

## **CHAPTER TWO**

### **CHRONOLOGY OF EVENTS RELATED TO THE MAYFIELD CASE**

In this chapter, the OIG provides a detailed chronology of events in the Mayfield matter. A timeline of major events is provided in Figure 1.

#### **I. Pre-Arrest Events**

##### **A. The Madrid Train Bombings and the Recovery of Latent Fingerprints 17 and 20**

On March 11, 2004, terrorists detonated a series of devastating bombs on several commuter trains in Madrid, Spain. The explosions killed approximately 200 individuals and injured more than 1,400 others, including 3 United States citizens.

On the day of the attacks, Spanish law enforcement officials located a stolen van near one of the train stations serviced by the commuter trains. Eyewitnesses interviewed by the Spanish National Police (SNP) reported seeing three individuals handling backpacks next to the van before heading toward the train station. During a search of the van, the SNP recovered a blue plastic bag containing several detonators and remnants of explosives. The SNP determined that the detonators and explosives were similar to those recovered from an unexploded bomb found at one of the March 11 bomb sites.

The SNP processed the blue plastic bag for fingerprints. Although numerous fingerprints were found on the plastic bag, the SNP determined that only two of the fingerprints were of sufficient quality to be useful for identification. These were designated as Latent Fingerprint Number 17 (LFP 17) and Latent Fingerprint Number 20 (LFP 20).<sup>9</sup> The SNP also recovered additional fingerprints from the van and from other objects found inside the van.

##### **B. The Identification of Latent Fingerprint 17 by the FBI**

In an effort to obtain international assistance with identifying potential suspects in the March 11 attacks, the SNP forwarded digital images of fingerprints recovered from its investigation to INTERPOL.

On Saturday, March 13, 2004, INTERPOL Madrid submitted digital images of 14 latent fingerprints recovered during the investigation of the

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<sup>9</sup> The term "latent" refers to fingerprints left on evidence, as distinguished from "inked" or "known" fingerprints collected intentionally.

Madrid train bombings to INTERPOL Washington, including LFP 17 and LFP 20. INTERPOL Washington forwarded the images by e-mail to the FBI Laboratory the same day. The only information provided about the images in the initial INTERPOL communication forwarded to the FBI was that they had been recovered in connection with the Madrid train bombings. The communication requested that the Laboratory inform INTERPOL Washington of its results, implicitly requesting the Laboratory to attempt to identify the prints.

Michael Wieners, one of three Unit Chiefs in the FBI Laboratory Latent Print Units (LPU), reported to work that Saturday to respond to this high-priority request. He requested assistance from Terry Green, a supervisor in the LPU. Wieners told the OIG that he selected Green in part because Green had extensive experience and strong skills in conducting computer searches of latent fingerprints using the FBI's Integrated Automated Fingerprint Identification System (IAFIS). IAFIS is an automated system that permits computer searches of FBI databases containing the fingerprints of over 47 million individuals.

Green and Wieners quickly determined that the images from INTERPOL were of low resolution and lacked a scale showing the size of the prints. They attempted IAFIS searches of the images but did not make any identifications. Wieners called the FBI's Supervisory Special Agent (SSA) assigned to INTERPOL Washington to request that the SNP resubmit the latent prints in higher resolution images, with a scale. Wieners told the SSA that without these enhancements, IAFIS results would be unreliable.

On Sunday, March 14, the Laboratory received higher resolution images from Spain, including LFP 17 and LFP 20, with a scale. Green "coded" the prints he found to be suitable for further examination (including LFP 17) by marking selected features on each latent print to permit the computer to compare the print with millions of known prints in the IAFIS databases.

On Monday, March 15, Green searched three databases in IAFIS: a Criminal Master File (containing fingerprints from criminal arrests); a Civil File (containing fingerprints taken in a non-criminal context, such as for military service or government employment); and a Special Latent Cognizant File (containing fingerprints of suspected terrorists).

The IAFIS searches generated separate lists of up to 20 candidate fingerprints for each latent print and each database searched. The program also generated a "score" for each candidate print indicating the degree of similarity detected by the computer. Depending on the database being searched, IAFIS identifies the top 10 to 20 highest scoring candidate fingerprints. The candidate print that receives the highest score from the

computer may not be the true match, which is why the system generates a list of candidate prints rather than just the highest-scoring candidate. The final identification decision is made by the examiner, not by the computer.

On Tuesday, March 16, Green began his comparisons of the latent prints from Spain with the IAFIS candidates. Green made the comparisons on the computer screen and with high resolution printouts of the digital images that he was able to generate in the LPU. According to LPU documents, Green conducted comparisons of LFP 17 to the candidate prints that IAFIS listed from the Civil File and the Special Latent Cognizant File, but did not find a match.

Green also compared LFP 17 to candidate prints from the Criminal Master File. Green told the OIG that during his comparison he began to think he had a match for LFP 17 with one of the candidate prints generated from this search. The computer had scored this candidate fourth-highest on a list of 20. Green asked Wieners to view the images side by side on the computer screen. Green told the OIG that Wieners said the comparison looked good. Wieners likewise told the OIG that he recalled saying words to the effect that Green was "onto something."

Green completed his examination and reached the conclusion that LFP 17 was made by the same source as the fourth candidate print on the list generated by IAFIS from the Criminal Master File. Green told the OIG that, consistent with established LPU practices, he then terminated his comparison of LFP 17 with the other candidate prints on the IAFIS-generated list. Green stated that at the time of the identification decision, he did not know anything about the person whose print he had matched other than the FBI identification number and the fact that the print was from the subject's left index finger. The candidate lists generated by IAFIS did not indicate any of the candidates' names, and the OIG did not find any records suggesting that the Laboratory had additional information about the individual at that time.

Green told the OIG that after making the identification he used the FBI identification number for the candidate print to access FBI identification records in order to determine whether other versions of the candidate's known prints were available. The identification record revealed the name of the subject, Brandon Bieri Mayfield. It also showed that Mayfield's fingerprints were in the Criminal Master File as the result of a 1985 arrest for burglary of an automobile (when Mayfield was a teenager), and that the charge had been dismissed.

The identification record indicated that Mayfield's fingerprints also were recorded in 1989 in connection with Mayfield's service in the United States Army.<sup>10</sup> Nothing on the FBI identification record indicated Mayfield's religion, occupation, current address, or marital status. There was no alias indicating an Arabic or Muslim name. Green told the OIG that none of the information on the printout affected his identification decision in any way.

Green did not find matches for any of the other latent fingerprints submitted by the SNP, including LFP 20. Green did determine that Mayfield was not the source of any of these other latent fingerprints.

On March 16, after reaching his conclusion that Mayfield was the source of LFP 17, Green ordered Mayfield's original civil and criminal inked 10-print cards, which are maintained by the FBI's Criminal Justice Information Services Division (CJIS). Green told the OIG that it was routine procedure to retrieve the original inked prints for comparison with the latent print. He said that when he reviewed these originals within the next few days and compared them with LFP 17, he felt they confirmed his prior determination.

On March 16, Unit Chief Wieners telephoned the SSA assigned to INTERPOL Washington to request that the original evidence (the bag on which LFP 17 was deposited) be obtained from Spain "due to a comparison with a possible person of interest." LPU examiners told us that they generally prefer to work with the original fingerprint if it is available, but it is not unusual for the LPU to examine photographs of latent fingerprints submitted by outside agencies. Wieners stated that he did not expect that the SNP would comply with his request for the original evidence because most law enforcement agencies will not surrender control over evidence of this nature and importance. Wieners also requested information from the SNP about the substrate (the surface on which the print was deposited) and the processing technique used to develop the print.

Pursuant to the FBI Laboratory requirement that any fingerprint identification be "verified" by a second examiner, Wieners asked John T. Massey to examine LFP 17 and the Mayfield known prints.<sup>11</sup> Massey is a retired FBI latent fingerprint examiner with 35 years of experience who was providing services to the LPU on a contract basis. Wieners told the OIG that he

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<sup>10</sup> The inked prints taken during Mayfield's military service were not contained in the IAFIS Civil File, which precluded the computer from retrieving those prints as a possible match. The FBI began including civil prints in the IAFIS databases subsequent to the time that Mayfield's Army prints were taken in 1989, and did not retroactively enter older civil prints.

<sup>11</sup> As noted in Chapter One, Massey declined to provide an interview to the OIG in connection with this investigation.

selected Massey because of Massey's skill and extensive experience. Wieners stated that Massey waited to see Mayfield's original inked prints from CJIS before making his decision, which Wieners considered to be a routine and prudent step. According to Wieners, Massey did not tell him about any particular problems or concerns in the comparison. On Friday, March 19, Massey formally verified the identification of Mayfield as the source of LFP 17.

Wieners stated that after Massey verified the identification, Wieners discussed the examination with Green and Massey. At this stage, however, Wieners had not performed his own complete and independent examination of LFP 17 and Mayfield's known print. Wieners told the OIG he recalled discussing with Green and Massey the fact that there were some differences in appearance between LFP 17 and the Mayfield known prints. Wieners told the OIG that he saw the differences and was satisfied that Green and Massey had reasonable explanations for them. In particular, the upper left portion of LFP 17 contained distinct features that could not be matched to the known Mayfield prints, and Wieners told the OIG that this area gave him "heartburn from the get-go." Green told Wieners that he had concluded that this area was the result of a separate touch, made by a different person or by a different part of Mayfield's finger. Wieners told us that he concurred with Green's explanation.

At least two other examiners in the LPU also looked at the comparison between LFP 17 and Mayfield's prints shortly after Green made the identification. The first examiner told the OIG he was not acting as an official examiner or verifier, and stated that he could not recall who asked him to conduct an informal examination of the prints. He told the OIG that he noticed both similarities and dissimilarities in the comparison. He stated that he had problems with the clarity of the latent image and that he decided the comparison was too difficult to complete in the time he had available.

The other examiner stated that Green asked him to look at the print because he (the other examiner) was the program manager in major incident cases, and because Green was proud of the identification. This examiner told the OIG he also noticed both similarities and dissimilarities in the prints. He told the OIG he was concerned about several dissimilarities, including the upper left portion of the latent print, which had several clear details that did not match the Mayfield known prints. He stated that he did not consider the upper left part of the print to be a separate touch. He also stated that he did not have enough time to study the prints, so he returned them to Green. This examiner told the OIG he might have briefly expressed some concerns about the identification in a passing conversation with Green.

On March 19, Wieners called the SSA at INTERPOL Washington to advise him that the Laboratory had identified Mayfield as the source of LFP 17. On March 20, Green finalized the written report formalizing the identification.

Later on March 20, another LPU Unit Chief performed a “peer review” and “administrative review” of the report to confirm that it was properly formatted and contained the information required under applicable LPU procedures. The third LPU Unit Chief told the OIG that these reviews did not involve a substantive evaluation of the basis for Green’s conclusion that Mayfield was the source of LFP 17.

On March 21, INTERPOL Madrid provided INTERPOL Washington with a description of the blue plastic bag and an explanation of the processing method used to develop and photograph LFP 17. This information was translated and submitted to the Counterterrorism Division (CTD) at FBI Headquarters on March 22. This information was apparently provided in response to the request originally made by Wieners to INTERPOL Washington on March 16 for information about the substrate and the processing method. Wieners and Green both stated they did not recall receiving this information in the LPU at that time, and the information was not included in the files made available to the OIG by the FBI Laboratory. It appears that the CTD did not forward this information to the Laboratory.

By March 23, the CTD also had obtained at least one photograph of the blue plastic bag containing detonators that showed multiple prints on the bag. Again, there is no evidence that the CTD forwarded this photograph to the Laboratory at the time. Green stated that one to three weeks after making the identification he learned that the print was made on a plastic bag, but this information was not useful because it did not specify the type of plastic. Wieners told the OIG that the first time he saw a photograph of the bag was in mid-April, at FBI Headquarters in Washington, D.C.<sup>12</sup>

### **C. Initiation of the FBI Investigation of Mayfield**

#### **1. Notification of the Mayfield identification to the FBI’s CTD and Portland Division**

Shortly after noon on March 19, 2004, the SSA at INTERPOL Washington sent an e-mail to the FBI CTD which stated that, with regard to the Madrid bombings investigation, the FBI LPU had “confirmed that one of the latents is a

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<sup>12</sup> Some examiners suggested to the OIG that if the Laboratory had known about the relative positioning of LFP 17 and other latent fingerprints on the plastic bag, it might not have made the erroneous identification. We address this issue in Chapter Five of this report.



## 2. Initiation of the field investigation of Mayfield by the Portland Division

The Portland SSA told the OIG that the March 19 e-mail from the CONUS 4 analyst contained everything she knew about Mayfield at the time. The Portland SSA said she gave copies of the e-mail to two Special Agents (SAs) who were members of her squad and told them to find out everything they could about Mayfield. The SAs were subsequently designated as the lead case agents (referred to in this report as Lead Case Agent 1 and Lead Case Agent 2) for the Portland Division field investigation of Mayfield. The Portland SSA said she also notified Robert Jordan, the Portland Division Special Agent in Charge (SAC), and the Assistant Special Agent in Charge (ASAC), of the identification of Mayfield. She said that at the time the Portland Division knew Mayfield's fingerprint was associated with the Madrid bombings but did not know where the fingerprint was found.

Lead Case Agent 1 told the OIG he was able to locate current addresses for Mayfield's home and office on March 19. The Portland SSA said that later that afternoon the Portland Division [REDACTED] to confirm that Mayfield was in his office. The FBI began 24-hour surveillance of Mayfield that afternoon.

The Portland SSA said that the Portland Division also ran Mayfield [REDACTED] through FBI databases and found (as did CONUS 4) that [REDACTED] made [REDACTED] <sup>15</sup> She also said that some members of the "Portland Seven" had attended this mosque. <sup>16</sup>

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<sup>15</sup> As discussed in greater detail in Section I.C.3 of this chapter, after the FBI learned of the Mayfield fingerprint identification, it sought authorization to conduct covert surveillance and searches of Mayfield pursuant to the Foreign Intelligence Surveillance Act of 1978 (FISA). In a written application later submitted in support of the request for FISA authority to conduct the covert surveillance and searches, [REDACTED]

<sup>16</sup> The "Portland Seven" matter involved the federal prosecution in Oregon of seven individuals, six of whom had allegedly plotted to travel to Afghanistan and engage in combat against the United States armed forces on behalf of the Taliban and al Qaeda. To date, six of the seven have pled guilty to various charges stemming from their actions, such as conspiracy to levy war against the United States and money laundering, and have been sentenced. A seventh individual charged in the case was killed in Pakistan.



The Portland SSA said that when they learned that Mayfield [REDACTED]

[REDACTED] that Mayfield attended the Bilal mosque, another mosque in the Portland area that was also attended by members of the Portland Seven. Thus, according to the Portland SSA and FBI documents, the FBI first learned that Mayfield was a Muslim after the FBI had been notified of the FBI LPU identification of Mayfield and had initiated the field investigation.

Witnesses and documents reflect that by the end of Friday, March 19, the FBI had Mayfield under 24-hour physical surveillance and identified Mayfield's home and business addresses and telephone numbers. The FBI also learned that Mayfield was a lawyer with his own law practice, that he served in the military from 1985-1994, and that there was no evidence that he had recently traveled abroad.<sup>17</sup> In addition, the FBI learned that Mayfield was a Muslim, was married to a naturalized United States citizen born in Egypt, and had three children. The government also began issuing numerous grand jury subpoenas.

On Saturday, March 20, the FBI learned from a database of court filings that Mayfield had previously represented Jeffrey Leon Battle, who was a member of the Portland Seven, in a child custody dispute. Battle pleaded guilty in October 2003 to conspiracy to levy war against the United States and was subsequently sentenced to an 18-year prison term.

