

A Review of the FBI's Handling of the Brandon Mayfield Case



UNCLASSIFIED AND REDACTED

Office of the Inspector General
Oversight and Review Division
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CHAPTER ONE INTRODUCTION

I. Background

This report sets forth the results of an investigation by the Office of the Inspector General (OIG) into the misidentification, investigation, arrest, and detention of Brandon Bieri Mayfield, an Oregon attorney. Mayfield was arrested on a material witness warrant in connection with the terrorist attack that took place on March 11, 2004, on commuter trains in Madrid, Spain. On March 19, Mayfield was identified by the Federal Bureau of Investigation (FBI) Laboratory Division as the source of a fingerprint found on evidence from the Madrid attack recovered by the Spanish National Police (SNP). The FBI immediately initiated an intensive investigation of Mayfield, including 24-hour surveillance. Among other things, the FBI learned that Mayfield was a Muslim and had represented a convicted Muslim terrorist in a child custody dispute. On May 6, after receiving media inquiries about an American suspect in the Madrid case, the FBI arrested Mayfield on the material witness warrant.

On May 19, however, the SNP informed the FBI that it had identified an Algerian national, Ouhnane Daoud, as the source of the fingerprint. After receiving Daoud's prints, the FBI Laboratory withdrew its original identification and the FBI apologized to Mayfield and his family. Mayfield was released from detention on May 20 and the material witness proceeding against him was formally dismissed on May 24.

The OIG initiated this investigation on June 16, 2004, approximately three weeks after news of the FBI Laboratory's erroneous identification of Mayfield became public.⁴ The objectives of the OIG's review were: (1) to determine the causes of the fingerprint misidentification and to assess the FBI Laboratory's conduct in the matter; (2) to assess the Laboratory's responses to the error and, if appropriate, to make additional recommendations for changes in Laboratory procedures to prevent future errors of this type; (3) to determine whether the FBI unfairly targeted Mayfield in the fingerprint identification or in the ensuing investigation because of his religion; (4) to assess the FBI's conduct in the investigation and arrest of Mayfield; (5) to assess the FBI's conduct in making certain representations to the United States District Court in support of the request for a material witness warrant and search warrants; and (6) to assess the conditions under which Mayfield was confined prior to his release.

⁴ After the OIG opened the investigation on its own initiative, several members of Congress also requested that the OIG investigate the Mayfield case.

In addition to the OIG's review, the Department of Justice (DOJ) Office of Professional Responsibility (OPR) also conducted an investigation into aspects of the Mayfield case that involved the conduct of Department attorneys. Initially, the OIG intended to review the entire Mayfield matter in its investigation. We believed that one DOJ oversight entity should investigate the matter. We also concluded that the OIG had jurisdiction under Section 1001 of the USA PATRIOT Act (Patriot Act) to investigate allegations of civil rights or civil liberties abuse made against all DOJ employees, including DOJ attorneys. However, OPR disagreed, stating that it has the authority generally to investigate allegations involving the professional conduct of DOJ attorneys. Eventually, the Deputy Attorney General decided that OPR would investigate the conduct of DOJ attorneys in the Mayfield case and the OIG would investigate the actions of the FBI.

As a result, OPR (rather than the OIG) evaluated DOJ attorneys' conduct in the Mayfield case, such as the decision to obtain a material witness warrant and the accuracy and sufficiency of the evidence presented by attorneys in support of the warrant. In addition, OPR examined representations made by DOJ attorneys in connection with their request that Mayfield be held in custody and the decision by DOJ attorneys to include certain information about Mayfield in court pleadings.

The OIG conducted its investigation of the FBI's conduct in coordination with the OPR investigation, although the two offices' findings were developed separately.

II. Methodology of this Review

In the course of our review, the OIG interviewed over 70 individuals. In Washington, D.C., the OIG interviewed personnel from the DOJ Counterterrorism Section (CTS), the DOJ Office of Intelligence Policy and Review (OIPR), and the FBI Counterterrorism Division (CTD). OIG investigators toured the FBI Laboratory Latent Print Units (LPU) located in Quantico, Virginia, and interviewed Laboratory and LPU management and staff, including the LPU fingerprint examiners directly involved in the misidentification.⁵ The OIG also obtained a written explanation of the misidentification from Kenneth Moses, the court-appointed fingerprint expert who also verified the identification.

⁵ John T. Massey, the fingerprint examiner who verified the Mayfield identification, was an FBI contractor at the time, but his contract has since expired. Massey declined to be interviewed for this investigation. Massey cited the pendency of legal action by Mayfield against him personally as the reason for declining to be interviewed for this investigation.

