copies, and a transmittal letter to his supervisor.

5. Defense Exhibit 13

Defense Exhibit 13 is a 1A envelope that contained a letter dated April 18, 1995, from an inmate at the Federal Correctional Institution in Raybrook, New York. The letter was provided to the FBI on April 21, 1995. The 1A envelope and its contents appear to be originals. In the letter, the inmate stated: "No good news to report from here, except the federal building bombing in Oklahoma City. My people do good work, and it will continue until the United States government is destroyed…."[55]

The case agent who worked on OKBOMB for the Albany Field Office told the OIG that prison officials brought the letter to the attention of the FBI because the letter mentioned the Oklahoma City bombing. The case agent said that the inmate had psychological problems and that the letter had a total "disconnect" to the OKBOMB investigation. The agent stated that just because a "lunatic" made a comment that "his people do good work" and referred to the Oklahoma City bombing did not mean that the information was connected to the investigation of the bombing. He stated that the letter should not have been in the Albany Auxiliary Office OKBOMB file and, instead, should have been filed in the "zero file." The agent stated that he made the decision not to send it to Oklahoma City. He said that the FBI hires professionals who are supposed to be able to think and make judgment calls.

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[55] Because of other information that was disclosed pretrial, the defense knew about the inmate witness and knew of the letter, although the letter itself had not been disclosed.

6. Defense Exhibit 14

Defense Exhibit 14 consists of a 1-page FD-302 concerning an April 26, 1995, interview conducted by an agent from the Springfield, Massachusetts, Resident Agency. The document contains no markings other than the Boston serial number. We found another copy of the same document in the Auxiliary Office files sent in by Boston to Oklahoma City in 2001. That document had an original signature but also red index markings, which are usually found only on copies. The Boston Division OKBOMB case agent told the OIG that the Resident Agencies were responsible for sending OKBOMB material directly to the OKBOMB Task Force. He believed that both of the documents were copies even though one contained an original signature.

The agent who drafted the FD-302, however, told the OIG that for OKBOMB, the Resident Agencies in the Boston Division followed a different procedure than normal. He stated that the Resident Agency agents sent all OKBOMB material to Boston, which was responsible for sending the material on to the OKBOMB Task Force. He also stated that it was his practice to only sign the original. The agent theorized that the Boston rotor mistakenly placed index markings on the original and placed both the original and the copy in the Boston Auxiliary Office file without sending anything on to the OKBOMB Task Force. Despite numerous attempts, we were unable to contact the former Boston rotor.

7. Defense Exhibits 16 and 17

Defense Exhibits 16 and 17 are duplicates – a 5-page FD-302 pertaining to an interview conducted on May 5, 1995, in Lafayette, Indiana. Exhibit 16, an uninitialed copy, was found in the materials sent by Indianapolis to Oklahoma City in 2001. Exhibit 17, which bears the agent's original inked initials, was found in the material sent from Detroit to Oklahoma City in 2001. In claiming that the government must have acted intentionally, defense counsel asserted that it was unlikely that the same document could be withheld by two different field offices without it being an intentional act.

The lead for this interview was likely sent by the Detroit Division rather than the OKBOMB Task Force, and it was directed to the Indianapolis Division. Our investigation suggests that the Indianapolis Division sent the original FD-302 to Detroit without sending a copy to the Task Force and that Detroit mistakenly filed the original in its Auxiliary Office files, also failing to send either the original or a copy of the FD-302 to the Task Force. Both offices

apparently mistakenly assumed the other would send the document to the Task Force but took no action to verify their assumptions.

The Indianapolis agent who conducted the interview did not recall anything specific about the processing of the FD-302. Based upon his understanding that the FD-302 found in Detroit's files is probably the original, the agent theorized that he probably sent the original to Detroit because the lead was set by Detroit.

The Detroit OKBOMB case agent stated that, assuming Detroit set the lead, it would have been standard procedure for the Indianapolis Division to send the original FD-302 to Detroit, as the requesting office. He stated that unless Detroit had specifically requested that Indianapolis send either the original or a copy to the OKBOMB Task Force, the interviewing agent in the Indianapolis Division may not have done so on his own initiative. The Detroit case agent acknowledged that Detroit should have serialized a copy of the FD-302 into its files and sent the original on to the OKBOMB Task Force. He theorized, however, that it was possible that the Detroit rotor who received the FD-302 from Indianapolis assumed that it was an initialed copy intended for Detroit's Auxiliary Office files and that Indianapolis had sent the original to the Task Force. Thus, the rotor may have mistakenly serialized and filed the original into Detroit's Auxiliary Office files.[56]

8. Defense Exhibit 19

Defense Exhibit 19 is a 6-page FD-302 that memorialized an interview conducted on May 11, 1995, in Los Angeles, California. The interview was of the girlfriend of an individual who the FBI at one time thought might be John Doe #2. The FD-302 appears to be an original and was found in the Los Angeles files sent to Oklahoma City in 2001.

A Los Angeles Division Associate SAC, an ASAC, and the Los Angeles OKBOMB case agent were all present for the interview. All distinctly remembered the interview but could offer little in the way of explanation about

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[56] In its May 14, 2001, response to the Director's request for an explanation as to its belated documents, the Detroit Division noted that the 5-page FD-302 reflected an investigation conducted in Indiana, implying that Detroit bore no responsibility for this document. Detroit apparently failed to give due consideration when drafting its explanatory memorandum as to how the original might have ended up in Detroit's files.

the disposition of the FD-302. The Associate SAC who prepared the document said that she would have forwarded it to the supervisor of the squad handling the OKBOMB matter. The squad supervisor told the OIG that he recalled an interview conducted by the Associate SAC and the ASAC, but he did not recall anything "out of the ordinary" about the FD-302. He said that he would have processed it like any other FD-302 with the original being sent to the OKBOMB Task Force with the requisite copies. He had no explanation for why it was not sent and remained in the Los Angeles Auxiliary Office files.

F. Ricardo Ojeda Documents

As part of their allegation that the government had intentionally failed to produce exculpatory information, the defense also pointed to information obtained from former FBI Special Agent Ricardo Ojeda, who during the OKBOMB investigation had been an agent in an Oklahoma City Division Resident Agency. In a May 2001 interview on the television show 60 Minutes II, Ojeda stated that he had drafted FD-302s that contained exculpatory information relating to the OKBOMB defendants and that he did not believe the government had disclosed these FD-302s.

The defense cited one of Ojeda's FD-302s in particular. This document was not one of the belated documents and had never been disclosed to the defense, even in 2001. The FD-302 concerned an April 14, 1997, interview Ojeda had conducted of a reporter. The reporter had previously interviewed an individual purporting to have knowledge of the activities of various militia members. The individual implied to the reporter that McVeigh and Nichols were either not involved in the bombing or at least had received substantial assistance from others. The defense asserted that this document was clearly exculpatory and had never been provided to them.

In response, the government claimed the FD-302 had not been disclosed because it had been written for a different case and that the case number on the FD-302 was not the OKBOMB case number. The government also asserted that the substance of the FD-302 had been disclosed to the defense in other documents and that the reporter who provided the information had worked closely with the defense attorneys.

Our investigation disclosed that the FD-302 was written in response to a lead generated in a different case, had a different case number, and therefore, in the normal course of document handling, would not have been placed in the OKBOMB files. Ojeda's FD-302, however, had made it to the OKBOMB Task

Force in Denver because an agent recognized that it contained information relating to OKBOMB. But, because the document was not serialized and filed properly when it arrived in Denver, it was not disclosed to the defense.

Ojeda told the OIG that the lead to interview the reporter was self-generated as a result of information provided by an informant. However, the file records show that a lead dated April 14, 1997, from Tulsa Special Agent Peter Rickel directed Ojeda to interview the reporter.

The case number on the lead was 266A-OC-57917, a case involving bomb threats, possession of explosive components, and alleged members of militia groups. (The OKBOMB case number is 174A-OC-56120.) The file number on Ojeda's FD-302 is also 266A-OC-57917. Ojeda told the OIG that he did not know why the OKBOMB file number was not on the document. He said that although he had no specific recollection, he felt certain that he would have instructed the typist to add the OKBOMB file number on the FD-302.

We interviewed the individual who typed the FD-302. She had a vague recollection of the case but had no specific recollection of the FD-302. She stated that Ojeda would normally provide either verbal or written instructions regarding the case number or numbers that should be placed on the FD-302. Pursuant to her normal practice, if two numbers were provided, she would place them side by side on the number line of the FD-302. She said that she did not recall any supervisor requesting her to change or delete a file number on an FD-302. The typist added that if a supervisor wanted a number changed, the supervisor would normally tell the case agent who prepared the FD-302.

Tim Arney, the supervisor of the Muskogee Resident Agency and Ojeda's supervisor, told the OIG that he "generally recalled" the lead that was assigned to Ojeda. Arney said that the decision as to what file number to put on an FD-302 is determined by the case agent (in this case Rickel) and the case agent's supervisor. Arney said that he did not change any file numbers in this case and would not have changed any file number on an investigation that was requested by another office because he would not be familiar enough with the case to make that decision.

The Tulsa Resident Agency Supervisor, James Hawkins, initialed the block stamp on the copy of the FD-302. Hawkins had no memory of the FD-302 and had no knowledge of how it got to the OKBOMB Task Force. Hawkins told the OIG that it would be appropriate for the lead and the corresponding FD-302 to not have the OKBOMB case number because the lead

was for a different case. He speculated that the FD-302 might have been sent to the OKBOMB Task Force because "someone probably saw" that the FD-302 contained references to OKBOMB.

On May 7, 1997, Oklahoma City Special Agent James Carlile forwarded Ojeda's FD-302 to the attention of "Denver Command Post SSA Mark White." The cover EC noted that the FD-302 was to be added to "binder number 3 regarding conspiracy videos." The OIG found Ojeda's FD-302 in that binder. Carlile, who is no longer with the FBI, told the OIG that he did not remember the circumstances surrounding this FD-302. He stated that Rickel was good about sending OKBOMB-related items to him and that he routinely forwarded anything that was in any way related to OKBOMB to the Task Force. Carlile said that he had no idea why the document was not given to the defense, but he speculated that the lack of an OKBOMB case number might have contributed to the problem.

Mark White, who was an OKBOMB Supervisory Special Agent, told the OIG that he put the FD-302 in the binder because of the faxed instructions from Carlile. He said that the information in the FD-302 was common knowledge, that the reporter had been working with the defense, and that the FD-302 had a different case number. He acknowledged that he likely read the FD-302 and saw the potentially exculpatory information contained in it. White reiterated that he filed the document only in the binder, rather than the FD-302 subfile, because those were his instructions from Carlile.

We do not believe that Carlile intended to dictate how the document was processed by the Task Force. White, who was a senior member of the OKBOMB Task Force, should have recognized that the document was discoverable and ensured that it was given to the discovery team. Although this was an error by White, the incorrect case number provides a stronger explanation for the error than the assertion that White intended to conceal exculpatory information from the defense.

V. OIG Analysis

During our interviews, we routinely asked FBI employees what they believed caused the belated documents problem. We received numerous suggestions, including the transition from FOIMS to ACS, confusion regarding the rules for retaining originals in the Auxiliary Offices, the volume of documents, chaotic conditions in the Task Force, and confusion over whether an item that appeared to be insignificant should be sent. The employees were

correct in recognizing that many factors contributed to the failure to disclose discoverable materials to the defense. We did not isolate one cause, one office, or one individual as being primarily responsible for the belated documents. What we did find was that problems developed when the FBI tried to handle the OKBOMB case, a case of unprecedented scale for the FBI, with a complicated and ineffective document management system.

The first question that we set out to answer was why discoverable documents had not been disclosed to the defense. The evidence shows that both the Task Force and the field offices bear responsibility for the failure to properly disclose discoverable material. Although some field offices continued to insist that they had sent "everything" to the OKBOMB Task Force, we believe that most field offices had items in their possession that had not been sent to the Task Force. One of the primary causes for the failure was the use of teletypes to send information. When the field offices relayed information to the Task Force on a teletype, the field offices believed they had completed the lead; however, because of FBI policies and discovery requirements, the Task Force asked for the information on FD-302s and inserts. The resulting effort to get the teletype information converted to an FD-302 or insert increased the opportunities for documents to be mislaid.

But there were plenty of other opportunities for documents to be mislaid as well. Documents were being routed from Resident Agencies to Headquarters Cities, and they were being sent to FBI Headquarters and many other field offices in addition to the OKBOMB Task Force. A variety of personnel were responsible for processing OKBOMB documents. Generally, the more personnel that are involved, the more opportunities there are for problems to arise as each person believes someone else has sent the document to the right place when in fact no one has. While FBI policies on handling documents exist, field offices have their own practices regarding document processing. The FBI relies heavily on manual systems to determine whether documents have been sent, yet practices in individual field offices undercut the effectiveness of manual systems.[57]

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[57] For example, many FBI employees would determine whether items had been sent to the OKBOMB Task Force by looking through the Auxiliary Office file and seeing if there were any originals in the file. However, as we found, originals can be hard to identify because employees do not universally follow FBI policies that distinguish originals from (continued)

Also, the FBI has a very complicated document management system that relies heavily on paper. The FBI requires agents to use numerous different types of formats – FD-302s, inserts, memoranda, ECs – and many different forms – FD-71s, FD-209s, and so on. There are also numerous locations for filing items associated with a case: documents go in one place, evidence another, and Elsur and confidential source material go in other locations. While there are valid reasons for separating these categories of items, it does involve more personnel, more forms, more procedures, and more opportunities for items to get lost. A substantial portion of the belated documents were confidential informant materials, which involve a different set of document processing procedures.

While acknowledging these contributing factors, the fact remains that over a third of the belated items appear to be "originals" that should not have remained in the possession of the field offices. The OKBOMB Task Force requested originals repeatedly, and adequate file reviews should have caught most of them. Even if the field believed the items were really copies masquerading as originals, they should have verified that with the OKBOMB Task Force. Therefore, individual agents and supervisors, both administrative and investigative, are responsible for failing to conduct adequate file reviews that would have revealed the presence of items that should have been sent to the Task Force. The failure is even greater given the number of requests made by the Task Force for the field offices to search their materials to find items that had not been sent.

The evidence also shows that documents were going astray at the Task Force as well as in the field. This is in contrast to the FBI's initial position regarding the matter and with the views of some OKBOMB Task Force personnel who stated to us that the field offices' failures to perform properly caused the problem. Again, we believe the root cause was unintentional errors by various individuals. Documents were placed in the wrong files, documents were mislaid, and some documents were simply lost, perhaps because they were sent to one of the numerous teams rather than being filed.

(continued)
copies. In addition, because some field offices routinely kept original 1As in their files, the presence of an original 1A in the OKBOMB files would not necessarily signal that something was amiss.

The Task Force document management system also was complicated and involved dozens of personnel, most of whom were on temporary duty and dealing with procedures that were unfamiliar to them. Because the discovery process relied exclusively on copying what was in specific subfiles, any misfiling meant that the item would not be disclosed.

Our investigation showed that Task Force managers did not recognize the systemic flaws in their own document management system. For example, Defenbaugh told us, "We tracked everything. We had to track everything." In fact the Task Force only tracked items once they were serialized by the Task Force and even then, documents could and did wind up in the wrong files with the result that discoverable documents were not disclosed timely to the defense.

Yet, we believe the investigative team could not be expected to devise foolproof ways to plug holes in its inadequate automated systems in the middle of a complex investigation. At the time of the OKBOMB investigation, the FBI as an institution was ill prepared to handle the document management component of such a large investigation. The computer system being used at the beginning of the investigation lacked essential document management components. As a result, the Task Force did not have adequate tools to manage the millions of documents coming from many different places. Although the Task Force attempted to implement quality control measures, the controls that were put in place were ad hoc and, given the volume and pace of documents generated, especially vulnerable to human error. Accordingly, even if the Task Force had recognized the flaws in its document management system, the solutions available to it at that point were limited.

We closely examined the evidence relating to whether the failure to disclose material was intentional. We believe the evidence shows that the failure to disclose material was not intentional. We found no direct evidence that government employees deliberately withheld exculpatory information from the defense. Furthermore, the circumstantial evidence supports such a finding, inasmuch as the information contained in the belated documents was insignificant or had been disclosed in a different form.

In a few isolated instances, agents decided not to send material to the OKBOMB Task Force because they believed the items were insignificant, irrelevant to the OKBOMB investigation, and not discoverable. Because the OKBOMB discovery agreement required disclosure of all FD-302s and inserts and because the OKBOMB Task Force had requested that *all* OKBOMB material be sent to it regardless of significance, the agents' decisions were not

correct. Nonetheless, we believe this evidence only reflected a few instances of incorrect judgment, not an intent to withhold exculpatory information from the defendants.

Law enforcement agencies will inevitably make some mistakes when handling so many documents. Without quality control measures in place to catch the errors, something is bound to go wrong. This is particularly true given the massive quantities of materials coming into the Task Force. And, despite all of the complexity, the OKBOMB document management system lacked an effective quality control or tracking system. Without universal serialization, the OKBOMB Task Force could not determine without substantial effort whether it was missing anything or, indeed, what it had. This problem should be substantially, although not completely, remedied with ACS, which does have such a feature. However, the feature has to be used. As we discussed, with OKBOMB even after ACS came online, the universal serialization was discontinued because of Task Force concerns that field offices were not following instructions regarding serializing documents, causing havoc for the discovery process.

ACS was an important upgrade from the previous FBI computer system, but on the whole it is antiquated and inefficient. It is difficult to use, crashes frequently, and cannot be used as an effective case management tool. The FBI has traditionally dealt with its poor automation system mostly by developing other smaller systems to handle specific tasks. Currently, the FBI is developing a new comprehensive computer system – Trilogy. Because of the limits of this investigation, we did not study Trilogy in depth to determine whether it will make sufficient changes to become an effective and useful system. In the Recommendations section of this report, however, we discuss more specifically some of the issues that we observed that should be taken into consideration as the FBI develops its next generation of automation.

Although our investigation revealed numerous problems with the FBI's handling of the documents in this case, we believe the failings in this case need to be placed in context. The OKBOMB Task Force and the field offices were dealing with what, at that time, was the largest criminal investigation ever undertaken by a United States law enforcement agency. The FBI processed millions of documents and items of physical evidence, conducted thousands of interviews, and managed an investigation that involved thousands of investigators and support personnel from the FBI and other agencies. Our

interviews showed immense effort by numerous FBI employees to conduct a successful and thorough investigation.

Furthermore, the nature of the belated documents should also be kept in context. Many of the documents at issue contain information that was disclosed to the defense in other documents prior to the defendants' trials. The belated documents also include considerable information that by any definition is insignificant and would not have aided the defense in its trial preparation. While this does not excuse the failings in this case, it provides context for our findings.

CHAPTER FOUR

EVENTS OF 2000-2001

In this chapter we explain how the belated documents came to be found. In the first section we set forth the chronology of events beginning in early 2000 through May 2001. The evidence shows that FBI officials were aware of a "potential" problem by the end of January 2001. By March 2001, Oklahoma City Division personnel knew that there were problems with the OKBOMB discovery and more senior OKBOMB personnel should have recognized the problem as well. Nonetheless, OKBOMB prosecutors, FBI Headquarters officials, and Department of Justice officials were not notified until May 7 and May 8, 2001, just a week before McVeigh's scheduled execution.

We conclude that senior FBI officials did not manage the review process appropriately. They waited far too long before notifying others, and they did not aggressively seek to resolve what they had been told was a potentially serious problem involving OKBOMB discovery. We analyze these officials' actions in this chapter.

We show a timeline of the chronology on the following page.

OKBOMB Timeline

1995	April 19	Bombing of Murrah Building
1996	December 15	Discovery deadline
1997	March 31	McVeigh trial begins
	June 2	McVeigh convicted [after appeals, execution date set for May 16, 2001]
	December 23	Nichols convicted
1998		
1999		
2000	February 18	Oklahoma City personnel request FBI archivist to examine storage of OKBOMB evidence
	May	Archivist [Shackleford] visits Oklahoma City and examines storage facilities
	December 20	Shackleford sends EC to field offices authorizing destruction of OKBOMB documents and requesting list of OKBOMB items to be sent to Oklahoma city.
2001	January 29	Vernon and Richmond examine files sent from Miami and Birmingham Divisions
	January 29	Vernon notifies White that some 1As appear to be originals; Defenbaugh and Teater also notified
	January 30	Richmond sends EC to field offices canceling authorization for destruction and requesting all OKBOMB materials be sent to Oklahoma City
	March 7	Conference in Oklahoma City attended by White and Defenbaugh
	March 15	Richmond sends second EC to field requesting all OKBOMB documents be sent to Oklahoma City
	March 29	E-mail from White to Defenbaugh discussing Buffalo documents
	April 30	First wave review completed
	May 7	Documents arrive in Dallas; Defenbaugh notifies FBI Headquarters
	May 8	Defenbaugh notifies Connelly
	May 9	Connelly sends documents to defense attorneys
	May 11	McVeigh execution postponed; OIG begins investigation; FBI Headquarters EC to field to send OKBOMB material to Oklahoma City with SAC certification
	May 12	FBI HQ EC to field requesting explanations for belated documents
	May 16	Deputy Director telephone call to all SACs
	May 18	FBI HQ EC to field to send OKBOMB material to Oklahoma City with SAC certification
	June 6 and 7	McVeigh petition for stay of execution denied
	June 11	McVeigh executed

I. Chronology

A. The Archival Process Begins

In 1998, after the conclusion of Nichols' trial, the FBI Task Force shipped the OKBOMB evidence, documents, and working files to the Oklahoma City Division. The materials were placed in a large warehouse for storage.

In early 2000, the OKBOMB case agent in the Oklahoma City Field Office became concerned that the warehouse used to store the OKBOMB materials was inadequate for long-term preservation because of the warehouse's insufficient heating and cooling systems. After speaking with his supervisors, the case agent sent an EC dated February 18, 2000, to FBI Headquarters requesting that an archivist examine the warehouse and make appropriate recommendations for long-term storage of the materials. In May 2000, FBI archivist William Shackelford and an employee from the National Archives visited Oklahoma City and examined the warehouse and storage of the OKBOMB materials. They agreed that the warehouse was unsuited for long-term preservation of the OKBOMB files. Shackelford told the OIG that beginning the archival process this early was unusual and that the process normally did not start until 25 years after a case was closed. Nonetheless, because of their concern about the long-term storage of OKBOMB materials, FBI personnel wanted to proceed with the preservation process.

Because Shackelford did not consider the OKBOMB archival process to be a priority, he did little on the matter for six months until December 2000. By EC dated December 20, 2000, Shackelford informed all FBI Field Offices that they were authorized to destroy *copies* of OKBOMB material that remained in the Auxiliary Office's files. The EC required that before destruction could take place, the field office had to ensure that the documents had been uploaded into ACS. The EC stated that original documents, material that had not been uploaded, and documents that had been uploaded but which had original writing on them were not to be destroyed. The items that could not be destroyed were to be itemized and the listing sent to Oklahoma City. We show the EC at Exhibit 12 at p. A-40.

Shackelford told the OIG that he initiated the destruction process because he had received inquiries from the field asking whether they could destroy copies of documents that had already been sent to the OKBOMB Task Force. Shackelford noted that although the archival process was being initiated earlier

than usual, destruction was a standard process, and it was initiated consistent with the FBI's administrative manual.

The EC was directed to the Administrative Officers in all field offices. Although four FBI Headquarters supervisors initialed the EC as approving it, including FBI Deputy Director Thomas Pickard, none of the supervisors were from Oklahoma City, and none were OKBOMB supervisors. Shackelford said that he consulted with administrative personnel in Oklahoma City regarding the EC and that they added language requiring the field offices to send a list of documents to Oklahoma City rather than the actual documents. The OKBOMB FBI supervisors, prosecutors, and document managers, as well as the Oklahoma City Field Office investigative supervisors, told the OIG they were not aware of this December 20, 2000, EC.

B. January 2001: Field Offices Send Material to Oklahoma City

In late January 2001, two field offices, Miami and Birmingham, sent a few boxes of OKBOMB material to the Oklahoma City Field Office. The Oklahoma City File Supervisor notified Financial Analyst Linda Vernon, who handled discovery during OKBOMB, and Peggy Richmond, an Oklahoma City Division Intelligence Research Specialist, that OKBOMB material had arrived and needed to be handled. Both Richmond and Vernon had dealt extensively with OKBOMB documents during the investigation and trial. Richmond and Vernon told the OIG that they were unaware of the December 20, 2000, EC, and this was the first time they had been informed that the field offices were sending in OKBOMB material.[58] Richmond said that she opened a box from one office and saw inside what appeared to be original 1As. A box from the other field office also contained original 1As. Richmond said she was immediately concerned because she did not believe the field offices should have retained any 1As. Vernon told the OIG that she did not recognize the 1As from her prior work organizing the OKBOMB discovery and thought that there was a "chance" that the 1As had never been disclosed in discovery.

Vernon and Richmond told the Oklahoma City Supervisory Administrative Specialist (SAS) that 1As had come in that they had possibly not

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[58] We observed that there seemed to be a notable lack of coordination between the individuals setting the archive process in motion, the archivist, and the individuals with the responsibility for dealing with the arriving paper.

seen before. The SAS instructed Vernon and Richmond to send the originals back to the field offices.[59] Vernon and Richmond said that they were concerned about the 1As and concerned about the instruction to send the 1As back to the field offices so they decided to contact the senior OKBOMB officials.

On January 29, 2001, Vernon sent an e-mail to Mark White, then a Supervisory Special Agent in the FBI Dallas, Texas, Field Office. White had previously been a Supervisory Special Agent on OKBOMB and had dealt with the OKBOMB discovery process.[60] Vernon stated in the e-mail:

> Headquarters has sent an EC out to all offices sayings [sic] it's okay to send Okbomb files to OKC. So the files are coming back with guess what Original 1As that I have never seen. 1As that all offices were suppose [sic] have sent in back in December 1996 or early 1997.… My concern is this is a big Discovery problem since we told the defense they have seen everything….
>
> Also Birmingham has the Time line Indexed in there [sic] file. Which also can up [sic] as a Discovery concern too. I don't think this will be a problem but I thought it was weird they had copies of it. I figure you can tell Danny [Defenbaugh] about this little problem. I have not contacted Sean [Connelly] about this.

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[59] The SAS told the OIG that even though she made a comment to that effect she did not mean it literally. She said that she was annoyed because she believed the field offices had not done what they were supposed to do in terms of "stripping the files" of duplicate material, that they were sending in material to Oklahoma City that should have been taken care of in the field, and that she wanted the field offices to do the work rather than Oklahoma City. The SAS said that when Richmond told her that there were items in the boxes that should not have been there and might not have been turned over to the defense, she immediately went to William Teater, the Oklahoma City Division Counterterrorism Squad Supervisor, and told him that people would have to be assigned to work on the matter full-time.

[60] In 1995 White was a special agent assigned to an Oklahoma City Division Resident Agency. Almost immediately after the bombing, he was assigned to assist in managing the thousands of leads that were being sent out. Gradually, he became responsible for overseeing "Lead World," the colloquial name for the team tracking the OKBOMB leads and the field offices' responses. White told the OIG that his role continued to expand during the OKBOMB investigation and that at one point he was supervising 86 separate investigative projects. He became a term Supervisory Special Agent during OKBOMB and stayed with the investigation until its completion in July 1998.

So what do you think would be best way to handle this situation?

This e-mail was also copied to William Teater, the supervisor of the Oklahoma City Division Counterterrorism Squad. Teater had also worked on the OKBOMB investigation but not as a supervisor.

White told the OIG that he spoke with Vernon and then with Danny Defenbaugh, who had been the Inspector in Charge of OKBOMB and who was currently the SAC of the FBI Dallas Field Office and White's supervisor. After speaking with Defenbaugh and relaying what Vernon had told him, White replied by e-mail to Vernon and Teater on January 29, 2001. White said that Defenbaugh agreed with White's assessment that the files should not be sent back to the field. In the e-mail, White instructed Vernon, Richmond, and Teater not to send any material back to the field offices and to check if there were duplicates of the 1As in the OKBOMB files. White wrote:

> In the near future, when it appears all Divisions who are going to send files into Oklahoma City have done so, SAC Defenbaugh and myself will come up to Oklahoma City and sit down with all of you, see what you have received and decide what to do to proceed. The NCIC checks and things like that are not of any concern … but photo's [sic] and other reports could be a big problem…
>
> Please keep me informed of the status of this. As I stated once the flow of reports/1A's slow down to where it appears all offices have forwarded their info, then we will come to visit.