On March 20, Mayfield was placed on the State Department's Visa Lookout list and in the Department of Homeland Security's Treasury Enforcement Communications System. [REDACTED]

On March 23, at the request of the FBI, the United States Attorney's Office (U.S. Attorney's Office) obtained court authorization for the FBI to [REDACTED]

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<sup>17</sup> The Portland SSA told us that sometime during the first week of the investigation, the FBI learned that Mayfield's law practice consisted largely of immigration and domestic relations matters.

[REDACTED]

### **3. Authorization for covert electronic surveillance and physical searches**

ITOS I Section Chief Cummings said that once he learned about the Mayfield fingerprint identification, he ordered agents in ITOS I to seek emergency authorization from the Attorney General to conduct covert surveillance and physical searches concerning Mayfield pursuant to FISA. The ITOS I Assistant Section Chief said he notified the Department of Justice (DOJ) Office of Intelligence Policy and Review (OIPR) of a forthcoming request to the Attorney General for emergency FISA authorization. The ITOS I Assistant Section Chief also said that the CONUS 4 SSA and the CONUS 4 analyst, with input from the Portland Division, were responsible for providing OIPR with justification for the emergency FISA authorization request.

FISA provides for the use of, among other things, covert electronic surveillance and physical searches to gather foreign intelligence information. To obtain FISA authorization to conduct covert surveillance and searches, DOJ OIPR must submit a written application to a special court, the Foreign Intelligence Surveillance Court (FISA Court), which has the authority to grant or deny the application. The written application must establish, among other things, probable cause for the FISA Court to find that the target of the surveillance and searches is either a foreign power or an agent of a foreign power, and that a significant purpose of the surveillance and searches is to obtain foreign intelligence information. A foreign power is defined broadly to include any group engaged in international terrorism. The written application must also include a declaration or affidavit from the FBI establishing the facts justifying the authorization for a FISA warrant. If the Attorney General (or Deputy Attorney General) determines that an emergency situation exists and that there is a factual basis for the issuance of a FISA warrant, the Attorney General (or Deputy Attorney General) may authorize electronic surveillance or a physical search without prior approval from the FISA Court, provided that the FISA Court is notified of the emergency authorization and a written FISA application is submitted to the FISA Court within 72 hours.

The CONUS 4 SSA said that sometime during the day on [REDACTED], he made an oral presentation to an OIPR attorney in support of the request for emergency FISA authorization. [REDACTED]

[REDACTED]



on [REDACTED] and issued several orders authorizing the requested FISA warrants.<sup>19</sup> The FISA warrants were set to expire in 90 days.

#### 4. Early concerns about a leak

ITOS I Section Chief Cummings told the OIG that because information regarding the FBI's identification of Mayfield had been channeled through INTERPOL, he realized it would be disseminated to other government agencies, and he became concerned that the identification of Mayfield would become public. Cummings said he immediately called a high-ranking official at the State Department to restrict the dissemination of information regarding the investigation.

The Portland SSA said that by either Friday afternoon or Friday evening on March 19, the Portland Division had discussed with the U.S. Attorney's Office for the District of Oregon a contingency plan in case Mayfield tried to flee. According to the Portland SSA, the U.S. Attorney's Office suggested using a material witness warrant to detain Mayfield.<sup>20</sup> The Portland SSA said that the next day, she, Karin Immergut (the U.S. Attorney for the District of Oregon), and two Assistant U.S. Attorneys (referred to in this report as AUSA 1 and AUSA 2) participated in a conference call with FBI SAC Jordan to discuss contingencies in the event that Mayfield tried to flee. AUSA 2 began drafting a material witness warrant for the arrest of Mayfield and criminal search warrants for Mayfield's home and office.<sup>21</sup> The Portland SSA said they also discussed the possibility of a leak regarding the FBI's interest in Mayfield and viewed the material witness warrant as a means of dealing with the possibility of Mayfield fleeing or a leak. The Portland SSA, who was the coordinator for the Joint Terrorism Task Force (JTTF) in Portland, also said she was instructed to restrict the information flow concerning the Mayfield investigation. Based on this, she said she advised all members of her squad, including JTTF personnel, to restrict the information flow to those who were working on the case.

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19 [REDACTED]

<sup>20</sup> Pursuant to 18 U.S.C. § 3144, a court may order the arrest of a person if it appears that the testimony of the person is material to a criminal proceeding, and it is shown that it may become "impracticable to secure the presence of the person by subpoena."

<sup>21</sup> Criminal search warrants are different than the FISA-authorized search warrants referred to previously in this report. FISA-authorized search warrants permit the government to conduct covert searches to gather foreign intelligence information without providing immediate notice to the target of the search. Criminal search warrants permit the government to conduct overt searches to gather evidence of a crime. The target of a criminal search is usually provided with immediate notice of the search.

Specifically, JTTF members were told not to provide information to their respective agencies and that briefings regarding the investigation would be conducted at Headquarters level.

Also on March 22, SAC Jordan sent an e-mail to Gary Bald, the Assistant Director for the CTD, alerting him to the Portland Division's contingency planning. Jordan stated that because Mayfield's identity and potential connection to the Madrid bombings was known to INTERPOL and other agencies, there was an increased danger of a media leak.

Bald told the OIG that on March 21 and 22, he learned of inquiries about Mayfield made by the Secret Service, the Department of Homeland Security, and other law enforcement agencies who were members of the Portland JTTF. Bald said the FBI's biggest concern was that it did not know if Mayfield was part of a second wave of terrorist attacks planned for the United States. Bald said he was also afraid that if information about Mayfield became public, Mayfield might disappear.

Bald stated that as a result of these inquiries, he telephoned contacts at other law enforcement agencies to try to restrict the flow of information concerning Mayfield, and asked Cummings to do the same. Furthermore, on March 25, Bald traveled to Spain to meet with the SNP to address the FBI's concerns that information in the Mayfield matter not be divulged to the international community. Bald said that concerns about potential leaks began to drive the pace of the investigation.

On March 27, David Nahmias, the Deputy Assistant Attorney General of the Criminal Division, authorized the execution of the material witness warrant relating to Mayfield in "truly exigent circumstances." Nahmias told the OIG he was referring to a possible situation in which the FBI's interest in Mayfield became public and he tried to flee.

#### **D. The FBI Laboratory's Response to Initial Concerns of the SNP**

Early on Monday, March 22, the Madrid Legat in Madrid reported in an e-mail to the CTD that the SNP "expressed some concern about the identification of Mayfield through the latent print. . . . They just want to be absolutely sure, as this is so out of character for the subjects they are dealing with." The Madrid Legat told the OIG that at this stage, the SNP's concerns reflected amazement that an American's fingerprint would show up on the evidence, given that the other suspects were local Moroccans. The FBI had not yet provided the SNP with Mayfield's known prints for comparison to LFP 17.

In an e-mail sent later that morning, an SSA from the Extraterritorial Unit (ETIU) requested that the Laboratory prepare “a product like a court room exhibit showing the known prints with the points of comparison to the latents” in order to respond to the SNP’s concerns. He also requested “good copies of the known prints to share with the Spanish.” Green responded by providing digital copies of Mayfield’s criminal and civil prints to ETIU that same day.<sup>22</sup> Later that day, March 22, Green sent ETIU charted enlargements of the identification (the March 22 Charted Enlargements) showing 15 numbered similarities along with several additional “Level 3” details (tiny features such as pores and incipient dots) circled in both prints. The March 22 Charted Enlargements are reproduced below as Figure 2A (showing the charted features on LFP 17) and Figure 2B (showing the corresponding features on Mayfield’s inked fingerprint). Because the official March 20 FBI Laboratory Report of the identification contains no description of the features or similarities on which the Laboratory’s conclusion was based, Figures 2A and 2B provide the earliest written record of the basis of the FBI’s identification.

**E. Course of the Investigation from Late March until Mid-April**

**1. The [REDACTED] FISA search of Mayfield’s office**

The FBI began making preparations to conduct covert searches of Mayfield’s office and residence as soon as the FISA Court granted the FISA application. In a document dated [REDACTED], the Portland Division formally requested the assistance of the [REDACTED], to gain covert entry into Mayfield’s office and residence.

[REDACTED]

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<sup>22</sup> The LPU provided photographic copies of the known fingerprints of Mayfield to ETIU on March 30, and these were apparently delivered to the SNP on April 2.

<sup>23</sup> [REDACTED]

[REDACTED]

The FISA search of Mayfield's office occurred on [REDACTED]  
[REDACTED]

The Portland SSA said that the search team included two FBI agents who were also attorneys and that their role was to review documents for attorney-client privilege.<sup>24</sup> The search team also included [REDACTED] who photographed selected documents. FBI records indicate that approximately [REDACTED] documents were photographed during the search. Two Computer Analysis Response Team examiners from Portland also participated in the search and mirrored (copied) the hard drives of the two computers in the office. [REDACTED]  
[REDACTED]

The Portland SSA told the OIG that the search was very successful and the team "was out safely." She also said that she believed that Mayfield was unaware of the search, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The Portland SSA said that the initial review of the documents photographed in Mayfield's office revealed no obvious explanation as to how Mayfield's fingerprint got on the bag of detonators.

**2.** [REDACTED]

On [REDACTED], Portland Division FBI agents began reviewing the documents photographed during the [REDACTED] covert office search. The review of those documents was completed by [REDACTED]  
[REDACTED]  
[REDACTED]

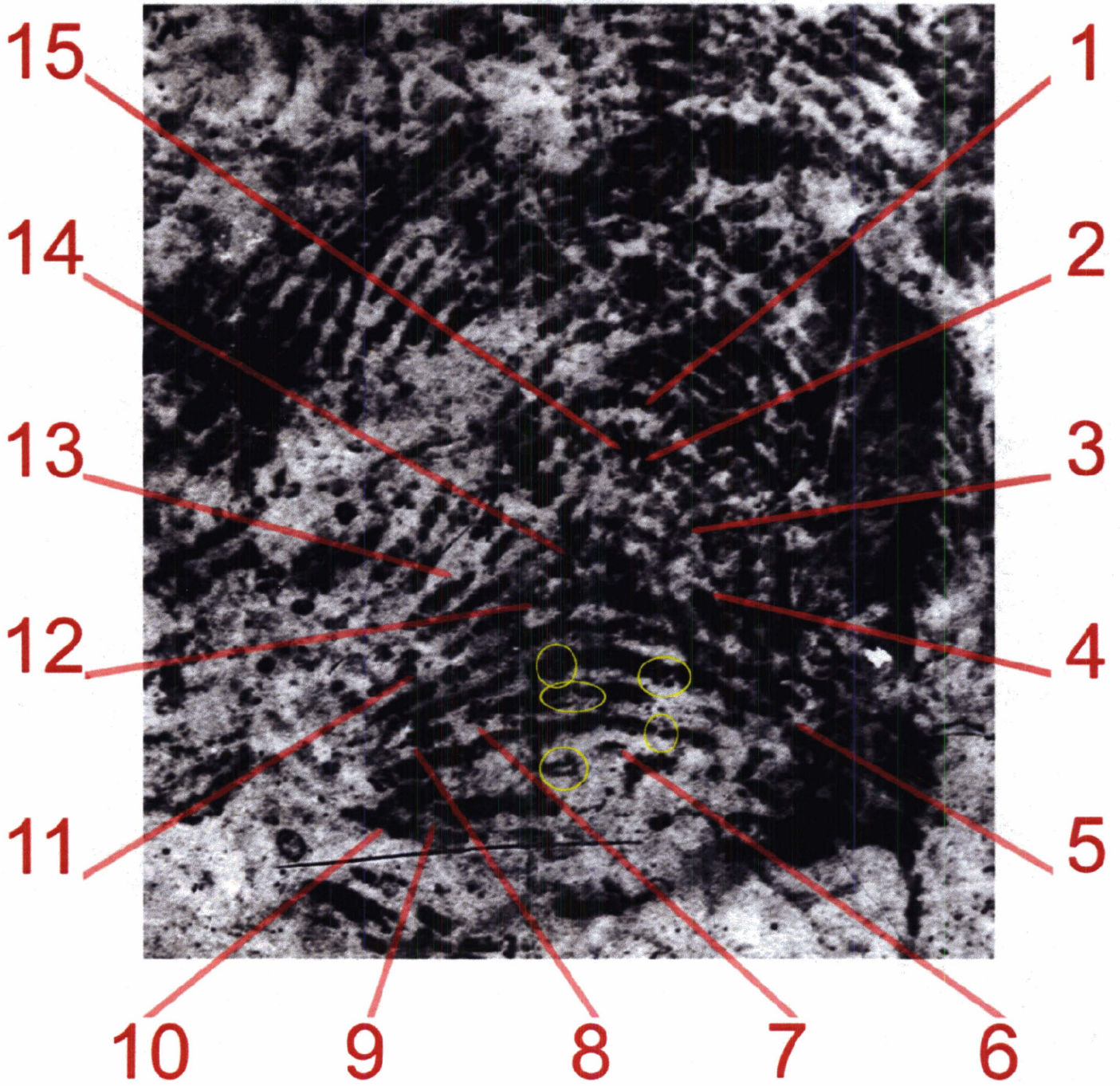
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<sup>24</sup> The procedures the FBI followed concerning the handling of privileged documents are discussed in Chapter Six.



# FIGURE 2A

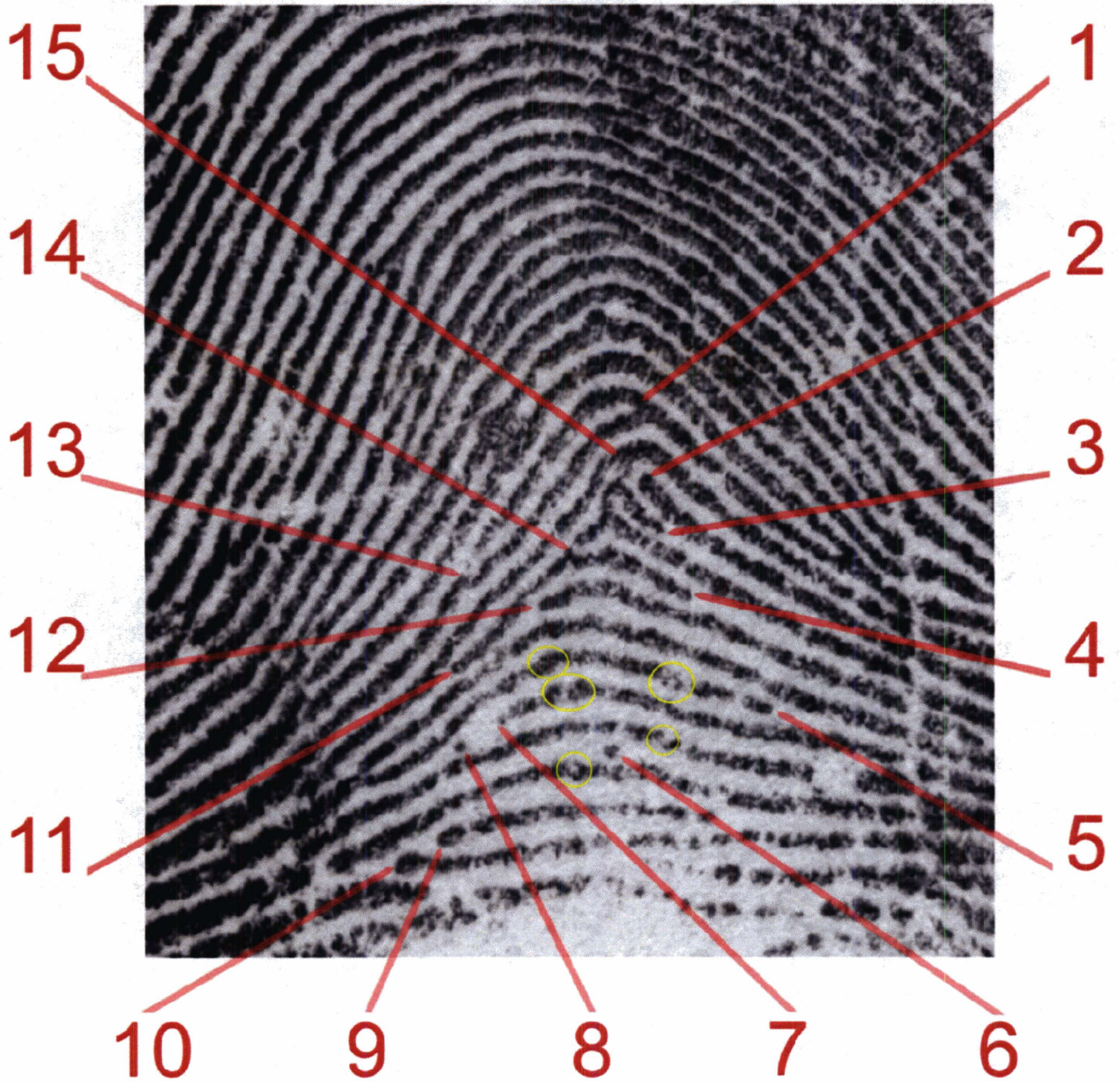
March 22 Charted Enlargement  
Latent Print





# FIGURE 2B

March 22 Charted Enlargement  
Mayfield Exemplar



Also, by [REDACTED], documents that were marked as potentially privileged were reviewed by an FBI "taint agent."<sup>25</sup>

The examination of the computer hard drives from Mayfield's office took significantly longer. Witnesses told us that "a good initial review" of the hard drives was completed by [REDACTED]

[REDACTED]

On [REDACTED], the FBI searched the trash ("a trash pull") at the complex where Mayfield's office was located, searching for pertinent information and plastic bags similar to the one on which LFP 17 was found. Nothing pertinent was found during this search. The FBI also planned to conduct a trash pull at the Mayfield residence on [REDACTED], but decided not to do so because of concerns the agents would be discovered.

