

McVeigh's New Lawyers Seek Subpoena - Attorneys Contend That Counsel Was Substandard

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Timothy McVeigh's new lawyers on Thursday pleaded with a federal judge for the right to fully explore allegations that the convicted Oklahoma City bomber's trial attorney bungled the case and violated legal ethics.

They also complained that the judge failed to inquire adequately about Mr. McVeigh's displeasure with lead counsel Stephen Jones after defense documents were quoted in The Dallas Morning News and Playboy magazine on the eve of jury selection.

"If the court will permit an analogy, asking Mr. Jones [about the conflict with Mr. McVeigh] is like asking the fox if the hen-house is safe," said appellate attorney Nathan Chambers of Denver.

With Mr. Jones sitting in the third row, U.S. District Judge Richard Matsch did not rule immediately on the McVeigh team's request for authority to subpoena records, documents and testimony that could bolster their claim of ineffective assistance of counsel.

Nor did Judge Matsch decide whether to order an extensive hearing into allegations that Mr. Jones put his interests above Mr. McVeigh's, failed to generate a plausible theory in Mr. McVeigh's defense and botched the jury-selection process.

The Denver jury convicted Mr. McVeigh of murder and recommended the death penalty. Judge Matsch, who also presided at the trial, passed sentence.

Mr. Jones, who did not speak during the nearly 21/2 hours of oral arguments, later defended his actions, saying he viewed Mr. McVeigh's defense as "clearly effective and zealous."

The Enid, Okla., attorney also said he does not believe his client received a fair trial, primarily because of reports in The Dallas Morning News and Playboy that Mr. McVeigh had provided his defense team with details of how he carried out the bomb plot.

Even so, Mr. Jones said he doubts that Mr. McVeigh's appeal will succeed, suggesting that while not perfect, the trial defense was more than sufficient to meet the legal system's standards for fairness.

'A shining example'

Special Assistant U.S. Attorney Sean Connelly said he, too, could see no reason to overturn Mr. McVeigh's conviction and death sentence for masterminding and executing the April 19, 1995, truck bombing of the Alfred P. Murrah Federal Building. The blast killed 168 people.

"We think this trial was a shining example ... of how the criminal justice system should work," he said.

"We believe it was a fair trial and the verdict was just. We cannot be assured it could be done any better than it was the first time."

Mr. McVeigh, now 32, did not attend Thursday's session, held in an ornate, second-floor courtroom across the street from where his case was decided three years ago. He is being held at the federal death row unit near Terre Haute, Ind.

Lead appeals attorney Dennis Hartley of Colorado Springs and Mr. Chambers used the oral arguments to expand on a 66-page motion filed in March seeking a new trial. The motion launched the second, and presumably final, round of Mr. McVeigh's appeals. His first appeals were unsuccessful.

If Judge Matsch rejects the latest challenge, Mr. McVeigh is not automatically entitled to appeal. He would need permission from Judge Matsch or the 10th Circuit to appear in the Denver-based appellate court. The Supreme Court could decide to hear the case, but it refused to consider Mr. McVeigh's first appeal.

In Thursday's session, Mr. Chambers argued that Judge Matsch erred when he failed to inquire fully into the publication of portions of defense documents in *The Dallas Morning News*.

He also said Judge Matsch should have met privately with Mr. McVeigh to discuss the crisis, especially after the defendant called the judge's office on March 12, 1997, from a Denver-area correctional facility to express his concern about Mr. Jones.

Such action would not have been unprecedented, Mr. Chambers noted: Early in the case, the chief federal judge in Oklahoma City, David Russell, privately questioned Mr. McVeigh about his relationship with Mr. Jones. The meeting came after Mr. Jones allegedly sneaked two *Newsweek* magazine reporters into a federal prison to interview Mr. McVeigh.

"There's quite a bit of difference here," said Judge Matsch, noting that Judge Russell's meeting wasn't on the eve of trial. "It's rather startling to me that before trial, without counsel, the defendant should meet with the judge."

Mr. Chambers disagreed.

"You can't refrain from doing a full inquiry in fear of what might happen," he said.

Mr. Jones disputed Mr. Chambers' version, saying, "The court was fully informed by me ... of Mr. McVeigh's concerns."

Jury selection criticized

Mr. Hartley also complained that Mr. Jones' team failed to thoroughly and systematically question potential jurors and had no discernible strategy for jury selection.

At least two jurors, he said, revealed in later interviews with the news media and Oklahoma City National Memorial archivists that they would not consider anything but a death sentence once Mr. McVeigh was convicted.

Mr. Jones scoffed at the criticism of his jury selection, saying, "I don't understand that statement at all." He said his team employed jury consultants and investigators to learn as much as possible about potential jurors.

Both Mr. Hartley and Mr. Chambers asserted that Mr. Jones repeatedly put his personal, financial and literary interests ahead of Mr. McVeigh's defense, citing, for example, a book contract they claimed Mr. Jones signed on June 16, 1997 - more than a month before he resigned as lead counsel.

Mr. Jones denied that his interests trumped his client's, insisting, for example, that he didn't sign a book contract until months after he resigned the case.

He published *Others Unknown: The Oklahoma City Bombing Case and Conspiracy* in 1998, but said that Mr. McVeigh knew about the book all along.

Reasonable contentions

CBS Radio legal analyst Andrew Cohen, a Denver lawyer who covered Mr. McVeigh's trial, said the appellate lawyers "made an interesting case, offered reasonable arguments and have some evidence to support their positions."

"The problem is, all that may not be enough, given the legal standards," he said. "The problem for the defense here and in most of these sorts of cases is that the burden is so high."

Mr. McVeigh's attorneys declined to discuss the case after the hearing. Asked about his client, Mr. Hartley said, "He's doing OK."

Federal prosecutors alleged that Mr. McVeigh masterminded and executed 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 his Army buddies, Terry Nichols, 45, was convicted in a separate federal trial of conspiracy and manslaughter and sentenced to life in federal prison. He also has been charged in state court in Oklahoma City with 160 counts of murder for the non-law officers killed.

Another former military comrade, 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.

Mr. Jones said he was not surprised, but was "disappointed" by the criticism of him Thursday, especially since Mr. Hartley spent only about 90 minutes discussing the case with him after taking over as lead appellate lawyer.

Mr. Jones also said many key defense decisions were based on Mr. McVeigh's instructions.

Asked if he expected to be called as a witness, if Judge Matsch orders a full evidentiary hearing, Mr. Jones replied, "I should imagine that you could count on it."

Caption:

PHOTO(S): 1. Stephen Jones ... former lead counsel for Timothy McVeigh says his defense was "clearly effective and zealous." 2. Richard Matsch ... Timothy McVeigh's lawyers told him their client didn't get a fair trial.