On January 30, 2001, Richmond responded to White by e-mail:

> So far we only have 3 offices in and we will handle per your instructions. We will send you a weekly update to let you know how things are going[.]

C. January 30, 2001, Electronic Communication from Richmond to Field Offices

Richmond told the OIG that she was concerned that other offices might still be in possession of OKBOMB material that had not been forwarded to the Task Force. She said that she also was concerned that some office might destroy documents, as they had been authorized to do, before she and Vernon had an opportunity to examine them. Therefore, in an effort to get a complete

understanding of the magnitude of the potential problem, Richmond asked Teater for permission to send out an FBI-wide EC requesting offices not to destroy OKBOMB documents and instructing them to send material to the Oklahoma City Division. Teater approved the EC, although he requested that she check with Shackelford to ensure that he had no objection. Shackelford did not have any objections, but he told Richmond that she might be deluged with materials.

On January 30, 2001, Richmond sent an EC to all field offices instructing them to send all OKBOMB material to Oklahoma City.

> Due to review of files received thus far and the delicate nature of the case, Oklahoma City desires to evaluate files prior to their being destroyed. Oklahoma City is requesting complete files be furnished and Oklahoma City will handle destruction.

The EC was sent to the attention of the Administrative Officers in all the field offices with a notation that it was for *immediate* action.[61] Richmond said she sent it to the Administrative Officers because those were the individuals to whom Shackelford sent his EC. Because Richmond sent the EC to the

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[61] ECs have a line marked "Precedence." (See Exhibit 8 at p. A-23.) "Immediate," "Priority," and "Routine" are options that can be set out on the precedence line. Richmond said that she did not put a due date on the EC because she did not think about it, and Teater made no mention of it to her. In our interviews, we did not receive a consistent answer when we asked FBI employees what the deadline was for acting on an "immediate" EC. The FBI's investigative manual states that the "immediate" designator is to be used when the:

> addressee(s) must take prompt action or have an urgent need for the information. Immediate teletypes require approval by the SAC, division head or their designated representative (at FBIHQ) and must be given preferred handling throughout each area of dispatch and receipt. Immediate teletypes require prompt delivery to the appropriate receiving official.

The manual also states that "priority" is used when information is needed within 24 hours and "routine" is used when information is needed within the normal course of business. The FBI Manual requires that ECs sent to all FBI offices must be approved by the field office SAC. Teater did not seek the Oklahoma City SAC's approval for Richmond's January 30, 2001, EC.

Administrative Officers and because the file number on the EC was an administrative file number, the EC was handled in the field by administrative personnel rather than investigative personnel. (We show this EC at Exhibit 13 at p. A-44.)

D. White, Teater, and Defenbaugh Reactions to News about the Potential Problem

White told the OIG that at this point he was not particularly concerned about the documents. He said that he recalled Vernon talking to him about one original 1A that contained interview notes, which did not concern him because interview notes were not discoverable. He said that he also assumed the other material consisted of photographs although he acknowledged that Vernon did not identify them all as such. Even though his e-mail to Vernon noted that photographs could be a "big problem," White told the OIG that he was not particularly concerned about photographs because he assumed that they were probably photographs that OKBOMB had sent to the field offices. White also told the OIG that he was not concerned because he recalled the field offices had certified that everything had been sent to the Task Force prior to the defendants' trials. White said he was not aware that Richmond had sent the January 30, 2001, EC.

Teater told the OIG that he was not consulted about Shackelford's December 20, 2000, EC and did not see it until mid-January. With respect to Vernon's January 29 e-mail, Teater said that in late January or early February 2001, when he returned from a business trip, Vernon told him that she had sent him an e-mail about something that had come up, and in his absence she had contacted White. Teater told the OIG that a "flag went up," but he believed that based on the systems used in OKBOMB that they would have the material in question. He also said that his main concern was ensuring that White and Defenbaugh were aware of the problem.

Defenbaugh also said that he had not been consulted about the December 20, 2000, EC authorizing field offices to destroy documents and instructing the field to send a listing of all OKBOMB material to Oklahoma

City.[62] He stated that he also did not review the contents of Richmond's January 30 EC but he was aware of it and agreed with the idea behind it.

Defenbaugh recalled White telling him that Vernon had found some agent interview notes in one of the boxes a field office had sent. He said that he was not concerned because interview notes were not discoverable items. When asked whether he gave White any instructions as to how to handle the problem, Defenbaugh said:

> No, because it's archival process. I wasn't gonna worry about it, it didn't have anything to do with me.
>
> * * *
>
> It's the Oklahoma City Division, in fact, if anything, … I really [did] not have anything to do with it, they didn't give me a copy of it so they probably thought that, you know, this is kind of, this is all administrative to take care of these documents. It wouldn't have anything to do with me.

Defenbaugh, however, also said that he told White that "they better go through every bit of those items to make sure we don't have a problem there." When asked whether he gave anyone a timetable to complete the review, Defenbaugh stated that he had not.

E. February 2001

On February 2, 2001, White responded to Richmond's January 30 e-mail notifying him that three offices had responded:

> Great! When it appears you have gotten sent to you most if not all what you are going to get, we can discuss further any problems, such as the 1A's. SAC Defenbaugh and myself may end up coming to OKC to sit down with you, look at the material, and determine how we will proceed.

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[62] Defenbaugh said that he had not read the December 20, 2000, EC until our May 16, 2001, interview. Although Defenbaugh thought that he "probably" should have received a copy of the EC for informational purposes, he did not assert that the archivist erred by failing to seek his approval for the destruction.

(We show this series of e-mails among White, Vernon, and Richmond at Exhibit 14 at p. A-47.) White told the OIG that he assumed that they were not going to get in much more material because only three offices had sent material and other offices had responded that they did not have any OKBOMB material.[63]

1. Reviewing the Field Office Materials

In response to Richmond's EC of January 30, 2001, boxes of field office material arrived in Oklahoma City. Richmond and Vernon established a process to review the items in order to determine whether they had been disclosed to the defense. With respect to each item that fit into the categories of discoverable material (FD-302s, inserts, and most of the 1A material), Richmond, Vernon, and a few other support personnel checked ZyIndex, ACS and, to a limited extent, the discovery databases. Although Vernon had created a discovery database to track the documents disclosed to the defense, the database could not be easily used for these purposes because the database primarily relied on the OKBOMB serial number to track items, and the documents sent from the field offices did not have the OKBOMB serial numbers on them. Furthermore, the discovery databases contained only limited descriptive information about the documents turned over to the defense. Without an OKBOMB serial number on the document, the only practical way to determine whether the defense had received the document was to find the document and a corresponding serial number in other OKBOMB databases.

The easiest method to find FD-302s and inserts was to use ZyIndex. The searcher, usually Richmond, entered key information from the questioned document, such as the name of the author or even phrases from the document itself. If there was a "hit," Richmond would check the document in the database to determine if it matched the questioned document. If there were no hits, the material was put in a "problem" box. ACS was used to track 1As, 1Bs, and

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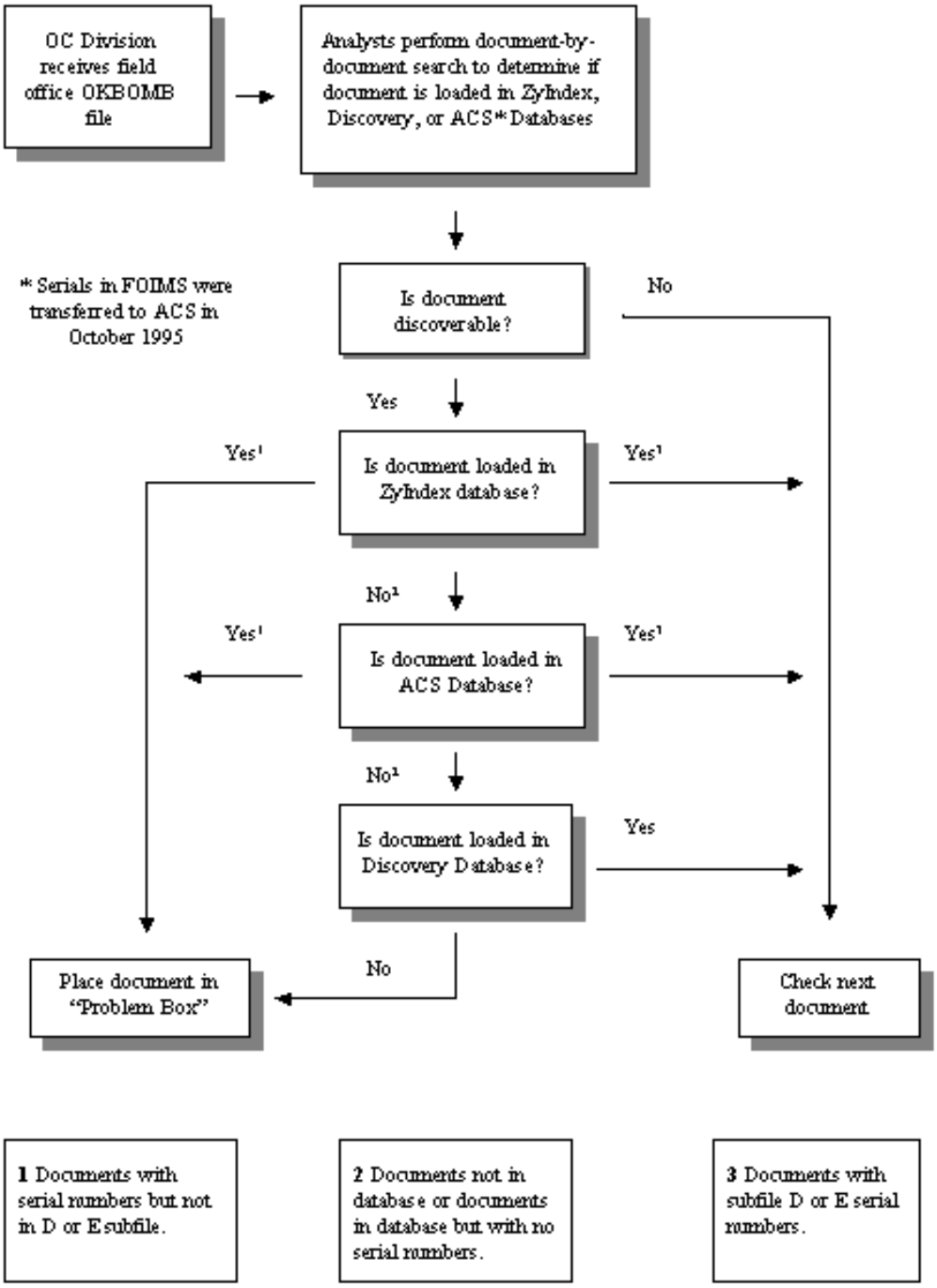
[63] In actuality, White had no basis to make this assumption. He had not reviewed the December 20, 2000, EC and so he was unaware that the EC did not set a deadline for the field offices to provide the material to Oklahoma City. Therefore, the fact that only three offices had sent material should not have been interpreted to mean that the other offices did not have responsive material. Furthermore, by February 2, only 11 offices had responded in any fashion to Richmond's lead.

1Cs.[64] Vernon dealt with the problem box and did a final search, usually using her discovery databases, to try to find the item. Vernon and Richmond told us that several different databases and employees were used because they wanted to try different ways of describing a document to see if it could be found. A flowchart of this process is shown on the following page.

[64] Vernon said that ACS was used to search for 1As, 1Bs, 1Cs because the Oklahoma City Division only had a few computers with ZyIndex and because the employee who was searching for the 1As, 1Bs, and 1Cs was more familiar with ACS than ZyIndex.

Process Used in 2001 to Identify FD-302s and Inserts Not Previously Disclosed to OKBOMB Defendants



Vernon and Richmond told the OIG that they continued this process through February 2001. By the end of February, 31 field offices had responded to Richmond's EC by sending OKBOMB materials to Oklahoma City.

2. Reactions to the February Review Process

Vernon told the OIG that she knew they definitely had a problem in February when they had the first 1A that could not be located in the OKBOMB databases even after repeated attempts to locate it. When asked whether in February she realized the depth of the problem, Vernon stated:

> At the very beginning I'm thinking, there's a potential of a problem. As I, we're going through this more, my potential factor is creeping higher and higher. I feel like the thermometer going up.

Teater told the OIG he inquired regularly as to the status of the project, and Richmond described Teater as supportive, stating that he checked to see if they needed more resources. Teater said that he asked Vernon and Richmond if they found anything that indicated that perpetrators other than McVeigh and Nichols were involved. He said that when Richmond told him no and told him what they were finding, he was less concerned because it appeared the information was not new information but related to information the Task Force had previously seen, such as John Doe # 2 material.[65] Teater acknowledged, however, that he recognized that it was something of a problem that Task Force personnel had not seen the material before, and it was information that had to be disclosed to defense counsel. When asked what steps he took to deal with the problem, Teater told the OIG that Vernon and Richmond spoke with White and Defenbaugh periodically. They were told that White and Defenbaugh would come to Oklahoma City and review the materials after all the divisions that were going to send files had done so. Although vague on the details, Teater thought he had some conversation with his "front office," most likely Oklahoma City Division ASAC David Cid, to the effect that Richmond was busy searching through materials that OKBOMB personnel had not seen before. Richmond told

[65] As discussed previously, the FBI spent considerable effort trying to identify an individual initially believed to have accompanied McVeigh when McVeigh rented the Ryder truck used in the bombing. The second individual was referred to as John Doe # 2.

the OIG that it was her impression that Teater believed White was handling the problem.

Defenbaugh did not take any steps to actively manage the review process in February. Defenbaugh said he did not recall even receiving information about the status of the review project in February. The OIG asked Defenbaugh:

> Q: Why didn't you call out to, or get Mark [White] to call out to find out how things were going between …
>
> A: It wasn't his job or my job. It was Oklahoma City's job. It was still the archival process there.

White also said that he was not involved in the project during February and that he did not learn anything more about the problem until March. We asked White what steps he took to resolve the potential problem that discoverable materials had not been properly disclosed to the defendants. White said that he took no specific action other than letting Richmond and Vernon's review process run its course. White said that he did not set any deadlines for completing the file review because it was not his place to set deadlines. He added that he knew Vernon and Richmond were responsible people, and they would get it taken care of immediately. White told the OIG that the fact that Richmond had e-mailed him, rather than Teater e-mailing Defenbaugh, led him to believe the situation was not particularly serious. He said that if it was a major issue then Teater should have notified Defenbaugh. White said that he was acting more as a "consultant" to the OKBOMB case and that it was Teater's responsibility to determine the seriousness of the problem.

In our second interview with White, he again asserted that he was not in the chain of command for what he considered to be an administrative issue and therefore had no responsibility for supervising it, for making decisions, or for ensuring that it was completed timely. White argued that the individuals who should have been responsible for supervising the project were Oklahoma City personnel – the OKBOMB case agent, Teater, and Oklahoma City SAC Richard Marquise – as well as Defenbaugh.[66]

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[66] White also told us that either Vernon or Richmond informed him that they had been told by Oklahoma City personnel that they should not contact White and Defenbaugh. White cited this as further evidence that he was not "in the flow" for handling this problem. We questioned Vernon about this issue. Vernon told us that she had been told by the same SAS (continued)

Richmond, however, told the OIG that she spoke with White a couple of times during February. He asked her if she was finding any information in the documents that was different than what they had seen previously. Richmond said that she told him no but that they were not able to establish that they had disclosed the documents. She said that she did not press the issue with White because she was aware that he and Defenbaugh were scheduled to travel to Oklahoma City early in March. She said that she thought they would be able to personally view the documents during that visit and take appropriate action.

F. March 2001

1. White and Defenbaugh Travel to Oklahoma City

Vernon, Richmond, and Teater told the OIG that they expected White and Defenbaugh to examine the problem more thoroughly in March 2001 when White and Defenbaugh were expected to come to Oklahoma City for a conference relating to OKBOMB. On March 7, 2001, White and Defenbaugh arrived in Oklahoma City. [67] While the meetings generally dealt with the FBI's plan to try to interview McVeigh, White and Defenbaugh discussed the problem documents with Vernon and Richmond.

Richmond and Vernon showed White boxes of material they had received from the field offices. By March 7, 31 field offices had responded by sending files to Oklahoma City. White said that he was shocked at the number of boxes that had come in because he thought the field offices would not have kept so much OKBOMB materials. White said he recalled Richmond and Vernon showing him a half-filled box of material, primarily consisting of material from the desk of Larry Tongate, a Kansas City agent who had worked extensively on OKBOMB. White told the OIG that he was not alarmed by seeing the "problem box" because he did not believe original material would be in Tongate's desk. White said Vernon and Richmond told him that they were continuing to do

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(continued)
who told her to send the evidence back to the field offices that she had jumped the chain of command by sending the January 29, 2001, e-mail to White. Vernon said that she considered this an "ego" issue by the SAS and that she sent the e-mail because she believed White and Defenbaugh needed to know about the potential problem.

[67] Although OKBOMB prosecutor Sean Connelly was invited to the conference, he did not attend.

research and that they still had not resolved the question of whether the material had been disclosed to the defense. White acknowledged, however, knowing that they had done extensive work already and that he did not know or inquire what other research was going to be done. He also did not inquire as to how long it was going to take to do the additional research. White told the OIG that after this he was "back out of the picture again. I'm in, I'm out, I'm in, I'm out." White said that he showed Defenbaugh the box of materials before they left Oklahoma City, and then "I'm back out again."

White said that he did not speak to Teater about the problem documents while he was in Oklahoma City because Teater was out of town. White also did not say anything to the OKBOMB prosecutor, Sean Connelly, even though he spoke with Connelly both before and after the conference, because "it wasn't my place to do that."

Vernon told the OIG she showed White three boxes of material: a box of evidence, a box of items to be rechecked, and a "problem box" full of documents. The "problem box" contained items that she and the other searchers had already spent considerable time and effort trying to find in the OKBOMB files, without success. Vernon said that while there were some materials from Tongate in that box, most of the material was from other locations. Vernon told the OIG that she knew by that time that they had spent a considerable amount of time researching most of the documents in the "problem box" without success. She said that she told White about their efforts and that while it was possible they might find some of the items at some point, she did not believe that it was likely.

Neither Richmond nor Vernon recalled showing Defenbaugh the "problem box," and they believed that he had returned to Dallas early. Defenbaugh, however, told the OIG that he recalled seeing a half-filled box of "problem" material. He also said that Richmond or Vernon told him that they were still doing research on the material. Defenbaugh said that he was not surprised that some items had not been found because they had had continual problems throughout the OKBOMB investigation trying to locate items in the Task Force files.[68] On the other hand, Defenbaugh did acknowledge being somewhat concerned about the documents. We asked Defenbaugh:

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[68] As Defenbaugh told us, "We had this Technical Analysis Group, at one time there must have been 25 people just trying to find stuff for us to get ready for trial or for leads or (continued)

Q: Did this cause you any concern when she gave you this information?

A: Yes. I was, we could have a problem here.

Q: And what instructions did you give her?

A: Try to look for everything as fast as she possibly could and to let me know.

Q: Did you set any timetable for her, to report back to you at a certain date?

A: No, I did not.

Defenbaugh also said that he did not notify anyone about the problem at this time.

> And the last thing I want[ed] to do and I hope that anybody could appreciate that, is cry wolf, and then, well it doesn't matter, it didn't have to be turned over anyway. So, [I] wanted to make sure that there was a full complete and thorough search before, and that I reviewed those items and Mark and I reviewed them before I made any advisements that, wait we got a problem here.

Both Vernon and Richmond said that nothing was resolved following the March meeting. They believed that White would come back to Oklahoma City at some later date to conduct a more thorough review, and they would continue their review of the documents until they had finished examining everything the field offices sent.

2. Richmond Sends Another Electronic Communication to the Field

Sometime after the March conference, Richmond learned that, despite her January 30, 2001, EC, field offices continued to retain OKBOMB materials,

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(continued)
for, especially for discovery." This highlights serious issues with the FBI's case management system that so much effort has to be spent trying to locate items that are supposedly in its files.

including 1Bs.[69] Therefore, on March 15, 2001, Richmond, with Teater's approval, sent another EC for immediate action to the Administrative Officers requesting that *all* OKBOMB materials be sent to Oklahoma City.

> Oklahoma City by teletype dated 11/14/96, and Director teletpye [sic] dated 11/15/96, requested all Field Offices and Legats to forward all documents and evidence pertaining to this case to the OKBOMB Command Post and on 1/30/01, Oklahoma City again requested all files, etc, relative to the OKBOMB investigation … be forwarded to Oklahoma City. Review of files received thus far indicates some offices are still in possession of 1A's, 1B's, 1C's or Elsur material.
>
> *Due to extremely sensitive nature of this case and the fact that Oklahoma City is receiving evidence that should have been forwarded to this office in 1996*, it is requested that all offices immediately conduct a search of your offices for any additional documents, sub files, etc., relating to 174A-OC-56120 that may have been previously missed. Please forward any 1A's, 1B's, 1C's Elsur, or 56120 that may have been previously missed. Please forward any 1A's, 1B's, 1C's, Elsur, or <u>ANY OTHER MATERIAL</u> still in your possession pertaining to OKBOMB to the Oklahoma City Division ….
>
> It is also requested that after this search is conducted, Oklahoma City be furnished name of individual in your office responsible for certifying that all documentation has been transmitted to Oklahoma City.

(Italics added; underline in original.) (We show this EC at Exhibit 15 at p. A-50.)

Richmond said that after sending the March 15 EC she spoke with White by telephone to tell him that more "stuff" was coming in. She said that White

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[69] Richmond said they discovered the 1Bs because included in the box of materials sent in by one field office was a form indicating that it had 1B evidence. When Vernon and Richmond checked the OKBOMB databases, however, they could not find that OKBOMB had ever received the 1B evidence. Richmond said that she became particularly angry and decided to send yet another EC.

asked her again if there was anything that would make a difference to the case but that he did not offer advice, guidance, or instructions. White told Richmond that he would come back to Oklahoma City and review the materials again at some point. Richmond told the OIG that Oklahoma City personnel always contacted White; White did not initiate contact with them. Richmond said that it was her impression that the supervisors were not "overly concerned" about the situation. She thought that Teater was not concerned because he believed the same as she did, that Defenbaugh and White were handling the situation. Richmond told the OIG that in her opinion, in March they had examined the documents sufficiently to indicate they did have a problem and that the documents likely had not been disclosed to the defense.

Field offices responded to Richmond's March 15 EC by sending in more material. Indeed, three offices reported to the OIG that even though they had sent material to Oklahoma City in response to the January 30, 2001, EC, they found additional material when they looked again in response to the March 15, 2001, EC.

3. Communications with Oklahoma City SAC and FBI Headquarters

In addition to White, Defenbaugh, and Teater, the SAC of the Oklahoma City Division, Richard Marquise, also received some information regarding Vernon and Richmond's work.[70] In the Oklahoma City Division, supervisors sent weekly summaries of their squads' activities to Marquise. In a March e-mail summarizing the week of March 12-16, Teater noted:

> Richmond advised all but six offices have sent their remaining OKBOMB files to OC. The six offices are preparing to ship their records to OC in the very near future. Hundreds of items have been cross-checked against what is in file however, there are many items which the status is yet to be determined.

In a March 23, 2001, e-mail, Teater informed Marquise:

> OKBOMB files are now in from each Field Office which re-re-checked their files for serials, 1-a, 1-b, 1-c. The support

[70] Marquise was not the Oklahoma City Division SAC during the OKBOMB investigation. He arrived in March 1999.

> employees have completed a considerable amount of work but there are numerous items of concern which are being checked thru the various data bases. Another EC was sent to all offices asking them to check in a number of places to ensure everything has been sent.

Marquise told the OIG, however, that he did not learn about the problem with the OKBOMB documents until May 7, 2001. When showed the March e-mails from Teater, Marquise acknowledged that he probably read them. He stated that he obviously did not appreciate the significance of what Teater was discussing, and he therefore took no action in response. He said that it was possible that he thought that Teater was referring to the only OKBOMB project of which he was aware, getting OKBOMB material to the Oklahoma City District Attorney.[71] In his written response following a review of the draft report, Marquise also stated that the e-mails should be put into context, specifically that the portions referenced were part of lengthy e-mails sent by Teater describing his squad's activities. Marquise noted that the e-mails did not make any reference to discovery or that information was being received in Oklahoma City that had not been disclosed to the defense.

Oklahoma City ASAC David Cid also received Teater's e-mails.[72] Cid told the OIG that he discussed the OKBOMB documents project with both Teater and Richmond at various times but that he believed they were working on finding documents for the District Attorney. Cid stated that "no one ever framed the issue in terms of, we have a problem with discovery in the original trial. And I never came to grips with that as, as an issue."

The OIG investigation disclosed that FBI Headquarters also received some indication that there was a problem with the OKBOMB documents as early as March 2001. Supervisory Special Agent Keith Moses, who was assigned to the Domestic Terrorism Operations Unit in FBI Headquarters, had questioned White and Teater by e-mail regarding allegations made by a journalist that the FBI had not adequately considered evidence of foreign involvement in the Oklahoma City bombing. White sent an e-mail response to Moses providing background

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[71] At that time, the Oklahoma City District Attorney was considering whether to prosecute Nichols on state charges.

[72] Cid has since retired from the FBI.

information about the journalist, and Teater followed up in a March 26, 2001, e-mail to Moses and White agreeing with White's response. Teater also wrote:

> Also, FYI all analysts and support employees, familiar with OKBOMB, are busy providing support to the state prosecution team and handling the receiving of reporting and other items such as 1as, 1bs, 1cs, etc. *not previously forwarded to OC* even though this was requested on several occasions.

(Emphasis added.)

Moses told the OIG that he "just missed" the reference to the OKBOMB documents. He said that when he responded to the e-mail that his focus was on the issue regarding the journalist. He said that it was entirely possible that he might not have even read the last part of the email that said "not previously forwarded." He explained that often he is so busy responding to different e-mails and correspondence that he quickly reads the message to determine the substance and then responds. He said that if he had fully read and digested the contents of the e-mail that the logical question for him to ask would have been, "what documents are you talking about?"

Moses said that he had no discussions with White, Teater, or Defenbaugh concerning OKBOMB documents. Although he said that he was vaguely aware that administrative personnel were working on some project, he thought the project was related to the state prosecution of Nichols, and he said he was totally unaware of any problem with the OKBOMB documents.

4. Vernon Tells White about Buffalo Documents

During March, Vernon reported issues about the documents to White, who reported them to Defenbaugh. In a March 29, 2001, e-mail, White advised Defenbaugh:

> Linda Vernon advised Buffalo Division, as part of what they recently sent, included FD-302's from Rose Woods, Carl LeBron and William McVeigh, which Linda states were not in the OKBOMB file. She is continuing to try and research this issue. She advised she doesn't think the contents have much information of importance, but because of who they are, not having them prior to this, and not having provided them the attorney's [sic] could be a problem.

White told the OIG that this e-mail was probably the result of a telephone call from Vernon. He did not recall Defenbaugh's response to the e-mail. In our initial interview, White said that because of the names of the individuals involved that he recognized that it was serious and "red flags should be flying at this point." When we asked what he did in response, White said he passed the information to Defenbaugh and "from this point again it becomes, I'm in, I'm passing information, I'm back out." In our second interview with White, however, he said that he construed Vernon as meaning that she was concerned about only three documents that might not have been disclosed. White said, "She's right now, almost batting 100, and I'm thinking she's going to finish batting 100 here." Accordingly, he said he was not concerned about the timetable.[73]

White also said that the e-mail made him think that he needed to have Dallas Field Office personnel check to see if Dallas had any OKBOMB files. White said that even though Dallas had previously sent material into Oklahoma City in response to Richmond's ECs, when they searched again they found three more files on his squad's rotor. White said that he did not hear anything more until April 30, 2001, when Richmond advised him that their review was complete.

Defenbaugh said that he did not recall his reaction to White's e-mail, but he did not believe that he set any timetable for completion of the project. He said that he did not want to "harass" Vernon and Richmond because they were very diligent workers. In a second interview, Defenbaugh stated that it was Oklahoma City's responsibility to supervise the project because the files were in Oklahoma City, it was an archival project, and Oklahoma City had started the process. Defenbaugh further stated that his responsibility only "kicked in" when it was clear that an FD-302 had not been timely disclosed. Because he was told by Richmond and Vernon that they were continuing to research the documents, he did not feel that the issue was his responsibility. Defenbaugh acknowledged, however, that he probably should have called Marquise after receiving White's March 29 e-mail. He said that he did not know why he did not make the call.