[REDACTED]

[REDACTED]

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<sup>25</sup> The Portland SSA told us that the taint agent was a Portland Division FBI agent who was otherwise minimally involved in the Mayfield investigation. She said the taint agent's sole purpose was to review documents seized from Mayfield's office for possible attorney-client privilege. The Portland SSA said that at one point she felt that the taint agent had marked too many documents as privileged, and thus directed an AUSA to assist in reviewing the documents. This second review, by the AUSA, was completed over the weekend of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] surveillance of the residence was terminated on [REDACTED] because of fears of being discovered. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

According to the Portland SSA, the FBI search team was ready to conduct a FISA physical search of the Mayfield home as early as [REDACTED], the FBI postponed the FISA home search until [REDACTED].

### 3. The [REDACTED] FISA search of Mayfield's residence

[REDACTED]

[REDACTED]

The Portland SSA said that after this search, the agents conducting surveillance of Mayfield noted that he began [REDACTED]. At the time, FBI witnesses told the OIG that the FBI did not make the connection (as they would later) that Mayfield was suspicious. She said they thought he was [REDACTED].

4. The [REDACTED] FISA search of Mayfield's residence

According to the Portland SSA, the FBI wanted to attempt another FISA search of the Mayfield residence on [REDACTED], but [REDACTED]. She said the FBI planned another FISA search of the home for [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED] Lead Case Agent 1 said he collected 10 DNA swabs and 6 cigarette butts.<sup>27</sup> [REDACTED]

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<sup>27</sup> In connection with their investigation of the Madrid bombings, SNP investigators collected DNA samples from items inside a vehicle which they believed had been occupied by people associated with the bombings. Accordingly, the FBI wanted to obtain DNA samples from Mayfield to compare them to those collected in Spain. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In addition, the search team photographed several documents. The search team did not find any evidence of obvious connection to the Madrid bombings.

The Portland SSA said that after the search was completed, they returned to the Portland Division office and began planning [REDACTED]. She said that they then learned that there were problems with the search.

[REDACTED]

[REDACTED]

29

28 [REDACTED]

<sup>29</sup> In newspaper articles after her husband was arrested, Mona Mayfield indicated that there were other things that had aroused her suspicions concerning a covert entry in her (continued)

The Portland SSA said she advised her supervisors of these problems. She said that Jordan decided they would not conduct any additional covert physical searches because of the Mayfields' suspicions, and also because of [REDACTED].

#### **F. The April 13 Negativo Report**

On April 13, the Madrid Legat met with an SNP official with responsibility for terrorism investigations. According to a memorandum dated April 14 and approved by the Madrid Legat, the official advised him that the SNP fingerprint examiners had reached an "inconclusive finding" with respect to whether LFP 17 was made by Mayfield. The same memorandum reports that on April 14, the Madrid Legat told the official that he had consulted with the FBI Laboratory and that the FBI "maintains the integrity of the identification" of Mayfield and was willing to send fingerprint examiners to Madrid to explain its identification. Later on April 14, the Madrid Legat obtained a copy of the written report from another member of the SNP. The report stated that the result of the SNP's examination was "negativo" (negative). It will be referred to as the April 13 Negativo Report.

The April 13 Negativo Report was prepared in the form of an official letter from the Forensic Science Division of the SNP to the Spanish National High Court. The FBI translated the April 13 Negativo Report as follows:

**SUBJECT: ANALYSIS AND COMPARISON OF FINGERPRINTS**

In response to your document of reference, in which you requested the analysis and comparison of three deca-dactylar [ten-print] cards belonging to BRANDON BIERI MAYFIELD, from the FBI Laboratory in the United States, we inform you that the Special Proceedings Sections performed the appropriate studies of the above mentioned, with the latent prints discovered during the different crime scene inspections carried out as a result of the 11 March, 2004 terrorist attacks investigations, as well as the deca-dactylar cards of the varied suspects that were given to this Police Precinct. The result was NEGATIVE. We also report that the fingerprints have been entered in our Automatic Dactylar System for their respective study regarding matters connected to

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house. Mona Mayfield stated that she saw footprints in the carpeting and that some blinds in the home were not in their usual position.



the March 11, 2004 attacks, as well as any other criminal activity. The result was also NEGATIVE.

The study of the deca-dactylar impressions is ongoing.<sup>30</sup> If the results are positive, you will be notified accordingly.

The April 13 Negativo Report was signed by the Section Chief of the SNP Crime Scene Investigations Division (referred to in this report as the SNP Section Chief). A translated copy of the report was transmitted to FBI Headquarters, the Portland Division, and the FBI Laboratory. The DOJ Counterterrorism Section (CTS) informed the Portland U.S. Attorney's Office about the report.

FBI Laboratory examiners Green and Wieners both stated that after seeing the April 13 Negativo Report, they took another look at the Mayfield identification. Wieners told the OIG that he was still concerned about the upper left area of the print, and that he searched unsuccessfully on the known prints for all 10 of Mayfield's fingers for details that would correspond to the upper left portion, consistent with a "separate touch" explanation. Green and Wieners both told the OIG that they again concluded that this portion of the print was either made by a different person or was made by a different part of Mayfield's finger (such as the extreme tip) that was not recorded on the inked 10-print cards. As a result, the Laboratory told the CTD that it stood by its identification of Mayfield. Early on April 15, the CONUS 4 SSA of the CTD reported in an e-mail to the Portland Division that, "I spoke with the lab this morning and they are absolutely confident that they have a match on the print. - No doubt about it!!!! - They will testify in any court you swear them into."

On the evening of April 16, the Madrid Legat met with the Director of the SNP Laboratory, and obtained further information regarding the April 13 Negativo Report. The Madrid Legat described this meeting in an e-mail to the CONUS 4 SSA, Cummings, and others, dated April 17:

[The Director of the SNP Laboratory] advised that his fingerprint technicians had reached a preliminary conclusion that the latent was not a match [with Mayfield] based on the number of ridges between two identifiable points to the left of the arch going up to the top left corner and the measurement of a small ridge in that same area. They did see many points of similarity but the above criteria led them to the conclusion of a negative match.

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<sup>30</sup> "Deca-dactylar impressions" are fingerprints for a known individual recorded on a 10-print fingerprint card.



[The Director of the SNP Laboratory] added that the finding was being considered preliminary at this time, NOT FINAL, and that he would be happy to receive [an] FBI expert, to discuss their differences any time next week.

The Madrid Legat's April 17 e-mail reveals that the SNP examiners, like the FBI examiners, found that details in the upper left portion of LFP 17 could not be matched to Mayfield. Unlike the FBI examiners, however, the SNP did not explain this dissimilarity as a separate touch by a different person or a different part of Mayfield's finger.

Several officials in the FBI and DOJ independently came to the conclusion that a meeting should be arranged between the FBI Laboratory and the SNP to discuss the April 13 Negativo Report. SAC Jordan and the U.S. Attorney's Office in Portland urged the FBI Laboratory to send someone to Spain to find out exactly why the SNP was disagreeing with the identification of Mayfield and to resolve any differences between the laboratories. The CTD also believed that the meeting was a way to begin to improve overall communications between the FBI and the SNP. Thus, an SSA from ETIU told the Laboratory in an e-mail that "the fingerprint identification gives us the perfect lead to get people on the ground [in Spain] to assist and to open the flow of information . . . ."

On April 16, the Acting Section Chief in the FBI Laboratory responsible for the LPU cautioned the ETIU in an e-mail response that "we can't be about the business to try and convince another Laboratory to change their conclusion to concur with ours," but agreed that "in light of the situation, it would be productive to have face to face talks with the Spanish to help all involved understand what the Spanish mean when they say 'Negative.' Does that mean their examination resulted in a 'non-identification' conclusion or was the result of their examination 'inconclusive.' This is a very important distinction, which needs to be fleshed out."<sup>31</sup>

The Acting Section Chief in the FBI Laboratory decided to send Wieners to Madrid to meet with the SNP regarding the Mayfield fingerprint identification. In advance of that meeting, Green prepared a new set of charted enlargements for Wieners to use in Spain, along with a textual description of

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<sup>31</sup> As explained in Chapter Three, the FBI LPU distinguishes between an "exclusion" result (which is what the Acting Section Chief was referring to as "non-identification") and an "inconclusive" result. An exclusion result is a finding that the subject did not make the latent fingerprint; an inconclusive result occurs when the examiner is unable to identify or exclude the subject. The SNP witnesses interviewed by the OIG indicated that the SNP does not formally recognize this distinction, but rather assigns a "negative" determination to any comparison that does not result in an identification.

the similarities used to support the identification. The new charted enlargements included several additional Level 3 details (very tiny features such as incipient dots or ridges, pores, and ridge edge shapes) that Green had not previously marked on the enlargements he prepared on March 22. The enlargements and textual descriptions were delivered to the Madrid Legat in Madrid on April 19 and the descriptions were translated into Spanish for the meeting.<sup>32</sup>

Wieners told the OIG that, although he had not performed a complete examination of LFP 17 and the known prints for Mayfield at the time of the original identification, by the time he left for Madrid he had become as familiar with the prints as if he had conducted a complete examination. On approximately April 17, Wieners visited ITOS I in preparation for his April 21 meeting with SNP officials. Wieners told the OIG that this visit was the first time he saw a photograph of the bag. Wieners stated that the photograph made the bag look like a small shopping bag. Wieners did not notice anything in the photograph indicating that more than one fingerprint was found on the bag.

#### **G. The April 21 Meeting in Madrid**

On April 21, Wieners met with officials of the SNP in Madrid to discuss the identification of LFP 17. Wieners was accompanied by the Madrid Legat and an ETIU SSA who was stationed in Madrid at that time. Approximately 10 officials of the SNP attended the meeting. The Director of the SNP Laboratory was unavailable to attend the meeting. A Deputy Director attended the meeting as the senior representative of the SNP Laboratory. The meeting was also attended by the SNP Section Chief who authored the April 13 Negative Report, and his supervisor, along with other fingerprint specialists from the SNP. The Madrid Legat served as translator.

According to Wieners and other participants in the meeting, Wieners made a presentation of the characteristics that the FBI relied on in making its identification, utilizing the charts and textual descriptions that Green had prepared earlier. Among other things, Wieners explained how the FBI relied on Level 3 details to make its identification. According to witnesses and contemporaneous written accounts, an SNP representative acknowledged that the SNP did not utilize such details in comparing the latent print to Mayfield's prints.

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<sup>32</sup> These charted enlargements and textual descriptions are included in Appendix B to this report.

After Wieners completed his presentation, one of the examiners from the SNP gave a presentation regarding the SNP's findings. According to the FBI participants at the meeting, the SNP examiner said that the SNP found eight points of similarity between LFP 17 and Mayfield's known prints, but that the SNP found several differences that concerned them. Among other things, the SNP found that details in the upper left portion of the latent fingerprint did not match Mayfield's prints. The SNP also pointed out that the ridges in the very bottom part of the fingerprint, corresponding with the area of the finger below the joint, were shaped differently in LFP 17 than in Mayfield's print.

According to the FBI participants at the meeting, Wieners provided explanations for each of the dissimilarities identified by the SNP. He explained that the FBI saw a gap between the main part of LFP 17 and the upper portion, possibly related to a wrinkle in the plastic bag, and that the FBI concluded that the upper part of the print was the result of a second touch. Wieners also explained the difference in the area below the joint as being caused by pressure or a separate touch, as evidenced by the large gap in the print in this area.

The FBI participants (the Madrid Legat, an ETIU SSA, and Wieners) told the OIG that most or nearly all of the SNP examiners seemed to be impressed by Wieners' presentation. The Madrid Legat described the SNP's reaction to Wieners' presentation in a memorandum that he prepared the next day:

Unit Chief Wieners provided satisfactory explanations for each of their questions and at the conclusion of the meeting all of the SNP personnel seemed satisfied with the FBI's identification.

In his interview with the OIG, however, the Madrid Legat clarified this statement. He stated that at the end of that meeting he felt that the SNP representatives were sufficiently impressed with Wieners' presentation to agree to go back and conduct a reexamination of the print. The Madrid Legat stated that the SNP was not at the point of agreeing with the identification of Mayfield. He told the OIG that at that time he had no confidence one way or another about what the results of the SNP's reexamination would be.<sup>33</sup> An ETIU SSA

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<sup>33</sup> During his interview, the Madrid Legat also clarified the statement in his memorandum that "*all* of the SNP personnel seemed satisfied" (emphasis added). He told the OIG that there was one SNP examiner who specifically expressed disagreement with Wieners during the meeting, but that other SNP examiners disagreed with the one examiner, who eventually stopped arguing. Wieners and an ETIU SSA also recalled that there was at least one SNP examiner who emphatically disagreed with Wieners during the meeting. The Madrid Legat admitted in his interview that he was not sure whether the dissenting examiner was persuaded; he said that the dissenting SNP examiner did not ever explicitly say he was persuaded that Wieners was right. The Madrid Legat's description of the dissenting SNP examiner during his interview also differed from a statement that he made in a declaration filed in Mayfield's civil action that "I believe there were one or two SNP Laboratory officials who (continued)

(who spoke Spanish) and Wieners (who was relying on the Madrid Legat for a translation) both told the OIG that they came away from the meeting with the expectation that the SNP would eventually agree with the FBI's fingerprint identification of Mayfield.

However, two SNP officials who participated in the meeting (the SNP Section Chief and his supervisor) gave a different account of the meeting to the OIG. These witnesses stated that the SNP participants were impressed with the detail and meticulousness of Wieners' presentation, but they denied that anyone from the SNP expressed agreement with the FBI's conclusions. The SNP witnesses said that at the end of the April 21 meeting, they agreed to take another look at the identification. The Director of the SNP Laboratory (who has since accepted another position) told the OIG that following the April 21 meeting he ordered three teams from the Laboratory to reexamine LFP 17 and the Mayfield prints.

