Prosecutors Toil at Ground Zero

Merrick Garland at the Helm

After the Blast

By: Daniel Klaidman

MERRICK GARLAND AT THE HELM

OKLAHOMA CITY--Federal prosecutors are accustomed to assembling their cases in antiseptic government offices far from the scene of the crime, insulated from the raw emotions of its victims.

But here in Oklahoma City, where on April 19 a truck bomb blew apart the Alfred P. Murrah Federal Building in the bloodiest act of terrorism on American soil, government lawyers and agents are working at ground zero, piloting the massive investigation out of a dank two-story warehouse whose windows were shattered by the blast.

Outside the squat, brick-and-cement-block building, it is not uncommon to see mourners weeping before a hastily erected shrine of flowers and teddy bears commemorating the children killed in the explosion. Inside, hundreds of letters from citizens of Oklahoma City praising the police cover a wall--powerful signs of the grief and humanity that surround investigators as they labor around the clock to crack the case.

Despite its war-torn appearance, the Southwestern Bell Building at Oklahoma and Northeast Sixth streets has been transformed into a high-tech command post for the Federal Bureau of Investigation--the cerebral cortex of one of the most intensive and far-flung federal investigations ever. Banks of powerful computers line the walls to help investigators sort through tens of thousands of potential leads. Teletype machines click through the day and night as thousands of special agents fanned out across the country transmit their findings back to the command post.

At the helm of the operation for the Justice Department, directing the prosecution, is Merrick Garland, an intense 42-year-old prosecutor and top aide to Deputy Attorney General Jamie Gorelick.

A former assistant U.S. attorney in the District and a former partner with the powerhouse D.C. firm of Arnold & Porter, Garland brings an array of skills to the daunting task of quarterbacking the Oklahoma City prosecution team. His colleagues at Justice say he combines an unusual ability to analyze difficult policy questions for both their legal and political content with the guts to make difficult calls in criminal cases--attributes that had already made him perhaps the most influential staffer in the department.

And his self-effacing style--one that has helped him tame egos in the upper echelons of Main Justice--is well-suited to the challenge of coordinating prosecutors and agents spread out over six states.

WORKAHOLIC'S WORKAHOLIC

But commanding the Oklahoma City case will test Garland's skills and grace under pressure as never before.

With these kinds of investigations, there is excruciating pressure to convict, but the trick is...
to produce convincing, legally admissible evidence against the ones who really did it, says Alan Strasser, who worked alongside Garland in the U.S. attorney's office in Washington.

Merrick is the perfect choice because he understands exactly how the investigative steps will be critical to obtaining and sustaining convictions, adds Strasser, now a partner in the D.C. office of Omaha's Kutak Rock.

The enormous scope of Garland's responsibilities here--from ensuring that the fast-moving investigation is not tainted by poorly executed searches or mishandled subpoenas, to assembling a prosecution team and an airtight legal case against alleged bomber Timothy McVeigh--is a measure of the confidence placed in Garland by Gorelick and Attorney General Janet Reno.

Merrick was the logical person and the most talented person for the job, Gorelick said in an interview last week.

And he has thrown himself into the job. A workaholic's workaholic, Garland seems propelled forward by an inexhaustible frenetic energy, which tumbles out in his rapidfire, Chicago-tinged speech. As one colleague puts it, It seems like Merrick is everywhere at once ... and he talks very, very fast.

Garland declined comment for this article, but senior Justice Department officials, including Gorelick, provided details of his role in the case.

**THE FATEFUL DAY**

On the morning of April 19, a few minutes after 10 a.m., Eastern time, a message marked urgent flickered across Garland's computer screen in his modest Justice Department office. The electronic missive from a prosecutor in the U.S. attorney's office for the Western District of Oklahoma was concise: There had been an explosion in the Federal Building in downtown Oklahoma City, and the situation was grave.

Garland walked briskly over to Gorelick's office; the deputy attorney general had already been alerted to the bombing by Reno. Garland and Gorelick huddled, quickly agreeing that Reno should put into place the department's Emergency Response Plan, a crisis-management strategy developed after the ill-fated 1993 assault on the Branch Davidian compound near Waco, Texas, in which more than 80 people died.

The two then met with Reno and began mapping out a plan, establishing clear lines of authority between Justice's law-enforcement agencies and other federal investigative bodies. They agreed that the FBI should be given unequivocal command of the investigation. Later that afternoon, President Bill Clinton announced to a nationwide television audience that he had placed the bureau in charge of the case.

Meanwhile, Gorelick dispatched Garland to the Strategic Information Operations Center at FBI headquarters across Pennsylvania Avenue, where he was briefed by senior bureau officials. Hundreds of potential leads were already scrolling across a giant computer screen projected on the wall of the windowless SIOC bunker. Garland and bureau officials hashed out theories on who was behind the attack. A truck bomb with such pinpoint precision seemed to bear the signature of Middle Eastern terrorists.

By Friday, two days after the bombing, the FBI had a suspect: Timothy McVeigh, a brooding, 27-year-old Army veteran with zealous anti-government feelings, who was placed at the scene of the crime by witnesses.