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[73] By this time, Richmond and Vernon had hundreds of documents that they had been unable to locate in the OKBOMB files. Accordingly, it is unlikely that Vernon would have told White that only three documents could not be located. Both Vernon and Richmond denied stating or implying that only three documents were at issue.

Defenbaugh said that he did not recall receiving any further information about the review project until the end of April.

G. April 2001: The Review Process Continues

Teater continued to inform Marquise of the status of the effort to review the OKBOMB material. In an April 6, 2001, e-mail, Teater stated:

> IRS P. Richmond advised they should finish reviewing all material regarding OKBOMB by the end of next week at which time she will advise the nature of 302s, inserts, Elsur material, etc. which was never forwarded to OC. A report will be made and forwarded to SAC Defenbaugh-DL. SAC, OC will be briefed before the report is forwarded to DL.

Teater's e-mail dated April 20, 2001, stated:

> OKBOMB documents will be further reviewed in the upcoming week to determine which documents OC has not seen.

Teater's e-mail dated April 27, 2001, noted yet another problem:

> OKBOMB review of records received from other Field Offices continues. Many of the files sent to OC have classified documents in files not properly marked. The classified documents are being pulled and placed in a classified file as was done in the past and as per procedure.

Marquise told the OIG that, like the other e-mails, he did not recall reading them, did not recognize their significance, and did nothing in response.

> Q: Do you think that this first line [of the April 6, 2001, e-mail] should have caught your attention?
>
> A: Yeah. It probably should have. And again, obviously hindsight's 20/20.
>
> Q: Okay.
>
> A: In looking at that, I may have focused only on that last sentence. I'll be briefed before anything sent to, to Dallas. I never got a briefing. And that was a month or so before I found out the conversation that kind of, as I said even, even when Bill [Teater] called me, uh, from De--, from, uh, Charlotte on the 7th of May, it didn't really register to me

> until, and, and maybe that's my fault. I got a lot of things going on here and there's lots of supervisors that ask for your attention and ask for things. And, that's no excuse. I mean, obviously if I'm, I got a responsibility to do things. I only wish it had been framed.
>
> * * *
>
> But it was never framed for me at the beginning saying this is what we're doing and this is what we're getting. And obviously it didn't click, didn't click with me.[74]

As reflected in the e-mails, during April 2001, Richmond, Vernon, and various other personnel continued their analysis of the materials the field offices were sending. The analysis was completed at the end of April.

White e-mailed Defenbaugh on April 30, 2001:

> I spoke to Peggy Richmond this morning. She advised their review was completed. They have one full and one half full legal size box, and one full Xerox box of FD-302's and inserts. These are documents that cannot be matched against anything they have found. I asked Peggy about the Rose Woods, Bill McVeigh FD-302's and she stated she did not think the information was matched with other documents. (I do not know what these reports contain)
>
> Peggy has asked for us to go to Oklahoma City to review the documents. I know you are out of town this week. I am in Charlotte next week. When do you want to do this?

White told the OIG that he did not recall Defenbaugh's response and that Defenbaugh was probably out of town when he sent the e-mail.

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[74] In his written response following his review of the draft report, Marquise stated that in his opinion the April 6, April 20, and April 27 e-mails did not in any way indicate that there were discovery problems with the OKBOMB material. He also reiterated that he was not briefed even though the April 6 e-mail stated that he would be. Marquise also wrote that his primary point was that the discovery problem issue had not been framed for him, not that he was too busy.

Richmond recalled calling White because she was concerned about McVeigh's approaching execution date of May 16 and she thought that White and Defenbaugh needed to review the documents soon. She called White to see when he would come back to Oklahoma City. She recalled there being some issue that prevented him from traveling to Oklahoma City at that time. Richmond said she asked Teater if they should just send the documents to Dallas, and he agreed.

Teater also told the OIG that he expected White and Defenbaugh to return to Oklahoma City to review the documents. He said that Richmond and Vernon had told him that White and Defenbaugh would return after all the field offices had responded and sent in their files. By the end of April, Teater said he became concerned about the approaching execution date. He called White to find out when they were returning to deal with the OKBOMB material. According to Teater, White said they would not be coming back, and Teater told White that they would send the material to Dallas. White responded that he would be at a training conference but that his "relief" would get the documents to Defenbaugh. Teater instructed Richmond and Vernon to make copies of the documents and send them to Dallas.

White said that he did not recall specifically talking to Teater but agreed that it would have been a "logical thing" for Teater to have called him.

H. May 2001: Notification of Prosecutors, FBI Headquarters, and Department of Justice

1. Monday, May 7, 2001

The documents arrived in Dallas on Monday, May 7, 2001. Teater's e-mail to Marquise summarizing the week of May 6 - 12, 2001, stated:

> OKBOMB documents are being copied and sent to SAC Defenbaugh-DL for review. These are documents which never reached OC or DN command posts despite at least 6 requests for same. Two support employees are working authorized overtime this evening and tomorrow to complete the review and copying process and forward same by 5PM Saturday to SAC-DL.

Defenbaugh said that he reviewed the documents when they arrived in Dallas on May 7 and quickly saw that they contained FD-302s, which were to

have been turned over during discovery. He said he realized at that point that they had a problem.

On the same day, he contacted White, who was in Charlotte, North Carolina, for a conference. Late that evening, White contacted James Jarboe, the FBI Headquarters Domestic Terrorism Section Chief, who was at the same conference, and told him that Defenbaugh had received two to three boxes of documents related to the OKBOMB investigation that may not have been turned over to the defense. Other than the e-mail to Moses in late March, this was the first notification to FBI Headquarters of the problem. Jarboe told the OIG that White said Defenbaugh was so upset that he was almost ill. Jarboe said that he had the impression that Defenbaugh had just found out about the problem, but Jarboe said he did not ask any questions at the time about who knew what and when.

Late in the evening of May 7, 2001, Defenbaugh contacted Dale Watson, Assistant Director for the FBI's Counterterrorism Division, and briefly described the issue. Watson said that it was his sense from this conversation that it was not definite that the defense did not have the documents. However, he said that he realized at the time that it would be a very big problem if in fact there were documents that should have been turned over to the defense that never had been turned over. Jarboe said that he also telephoned Watson to inform him of the possible problem with the documents.

Defenbaugh told the OIG that he had not notified anyone before this point because he was concerned about leaks of information to the public. He said that they had experienced numerous leaks during the OKBOMB investigation and that he did not want to let anything out, "cry wolf," and then have the information about the documents leaked. He also said that he waited to notify anyone about the potential problem because he wanted to know the full extent of it. Defenbaugh said, "I wanted to be thorough and have everything and give the answer to somebody, here's the problem, here is how many problems you got." When we questioned Defenbaugh further about whether he should have notified OKBOMB prosecutor Sean Connelly earlier, Defenbaugh stated:

> No, I wasn't going to blow the whistle. If I, if I talked to prosecutors at that point, that would have been blowing the whistle and saying you have a problem, and I may not have had a problem. I didn't know I had a problem. And I sure didn't have all the answers. Let's think about this for a minute. Let's go back to January 29th and let's do another scenario and let's say

> that I called Sean [Connelly]. All right, and said, I found one agent interview note. I think we might have a problem here. What's gonna happen? What would have happened? You don't think that he would have called this building here [Department of Justice] that we're sitting in right now? And I guarantee you right now that that would have gotten to the press. And let's say then that it wasn't a problem. It was only the agent interview notes and out of all these hundreds of boxes everybody did right, and there was only duplicates and that's what they were supposed to have, and we found one agent interview note that wasn't supposed to be handed over anyway. Would that make me look like a fool? Yes, is the answer to that. So that, that's my, my thought on this.

Defenbaugh also said that he did not believe that there was any delay in the process because Richmond and Vernon were working diligently. However, at a different point in the OIG's interview, Defenbaugh stated:

> Yeah, I should have sped it up, no question about that. However, I wasn't gonna let him get executed either…. I wanted to make sure that we were right. If I was gonna blow the whistle and stop the juice from flowing, I was gonna make sure that we were right and I was thorough. And we were thorough as far as the items we got, as we could possibly be, that was my reasoning.

2. Tuesday, May 8, 2001

On Tuesday, May 8, 2001, a conference call was held with Defenbaugh, Teater, Section Chief Jarboe, and attorneys from the FBI Office of General Counsel to discuss the problem. Defenbaugh told them that over 700 documents were at issue, and he described the general nature of the documents. The participants did not discuss when Defenbaugh learned of the problem.

Defenbaugh also contacted Sean Connelly and informed him of the problem. Connelly, an Assistant United States Attorney in Denver, Colorado, had been an OKBOMB trial prosecutor and had continued to work on the appellate issues. Connelly said that Defenbaugh's telephone call was the first he had heard of the archival process and the first mention that problems had developed with the OKBOMB discovery.

Defenbaugh drafted a letter to Connelly stressing that as the OKBOMB Task Force Inspector in Charge he had repeatedly sought and received assurances from the field that all OKBOMB information had been forwarded from the field prior to the defendants' trials. (See Exhibit 16 at p. A-53.) Defenbaugh also informed Connelly that he and his staff had reviewed every problem document sent by Vernon and Richmond to Dallas and had concluded that none of them contained exculpatory information.

After Defenbaugh called Connelly, Connelly called the Department of Justice and left a message for Johnny Sutton, an Associate Deputy Attorney General. The first Department official who Connelly was able to reach was Anthony Murry, a senior attorney in the Criminal Division's Terrorism and Violent Crime Section (TVCS). Connelly informed Murry of the problem, and Murry told his supervisor, James Reynolds, Chief of TVCS. When Connelly finally was able to reach Sutton, he told Sutton that he wanted to notify the defense attorneys immediately. Sutton called Connelly back approximately five minutes later and authorized Connelly to contact the defense attorneys. Connelly immediately called the defense attorneys to inform them about the discovery of the OKBOMB materials.

Within the Department, the information was being passed to senior officials, and eventually to Acting Deputy Attorney General Robert Mueller and staff in the Office of the Attorney General. On May 8, Sutton informed Mueller's Chief of Staff. Mueller learned about the issue during the afternoon of Tuesday, May 8. Mueller said, however, that he did not appreciate about the significance of the belated documents issue until May 10 and that on May 10 he received a copy of the May 9 letter (discussed in the next section) from Connelly to defense counsel that specifically described the documents.

The news was also working its way through the FBI's chain of command. On Tuesday afternoon, Watson informed Deputy Director Thomas Pickard. Watson said that he told Pickard what he knew at that point – that Defenbaugh had not gone through all of the documents but he had seen some FD-302s that should have been, but were not, disclosed to the defense.[75] He also told Pickard that Connelly was going to inform the defense counsel. Pickard recalled that Watson did not provide specific information. He recalled being made aware of a

[75] Defenbaugh's May 8 letter to Connelly stated that Defenbaugh and his staff had reviewed all of the documents.

"discovery issue" and being told that they were not sure at that point how serious it was. Pickard said that Watson indicated that he would provide an "update" with more information as soon as possible. Pickard told the OIG that based on that information he saw no need at that point to inform FBI Director Freeh, who was out of the office.

3. Wednesday, May 9, 2001

Connelly and various Department officials spent Wednesday drafting Connelly's letter to the defense counsel and organizing the documents. Various individuals participating in the project said that they wanted to get the materials to the defense that day.

At the end of the day on May 9, Connelly sent over 700 documents to the defense attorneys. In a cover letter Connelly advised the defense attorneys that he had only learned of the problem on May 8. He, like Defenbaugh, also pointed out that the field divisions had been requested to forward all OKBOMB materials to Oklahoma prior to the trial. Connelly also asserted that the material being produced did not constitute Brady material. He acknowledged, however, that the material should have been produced pursuant to the reciprocal discovery agreement. (We show Connelly's letter at Exhibit 17 at p. A-56.)

4. Thursday, May 10, 2001

Pickard did not inform Director Louis Freeh about the issue until Thursday, May 10, 2001. Director Freeh was out of the office on May 8 and 9 on personal business, visiting his ill father. Pickard saw Freeh Thursday morning and told him that there was a problem with the documents in the McVeigh case and that they were still trying to get a handle on the issue to determine how egregious an error it was. He also gave Freeh Connelly's letter. Pickard said that he did not expect that Freeh read it that morning, however, because Freeh was preparing for a congressional hearing on an unrelated matter.

The Attorney General was first informed about the belated documents on Thursday morning, May 10, by Mindy Tucker, the Director of the Department's Office of Public Affairs, during an event the Attorney General was attending. Once Tucker raised the issue, the Attorney General immediately discussed it with his chief of staff and sometime later, with Mueller.

I. Court Proceedings

McVeigh was scheduled to be executed on May 16, 2001.[76] On May 11, 2001, Attorney General Ashcroft stayed McVeigh's execution for 30 days to allow the defense more time to review the documents that had been belatedly disclosed. On May 31, 2001, McVeigh filed a Petition for Stay of Execution in the United States District Court. In his pleading, McVeigh asserted that the belatedly produced materials contained exculpatory material that would have aided his trial defense. He identified eight documents in particular that he contended constituted exculpatory material that the defense needed to properly prepare for trial. He also contended that the belatedly produced documents, as well as evidence gathered by the defense, showed that the FBI had intentionally withheld exculpatory evidence from the defense. (The eight documents and other defense evidence are discussed in Chapter Three, Section V B.)

In its response, the government acknowledged that the belatedly produced material should have been produced pretrial pursuant to the reciprocal discovery agreement. However, the government denied that the material contained any Brady information and denied that it intentionally withheld discoverable materials.

On June 6, 2001, United States District Court Judge Matsch denied McVeigh's request for a stay of execution. Judge Matsch found that McVeigh did not meet the legal requirements for obtaining a stay in that he had not shown, even with the new materials, his actual innocence. While stating his ruling on McVeigh's petition, Judge Matsch also stated:

> It is the function of others to hold the FBI accountable for its conduct here, as elsewhere. And I would expect that there would be consequences upon finding what the defense suggests; but there is a great deal of difference between an undisciplined organization or organization that is not adequately controlled or that can't keep track of its information – those are not the questions here. We're not here for the purpose of trying the FBI.

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[76] Both McVeigh and Nichols had appealed their 1997 convictions. The United States Court of Appeals for the Tenth Circuit upheld the convictions and sentences. See United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998), cert. denied, 526 U.S. 1007 (1999); United States v. Nichols, 169 F.3d 1255 (10th Cir.), cert. denied, 528 U.S. 934 (1999). McVeigh voluntarily ended his collateral challenges to the conviction in January 2001.

* * *

> Now, I do not doubt that there may be as a result of the requested evidentiary hearing evidence presented of negligence, lack of coordination, lack of organization in the collection and maintaining of the materials. But it has to also be viewed in the context of the massive investigation [that] was undertaken here and the speed with which it was done. There seems in my review of what's been submitted here no pattern of what was not disclosed that would suggest a scheme to keep away from the defense what they needed for trial, including the sentence hearing.

On June 7, 2001, the United States Court of Appeals for the Tenth Circuit denied McVeigh's appeal of Judge Matsch's order. McVeigh was executed on June 11, 2001.

On September 6, 2001, the Oklahoma City District Attorney announced that he would try Nichols on 160 first-degree murder counts. Nichols' appeal for a new federal trial was denied by the Supreme Court on October 1, 2001.

II. OIG Analysis

We considered whether FBI personnel acted appropriately upon learning that discoverable items may not have been disclosed properly to the defense. We concluded that Defenbaugh and White failed to properly manage the problem. They failed to notify timely the OKBOMB prosecutors or even the FBI's General Counsel to receive legal advice on managing the issue. They also failed to set deadlines for accomplishing tasks and, as a result, the issue exploded just prior to McVeigh's execution. At that point, there was no time for adequate analysis of the issue. We also believe that Oklahoma City supervisors Teater and Marquise should have intervened more aggressively in the situation.

We believe the failure of senior FBI managers to take timely action to resolve or report the problem of the belated documents was a significant neglect of their duties. They waited until the week before McVeigh's execution to notify anyone in FBI Headquarters or the Department of Justice about the problem. Although the managers did not commit intentional misconduct, we believe the FBI should consider disciplinary action for Defenbaugh and White, and to a lesser extent Teater, for their failure to handle this issue more timely and notify the prosecutors and FBI Headquarters about it sooner. The FBI

should also evaluate whether Marquise's conduct warrants administrative action. By contrast, we recommend that Vernon and Richmond be commended for their efforts to report and resolve the issues related to the belated documents.

A. Danny Defenbaugh

Defenbaugh was the Inspector in Charge of the OKBOMB investigation and is currently the SAC of the Dallas, Texas, Field Office. By all accounts, he has had an illustrious career, capped off by the successful investigation and prosecution of McVeigh and Nichols. He certainly deserves great credit for his hard work on the OKBOMB investigation. Yet, we believe the evidence shows that Defenbaugh acted inappropriately by failing to ensure that the situation was resolved timely when he learned of the potential problem with the documents.

Defenbaugh was informed by at least January 29, 2001, that there was a potential problem with the OKBOMB discovery. Other than properly directing that the files should not be returned to the field and that Vernon and Richmond should determine whether there was a problem, Defenbaugh took no other action through the month of February. He did not determine how the files were going to be retrieved from the field or in what time frame. He took no part in ensuring that the January EC went to the appropriate field office employees, was drafted properly, or accomplished the goal of retrieving the files. He did not communicate with Vernon and Richmond to determine the status of the project. He did not set any timetable for completing it. Nor did he direct White to actively supervise the project or ensure that Oklahoma City managers were supervising it. Most important, he did not notify the OKBOMB prosecutor, the FBI's General Counsel (who, given the legal ramifications of the problem, could have provided necessary advice as to how to handle it), or anyone else in FBI Headquarters about the potential problem.

Defenbaugh explained to us that he did not want to notify anyone about the issue until he was certain that there was in fact a real problem. He said that OKBOMB had been beset by leaks and that he did not want to have information about an OKBOMB problem getting to the press when there likely was no problem. Defenbaugh said that he wanted to wait until the entire review project had been completed and they knew the true extent of the problem before he notified anyone. Defenbaugh said that he was told throughout this time period that Vernon and Richmond were working on the project and that it was unclear whether the documents had not been disclosed. He said he continued to believe that the items would be found. When asked why he did not supervise Vernon

and Richmond more closely, he said that they were very hard workers, they knew what they were doing, and that he believed they were working expeditiously.

Although we question whether it was reasonable to spend the month of February allowing the review process to continue without active supervision, this state of affairs continued even after Defenbaugh and White visited Oklahoma City in March and had an opportunity to speak directly with Vernon and Richmond. Vernon and Richmond told us that by March they realized that there was a definite problem, that they had worked very hard to establish that items had been disclosed, but that a significant number of documents could not be found in their OKBOMB databases. Defenbaugh said he came away from the March meeting believing that few documents were involved and that more checking still needed to be done. We believe Defenbaugh should have notified FBI Headquarters and the OKBOMB prosecutors about the potential problem, even if he hoped – or even believed – that more checking could possibly find the documents. The speculative possibility that the documents might be found did not justify keeping the information from others.

Defenbaugh also argued that supervision of the project was Oklahoma City's responsibility. While we do fault (to a lesser extent) Oklahoma City supervisors, we do not believe their failure excuses Defenbaugh's inaction. Vernon and Richmond had sufficiently apprised Defenbaugh (through White) of the contours of the problem that he should have been aware of its potentially serious ramifications. As the former head of the FBI team, Defenbaugh had an obligation to ensure that a problem of that magnitude was being resolved timely and adequately. He should have done so by either providing more rigorous supervision himself or by ensuring that senior Oklahoma City managers were actively supervising the project.

The evidence shows that Defenbaugh inappropriately chose to wait until every document had been examined before events forced him to take action. This was particularly troublesome given what we know about the field offices' responses to Richmond's ECs – many field offices were not responding or not responding promptly.

Defenbaugh asserted that he wanted to be sure there was a problem and that they conducted a thorough review before anyone was notified of the

problem.[77] Yet, Defenbaugh's lack of attention to the review, his lack of direction to the individuals conducting the review, and his lack of follow-up between January and May meant that a matter that required expedited handling dragged on until the last possible moment. We believe that he could have and should have done more to bring the issue to a resolution earlier. We do not believe it was necessary or reasonable to wait until every last document had been reviewed before taking action. Timetables should have been set, adequate resources brought to bear, and appropriate FBI and Department of Justice personnel notified. From what we were told, McVeigh's execution date was not discussed among the participants; yet, it stood as a looming deadline that should have caused Defenbaugh to resolve the issue promptly and to notify others sooner.

B. Mark White

White also has been praised for his work on the OKBOMB investigation and for his role in assisting the prosecutors to organize the belated documents in 2001. This praise is unquestionably well-deserved. For the reasons that we set forth in the previous section concerning Defenbaugh, however, we also believe that White failed to take appropriate action in response to his learning of the potential problems with the documents.

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[77] After reviewing the draft report, Defenbaugh reiterated in a written response to the OIG his reasons for waiting to notify FBI Headquarters and Connelly:

- He relied on the previous certifications by the SACs and Legats that all OKBOMB material had been sent;
- he believed the first items found were not discoverable;
- by February 1, 2001, only three offices had responded;
- Oklahoma City did not have possession of all the field offices' materials until April 2001;
- he was concerned about a premature leak of a possible problem that had not been substantiated; and
- he wanted to be "thorough, accurate and … timely" before making a notification.

For the reasons stated in this section, we do not believe that Defenbaugh's inaction was justified.

White told the OIG that he did not believe it was his responsibility to manage the situation. He stated that he had properly notified Defenbaugh and that an Oklahoma City supervisor, Teater, also was involved. White told the OIG that he was acting more as a "consultant," and that he was "in" and then "out" of the situation. He also asserted that it was not his place to notify Connelly or anyone else about the problem. He argued that in the FBI's chain of command, it was Defenbaugh who needed to make the decision about notification.[78] In his written response to the OIG, White also disputed the portion of the OIG report that stated that Oklahoma City personnel were aware by March 2001 that discoverable documents had not been disclosed to the defense. White stated that he had been told only that Oklahoma City had "problem" documents and the analysts were still working on finding them. White also reiterated in his written response that he was not an "OKBOMB supervisor" in 2001 and therefore he had no authority to make any decisions, set any deadlines, or take any action with respect to the OKBOMB documents.

We do not agree that the FBI's chain of command absolves White of responsibility for ensuring that the problem documents were handled appropriately. Although Teater was involved, Teater did not know the OKBOMB discovery issues like White did.[79] Richmond and Vernon were

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[78] In his written response to the OIG following his review of the draft report, White alleged that Oklahoma City personnel could have discovered the belated documents problem months earlier. White stated that he had been told that a box of OKBOMB materials had been sent from a field office in the summer of 2000 but that Oklahoma City personnel had filed it on the Terrorism Squad rotor rather than examining the contents of the box. White argued that if Oklahoma City had closely reviewed the documents in the box, they might have uncovered discoverable documents, which would have revealed the problem much earlier. While White may be correct that Oklahoma City should have handled the box in some fashion other than leaving it on the rotor, the incident does not absolve his inaction. First, the box did not contain any belated original 1As, which was what tipped off Richmond and Vernon to the problem with the materials sent by Miami and Birmingham. Second, regardless of whether the problem could have been discovered earlier, the fact of the matter is that it was discovered in January 2001 and needed to be handled expeditiously.

[79] In his written response White also took issue with this statement, asserting that by August 2000 Teater had more knowledge about the "administrative/investigative/ management" issues of the case than did White. Although in their interviews with us both White and Defenbaugh referred to the documents problem as an administrative matter, we consider discovery to be an important aspect of the original investigation and trial. Teater had not been involved in discovery before trial, but White had. We also note that White was (continued)

communicating with White about the problem and the status of the project. They were not communicating directly with Defenbaugh and neither was Teater. We believe White should not have acted simply as a conduit of information between Oklahoma City and Defenbaugh. He should have become involved in setting deadlines for reviewing the documents and making decisions about how to bring the problem to a resolution.

Although White described his actions as being a "consultant" and as being "in" and then "out," the evidence shows that he was fully involved with other OKBOMB issues. There are innumerable e-mails in 2001 to and from White regarding the FBI's attempt to interview McVeigh. Indeed, White appeared to be leading that effort. Determining whether there was a discovery issue that might affect McVeigh's and Nichols' convictions was also an important issue and should have received at least an equal amount of his attention.

While White told us that he did not believe that he was supervising the review project, others were not of the same belief. Richmond, Vernon, and Teater all believed that both White and Defenbaugh were in charge of the issue. During our interview of White, he seemed to be stating that others had erred by including him in the first place. He stated that Teater and Vernon should have gone elsewhere when they saw they had a problem. We believe that it was reasonable for the Oklahoma City personnel to believe that the Inspector in Charge and one of the OKBOMB supervisory agents were the appropriate persons to resolve the problem or at least provide adequate guidance as to what they should do. Indeed, in White's January 29 e-mail response to Vernon, he instructed her to keep him apprised of the status of the situation and what they were finding. Also, given the FBI's chain of command, Richmond, Vernon, and Teater all believed that they needed to go through White to get information to Defenbaugh. If White wanted to be "out," he should have notified the Oklahoma City personnel involved in the matter that he was not handling it and that they needed to contact Defenbaugh directly. As it was, Richmond, Vernon, and Teater acted in reliance upon their belief that White was actively

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(continued)
leading the process to interview McVeigh, not Teater. Therefore, clearly for some OKBOMB issues, neither White nor Defenbaugh believed that Teater was in charge. We believe that handling a possible discovery violation, which had important legal consequences, was the responsibility of White and Defenbaugh, the senior OKBOMB investigators, as well as Teater.

supervising the project. If they had known otherwise, they might have been more insistent upon getting other managers or Connelly involved.

C. William Teater

Teater had been involved in some aspects of the OKBOMB investigation, although not in discovery and not in a supervisory capacity. Because he was the squad supervisor for the squad that retained some responsibility for OKBOMB, he became the only Oklahoma City Division supervisor managing the project.

In many ways, Teater performed appropriately. Teater tried to ensure that Vernon and Richmond had adequate resources and that they were communicating with White. We also believe it was reasonable for Teater to look to Defenbaugh and White, as the senior OKBOMB managers, to supervise and make decisions regarding the problem. And Teater also apprised his supervisor, to some extent, of what was going on.

Under the circumstances presented by this unusual case, however, where a potentially significant legal problem had arisen in a case involving a defendant facing the death penalty, we conclude that Teater's limited actions were inadequate. Given the fast approaching upcoming execution, Teater – as the supervisor for the squad handling the post-OKBOMB issues – should have done more to ensure that someone was making the necessary decisions to resolve the matter expeditiously. Teater should have spoken to White, Defenbaugh, or Marquise directly rather than simply assuming that someone else was managing the project.

D. Richard Marquise

Marquise became SAC of the Oklahoma City Division in 1999. He told us that he was not aware of any of the issues regarding the documents until May 7, 2001. Yet, Marquise received e-mails from Teater indicating that there was a problem with the OKBOMB documents. Marquise told the OIG that although he read Teater's e-mails, he did not appreciate the problem that Teater was describing. He said he may have assumed that Teater was describing some issue that concerned the FBI's project for providing documents to the Oklahoma City District Attorney who was considering whether to prosecute Nichols on state charges. In his written response to the OIG following his review of the draft report, Marquise asserted that no one could have determined that Oklahoma City personnel were dealing with a serious discovery problem based on Teater's e-mails. Marquise also asserted that the Oklahoma City ASAC should have dealt

with Teater and that a failure in communication between Teater and the ASAC led to the problem.

We acknowledge that the import of Teater's e-mails may be somewhat different in light of subsequent events than they could have been interpreted at the time. Consequently, we had difficulty determining whether or how much criticism should be directed at Marquise. Nonetheless, because of the unusual circumstances of this case – an extremely high-profile matter with a defendant who was to be executed shortly – Teater's e-mails seem to provide enough information that should have caused a manager of Marquise's experience to at least question Teater, or to have the ASAC question Teater, about what was going on and to ensure, at a senior level, that someone was in full control of the problem and working to resolve it expeditiously. Marquise did not do this.