#### **H. Late April - Early May**

##### **1. The aftermath of the [REDACTED] search**

According to FBI witnesses and documents, the Mayfields continued to be suspicious after the [REDACTED] FISA search of their home. [REDACTED]

[REDACTED] Also, FBI documents reported that on the evening of [REDACTED] Mayfield "began an attempt to make surveillance, as apparent from his driving. He engaged in pulling into driveways and cul-de-sacs, only to quickly turn around. He would drive into parking lots, sit for a few moments and then pull out. He circled his residence several times and drove slowly. When he eventually pulled into the driveway, he sat in the car for an extended period."

[REDACTED] Mayfield located the van at the store whose name appeared on the outside of the van. The FBI believed that Mayfield was checking to ensure that the van belonged to a legitimate business enterprise. On April 16, Mona Mayfield was observed using binoculars in the parking lot of Mayfield's law office. [REDACTED]

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initially expressed disagreement, but they eventually appeared to be persuaded by their SNP colleagues that Unit Chief Wieners' explanations were satisfactory."

[REDACTED]

[REDACTED]

[REDACTED]

**2. The FBI's investigative plan and theories regarding Mayfield's involvement in the bombings**

In mid-to-late April, as the investigation of Mayfield neared the end of its first month, the FBI evaluated the status of the investigation and the theories regarding Mayfield's involvement in the bombings. For instance, in an e-mail dated April 16, the CONUS 4 SSA told the Portland Division that he was being asked for a "game plan" concerning the Mayfield investigation and asked the Portland Division how long it would take to review the evidence [REDACTED] to date. He proposed the following investigative timetable:

Our FISA expires [REDACTED] - to date we have no additional evidence linking Mayfield to the bombings. As [Portland Lead Case Agent 2] expressed - if he is guilty - he is one cool customer. Thus - after you have reviewed all the evidence - and feel comfortable stating that you have exhausted all investigative avenues in linking Mayfield to the bombings - I would suggest bringing him in for an

interview (Polygraph?) – [REDACTED]. If we use the first week in June as a target date for an interview – that would give us a solid 5-6 weeks to review the evidence we have and to make a well founded investigative determination as to Mayfield’s involvement.<sup>34</sup>

In an e-mail to an ETIU SSA and the Madrid Legat dated April 19, the CONUS 4 SSA stated:

To date – we have found no corroborating evidence linking Mayfield to the bombing. [REDACTED], searches on his home and office are negative to date – but we continue to review [REDACTED] [REDACTED] physical surveillance has revealed very little. Records reveal no travel by Mayfield or his wife as both have expired passports. . . . At this time, we are leaning toward the theory that Mayfield touched the bag in the U.S. and the bag was transported by a third unknown party to Europe. If no additional evidence is found – our rough/preliminary investigative plan is to conduct an interview of Mayfield [REDACTED] [REDACTED]. If additional evidence is found, we will continue with FISA coverage and the investigation.

FBI witnesses stated that the FBI intended to follow the investigative plan outlined in the e-mails set forth above. Lead Case Agent 1 told us that the FBI anticipated having the analytical work completed or substantially completed [REDACTED], at which point FBI agents would approach Mayfield and request an interview. He said that the plan did not call for them to arrest Mayfield at that time. Similarly, Lead Case Agent 2 said that the plan was to continue surveillance of Mayfield, continue analyzing the information already collected, and then approach Mayfield in late May or early June for an interview. The Portland SSA said that the Portland Division wanted to use the remainder of April and May to complete its review and analysis of the material seized pursuant to the FISA searches and then have Lead Case Agent 1 and Lead Case Agent 2 approach Mayfield for an interview. She also said that FBI Headquarters and the U.S. Attorney’s Office were in agreement with this plan. AUSA 2 told the OIG that the investigative plan called for the FBI to conduct a “[REDACTED] approach” of Mayfield in June, which

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<sup>34</sup> Lead Case Agent 2 told us that she had referred to Mayfield as “one cool customer” because after the Madrid bombings there were several related events (primarily an April 3 apartment bombings in Madrid involving suspects in the SNP’s March 11 train bombings investigation) [REDACTED]. She said that if Mayfield had any connections to these activities, “he was the coolest person I’ve ever seen.”

meant that the FBI would attempt to interview, but not necessarily arrest, Mayfield at that time.

Witnesses and documents also indicated that, by late April, the FBI was primarily pursuing two theories regarding Mayfield's involvement in the Madrid bombings. According to an FBI summary of the Mayfield investigation prepared by the CONUS 4 analyst and approved by the Portland SSA and Lead Case Agent 1:

Either Mayfield himself traveled to Spain and had contact with the bag there, perhaps while knowingly participating in the bombings; or Mayfield came into physical contact with the bag while it was in the United States, after which he or some other individual shipped the bag to Spain or some other individual traveled with it to Spain. To date, investigation suggests it is extremely unlikely Mayfield traveled under his own name to Spain, although the possibility exists that he has an alias that has not yet come to light. Given the character and known terrorism ties of several of his associates, it appears possible that someone else in the community is the link between Mayfield and the Madrid bombings.

Indeed, ITOS I Section Chief Cummings told us that while he initially believed that Mayfield was knowingly involved in the Madrid bombings, as time passed and the results of the investigation were reviewed, he came to believe that Mayfield was probably an unwitting participant.

**3. The FBI discovers material** [REDACTED]

[REDACTED]



## **I. The Decision to Arrest Mayfield on a Material Witness Warrant**

The Madrid Legat told the OIG that on May 4, 2004, he received a telephone call from a reporter in the Paris Bureau of the Los Angeles Times, who asked whether two fingerprint experts could disagree over a single print. According to the Madrid Legat, the reporter also asked “what about this American” whose print was found in connection with the Madrid bombings. The Madrid Legat said he referred the reporter to the SNP and he notified the ETIU of the reporter’s inquiry. Based on our investigation, this was the first indication of a leak of information about Mayfield.

The Portland SSA said that she learned about the possible media leak early on May 4, and notified others in the Portland Division and the U.S. Attorney’s Office. Later that day, a meeting was held between Immergut (the U.S. Attorney), SAC Jordan and others from the Portland Division, and the U.S. Attorney’s Office to discuss the appropriate steps in light of the leak. According to witnesses, Jordan stated at this meeting that he wanted to execute the material witness warrant because he could not guarantee that the Portland Division would be able to keep Mayfield under 24-hour surveillance and prevent him from fleeing if a media leak occurred. Immergut told the OIG that shortly after the meeting, she called Chris Wray (Assistant Attorney General for the DOJ Criminal Division) and David Nahmias (Deputy Assistant Attorney General for the DOJ Criminal Division) to discuss the leak issue and whether to seek a material witness warrant at that time. She said that, among other things, they discussed whether to delay using the material witness warrant to gather additional intelligence. According to Immergut, Nahmias told her that the DOJ Criminal Division would approve filing the material witness warrant against Mayfield and pursuing criminal search warrants if the FBI felt strongly that it was necessary to proceed quickly to ensure against risk of flight and destruction of evidence. At this stage, the information known to the FBI and the U.S. Attorney’s Office regarding the fingerprint dispute between the FBI and SNP was that the SNP was still reviewing the relevant prints after Wieners’ April 21 meeting in Madrid with SNP officials and they had not yet issued a final report.

According to numerous witnesses interviewed by the OIG, there was considerable discussion, and some disagreement, both within and between the FBI and DOJ concerning whether to seek a material witness warrant as a result of the leaks. Cummings (Section Chief of ITOS I) told the OIG that FBI Headquarters got into a “heated” discussion with FBI Portland about what to



do as a result of the leaks. Cummings said that the Portland Division wanted to “take Mayfield down” because of the leaks, since agents were worried they might lose him. Cummings said he told the Portland Division that its job was intelligence collection and that agents should not take Mayfield into custody until all intelligence had been gathered. Cummings said he told Portland to get more people for surveillance if needed. He said he also told Portland that there was more work to be done and he did not want to lose the opportunity to possibly “recruit” Mayfield to cooperate with the FBI concerning additional potential suspects. Ultimately, Cummings agreed to let Portland agents approach Mayfield for an interview with a material witness warrant “in their pocket” to be used only if needed. Cummings told us that he stressed to the Portland Division that the goal was to approach Mayfield quietly and privately so that Mayfield might cooperate. Cummings said he was adamant that he did not want Mayfield simply arrested.

One of the Deputy Chiefs in the DOJ CTS said that from the outset he had reservations about authorizing the arrest of Mayfield as a material witness. The Deputy Chief said, “I was concerned that we didn’t have enough to show that Mr. Mayfield was unlikely to appear if we served him with a subpoena.” The Deputy Chief said he discussed his concerns with others, including the Portland AUSAs and “the leadership of the [DOJ],” some of whom shared his concerns. However, he said he also felt that if Mayfield was involved in any way with the Madrid bombings, it would provide him with an extremely strong incentive to flee and “that it really wasn’t that much of a stretch to conclude that we had enough.” In that regard, the Deputy Chief further said he did not think the use of a material witness warrant was inappropriate but rather a judgment call as to whether there was enough evidence to support a finding that Mayfield was unlikely to appear in response to a subpoena. He said, “[A]nd to the extent that it might have been a close case, that the way to go was to let the judge decide conclusively whether there was enough.”

Immergut said that because of the gravity of the Madrid bombings, the escalating leaks in the case, and because Mayfield appeared to suspect he was under surveillance, the SAC of the FBI Portland Division felt strongly that the government should seek a material witness warrant.<sup>35</sup> She said she supported the SAC’s judgment on this issue.

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<sup>35</sup> On May 5, the Madrid Legat reported that the Spanish magazine, *El Tiempo*, had called the U.S. Embassy in Spain to ask about an American suspect in the Madrid bombings. *El Tiempo* indicated it would publish a story about the bombings in the near future. Also, on May 6, while Mayfield was in custody but before the details of his arrest had been made public, a reporter from *Newsweek* called the SAC of the Portland Division and advised that he was aware of specific facts concerning the investigation, including the existence of a latent fingerprint, a subject residing in Portland, and an impending arrest.

Nahmias told us that there was a significant concern about risk of flight and that the Mayfield matter was a “classic case for a material witness warrant.” In an e-mail dated May 5, Nahmias said of Mayfield, “He is at this point what the ‘material witness’ designation is all about, and that is how we should approach him.” Nahmias said that Assistant Attorney General Wray ultimately made the decision to authorize the use of the material witness warrant based upon Immergut’s recommendation. Wray acknowledged that he authorized the material witness warrant.

Witnesses from the FBI CTD, the FBI Portland Division, the DOJ CTS, and the U.S. Attorney’s Office stated that they did not believe the government had enough evidence to charge Mayfield with a criminal offense at that time. We found no evidence that anyone in the FBI or at DOJ advocated that course of action.<sup>36</sup>

Witnesses from the FBI Portland Division and the U.S. Attorney’s Office said the prosecutors planned to present the material witness and criminal search warrants to the judge for authorization on the morning of May 6. The FBI and DOJ wanted the Portland Division agents to approach Mayfield and seek to interview him. The plan contemplated that if he agreed to be interviewed, the agents would call the U.S. Attorney’s Office to see if they should still execute the material witness warrant. If Mayfield refused to be interviewed, the agents would execute the material witness warrant and take Mayfield into custody.

## **J. Preparation of the Affidavits in Support of the Material Witness and Search Warrants**

As previously noted, FBI Portland and the U.S. Attorney’s Office had begun preparing a material witness warrant and supporting affidavit in late March as a “contingency plan” in the event that the FBI’s interest in Mayfield became public. The U.S. Attorney’s Office also prepared criminal search warrants and affidavits for Mayfield’s home, cars, and law office. The U.S. Attorney’s Office prepared a separate affidavit for the law office search because

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<sup>36</sup> In an e-mail dated May 5, 2004, the Public Affairs Specialist for the FBI Portland Division stated that “there is not enough other evidence to arrest [Mayfield] on a criminal charge.” She told the OIG that as a Public Affairs Specialist, she knew the Mayfield case would be a high-profile matter and she attended several briefings in the Portland Division concerning the Mayfield investigation to learn more about the case. She said that agents in the Portland Division did not believe there was sufficient evidence to charge Mayfield criminally. In an August 4, 2005, letter to the OIG and OPR, Mayfield’s attorneys stated that the May 5 e-mail demonstrates that “the FBI did not have probable cause to arrest [Mayfield] for a crime.” As stated previously, numerous government witnesses told the OIG that they believed that there was not sufficient evidence to charge Mayfield criminally, but there was sufficient evidence to arrest him as a material witness.

of the need to describe additional safeguards to minimize the disclosure of material subject to the attorney-client privilege. A Portland SA (referred to in this report as the original FBI affiant) was originally assigned to serve as the affiant and participated in preparing early drafts of the affidavits. AUSA 2 was the primary participant from the U.S. Attorney's Office.

In April, the decision was made that Lead Case Agent 1 would be the affiant because he was a more experienced investigator than the original FBI affiant. In early May, however, Lead Case Agent 1 became concerned that he might be "tainted" as an affiant because he had previously reviewed potentially privileged documents seized from Mayfield's law office during the [REDACTED] FISA search.

On May 5, 2004, the Portland SSA decided to replace Lead Case Agent 1 as the affiant with SA Richard Werder. Werder had only limited involvement in the Mayfield investigation prior to that time. Werder said he then spent two to three hours reviewing a stack of documents provided to him by Lead Case Agent 1 to verify the information in the affidavits. Lead Case Agent 1 and Werder told the OIG that Werder made, at most, minor edits to affidavits, which previously had been drafted by AUSA 2, the original FBI affiant, and Lead Case Agent 1. On May 6, Werder signed the affidavits and they were submitted to the Court.

The Werder affidavits contain a detailed summary of the FBI's investigation of Mayfield and the basis for the FBI's belief that Mayfield was a material witness and that he was in possession of evidence relevant to the investigation of the Madrid train bombings. Three sections of the affidavits became the focus of the OIG's review: a paragraph describing the original identification of Mayfield by the FBI Laboratory LPU, a paragraph describing the doubts expressed by the SNP regarding the FBI's fingerprint identification and the April 21 meeting in Madrid, and two paragraphs describing the FBI's beliefs regarding the likelihood that Mayfield had traveled to Spain under a false or fictitious name. These paragraphs are discussed in the subsections below.

#### **1. Affidavit description of the FBI Laboratory's identification of Mayfield**

Paragraph seven of the affidavit submitted in support of the material witness warrant stated:

On March 17, 2004, the SNP provided the FBI with photographic images of latent fingerprints that were recovered from the plastic bag containing the detonators that was found in the Kangoo van, including Latent Finger Print # 17 (hereinafter

LFP#17). All the fingerprints were provided to the Latent Print Unit at the FBI Laboratory in Quantico, Virginia. Senior Fingerprint Examiner Terry Green, submitted LFP#17 into the Automated Fingerprint Identification System (AFIS) for possible matches. BRANDON BIERI MAYFIELD was identified as a potential match to the unknown print. Senior Fingerprint Examiner Green then requested and received two known fingerprint cards of MAYFIELD. The first card contained the known prints of MAYFIELD's obtained in connection with a criminal arrest for burglary in Wichita, Kansas on December 22, 1984. The second fingerprint card contained the known prints of MAYFIELD obtained during his service in the United States Army. Both cards containing the known fingerprints of MAYFIELD were compared to LFP#17 received from Madrid. Senior Fingerprint Examiner Green identified in excess of 15 points of identification during his comparison and has advised the affiant that he considers the match to be a 100% identification of BRANDON BIERI MAYFIELD. The 100% identification was verified by Supervisory Fingerprint Specialist Michael Wieners, Unit Chief, Latent Print Unit, and Fingerprint Examiner John T. Massey, who is a retired FBI fingerprint examiner with over 30 years of experience on contract with the Latent Fingerprint Section of the FBI Laboratory.