With tips quickly leading agents to two brothers with ties to McVeigh in Kingman, Ariz., and Decker, Mich., and with a manhunt getting under way for a second suspect known only as John Doe 2, it was becoming evident that the investigation would involve thousands of agents and prosecutors across the country.

Gorelick decided she needed a prosecutor who possessed the management skill, legal judgment, steady temperament, and clout necessary to spearhead such a wide-ranging undertaking. She would send Garland to Oklahoma City.

It was quickly clear that the investigation would involve not just Oklahoma City, but many other jurisdictions, recalls Gorelick. It would require the ability to act quickly, with judgment and authority.

Garland hit the phones, calling U.S. attorneys around the country to instruct them that the bombing investigation and prosecution would be run out of Oklahoma City--and that Garland was the attorney general's man in charge. Everything goes through Oklahoma City, Gorelick says she told them.

By Friday afternoon, Garland was on an FBI Saberliner aircraft en route to Oklahoma City to take command of the burgeoning case.
PROSECUTION DREAMS

It is not surprising that Gorelick turned to Garland in time of crisis; the two have known each other since they overlapped as undergraduates at Harvard. Both went on to Harvard University Law School.

When Garland graduated from law school in 1977, he clerked for Judge Henry Friendly of the U.S. Court of Appeals for the 2nd Circuit. That was followed by a Supreme Court clerkship with Justice William Brennan Jr.

In 1979, Garland got his first taste of working at the nexus of law, policy, and politics as a special assistant to Attorney General Benjamin Civiletti. Among other assignments, Garland helped develop the Principles of Prosecution, the Justice Department guidelines that instruct prosecutors on what facts to take into consideration when making a decision on whether to prosecute.

Garland left government for a stint in private practice, joining Arnold & Porter in 1981. There, his practice included a mix of civil, criminal, and antitrust litigation.

He excelled at Arnold & Porter, earning recognition as a hot prospect among the nation's up-and-coming lawyers in a 1983 Legal Times survey and establishing himself as a star junior partner. But he found himself longing to return to prosecutorial work.

Garland got his chance in 1987, when he took leave from the firm to serve as an associate independent counsel investigating the Wedtech affair, in which a machine-tool company in the South Bronx prospered—and ultimately unraveled—due to a series of bribes and deceptive business practices that implicated some high-ranking officials and members of Congress. Former White House aide Lyn Nofziger was tried for violating federal ethics laws, and Garland assisted in the prosecution. (Nofziger's conviction was later overturned on appeal.)

Garland returned to Arnold & Porter the following year, but did not stay long. Although he is a lifelong Democrat—he worked as a volunteer lawyer for Michael Dukakis' 1988 presidential campaign—Garland got back into prosecuting thanks to a Republican. Jay Stephens, U.S. attorney for the District of Columbia under President George Bush, called Garland with an attractive offer, making him an assistant U.S. attorney, but allowing him to skip the customary tour of duty in D.C. Superior Court trying the local cases that are standard fare for most new federal prosecutors in the District.

Garland began by handling mostly federal gun and drug cases. In his second case, he helped prosecute Michael Palmer, the first drug defendant charged with operating a continuing criminal enterprise in the District who was eligible to receive a mandatory life sentence. Garland joined lead prosecutor Judith Retchin late in the game.

I had been investigating the case for months, says Retchin, now a D.C. Superior Court judge. Within two weeks, he had total command of the facts and could have tried the case himself. Palmer was convicted and is serving a life sentence.

Retchin was sufficiently impressed by Garland that she would later come back to him in the highest-profile case of her career, the drug prosecution of D.C. Mayor Marion Barry Jr. Garland would play a little-known, behind-the-scenes role in the Barry investigation.

Meanwhile, he moved quickly to complex white-collar and fraud cases of his own, putting a senior official at the Agency for International Development behind bars for embezzling thousands of dollars, and taking part in the bank fraud case against Democratic Party elder Clark Clifford and his protege, Robert Altman. (The Justice Department deferred to New York state prosecutors in the case; Altman was acquitted of all charges, and those against Clifford were dismissed.)

NAVIGATING JUSTICE

Garland returned to Arnold & Porter in 1991, but when Bill Clinton was elected president, Garland could not resist the opportunity to return to government.

He was one of about a dozen Washington lawyers who prepped Clinton's first nominee for attorney general, Zoe Baird, for her Senate hearing. His old friend and classmate Gorelick led the team. After Baird's nomination flamed out amid allegations that she had hired an illegal alien and failed to pay Social Security taxes, Garland was part of the team—also headed by Gorelick—that shepherded Reno through the confirmation process.

Garland impressed Reno and secured a senior position in the Justice Department's Criminal Division.

Last year, after Gorelick replaced Harvard law Professor Philip Heymann as deputy
attorney general, she tapped Garland to be principal associate deputy attorney general, her top aide. In that position, he has quickly become a force within the department, playing a major role in most important policy matters.

He's the engine of this office, says Gorelick.