E. Peggy Richmond and Linda Vernon

We believe that Richmond and Vernon are to be commended for their actions regarding this matter. We believe their dedication and efforts should be recognized, both within the FBI and elsewhere. They almost single-handedly organized and performed the initial review of the documents, provided assistance during the second wave review, and provided immeasurable assistance to the OIG during our investigation.

Moreover, we believe the FBI would do well to use this as an opportunity to help remedy a long-standing FBI problem – the belief among FBI employees that bringing problems to management's attention only results in problems for the employee.[80] Absent Vernon's and Richmond's realization that there was a potential discovery problem and their desire to resolve the issue, it is unlikely that the "belated documents" problem would have been uncovered. Their actions also have provided an opportunity for the FBI to focus on long-standing problems with its information management system, problems that also affect the FBI's present investigative capacities.

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[80] Almost all of the FBI managers who reviewed the draft of this report objected to our statement that FBI employees perceive that they create problems for themselves if they bring problems to managers' attention. While neither Vernon nor Richmond reported any negative effects from their reporting of the documents issue to their managers, we believe our conclusion about perception is valid based upon the information we have received from FBI employees in various other matters.

Accordingly, we believe that Vernon and Richmond should be commended for their recognition and reporting of a problem, in addition to commending them for the assistance they provided in resolving the issue.

CHAPTER FIVE

FBI HEADQUARTERS' ACTIONS AFTER LEARNING OF THE BELATED DOCUMENTS

In this chapter we discuss the role FBI Headquarters played following the disclosure that documents had not been properly disclosed. As previously discussed, Defenbaugh notified FBI Headquarters and Connelly about the problems with the documents on May 7 and May 8, 2001. Within a few days, FBI Headquarters realized that the field offices continued to possess OKBOMB materials that had not been analyzed to determine whether the materials had been disclosed to the defense pretrial. In the ensuing weeks Headquarters sent several instructions to the field offices relating to the OKBOMB materials.

We concluded that Headquarters had difficulty organizing an appropriate response to the problem, and it contributed to the sense of confusion that existed throughout the agency. Headquarters did not adequately communicate with the field, and its instructions to the field were confusing, contradictory, and led to duplicative and unnecessary activity by field personnel.

I. Chronology of FBI Headquarters' Actions

A. Baltimore Sends Material to Oklahoma City, and FBI Headquarters Learns that Field Offices Continue to Possess OKBOMB Materials

Within a few days of notifying the defense that the government was disclosing over 700 documents, the government learned that its count was not accurate. Despite having noted in ACS that Shackelford's December 20 lead and Richmond's January 30 and March 15 leads were "covered" (in other words, completed), Baltimore in fact had done nothing with respect to the leads and had never sent any files to Oklahoma City. Because she had received no response from Baltimore, Peggy Richmond made repeated telephone calls to various Baltimore personnel during the week of May 8 to inquire about Baltimore's OKBOMB documents. As a result, Baltimore searched for and found its Auxiliary Office files. On May 10, 2001, Baltimore sent its files to Oklahoma City from which eight additional documents were found that Richmond and Vernon determined had not been disclosed to the defense.

According to Deputy Director Pickard, FBI Headquarters learned on Thursday, May 10, 2001, that Oklahoma City had just received Baltimore's OKBOMB files. This triggered the question of whether other field offices also had more OKBOMB material.

By May 11 numerous articles critical of the FBI were running in the major newspapers and other media. Congressional members also expressed dismay at the situation. The FBI was under pressure to both ensure that no other OKBOMB material remained in the field offices and to explain how and why it had "bungled" such a serious and high-profile matter. As a result, FBI Headquarters sent numerous communications to the field seeking to get all OKBOMB material to Oklahoma City and asking the field offices perceived to be responsible for the belated documents to explain their actions.

B. May 11, 2001, EC: Headquarters Instructs the Field to Conduct Another Search for OKBOMB Material

On May 11, 2001, Pickard directed the Counterterrorism Division to send an EC to all field offices requiring them to certify that all documents and materials relating to the OKBOMB investigation had been sent to Oklahoma City. Pickard said that at this point there was a concern that there might be other documents still out in the field offices, since the Baltimore documents had just been sent to Oklahoma City that week. Pickard said that the certification requirement was imposed because he wanted the matter to get the SACs' attention so that the FBI could make sure that they had everything from the field offices.

Late in the evening on Friday, FBI Headquarters sent an EC to all field offices, Legats, and Headquarters Divisions describing the problem and providing background information. We were told that this communication was the first information the field offices had received about the problem from Headquarters.[81] In the EC, Headquarters identified seven teletypes from the OKBOMB Task Force in 1995 and 1996 requesting the field to send investigative materials to the Task Force.

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[81] Some SACs complained to the OIG that they were receiving telephone calls from the media prior to receiving any information from FBI Headquarters.

In addition to the historical information, the EC instructed all

> [Assistant Directors in Charge], SACs, and Legats … to certify by EC to the Deputy Director's Office … that all investigative materials to include, but not limited to FD-302s, inserts, 1A evidence, 1B evidence, 1C evidence, and elsur tapes relating to the Oklahoma City bombing investigation have been forwarded to Oklahoma City and that no further materials exist. This certification should be considered a 'personal assurance' of each division head, and must be included as a signed endorsement on the hard copy EC. If any investigative materials are located *which have not been previously submitted to Oklahoma City*, [Headquarters] should immediately be contacted….

(Emphasis added.) The certification was to be completed by May 15, 2001.

In response to this EC, many field offices conducted extensive searches for OKBOMB documents that included supervisors contacting all employees and requesting them to search their work areas; conducting multiple searches of the closed files, evidence and Elsur rooms; and searching the work space of employees who were out of the office on leave. Eighteen field offices sent material to Oklahoma City in response to the May 11, 2001, EC.

Despite requests in December 2000, January 2001, and March 2001 for the field offices to locate and send OKBOMB material to Oklahoma City, the May 11 EC caused a number of offices to locate their Auxiliary Office files or parts of the Auxiliary Office files for the first time. For example, New York City located its OKBOMB files only after the May 11 EC; on May 16 it sent 55 volumes of its OKBOMB files and physical evidence to Oklahoma City. Newark, which had been unable to locate its OKBOMB files when it was responding to the ECs of December 2000, January 30, 2001, and March 15, 2001, finally located its entire Auxiliary Office file. Newark personnel reviewed the file for original documents, which were then pulled from the files and sent to Oklahoma City. Little Rock found two bags of "confidential trash" containing its OKBOMB Auxiliary Office files that were then sent. Denver located five volumes of its Auxiliary Office files on Saturday, May 12, 2001, and sent them to Oklahoma City. On May 14 the Denver Administrative Officer ordered a review of all files and boxes in the closed files section of the office, and Denver located an additional 32 volumes of OKBOMB material.

Jackson and Tampa each found a volume of their Auxiliary Office file that had been overlooked when they had sent their OKBOMB materials to Oklahoma City in response to the prior ECs. Although the Columbia Division had responded to Richmond's January 30, 2001, EC with an EC stating that it had no OKBOMB materials, no one had actually searched the rotor. In response to the May 11 EC, Columbia conducted a search of the rotor and located one volume and five smaller subfiles that were sent to Oklahoma City on May 14.

Some field offices understood the May 11 EC to mean that they were looking only for *original* material. Many field offices, like Newark, reported in their responses to the OIG survey that they located OKBOMB material but since what they found were copies that they believed had been previously submitted to Oklahoma City, the documents were not sent to FBI Headquarters or Oklahoma City until later.

Some of those field offices also reported receiving guidance from FBI Headquarters to the effect that only originals needed to be identified and provided. For example, Denver Division witnesses told the OIG that they had contacted Jarboe at FBI Headquarters to receive guidance about the May 11, 2001, EC and that Jarboe explained that because Oklahoma City was overwhelmed with documents, they should send only original documents that the Denver office determined had never before been sent to Oklahoma City.[82] Albuquerque and Minneapolis said that they withheld their documents based on instructions from FBI Headquarters. Pittsburgh reported that it withheld its documents based on instructions received from Shackelford. As we discuss subsequently, these documents ultimately were sent in response to later instructions from Headquarters.

[82] The Denver Division received contrary instructions from Oklahoma City and was advised to send all five volumes of its Denver OKBOMB files that were located on May 12, 2001, to Oklahoma City, which the Denver Division did. In his written response following a review of the OIG's draft report, Jarboe stated that his telephone logs contradicted Denver's account because they indicated that he told the Denver SAC to send "all to OC." Jarboe stated that other than the log, he had no independent recollection regarding the conversations with Denver.

C. May 12, 2001, EC: Headquarters Demands Explanations from the Field

On Saturday, May 12, 2001, FBI Headquarters sent an EC to the 46 field offices and one Legat that had generated the problem documents. Headquarters stated in the EC, "In February 2001, Oklahoma City began receiving boxes from various field offices which contained material never previously provided." Headquarters instructed the 47 offices to "provide a written explanation as to why this material was never forwarded to Oklahoma City until recently." In the EC, Headquarters placed the blame for the belated production of documents squarely on the field offices. The EC pointed to five teletypes the OKBOMB Task Force had sent to the field pretrial requesting information relating to the OKBOMB investigation. The explanations were to be sent by May 14, 2001.

FBI Headquarters also faxed copies of the problem documents generated by each field office to that field office. However, the field offices had problems responding to the EC. First, some cities did not receive complete packages of the problem documents generated by that field office. When the OIG conducted on-site interviews, we had belated documents that the field offices said they had not seen before.[83] Second, because the field offices had sent their OKBOMB files to Oklahoma City, they had no files available to search in their efforts to piece together an explanation. Third, when the offices tried to use ACS to view documents, their access was initially restricted because of the limitations that had previously been put on access to the OKBOMB case file. After telephone calls from the field caused Headquarters to lift the restrictions, ACS was so overwhelmed by the usage that it repeatedly crashed. Therefore, in some cases, the responses were not complete and not accurate. We discuss the responses more fully in Chapter Six, Section I B.

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[83] For example, Headquarters told the Buffalo Division that it would be receiving 179 pages of problem documents, but Buffalo was faxed many fewer pages. After receiving the material, Buffalo personnel contacted Headquarters to ask about the missing pages and were told that if they had not received the pages, then they should not be considered "problem" documents. Because of this miscommunication, Buffalo was unable to provide a complete explanation of why their documents were belated. It was not until we visited the office that they were told that all 179 pages were, in fact, considered problem documents.

D. May 16, 2001: Telephone Call by the FBI Deputy Director to All FBI SACs

While some field offices located and submitted parts of their Auxiliary Office files in response to the EC of May 11, 2001, Pickard told the OIG that he became extremely concerned about the existence of additional material in the field when he received a call in the afternoon of Tuesday, May 15, 2001, from Defenbaugh. Defenbaugh told Pickard that three more boxes of documents had been received in Oklahoma City from the Denver Division. These documents were the remaining volumes of the Denver Auxiliary Office files, the first five volumes of which had been located on Saturday, May 12. Pickard said that Defenbaugh was extremely upset because the documents were located "only two blocks away" from the Denver Command Post location. After this, Pickard decided to have a conference call with all the SACs to convey how important the matter was.

In the call, Pickard instructed the SACs to send absolutely everything related to OKBOMB to Oklahoma City. Pickard said that he wanted to convey to the field offices that they should not use any discretion at all or make any decision at all about any document and whether it should be sent to Oklahoma City. He made it clear that nothing should remain in the office that related to OKBOMB. We were told that Pickard was particularly forceful during this call. Pickard and other witnesses told the OIG that he said that anyone not complying with his directive would have to account for it personally to him.

After the Pickard conference call, most offices searched their offices again. Because Pickard was clear in his message in the conference call that *all* OKBOMB material was to be sent, field offices attempted to empty their offices of every piece of paper that had anything related to OKBOMB on it. Thirty-four of the 43 field offices surveyed reported sending material to Oklahoma City after the Pickard telephone call. Some offices reported sending material that they had found during the search after the May 11 EC but had not sent in because they believed only originals should be sent. For example, Los Angeles located an agent's working copies and reference material that had not been generated by Los Angeles. Given the type of material found, however, Los Angeles did not forward it to Oklahoma City until after the May 16 telephone call with Pickard because they did not think it was responsive to the May 11 EC. Thirty-one field offices reported finding material that had not been located in previous searches. San Juan located its Auxiliary Office files for the first time.

The field offices that we visited also reported sending more materials to Oklahoma City after Pickard's telephone call. Columbia found a subfile of incoming teletypes in one of its Resident Agencies. Philadelphia forwarded documents they considered to be "working or bootleg" agent copies of various documents, including photographs. Philadelphia personnel explained that these were not sent earlier because they did not consider the documents to be official copies and believed the official documents had been previously furnished. Detroit also located two boxes of "work papers" of an agent assigned to the Task Force.

In Buffalo, after the May 11 EC, the field office canvassed all agents and support personnel and responded that all *original* investigative materials (with the exception of original ELSUR tapes) had been sent previously. However, after the Deputy Director's conference call, the employees were again canvassed. They also searched all cabinets, desks, safes, and other storage containers maintained at Headquarters City, Resident Agencies, the evidence room, ELSUR, 1Bs, squad areas, and administrative offices. That search located a significant amount of material, including confidential informant inserts and work copies of investigative materials.

The Denver Field Office canvassed every employee in the Division for all copies of documents related to the OKBOMB case as well as any other item in the possession of employees related to OKBOMB, including photographs and mementos.[84] On May 16, 2001, the Denver Field Office sent five additional boxes of documents and other items to Oklahoma City. Denver personnel told the OIG that the material had not been sent in response to the May 11 request because they understood that request was for original OKBOMB investigative material.

As a result of the May 11 EC and the May 16 telephone call, Oklahoma City was deluged with boxes of materials, most of the contents of which were not within the scope of the discovery agreement or had been disclosed previously. For example, we were told that framed pictures, newspaper clippings, and pieces of granite that looked similar to the granite in the Murrah

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[84] This was the second canvas of all employees conducted by the Denver Division within a 5-day period. During the first canvas that began on May 12, employees were asked to turn over any original OKBOMB documents or other investigative material not previously sent to the OKBOMB Task Force in Oklahoma City or Denver.

Building were sent in. These materials were reviewed in similar fashion to the earlier materials. (We describe this review process subsequently.)

E. Additional Telephone Calls from Headquarters

At some point between May 11 and May 15, 2001, FBI Headquarters realized that inserts from confidential informant files might not have been disclosed to the defense. FBI Headquarters checked its confidential informant database (CIMS) and determined which offices had "hits" for the OKBOMB file number or words relating to the OKBOMB investigation, such as McVeigh or Nichols. FBI Headquarters made calls on May 16, 2001, to field offices about "source files" that possibly contained references to the OKBOMB case. FBI Headquarters identified specific source files for the field offices to search.

In response to our survey, 25 field offices reported receiving a telephone call from Headquarters, searching their confidential informant files section, and sending documents to Oklahoma City as a result of the search. In our field visits, several field offices also reported finding documents as a result of these telephone calls from Headquarters. They said that while Headquarters could do an automated search, the field offices could not. Therefore, they were unable to find the documents except through a file-by-file search or through information supplied by Headquarters.[85]

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[85] We explored this question of the field offices' search capacities further with the Technical Information Specialists in two field offices and received two somewhat different answers. (The Technical Information Specialists have responsibility for each field office's confidential informant files.) Both employees stated that they could not search CIMS (the database used for tracking confidential informant files) for cases in which their field office was not the Office of Origin. Thus, although FBI Headquarters can search CIMS for all cases and identify the confidential informant files in all field offices that have the OKBOMB case number, the field offices cannot do so. One field office employee told us that CIMS could be searched for names that a confidential informant may have mentioned and that would have been entered when the FD-302 or insert was indexed in CIMS. The employee in that office said that he was able to locate five inserts in confidential informant files in his field office by searching for names such as McVeigh. In contrast, the employee in the other field office said that she was unable to do a text search in CIMS and that only Headquarters could identify which sources mentioned McVeigh. Both agreed that once the source was identified it would still be necessary to conduct a manual search of that source's file to locate the specific insert or FD-302. This is but one example of a problem that we observed throughout the (continued)

F. May 18, 2001, EC

In a May 18, 2001, EC, the Director's Office instructed all Assistant Directors in Charge, SACs, and Legal Attachés to certify again that all OKBOMB materials had been identified and delivered to Oklahoma City. The certification was to be completed by May 21, 2001.

Seven field offices reported finding even more OKBOMB material when they searched again in order to respond to the May 18 EC. Several of these offices reported that they found the material by searching unrelated cases for the words OKBOMB or McVeigh.[86] Seven offices also reported finding additional material *after* the SAC had certified on May 21, 2001, that all OKBOMB material had been sent to Oklahoma City. Five of these offices stated that the material was found in agents' working files; two offices reported that the

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(continued)
investigation – support employees had varying degrees of understanding of the capabilities of the databases and computer systems that they were charged with working.

[86] The response of one field office indicated that the field was experiencing some frustration by this time:

> At the time the 05/18/2001 EC was received by [this field office], [the] former SAC was out of the division. It was apparent to ASAC [], who was Acting SAC at the time, that the search for OKBOMB material was "out of control" across the Bureau and field offices were in a state of panic. The mindset of other field managers ASAC [] had discussions with was that this search for materials was an 'overkill' and totally unnecessary. If fact, many suggested that the OKBOMB stone (a piece of wall from the Murrah Building), given to field offices in memory of the tragic incident, be sent to Oklahoma City because it had the word OKBOMB inscribed on it. Thus, ASAC [] decided to conduct additional queries of ACS and other data bases as one last final check. This query resulted in locating five serials which had a reference to OKBOMB, though these serials were of the nature that did not seem to fit the requirements for discovery in this case. An example would be a teletype from FBIHQ to all field offices advising that a story re the OKBOMB incident was airing on television on a particular day. Regardless, ASAC [] opted to send these documents to Oklahoma City, which was done via Federal Express on 05/18/2001.

material was from complainants who had given information to the FBI on May 16 and May 21, 2001.[87]

G. FBI Analysis of the "Second Wave" Materials

To handle the massive amounts of material arriving in Oklahoma City, Pickard selected John "Dave" Stenhouse, Chief of the Intelligence Operations Section, as the leader of a team that would travel to Oklahoma City and determine whether the new material also contained items that had not been disclosed to the defense. Stenhouse and a team of nine others arrived in Oklahoma City on May 16.

Stenhouse told the OIG he quickly realized that the task was much bigger than he had expected. He received an additional 80 people, as well as support from Oklahoma City Division personnel. Stenhouse said that they initially tried to log in all the material but abandoned the effort because of the volume of material. Instead, the team segregated presumptively discoverable material, such as FD-302s, inserts, and 1As, from items clearly not within the discovery agreement, such as teletypes and other internal documents. The team then searched for each document in ZyIndex. If the item was found in ZyIndex, it was presumed to have been turned over to the defense.

Stenhouse's team worked 24 hours a day using 30 computers. The review was completed on May 24, 2001. The review identified 158 items that were not located in the relevant databases. Stenhouse stated that he believed that with more time, they would have found that some of these materials had been disclosed. Stenhouse noted that their searches were inexact and depended heavily on the skills of the person doing the searching.

While Stenhouse was analyzing the second wave materials that had come from the field offices and a few Legats, another team was conducting a search of the OKBOMB Task Force files. James Bernazzani, Jr., an Assistant SAC from the Houston, Texas, Division, led a team of 60 people. Bernazzani's team

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[87] Five of the offices who reported finding material after the certification also reported taking some action against the personnel involved. The action consisted of 1) relieving an acting squad supervisor of his supervisory duties, 2) a supervisor removed himself from the Executive Development program, 3) counseling an agent, 4) having performance failures reflected in a performance evaluation, and 5) admonishing an agent. One office took no action because the agent involved had resigned the day after the certification.

examined every document in the entire OKBOMB case file, including all subfiles, looking for misfiled FD-302s and inserts. They located 14 FD-302s and 5 inserts that had been misfiled.[88] In addition, Bernazzani's team also searched through 69 4-drawer file cabinets and 24 boxes that were located in the OKBOMB warehouse. The file cabinets and boxes contained "working files" of the agents assigned to the OKBOMB Task Force. The team found 11,455 FD-302s and 2,616 inserts in the files. After searching the databases, 11 FD-302s and 8 inserts could not be found, indicating that these items had not been disclosed to the defense.[89]

II. OIG Analysis

FBI Headquarters' actions after learning of the problem documents in May 2001 were more reactive than well-considered. In some part, this was because they had little time to reflect and were faced with a legal and public relations crisis. Early statements from FBI officials were only partially accurate, however. They blamed the computer system and the field offices when the fault lay with both the field offices and the Task Force. FBI Headquarters also issued directives to the field without fully understanding what was being sought or the effort necessary to respond, resulting in confusion, frustration, and wasted effort by field personnel. Poor communication with field managers also caused resentment, confusion, and more wasted effort.

Many SACs complained that they had no information from Headquarters about the belated documents problem until the May 11, 2001, EC. They said that they were being asked to respond to the problem by the media before Headquarters gave them any information about the situation. In addition, they resented the fact that Headquarters placed much of the blame for the belated

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[88] A "misfile" meant that the FD-302 or insert had been placed in some file other than the D or E subfiles. Because the material for discovery was copied from the D and E subfiles, FD-302s and inserts that were filed elsewhere were not disclosed even though the items had made it to the OKBOMB Task Force.

[89] A June 29, 2001, EC summarizing the second wave review process noted that 248 persons supported the searches and verifications. The EC also stated that in the review of material from the field offices and Legats, tens of thousands of items were examined and 14,093 items were checked against the databases. In the main file and warehouse reviews over 100,000 items were reviewed and over 34,000 items were checked against the databases.

documents on the field before they had an opportunity to explain their offices' actions.

The confusion generated by Headquarters over the May 11, 2001, EC caused field offices to have to search their offices multiple times. The wording of the EC indicates that the field offices were expected to look only for material that had not been forwarded to the OKBOMB Task Force, an instruction that was interpreted by many as meaning only originals. This was reinforced by verbal instructions given to many field offices by Headquarters' personnel. Headquarters apparently did not understand at that point that the belated documents consisted of copies as well as originals. Just because a field office believed an item had been sent to the Task Force did not mean that the defense received the item. Therefore, Oklahoma City personnel needed copies as well as originals if they were to perform a thorough search for all documents that had not been disclosed to the defense. When Pickard changed the instructions on May 16, the field offices had to redo their search efforts.

There also were issues concerning Headquarters' May 12, 2001, EC. First, despite knowing that the OIG had been asked by the Attorney General to conduct an investigation into the circumstances surrounding the belated production of documents, the FBI requested explanations from the field offices without consulting with the OIG. In order to respond to the EC, many field offices interviewed agents and administrative personnel. Although we do not believe these actions ultimately had an impact on our investigation, in some situations advance discussions with witnesses risks interfering with an OIG investigation.[90]

In addition, as previously discussed in this report, Headquarters did not seem to appreciate the difficulty the field offices would have trying to respond

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[90] As previously noted, we found FBI employees to be cooperative. However, in addition to the May 12 EC, there was one other instance where the FBI conducted its own investigation into allegations concerning the belated documents. The FBI received information indicating that OKBOMB documents were being destroyed in Dallas, Texas, in May 2001 after the OIG had begun investigating. FBI Headquarters instructed a Philadelphia Division ASAC to investigate the allegation. The OIG was not notified of the allegation until the investigation had been completed and the investigative reports written. The FBI's investigation found strong evidence contradicting the allegation that OKBOMB documents had been destroyed in Dallas. We reviewed the FBI's investigation and determined that no further investigation was warranted.

accurately to the request for an explanation. The field offices had no files, and ACS provided only limited or, in many cases, no assistance. In addition, Headquarters had no appreciation for the significance of determining whether "originals" were included in the problem documents. (This issue is addressed more thoroughly in Chapter Three, Section III B 1.) What the field offices received through the faxes from Headquarters looked for the most part like copies. Consequently, the field offices asserted, often incorrectly, that because the problem documents were copies, the field must have sent the original to the OKBOMB Task Force during the course of the OKBOMB investigation. It was not until we showed various field office personnel color copies of the documents that they understood that originals had been found in their files.

Also, because of the lack of adequate communication, field offices continued to insist in their responses to the May 12 EC that they had complied with their responsibilities in 1995-1997 because they had sent information to the Task Force by teletype. These explanations showed that some of the offices either continued to misunderstand or were not being informed of the nature of the problem.[91]

[91] After reviewing the draft report, the FBI's General Counsel, Larry Parkinson, objected that this section portrayed the FBI as acting unilaterally. He stated that after May 10 the FBI coordinated all of its actions with the Department of Justice through twice-daily conference calls.

CHAPTER SIX

RESPONSES BY FIELD OFFICES TO 2000-2001 REQUESTS FOR INFORMATION

Another aspect of the belated documents story is the often inadequate manner in which field offices responded to the leads in Shackelford's December 2000 EC and Richmond's January and March 2001 ECs. We found that many field offices failed to respond at all, failed to respond accurately, or failed to respond timely. The failures indicate a disturbing lack of attention to administrative detail, which may indicate larger problems with administrative management and supervision. These findings raise serious questions regarding the FBI's attention to detail, managerial accountability, and the reliability of information sent by field offices to Headquarters and to other field offices.

In this chapter we also discuss the destruction of documents by some field offices. Thirteen field offices destroyed documents in response to Shackelford's December 2000 EC authorizing them to do so, and two offices destroyed documents prior to receiving the 2000 EC. As we discuss in this chapter, these field office files may have contained other documents that had not been disclosed properly to the defense.

I. Field Office Failures to Respond Properly to Leads

In ACS, all leads assigned to a specific field office are sent electronically to a central account (known as the "lead bucket") in that field office. Each office has established protocols instructing the central account to re-route each lead to a manager, squad, or staff member within the office, based on the lead's classification prefix. Thus, an office might instruct ACS to route all leads with a "174" prefix to the squad responsible for domestic terrorism; all leads with a "66F" prefix might be routed to the Administrative Officer. After viewing the lead, the individual to whom the lead is assigned is presented with several options: to assign the lead to another individual or squad within that office; to transfer the lead to another Division; or to mark the lead as "covered," or completed. Choosing the "Cover" option brings up a new screen that includes, among other sections, a disposition field, in which the individual can – but is not required to – explain what actions he or she took to cover the lead. A lead that is assigned can in turn be reassigned. The person to whom the lead is reassigned

has the option to reassign the lead yet again or to mark it as "covered" after completing the required task.

A. Inaccurate Responses

We found that field offices responded inaccurately to leads. Some offices inaccurately marked a lead as "covered" by allowing personnel, usually an SAC or ASAC's secretary, to mark a lead as "covered" even though the lead had simply been reassigned to someone else in the office. In some cases, offices inappropriately marked a lead as "covered" when the office had not in fact taken any action to handle the lead. In other instances, we found that offices provided inaccurate substantive information in their responses. We set forth a few examples in this section, but there were others.

1. Baltimore, Maryland Field Office

Baltimore personnel marked leads as covered when they had not completed the assigned task. In Baltimore, Shackelford's December 20, 2000, lead was assigned to the Baltimore File Supervisor on December 30, 2000. The File Supervisor said she did not work on it immediately because it involved reviewing files for destruction, which she believed could wait. In February 2001, the File Supervisor received a promotion. Two days before she left her old assignment, on February 21, she received the January 30, 2001, lead from Oklahoma City.[92] According to the File Supervisor, on February 23, she gave both the December and January leads to her supervisor, the Supervisory Administrative Specialist (SAS), told the SAS she had not finished the assignment, and told the SAS where the documents were located to complete the leads. The File Supervisor then marked in ACS that both the December 20, 2000, and January 30, 2001, leads were "covered." The File Supervisor acknowledged to the OIG that she made a mistake when she marked the leads as covered. She also said that she did not tell the SAS that she had marked the leads as covered. The File Supervisor stated that she hoped that the SAS would

[92] We note that even though the January 30, 2001, lead indicated that it was for "immediate" action, the lead was assigned to the Baltimore Administrative Officer, who assigned it to the Supervisory Administrative Specialist, who assigned it to the File Supervisor. The lead did not reach the person responsible for accomplishing the task until February 21.

complete the task and "catch up" with the fact that the computer indicated the lead had been covered.