This paragraph was originally drafted by the original FBI affiant and by AUSA 2. AUSA 2 and the original FBI affiant said they each called Terry Green at the FBI Laboratory LPU on March 23, to obtain detailed information about the identification of Mayfield for the affidavit. AUSA 2's handwritten notes of her conversation with Green shortly after the identification was made include the words "positive - 100% identification." Green and AUSA 2 both stated that AUSA 2 read the draft language regarding the identification of LFP 17 to Green on March 23, and that Green approved it. Lead Case Agent 1 told the OIG that he confirmed this language again in late April by reading it over the telephone to Green.

## **2. Affidavit description of the SNP doubts and the April 21 meeting**

In late April, Lead Case Agent 1 took responsibility for drafting language for the affidavits describing the April 13 Negative Report and the April 21 meeting in Madrid. The language submitted to the Court in paragraph eight of the affidavit supporting the material witness warrant stated:

In mid-April it became apparent that the preliminary findings of the Forensic Science Division of the SNP concerning the fingerprint were not consistent with those of the FBI Laboratory.

As a result, a meeting was held between a representative of the FBI's Latent Fingerprint Unit and approximately ten members of the Forensic Science Division of the SNP, including representatives from both the automatic fingerprint identification section and the latent fingerprint section on April 21, 2004. Before the meeting SNP personnel indicated that their report of the examination of LP#17 was preliminary and that a final determination had not been rendered. The SNP also indicated that they had not gone into the level three characteristics (ridge edges, ridge breaks, pores, and incipient ridge events) utilized by the FBI when making their initial comparison. At the conclusion of the meeting it was believed that the SNP felt satisfied with the FBI Laboratory's identification of LFP#17 and indicated that the Forensic Science Division intended to continue its analysis of the latent print comparison. I have been advised that the FBI lab stands by their conclusion of a 100% positive identification that LFP#17 as [sic] the fingerprint of BRANDON BIERI MAYFIELD.

This language, which does not specifically mention the April 13 Negative Report, was considerably less specific in its final form than the language in earlier drafts regarding the SNP's doubts about the fingerprint identification. Lead Case Agent 1 had originally drafted language that stated:

On April 13, 2004, the Forensic Science Division of the SNP issued a report indicating that it conducted an analysis and comparison of three photographic copies of fingerprint cards of BRANDON BIERI MAYFIELD with the "latent prints discovered during the different crime scene inspections" carried out after the March 11, 2004 terrorist attacks. An English translation of the laboratory report indicates that the result of the comparison was negative, although it is unclear whether this term was used to indicate that the examination resulted in a "non-identification," was "inconclusive," or carried some other meaning. The report also indicates that analysis of the impressions is ongoing leaving uncertainty whether the comparison was complete and a finale [sic] determination rendered. Given the FBI Laboratory's definitive identification and uncertainties over the SNP report, a meeting was arranged . . . .

On April 29, Lead Case Agent 1 sent the draft affidavit to the Madrid Legat for his review to ensure that the affidavit was accurate. The Madrid Legat responded by e-mail that the April 13 Negative Report had been provided by sources in the SNP in confidence, without the approval of the judge in charge of the investigation in Spain, and should not be described in detail in the affidavits. However, the U.S. Attorney's Office insisted that some reference

to the April 13 Negativo Report be disclosed in the affidavit. In the next draft, dated May 4, the U.S. Attorney's Office and the Portland Division had substituted the less specific language that was contained in the final version of the affidavit. This less specific description was included in the affidavit despite the Madrid Legat's continued objection to making any reference to the April 13 Negativo Report public.

Lead Case Agent 1 told the OIG that the description of the April 21 meeting used in the final affidavit, including the statement that the SNP "felt satisfied with the FBI's identification," was derived from the April 22 memorandum written by the Madrid Legat regarding the meeting. As previously noted, the Madrid Legat's April 22 memorandum stated that "at the conclusion of the meeting all of the SNP personnel seemed satisfied with the FBI's identification." Lead Case Agent 1 told the OIG that he did not read this description to Green, and that he could not recall whether he reviewed it with anyone who attended the April 21 meeting. The Madrid Legat told the OIG that he did not recall discussing this statement in the affidavit with Lead Case Agent 1.

### **3. Affidavit description of the FBI's beliefs regarding travel by Mayfield to Spain**

The affidavit submitted in support of the material witness warrant also contained statements pertaining to Mayfield's alleged travel in connection with the Madrid bombings. Specifically, paragraph 21 of the affidavit stated: "The investigation thus far has revealed no records of travel outside the United States in the name of BRANDON BIERI MAYFIELD." Paragraph 23 stated: "Since no record of travel or travel documents have been found in the name of BRANDON BIERI MAYFIELD, it is believed that MAYFIELD may have traveled under a false or fictitious name, with false or fictitious documents." Paragraph 24 stated: "I believe that based upon the likelihood of false travel documents in existence, and the serious nature of the potential charges, Mayfield may attempt to flee the country if served with a subpoena to appear before the federal grand jury." Variants of these statements appeared in the earliest drafts of the affidavit prepared by AUSA 2 and the original FBI affiant in late March.

The Portland SSA told us she reviewed the affidavits in her role as supervisor. She stated that the basis for the statement in paragraph 24 of the affidavit about "the likelihood of false travel documents in existence" was that when the FBI had conducted the FISA search of Mayfield's home, [REDACTED]

[REDACTED] Werder (who signed the affidavit) also told us that he was aware that the FISA search [REDACTED].

However, we determined that the language referring to “the likelihood of false travel documents in existence” was first drafted in [REDACTED], before the FISA searches of the Mayfield residence were conducted. The FBI and U.S. Attorney’s Office witnesses we questioned about this language did not identify any other evidence supporting “the likelihood of false travel documents,” except the Laboratory’s identification of Mayfield as the source of a fingerprint found in Spain.

## **II. The Arrest of Mayfield and Subsequent Events**

### **A. Arrest of Mayfield**

The Portland SSA told the OIG that she had a meeting with Lead Case Agent 1 and Lead Case Agent 2 prior to May 6 (the day of the arrest), to discuss the approach of Mayfield. She said the agents concurred with the plan to attempt to “smooth talk him and try to get him to cooperate.” The Portland SSA selected another FBI SA (referred to in this report as the Assisting Agent) with international terrorism experience to assist Lead Case Agent 2 on approaching Mayfield. The Assisting Agent said he met with Lead Case Agent 2 on May 4, to “get up to speed on the case.” On May 5, there was a briefing on the matter with Portland Division agents and the U.S. Attorney’s Office. Witnesses stated that SAC Jordan emphasized at this meeting that Mayfield should be approached and treated professionally.

On the morning of May 6, the government presented to Robert E. Jones, Senior District Court Judge for the District of Oregon, the material witness warrant and criminal search warrants for Mayfield’s office, residence, and four vehicles. The judge authorized all of the warrants. With respect to the search of Mayfield’s law office, the judge imposed specific procedures to be employed during the search to safeguard materials subject to attorney-client privilege.

Lead Case Agent 2 said she and the Assisting Agent went to Mayfield’s office at approximately 9 or 9:30 a.m. on May 6. She said there was no one other than Mayfield in his office. Another FBI agent waited outside in case any of Mayfield’s clients came to the office. Lead Case Agent 2 and the Assisting Agent said that they knocked on the door to the office and Mayfield let them in. They said they identified themselves as FBI agents and that Mayfield immediately made it clear that he did not want to talk with them. Lead Case Agent 2 said Mayfield said, “I don’t want you in my office. I have client files in here. I don’t want to talk with you.” The Assisting Agent also told the OIG that Mayfield stated that he had client files in his office.

Both Lead Case Agent 2 and the Assisting Agent said that they did not get a chance to explain their presence to Mayfield because as soon as he saw their FBI identification he said he wanted them out of his office. They said that the Assisting Agent then told Mayfield he was under arrest and that they had search warrants for his house and office. The Assisting Agent handcuffed Mayfield's arms behind his back. He said Mayfield was cooperative but would not "engage" with the agents. Lead Case Agent 2 said that the Assisting Agent read the material witness and search warrants to Mayfield. The Assisting Agent said he read the search warrants to Mayfield and let Mayfield read the cover page of the material witness warrant. Neither the Assisting Agent nor Lead Case Agent 2 gave Mayfield the affidavit supporting the material witness warrant at that time.

Lead Case Agent 2 and the Assisting Agent said that the Assisting Agent then tried to talk to Mayfield about why the FBI was there. They said Mayfield responded that he wanted to have his hearing, that he knew the judge, and that he could not believe that the judge had signed the warrant. Lead Case Agent 2 said that neither she nor the Assisting Agent mentioned the Madrid bombings at that point, but that the search and material witness warrants mentioned the nature of the potential charges against Mayfield. The Assisting Agent said they were at Mayfield's office for approximately 20 minutes.

The Assisting Agent and Lead Case Agent 2 led Mayfield to the FBI squad car. The Assisting Agent asked Mayfield for his car keys to conduct the search of Mayfield's car. The Assisting Agent told us that at that point, he told Mayfield, "as far as I know, the media is right behind us and we don't want to make a scene."<sup>37</sup> The Assisting Agent and Lead Case Agent 2 both said that Mayfield declined to provide his car keys. Mayfield then asked for his handcuffs to be placed in the front because he had an old shoulder injury that caused him discomfort. Lead Case Agent 2 said they normally do not comply with such requests, but they did so in this case. The Assisting Agent said he agreed to switch the handcuffs in the hope that it would encourage Mayfield to talk and be cooperative.

Lead Case Agent 2 said they drove Mayfield to the courthouse, which took approximately 15 minutes. The agents asked Mayfield if there was anyone they could call for him, and Mayfield said no. The Assisting Agent said that after discussing the matter with the AUSAs, he gave a copy of the material witness warrant affidavit to Mayfield and asked Mayfield if he had an attorney

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<sup>37</sup> The Assisting Agent told us that he had no specific knowledge that the media would be there, but was aware that the media follows FBI activity via scanners and that the reason the arrest was happening on that date was because of a possible media leak. He also said that his mention of the media was part of his effort to get Mayfield to talk and cooperate in the search of the car.



they could call for him. Mayfield asked them to call Tom Nelson, a local attorney. AUSA 1 called Nelson and informed him of Mayfield's arrest.

The FBI then transferred custody of Mayfield to the United States Marshals Service (USMS), which fingerprinted and photographed Mayfield. The FBI did not request or receive fingerprints or photographs from the USMS.

## **B. Criminal Searches and Witness Interviews**

The FBI executed all of the search warrants on May 6. According to FBI documents, the search of Mayfield's office began at 10:18 a.m. and was concluded at 3 p.m. The search team removed approximately six boxes of documents and items, including approximately two boxes of client files, a Rolodex, numerous business cards, telephone logs, two computer hard drives, multiple computer CDs and diskettes, a cellular telephone, and receipts and bills.

In conducting the search of the law office, the FBI assigned two lawyer-agents (among others) to the search team. According to documents filed with the court, the search team seized no material from the law office until the lawyer-agents made an initial determination that the material fell within the scope of the warrant. The search team reported that it seized approximately 25 percent of the office files. The files that were seized were further screened by a "privilege AUSA" to identify and segregate privileged and non-privileged material.

FBI documents indicate that the FBI spent three hours searching the Mayfield residence on May 6, beginning at approximately 11:15 a.m. Prior to executing the search warrant at the Mayfield residence, two Special Agents interviewed Mona Mayfield, who denied that she or her husband had any involvement in the Madrid bombings or any other terrorist acts. FBI agents also interviewed or attempted to interview other Mayfield family members and relatives, including Mayfield's mother, father, brother, and stepmother.

The two Special Agents who interviewed Mona Mayfield sat with her while the search was conducted. Lead Case Agent 1 was present for this search, along with six other FBI agents. He said he was in charge of the search of the residence and that the search team did a "good job" of getting in and out without alerting the neighbors or the media. He also said that the search team left the house in good condition.<sup>38</sup> From the home, the FBI seized

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<sup>38</sup> Mona Mayfield was quoted in press accounts as stating that after the search, the house looked as if it had been robbed, with rooms ransacked, closets emptied, and drawers overturned.

approximately 80 items, including 4 computers, numerous computer diskettes and CDs, credit cards, checkbooks, shipping receipts, passports, bank receipts, videotapes, cassette tapes, 2 firearms, and other miscellaneous papers.

### **C. Post-Arrest Developments**

#### **1. Mayfield's initial court appearance**

On the afternoon of May 6, Mayfield was brought before Judge Jones for his initial appearance on the material witness warrant. Mayfield was represented by Tom Nelson. The judge advised Mayfield that, as a material witness, he was subject to being held without bail pending his appearance before a grand jury. The judge also advised Mayfield that his options were to "take the Fifth Amendment before the grand jury or . . . to testify in deposition in perpetuation of your testimony or to testify before the grand jury." The judge also told Mayfield that as soon as his testimony was obtained, Mayfield could be released. The judge then ordered that the grand jury be brought in on May 11 or that Mayfield be permitted to give deposition testimony by May 11.

Mayfield stated in court that the fingerprint was not his and if it was, he had no idea how it got there. After consulting with his attorney, Mayfield asked the judge if he could be released if he consented to a deposition that day. The judge declined, stating that a deposition on that date would not be meaningful because the government had not had enough time to finish conducting the searches of the Mayfield residence, law office, and vehicles. Mayfield also requested that he be released on special conditions pending his appearance before the grand jury. The judge declined to release Mayfield, stating that because of the "gravity of the matter, there is no way I can ensure the appearance . . . of this material witness at this time."<sup>39</sup>

The judge placed a "gag order" on the government and Mayfield's counsel, but he told Mayfield that he could tell people he was being held as a material witness. The judge also prohibited the release of the affidavit by anyone, including Mayfield. Further, the judge ordered that the agents executing the search warrants return the premises to the condition they were prior to the search. The Portland SSA, who attended the initial appearance,

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<sup>39</sup> Although Mayfield was not charged with any criminal offenses at the time of his arrest, the application and affidavit for the material witness warrant set forth several potential federal crimes being investigated by a federal grand jury in connection with the Madrid bombings. A conviction for those crimes carried a maximum sentence of death. In a subsequent court hearing on May 17, Judge Jones stated: "If it's his fingerprint, unexplained in - with detonators in Spain, [it] is a powerful reason for him to flee if he's facing capital punishment."

told us she left the hearing and called the search team to make sure they left the house in good condition.

## **2. The FBI's continuing investigation of Mayfield**

During the May 6 searches, the FBI discovered keys to a bank safe deposit box. On May 10, the government obtained a search warrant for that safe deposit box. Inside the box the FBI found, among other items, \$10,000 in \$100 bills. It was subsequently determined that the cash was the legitimate property of Mona Mayfield, acquired pursuant to an inheritance.

In addition, after the execution of the searches, the FBI began reviewing and analyzing the items, documents, and computer materials seized during those searches. Among other things, the FBI found that the home computers had accessed websites relating to the Spanish rail system, Spain's largest airline, a Spanish airport, and a Spanish terrorist group known as "ETA." The FBI also discovered pilot training logs demonstrating Mayfield's experience as a small aircraft pilot in the 1980s and a book chronicling the development of al Qaeda.

## **3. Subsequent court proceedings involving Mayfield**

On Friday, May 7, the Federal Public Defender, Steven Wax, and one of his assistants, Christopher Schatz, were appointed to replace Nelson as Mayfield's counsel. On that same day, according to the court docket, the judge advised counsel for Mayfield and the government that Mayfield's deposition could begin at 1:30 p.m. that day, Mayfield could be released for the weekend on electronic monitoring, and the deposition could resume on the morning of Monday, May 10. After consulting with his counsel, Mayfield declined to be deposed on that date. As a result, Mayfield remained incarcerated.

