

Oklahoma Prosecutor Defends Public Statements About Nichols

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Oklahoma County District Attorney Robert Macy on Wednesday defended public statements that he made about a state trial for Terry Nichols, saying they were in response to criticism of his decision to prosecute.

A 48-page brief appealing District Judge Ray Dean Linder's Oct. 16 decision to disqualify Mr. Macy from prosecuting the Oklahoma City bombing conspirator was filed at the Oklahoma Court of Criminal Appeals.

Judge Linder ruled that Mr. Macy's published comments were "a blatant violation of the rules of professional conduct," after a hearing where witnesses, including law professors, testified that Mr. Macy's remarks could prevent Mr. Nichols from getting a fair trial.

The statements included an opinion piece Mr. Macy wrote that was published in the Sunday Oklahoman in December and an article in which Mr. Macy responded to a public opinion poll commissioned by the Daily Oklahoman showing strong sentiment against a state trial.

In the appeal, Mr. Macy argued the instances in which he made public statements about the trial were "speech protected by the First Amendment and by the Rules of Professional Conduct which only prohibit these ... statements if each were shown to have a clear and present danger of materially prejudicing the fact finding process."

Mr. Macy said that local and national media, including the CBS news magazine 60 Minutes, challenged his decision to move forward with the prosecution, but that he had to consider the "despairing victims and survivors and many others supporting the prosecution" who wanted him to answer his critics.

He argued that the statements were made to affect public opinion and that no evidence was offered in the hearing that the statements were made to affect the fact-finding process of a jury.

Judge Linder also ruled that Mr. Macy had violated a gag order handed down earlier this year that prohibited anyone directly involved with the case from discussing it.

"His conduct was improper. His conduct was disqualifying. He takes his whole office with him," Judge Linder said at the hearing.

The petition said Mr. Nichols' attorneys did not file complaints with the Oklahoma Bar Association seeking discipline or pursue a contempt action against Mr. Macy.

"... He [Nichols] has sought relief more aimed at avoiding a trial and the death penalty than obtaining redress for violations of the gag order and pretrial publicity restrictions," the petition stated.

The petition also stated that the disqualification attempt has as its real objective the removal of the assistant district attorneys, saying "the court has made no findings of fact that any other basis justifies the disqualification of the assigned assistant district attorneys in this matter."

"Their disqualification would cripple any effort by the state of Oklahoma to proceed in the near future," the brief stated.

Judge Linder denied a request by Mr. Nichols' attorneys to sanction Mr. Macy.

Mr. Nichols, 45, is charged with 160 counts of first-degree murder in the April 19, 1995, bombing of the Alfred P. Murrah Federal Building. The explosion resulted in 168 deaths and more than 500 injuries.

A federal jury in Denver convicted Mr. Nichols of involuntary manslaughter in the deaths of eight federal agents and conspiracy.

His co-defendant, Timothy McVeigh, was convicted on eight counts of first-degree murder and weapons counts and was sentenced to death. Mr. McVeigh awaits execution at a federal prison in Indiana.

Caption: PHOTO(S): Robert Macy ... was disqualified last month from prosecuting the Oklahoma City bombing co-conspirator.