The SAS denied that the File Supervisor had spoken to her about completing the leads. She recalled that she had spent time with the File Supervisor in February 2001 reviewing matters that needed to be handled until a new person was hired. The SAS was confident that the File Supervisor had never reassigned anything to her. During the OIG interview, the SAS recalled seeing a serial dealing with a "174" classification when the File Supervisor was cleaning out her office in February 2001. The SAS said that she did not read the serial and that the File Supervisor said that she would handle it. When shown the January 30, 2001, EC from Oklahoma City, the SAS told the OIG that it could have been the serial she discussed with the File Supervisor. A few days after the File Supervisor left her position, the SAS checked ACS for open leads. She said that she found none.

The Administrative Officer told the OIG that when he received the March 15, 2001, lead, he recalled the January 30 lead. When he checked ACS for the January 30 lead's status, he saw that it had been covered. He then marked the March lead as "covered" as well without checking to see what had been done. The OIG asked the Administrative Officer about the requirement in the March EC to provide Oklahoma City with the name of the individual who was "certifying" the search for the OKBOMB documents. The Administrative Officer said that he believed that the File Supervisor would have given her name when she responded to the January EC and therefore he did not think that he needed to send another name to Oklahoma City.[93]

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[93] In fact, while the January 30 EC had requested either OKBOMB files or a statement that the field office had no files, the EC had not requested the name of the individual conducting the search. Only the March 15 EC asked for that information.

In addition to these problems, Richmond also had considerable difficulty getting the materials from Baltimore in May 2001. According to Richmond, she contacted Baltimore because it had not responded to the various ECs she had sent. She said that she called several times and either was unable to locate individuals, such as the Administrative Officer, or the people she spoke to seemed to have no idea what she was talking about. Finally, on May 10, she spoke to the Administrative Officer, who apologized and agreed to have the files hand-carried to Oklahoma City. Richmond said that when she received the files, she observed that the volumes were numbered from 1 through the ending number. Volume 3 was missing, however. She then had to call and have Baltimore locate that volume. The Baltimore SAS (continued)

2. Columbia, South Carolina Field Office

Like Baltimore, Columbia responded inaccurately to the January 30 EC from Richmond. Columbia sent a February 5, 2001, EC stating, "On 01/05/2001, a search was conducted and no documents re OKBOMB were located in the Columbia Division." In fact, Columbia had one entire volume and various other materials in locations throughout the office.[94]

The paralegal who drafted the February 5 EC had no recollection of reviewing the incoming EC, preparing the outgoing EC, or of conducting any search for OKBOMB documents. She stated that she normally handled expungement requests and that in the course of doing so she would check the automated records to determine if files existed. She conceded, however, that the automated records showed numerous references to Columbia OKBOMB files. The paralegal told the OIG that she must have responded under the mistaken belief that she was responding to an expungement request and under the further mistaken belief that she had conducted a search for responsive records with negative results. The paralegal acknowledged, however, that the title of the January 30, 2001, EC was "Destruction of Field Files and Records" rather than "expungement" and that the text of the incoming EC varied significantly from standard expungement requests.

(continued)
recalled that on Tuesday, May 8, 2001, she received a call from someone in Oklahoma City (that is, Richmond) referring to a prior EC. The SAS said she told the caller that the matter would have been handled by the former File Supervisor who would return the call on Thursday, May 10, when she returned to the office. The SAS said that the caller called again on Wednesday, May 9, and spoke to another support employee who also told the caller that the former File Supervisor would handle the issue on Thursday. The File Supervisor said she was told the morning of May 10 by the support employee that Oklahoma City had called and said the OKBOMB documents had never been sent. The File Supervisor said that she was furious that the SAS claimed that she did not know anything about the matter. The File Supervisor then boxed up the materials and, at Oklahoma City's request, the files were hand-carried to Oklahoma City by a Baltimore special agent. On the evening of May 10, the File Supervisor received a call at home from the Administrative Officer who informed her that Oklahoma City had reported that a volume was missing from the Baltimore files. The File Supervisor returned to the office and found the volume on a shelf above where the other volumes were located.

[94] Columbia also had 11 volumes that were identified in the computer system but which were physically missing from the office. We discuss this in Section II C of this chapter.

3. New York City, New York Field Office

In response to the January 30 EC, New York City sent an EC to Oklahoma City dated March 1, 2001, stating that it had no OKBOMB materials. However, in May 2001, New York City located 57 volumes of OKBOMB material.

The File Supervisor who had been assigned to the January 30, 2001, lead told the OIG that she called the appropriate rotor to ask if the office had anything on OKBOMB. The rotor responded that he would check. According to the File Supervisor, the rotor called her back and told her that there were no OKBOMB files. The File Supervisor relayed this information to her supervisor, who drafted the response to Oklahoma City. The rotor, however, told the OIG that he was "99.9 percent" sure that he never had a conversation with the File Supervisor regarding OKBOMB files. He stated that he is confident that he would not have told her that New York City had no OKBOMB files because he knew that it did.

4. Denver, Colorado Field Office

Denver did make efforts to find the Denver OKBOMB files in response to the ECs coming from Oklahoma City. Yet, Denver personnel still failed to find numerous volumes of material because of failures in Denver's filing system.

In Denver, the December 20, 2000, EC was routed to the Freedom of Information/Privacy Act (FOI/PA) Coordinator, who handles file destruction as a collateral duty. According to the FOI/PA Coordinator, in response to this EC she looked on the shelves in the closed files section of the office, looked on the rotor file in the appropriate squad area, asked the squad secretary to look for any OKBOMB files in her space, and spoke to several employees about the Denver OKBOMB files. The Denver OKBOMB Rotor told the FOI/PA Coordinator that he believed that the Denver Auxiliary Office file had already been sent to the Task Force. The FOI/PA Coordinator prepared an EC dated January 18, 2001, to Shackelford stating that she was unable to locate any OKBOMB files in Denver.

With respect to the January 30, 2001, EC, the Administrative Officer told the OIG that she assigned the lead via ACS to the FOI/PA Coordinator. The FOI/PA Coordinator said that it would have been routed to her but that she did not recall seeing it. Denver took no action in response to this EC.

When the March 15, 2001, EC came in, the Administrative Officer assigned this lead to the SAS. The SAS told the OIG that she looked for the

Denver files in the closed files section of the office, spoke to the case agent about the possible whereabouts of the Denver files, and spoke to the former Administrative Officer. She said she was told that Denver had already sent all of its OKBOMB files to Oklahoma City, and she prepared an EC to Oklahoma City on April 3, 2001, to that effect.

In fact, the Denver OKBOMB files were in the Denver office and were discovered on May 12, 2001. Several employees were in the office on May 12 – a Saturday – to search for "original OKBOMB documents" in response to the May 11 Headquarters' EC. While walking through the closed files section of the office, the Administrative Officer tripped over some unlabeled boxes on the floor. When the Administrative Officer asked the File Supervisor what the boxes contained, the File Supervisor said that the boxes contained Auxiliary Office files, although she was not aware what specific files were in the boxes. The Administrative Officer and the File Supervisor opened the boxes and discovered several OKBOMB volumes.[95] The File Supervisor told the OIG that she subsequently was able to determine that the files had been returned to Denver from the Information Technology Center (ITC) in Butte, Montana, on October 14, 1998. The File Supervisor said she had been told by a previous File Supervisor, who had left the Division in October 2000, that many Denver Auxiliary Office files had been shipped a few years earlier for destruction to the archives unit at the ITC and that the files had been returned as they were deemed unsuitable for destruction. These files had remained in several unlabeled boxes in the closed files section of the office.

The File Supervisor, who knew about the boxes in the closed files section, had been unaware of the earlier searches for the OKBOMB Auxiliary Office files. The FOI/PA Coordinator and the SAS who were looking for the Auxiliary Office files had been unaware that the boxes in the closed files section of the office contained Auxiliary Office files.[96]

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[95] The OKBOMB files discovered were five volumes containing FD-302s and inserts, five volumes of outgoing communications, and one volume of newspaper clippings.

[96] The Denver Division is still lacking sufficient shelf space for all of its closed Auxiliary Office files. The contents of the boxes have since been marked on the outside of the boxes, and the boxes are being stored in the closed files section of the office based on the alphabetical order of the Office of Origin files contained in the boxes.

Two days after the discovery of the five volumes, the Administrative Officer ordered a complete review of the closed files section and 32 additional volumes of OKBOMB material were found and shipped to Oklahoma City.

5. Newark, New Jersey Field Office

Newark informed Oklahoma City on January 30, 2001, that "as the result of searches done in the Newark office," Newark did not possess any OKBOMB material. On March 26, 2001, Newark "certified" that all of its OKBOMB material had been forwarded to Oklahoma City. However, Newark did not provide the name of the employee responsible for making the certification, as had been requested by Richmond's March 15, 2001, EC.

Despite Newark's responses indicating it had no OKBOMB material, it found its entire OKBOMB Auxiliary Office file when it searched in response to the May 11, 2001, EC from Headquarters. In response to the OIG survey, Newark explained:

> The items were located in a closed file storage room that was being utilized for Auxiliary Office files that were closed prior to the conversion of ACS. The files located in this area were not filed in any particular order, ie. by file number, field office, and/or classification. It was after a file by file review that items related to the Oklahoma City bombing investigation were discovered.

6. Philadelphia, Pennsylvania Field Office

In response to the January 30, 2001, EC from Richmond, the Philadelphia File Supervisor sent two boxes of material to Oklahoma City. The File Supervisor told the OIG that she found the materials in the "closed files" section of the office.

The March 15, 2001, EC was routed to the counterterrorism squad rather than to the administrative supervisors. A counterterrorism relief supervisor searched the closed files section and found no OKBOMB material. She then checked with the File Supervisor and the OKBOMB case agent who informed her that all OKBOMB materials had been sent to Oklahoma City. An EC was sent to Oklahoma City on March 20, 2001, stating that "Philadelphia has conducted a thorough search of the Philadelphia Division and has no further materials pertaining to OKBOMB in its possession."

On May 13, 2001, in response to the May 11 EC from FBI Headquarters, the counterterrorism squad supervisor checked ACS and learned for the first time of the March 15 and January 30 ECs. The supervisor checked closed files and the administrative files and did not find any OKBOMB materials. He also consulted the case agent who assured him that all OKBOMB material had been sent to Oklahoma City.

On May 14, 2001, however, the case agent searched the counterterrorism "workbox" room and found 12 *original* OKBOMB documents.[97] The case agent told the OIG that he had checked the workbox room in the past and had not seen the files. He said that he had no excuse or explanation; he could only state that this time when he looked in the room he found the files.

On May 16, 2001, the Philadelphia ASAC received a call from FBI Headquarters informing her that information in Headquarters informant files indicated that Philadelphia may have additional OKBOMB documents in its informant files. The ASAC then located two additional OKBOMB related documents in the informant files. The Informant Coordinator advised the OIG that she had not searched the informant files, since she understood that it was the responsibility of the case agents to review their respective informant files and they were responsible for the contents of the files.

B. Inaccurate Responses to the May 12, 2001, Electronic Communication

In many cases, the evidence contradicted the explanations provided by the field offices when they responded to Headquarters' May 12, 2001, request for explanations as to why the field offices had not provided OKBOMB materials to the Task Force before the OKBOMB defendants' trials. We did not analyze all of the explanations but we provide a few examples.

Although Mobile asserted in its explanation that it had not been required to send non-pertinent information to the OKBOMB Task Force, we found teletypes from the Task Force to all field offices clearly stating that non-pertinent information was to be sent. (See Chapter Three, Section III C 5.) Even more

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[97] The "workbox" area is a room in which the agents keep materials related to cases that they are working on and want to have readily accessible. The agent agreed that original materials should not have been kept in the workbox area.

inexplicable were New Haven's and New Orleans' statements that FBI policy permitted field offices to keep original FD-302s and inserts. Not only was this assertion of FBI policy contradicted by other offices' responses, the FBI's administrative manual specifically states:

> Original FD-302s and 1A envelopes are to be forwarded to the [Office of Origin] at time prepared and/or acquired with exception of those 1A envelopes which are to be returned to the contributor in the jurisdiction wherein they were obtained.

See MAOP § 2-4.3.2.

FBI personnel that we interviewed also confirmed that they understood that originals were to be sent to the OKBOMB Task Force in accordance with standard FBI policy. And OKBOMB Task Force teletypes repeatedly emphasized that originals were to be sent to the Task Force.

Baltimore stated in its response to the May 12 EC:

> Previous communications requested that field offices send original or xeroxed documents relative to the Oklahoma bombing. At the time of the request, Baltimore had 12 volumes of files as well as 1A's relative to this case. Baltimore opted to Xerox copies rather than send original documents. During the Xeroxing of these documents, the two inserts and three 1A's were inadvertently missed. Clearly, this was a clerical error on the part of the Baltimore Division.

In fact, the instructions from the Task Force consistently instructed the field to provide *originals* as well as multiple copies. Both the Baltimore OKBOMB case agent and the squad supervisor told us that they understood that originals had to be sent to the OKBOMB Task Force during the course of the OKBOMB investigation. We asked the Baltimore Administrative Officer what the basis was for the explanation that he provided to FBI Headquarters. The Administrative Officer said that in preparing the explanation he spoke to his administrative subordinates and the SAC. He said that the only explanation he could provide was that when the documents were copied in 1995-1996, these particular documents simply were not copied and, therefore, never forwarded. The Administrative Officer said that he could not think of any other reason and that he was trying to come up with "any explanation." He added that it was his understanding that an Auxiliary Office keeps originals and sends copies of

documents to the Office of Origin. He then told the OIG that he was not confident about his understanding.

Los Angeles stated in its response that it was "quite certain" that all investigative material had been furnished contemporaneously to Oklahoma City in part because it had established a "meticulous" tracking system for OKBOMB material. Los Angeles acknowledged in its response to FBI Headquarters that, despite its tracking system, it had improperly failed to send in 18 1B's (consisting of 17 audiotapes and 1 videotape) because it had not looked in its Elsur material when responding to the OKBOMB Task Force's 1995-1996 requests. Los Angeles asserted, however, that it had sent the transcripts of the audiotapes to the Kingman, Arizona, Command Post and the OKBOMB Task Force contemporaneously. The OIG examined the Los Angeles files and found a fax cover sheet showing that two transcripts were being faxed to the FBI's Kingman, Arizona, Command Post. We found no record that the transcripts had been sent to the OKBOMB Task Force. In addition, the prosecutor who dealt with the issue involved with the tapes stated that he had never seen the transcripts.

Los Angeles also asserted that the OKBOMB Task Force should have had all Los Angeles material before trial because Los Angeles had copied and mailed the entire Los Angeles OKBOMB file to the OKBOMB Task Force in late 1996. This explanation was based on information provided by a former supervisor who stated that he was certain everything had been sent to the OKBOMB Task Force because he recalled asking an agent and the squad rotor to copy Los Angeles' entire Auxiliary Office file and to send it to the Task Force. When we interviewed personnel in Los Angeles, however, we discovered that this answer was based on the former supervisor's misunderstanding of actions that had been taken by the agent in 1996. The agent said that he reviewed the entire Auxiliary Office OKBOMB file looking for FD-302s that had been requested by the Task Force because they related to teletypes. He only copied a select portion of the file in response to the specific request from the Task Force. The rotor also did not recall ever copying the entire case file.

In addition to these examples, several offices identified specific belated documents that they asserted had been sent to the OKBOMB Task Force based on the offices' search through ACS for airtels. Our review of 31 explanations showed that 17 were accurate, 9 were inaccurate, and we had insufficient information to prove or disprove the accuracy of the remaining 5.

C. Failure to Respond Adequately to Leads

Many offices did not act on Shackelford's December 20, 2000, lead expeditiously because there was no time period set out for the action. We do not criticize these offices for not acting promptly because we believe it was an appropriate managerial decision to determine that file destruction was not a high priority, particularly given the lack of any urgency stated in the EC. On the other hand, records may have escaped destruction because some field offices "lost" the December 20, 2000, lead. In some offices we found that the lead disappeared without any response or conscious decision to postpone the response. In some cases, administrative personnel could not recall ever seeing the lead.

In Columbia, for example, the Administrative Office recalled the December 2000 lead and stated that it had been reassigned to the File Supervisor. The File Supervisor told the OIG that he did not recall the lead. He said that Columbia at one time had a system of assigning leads that occasionally led to leads "falling through the cracks."

In the Atlanta Division, the File Supervisor, the Supervisory Administrative Specialist, and the Administrative Officer could not recall seeing the December 20, 2000, EC. The Supervisory Administrative Specialist and the Administrative Officer thought it went to the investigative squad for action. Yet, neither the SAC, the primary squad relief supervisor, nor the two co-case agents recalled seeing the December 20, 2000, EC.

Neither the Philadelphia Administrative Officer nor the File Supervisor recalled the December 2000 EC, and it was not acted upon.

The December lead was not the only lead that was not acted upon. In Denver the Administrative Officer recalled assigning the January 30, 2001, lead to the FOI/PA coordinator. The FOI/PA coordinator told the OIG that she did not recall seeing it. The File Supervisor also did not recall the lead, and Denver did not respond to it.

Several offices marked the March 15, 2001, lead as covered because they had sent files in response to the January 30 lead. These offices sent no further written response to Oklahoma City. However, as previously noted, the March 15 lead requested additional information. Offices also marked the December 20, 2000, lead as covered based on the premise that they knew where the files were and were waiting for some time in the future to do the actual destruction.

D. Untimely Responses

As previously discussed, FBI procedures require that teletypes with an "immediate" designation must be given priority handling throughout each area of dispatch and receipt. Even though the January 30, 2001, EC was for "immediate" action, some offices took weeks to even assign the lead. In Baltimore, the lead was not assigned to the individual responsible for handling it until February 21, 2001. The Los Angeles closed File Supervisor did not receive the December 2000 lead until mid-January and then received the January 30 lead in early February. Ultimately, Los Angeles did not send its six boxes of material to Oklahoma City until March 1, 2001.[98] The Los Angeles Elsur supervisor did not receive the January 30 EC until March 14 and sent materials on March 19. New York City's response to the January 30, 2001, lead requiring "immediate" action was dated March 1, 2001. The Jackson, Mississippi, Division did not send material until March 19. It stated in its response to the OIG survey that it had found the OKBOMB files, but the Administrative Officer wanted changes made to the transmittal document. Nothing further was done until Jackson received the March 15, 2001, EC repeating the request for documents.

The FBI's ACS computer system may have contributed to the delayed responses. Both the January 30 and March 15 ECs stated on the lead that immediate action was required. Yet, we noticed that in ACS the deadline for action on the January 30, 2001, EC was April 2, 2001. The deadline for action on the March 15, 2001, EC was May 18, 2001, two days past McVeigh's original execution date. We were told that whenever the EC precedence is "Immediate," ACS automatically assigns a deadline date 60 days after the "Set Date." We also were told that the deadline date cannot be changed manually.

To add to the confusion, several offices told us that the March 15, 2001, lead had been discontinued.[99] We verified that the lead had been accidentally

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[98] In Los Angeles, the March 15, 2001, lead was assigned to a Los Angeles Police Department officer assigned to the Joint Terrorism Task Force on the domestic terrorism squad. Nothing was done before the lead was accidentally discontinued by the Oklahoma City Division in April 2001.

[99] Birmingham reported that the March 15 lead was assigned to a supervisory special agent. Birmingham stated that:

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discontinued on April 10, 2001, because an Oklahoma City rotor was trying to move the lead from one file to another in ACS. ACS automatically discontinued the lead in the original file. The rotor was not aware of the problem, however, and the lead was not reset until May 10.[100] Some offices also reported that they were not on the distribution list for the March 15 lead and were unaware of it.

E. OIG Analysis

During the course of the investigation, the OIG reviewed hundreds of communications between and among FBI Headquarters, the OKBOMB Task Force, and the field offices. These communications include teletypes and airtels, and more recently electronic communications. They include communications to and responses from the domestic terrorism case squads, as was the case with most of the communications in the 1995-97 period, and communications to and responses from the administrative staff, as was the case with the ECs in the 2000-2001 period. Viewed as a whole, a troubling fact becomes evident: a significant number of these communications contain information that is, at best, inaccurate and misleading. In addition, offices failed to respond to leads, lost leads, and responded after deadlines had passed. If the communications among the FBI components in the OKBOMB investigation are not unique in this sense, a problem of significant consequence exists.

Numerous teletypes during the 1995-97 time period advised the Task Force and Headquarters that field offices had searched their files for original OKBOMB-related documents and evidence, yet many of these files yielded original FD-302s and other documents when searched by Oklahoma City in 2001. In 2001, a number of field offices responding to Oklahoma City's call for

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(continued)

> [The Supervisory Special Agent] has no knowledge of this lead. Birmingham can find no indication that any steps were taken to cover the lead. However, it should be noted that the lead was marked 'DISCONTINUED' in ACS.

[100] We do not believe that field offices can legitimately rely on the fact that the lead was discontinued as their excuse for failing to act on the March 15 lead. The lead was not discontinued until April 10, almost a month after the lead, which requested "immediate" action, had been sent. The March 15 lead also made reference to the fact that there was a problem that needed to be handled, and the field offices should certainly have been aware that the case involved a defendant who was scheduled to be executed. We believe they should have expedited their responses.

all OKBOMB materials wrongly reported the absence of any OKBOMB materials or failed to locate and produce all the OKBOMB materials in their custody. What is perhaps most surprising is that this problem is not restricted to communications between line staff, but occurs with equal frequency in communications approved by field office executive management to senior Headquarters personnel. For example, we found numerous inaccurate statements in the response to the Deputy Director's May 12 directive to the field offices to submit an explanation for the belated production of documents; in each case, the response had been approved by the field office SAC.

Several of these inaccuracies may be explained in whole or in part by the field offices' understandable difficulty in crafting a response without ready access to their Auxiliary Office files. Additionally, it might be reasonable to expect some ambiguity and imprecision in responses attempting to recreate events that occurred almost six years before, and we recognize the pressures on the field offices to respond to directives issued by the highest levels of the FBI with short timelines. But in several instances the misinformation transmitted to Headquarters appeared to be the result of managers not making sufficient inquiry of the basis for the explanation that was being provided to Headquarters. The fact that the subject matter relates principally to office administrative functions and not an ongoing substantive investigation should not justify relaxing the expectation that the information relayed by field offices is reliable and that supervisors have taken steps to ensure its accuracy.

II. Destruction of Documents

Thirteen offices destroyed OKBOMB documents in response to Shackelford's December 20, 2000, EC. Two other offices destroyed documents prior to the EC. The destruction of these documents appears to have been undertaken pursuant to FBI destruction policy, which allows for the destruction of Auxiliary Office copies. However, the loss of Auxiliary Office copies means that there may have been more documents that should have been disclosed to the defense but were not.

A. Destruction Policies

The FBI's file destruction policies, developed in conjunction with the National Archives, are set forth in the FBI's MAOP, Part II, Section 2-4.5. The FBI Archive Specialist, currently Shackelford, is responsible for administering the file destruction policies and training FBI personnel in its requirements.

File destruction rules vary depending on the case classification, whether the office in question is the Office of Origin or the Auxiliary Office, and whether special circumstances exist. Generally, according to the MAOP, in bombing cases the Office of Origin may destroy the file after 20 years. Auxiliary Office files for such cases, however, may be destroyed one year from the date of the last relevant communication. The Auxiliary Office need not notify the Office of Origin that it intends to destroy its Auxiliary Office files, assuming it adheres to the general destruction policies.

Office of Origin files designated by FBI Headquarters in consultation with the National Archives as having "national historical significance" should not be destroyed but instead must be permanently retained for eventual transfer to the National Archives. According to Shackelford, by "coding" a case file, as the FBI did by designating the Oklahoma bombing matter "OKBOMB," the FBI effectively declares a file of national historical significance, thereby prohibiting destruction of the Office of Origin files. Importantly, however, Auxiliary Office files related to such cases are not affected by such classification and remain subject to the general destruction policies (one year from the last relevant communication).[101] Similarly, Shackelford stated that while the FBI's administrative manual provides that matters in pending litigation are not subject to file destruction, this restriction, too, does not apply to Auxiliary Office files.[102] According to Shackelford, in both instances the reason for the distinction between Office of Origin and Auxiliary Office files is that Auxiliary Office files are presumed to consist only of copies. To ensure that only copies are destroyed, the destruction rules and FBI destruction training both emphasize that any original documents or materials in the Auxiliary Office files are to be

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[101] Auxiliary office files consisting of 50 or more volumes, however, are automatically deemed as having national historical value and may not be destroyed.

[102] The administrative manual states:

> No field office may engage in file destruction until all litigation matters have been searched through the office indices and relevant files identified and marked for retention pending resolution of the litigation. Case files which bear the notation that files are being retained due to pending litigation are to be maintained until notification is received from FBIHQ that the litigation has been resolved. MAOP 2-4.5.1(3).

removed from the files and forwarded to the Office of Origin prior to the destruction of the Auxiliary Office files.

Field offices must keep a record of file destruction by noting the case number and date of destruction on a specified form.

B. Destruction of OKBOMB Documents by Field Offices

The field offices that destroyed records insisted that they only destroyed copies of materials that had been sent to the OKBOMB Task Force. While probably true with regard to most of the destroyed documents, there is no way of determining with certainty whether any originals not sent to OKBOMB also were destroyed. Moreover, even destruction of copies could impact the belated documents. Over half of the belated documents consist of copies. It is possible that, if the field offices had sent the materials to Oklahoma City for analysis rather than destroying them, some of those documents would not have been found in ZyIndex and would have been considered to be belated. In other words, without the documents to compare with ZyIndex, it is difficult to know whether the universe of belated documents would have been larger.

We attempted to determine whether any potentially discoverable material had been destroyed based on the information that the field offices provided to us in the survey. Although FBI procedures require that a log be kept of all records destroyed, there is no requirement that the field offices itemize the items destroyed. Six of the offices indicated in the survey that they had no log. The others provided logs specifying some limited information, such as the date of destruction, but not the nature of the documents destroyed.

Six offices stated that they destroyed only teletypes. The other offices either explicitly acknowledged destroying FD-302s or could not rule out that FD-302s had been destroyed. Therefore, some materials within the discoverable categories were destroyed by the field offices in response to the December 20, 2000, EC. The chart on the following page shows the field offices that destroyed documents and the nature of the documents they said were destroyed.

Table 5: Document Destruction

Field Office	After 12/20/00 EC?	Nature of Documents	Log	ACS Checked?
Anchorage	Yes	Incoming teletypes	No	No
Birmingham	Yes	Airtels; ECs; TTs; 302s (stamped or notation that had been sent to OC)	Yes	Yes
Buffalo	Early 2000	Copies of teletypes	No	No
Chicago	Yes	302s and other materials; copies/notation that original had been sent	Yes	No
Jacksonville	Yes	Copies of teletypes, EC's, 302s, inserts, photos, videos	No	No
Kansas City	Yes	The teletype sub-file containing incoming and outgoing teletypes	Yes	No
Las Vegas	1998	Work copy file; unknown contents; only copies	No	No
Memphis	Yes	Documents already uploaded or previously sent to OKBOMB; 302s, ECs, inserts	Yes	No
Milwaukee	Yes	15 volumes: Duplicate teletypes, ECs, 302s and inserts	No	No
New Haven	Yes	All copies; 85 original items sent to OKC; teletypes and misc. documents not further clarified	No	No
Omaha	Yes	Copies of incoming teletypes	Yes	No
Phoenix	Yes	18 volumes of incoming teletypes	Yes	No
St. Louis	Yes	Subfile 1; 8 volumes of incoming teletypes	Yes	No
San Diego	Yes	Portion of 1 subfile: DMV and other records checks (fax cover sheets indicating had been sent to OKBOMB)	Yes	No
Springfield	Yes	All documents other than 105 sent to Okl. City; 1As/incoming teletypes/302s	Yes	No

Through a labor intensive process, the FBI may be able to obtain some information about the documents that were destroyed although they cannot recreate the actual document. By using ACS, FBI personnel may be able to identify certain key information about the items that were destroyed.[103] The discoverable materials – FD-302s, inserts, and 1As – can then be checked against ZyIndex and the hard copy records to determine whether they were disclosed to the defense. If, however, it was determined that some of the destroyed documents had not been disclosed to the defense, the FBI would only have limited information about the document; the substance of the information on the document would not be available. The FBI was in the initial stages of reviewing the work needed to undertake this process when the events of September 11, 2001, interceded, and they stopped the process. Accordingly, at this date, we do not know what, if any, effect the document destruction had on the number of belated documents.

We also questioned why the information about the destroyed documents had not been reported to the defense or the court during the proceedings regarding McVeigh's execution. Connelly said that he had never been told that documents had been destroyed. He further stated that he had not reviewed the archivist's December 20, 2000, EC and therefore was not aware that the field offices had been given permission to destroy documents. He said that he would have informed the defense and the court if he had known about the document destruction.