In a court hearing on May 10, the judge expressed concern about leaks of sealed information to the media and noted that "there's been leakage on both sides." The judge read into the record portions of several newspaper articles that quoted anonymous government officials, Mayfield's prior counsel, and Mayfield's relatives and family members discussing a variety of topics, including the fingerprint identification, the conduct of the FBI's investigation of Mayfield, Mayfield's detention under a false name, and the Mayfield family's suspicion that his home had recently been entered surreptitiously.<sup>40</sup> Counsel

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<sup>40</sup> Documents indicate that almost immediately after the arrest of Mayfield, the DOJ, the FBI, and the U.S. Attorney's Office began receiving numerous press inquiries concerning Mayfield's arrest. As a result, the judge imposed a general "gag order" on May 6. However, the newspaper articles read into the record by the judge on May 10 cited, among others, anonymous government officials as their sources, in clear violation of the judge's May 6 "gag order." An e-mail from a DOJ Public Affairs Officer said that he was told by two reporters that (continued)

for both parties indicated to the judge that they were also concerned about leaks and had begun drafting a joint “gag order.”<sup>41</sup>

Also on May 10, Mayfield’s counsel requested that the grand jury session be postponed from May 11 to allow him additional time to consult with his client. The attorney requested an adjournment until May 20, and later agreed to May 21 as the date for Mayfield’s grand jury appearance. The attorney also agreed to notify the judge and the government in advance if Mayfield planned to assert his Fifth Amendment privilege and refuse to testify. The judge stated: “Apparently he is willing to remain in custody until this grand jury – until he gets your advice.” Mayfield’s attorney responded: “That’s correct, Your Honor.”

Mayfield’s counsel asked the judge to halt the government’s review of the evidence seized from Mayfield’s law office, alleging that the review was improper, and instead asked the judge to appoint a special master to assume control of the evidence. The government objected and explained to the judge the “taint procedure” it had followed as ordered by the judge upon execution of the law office search warrant. The judge declined to halt the ongoing review and instead ordered that the client files that were already reviewed by the taint AUSA be brought to his chambers for his review. Those files were delivered to the judge that same day.

On May 11 and May 14, Mayfield’s counsel filed numerous motions challenging the material witness procedure and the criminal searches of Mayfield’s home, office, and vehicles. Also on May 11, the judge entered an order indicating that he had reviewed all of the seized attorney-client files and withdrew from further government review certain privileged matters. All non-privileged files were copied by the government and subsequently returned to Mayfield’s counsel.

During this period, counsel for both the government and Mayfield met frequently to discuss possible scenarios under which Mayfield’s testimony

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their sources were from Portland. However, witnesses from both the FBI Portland Division and the U.S. Attorney’s Office denied that anyone from their offices leaked information about the Mayfield case to the media. In addition, both the FBI Portland Division and the U.S. Attorney’s Office in May 2004 jointly requested that the FBI Office of Professional Responsibility, in conjunction with the DOJ Office of Professional Responsibility, conduct an internal investigation to attempt to discover the source of the leaks. The source of the leaks was never uncovered.

<sup>41</sup> Counsel subsequently presented to the judge a more stringent “gag order” which prohibited the dissemination of sealed information by any government official, employee, or counsel associated with Mayfield. The judge approved the gag order on May 11.

could be obtained prior to May 21. To that end, on May 13, the government presented Mayfield's counsel with a "proffer letter" outlining the terms under which an interview of Mayfield could be arranged before or in lieu of the scheduled May 21 grand jury appearance. The parties thereafter exchanged correspondence negotiating the terms of a proposed proffer, but could not agree on several issues, including the scope of any immunity that would be granted to Mayfield in connection with his interview.

In a court hearing on May 17, the parties indicated to the judge that they were thus far unable to negotiate the terms of a mutually agreeable proffer agreement. The judge noted the challenges faced by both parties:

As I look at it, both sides are in a catch-22 position. Legally, the defense doesn't want to commit to giving a proffer or deposition or grand jury testimony until they know what the Government's got against them. The Government doesn't want to tell the . . . material witness what they have . . . so that answers can't be tailored to any questions that they normally have to ask of a witness. And so they don't want to . . . get rehearsed testimony to questions.

The judge also asked AUSA 1 what the government would do in the event that Mayfield asserted his Fifth Amendment privilege before the grand jury. AUSA 1 responded that it would be forced to make a decision whether to compel Mayfield's testimony pursuant to a grant of immunity. AUSA 1 also added that the government would probably ask that the Court continue the matter for several weeks in order to allow the government to finish its review of the evidence seized during the May 6 searches in order to make the decision whether to immunize Mayfield.

#### **D. Mayfield's Detention**

Following Mayfield's court appearance on May 6, the USMS transported Mayfield to the Multnomah County Detention Center (MCDC), a maximum security adult correctional facility in Portland.<sup>42</sup> The material witness statute provides that if detention is ordered, the witness shall be confined in a corrections facility and kept "separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal." 18 U.S.C. § 3142(i)(2). The MCDC is under contract to the USMS to provide detention facilities to the federal government. The USMS chose this facility to

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<sup>42</sup> Following his release, Mayfield made statements to the media regarding the conditions of his confinement and its appropriateness in light of his status as a material witness. The OIG addresses these issues here and in Chapter Six.

house Mayfield because its location is convenient to the courthouse where Judge Jones ordered Mayfield's detention.

On May 6, 2004, AUSA 2 sent a memorandum to the USMS stating that because Mayfield was being detained as a material witness, not a criminal defendant, his arrest was governed by Federal Rule of Criminal Procedure 6(e) and was considered to be secret. The AUSA's memorandum instructed the USMS that neither the USMS nor the jail should release any information regarding Mayfield's custody status, including his photographs. Because the MCDC booking records are open to the public, the USMS and the MCDC agreed that Mayfield would be booked under an alias, "Randy Taylor."

The AUSA's memorandum to the USMS did not give any further guidance regarding how or where Mayfield should be confined. The Operations Supervisor for the USMS made a handwritten notation on AUSA 2's memorandum that stated "SUBJECT SHOULD BE KEPT SEPARATE FROM ALL INDIVIDUALS FOR HIS OWN SAFETY," and forwarded the memorandum, by facsimile, to the MCDC. The Operations Supervisor told us that she had a telephone conversation with AUSA 2 at the time, but that she did not recall whether she made the notation in response to something AUSA 2 said or on her own initiative out of concern for Mayfield's safety.

At the MCDC Mayfield was searched for contraband, screened for medical conditions, and sent to the classification station where a deputy conducted a risk assessment to determine the section of the MCDC in which Mayfield would be housed. The deputy on duty at the classification station told us that at the time he was unaware that Mayfield was using an alias. He stated that when he did a database search for prior arrest records under Mayfield's alias, he found several from Florida. He then confronted Mayfield about his failure to disclose these arrests. Mayfield did not reveal his identity, but did deny the prior arrests. The deputy stated that he sent Mayfield back to the waiting area while he completed his risk assessment. He stated that he assessed Mayfield as low-risk, and accordingly assigned him to a cell within the general prison population. The deputy told the OIG that he then happened to recognize Mayfield from an internet news report. The deputy stated that he then called Mayfield up to the desk and confronted him about not being truthful regarding his identity. Mayfield responded that the USMS had told him not to disclose his real name. The deputy told the OIG he became concerned that other prisoners would recognize Mayfield, so he assigned Mayfield to a cell in closed custody for Mayfield's protection.

From May 6 through May 12, 2004, Mayfield was housed in the MCDC's fourth floor administrative segregation unit, a restrictive area where the more dangerous and high-profile inmates are also maintained. Prisoners in the segregation unit are each housed in separate cells and locked inside their cells

for 22 hours a day. The MCDC Captain said that although Mayfield still needed to remain in restrictive custody for his protection, it was subsequently determined that Mayfield was not a threat to the guards or to other prisoners and therefore he was transferred on May 12 to the protective custody unit, the lesser of the two restrictive custody units. The MCDC also houses other prisoners in this unit who it considered to be “vulnerable” (those who are physically weaker, who are new to the prison system, or have minor mental disorders). Like other prisoners in this sixth floor unit, Mayfield was allowed to commingle with other inmates in a common area for several hours per guard shift. The cells in both the administrative segregation and the protective custody units are enclosed by walls on all sides with a small, square opening in the door, allowing the inmate to look out.

MCDC and Multnomah County Sheriff’s Office (MCSO) officials told us that their detention facility procedures reflect their sensitivities to the large Muslim population that lives in the Portland area. The Multnomah County detention facilities contain the only two Halal-certified kitchens in the states of Oregon and Washington.<sup>43</sup> In addition, the detention facilities maintain a supply of Korans and prayer rugs which are available to prisoners upon request. Mayfield was provided with both.

According to USMS records, during his 2-week incarceration, Mayfield was transported to the courthouse by the USMS four times. In addition, on May 12, 2004, the USMS transported Mayfield to a judicial conference room so he could meet with Oregon State Bar Professional Liability Fund counsel to arrange to have another attorney cover his clients while he was incarcerated. In accordance with USMS procedures, each time Mayfield was transported he was handcuffed and shackled.

Also, in accordance with MCDC procedures, Mayfield was allowed to have “contact” visits with his attorneys and “non-contact” visits (separated by a window wall) with designated family members and friends. Because of the possibility of contraband being provided to the inmate either intentionally or unintentionally during “contact” visits, Mayfield was, according to MCDC officials, routinely strip searched after these visits. He was also strip searched when he was first booked in and each time he returned from court. Mayfield had visitors, either family members or attorneys, on 9 of the 13 days that he was incarcerated (excluding the day he was first incarcerated and the day he was released). According to MCDC records, the only times visitors were denied access to Mayfield were when Mayfield was at court and therefore unavailable, when visits occurred outside the standard visiting hours, or when a visitor was not on the approved list of visitors that had been designated by Mayfield.

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<sup>43</sup> In Halal-certified kitchens, the meat is prepared as prescribed by Muslim law.

According to the Chief Deputy for Corrections for the MCSO, special accommodations were made for Mayfield regarding his attorneys' visits. Mayfield's attorneys wanted to use a separate room, bring in documents, and use a tape recorder. The Chief Deputy said that the MCDC was concerned about the volume of materials that Mayfield's attorneys wanted to bring into the MCDC because of the possible introduction of contraband, but they made an exception and allowed them to do so. He said that it was a matter of trying to balance Mayfield's legal needs against the MCDC's security needs. He also stated that, while these meetings were observed by MCDC personnel for security reasons, they were not monitored for content.

At the direction of the judge, the USMS made a conference room available for Mayfield to work on his client files and to meet with a member of the Oregon bar to arrange for another attorney to take over his cases.

#### **E. The SNP's Reexamination of Latent Fingerprint 17**

At the same time that the events leading to Mayfield's detention were unfolding, the SNP was conducting its own reexamination of LFP 17 as promised at the April 21 meeting in Madrid. In the weeks following the April 21 meeting, the Madrid Legat repeatedly asked officials in the SNP for updates regarding the status of the SNP's reexamination of LFP 17 and Mayfield's prints. On May 4, the FBI CTD transmitted an FBI Letterhead Memorandum (LHM) to the Madrid Legat for dissemination to the Spanish government. The Madrid Legat told the OIG that he did not specifically recall this LHM, but he had no reason to believe that it was not delivered to the Spanish government. The LHM stated, among other things:

Because Mayfield's name and/or FBI investigation of Mayfield appears likely to become public in the very near future, our plans to interview Mayfield have been significantly advanced. To effectively interview Mayfield, we need the authority to detain him; currently we cannot obtain such authority from our courts without an official Spanish report identifying Latent Print #17 from the plastic bag recovered by your service from within the suspect Kangoo van as Mayfield's. We would greatly appreciate a final forensic report from your service as soon as possible, in an unclassified format suitable for use in U.S. judicial proceedings.

As we discuss in Chapter Six, however, the statement in the LHM that Mayfield could not be detained unless the SNP Laboratory identified him as the source of LFP 17 was inaccurate.



As noted above, the former SNP Laboratory Director told the OIG he had assigned three teams to reexamine LFP 17. The findings of these teams were reported to him on or shortly after May 5. The findings of these review teams were described to the OIG by three SNP officials who were involved in the process. No written report of this reexamination was ever shared with the FBI or the OIG.

According to the SNP officials we interviewed, the Spanish review teams found that there were seven characteristics in LFP 17 that appeared to match Mayfield, but that there were differences between the prints that could not be reconciled. In particular, the SNP found that the dissimilarity in the upper left portion of LFP 17 could not be explained as a "second touch" because the pressure applied in that portion of the print was consistent with the rest of the print and therefore indicated a single touch. The SNP also found discrepancies in the spacing between details in the lower portion of the prints and discrepancies in the curvature of some ridges in the prints. The former SNP Laboratory Director told the OIG that on May 7 or May 8, he requested additional opinions regarding LFP 17 from two outside experts affiliated with other Spanish forensics laboratories. He stated that only one of the outside experts had time to review LFP 17 and the Mayfield prints, and that this expert told him that the print did not match Mayfield's prints.

There are conflicting accounts as to whether the SNP immediately informed the FBI of the findings of these review teams. The former SNP Laboratory Director told the OIG that he informed the Madrid Legat of the results of the SNP's reexamination on May 11 or 12, when the SNP asked the Madrid Legat for additional fingerprints of Mayfield. The Madrid Legat denied to the OIG investigators that anyone from the SNP informed him that the SNP had concluded that the FBI was wrong prior to May 19, when the SNP informed him that it had identified Ouhnane Daoud. The OIG found no documentary evidence showing that the SNP informed the FBI that it had concluded that Mayfield was not the source of LFP 17 prior to May 19.

The contemporaneous documentation reviewed by the OIG reveals, however, that at least by May 7, the day after Mayfield was arrested, the FBI had been told by the SNP that there were disagreements within the SNP Laboratory regarding the Mayfield identification, and the FBI had related this fact to the U.S. Attorney's Office. During the period following the April 21 meeting, the Madrid Legat had made a number of calls to the SNP seeking information on the status of the SNP's reexamination of LFP 17. On May 7, the Madrid Legat wrote the following in an e-mail to an ETIU SSA and the ITOS I Assistant Section Chief:

Regarding the SNP fingerprint report, it is still undecided as of today. Some of their people agree with our finding, there is still a

few who don't, according to the [Deputy Director], they hope to resolve this tomorrow when the Director General [of the SNP Laboratory Director] returns.

On the same day, a DOJ CTS attorney (referred to in this report as the CTS Attorney) sent an e-mail to DOJ and the U.S. Attorney's Office that described the same conversation, as related to her by the Madrid Legat:

With respect to the fingerprint report, it is still incomplete. [The Madrid Legat] met with the laboratory guys today and there is apparently still some disagreement among the Spanish. He will meet with them again on Monday.

The CTS Attorney stated during her OIG interview that she did not recall what the "disagreement" was, but told the OIG she did not interpret this information from the Madrid Legat to mean that the SNP was about to exclude Mayfield. However, her use of the word "still" in the e-mail suggests that this was not the first time the FBI or DOJ had been made aware of disagreements within the SNP Laboratory.

The OIG interviewed the Madrid Legat and the SNP Deputy Director regarding their May 7 conversation. The Madrid Legat said he had no recollection of the conversation beyond what was stated in his May 7 e-mail. The SNP Deputy Director said he recalled only that the Madrid Legat called him frequently and that the SNP Deputy Director always referred him to the Director of the SNP Laboratory for information. The SNP Deputy Director told the OIG he did not believe that he told the Madrid Legat that there was disagreement within the SNP about the identification.

On May 8, a Spanish newspaper (El Pais) reported that the SNP was "very doubtful" that Mayfield was the source of LFP 17. By May 10, media reports regarding SNP doubts had reached Mayfield's attorneys and the U.S. Attorney's Office. On May 12, the Madrid Legat sent an e-mail to FBI Headquarters and the Portland Division stating:

This past weekend, there were a series of articles in the Spanish press which quoted Spanish officials as stating . . . [t]he SNP Laboratory disagrees with the FBI findings and do not consider our fingerprint identification techniques sound. . . .

