

## **Nichols' attorneys use prosecution witnesses to bolster their own case**

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Author: TIM TALLEY

Lawyers for Oklahoma City bombing conspirator Terry Nichols have seized an early opportunity to mount their defense, using cross examination of key prosecution witnesses to try to bolster their theory of a wider bombing conspiracy.

During three weeks of testimony at Nichols' murder trial, Oklahoma prosecutors questioned 86 witnesses about evidence that Nichols helped bomber Timothy McVeigh plan and execute what was the worst act of domestic terrorism in the nation's history.

Defense attorneys have used some of those same witnesses to boost their argument that McVeigh had substantial help from unknown coconspirators in planning the bombing of the Oklahoma City federal building.

Their questions have raised the possibility that circumstantial evidence prosecutors say links Nichols to the plot may have other, less sinister explanations.

The technique has ruffled prosecutors. During cross-examination of a Kansas quarry worker, prosecutor Sandra Elliott complained to Judge Steven Taylor that defense attorneys were suggesting a wider bombing conspiracy before the state had even rested.

Prosecutors allege that Nichols burglarized the quarry in October 1994 and took blasting caps and detonation cord used in the April 19, 1995, bombing of the Alfred P. Murrah Federal Building, which killed 168 people.

On cross-examination, defense attorney Creekmore Wallace asked the worker, Allen Radtke, about the identities of other possible suspects he gave to investigators.

The technique is a way to score points with jurors and raise the specter of reasonable doubt, said Larry Pozner, co-author of "Cross Examination: Science and Techniques" and past president of the National Association of Criminal Defense Lawyers.

"If the cross examination of the government's case demonstrates reasonable doubt, that's the death knell of the government's case," Pozner said.

Defense attorneys who ask tough questions are not trying to trick the state's witnesses, Pozner said.

"It's not about gamesmanship. It's about getting the truth out," he said.

Jack Dempsey Pointer, past president of the defense lawyers association, said cross examination gives defense attorneys "an opportunity to bring out points that the prosecution may have overlooked -- or didn't want you to know."

Testimony in the case resumes Monday.

Nichols, 49, is already serving a life prison sentence, convicted in 1997 of federal charges of involuntary manslaughter and conspiracy charges for the deaths of eight federal law enforcement officers.

In Oklahoma, he is charged with 161 counts of first-degree murder for the deaths of the other 160 victims and the fetus of one victim. The state prosecutors are seeking the death penalty.

Suggestions of a wider bombing conspiracy were introduced to Nichols' jury during the testimony of Eldon Elliott, a former Ryder truck leasing agent in Junction City, Kan., who rented the truck that authorities say was used to deliver the bomb.

Elliott identified McVeigh as the man who leased the truck. But he said McVeigh was accompanied by another man when he picked up the truck on April 17, two days before the bombing. He said the man was not Nichols.

An FBI fingerprint examiner, Louis Hupp, said under cross examination by defense attorney Barbara Bergman that he mistakenly testified to finding Nichols' prints on a crucial piece of evidence. Hupp attributed the mistake to "an administrative error."

Nichols' first wife, Lana Padilla, said under cross examination there were inconsistencies in FBI reports about her statements concerning Nichols and backed off her earlier descriptions of Nichols as an anti-government survivalist.

Padilla also suggested there could be other explanations for circumstantial evidence in the bombing case.

During their marriage, Nichols packaged liquid fertilizer in small bottles and sold them at booths at county fairs, Padilla said. Small bottles of ammonium nitrate fertilizer were found in Nichols' Herington, Kan., home following the bombing.

Authorities say the fertilizer was the same kind used in the bomb that destroyed the federal building.

Pozner said mixed messages from prosecution witnesses could raise question marks among jurors.

"The case that the prosecution made shrinks," he said. "You're not painting a clear picture. You're painting a muddy picture. And muddy pictures do not usually win."

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