We also asked the FBI's General Counsel, Larry Parkinson, what he knew about the destruction of documents. Parkinson said that he was aware of the Columbia Division's missing documents that were presumed to have been destroyed; however, he was not aware that other field offices had destroyed material. Parkinson acknowledged that sometime in May 2001 he had read Shackelford's December 20, 2000, EC granting the field offices authority to destroy documents. He said, however, that at that time he and everyone else involved in resolving the problem at FBI Headquarters were focused intently on making sure that there were no other OKBOMB documents remaining in the possession of the field offices that had not been forwarded to Oklahoma City. He conceded that he did not really concentrate on the possibility that documents

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[103] See footnote 105 for a description of how the FBI was able to reconstruct information about the Columbia Division's missing documents.

had been destroyed. He also stated that one of the reasons he had not focused on the issue was because the OIG was investigating the belated documents problem.[104]

Defenbaugh and White also told the OIG that they had no knowledge that documents had been destroyed during the archival process. Defenbaugh reiterated that he had not been aware of the archival process when it started and when he learned about it, he did not focus on the fact that destruction of copies might be a problem. White told the OIG that he assumed that nothing had been destroyed because of the January 30, 2001, EC instructing the field offices not to destroy OKBOMB materials.

Other senior FBI officials, including Jarboe and Watson, also acknowledged being aware by mid-May 2001 of Shackelford's December 20, 2000, EC authorizing the destruction of documents. Both officials stated that they were focused on other issues, such as getting documents to Oklahoma City, and they took no steps to determine whether documents had been destroyed by the field offices.

Richmond said that she was aware that some field offices had destroyed documents because at least one, Chicago, wrote in its response to Richmond's January 30 EC that it had destroyed some of its file. Richmond said that she did not consider the impact of the destruction on the discovery problem. She said that her primary concern was that destruction made it more difficult for her to find documents when Headquarters or field offices contacted her with questions.

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[104] In our interviews, most FBI officials told us that they had not focused on the destruction issue because they were dealing with determining whether the field offices continued to maintain possession of OKBOMB documents and did not raise the OIG investigation as a reason for their inaction. In addition, given the fact that the FBI thoroughly investigated Columbia's missing documents while the OIG investigation was ongoing, we doubt that the OIG investigation had much impact on most officials' actions or inactions regarding the destruction issue. After reviewing the draft report, Parkinson noted in his written response that it was inconsistent "and unfair" to criticize the FBI (as we do in Chapter Five, Section II) for investigating certain issues during the OIG investigation and then to criticize the FBI for failing to investigate the destruction issue. We do not believe that our criticism is inconsistent given that we state that the FBI should have *notified* Connelly, not that it should have investigated the issue, and the notification could have been based on information that was already in FBI Headquarters' possession. Any additional investigation that was needed could have been coordinated with the OIG.

Vernon also acknowledged being aware that some field offices destroyed documents, although she was unsure when she learned that fact. She said that she did not raise the issue with anyone because she assumed that FBI officials and the OKBOMB prosecutors who were working on reviewing the documents would have been aware of the issue from reading Shackelford's December 20, 2000, EC.

We believe that the court and defense counsel should have been informed of the FBI's destruction of documents, in addition to being given the belated documents, while McVeigh's stay of execution was being litigated. The prosecutor, Sean Connelly, said that had he been told, he would have notified the court and the defense about it in the litigation concerning McVeigh's request for a stay. A breakdown in the FBI prevented defense counsel from learning information about the destruction of documents. While the notification should have happened, the fragmented nature of the process for dealing with the belated documents made it difficult for individuals to appreciate the significance of the December 20 EC. We also found that FBI supervisors did not understand the role that copies played in the review process and assumed that the destruction of copies would not affect the process.

We did observe a few other issues relating to document destruction that merit comment. Given our understanding that the FBI requires offices to keep a destruction log, we questioned the field offices that said they destroyed documents but did not keep logs. Several of the offices indicated that they did not keep logs because they were the Auxiliary Office rather than the Office of Origin. We did not find such an exception to FBI policy in the administrative manual. One office responded to the OIG survey by stating that it had kept no log of its destruction but sent us the log when we conducted follow-up interviews. Another office failed to respond to our request in the OIG survey for the destruction log but then sent the log when we conducted the follow-up interviews.

We also found that even though the field offices destroyed documents pursuant to Shackelford's authorization, they did not follow the guidelines set forth in his EC. Shackelford authorized field offices to destroy items that had been uploaded to ACS; yet only one office stated that they checked ACS before destroying the material. When asked to explain, a few offices stated that ACS was restricted, although none of them attempted to have the restriction lifted before proceeding with the destruction. Others stated that ACS was not checked because it was not required by FBI policy, because the employee handling the

destruction was experienced, and because the documents had been serialized. If the offices had followed instructions and only destroyed documents that had been uploaded into ACS, we could determine with more confidence whether the OKBOMB defendants had received copies of the documents that were destroyed.

C. Columbia Division's Missing Documents

On May 16, 2001, the Columbia Division notified Stenhouse, who had led the FBI's review of the second wave documents, that Columbia could not find 11 volumes of Columbia's OKBOMB file. Columbia ASAC Paul LaCotti, Jr. told the OIG that Columbia Division personnel searched the office for OKBOMB materials in response to the May 11, 2001, EC from Headquarters. Columbia found volume 12 on the pending files rotor. According to LaCotti, based on this search Columbia realized that 11 volumes of the case file were missing. LaCotti stated that the entire office was searched without success. In addition, FBI Headquarters and Oklahoma City were contacted to see if they had the files; both responded negatively.

Columbia personnel told the OIG that they had moved offices in early 1999. The Administrative Officer stated that he felt certain the files had been moved out of the old building. He stated that there had been a log of items moved out of the building, although he was not certain that anyone had checked the inventory when the files were moved into the new space. The Administrative Officer reported destroying the log about a year after the move. The Administrative Officer also raised the possibility that the 11 volumes had been destroyed. He told the OIG that after the move the File Supervisor had assigned a night shift employee to destroy all eligible Auxiliary Office files.

The File Supervisor told the OIG that Columbia searched for the files for several days. He said that he and others talked with everyone, currently employed and retired, who might have had any contact with the files and that "everyone looked everywhere." The File Supervisor drafted an EC dated May 17, 2001, to FBI Headquarters summarizing Columbia's efforts. The EC stated that on May 14, 2001, 28 current and former employees were contacted and from May 14 through May 16, 39 locations, including all safes and file cabinets in the Columbia Division had been searched. The File Supervisor told the OIG that three possibilities were equally likely: (1) the files had been lost, (2) the files had been destroyed by the night shift employee, or (3) the files had been sent at some point to Oklahoma City.

Although some Columbia personnel thought it highly likely that the files had been destroyed, the evidence on that point is not clear. The night shift employee responsible for destroying Columbia's eligible files stated that she did not recall destroying any OKBOMB files, although she also acknowledged that the case number would have meant nothing to her. She pointed out, however, that her destruction logs do not list any OKBOMB destruction. She stated that she filled out a form for each file volume just prior to shredding it, noting the file number along with the date of destruction. The employee told the OIG that she believed it would have taken her weeks to destroy 11 volumes of files (because file destruction was done as an adjunct to her regular duties), and she thought it extremely unlikely that she would destroy 11 volumes over such a period without recording any of them. In addition, we were told that the Columbia OKBOMB volumes had been changed from brown covers to red covers prior to the move to the new offices. The night shift employee said that she had not destroyed any files with red covers.

In summary, 11 volumes of files in one of the FBI's most important cases disappeared without any record as to their disposition.

After being notified of the missing Columbia documents, Stenhouse led a project to identify the missing documents and determine whether they had been disclosed to the defense before the defendants' trials. The FBI concluded that 854 documents were missing but only 27 would have been discoverable (FD-302s or inserts). After the review of the 27 documents was completed, the FBI concluded that 26 had been disclosed to the defense.[105] The one insert that had not been disclosed was an insert listing telephone subscriber information. The telephone subscriber information had been disclosed on another FD-302.

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[105] To reach its conclusions, the FBI first determined that there were 854 serials missing because volume 12, the volume that was found on the rotor, started with serial 855. By using ACS to access FOIMS, the FBI could learn for each serial number the type of document, the date the document was created in FOIMS, to and from whom the document was addressed, and in some cases, a brief topical description. From this information, the FBI determined that only 27 documents were FD-302s or inserts. The remainder were teletypes, airtels, and other internal memoranda that would not have been discoverable. The FBI then searched for each of the 27 discoverable documents using ZyIndex. If a potential match was located, the actual physical document was pulled from the Task Force files and matched to the Columbia Division serial number. Through this method the FBI was able to match 26 Columbia Division serial numbers to documents that had been properly disclosed to the defense.

CHAPTER SEVEN

OIG RECOMMENDATIONS

We believe it is important to acknowledge the many difficulties faced by the OKBOMB investigators, both on the Task Force and in the field, and the general success they had in overcoming those difficulties. This case involved the FBI's entire organizational structure, thousands of employees, tens of thousands of investigative reports and over a million records, and the investigation of tens of thousands of individual leads. Most of the investigative work was accomplished in a short time frame of only a few months. The perpetrators were arrested and tried. And according to the appellate courts that have reviewed the matter, they received fair trials. The belated documents should not undermine the significant accomplishments of the individuals who assisted in the OKBOMB investigation.

The real significance of the belated documents and the OIG investigation of the circumstances surrounding them is much broader than the impact of the problem on the OKBOMB case. What we found in essence was that the FBI has not spent enough time, money, and attention on document management. It is not the glamorous part of the agency's mission. We found a wide variety of flaws in the FBI's information systems. The FBI has known about many of these problems for some time, either because the OIG has discussed them in other reports (some of which we discuss in this chapter) or because the FBI has found them through their own reviews. Little has been done to remedy those problems, however.

The tragic attacks occurring on September 11, 2001, demonstrate that the FBI continues to be faced with cases of the scale and dimensions of OKBOMB and that the lessons learned from OKBOMB continue to be relevant. While OKBOMB occurred over six years ago, the FBI's document management process remains generally unchanged, as does the technology on which it depends. In one of several criticisms about the FBI's lack of current technology, the FBI's Assistant Director for Information Resources noted that employees of the FBI, an information gathering agency, only had access to the Internet through a limited number of machines and could only e-mail other FBI employees. He compared the deficiency to agents only being able to telephone other agents.

We believe that now is the opportune time for the FBI to reexamine its document management process in the context of the technology available today as well as the technology that is likely to be available in the future. We believe that the goal should be to build a system that is efficient, reliable, user friendly, and expandable.

The vast majority of our recommendations concern automation systems. Although the automation system did not cause the belated documents problem, an effective automation system would likely prevent the reoccurrence of another such problem. But, while improvements to the FBI's automation may provide benefits for the discovery process, the real benefits would be seen much earlier – in the investigative stage and in improvements to employee productivity.

I. Information Management

Significant effort needs to be put into planning a true information management system that 1) can be used to track information; 2) can be used to search for information; and 3) can eliminate the need for independent databases. The FBI is in the process of creating a new generation of automation – Trilogy. We did not investigate Trilogy and therefore do not know the exact design specifications for that system. Nonetheless, we set forth some of our observations and recommendations regarding information management and automation that may prove useful during the process of developing and implementing Trilogy.

A. Commitment to Automation and Focus on Information Management

While the FBI has spent many resources developing automation systems, it has not fully utilized them. Most of the senior managers to whom we spoke acknowledged that they had no understanding of ACS, did not use it, and relied on their secretaries to obtain information off of the computer for them. They complained that the system was too difficult to use. Indeed, about the only consistent information we received during our investigation was the universal dislike for ACS by supervisors, agents, and support personnel. On the other hand, personnel in the Information Resources Division believed that some of the complaints about ACS were the result of field managers' and FBI Headquarters' lack of commitment to automation – in other words, the system seemed cumbersome because employees refused to familiarize themselves with it.

Based on our own observations, we agree that ACS is extraordinarily difficult to use, has significant deficiencies, and is not the vehicle for moving the FBI into the 21st century. It is also true, however, that rather than aggressively trying to remedy its automation problems the FBI has tolerated the development of duplicative systems: one paper and one automated. The FBI is simply too big and the cases are too large to continue to rely on paper as the chief information management tool. Yet, because the FBI has tolerated the continued reliance on paper as an alternate system, the FBI's automation systems have suffered. Inefficiencies have been created, such as when field offices wait for the "electronic communication" to arrive through the mail before acting on it. In addition, when some employees are not utilizing the automated system properly, the data in the system becomes unreliable because it is not complete.

Any new automated system will meet the same fate as ACS unless FBI managers commit to using it and enforce its use throughout the FBI. That is not to say that paper will suddenly disappear from the FBI. We are not ready to advocate for a completely "paperless" organization given that the FBI must interact with prosecutors, defense attorneys, and court systems and must keep track of documents and evidence that are received from individuals outside the FBI. But we believe that the FBI must commit to relying on automation as the primary means for accessing, retaining, and transferring information. This means, at a minimum, that all employees must be extensively and properly trained and that the efficient use of automation must become part of the basic job requirements.

The FBI also needs to foster and maintain an attitude throughout the agency that information management is an important part of the FBI's function, rather than a sudden focus on the issue when a crisis is at hand. On several occasions the OIG has advised the FBI that it had significant information management problems, yet little was done to remedy the deficiencies.

In our July 1999 report on the Justice Department's campaign finance task force, we carefully tracked ten critical pieces of intelligence information and how they were handled by the FBI and the Department. We found that key information from the critical documents at issue either had not been entered into ACS in a manner that could be searched or had not been entered into ACS at all. We also found that many of the FBI personnel we interviewed were not well versed in the use of the FBI's database system and had erroneous beliefs about the way it operated. We recommended that the FBI amend its practices and regulations so that more information is entered into ACS and its computer

databases. We also recommended supplementary training for FBI agents on ACS, which we called "crucial to the integrity and utility of the ACS system." Yet, despite agreeing to do so, the FBI never implemented any of these actions.

In a report issued in November 1999, we described significant deficiencies in the FBI's investigation into the death of a federal inmate, Kenneth Michael Trentadue, and the FBI's handling of the evidence in that case. For example, the FBI misplaced for several years negatives of photographs taken of the body and the cell. The FBI was unaware that it possessed an important piece of evidence involving chain of custody and, after the OIG discovered its existence and asked that it be preserved, the original was destroyed because the FBI failed to safeguard adequately the document. We also found that documents had been misplaced, serials had been uploaded to the wrong file in ACS, evidence from a different case was in the file, and differing versions of the same electronic communication were in the file.

The OIG's Lost Trust report, completed in February 2001, also described significant failures by FBI agents who failed to turn over evidence to prosecutors during a series of cases that began in 1989 into corruption in the South Carolina General Assembly. In those cases, the FBI failed to disclose to prosecutors important FD-302s and failed to disclose others in a timely fashion. We concluded that the documents were not intentionally withheld but that the FBI's failure to produce these documents was the result of inadequate record-keeping and inadequate organization of the files, which was exemplified by the fact that FBI agents and prosecutors had to depend upon the records of defense counsel's paralegal to determine whether and when a document had been produced in discovery. We described how the FBI's case files were in substantial disarray and disorder and how the FD-302s were not even filed in the official file. We concluded that the FBI agent on the case was overwhelmed with the amount of work and that FBI managers provided insufficient support to ensure that the files were organized.

These reports illustrated significant deficiencies in the attention the FBI gave to handling documents appropriately or correcting deficiencies that were identified, and in our view, gave insufficient responses to addressing those problems. The reports also show that even on cases involving many fewer documents, the FBI had difficulty tracking and processing its documents effectively.

Although former Director Freeh imposed a one-day "stand down" to focus on document management, until the FBI as an institution places more emphasis

on managing the information that it has, problems will continue to exist. The problems may not be as publicly exposed as they were in OKBOMB, but they will continue to bedevil individual agents and prosecutors. We also would note that although this problem has been framed in terms of the defense not getting access to certain material, some of the information also did not get to the prosecutors. The failure to manage information properly has important implications for the prosecutors' own trial preparation. When information must flow through cases, agents, and even agencies, the FBI must have in place a reliable, trustworthy, and useful information management system.

B. Simplification of Record Keeping

The primary cause of the belated documents was the difficulty of moving, without error, thousands of documents through the many procedural steps and physical locations required by the FBI's document management system. The development of Trilogy offers an opportunity for the FBI to simplify its entire document management system. Supervisors could, for example, review electronic versions of documents rather than having paper be sent from agents, to secretaries, to rotors, and then to supervisors.

Another related recommendation is to reduce the number of record-keeping formats, all of which require different procedures. During our interviews, numerous agents and supervisors questioned the need for the mindboggling variety of forms utilized by the FBI, particularly the need for inserts. Although we were told the difference between FD-302s and inserts, in practice it appears that substantive information is placed both on FD-302s and inserts. Indeed, in OKBOMB, the inserts were disclosed to the defense because the prosecutors could not make a useful distinction between the information on the FD-302s and the information on the inserts.

We believe that the use of inserts can lead to problems. Important information, which may not seem important to the FBI agent writing the insert, can get lost simply because it is placed on the wrong form. The use of inserts also can create discovery problems. Inserts are rarely disclosed; many, possibly most, prosecutors do not know that they exist and rarely see them. Based on the information that we received, some agents believe that inserts are not discoverable, and some agents may even use them because of that fact. In fact, a report is discoverable or not based on the information contained within it, not because of the format of the report.

We recommend that the FBI evaluate its record keeping procedures with the goal of simplifying the process. This process should be integrated with the development of Trilogy as some forms or documents currently in use might be eliminated with a new computer system.

In addition, if the FBI believes that it is necessary or useful to have a document that is a true "original," then it needs to revise its system for creating them. Practices in the field have circumvented the FBI's policies regarding originals. One possibility would be to have a stamp to mark documents as "originals." Another possibility is the use of electronic signatures, which would allow the FBI to transmit "original" documents electronically, thereby preventing the loss of documents and creating an audit trail.

C. A User Friendly and Reliable System

Some of the criticism of ACS involves obvious problems that have been known by the FBI for some time. The system is not user friendly. Relatively simple tasks require numerous steps. As one supervisor told us, he keeps sets of instructions under the glass on his desk so that he can remember how to use ACS to review the leads assigned to his agents. In addition, the system crashes or freezes often. We observed this problem repeatedly. When we interviewed administrative personnel in various field offices and asked them to show us something on ACS, the system often stopped working. Field offices were unable to use ACS to find OKBOMB documents when Headquarters asked them for explanations. If these problems are not fixed, then Trilogy will be as ineffective as ACS.

We received conflicting information regarding the development of ACS. Field personnel told us that the field was not sufficiently consulted during the development phase while Headquarters personnel told us the field had been extensively consulted. The development of Trilogy should involve agents, supervisors, and rotors so that the people who actually use the computer system will have a say in how the system will meet their needs. In addition, the system designers need to know how the system actually will be used in the field.

D. Tracking Information

For tracking purposes, ACS's universal serialization system is a clear improvement over FOIMS. However, we cannot say that as a result there will never be another OKBOMB-type problem with documents. First, universal serialization does not guarantee that every item in the FBI's files can be

accounted for. Only FBI-generated documents can be uploaded into the system. Therefore, there is still the potential for documents to be lost, misfiled, and misplaced. Second, uploading documents from a word processing system into a database, as is required by ACS, adds an extra step and increases the opportunities for a document to be lost.

One solution to the uploading problem is to integrate the creation of FBI generated documents into the automated system. We understand that other agencies, such as the Bureau of Alcohol, Tobacco and Firearms, create the document in the system that also tracks it.

E. Retrieving Information

Although ACS allows full-text retrieval, it is not an effective case management tool. One reason is that performing searches for documents in ACS is too time consuming. Accordingly, any new system should have easy to use search capabilities so that separate systems, such as ZyIndex, can be eliminated.

F. Integrated Databases

For major cases and crisis situations, Rapid Start and ZyIndex are used to compensate for ACS's deficiencies.[106] We believe that the FBI should work toward eliminating crisis management software (as well as eliminating other independent systems). The goal should be to build document management and lead tracking systems that are expandable to meet every situation. Using separate systems to manage particular cases creates problems. For one, personnel have to be trained on different systems. Since Rapid Start and ZyIndex are used infrequently, the training is often forgotten before it is used. One individual told us that although she had received training a few years ago, she is not confident in her current skills, particularly given that ZyIndex had been upgraded since her training. In addition, it is difficult to get information from ACS into ZyIndex. Consequently, hard copies and disks still have to be sent, thereby reducing efficiency and increasing the chances for items to be lost.

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[106] We understand that there are many other independent database systems in use throughout the FBI.

Increasing the number of database systems in use increases the chances that information will not be found since not every employee will know or think to check every system.[107] Having information in separate systems that cannot communicate with each other increases the number of steps required to get complete and thorough information about particular individuals or subjects. Indeed, at the time of our investigation Rapid Start did not have a field to note the serial number of the document that responded to the lead. Therefore, to find the response to a lead, hard copies of the response had to be kept with a hard copy of the lead creating additional steps, complexity, and opportunities for error within the document management system. This has serious ramifications in the current environment when it is particularly important for agents to be able to quickly and easily access all known information about particular individuals.

Although we believe that separate database systems can lead to problems, others disagreed and told us that they did not believe that Rapid Start in particular should be integrated into ACS. They believed that integrating Rapid Start with other databases would severely reduce its effectiveness as a crisis management tool by making it too complex or too slow. While it may be true that integrating Rapid Start into ACS would create difficulties, it also may be true that integrating it with a different, more effective database would not create the same problems. We did not resolve this issue, but we believe it is an important one for the FBI to consider in the development of Trilogy.

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[107] A prime example of this issue arose with the FBI's "lead sheets." Rapid Start uses an Information Control Sheet, also known as a lead sheet, to track leads and lead responses. When an individual with information called the FBI's OKBOMB hotline number, an agent put the information on the lead sheet. The information was entered into Rapid Start and a lead was generated requesting investigation from either an OKBOMB Task Force agent or an Auxiliary Office agent. When the response came back, it was noted on the lead sheet and in Rapid Start. Some OKBOMB prosecutors, however, were either unaware of the existence of the lead sheets or did not appreciate their significance until Nichols' trial when a legal issue regarding the lead sheets was raised by the defense. Although the information on the lead sheets generally was not important in itself (or it would have been reflected in an FD-302), in at least one instance the failure to check a lead sheet led a prosecutor to ask questions of a defense witness based upon information that was inaccurate. The prosecutor argued to the jury that a witness had not reported information in a timely way to the FBI. In fact, the lead sheet established that the witness had reported the information. In another instance, the information contained on a lead sheet was used to support a prosecution witness's testimony.

II. Training

No automation system will be effective unless personnel receive adequate training. We conducted a limited review of the FBI's computer training. New agents receive ten hours of training on ACS. Two in-service classes are also offered: a 2-day class that most agents eventually take and a 3-day class usually taken by support personnel. We were told that 10 hours was insufficient to teach new agents how to effectively use ACS, although we acknowledge that even with 16 weeks of training there is still only so much time that can be devoted to any one subject. The FBI Information Resources Training unit, which is responsible for new agent and in-service computer training, also told us that they believed that they had not received clear guidance as to what ACS skills agents need to perform their jobs effectively. Therefore, the training unit believed that it was not necessarily teaching the minimum set of skills agents really needed.

The training unit also noted that agents are not required to demonstrate minimum ACS competence to graduate from the training academy. Although there are certain skills that agents must have in order to graduate (for example, firearms skills, knowledge of legal issues, and investigative techniques), ACS competence is not included in these "core" skills. In addition, because there is no consistent policy on ACS training and levels of competence, there is widespread variation among the field offices on ACS use.

Accordingly, we recommend that the FBI evaluate its computer training in order to develop a clear understanding of what agents need to perform their job duties effectively. As one aspect of its commitment to an automated system, the FBI should consider whether computer usage should be considered part of the core skills needed to graduate from the new agents training academy. The FBI should also consider mandatory refresher training to ensure that agents are kept abreast of changes to the system and that they are using the technology available to them.

III. Other Recommendations

During the course of our investigation, we observed other issues involving disparate problems.

A. Leads

Although there are traps for the unwary regarding the sending of leads,[108] we found more significant problems with field offices' procedures for responding to leads. As we discussed in Chapter Six, a significant portion of the field offices failed to respond appropriately to Shackelford's and Richmond's leads. Field offices lost leads, ignored leads, failed to respond timely, and responded inaccurately.

In many instances, these failures were the result of the lack of adequate systems to manage leads. One contributing factor is that ACS does not efficiently notify individuals that leads exist. As we were told, it is not a "you've got mail" system. As a result, some offices wait for the hard copy to arrive. This increases delays and increases the potential that leads will not be handled at all.

Another serious problem is the inappropriate use of the designator "cover" to indicate action on a lead. In a few instances, individuals inappropriately marked "cover" when they had done nothing on the lead. In other instances, however, offices seemed to have systems permitting leads to be "covered" even though the task set out in the lead had not actually been completed. We believe that the FBI cannot effectively manage leads without a clear understanding of what constitutes "covering" a lead. Field offices also do not consistently use the comments field in ACS that shows what has been done to complete the lead. We recommend that procedures be initiated to require that leads cannot be covered without an explanation of what has been done to cover it, such as the serial number of the FD-302 or other document that completed the task assigned in the lead. We also recommend that future automation systems incorporate the means to allow supervisors to easily review leads, to be informed of outstanding leads, and to be informed of how leads have been handled. It would be particularly useful if a tickler system were incorporated automatically to allow both the agent and the supervisor to know that a lead deadline date was approaching. And some of ACS's eccentricities need to be eliminated, such as the automatic setting of a 60-day deadline for "immediate" leads.

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[108] For example, as previously discussed, an Oklahoma City rotor accidentally discontinued a lead when she thought she was moving it to a different file.

B. Lead Tracking

Although Rapid Start is fairly effective as a major case lead tracking system, improvements can be made. In addition to the recommendation regarding integrating lead tracking with a document management system, we also recommend:

- Universal lead numbers. Some field offices in OKBOMB tracked their leads using local lead control numbers. As with universal serialization, the field offices should be able to input information that would generate a universal lead number that could be tracked by both the field office and the Office of Origin. We understand that this continues to be an issue with the FBI's investigation into the acts of terrorism against the World Trade Towers and the Pentagon and that while many field offices are using Rapid Start, the information in the systems are not connected.
- Lead numbers on Investigative Reports. Every lead should have a lead control number. During our investigation, we saw teletypes without lead numbers. An efficient automated system would have the lead number automatically entered into the lead. The corollary to this is that the responding investigative report *must* have the lead number. As the OKBOMB Task Force noted in one of its teletypes, hundreds of hours were spent trying to match responses with leads.

C. Temporary Duty Personnel

The FBI is particularly good at putting substantial resources into a crisis in a short period of time. That capacity greatly increases its ability to investigate major crimes rapidly. However, the use of large numbers of persons on temporary duty (TDY) can create problems, and the shorter the rotation period the more problems that are created.

For one thing, although it should not have to be said, field office managers should not use major investigations as an opportunity to offload problem employees. If the employees are not performing effectively in the field office, it is unlikely that they are going to perform better in a crisis environment with less supervision.

The FBI should consider whether there are viable alternatives to short rotation periods. In some cases, short rotations may be necessary because individuals are unable to be away from home for extended periods. On the other hand, it may be that field office managers are reluctant to let good employees

who are working on other matters leave for extended periods. In the latter case, we believe that priorities should be shifted to allow for extended details. Although we appreciate that lengthening the rotation period may reduce the number of individuals available, the reduction in problems may improve the effectiveness of the team.

D. Administrative File Reviews

We understand that supervisors periodically conduct file reviews. Because we did not investigate this particular issue in depth, we do not know how thoroughly supervisors actually examine the administrative aspects of the file as opposed to the substantive aspects, such as whether the agent is interviewing the appropriate individuals. We suspect, given time constraints and the press of other duties, that many supervisors do not focus on whether documents are drafted, filed, uploaded, indexed, and otherwise handled properly. Consequently, the FBI should consider whether the administrative officer should initiate file reviews. We understand that the Columbia Division has instituted such a system. If done properly, these reviews would likely reveal individual and systemic deficiencies.