As of yesterday afternoon [May 11], the SNP Laboratory still had not finalized their report on the fingerprint, informing me they would let me know whenever they finished.

The Madrid Legat did not comment on the accuracy of the Spanish media reports in his e-mail. He told the OIG that he was generally skeptical of the accuracy of reports in the Spanish newspapers. He stated that by this time, however, he was beginning to think that the SNP Laboratory might not agree with the FBI because it was taking them so long to complete their report.

Later on May 12, the SNP delivered a letter to the Madrid Legat requesting additional inked fingerprints for Mayfield. The Madrid Legat arranged for the translation of the letter and forwarded it to the CTD and the Portland Division.

As translated, the letter stated that the available inked prints for Mayfield “do not contain sufficient detail in all areas and in particular the upper portion, as to compare with the prints lifted during the [March 11 attacks], information that is essential to proceed with the issue of a corresponding forensic report.” Accordingly, the May 12 letter requested that the FBI obtain “[t]hree complete, original fingerprint cards, of the 10 fingers with the largest print area possible, including the marginal upper area and marginal area on both sides.” The letter also requested DNA samples for Mayfield.

The SNP officials we interviewed each told the OIG that after Mayfield was arrested, the SNP realized that there was an opportunity to obtain a better set of inked prints from Mayfield. In addition, the former Director of the SNP Laboratory told the OIG that at the time he delivered the May 12 letter to the Madrid Legat, he specifically told the Madrid Legat that the SNP had reached the conclusion that LFP 17 was not a match to Mayfield.

The Madrid Legat provided a different version of events to the OIG. He told the OIG that he inferred from the SNP’s May 12 letter that the SNP was still considering Mayfield as the possible source of LFP 17. He said he spoke to the SNP Laboratory Director around May 12 but that the Director did not indicate which way the SNP Laboratory was leaning.

The FBI obtained a new set of inked fingerprints from Mayfield in Portland late on May 13, and these prints were forwarded to the FBI Laboratory. Green told the OIG he examined these prints to determine whether additional details from the extreme tips of Mayfield’s finger could be matched to the upper left portion of the print to substantiate the theory of a second touch, but he discovered that once again that area of Mayfield’s finger was not recorded.<sup>44</sup>

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<sup>44</sup> Before the fingerprints were forwarded to Spain, the SNP identified Daoud as the source of LFP 17 and withdrew its request for additional Mayfield prints.

On May 14, the CTS Attorney wrote an e-mail describing a telephone call from the Madrid Legat in which he said that the SNP had “probably determined that their initial report is wrong and that they have requested an additional copy of the prints in order to save face.” During his interview with the OIG, the Madrid Legat said he could not recall any details regarding this conversation or the basis of his statement to the CTS Attorney.

#### **F. The Court-Appointed Fingerprint Expert**

On May 17, Judge Jones held a hearing on a motion by Mayfield’s attorneys seeking his release. Among other things, Mayfield’s attorneys argued that the primary basis on which the government sought Mayfield’s detention – the validity of the FBI’s identification of LFP 17 – had come into question as a result of press reports indicating that the SNP had doubts about the FBI’s conclusions. Judge Jones responded by stating “I have no affidavit from any Spanish authorities as to questioning the fingerprint. The only information I have is that after consulting with the FBI, that they agreed with the 100 percent identification.” However, the judge ordered the United States to produce a copy of LFP 17 to a fingerprint expert chosen by the defense. The U.S. Attorney’s Office provided the names of three potential experts recommended by the FBI Laboratory to Mayfield’s attorneys, including Kenneth R. Moses of Forensic Identification Services in San Francisco. Mayfield’s attorneys designated Moses as the fingerprint expert.<sup>45</sup>

Moses was certified as a latent print examiner by the International Association for Identification (IAI). He served as a crime scene investigator in the San Francisco Police Department Crime Laboratory from 1971 to 1998, and received numerous honors and awards. The judge found him to be qualified as an expert, and digital images of LFP 17 were delivered to him later on May 18.

On May 19, Moses testified telephonically as to the results of his identification. He stated, “I compared the latent prints to the known prints that were submitted on Brandon Mayfield, and I concluded that the latent print is the left index finger of Mr. Mayfield.” Moses stated that there were 16

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<sup>45</sup> On May 18, at the request of the United States and with the agreement of Mayfield’s counsel, the judge modified his order to provide that the expert would be designated as a court expert rather than a defense expert. The government obtained this modification with the consent of counsel for Mayfield in order to avoid the precedent of being ordered to provide discovery to a grand jury witness to justify seeking the witness’s testimony. During the hearing on that day, AUSA 1 stated: “There have been leaks in the press indicating some question about [the FBI’s identification of Mayfield] by the Spanish government. To the extent that we had any knowledge of that, we provided that to the Court in the material witness affidavit. As far as I know the Spanish position hasn’t changed one way or another since then.”

minutiae in the latent print that corresponded to the minutiae on Mayfield's finger. He stated that the identification was "quite difficult," citing distortion and blotting out by residue from the development process. He stated that he would have liked to examine the original evidence, but he testified that the digital image of the latent print that he received was sufficient to make the identification.

### **G. The SNP's Identification of Daoud**

On May 19, the same day that Moses testified that LFP 17 was Mayfield's print, the FBI and the U.S. Attorney's Office learned that the SNP had identified LFP 17 as belonging to a different person, an Algerian named Ouhmane Daoud. The events that led the SNP to Daoud began on April 3, when Spanish law enforcement authorities raided an apartment building in suburban Madrid in an effort to arrest suspects in the March 11 train bombings. The suspects blew themselves up, also killing a Spanish policeman. In the course of sifting through evidence found at the site of the suicide blast, the SNP discovered documents bearing Daoud's name. The SNP discovered that Daoud's fingerprints were on file as a result of an immigration violation. On approximately May 15, the SNP fingerprint examiners determined that Daoud's right middle finger was the source of LFP 17, based on a correspondence of 14 points of identity. The SNP also determined that Daoud's right thumb was the source of LFP 20, found on the same bag, based on a correspondence of eight points of identity.

The SNP found that Daoud's print was consistent with the upper left portion of LFP 17 (which did not match Mayfield and which the FBI had explained as a separate touch). According to notes taken by the Portland SSA at a June 9 meeting between the SNP and the FBI, the SNP officials stated that they examined the bag and determined there was no fold in it that would explain the appearance of a break in the print separating that portion of the print from the rest of the print. The SNP told the FBI that they concluded that the gap or separation between the upper left portion of the print and the center of the print was the result of an imperfection in the development technique rather than a second touch or a fold in the bag.

The Director of the SNP Laboratory told the OIG that before announcing the identification, he sought independent verification from the three groups he had convened to study the Mayfield prints and from the outside expert. All agreed that Daoud was the source of LFP 17 and LFP 20.

On May 19, the SNP delivered a letter to the Madrid Legat advising him that the SNP Laboratory had identified Daoud as the source of LFP 17 and LFP 20. He immediately forwarded the letter and digital copies of Daoud's prints to an SSA in ETIU, who in turn forwarded the material to the third LPU Unit Chief

and Terry Green at the Laboratory. The Madrid Legat also alerted the Portland Division, which in turn alerted the U.S. Attorney's Office.

Judge Jones called the U.S. Attorney's Office at approximately 9:15 a.m. on May 19 to inform it that Moses had concluded that LFP 17 matched Mayfield's known prints and that Moses would testify about his conclusion at 10:30 a.m. that day. During that telephone call, AUSA 1 informed the judge that the U.S. Attorney's Office had received information from Spain casting doubt on the identification, that the U.S. Attorney's Office was trying to gather additional information, and would address the issue with the judge at the 10:30 a.m. hearing.

On May 20, the SNP completed its detailed Expert Report explaining the identification of Daoud as the source of LFP 17 and LFP 20. This report was turned over to the FBI on May 26, but FBI records do not reflect when it was received by the Laboratory.

#### **H. The Release of Mayfield**

Immediately after receiving the new information from the SNP on May 19, the FBI Laboratory began reexamining LFP 17. Wieners told the OIG that as soon as he saw the upper left portion of Daoud's print, his "heart sank," as he realized that it matched LFP 17 in the area that Mayfield's prints did not. The Laboratory requested that the Madrid Legat obtain higher resolution copies of Daoud's prints from the SNP to use in the examination. On the same day, the major case prints (10-print cards) obtained from Mayfield after his arrest in Portland were delivered to the LPU. Wieners told AUSA 2 that it would take a couple of days for the LPU to resolve the issue.

The Moses testimony took place at approximately 10:30 a.m., Pacific Time, on May 19. Immediately after Moses testified, AUSA 1 reported to the judge, in vague terms, that classified information from Spain had cast doubt on the identification. Judge Jones accepted AUSA 1's offer to brief him *in camera* regarding the information from Spain. After hearing the information, Judge Jones returned to open court and stated that the new information "is not of such a caliber that would justify immediate release of the material witness." The judge did not explain or elaborate on this conclusion.

Early on May 20, the Madrid Legat obtained higher resolution digital copies of Daoud's known fingerprints from the SNP and e-mailed them to the Laboratory. That same morning, Wieners called AUSA 2 to reiterate that it would take more time to resolve the conflicting identifications. Wieners had heard that Mayfield was scheduled to go before the grand jury and wanted to warn the U.S. Attorney's Office about where things were going. AUSA 2 memorialized the conversation in a file memorandum. According to the

memorandum, Wieners told AUSA 2 that the LPU “see[s] what the Spanish see” and that there may be merit in the SNP comparison. AUSA 2’s memorandum quoted Wieners as stating (in reference to the discovery of a second potential match to LFP 17) that he had “never seen anything like this” in 25 years of fingerprint examination. According to AUSA 2, Wieners stated that “in light of the potential industry wide effect beyond this matter, the lab would be taking a cautious and judicious approach to this issue realizing time is sensitive.” He indicated that the FBI Laboratory would likely be sending examiners to Spain to discuss the matter with the SNP.

In light of this development, the U.S. Attorney’s Office recommended to DOJ that the government disclose the information to Mayfield’s attorneys and seek Mayfield’s immediate release. By early afternoon on May 20, Criminal Division Deputy Assistant Attorney General David Nahmias authorized the U.S. Attorney’s Office to move for release on strict conditions.

At a hearing that afternoon, AUSA 1 informed the judge and Mayfield that the Spanish government had identified another individual in Spain as the source of LFP 17. AUSA 1 stated that “it is our position that it is still Mr. Mayfield’s print on that blue bag. But in light of this information, it is our request that Mr. Mayfield be released pending further proceedings in this material witness proceeding.” Judge Jones granted Mayfield’s release to “home detention” but denied the government’s request for electronic monitoring.

#### **I. The FBI Laboratory’s Reexamination of LFP 17**

As noted above, the FBI Laboratory began a reexamination of LFP 17 on May 19, when it received a copy of Daoud’s known prints from the SNP. Wieners, Green, and two other examiners became involved in the reexamination. Green told the OIG that at that time, he still thought LFP 17 was Mayfield’s print. Wieners told the OIG that he quickly became persuaded that the source of the print was Daoud, but he lacked confidence in his objectivity and did not voice his opinion. The two other examiners hypothesized that the lower portion of the print might have been made by Mayfield and the upper portion made by Daoud. Wieners also reported that a fifth examiner also looked at the prints and told Wieners he thought it was Daoud’s. The fifth examiner told the OIG he did not do a complete examination.

The Laboratory did not resolve the issue immediately after receiving Daoud’s known prints. The examiners were unwilling to identify Daoud as the source because there were a few dissimilarities between LFP 17 and Daoud’s known prints that they were not sure could be explained, and at least one place in LFP 17 that seemed to match Mayfield’s prints better than Daoud’s.

DOJ pushed for a resolution of the issue. The Assistant Attorney General for the Criminal Division, Christopher Wray, discussed the matter with Deputy FBI Director Bruce Gebhardt on May 20, and stated that answers were needed immediately. Gebhardt called Joseph DiZinno, Assistant Director of the FBI Laboratory, and CTD Section Chief Cummings and told them to develop a strategy in consultation with Nahmias to resolve the issue quickly.

At approximately 6 p.m. Eastern Time on May 20, DiZinno contacted an LPU Unit Chief and instructed him to catch the next flight to Spain to gather firsthand information and the evidence, if possible, from the SNP so that the Laboratory could make its own determination regarding whether Daoud was the source of LFP 17. The LPU Unit Chief took DiZinno's instructions to mean that he should obtain a high-quality photograph of the latent print, the original evidence (if possible), and the known prints of Daoud. The LPU Unit Chief was selected for the trip because Wieners was unavailable to travel. An additional Senior Fingerprint Specialist who had not previously been involved in the case was selected to accompany the LPU Unit Chief to Spain.

On May 21, after DiZinno instructed the examiners to go to Spain, the Laboratory received better digital images of Daoud's prints from the SNP. Nevertheless, the Laboratory examiners were unable to resolve the identification issues.

The earliest flight the LPU Unit Chief and the other examiner could catch left Washington on May 21 and arrived in Madrid early on Saturday, May 22. The Madrid Legat met the examiners at the airport and drove them directly to a meeting with approximately 10 officials of the SNP Laboratory, most of whom had also attended the April 21 meeting with Wieners. The SNP Laboratory Director displayed the blue plastic bag on which LFP 17 was found. He explained that the original latent fingerprints had been destroyed as a result of processing, but that their locations were marked on the bag. The Director explained that the SNP examiners believed that LFP 20 and LFP 17 corresponded to Daoud's thumb and middle finger and that a third, unidentifiable latent print (LFP 19) likely corresponded with his index finger, so that all three prints were made simultaneously. He also displayed the original inked fingerprint cards for Daoud. The LPU Unit Chief took digital photographs of the bag and the original fingerprint cards. The SNP Laboratory Director also gave the third LPU Unit Chief a copy of LFP 19.

The Madrid Legat gave the third LPU Unit Chief additional materials that the SNP Laboratory Director had provided to him the day before, including photographs of Daoud and photographs of Daoud's 10-print cards. It is not clear whether the SNP provided additional photographs of LFP 17 to the third



LPU Unit Chief at this time; if so, they apparently were not distinguishable from the digital images previously provided to the FBI.

The representatives of the SNP were prepared to explain their identification of Daoud at the May 22 meeting, but the LPU Unit Chief told the OIG he declined to enter into such a discussion because he had been up all night, did not have much background on the case, and wanted to remain independent in his review of the materials. The Madrid Legat told the OIG that the SNP representatives were disappointed at the unwillingness of the FBI to discuss the identification at that time.

The LPU Unit Chief and the other examiner traveled back to Washington on Sunday, May 23, and arrived in Quantico at about 10 p.m. The LPU Unit Chief delivered the materials he had obtained in Spain to the LPU, including better quality known prints for Daoud. Green, Wieners, Stephen Meagher (another LPU Unit Chief), and a fourth examiner were waiting to examine the new materials. Wieners told the OIG that he asked Meagher to get involved in the reexamination of LFP 17 because Meagher had not been involved in the identification up to that time, and Wieners felt Meagher was the least biased examiner and the most able to conduct an objective examination. The witnesses told the OIG that the LPU Unit Chief who had traveled to Madrid briefed Meagher and Wieners on what the SNP had told him, including the potential for simultaneous impressions. The LPU Unit Chief and the examiner who traveled with him to Spain did not participate further in the effort to resolve the issue that night.

The team of FBI Laboratory examiners worked through the night. They told the OIG that they had been directed by DiZinno or Dwight Adams (Director of the Laboratory) to produce an answer first thing in the morning.

