

## **Prosecution Disqualified in Nichols Trial - Judge Says Pretrial Comments Improper**

Dallas Morning News, The (TX)

October 17, 2000 | Arnold Hamilton | Page: 17A | Section: NEWS

A state judge on Monday disqualified the entire prosecution team in Terry Nichols' murder trial, a setback for those who want the Oklahoma City bombing conspirator tried on state charges.

State District Judge Ray Dean Linder ordered Oklahoma County District Attorney Bob Macy and his assistants off the case after ruling that some of Mr. Macy's pretrial comments were improper.

"There was a blatant violation of the rules of professional conduct by a man I have known for over 40 years," said Judge Linder.

"One hundred percent compliance with the rules is not only necessary, it's demanded."

Mr. Macy, who pressed the case against Mr. Nichols despite public criticism, could not immediately be reached for comment, but it seemed certain he would appeal the ruling.

If the disqualification stands, Oklahoma Attorney General Drew Edmondson would appoint a new prosecution team, a process that could delay Mr. Nichols' trial for months, if not permanently.

"I understand that District Attorney Macy is reviewing the transcripts to determine grounds for an emergency appeal of the order," Mr. Edmondson said through a spokesman.

"It would be inappropriate for my office to begin the process of appointment until questions about such an appeal are answered."

But a veteran criminal defense attorney who covered Mr. Nichols' federal trial for Oklahoma City television station KWTW said Judge Linder's decision could torpedo the state prosecution altogether.

"I think this could be the death-knell for the prosecution," defense attorney Irven Box told KWTW. "It's a very stunning decision."

Mr. Nichols, 45, was convicted by a federal jury in Denver of conspiracy and manslaughter in the April 19, 1995, bombing of the Alfred P. Murrah Federal Building that killed 168 people, including 19 children.

He was acquitted of the murder of eight federal law enforcement officers who died in the blast, which prosecutors contended was retaliation for the federal government's handling of the 51-day standoff in 1993 with Branch Davidians near Waco.

Although Mr. Nichols was sentenced to life in federal prison without the possibility of parole, Mr. Macy filed 160 first-degree murder charges against him in Oklahoma court in the deaths of the others who were killed.

Mr. Macy also pledged to seek the death penalty, a vow that may have led to his and his office's disqualification.

Mr. Nichols' lawyers urged Mr. Macy's removal from the case because of comments published in a local newspaper in December and aired on network television last spring.

Asked by CBS' 60 Minutes II whether he believed the death penalty would be appropriate in this case, Mr. Macy said, "You should have been down there the first four or five days. There would be no question in your mind."

Mr. Macy also was quoted by the Sunday Oklahoman as saying, "I certainly feel that death is the appropriate punishment for killing 19 babies."

"That is a statement that pretty much destroys the presumption of innocence in this case," defense attorney Barbara Hellman said. "I was really shocked by it. It seemed to be such a patent violation of the rules."

Bombing survivor Dr. Paul Heath said he was disappointed by the judge's ruling and hoped that Mr. Macy would be reinstated on appeal.

"I know there are people in Oklahoma ... who would be satisfied to let the case drop just because it brings up so many unresolved feelings of hurt and anguish and depression and bitterness over the losses we've all had," he said.

"No one wants to go through this again ... [but] what kind of message are we sending to terrorists when we say it's too much trouble to prosecute you. What does that say to a hate group?"

In a hearing that led to Judge Linder's decision, defense attorney Barbara Bergman asserted that Mr. Macy's personal involvement in the case - including friendship with bombing victims - contributed to his "intense, personal emotional involvement" in prosecuting Mr. Nichols.

"Because of that intense, emotional involvement, Mr. Macy has a conflict of interest," she said.

Lawrence Hellman, dean of the Oklahoma City University School of Law, also said Mr. Macy's public remarks "create an obstacle to there being a fair trial."

"If they're true," Mr. Hellman said, "they should be presented in a court of law, not in the court of public opinion."

"We need to look for someone who can have an emotional distance."

Assistant District Attorney Sandra Elliott countered that Mr. Macy's published remarks were merely an attempt to justify his prosecution of Mr. Nichols, which has been criticized because of its cost, expected to reach into the millions of dollars.

"An attorney has a right to give a reasonable response to criticism in the press," she said. "Mr. Macy does not believe that he has feelings that are strong enough to disqualify him from the case."

Judge Linder, however, ruled that Mr. Macy both violated the rules of professional conduct and a gag order that prohibited anyone directly involved in the case from discussing it.

"His conduct was improper," the judge said. "His conduct was disqualifying. ... He takes his whole office with him."

Judge Linder recently took over the case after Mr. Macy's office argued that the judge who had been presiding over it, Robert Murphy of Stillwater, was biased.

Mr. Nichols is being held in the Oklahoma County jail awaiting a preliminary hearing on the state charges. Last week he launched his second - and final - round of appeals aimed at overturning his federal conviction.

The bombing was masterminded by one of Mr. Nichols' former Army buddies, Timothy McVeigh, a decorated Persian Gulf War veteran. Mr. McVeigh, 32, was convicted in a separate trial of conspiracy and murder and sentenced to death by a federal jury.

Mr. McVeigh lost the first round in his second - and final - appeal last week when the trial judge refused to grant him a new trial on complaints his lawyers bungled the case and prosecutors withheld key evidence.

He is imprisoned at the federal death-row unit near Terre Haute, Ind.

Mr. Macy had long planned to bring state charges against those involved in the case. He even sent deputy prosecutors to sit in on the federal trials in Denver, where the case was moved because of extensive pretrial publicity.

Greg O'Meara, an attorney and former prosecutor who has been an ethical coach for prosecutors, said Mr. Macy's comments about the case and his personal involvement with it and bombing victims could violate Mr. Nichols' Sixth Amendment right to a new trial.

Mr. O'Meara said that the extent of bombing damage to the district attorney's office could have resulted in a felony charge of criminal damage to property and that Mr. Macy could be viewed as a victim of the bombing.

"Mr. Macy I believe has a conflict of interest in this case," Mr. O'Meara said. "You think like a victim of a crime. You think that someone has to pay for this."

The Associated Press contributed to this report.