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Another Oklahoma City Bomb Trial, and Still Questions Remain

By **RALPH BLUMENTHAL** MARCH 16, 2004

Sitting beside the Survivor Tree, the scorched elm that survived the 1995 bombing of the Alfred P. Murrah Federal Building, Ken Thompson and John L. Cole said it was easy to say why Terry L. Nichols, already serving a life sentence in a federal prison for conspiracy and manslaughter, should stand trial in a state court on murder charges that could send him to death row.

The reasons, they said, were Mr. Thompson's mother, Virginia, and Mr. Cole's two toddler godsons, Aaron Coverdale and his brother, Elijah. They, along with 165 other people and one victim's fetus, were killed in the blast that prosecutors say Mr. Nichols helped Timothy J. McVeigh set off on the busy Wednesday morning of April 19 to vent their hatred of the government on the second anniversary of the F.B.I. assault at Waco.

But beyond that, said Mr. Thompson, an executive with an antiterrorism institute founded here after the bombing, "I just want the truth to come out."

Two lengthy federal trials in Denver in 1997 and the execution of Mr. McVeigh in 2001 would seem to have done that. Yet with an Oklahoma jury of six men and six women finally seated to try Mr. Nichols starting on March 22, this time on state murder charges in the rural community of McAlester, home of Oklahoma's maximum-security prison and death house 130 miles from the

scene of the crime, the truth of who else may have conspired in the attack appears increasingly clouded.

The state is armed with what federal prosecutors have called "an avalanche of evidence" proving that Mr. Nichols, 48, a slight Army veteran from Kansas with militant antigovernment views, bought the explosive materials and served as Mr. McVeigh's crony.

But the defense is clearly based on showing, as Mr. Nichols's chief lawyer, Brian T. Hermanson, said in court filings, that Mr. McVeigh "conspired with others whose identities are still unknown" and "orchestrated various events and evidence so as to make it appear that Mr. Nichols was involved and, thereby, direct attention away from others."

The biggest new questions involve Mr. McVeigh's contacts with a violent white supremacist underground and whether the government properly followed leads and disclosed what it had found, to the point, perhaps, of raising doubts about its portrayal of Mr. Nichols in the plot.

"Is it too bad they killed Tim?" asked Michael Tigar, the lawyer who represented Mr. Nichols in the earlier trial, in which he won an acquittal for Mr. Nichols on the federal murder charges. "If they really wanted to find out what happened, maybe some of the revelations, now that the cover is blown, maybe he would have talked. Who knows?"

Prosecutors insist they have made available all exculpatory material, as required, and that nothing alters Mr. Nichols's guilt. "Whether or not anybody else is involved," said Sandra H. Elliott, an assistant Oklahoma County district attorney, "we can prove Mr. Nichols is."

David Cid, a retired F.B.I. agent who worked on the case, said, "There's no obligation for the prosecution to prove that everybody else they haven't arrested didn't do it." But among the mysteries in the case is whether someone initially identified by the F.B.I. as "John Doe No. 2" but never found,

accompanied Mr. McVeigh when he rented the Ryder truck used in the bombing and was with him elsewhere. There are also conflicting accounts of where and how the bomb was built and how valuables of a gun dealer ended up with Mr. Nichols.

Senior F.B.I. agents were troubled enough by unresolved questions to request an interview with Mr. McVeigh just before his execution, The Associated Press reported this month. The interview never took place, the news agency reported.

An Indiana University criminology professor, Mark S. Hamm, who wrote a book about a white supremacist group known as the Aryan Republican Army, said he had been listed by the Nichols defense as a potential witness to testify about possible links between members of the group and Mr. Nichols and Mr. McVeigh.

"The preponderance of evidence points to the fact that McVeigh had some sort of ongoing relationship with members of the A.R.A.," said Professor Hamm, author of the 2001 book "In Bad Company: America's Terrorist Underground." But, he said, "There's no smoking gun here."

Mr. McVeigh's chief defense lawyer, Stephen Jones, confirmed that he had recently been subpoenaed by the state to rebut defense assertions that an imprisoned white supremacist could reveal the names of co-conspirators who were not charged. In "Others Unknown," a book Mr. Jones wrote and expanded after Mr. McVeigh accused him of incompetent representation, thereby waiving the lawyer-client privilege, according to Mr. Jones, he claims Mr. McVeigh incriminated Mr. Nichols in the building of the bomb. The subpoena was subsequently withdrawn.

The F.B.I. announced several weeks ago that it was reviewing its handling of some of the case's 40,000 investigative leads.

Judge Steven Taylor ruled that Mr. Nichols's lawyers could question

government officials on their handling of the investigation.

If it was up to most Oklahomans, there would be no state trial. In a recent poll by The Tulsa World, 70 percent of the respondents said another trial would be a waste of time and money. That had been the view, too, of the district attorney, C. Wesley Lane II, until Sept. 5, 2001, when he met families of bombing victims at the 70-year-old Survivor Tree and vowed to try Mr. Nichols for murder.

The federal charges covered only the killing of eight government employees and the destruction of the building. There were 160 other people killed, including 19 children at a day care center on the second floor. Seven hundred people were injured.

"One hundred sixty people never had their loved one's name on an indictment," said Mr. Thompson, director of external affairs of the federally sponsored National Memorial Institute for the Prevention of Terrorism, whose mother's remains were the last recovered from the ruins after the shattered building was demolished. Now the site is memorialized by 168 empty chairs and pylons marked 9:01 and 9:03, framing the moment of the explosion.

Prosecution evidence includes Mr. Nichols's use of nine aliases; numerous phone calls and meetings with Mr. McVeigh; a receipt in Mr. Nichols's possession, with Mr. McVeigh's fingerprint, for 2,000 pounds of ammonium nitrate, an explosive fertilizer; and a letter he wrote to Mr. McVeigh months before the bombing saying, "Go for it!"

Mr. Nichols was also found in possession of items an Arkansas gun dealer said had been stolen from him in an armed robbery. A major government witness implicated in the bombing, Michael Fortier, another Army buddy of the two men, testified that the robbery had been staged to raise money for the plot.

But the defense clearly intends to try to exploit contradictions in the

government's case, including conflicting accounts of whether Mr. Nichols and Mr. McVeigh met at a Kansas lake to build and load the bomb, and the murky circumstances surrounding the robbery of the gun dealer, Roger Moore.

Professor Hamm said a driver's license in the name of an alias used by Mr. Moore later turned up in the possession of a member of the Aryan Republican Army, Richard Guthrie, raising questions about whether the white supremacists had taken part in the robbery and, perhaps, the bombing as well.

Even without hearing such evidence, the federal jury had been clearly conflicted about Mr. Nichols's intentions, convicting him of conspiracy and involuntary manslaughter but acquitting him of the murder charges. They could not agree on a punishment, so Judge Richard P. Matsch imposed the maximum, a life sentence.

Mr. Jones, the lawyer for Mr. McVeigh, said, "Where the Nichols defense clearly wants to go is to try for an acquittal or hung jury using material the government withheld." Then, he said, "they'll go back to Denver" for a reversal of the earlier conviction. But, Mr. Jones said, "it has to succeed in McAlester first."

Before his conviction, the government had offered Mr. Nichols a chance to plead to federal and state charges in exchange for a life sentence. He declined. A prosecutor said he was offering Mr. Nichols his life, and Mr. Nichols responded, according to a lawyer present, "It's not yours to give." Recently his lawyers sought to reopen the offer. This time the state said no.