The four examiners had slightly different recollections of events during the overnight examination, but all agreed that Meagher ultimately decided to declare LFP 17 to be of "no value." Meagher told the OIG that after examining the materials and asking some questions, he went to his office by himself to conduct a detailed examination, which took about an hour and a half. He told the OIG that he concluded that because he was lacking key information regarding the fingerprint and its processing technique, he could not offer a reasonable explanation for the dissimilarities that he found between LFP 17 and both the Mayfield and Daoud prints. Meagher stated he needed to see the original evidence (the plastic bag) and know more about the processing and photographic techniques used to make the image in order to reach a proper conclusion. He stated that he therefore concluded that without this additional information, LFP 17 was of "no value" for identification.

Wieners stated that after Meagher completed his independent examination, Meagher pointed out that they still did not have the best image available. Wieners said Meagher noted the issue of possible simultaneous prints and the existence of multiple lines of demarcation and separation in the print. According to Wieners, Meagher stated that based on the fact that he could “make it work” with both Daoud and Mayfield, which should never be the case, it was necessary to declare this print of no value. Thus, the determination of no value was based in part on the fact that by using proper identification techniques, it was possible to match this latent to two different sources. However, Meagher did not mention this rationale in his interview with the OIG.

Green told the OIG that Meagher made the determination that the print was of no value because he saw inconsistencies with both the Daoud and Mayfield prints. Green stressed that this was strictly Meagher’s decision. Green stated that in his view there were parts in the latent fingerprint that seemed to match Mayfield better than Daoud. Green told the OIG that nothing that happened during the May 23-24 overnight reexamination convinced him that he had made a mistake.

The fourth examiner told the OIG that when Meagher emerged from his office that night, he stated that he believed Mayfield could be excluded, but that he thought that the latent was not necessarily “of value” for identification. He said he thought the FBI Laboratory should err on the side of caution and not make another mistake.

Meagher and Wieners prepared a written summary of the Laboratory’s reexamination, which was circulated to the CTD and the FBI Portland Division on the afternoon of May 24. The summary describes how the Laboratory reached the “no value” determination:

As this controversy burgeoned, the LPU supervisory staff began analyzing the latent print in question and many differing opinions arose. Some were convinced the latent print belonged to Mr. Mayfield. Others were equally convinced the latent print belonged to [Daoud]. Obviously, since fingerprints are unique and can only be attributed to a single source, only one position can be correct. Still others thought the latent print was actually two prints overlaid and that one portion belonged to Mr. Mayfield and the other belonged to [Daoud]. Each camp, in reaching their conclusion, noted dissimilarities between the latent print and the respective known prints that were difficult to explain. As the four Examiners met on Sunday night/Monday morning, the same schisms were manifest. At that point, the focus returned to the latent print and it was re-analyzed. The four Examiners

conducting this re-analysis consisted of two Unit Chiefs and two Supervisory Fingerprint Examiners with a combined total of ninety-three years of experience in the latent print science. The one constant in all of their arguments was that the latent print had multiple separations. In other words, the latent print was divided by many lines of demarcation possibly caused by creases in the plastic bag, multiple touches by one or more fingers or both. Based on the lack of sufficient quality and/or quantity of ridge detail in any one area of the latent print, a no value determination was made.

In the morning, after the reexamination was complete, Wieners and Meagher briefed Adams and DiZinno.

At this point, miscommunications within the FBI and DOJ about the LPU's conclusions and the reasons for the error began to proliferate. Meagher told the OIG that he probably left Adams and DiZinno with the impression that there was enough information available to conclude that the latent print was not Mayfield's, but *not* enough to identify Daoud.<sup>46</sup> As the Laboratory's findings were conveyed to the Director and to DOJ, however, this message became confused. An e-mail from a senior DOJ official to the U.S. Attorney's Office and the Criminal Division at DOJ on May 24 stated:

At the briefing this morning with the Director, we learned that the Lab has concluded that the Spanish are correct about the print – the FBI lab has now concluded it belongs to the Algerian. They no longer think it is a match for Mayfield. FBI management found out this morning. FBI management does not yet have an understanding of how this happened, except that the image they were looking at was not as clear as the original.

Later on May 24, Assistant Attorney General Wray set up a conference call involving Adams, U.S. Attorney Immergut, and others. According to Immergut, Adams stated that the problem was caused by the FBI's use of a third-generation image. Immergut said she understood from this call that the FBI examiners who met with the SNP in Madrid on May 22 saw a better image of LFP 17.

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<sup>46</sup> Meagher told the OIG that he advised Adams and DiZinno that the Laboratory lacked sufficient information about the evidence and processing techniques to provide proper and adequate explanations for certain dissimilarities between LFP 17 and Daoud's known fingerprint.

Contrary to the e-mail describing the Director's briefing, the Laboratory had not determined at that time that Daoud was the source of the print, and had not determined that the image they had used to identify Mayfield was not as clear as the original. Indeed, nobody from the Laboratory had ever seen the original print or anything other than a digital copy of a photograph taken of LFP 17.

The OIG believes that Meagher's explanation to Adams and DiZinno regarding the error became garbled because the Laboratory personnel involved in the overnight reexamination were not involved in the subsequent briefings of the Director and of the DOJ. In addition, there was a miscommunication of what the examiners had brought back from Spain. They retrieved a better copy of Daoud's known prints during the May 22 meeting with the SNP, not a better version of LFP 17.<sup>47</sup>

#### **J. Dismissal of the Material Witness Proceeding**

On May 24, after learning that the Laboratory had withdrawn its identification of Mayfield as the source of LFP 17, the U.S. Attorney's Office filed a Motion To Dismiss Material Witness Proceeding. The Motion described the Laboratory's overnight reexamination of the print, and repeated the explanation from the summary provided by Meagher and Wieners:

The four examiners concurred that the latent print had multiple separations – *i.e.* that it was divided by many lines of demarcation possibly caused by creases in the underlying material, multiple touches by one or more fingers, or both. Utilizing the additional information acquired this weekend in Spain, the FBI lab has now determined that the latent print previously identified as a fingerprint of MAYFIELD to be of no value for identification purposes.

The Court dismissed the material witness proceeding and ordered the return of materials seized from Mayfield.

On the same day, the FBI National Press Office issued a press release which apologized to Mayfield and his family and which described the discovery of the misidentification as follows:

Soon after the submitted fingerprint was associated with Mr. Mayfield, Spanish authorities alerted the FBI to additional

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<sup>47</sup> The LPU Unit Chief who traveled to Madrid was unavailable to clarify this confusion until May 26.

information that cast doubt on our findings. As a result, the FBI sent two fingerprint examiners to Madrid, who compared the image the FBI had been provided to the image the Spanish authorities had.

Upon review it was determined that the FBI identification was based on an image of substandard quality, which was particularly problematic because of the remarkable number of points of similarity between Mr. Mayfield's prints and the print details in the images submitted to the FBI.

In Portland, SAC Jordan also held a press conference on May 24 in which he apologized to Mayfield.

### **K. Aftermath**

During the period from May 25 into early June, FBI and DOJ officials sought to clarify the causes of the misidentification, to provide explanations for Congress and others, and to address the inconsistency between the SNP's identification of LFP 17 to Daoud and the FBI LPU's declaration that LFP 17 was of "no value." On May 25 and 26, FBI Laboratory Director Adams briefed several congressional committees about the error. Adams described these briefings in an e-mail to Meagher, Wieners, and others in the Laboratory that stated "[a]ll groups seem to understand the reasons behind the identification after I explain the quality issue, lack of complete information and access to originals, and the remarkable similarity to Mayfield." During these briefings, Adams indicated that the FBI examiners who met with the SNP in Madrid on May 22 had seen a better quality image of LFP 17.<sup>48</sup>

U.S. Attorney Immergut also raised questions about the FBI Laboratory's change in position, which led to a conference call on May 26 between the U.S. Attorney's Office, the Portland Division, and the FBI Laboratory. During this call, the Laboratory explained that the examiners had not seen a better image of LFP 17 in Spain. The LPU examiners also stated it was unlikely that seeing a better quality image of LFP 17 would change the Laboratory's conclusion, because the problem was the quality of the latent print, not the image. According to an e-mail recounting the call, Wieners indicated that at least part of the decision to classify LFP 17 as being of "no value" included a consideration that it should not be possible to identify a single latent fingerprint (LFP 17) to two different sources (Mayfield and Daoud). Both SAC Jordan and SA Werder told the OIG that they came away from the call with the

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<sup>48</sup> Again, this inaccurate information resulted from a misunderstanding of what the examiners who met with the SNP on May 22 had retrieved from Spain.

impression that at least some examiners in the Laboratory still felt on May 26 that Mayfield could not be ruled out as the source of the print – an impression that Wieners later confirmed. Jordan, Immergut, and AUSA 1 all expressed frustration with the Laboratory’s “no value” determination in light of the fact that the Laboratory had never seen the best available image.

On May 27, Green signed a memorandum to the Acting Section Chief in charge of the LPU acknowledging his error in identifying Mayfield as the source of LFP 17. He stated: “After reviewing my original analysis of Latent 17, I determined that I was in error in concluding it was of value for comparison. I should have made an initial decision that Latent 17 is not of value for comparison purposes, not only because of the quality of the image, but that there was no background information about the image to aide in my findings of explainable dissimilarities.” Green told the OIG he was instructed to prepare this memorandum as part of the corrective action process. He said that at the time he wrote the memorandum, he had not yet excluded Mayfield or accepted that the print was Daoud’s, so the “no value” conclusion was the only possible result.

On May 28, the FBI Office of Legislative Affairs circulated draft talking points intended to be used in telephone calls to the congressional committees to correct the information that Adams had provided earlier. These draft talking points suggested that information gathered during the Madrid trip enabled the FBI “to exclude Mr. Mayfield as the contributor of the questioned latent print,” and described the “challenges” the Laboratory faced in making the original identification. This draft elicited a strong response from U.S. Attorney Immergut, who pointed out that the LPU still had not excluded Mayfield, but instead declared the print of no value, and that the Laboratory had never mentioned any challenges or uncertainties when Green told the U.S. Attorney’s Office it was a “100 percent” identification.

In response to the issues raised by Immergut, Deputy Assistant Attorney General Nahmias scheduled a meeting at DOJ in Washington on June 2 “to sort through exactly what the facts are.” The meeting was attended by a large number of officials from DOJ, the U.S. Attorney’s Office, the FBI Portland Division, FBI Headquarters, and the FBI Laboratory. At the June 2 meeting, the Laboratory acknowledged that Mayfield still could not be excluded as the source of LFP 17 because the print was of “no value.” The Laboratory also attributed its mistake to “practitioner error” as distinguished from a failure of the science. The Laboratory representatives stated that the latent print was divided into small segments by many creases and lines of interference and that there were not enough details within any one contiguous area to make an identification.

During the June 2 meeting, Gary Bald, the FBI's Assistant Director of the CTD, pointed out that the FBI Laboratory's position that the print was of "no value" could have an adverse impact on the SNP's case, which was based on the SNP Laboratory's positive identification of the print as Daoud's. Bald, Assistant Attorney General Wray, and others stated that another trip to Madrid was needed to reconcile the inconsistent positions between the FBI and the SNP. Among other things, Wray's list of action items at the end of the meeting included the trip to Spain, the preparation of new talking points explaining the error, and a closer look at other cases which might be adversely affected by the Mayfield misidentification.

An ETIU SSA was directed to work with the Madrid Legat to arrange another meeting with the SNP in Madrid. In an e-mail circulated on June 2, later in the same day as the meeting at DOJ, the ETIU SSA stated:

The purpose of this trip is to examine the original photographic image of the latent print (i.e. the best evidence available) and to discuss the SNP's findings relative to Mayfield. . . . The primary concern which will be shared by everyone, is how we went from a positive identification to an inconclusive and the Spanish have arrived at a positive identification of a different suspect. We need to know if there is something in the Spanish comparison/presentation which can conclusively illustrate that latent #17, is indeed that of their suspect [Daoud], and not of Mayfield.

On June 9, a contingent of FBI and DOJ personnel met with the SNP for a third time to discuss LFP 17. The U.S. representatives included the Madrid Legat, an ETIU SSA, LPU Unit Chiefs Meagher and Wieners from the FBI Laboratory, the Portland SSA and Lead Case Agent 1 from the Portland Division, the Portland AUSA, and the CTS Attorney. The SNP contingent included many of the same persons who attended prior meetings, except that the Director of the SNP Laboratory had been replaced as a result of the change in Spanish governments.

The meeting lasted approximately three hours. According to the participants we interviewed, the SNP representatives provided a detailed description of how the fingerprints on the blue plastic bag were discovered, developed, and photographed. They also explained how they reached the "negativo" finding in the April 13 Negativo Report. In addition, the SNP representatives described their reexamination of LFP 17 after the April 21 meeting with the FBI and the sequence of events leading to the identification of Daoud as the source of LFP 17 and 20. They acknowledged that LFP 17 was a "bad quality" print that was "difficult" to identify, and described how they determined that the LFP 17, 19, and 20 might have been placed simultaneously by someone holding the rolled-up or crumpled bag. At the

same time, however, the SNP acknowledged that the bag was laid out flat before it was processed for prints and that there was no way to determine or reconstruct the configuration of the bag as it was found in the van.

During the June 9 meeting, the FBI was given the opportunity to examine the bag closely with a magnifier, and to see the relative positioning of the prints from the outlines that remained on the bag. The SNP also provided the FBI with high-quality photographs of the latent prints made from the original silver halide negatives. This was the first time the FBI obtained copies of the latent prints that had not been digitized.

At the end of the meeting, Meagher and Wieners indicated that the LPU would be reexamining LFP 17 and 20 in light of the new information made available by the SNP.

#### **L. The FBI's Identification of Daoud as the Source of Latent Fingerprint 17 and Latent Fingerprint 20**

After the June 9 meeting in Spain, examiners in the LPU conducted another reexamination of LFP 17 and officially concluded that the print was made by Daoud. On June 14, Meagher began the formal reexamination of LFP 17 and LFP 20. By June 15, he concluded that LFP 17 was made by Daoud's right middle finger, and that LFP 20 was made by Daoud's right thumb. Meagher charted 18 points of similarity on LFP 17 and 15 points of similarity on LFP 20.<sup>49</sup> Meagher found enough matching detail in both prints to identify each individually, without relying on the prints having been deposited simultaneously.

On June 15, Meagher asked another examiner in the Laboratory to perform a verification of his identifications. Meagher told the OIG that he selected an examiner who had never seen the relevant prints before. The examiner subsequently verified the identification of Daoud. On June 22, Meagher requested verification as a "technical/peer review" by a third LPU examiner, who also verified the identification of Daoud. Meagher instructed the two verifying examiners each to prepare charted enlargements of their identifications.<sup>50</sup> The charts prepared independently by Meagher and the two verifying examiners revealed that the three examiners all relied on many of the same points of similarity in identifying Daoud as the source of the prints. Meagher completed the final report of this identification on July 16.

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<sup>49</sup> Meagher's charted enlargements of the Daoud identification are provided in Appendix C.

<sup>50</sup> The charts are provided in Appendices D and E. We have not included copies of the charts for LFP 20 (the thumbprint) as this print was never identified to Mayfield and hence was not the source of the error.



### **M. Mayfield's Civil Action**

On October 4, 2004, attorneys for Mayfield filed a civil action in the United States District Court in Oregon against the FBI and DOJ. The complaint also named Werder, Green, Massey, Wieners, and "John Does I-X," as individual defendants. Mayfield's complaint includes claims for civil rights violations based on the allegation that Mayfield was selected for arrest and imprisonment based upon his Muslim religion, a Privacy Act claim relating to the leaking of confidential information to the media regarding Mayfield, and a claim challenging the constitutionality of the provisions of the Patriot Act and FISA allegedly used to collect and retain information about the Mayfields. The case remains pending.

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