

McVeigh Asks For New Trial, Faults Counsel - Jones Denies Hurting Bomber's Case

Dallas Morning News, The (TX)

March 8, 2000 | Arnold Hamilton | Page: 21A | Section: NEWS

Convicted Oklahoma City bomber Timothy McVeigh asked for a new trial Tuesday, saying he was "sold out" by what he called a self-aggrandizing former lawyer who leaked damaging stories to the news media and pursued dubious conspiracy theories to help promote his book on the case.

Mr. McVeigh, through his new appellate attorneys, also urged U.S. District Judge Richard Matsch to withdraw from the case, contending that his public praise of Mr. McVeigh's trial defense suggests he has prejudged allegations of ineffective counsel.

In a 66-page appeal, Mr. McVeigh's former chief counsel, Stephen Jones of Enid, Okla., was accused of a "dangerous dalliance" with the news media that resulted in the leaking of inflammatory information to The Dallas Morning News , The New York Times , ABC News and Playboy .

Moreover, lead appeals attorney Dennis Hartley said that Mr. Jones undermined his "duty to zealously and vigorously represent his client" when he ran afoul of a federal judge and federal prosecutors by sneaking two Newsweek reporters into an El Reno, Okla., prison to meet with Mr. McVeigh.

"Stephen Jones' representation of Timothy McVeigh," Mr. Hartley wrote, "was burdened by intolerable conflicts of interest that prevented complete and dedicated commitment to the client."

Mr. Jones denied any wrongdoing, describing the criticism as typical appellate strategy.

"These personal and professional attacks - no matter how false, untrue and economical with the truth, as they are in this case - are par for the course," he said in a written statement. "The validity of these accusations will be determined in a court of law.

"I do not fear its judgment, especially since Mr. McVeigh's allegations have apparently waived the attorney-client privilege, allowing me, when the hearing is held, to answer each claim specifically."

Mr. Jones withdrew from the case in August 1997 after he was publicly denounced by Mr. McVeigh.

The motions filed Tuesday in U.S. District Court in Denver, where the case was moved because of extensive pre-trial publicity, represent the second stage of Mr. McVeigh's appeals.

His first appeals were unsuccessful. The 10th U.S. Circuit Court of Appeals rejected arguments that he did not receive a fair trial. His attorneys had argued that his trial was tainted by jury misconduct and news reports saying that he had confessed. The U.S. Supreme Court refused to hear the case.

Mr. McVeigh, a 31-year-old Gulf War veteran, was convicted of conspiracy and murder and sentenced to death for his role in the April 19, 1995, bombing of the Alfred P. Murrah Federal Building that killed 168 people and injured more than 500.

Prosecutors alleged that Mr. McVeigh conceived of and carried out America's worst act of domestic terrorism in retaliation for what he perceived as the government's mishandling of the deadly 51-day siege at the Branch Davidian compound near Waco in 1993.

One of Mr. McVeigh's Army buddies, Terry Nichols, was convicted of conspiracy and manslaughter and sentenced to life in federal prison. He also has been charged in state court with 160 counts of murder in the blast.

Another former military colleague, Michael Fortier, pleaded guilty to several crimes, including failure to alert authorities to the bomb plot. He was sentenced to 12 years in federal prison but is appealing the length of punishment.

Denver attorney Andrew Cohen, who covered Mr. McVeigh's and Mr. Nichols' federal trials for CBS News, said that Mr. McVeigh's latest effort to overturn his conviction and death sentence is unusual because of the "particularly scathing rebuke of Jones' actions before, during and even after the trial."

But, Mr. Cohen said, "It's not enough to portray the defense attorney as a boob. . . . The new lawyers may present a foolproof case that Jones is a loser, but it doesn't necessarily make McVeigh a winner. The burden is so high that it's very difficult to get a new trial."

Agents criticized

Mr. McVeigh's appeal also took aim at federal agents and Judge Matsch.

Authorities, Mr. Hartley's motion says, kept Mr. McVeigh in the Perry, Okla., courthouse until just before nightly network news broadcasts, when he was led in handcuffs to a waiting van in his first public appearance since the bombing.

The exit was designed, Mr. Hartley said, to "assure maximum national publicity in order to improperly influence witnesses and to irrevocably taint the jury pool."

Mr. Hartley not only argued that Judge Matsch has prejudged the appeal, but also that the judge, in effect, failed Mr. McVeigh by not inquiring about Mr. Jones' possible conflicts of interest.

But most of the appeal targeted Mr. Jones.

Only nine days after becoming Mr. McVeigh's counsel, Mr. Jones "arranged to have an alleged 'confession' of Mr. McVeigh published on the front page of The New York Times," Mr. Hartley said in his motion. Later, he said, Mr. Jones released phone records to ABC News that by court order were supposed to remain private.

"Repeatedly," Mr. Hartley's motion says "throughout the time that Stephen Jones represented Mr. McVeigh, the mass media reported inflammatory stories based on information supplied by the defense."

Mr. Hartley used nearly five pages to discuss Mr. Jones' conduct after The Dallas Morning News reported in early 1997 that it had obtained internal defense documents revealing that Mr. McVeigh described how he bombed the federal building.

Despite warnings from independent attorneys that the jury pool had been tainted and that the article was "devastating to the defense," Mr. Jones "pressed to keep the trial date," Mr. Hartley said, and issued an order that only he and another lawyer, Rob Nigh, were "permitted to speak to Mr. McVeigh.

"Although some members of the defense team did have conversations with Mr. McVeigh, access to the client was greatly restricted," Mr. Hartley wrote. "This restriction prevented Mr. McVeigh from receiving any semblance of independent advice of counsel."

"Literary aspects'

Mr. Hartley also accused Mr. Jones of violating bar association rules by signing a book contract in June 1997 while he still represented Mr. McVeigh. He later changed publishers, producing *Others Unknown: The Oklahoma City Bombing Case and Conspiracy* in 1998.

"Throughout the time he represented Mr. McVeigh, Jones conducted the defense with an eye toward the literary aspects of the case and its dramatic potential," Mr. Hartley wrote.

The motion also criticized Mr. Jones for disavowing "any relationship with the victims of the bombing," when in fact he and his wife, Sherrel, were close friends of the parents of bombing victim Susan Ferrell.

Mr. Hartley also said that Mr. Jones and the defense team had no coherent strategy for interviewing potential jurors; that they failed to object to emotionally charged testimony of some victims; and that they didn't challenge conflicting FBI laboratory reports on whether Mr. McVeigh's clothing at the time of his arrest contained explosives residue.

Mr. Jones declined to get into such details, saying he would not "engage in a running public debate with my former client."

"As his lawyer, his defense was able to recuse the Oklahoma City judge, secure a change of venue, obtain a separate trial and adequate financing, conduct individualized voir dire of the jury and suppress harmful evidence," Mr. Jones said. "The jury deliberated four and a half days.

"Hardly evidence of ineffective counsel."

Caption:

PHOTO(S): Timothy McVeigh . . . says Stephen Jones leaked stories and focused on his book about the bombing.