Those who have worked with Garland at Justice praise his ability to navigate the department's pressure cooker of bureaucratic and ideological rivalries with aplomb.

He is someone who can be a buffer between the career and the political people, between the case-oriented and the policy people, says Ronald Klain, Reno's former chief of staff who now works for Senate Minority Leader Thomas Daschle (D-S.D.). He's an unusual nexus between all these different forces at the department.

BEGINNING INQUIRY

Those qualities seem to be serving Garland well in Oklahoma City, where by all accounts the management of the investigation, involving more than a dozen federal, state, and local police agencies, is progressing smoothly.

When Garland touched down in Oklahoma City, he headed straight to the FBI command post. Quickly briefed on the status of the nascent investigation by FBI agents in charge, Garland then headed for El Reno Federal Correctional Institution, where McVeigh first appeared before a judge.

Within hours of landing, Garland was hit by a barrage of legal concerns. Motions had been filed for a change of venue by McVeigh's federal defender. Subpoenas were being sought. And search warrants needed to be approved in the widening probe. Garland even had to worry about the implications of McVeigh's inability to obtain permanent counsel—a situation created by the claims of McVeigh's lawyers that their proximity to the tragedy made it impossible for them to provide adequate representation for the bombing suspect.

In subsequent days, Garland met with Oklahoma County District Attorney Robert Macy, gently notifying him of the Justice Department's desire not to have a local investigation going on simultaneously. And Garland began interviewing witnesses and presenting them before a federal grand jury convened at Tinker Air Force Base near Oklahoma City.

Back in Washington, officials were dealing with the political fallout of the bombing and assessing whether the FBI had sufficient legal authority to penetrate the kinds of militia groups linked to McVeigh and his fellow travelers. Besides keeping Gorelick and Reno updated on the course of the investigation several times a day, Garland was also giving input on the administration's legislative response.

But Garland's principal focus is the investigation and prosecution of the bombers. He had to put together a unified prosecution team—no easy feat, given the inherent tension between Main Justice and the 94 U.S. attorney's offices.

Garland skirted that problem by assembling a team that included prosecutors from both camps. Leading the unit of Oklahomabased attorneys is Arlene Joplin, a senior prosecutor in the U.S. attorney's office. Joplin is aided by Assistant U.S. Attorneys Vicki Behenna and Kerry Kelly.

On the team from Main Justice are Bruce Delaplaine and John Lancaster, both line lawyers in the Criminal Division's Terrorism and Violent Crime Section.

To provide support to the prosecution team and to help manage the lawyers in the local U.S. attorney's office, Reno has dispatched Donna Bucella, deputy director of the Executive Office of U.S. Attorneys, to Oklahoma City. And to bolster the team's experience with terrorism prosecutions, Garland called in Gilmore Childers, a senior trial counsel in the U.S. attorney's office for the Southern District of New York, who worked on the World Trade Center bombing case.

To date, Garland has done the bulk of the courtroom work, but he is not expected to try the case; a final decision on who will represent the government in court has not been made. Some close to the case speculate that the trial work will be shared by Joplin and an experienced anti-terrorism prosecutor from Main Justice.

AT WORK IN OKLAHOMA

On a typical day, Garland leaves his hotel on the outskirts of the city (he is staying with senior FBI agents and other Justice lawyers) at about 7 a.m. Upon his arrival at the command post, he is briefed on overnight developments, and then has a conference call with investigators and prosecutors from around the country to review the day's strategy and pressing legal matters, such as questions about venue and subpoenas.
He and the other prosecutors are working closely with FBI agents, sifting through the myriad leads streaming into the command post—from citizen calls to the FBI's 800 number, from agents in the field, and from other sources.

The leads are written on forms; FBI typists then load them into a massive computer known as the Rapid Start Automatic Case Support System. As of late last week, investigators had already stored close to 10 million bits of information, including 14,000 separate interviews. The computer enables investigators to cross-reference leads.

It's incredible, says one command-post official of the computer system. I don't know how they did their jobs before they had it.

Despite the high-tech wizardry, the most crucial aspect of any investigation is old-fashioned, painstaking detective work. That requires people working together and cooperating—not something at which the FBI has always excelled, But Oklahoma City—where agents and prosecutors sit elbow to elbow at dinner, wolfing down stew donated by the Salvation Army—appears to be different.

The perception in law enforcement for many years was that most federal agencies, and especially the FBI, were a lot more concerned with gathering information from local agencies than with sharing information with local agencies, says Oklahoma City Police Chief Sam Gonzales. In this particular case, the FBI has been willing to show us every document they have, every lead they have.

We have really been made a part of the investigative team, and everybody I've talked to says this level of cooperation in joint investigations is unheard of, adds Gonzales. Maybe it's due to changing philosophies in the FBI leadership.

But for Garland and the others, perhaps it is more than changing philosophies. Perhaps it is the children, both dead and alive, who have given investigators sustenance and common purpose.

With such an awful, gut-wrenching crime, egos are submerged, says one investigator on the scene, looking off at what's left of the hollowed-out Federal Building. When someone points out the child-care center and you realize it's no longer there, it gives you some perspective.