OIG investigators traveled to Portland, Oregon to interview personnel from the FBI Portland Division, the United States Attorney's Office (U.S. Attorney's Office), the United States Marshals Service (USMS), the Multnomah County Sheriff's Office (MCSO), and the Multnomah County Detention Center (MCDC) who were directly involved in the investigation, arrest, and detention of Mayfield. Additionally, the OIG toured the MCDC where Mayfield was detained for two weeks.

The OIG sought to interview Brandon Mayfield regarding this matter, but Mayfield's attorneys declined this request. Therefore, the OIG reviewed numerous press accounts describing Mayfield's statements regarding the investigation and the conditions of his confinement.

The OIG obtained and reviewed thousands of pages of documents generated by DOJ, the FBI, and the U.S. Attorney's Office pertaining to the fingerprint identification and the investigation and arrest of Mayfield. This documentation included e-mails, internal memoranda and reports, notes, briefing materials, policy and procedural manuals, timelines, and investigative records, as well as pleadings, transcripts, and orders from court proceedings. While in Portland, the OIG reviewed court records, U.S. Attorney's Office documents, and documents seized by the FBI during searches of Mayfield's office and residence. OIG investigators also reviewed USMS and MCDC records pertaining to Mayfield's detention, including Mayfield's prisoner file, MCDC daily shift logs, internal memoranda, and prisoner tracking system logs.

We also interviewed four officials of the SNP by telephone, including the former director and deputy director of the SNP Laboratory, the commissioner of the unit responsible for processing and identifying fingerprints, and the crime scene investigations division section chief, all of whom were either present at one or more meetings with the FBI to discuss the fingerprint identification or who had subsequent contacts with the FBI on the matter.

In addition, the OIG reviewed the unpublished individual reports of all eight members of an International Panel convened by the FBI in June 2004 to review the fingerprint analysis performed by the FBI Laboratory and to make recommendations to help prevent future errors. The OIG also conducted interviews of two of the panelists who provided information on the panel's review process and explained their assessments of the reasons for the fingerprint error.

The OIG also interviewed the Executive Director of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the organization responsible for accrediting the FBI Laboratory, to ascertain the accrediting process and to determine the organization's policy and procedures for addressing situations where an accredited laboratory has made a significant

error. ASCLD/LAB also provided a copy of an October 2004 report of an interim inspection it conducted of the FBI Laboratory in response to the Mayfield fingerprint misidentification.

In April 2005, the FBI Laboratory provided the OIG with a copy of detailed reports prepared by seven separate Latent Review Teams asked by the Laboratory to perform a comprehensive internal review of LPU policies and procedures. The OIG reviewed and analyzed the Latent Review Teams' recommendations to assess their responsiveness to the causes of the Mayfield error.

The OIG recruited the following recognized experts in latent fingerprint identification to provide expert input and guidance on latent fingerprint examination issues:

- (1) John Dustin "Dusty" Clark, a latent fingerprint examiner formerly with the California Department of Justice and now employed by the Western Identification Network. Clark has been certified by the International Association for Identification (IAI) and is a member of the Scientific Working Group for Friction Ridge Analysis, Study, and Technology (SWGFAST), an organization of latent fingerprint examiners from many laboratories that establishes guidelines for the discipline. He has provided expert identification testimony on over 280 occasions. In addition to providing his expertise to the OIG's investigation, Clark prepared many of the graphic illustrations of the fingerprint comparisons used in this report.
- (2) Michael R. Grimm, Forensic Science Supervisor, Western Laboratory, Division of Forensic Science, Virginia State Police. Grimm has been a latent fingerprint examiner for 30 years and has qualified to testify as a latent print expert more than 250 times. He is certified by the IAI and has served on the IAI Certification Board. He is also a member of SWGFAST.
- (3) John R. Vanderkolk, Regional Laboratory Manager, Indiana State Police. Vanderkolk is a practicing latent fingerprint examiner, an Editorial Board Member of the Journal of Forensic Identification, and a member of SWGFAST. He has published several articles regarding latent fingerprint examination and has conducted latent fingerprint training on numerous occasions.

These experts were selected for their reputations within the latent fingerprint community and for the diversity of views they have expressed in various

debates within the discipline about issues the OIG believed were implicated by the Mayfield misidentification.⁶

III. Organization of the OIG Report

This report is divided into seven chapters. In the remainder of this chapter, we briefly identify the various law enforcement organizations that are relevant to this report. Chapter Two sets forth a detailed chronology of events regarding the fingerprint identification, investigation, arrest, detention, and subsequent release of Mayfield. Chapter Three provides background information regarding fingerprint identification issues, including a description of the FBI Laboratory LPU and an overview of the latent fingerprint examination process utilized by the LPU. Chapter Four contains the OIG's substantive review of the causes of the erroneous fingerprint identification. Chapter Five presents a review of the Laboratory's responses to the error, including various reforms under way in the LPU, and additional recommendations for consideration by the Laboratory.