E. IMAs (Rotors)

Several field offices indicated that they had difficulty filling and keeping filled their IMA positions. Some managers asserted that the low pay for this position made it difficult to fill. Our sense was that this is an important position in the office and to the extent that IMA positions go unfilled or filled by unqualified individuals, the efficiency of the office is reduced. Several FBI managers suggested that given the important computer skills needed, the position could be upgraded. We would recommend that the FBI evaluate the IMA position and determine whether the position needs to be reclassified or whether other steps are needed to ensure that the FBI maintains full and capable staffing for these positions.

We also understand that the number of IMAs has shrunk as the FBI focused on hiring agents. Managers complained that while there was formerly one rotor per squad, squads now share rotors with the result that there are often backlogs in filing. It may be that at one time it was considered that computer systems would reduce the number of IMAs needed. Because ACS did not eliminate paperwork requirements, however, the FBI continues to need substantial clerical support. Unless Trilogy substantially reduces the need for

transmitting and filing hard copies, the FBI should evaluate whether it needs to budget for more IMA positions.

F. Post-Case Review

While the FBI and the Department of Justice have initiated in-service training on investigating and prosecuting certain types of emerging or complex crimes (for example, health care fraud and computer crimes), neither organization has done a particularly effective job at learning about administrative and organizational issues from prior cases. Different prosecutors and agents tend to supervise major cases, and each new investigative and prosecutorial leader must develop an organizational and administrative structure and develop solutions for innumerable problems, even though many of the issues have been dealt with time and time again in prior cases.

We spoke to several prosecutors and lead investigators of major cases, all of whom said that they had never been "debriefed" about the difficulties, challenges, or issues that they had faced. We believe that some process should be instituted formally to capture the wealth of knowledge that is gained when major cases are investigated and prosecuted. Either the Department of Justice or the FBI should be charged with the responsibility of ensuring that some procedure exists to learn from past efforts. One possibility is to have periodic working groups that would meet, perhaps gathering personnel from several cases (including former employees), to discuss major case problems, issues, and solutions. These ideas ultimately would be distilled into protocols (discussed below) that could be used by the personnel assigned to subsequent cases.

We raised this issue with several individuals during our interviews. While most generally thought the idea had merit, several raised potential problems. One such problem was the difficulty of getting individuals to talk about or acknowledge their mistakes. While learning from mistakes is valuable, we do not believe that the focus of the discussion necessarily needs to be on identifying mistakes or identifying individuals who made mistakes. Rather, the focus should be on identifying various challenges and how to solve them. As just one example, it would be useful to know that the FBI's chief crisis document management tool, ZyIndex, requires that the field send documents loaded onto floppy disks. That information could be incorporated into a set of instructions that would be immediately sent to the field rather than having a new investigative team figure it out many days into the investigation, as happened with the OKBOMB investigation.

Another problem that individuals raised was whether a written document would be discoverable by defendants. We believe that a written document that focuses on procedures for organizing and running major case investigations would not be discoverable any more than the law enforcement agencies' procedural manuals are discoverable. In any case, we do not believe that the possibility that the document might be discoverable should prevent the Department and the FBI from taking steps to improve future investigations and prosecutions.

G. Development of Protocols

We were told that the OKBOMB Task Force repeatedly was forced to develop solutions for problems as it went along. To some extent, this is inevitable. Even the best planning is unlikely to foresee every issue that will arise given that every case is unique factually. But, we believe that having a protocol in place at the very beginning of a major case would improve the effectiveness of the investigative team, particularly in the early, often chaotic days of a crisis or major investigation.

The protocol should address issues likely to be faced by the investigative team. The protocol could include a set of instructions that would be sent out immediately to all field offices and Legats regarding, among other issues, document management. The protocol should specifically set out what is to be sent to the Office of Origin, the number of document copies to be included, whether disks are needed, the subfiling system to be used, and specific instructions for handling subpoenas, telephone records information, and other key items. These instructions would be developed in a non-crisis atmosphere when due consideration could be given to the possible ramifications of different actions.

The protocol also could discuss, even if it did not completely resolve, other issues that might be faced by prosecutors and investigators during the investigation, such as discovery issues, including the scope of discovery and how to organize discovery; how to get information from other agencies; different databases that should be checked to get information; and other important topics. The protocol might include samples of correspondence, motions, or other items thereby saving time reinventing these documents.

The FBI should consider training a cadre of experienced administrative personnel who could be deployed immediately to organize the information management and administrative aspects of major investigations. It would also

be beneficial to assign an individual with managerial responsibility for the administrative side of the investigation. In OKBOMB, although there were many individuals with responsibility for some aspect of the administrative effort – such as discovery or filing or ZyIndex – there did not seem to be one person in charge of ensuring more broadly that information management was in place and running smoothly.

H. Destruction of Documents

We recommend that the FBI's Office of General Counsel review the FBI's policy of authorizing the destruction of documents while litigation is pending. Although the destruction policy only pertains to copies and only under certain guidelines, as we have seen in this instance, the field offices ignored the guidelines, and the retention of copies was important. Accordingly, the Office of General Counsel should consider whether any destruction should take place during pending litigation and whether destruction logs should include more complete information about the files being destroyed.

CHAPTER EIGHT

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.

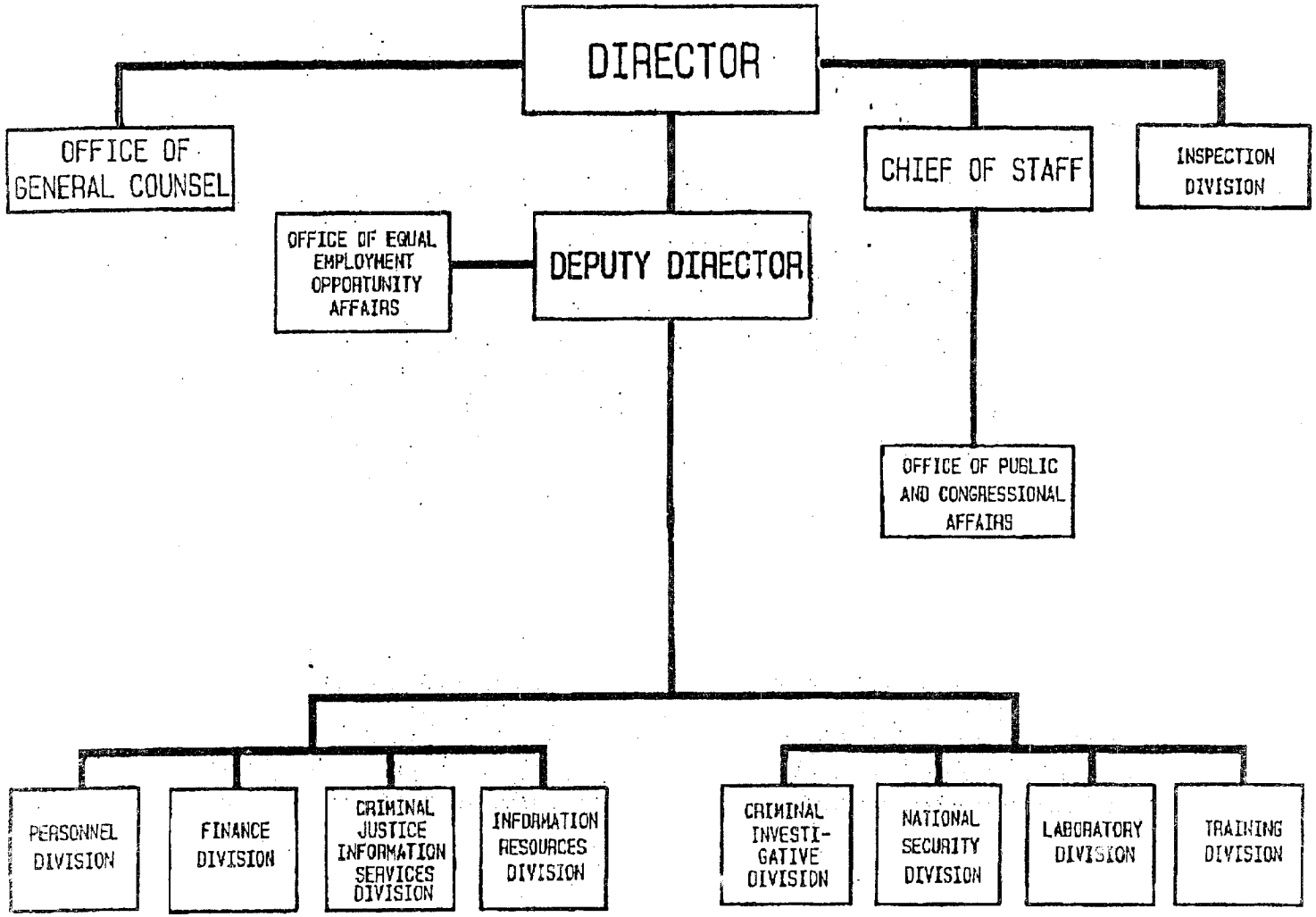
Glenn A. Fine
Inspector General

APPENDIX

Exhibit 1:

FBI Organizational Chart from 1995

FEDERAL BUREAU OF INVESTIGATION



Approved: _____ Date: 06/17/94

JANET RENO
Attorney General

Exhibit 2:

Organizational Chart for an
FBI Field Office

Organization of Counterterrorism Squad and Administrative Staff in an FBI Field Office

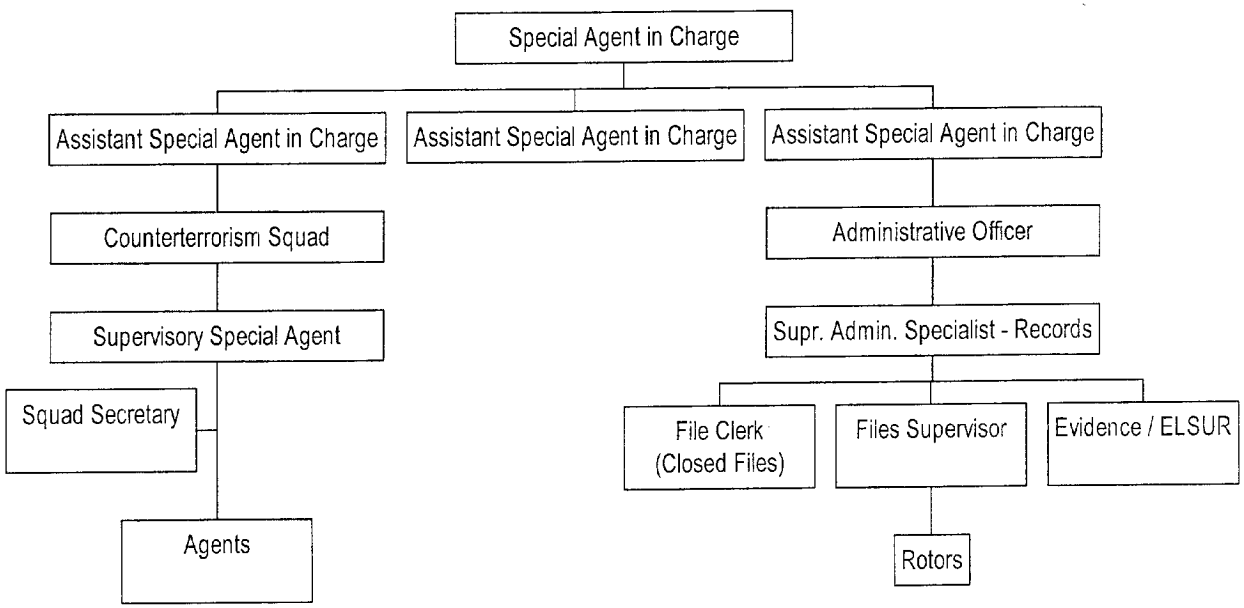


Exhibit 3:

Sample FD-302

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription _____

Investigation on _____ at _____

File # _____ Date dictated _____

by _____

A-6

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/28/95

Jose Jones, 1234 Maple Drive, West Lake Village, California, California Drivers License Number (CDL) ABC12345, was advised of the identity of the interviewing agent and the purpose of the interview and provided the following information:

Jones advised that the Pinto had arrived at 1235 Maple Drive, West Lake Village, California on April 22, 1995. Jones indicated that he just saw it there.

Jones stated that he has never seen Jane B. Doe before.

Jones was unable to provide any further information.

Investigation on 4/25/95 at Los Angeles, California

File # 174A-OC-56120 Date dictated 4/27/95 A-7

by SA JOHN O. SMITH

Exhibit 4:

Sample Insert

174A-OC-56120
OJM
1

On 05/16/95, Jane B. Doe furnished the following information to SA Oliver J. Mercedes:

On above date Doe was attending a meeting at ACME Organization Headquarters when an individual entered the room and began to hand out propaganda accusing the U.S. Government of involvement in the bombing of the Federal building in Oklahoma City. Doe has never seen the individual before at ACME Organization meetings and believes the individual was walking the streets of downtown Miami passing this literature around to anyone that would accept it.

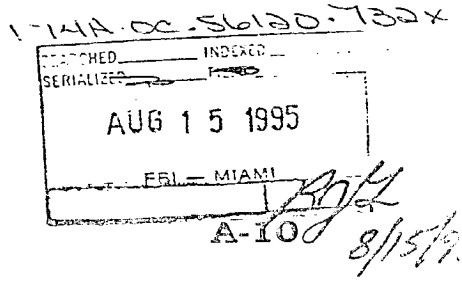


Exhibit 5:

Sample 1-A Envelope

1A envelope

Universal Case File Number _____

Field Office Acquiring Evidence _____

Serial # of Originating Document _____

Date Received _____

From _____
(Name of Contributor)

_____
(Address of Contributor)

_____
(City and State)

By _____
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No
Receipt Given ☐ Yes ☐ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☐ No

Title:

Reference: _____
(Communication Enclosing Material)

_____

Description: ☐ Original notes re interview of

_____

_____

_____

_____

2A envelope

Universal Case File Number 174A-OC-Sub 0

Field Office Acquiring Evidence Los Angeles

Serial # of Originating Document

Date Received 5/2/95

From
(Name of Contributor)

(Address of Contributor)

(City and State)

By John Q. Smith
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No
Receipt Given ☐ Yes ☐ No
Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure
☐ Yes ☐ No

Title:

Reference:
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

Jose Jones

Exhibit 6:

Sample Teletype

FD-36 (Rev. 9-1-97)

Teletype

FBI

TRANSMIT VIA:
☒ Teletype

PRECEDENCE:
☐ Immediate
☐ Priority
☒ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS

PAGE 1 OF 1.

Date _____

FM ( )

TO

INFO

BT

UNCLAS

CITE:

SUBJECT: .

BT

.

Approved: _____ **Original filename:** _____

Time Received: _____ **Telprep filename:** _____

A-15

MRI/JULIAN DATE: _____ **ISN:** _____

0002 MRI 01635

PP RUCNFB AFO FBINO FBIOC

DE FBIOK #0004 2270049

ZNR UUUUU

P 142319Z AUG 95

FM FBI CP OKLAHOMA (174A-OC-56120) (P)

TO DIRECTOR FBI/PRIORITY/

ALL FBI FIELD OFFICES/PRIORITY/

INFO FBI OKLAHOMA CITY/PRIORITY/

BT

UNCLAS

CITE: //3580//

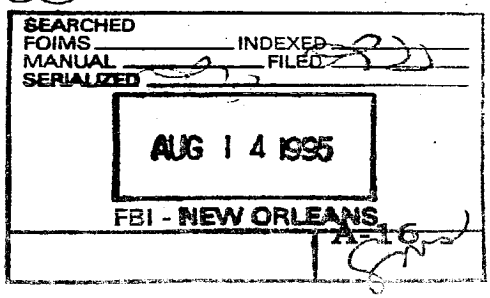
SUBJECT: OKBOMB; MAJOR CASE 117; EID; OO: OKLAHOMA CITY.

ARMED AND DANGEROUS.

RE OKLAHOMA COMMAND POST TELETYPE TO BUREAU AND ALL FIELD OFFICES DATED APRIL 19, 1995, AND SUMMARY TELETYPES TO BUREAU AND ALL FIELD OFFICES DATED APRIL 20, 1995 TO PRESENT.

EFFECTIVE THIS DATE, DAILY SUMMARY TELETYPES WILL NO LONGER BE SENT. THE OKBOMB TASK FORCE WILL ADVISE THE BUREAU AND OTHER AFFECTED FIELD DIVISIONS ON FRIDAY OF EACH WEEK, AND

174A-OC-56120-1112



PAGE TWO DE FBIOK 0004 UNCLAS

IN SUMMARY FORM, OF PERTINENT EVENTS IN CONNECTION WITH THIS MATTER.

AS ALWAYS, SHOULD ITEMS OF INTEREST ARISE WHICH WOULD REQUIRE NOTIFICATION IN A MORE EXPEDIENT MANNER, THE BUREAU AND OTHER INTERESTED OFFICES WILL BE ADVISED BY SEPARATE TELETYPE COMMUNICATION.

ARMED AND DANGEROUS.

BT

#0004

NNNN

Exhibit 7:

Sample Airtel

FD-36 (Rev. 11-17-88)

Airtel

FBI

TRANSMIT VIA:
- ☐ Teletype
- ☐ Facsimile
- ☐ _____

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☐ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☐ UNCLAS

Date _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Approved: _____ Transmitted _____ (Number) _____ (Time) Per _____

FBI/DOJ

FD-36 (Rev. 11-17-88)

FBI

TRANSMIT VIA:
☐ Teletype
☐ Facsimile
☒ AIRTEL

PRECEDENCE:
☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:
☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 6/8/95

TO : SAC, OKLAHOMA CITY (174A-OC-56120)

FROM : SAC, NEW ORLEANS (174A-OC-56120)

SUBJECT : OKBOMB;
MC 117;
EID

Re Oklahoma City teletype to New Orleans, 5/28/95, Lead #10938.

New Orleans teletype to Oklahoma City, 6/1/95.

Enclosed for Oklahoma City are the original and one copy of an FD-302 re the interview of , on 5/31/95. Also enclosed is one FD-340 (1A envelope) containing the original notes of the interview.

174A-OC-56120-963

2 - Oklahoma City (Enc. 3)
1 - New Orleans
JD:rsg
(3)

Approved: _____ Transmitted _____ (Number) (Time) Per _____

A-20

Exhibit 8:

Sample Electronic Communication (EC)

(Rev. 08-28-2000)

EC

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE Date:

To:

From:

Contact:

Approved By:

Drafted By:

Case ID #:

Title:

Synopsis:

Details:

♦♦

(12/31/1995)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY **Date:** 10/14/1997

To: Jackson

Jacksonville **Attn:** Pensacola RA

Denver **Attn:** OKBOMB CP, SA

From: ✓New Orleans
Squad 7
Contact: SA

Approved By: Wendell Paula Jean

Drafted By: Fiveash Raymond M Jr.:rsg

Case ID #: 174A-OC-56120

Title: OKBOMB,
MAJOR CASE 117;
EID

Synopsis: To request RYDER RENTAL records for trucks that could have been in Oklahoma City/Central Kansas 4/14-19/95.

Enclosures: Enclosed for Jackson and Jacksonville are copies of documents forwarded to set the lead for New Orleans.

Details: On 10/14/97, , RYDER RENTAL, , New Orleans, , advised that the records for Dealer , Jackson, Mississippi, and Dealer , Pensacola, Florida, are maintained in their respective areas.

174A-OC-56120

LEAD (s):

Set Lead 1:

JACKSON

AT JACKSON, MISSISSIPPI:

Contact the RYDER TRUCK dealer at telephone , obtain requested documents, and forward to OKBOMB CP - Denver.

Set Lead 2:

JACKSONVILLE

AT PENSACOLA, FLORIDA:

Contact RYDER TRUCK dealer at Boulevard, telephone , obtain requested documents, and forward to OKBOMB CP - Denver.

◆◆

Exhibit 9:

November 15, 1996, Teletype from the Director to All Field Offices and Legats

0004 MRI 01685

PP AFO FBIDNCP ALO CASE117

DE RUCNFB #0039 3210003

ZNR UUUUU

P 152213Z NOV 96

FM DIRECTOR FBI (174A-OC-56120) (P)

TO ALL FBI FIELD OFFICES/PRIORITY/

CP DENVER//INFO///PRIORITY/

ALL LEGATS/PRIORITY/

BT

UNCLAS

CITE: //0541//

PASS: PERSONAL ATTENTION ADIC NYO; ADIC WFO; ALL SACS; LEGATS;

CP DENVER - INSPECTOR IN CHARGE.

SUBJECT: OKBOMB; MAJOR CASE 117, EID; OO: OKLAHOMA CITY

BUDED: 11/29/96.

ARMED AND DANGEROUS

RE OKBOMB TELETYPES DATED 9/7/95, 9/16/95, 10/25/95, 11/11/95 AND 11/13/96.

REFERENCED TELETYPES TO ALL FBI FIELD OFFICES REQUESTED ALL

DOCUMENTS AND EVIDENCE PERTAINING TO THE CAPTIONED MATTER BE FORWARDED TO THE OKBOMB COMMAND POST. THE 9/16/95 TELETYPE SPECIFICALLY ADVISED THAT ALL DIVISIONS WERE TO NOTIFY THE OKBOMB CP AND PROVIDE INFORMATION AS TO WHAT OKBOMB EVIDENCE REMAINED WITHIN THEIR DIVISION. THE RESPONSES FROM ALL FIELD OFFICES TO THE OKBOMB COMMAND POST INDICATED THAT NO OKBOMB RELATED EVIDENCE REMAINED IN ANY DIVISION.

DUE TO THE REPRESENTATIONS MADE BY ALL FIELD OFFICES, THE COURT WAS ADVISED BY OKBOMB PROSECUTORS THE FBI HAD PROVIDED ALL DOCUMENTS AND ITEMS OF EVIDENCE FOR DISCOVERY.

ON 11/14/96, DURING THE DISCOVERY HEARINGS FOR THE UPCOMING MCVEIGH/NICHOLS TRIALS, DEFENSE ATTORNEYS NOTIFIED THE COURT THAT DOCUMENTS, SPECIFICALLY, SURVEILLANCE LOGS CONCERNING MICHAEL FORTIER, HAD NOT BEEN TURNED OVER TO THEM DURING DISCOVERY BY THE GOVERNMENT. A CHECK WITH THE APPROPRIATE FIELD OFFICE CONFIRMED THE SURVEILLANCE LOGS IN QUESTION WERE STILL IN THEIR POSSESSION.

ADDITIONALLY, U. S. DISTRICT JUDGE RICHARD P. MATSCH HAS RULED THAT ALL INVESTIGATION CONDUCTED PRIOR TO 11/1/96, MUST BE TURNED OVER TO THE DEFENSE ATTORNEYS AS PART OF THE DISCOVERY PROCESS, BY 12/15/96. THIS DEADLINE MUST BE MET.

THIS COMMUNICATION ADDRESSES TWO ISSUES: THE CONFIRMATION

ADDRESSING OKBOMB ASSIGNMENTS, BUT ALSO OTHER LOGICAL COMPONENTS WITHIN THE DIVISION SUCH AS RESIDENT AGENCIES WHO MAY HAVE COVERED LEADS, SOG SQUADS, ELSUR CLERKS, BULKY CLERKS, PHOTOGRAPHERS, POLYGRAPH EXAMINERS AND ROTOR CLERKS TO MAKE ABSOLUTELY SURE NO OKBOMB RELATED MATERIAL, NOT PREVIOUSLY FORWARDED TO OKBOMB, REMAINS WITHIN THEIR DIVISIONS.

FINALLY, IT IS IMPERATIVE ALL SACS AND LEGATS MAKE SURE ALL INVESTIGATIVE LEADS ASSIGNED PRIOR TO 11/1/96 ARE COMPLETED, PROPERLY DOCUMENTED, AND THE RESULTS ARE FORWARD TO THE OKBOMB CP IN DENVER BEFORE COB 11/29/96. THE OKBOMB CP WILL BE FAXING TO EACH SAC A LIST OF ALL LEADS STILL CONSIDERED OPEN WITHIN THEIR RESPECTIVE DIVISION.

SACS AND LEGAL ATTACHES ARE REMINDED RESULTS OF INVESTIGATIONS MUST BE REPORTED BY FD-302 WITH 12 COPIES OR BY INSERT WITH ORIGINAL AND ONE COPY. A FLOPPY DISK CONTAINING DOCUMENTS SHOULD ALSO BE PROVIDED. LEAD CONTROL NUMBERS MUST BE STATED IN THE RESPONSE, AS WELL AS ON ALL FD-302S AND INSERTS.

FAILURE TO PROVIDE THE NECESSARY DOCUMENTS WHICH HAVE BEEN REQUESTED REGARDING THIS CASE IN A TIMELY AND SUITABLE MANNER WILL RESULT IN THE APPROPRIATE ADMINISTRATIVE ACTION.

BT

THAT (1) ALL APPROPRIATE DOCUMENTS AND ITEMS RELATING TO THIS INVESTIGATION HAVE BEEN FORWARDED TO THE OKBOMB CP AT DENVER; AND (2) THAT ALL INVESTIGATIVE LEADS HAVE BEEN COVERED AND REPORTED, REGARDING INVESTIGATION CONDUCTED PRIOR TO 11/1/96.

ACCORDINGLY, IT WILL BE THE RESPONSIBILITY OF ALL SACS AND LEGAL ATTACHES TO ENSURE ANY FD-302, INSERT, MEMO, EC, 1A, 1B, 1C, ELSUR RECORDING OR DOCUMENT, BULKY EVIDENCE LOG/DOCUMENT, PHOTO, PHOTO LOG, SURVEILLANCE LOG, POLYGRAPH REPORT, AND ANY OTHER ITEM, NOT SPECIFICALLY DESCRIBED WHICH PERTAINS TO THE OKBOMB INVESTIGATION, BE FORWARDED TO THE OKBOMB COMMAND POST IN DENVER BY COB 11/29/96. NO EXTENSION TO THAT DATE CAN BE PERMITTED.

IT WILL FURTHER BE THE RESPONSIBILITY OF EACH SAC AND LEGAL ATTACHE TO CONFIRM BY TELEPHONE, THEN FOLLOW-UP WITH A TELETYPE, ADVISING THE OKBOMB COMMAND POST WHAT ITEMS ARE BEING FORWARDED, OR THAT THEIR SPECIFIC DIVISION/LEGAT HAS NO PERTINENT ITEMS REMAINING UNDER THEIR CARE AND CONTROL. THE POINT OF CONTACT AT THE OKBOMB CP AT DENVER WILL BE SSA MARK D. WHITE AT TELEPHONE

IT IS SUGGESTED THAT SACS AND LEGAL ATTACHES NOT ONLY CONTACT THE SQUAD SUPERVISORS WITHIN THEIR RESPECTIVE OFFICES

#0039

NNNN

Exhibit 10:

Overcount of Belated Documents

APPENDIX

OVERCOUNT

Although the government disclosed 1033 documents and physical items to the defense in May 2001, we found that number overstated the true number of documents that had not been properly disclosed to the defense. The overcount was caused for a number of reasons:

A. Documents were timely disclosed pretrial

Some documents were not belated at all because they had actually been properly disclosed to the defense before the defendants' trials. Because of the complexities inherent in the database used to track OKBOMB documents and the speed of the search for the documents in the database, some documents were erroneously assumed to have not been disclosed. Subsequent and more thorough investigation revealed that they had been disclosed properly. For example, one of Phoenix's belated inserts had been disclosed timely as had an insert concerning vehicle tag numbers from Sacramento, California. An analysis completed by the prosecutors noted that an insert found in an FBI Headquarters office and disclosed to the defense as part of the second wave of belated documents had in fact been disclosed in 1996 and was inadvertently included in the documents given to the defense in May 2001.[1] We found that at least 14 of the belated documents had been properly disclosed before trial.

B. Duplicates

Twenty-four documents are duplicates and so were counted twice. For example, the same FD-302 was counted as being belated both from Indianapolis and Detroit. Denver had a first wave belated document that is identical to a Denver second wave belated document. A photograph sent from St. Louis to Paris and San Juan was counted as a belated document three times. We show a graphic of this as Example #1 in this Appendix.

---

[1] The FBI officials supervising the process of examining the documents told us that if they had more time to analyze the belated documents, they likely would have found others that had in fact been disclosed to the defense in a timely fashion. Given our experience with OKBOMB's database, ZyIndex, we believe that is likely an accurate assessment.