Chapter Six evaluates the conduct of the FBI with respect to the investigation and arrest of Mayfield. It addresses the issue of whether Mayfield was improperly targeted because of his religion, examines the FBI's use of the Foreign Intelligence Surveillance Act of 1978 (FISA) and the Patriot Act in the investigation, and assesses representations made by the FBI in seeking a material witness warrant and criminal search warrants. It also sets forth the OIG's assessment of the conditions of Mayfield's confinement. Chapter Seven presents a summary of the OIG's conclusions.

IV. Description of Organizations Involved in the Mayfield Matter

Several federal and international law enforcement organizations and components participated in the investigation, arrest, and detention of Mayfield. Background information regarding those organizations and components of particular relevance to the OIG's investigation is provided here.

The FBI Laboratory provides forensic and technical services to federal, state, and local law enforcement agencies, and occasionally to foreign police departments. The Laboratory analyzes crime scene evidence, provides expert

⁶ It should be emphasized that although the OIG's conclusions were informed by opinions and information provided by these consultants, the conclusions are the OIG's alone, are based on all of the information obtained by the OIG, and should not be attributed to the consultants except where specifically stated in this report. The OIG is extremely grateful for the assistance provided by Messrs. Clark, Grimm, and Vanderkolk.

witness testimony, and assists domestic and international law enforcement agencies in large-scale investigations and disasters. Among the components of the Laboratory are the Latent Print Units (LPU), which conduct latent fingerprint examinations.⁷ The LPU identified Mayfield as the source of the fingerprint found in Spain. More detailed information regarding the Laboratory and the LPU is provided below in Chapter Three.

The FBI's CTD is responsible for investigating and dismantling terrorist cells and operatives within the United States and worldwide. The CTD is divided into branches, sections, and units, each of which focuses on a different aspect of terrorism. The Investigative Operations Branch of the CTD supports, coordinates, and manages terrorism-related investigations. It is made up of four sections, one of which is the International Terrorism Operations Section I (ITOS I). ITOS I is responsible for FBI international counterterrorism operations related to al Qaeda and Sunni extremist groups. In March 2004, ITOS I encompassed five geographical units – four Continental United States (CONUS) Units and the Extraterritorial Unit (ETIU). CONUS 4 had geographical responsibility for the Portland, Oregon area. The ETIU serves as a liaison with the FBI's Legal Attachés in other countries.⁸

The FBI's Legal Attaché (referred to in this report as the Madrid Legat) in Madrid acts as a liaison between the FBI and law enforcement agencies in Spain and several other countries, and has responsibility for coordinating all FBI investigations in those countries.

The FBI has 56 separate Field Offices located across the United States. The Portland, Oregon Division of the FBI (Portland Division) was the Field Office primarily responsible for the field investigation of Mayfield. The Portland Division worked closely with the U.S. Attorney's Office for the District of Oregon, which is responsible for prosecuting federal cases in Oregon.

DOJ CTS supports law enforcement efforts in combating international and domestic terrorism. The CTS supported and monitored the efforts of the Oregon U.S. Attorney's Office and worked closely with the FBI's CTD in the Mayfield investigation. The DOJ OIPR is responsible for the preparation and filing of all applications for electronic surveillance and physical searches under FISA.

⁷ Although there were three Latent Print Units within the Laboratory at the time of the Mayfield identification, the FBI sometimes referred to the units collectively in the singular as the LPU. The OIG will follow that convention in this report.

⁸ Appendix A to this report contains an organizational chart for the CTD and other selected organizations involved in the Mayfield matter as of the time of the Mayfield identification.

The USMS takes custody of those individuals arrested or detained by some federal agencies, including the FBI. This requires housing and transporting the prisoners from the time they are brought into federal custody until they are either sentenced, acquitted, or otherwise released. If sentenced, the USMS transports them to designated prison facilities. Seventy-five percent of the prisoners in USMS custody are detained in state, local, and private facilities under contract to the USMS; the remainder are housed in Federal Bureau of Prisons facilities.

The MCDC, located in Portland, Oregon, is one of the 1,300 detention facilities under contract with the USMS to house federal prisoners under USMS custody. Mayfield was detained in the MCDC.

The SNP is the national police force of the Government of Spain. Like the FBI, the SNP has its own forensic laboratory. The SNP was responsible for investigating the March 11 Madrid train bombings.

INTERPOL is the world's largest international police organization, with 182 member countries. INTERPOL facilitates cross-border police cooperation by providing a global police communication system and a range of criminal databases and analytical services. INTERPOL facilitated initial communications between the SNP and the FBI Laboratory regarding the fingerprint that was identified as belonging to Mayfield.

FIGURE 1

Timeline of Major Events