C. Belated 1 A Envelopes Contained Documents that had been Disclosed Timely

The 1A envelopes gave rise to another overcounting problem. In some instances, the 1A envelope and its contents were considered belated even though the contents had in fact been disclosed timely to the defense. This occurred when an office placed FD-302s from another office into 1A envelopes. For example, Dallas sent an FD-302 and an insert to the OKBOMB Task Force and to other offices, including New Orleans. New Orleans placed the FD-302 and insert in a 1A envelope. The 1A envelope and its contents were considered as New Orleans belated documents even though the contents – the Dallas FD-302 – had been disclosed to the defense. We show a graphic of this at Example #2 in this Appendix. A Mobile belated 1A contains a composite drawing sent to the field offices by the OKBOMB Task Force during the OKBOMB investigation.

D. Belated Documents Similar to Documents Previously Disclosed

Another related problem arises from similar but not identical documents. In 14 cases, we found FD-302s that had been disclosed to the defense that differed from the belated document by only a few words, such as the spelling of T-shirt (tee shirt) or the use of names instead of pronouns (Smith v. he).

These situations usually resulted from agents recreating documents that already existed and from draft documents. On occasion the Task Force did not receive an FD-302, requested that the field office send one, and the field office created a new FD-302 that was sent to the Task Force rather than sending the one that already existed. When the field office files were reviewed in Oklahoma City, the FD-302 that had never been sent was deemed to be belated even though it varied only slightly from the FD-302 that had been disclosed to the defense. Another example is a San Francisco insert that was considered to be a belated second wave document. According to San Francisco, the insert was a draft that was turned into an FD-302 by the agent. The FD-302 was submitted and disclosed to the defense, but the draft insert remained in the agent's working folder. It was deemed to be belated after the working files were reviewed as part of the second wave. However, because draft documents were never considered to

be discoverable, we do not believe it should be counted as one of the belated documents.[2]

E. Belated Documents that would not have been Discoverable

Some documents involved unrelated cases or categories of documents that were not discoverable. In some instances, the belated items were so unrelated to the OKBOMB investigation or could not reasonably be construed as "investigative" material that they should not have been disclosed to the OKBOMB defendants in 2001 and should not have been counted as belated documents. For example, material found in a Salt Lake City 1A consisted of 183 pages of items sent to the FBI by a citizen. The items included newspaper articles about the bombing and an extensive collection of song lyrics.

An example of this problem is a Portland insert that was counted as part of the second wave. The belated document was originally sent to Oklahoma City by Portland in the first wave. One of the searchers reviewing the first wave materials did not believe it should be considered as a problem document because it concerned an unrelated bank robbery and was probably only put in the Portland Auxiliary Office file for information purposes.[3] However, as part of the first wave review process, on May 15, 2001, the Dallas Field Office sent 25 pages of Portland inserts back to Portland. That fax, including the insert that the first wave searcher had determined should not be considered a belated document, was sent back to Oklahoma City as part of the second wave. Because the second wave searchers were not making the same distinctions that the first wave searcher had made, the insert was considered to be a belated document.

As another example, an item somewhat similar in appearance to an insert was found in the warehouse in Oklahoma City and was construed to

---

[2] Although we did not analyze the second wave documents to the same extent that we did the first wave documents, we suspect this problem likely occurred in even more documents in the second wave. In May 2001, the field offices were sending to Oklahoma City agents' "working files," i.e. copies that individual agents maintained in their desks apart from the official Auxiliary Office file. Therefore, the second wave may contain many "similar but not identical" versions, such as drafts, of documents that were disclosed.

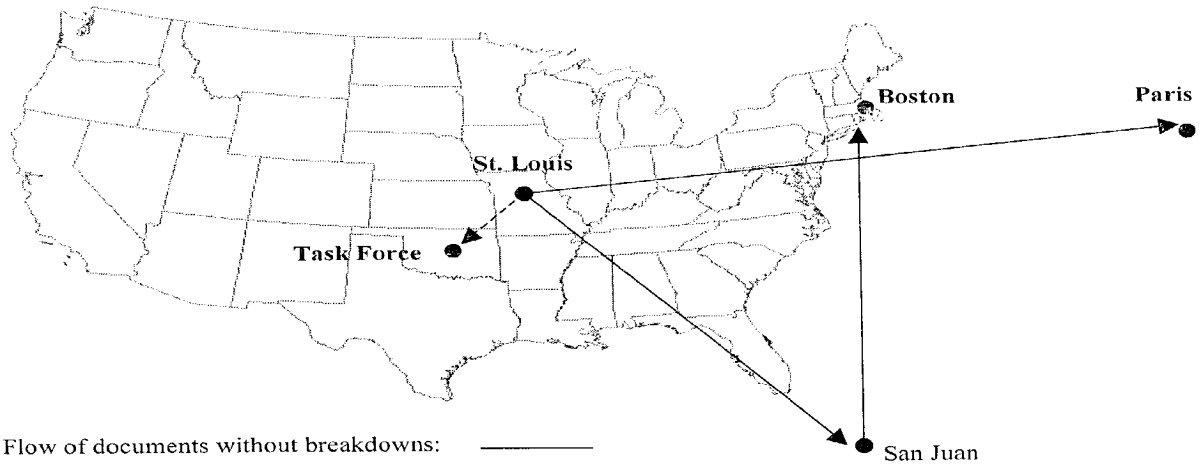
[3] The suspect arrested for the robbery had in his pockets three newspaper articles about the Oklahoma City bombing.

be a belated document. However, in actuality, the item is the second page of an EC, not an insert. ECs were not turned over as part of the OKBOMB discovery process.

Because we did not have extensive knowledge of the details of the OKBOMB investigation, we were unable to determine the exact number of documents that might reasonably be judged to be unrelated to OKBOMB and therefore not discoverable.

Example #1
Photograph Counted as a Belated Document Three Times

Purpose: This example illustrates how a photograph of a potential John Doe 2 suspect was counted as a belated document three times.



Flow of documents without breakdowns: ————

Breakdown in flow of documents: ---------

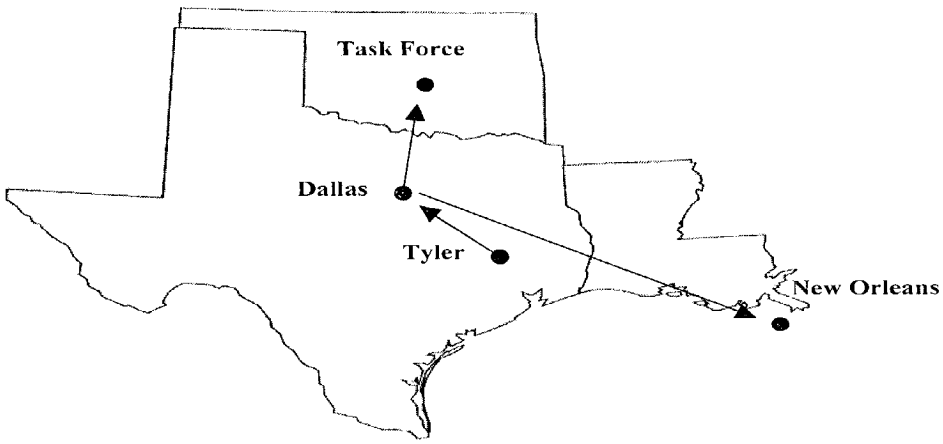
St. Louis Field Office and the Task Force: St. Louis sent an airtel to the Task Force, Legat Paris, and the San Juan Field Office stating that the photograph of "CPD" (a possible John Doe 2 suspect) was enclosed. In 2001 the photograph could not be located in the Task Force file and was subsequently identified as a St. Louis belated document.

Legat Paris: Paris placed the photograph in a 1A envelope, which was placed in its OKBOMB file. When Paris sent its OKBOMB file to Oklahoma City in 2001, the searchers could not find a reference to the Paris 1A envelope in the OKBOMB database and counted it as a Paris belated document.

San Juan and Boston Field Offices: San Juan sent Boston a copy of the photograph for further investigation. Boston placed the photograph in its OKBOMB file. When Boston sent its OKBOMB file to Oklahoma City in 2001, the searchers could not find a reference to the photograph in the OKBOMB database and counted it as a Boston belated document.

Example #2

Purpose: This example illustrates how a 1A envelope and its contents were counted as belated even though the contents had been disclosed to the defense.



Tyler Resident Agency (RA): Agent assigned to Tyler RA interviewed "MLH" concerning "JPC" who advocated the violent overthrow of the United States Government. Agent forwarded original interview notes and criminal history of "JPC" to Dallas, the Headquarters City.

Dallas Field Office: Dallas sent an airtel to the Task Force with the FD-302 of the "MLH" interview, an insert pertaining to "JPC's" criminal history, and a 1A envelope containing the interview notes. Dallas also sent two copies each of the interview and insert to New Orleans to conduct further investigation because the witness had some connection to a town in Louisiana.

New Orleans Field Office: New Orleans placed the copies of the FD-302 and insert in a 1A envelope, which was placed in its OKBOMB file.

Task Force: The FD-302 and insert from Dallas were placed in the Task Force file and disclosed to the defense. In 2001, the searchers did not check the contents of the New Orleans 1A envelope to determine if the contents had been disclosed previously. Rather, when the searchers could not find a reference to the specific New Orleans 1A envelope in the OKBOMB database, they counted it as belated even though its contents had in fact been disclosed to the defense.

Exhibit 11:

Sample FD-209

FD-209 (Rev. 2-12-92)

Memorandum

To : SAC DALLAS (270C-DL-73913) (FCIT) (P) Date 1/16/96

From : SA GLENN C. EDWARDS

Subject: DL-5105-CW-DT

Dates of Contact
1/12/96

File #s on which contacted (Use Titles if File #s not available)
174A-OC-56120

Purpose and results of contact

- ☐ NEGATIVE
- ☒ POSITIVE
- ☐ STATISTIC

Description of Statistical Accomplishment	Title of Case	File No.

ENTERED CRMS
FD-209 DATE 1/30/96 OPER CW
INSERT DATE CHKR
FD-302 DATE USER

270C-DL-73913, Sub A

Information herein obtained confidentially; informant's name is not to be disclosed in a report or otherwise unless it has been decided definitely that this person is to be a witness in a trial or hearing.

PERSONAL DATA

JAN 19 1996
DALLAS

139

1 - 270C-DL-73913 1 - 270C-DL-73913A 2 - 174A-OC-56130

Exhibit 12:

December 20, 2000, EC from Shackelford

(Rev. 08-28-2000)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/20/2000

To: All Field Offices

Attn: Administrative Officer

From: Information Resources
Information Management/File Services/Room 1B327-Box 20
Contact: William Shackelford, Extension 6903

Approved By: Pickard Thomas J
Dies Bobby Edward
Weaver Dennis R
Hardy Nora B

Drafted By: Shackelford William

Case ID #: 66F-HQ-1186292 - 1255
174A-OC-56120 - 10731

Title: DESTRUCTION OF FIELD FILES AND RECORDS
OKBOMB
MAJOR CASE 117

Synopsis: NARA approved authority to destroy Lead Office (LO) case files pertaining to OKBOMB.

Administrative: Reference Manual of Administrative Operations and Procedures (MAOP), Part II, Section 2-4.5.2

Details: As the result of inquiries received from several field offices, disposition authority was sought from the National Archives and Records Administration (NARA) to permit destruction of LO case files relative to the investigation of the "Bombing of the Alfred P. Murrah Federal Building; Oklahoma City, Oklahoma; April 19, 1995" (OKBOMB; Major Case 117; 174A-OC-56120).

NARA has responded favorably and has provided the FBI with limited destruction authority. Therefore, upon receipt of this communication, field offices are authorized to destroy OKBOMB related LO case files after observance of the instructions and restrictions set forth below. This decision, by NARA, is consistent with the current policy pertaining to the destruction of existing LO cases as set forth in MAOP, Part II, Section 2-4.5.2, (2) and (4).

NARA has noted that many of the OKBOMB documents have been uploaded by the either the Oklahoma City (OC) or the various LO and the text is easily retrievable through Automated Case Support (ACS) System. Therefore, once the LO has determined

COPY

which documents have been uploaded into ACS, the document(s) may be destroyed unless one of the following circumstances exist:

1) Substantive notes which are discoverable have been written on the uploaded communication;

2) Enclosures are attached which have not been uploaded;

3) Additional indexing is indicated;

4) Photographs or other material not able to be uploaded is attached, or

5) Documentary or physical evidence exists;

6) Any communication which was not uploaded, including all communications received by the LO from outside of the FBI.

Documents which meet the above criteria, as well as original FD-302s, laboratory reports, latent fingerprint reports, original surveillance logs, agents' investigative notes, original photographs and other original documents maintained in the 1-A exhibit section of lead office case files are to be prepared for forwarding to the office of origin. Form FD-491 (Transmittal of Original Documents to Office of Origin) may be used for this purpose.

<u>However, in order to avoid inundating OC with the filing of LO material, all field offices are to retain material identified by the LO but are not to forward any LO material to OC without specific instructions from either FBIHQ or OC.</u>

The destruction guidelines set forth in this communication are consistent with the Bureau's paperwork reduction initiatives and eliminates, where possible, retention, maintenance and processing of unnecessary paper records. All offices should ensure that statistics are maintained for record material destroyed.

Any inquiries regarding the instructions set forth herein should be directed to either Mr. William Shackelford, Archives Specialist, FBIHQ, Extension 6903 or Ms. Dorris Arrasmith, OC File Supervisor.

LEAD(s):

Set Lead 1:

ALL RECEIVING OFFICES

Review OKBOMB related LO case file and identify all material which meets the criteria for forwarding to OC. Prepare Form FD-491 (Transmittal of Original Documents to Office of Origin) for this purpose.

Set Lead 2:

ALL RECEIVING OFFICES

Determine volume of LO case file material which is to be forwarded to OC and advise by electronic communication the OC File Supervisor.

Set Lead 3:

OKLAHOMA CITY

AT OKLAHOMA CITY, OKLAHOMA

Upon notification from each LO of volume of case file material to be forwarded, allocate sufficient resources to file material with Office of Origin 174A-OC-56120.

Set Lead 4:

OKLAHOMA CITY

AT OKLAHOMA CITY, OKLAHOMA

Maintain LO case file material as separate sub files to Office of Origin 174A-OC-56120. Do not integrate LO material into main file volumes of Office of Origin case file.

CC: 1 - Mr. Dies, Room 9939
1 - Mr. Weaver, Room 9998
1 - Ms. Hardy, South Pickett Street - Building 841
1 - Mr. Shackelford, Room 1B327-Box 20
1 - Mrs. Roundtree, Room 4933
1 - Mrs. Cummins, Room 4933

Exhibit 13:

January 30, 2001, EC from Richmond

FEDERAL BUREAU OF INVESTIGATION

01/30/2001
Precedence: IMMEDIATE Date: 01/30/2001

To: All Field Offices
Information Resources

Attn: Administrative Officer
Information Management/
File Services
Room 1B327-Bex [illegible]
William Shackelford

From: Oklahoma City
Squad 4
Contact: IRS Peggy W. Richmond

Approved By: Teater William E

Drafted By: Richmond Peggy W:pwr pwr

Case ID #: 66F-HQ-1186292-1264
174A-OC-56120-L9 (Pending)
~~10740~~ 10753

Title: DESTRUCTION OF FIELD FILES AND RECORDS
OKBOMB
MAJOR CASE 117

Synopsis: Oklahoma City requests complete files be sent to Oklahoma City.

Reference: 66F-HQ-1186292 Serial 1255
174A-OC-56120 Serial 10731

Details: Due to review of files received thus far and the delicate nature of the case, Oklahoma City desires to evaluate files prior to their being destroyed. Oklahoma City is requesting complete files be furnished and Oklahoma City will handle destruction.

WET/RB

A-45

[illegible] cc 66F-OC-A[illegible]-36

LEAD(s):

Set Lead 1:

ALL RECEIVING OFFICES

Forward complete files to Oklahoma City, Attention: IRS Peggy Richmond, x 3983 or FA Linda Vernon, x 3985, contacting Oklahoma City prior to transmitting.

Field Offices not having OKBOMB related material are requested to provide Oklahoma City an EC advising no OKBOMB documents have been retained in those divisions.

Oklahoma City Division understands the time and effort expended by the field offices to handle the OKBOMB files and wishes to express our appreciation to each of you for all the assistance provided in the past and that being provided at this time.

◆◆

Exhibit 14:

Series of E-mails among White, Vernon, and Richmond

From: MARK WHITE
To: PEGGY RICHMOND
Date: Thu, Feb 1, 2001 10:28 AM
Subject: Re: Okbomb

Great! When it appears you have gotten sent to you most if not all what you are going to get, we can discuss further any problems, such as the 1A's. SAC Defenbaugh and myself may end up coming to OKC to sit down with you, look at the material, and determine how we will proceed.

>>> PEGGY RICHMOND 01/30 5:48 AM >>>
Hi - Mark --

When I found out last week that we were getting files from other offices I told them I didnt want to send to warehouse and had arranged space for them. Doris and I have already discussed setting up a sub file for the EC's that are advising what is being sent plus I will have an access database I am going to use to keep track of these communications.

Today is Doris' (she is file supv now) first free day to get with me since I learned of the EC from HQ and we had scheduled a meeting for this morning to get sub file set up, etc. She had already agreed to advise me when they came in so I could review and file.

So far we only have 3 offices in and we will handle per your instructions. We will send you a weekly update to let you know how things are going

>>> MARK WHITE 01/29 1:33 PM >>>
Linda, Bill and Peggy-

I have discussed this with SAC Defenbaugh. We both agree on these points.

1. **Do not send these 1A's or any other 1A's/or other paperwork/or evidence you may receive back to the offices. Keep them in Oklahoma City. This is per SAC Defenbaugh.**

2. Check the 1A's against other evidence already on file. Let's check to make sure these are not duplicates of what we already have.

3. In the near future, when it appears all Divisions who are going to send files into Oklahoma City have done so, SAC Defenbaugh and myself will come up to Oklahoma City and sit down with all of you, see what you have received and decide what to do to proceed. The NCIC checks and things like that are not of any concern (but don't get rid of them yet) but photo's and other reports could be a big problem.

4. Keep all the IA's and any other information that may be discoverable seperated so we can review it. **We also must know what office has sent it to us.** This may mean if office's send us FD-302's, you will have to check to make sure we have the original on file.

Please keep me informed of the status of this. As I stated once the flow of reports/1A's slow down to where it appears all offices have forwarded their info, then we will come to visit.

Thanks.

>>> LINDA VERNON 01/29/01 10:35AM >>>
Hello Mark,

Headquarters has sent an EC out to all offices sayings it's okay to send Okbomb files to OKC. So the files are coming back with guess what Original 1As that I have never seen. 1As that all offices were suppose have sent in back in December 1996 or early 1997. has told us to send back the 1As to the offices because we are not to get any evidence with these files. My concern is this is a big Discovery problem since we told the defense they have seen everything. The 2 offices we received 1As from so far is Miami & Birmingham. I glance at the 1As and they are Photos, NCIC printout, etc. I didn't really want to know because if I don't really see them then I can plead ignorance on the subject.

Also Birmingham has the Time Line Indexed in there file. Which also can up as a Discovery concern too. I don't think this will be a problem but I thought it was weird they had copies of it. I figure you can tell Danny about this little problem. I have not contacted Sean about this.

So what do you think would be best way to handle this situation?

Linda

Exhibit 15:

March 15, 2001, EC from Richmond

FEDERAL BUREAU OF INVESTIGATION

03/15/2001

Precedence: IMMEDIATE **Date:** 03/15/2001

To: All Field Offices **Attn:** Administrative Officer
All Legats
Information Resources
Information Management/File Services/Room 1B327-Box 20
Contact: William Shackelford, x 6903

From: Oklahoma City
Squad 4
Contact: IRS Peggy W. Richmond, (405) 290-3983

Approved By: Teater William E

Drafted By: Richmond Peggy W

Case ID #: 174A-OC-56120 (Pending)

Title: DESTRUCTION OF FIELD FILES AND RECORDS
OKBOMB
MAJOR CASE 117

Synopsis: Immediately forward any 1A's, 1B's, 1C's and Elsur material not previously forwarded to Oklahoma City.

Reference: 174A-OC-56120 Serial 10740

Details: Oklahoma City by teletype dated 11/14/96, and Director teletpye dated 11/15/96, requested all Field Offices and Legats to forward all documents and evidence pertaining to this case to the OKBOMB Command Post and on 1/30/01, Oklahoma City again requested all files, etc., relative to the OKBOMB investigation (copy not sent to Legats) be forwarded to Oklahoma City. Review of files received thus far indicates some offices are still in possession of 1A's, 1B's, 1C's or Elsur material.

174A-OC-56120-LO-48
66F-OC-A60083

A-5183

4E010040.R1

LEAD(s):

Set Lead 1:

ALL RECEIVING OFFICES

Due to the extremely sensitive nature of this case and the fact that Oklahoma City is receiving evidence that should have been forwarded to this office in 1996, it is requested that all offices immediately conduct a search of your offices for any additional documents, sub files, etc., relating to 174A-OC-56120 that may have been previously missed. Please forward any 1A's, 1B's, 1C's, **Elsur**, or **ANY OTHER MATERIAL** still in your possession pertaining to OKBOMB to the Oklahoma City Division, Attention: IRS Peggy W. Richmond.

It is also requested that after this search is conducted, Oklahoma City be furnished name of individual in your office responsible for certifying that all documentation has been transmitted to Oklahoma City.

Oklahoma City appreciates all the assistance your offices have provided to date in this matter.

◆◆

Exhibit 16:

May 8, 2001, Letter from
Defenbaugh to Connelly

U.S. Department of Justice

Federal Bureau of Investigation

DRAFT

(1-15)

In Reply, Please Refer to
File No. 174A-OC-56120

1801 N. Lamar, Ste 300
Dallas, Texas 75202-1795
214-720-2200
May 8, 2001

Sean Connelly
Special Attorney for the United States Attorney General
United States Attorney's Office
1225 17th Street, Suite 700
Denver, Colorado 80202

RE: Additional Items Located concerning the Oklahoma City Bombing Investigation (OKBOMB)

Dear Mr. Connelly:

As you are aware, the Federal Bureau of Investigation (FBI) was tasked on a number of occasions to provide complete discovery to all defendants involved in the OKBOMB matter. On no fewer than five (5) occasions, commencing from the fall of 1995 until the present, I, as the FBI Inspector in Charge of the OKBOMB Task Force, sought and obtained numerous assurances from FBI Senior Management Officials that diligent searches for documents had taken place in their Field Offices and foreign Legal Attache's (Legat's), and that all matters relating to the investigation had been forwarded to me. Via requests by myself, and Director Louis Freeh, numerous written and e-mailed demands were made for each and every employee of the FBI to search appropriate files and areas within their respective domains, for any document, even remotely connected with the OKBOMB investigation. Located materials were then forwarded to me at the OKBOMB Task Force. Written certification was demanded from Senior Management Officials in each FBI Field office and foreign Legat post, confirming that such a search had been conducted and either no documents were found, or any located items would be, or had already been forwarded to me.

I am aware that each and every FBI field office and foreign Legat was involved in the OKBOMB investigation and that the case was the most labor intensive in FBI history. Only recently have I become aware that additional documents, some of which have not been tendered to the defendants, have in fact been located. These documents include original 302s, inserts, and physical evidence ("1As", "2Bs", and "1Cs"). It is noted that my recent review of these items was the first time anyone on the

OKBOMB Task Force had seen these materials, and none were used in the Government's case.

I have determined that these items were located when the Oklahoma City FBI office contacted FBI Archivist William Shackleford to determine how to preserve OKBOMB documents. Shackleford requested on December 20, 2000, that all FBI offices send their documents to Oklahoma City. FBI Oklahoma City reviewed the materials and found that most all had previously been provided to defense counsel through the discovery process. The remaining documents are those which are the subject of this letter, and are items which have not been identified through any of the 26 OKBOMB databases.

I and my staff, have personally reviewed each document and have divided the information into five (5) categories: Items relating to John Doe #1; Items relating to John Doe #2; Items miscellaneous in nature; Items which mention McVeigh, Nichols, or Fortier which are not important; and, Items which mention McVeigh, Nichols, or Fortier which are important or exculpatory.

We have conducted a document by document review and analysis of each item, and have found that none are Brady material, exculpatory, or relate to any of the defendant's innocence. None of the documents are in the category of items which mention McVeigh, Nichols, or Fortier and are "important/exculpatory". The majority of the items are associated with John Doe's #1 and #2; are not related to the defendants at all; or mention McVeigh, Nichols, or Fortier, but are deemed not important.

Fairness, justice and the obligation of discovery require that I bring this information to your attention.

Sincerely,

Danny A. Defenbaugh
Special Agent in Charge

Exhibit 17:

May 9, 2001, Letter from Connelly to Defense Counsel

U.S. Department of Justice

1225 Seventeenth Street
Suite 700
Denver, Colorado 80202

(303) 454-0341
(FAX) 454-0403

May 9, 2001

Robert Nigh, Jr.
2617 E. 21st Street
Tulsa, OK 74114 (by 5/9 federal express)

Nathan Chambers
Carrigan Chambers Dansky & Zonies, P.C.
1601 Blake Street, Suite 300
Denver, CO 80202 (by 5/10 hand delivery)

John M. Richilano
Richilano & Ridley
1800 15th Street, Suite 101
Denver, Co 80202 (by 5/10 hand delivery)

Dear Counsel:

As I told each of you in separate telephone conversations yesterday, the FBI has discovered additional materials generated by its field divisions outside Oklahoma City in connection with the OKBOMB investigation. I first learned of the existence of these materials yesterday, and received them today after they were flown from Oklahoma City to Denver on an FBI plane. The documents were brought to my attention by FBI Special Agent in Charge Danny Defenbaugh, who headed the OKBOMB investigation and currently heads the FBI's Dallas field division. FBI Director Louis Freeh and Agent Defenbaugh had requested on numerous occasions prior to trial that each field division and legal attache forward all OKBOMB-related materials to the Oklahoma City division, and had received assurances that all such materials had been forwarded. The belated discovery of additional such materials came after an FBI archivist requested that all OKBOMB-related materials be sent to the Oklahoma City field office for archiving.

The materials consist of FBI reports of investigation ("302s" and "inserts") and physical evidence, such as photographs, written correspondence and tapes ("1As" "1Bs" and "1Cs"). All reports, and all physical evidence capable of being photocopied, are being delivered to you. The physical evidence not capable of being photocopied is identified in the photocopied materials. For control purposes, we have Bates-stamped all the materials being produced from each field division. For example, the documents from the Albany field division are Bates-stamped numbered 1-153, the documents from the Albuquerque field division are Bates-stamped numbered 1-102, etc.

We do not believe anything being produced is Brady material bearing on the federal convictions or sentences of Timothy McVeigh or Terry Nichols. Similarly, we do not believe anything in the materials makes even a prima facie showing of either man's actual innocence. Many of the materials are similar to the previously-litigated "lead sheets," in that they involve interviews and information regarding persons whom at one time were thought to resemble the UNSUB sketches. Nonetheless, many of the materials – in particular, the FBI-302s and inserts – should have been produced under the reciprocal discovery agreement. We are producing the materials now so you can make your own determinations.

Please feel free to contact me if you have any questions.

Sincerely,

SEAN CONNELLY
Special Attorney to the
U. S. Attorney General

Attached FBI Materials: Albany 1-153; Albuquerque 1-102; Anchorage 1-7; Atlanta 1-61; Birmingham 1-30; Boston 1-70; Buffalo 1-179; Charlotte 1-5; Chicago 1-90; Cincinnati 1-3; Cleveland 1-10; Dallas 1-63; Detroit 1-164; El Paso 1-152; Honolulu 1-30; Houston 1-37; Indianapolis 1-61; Jackson 1-36; Kansas City 1-12; Knoxville 1-4; Little Rock 1-98; Los Angeles 1-446; Louisville 1-5; Miami 1-226; Milwaukee 1-3; Minneapolis 1-10; Mobile 1-179; New Orleans 1-103; Norfolk 1-4; New Haven 1-51; Omaha 1-9; Paris 1-26; Philadelphia 1-36; Phoenix 1-4; Pittsburgh 1-7; Portland 1-5; Richmond 1-39; Sacramento 1-105; St. Louis 1-48; Salt Lake City 1-218; San Antonio 1-93; San Diego 1-59; San Francisco 1-5; Seattle 1-38; Tampa 1-46; Washington 1-3.

pc (w/o Attachments) (by 5/10 hand delivery): The Honorable Richard P. Matsch.