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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

ff

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REPORTER'S TRANSCRIPT
(Hearing on Motions)

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ff

MATSCH,

August,

Denver,

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Proceedings before the HONORABLE RICHARD P.

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Judge, United States District Court for the District of

14

Colorado, commencing at 2:00 p.m., on the 6th day of

15

1997, in Courtroom C-204, United States Courthouse,

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Colorado.

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Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
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1 APPEARANCES
2 LARRY A. MACKEY, SEAN CONNELLY, BETH
WILKINSON,
3 GEOFFREY S. MEARNES, JAMIE ORENSTEIN, and AITAN GOELMAN,
Special
4 Attorneys to the U.S. Attorney General, 1961 Stout
Street,
5 Suite 1200, Denver, Colorado, 80294, appearing for the
6 plaintiff.
7 MICHAEL E. TIGAR, RONALD G. WOODS, ADAM
THURSCHELL,
8 REID NEUREITER, and JANE TIGAR, Attorneys at Law, 1120
Lincoln
9 Street, Suite 1308, Denver, Colorado, 80203, appearing
for
10 Defendant Nichols.

11 * * * * *

12 PROCEEDINGS

13 (In open court at 2:00 p.m.)

14 THE COURT: Be seated, please. We're convened
in
15 Criminal Action 96-CR-68, United States vs. Terry Lynn
Nichols.

16 And we're here on the defendant's renewed motion to
disqualify

17 Government lawyers from the Western District of
Oklahoma.

18 Appearances, Mr. Mackey.

19 MR. MACKEY: Your Honor, good afternoon.
Larry Mackey

20 for the Government. With me is Ms. Beth Wilkinson,
Jeff

21 Mearns, Sean Connelly, Aitan Goelman, and Jamie
Orenstein.

22 THE COURT: And Mr. Tigar?

23 MR. TIGAR: Good afternoon, your Honor.
Michael Tigar

24 for Terry Lynn Nichols. Mr. Nichols is here in court
with us.

25 THE COURT: Good afternoon.

3

1 MR. TIGAR: We have Ron Woods, Reid Neureiter,
Jane
2 Tigar, and Adam Thurschwell.

3 THE COURT: Now, the motion as it is titled is
a

4 renewed motion, and there was a motion described as a
motion
5 for recusal filed when the case was in the Western
District of
6 Oklahoma and bore the number 95-105-A, May 17 of 1995,
7 resulting in an order from Magistrate Judge Howland
there. And
8 then that was renewed May 31 of 1995, with an order
from Judge
9 Russell -- Chief Judge Russell, and it was combined at
that
10 time. There was a motion addressing the judicial
officers in
11 the Western District of Oklahoma as well as the United
States
12 attorney's office. And my understanding of the
defendant's
13 position is that those -- not the judicial officers.
14 Obviously, that's been disposed of, but the motion
presently
15 before me is a renewal. There is -- there has been
briefing on
16 this. The Government has responded, and then there is
a reply
17 filed earlier today. The reply makes -- adds some
information
18 not previously available to counsel for Mr. Nichols,
according
19 to the reading of it.

20 MR. WOODS: That's correct, your Honor.

21 THE COURT: So we're -- and Mr. Ryan is
unavailable

22 today?

23 MR. MACKEY: Yes. That's correct, Judge. And
by
24 reason of that, we would ask the Court to consider a
25 postponement of the argument on this motion ideally
until next

4

1 Wednesday, when we can be assured of Mr. Ryan's
presence. The
2 reason for that, Judge, is Mr. Ryan is the only person,
the
3 only lawyer, that's now the subject of the current
motion.

4 MR. WOODS: Your Honor, we would request that
Mr. Ryan
5 be here because there are going to be certain things
said that
6 only he can respond to, and I was going to make that
motion
7 this afternoon when I learned that Mr. Ryan is not here
that we
8 postpone it so that Mr. Ryan can be here. We think
it's out of
9 fairness that Mr. Ryan be available to respond.

10 THE COURT: You don't intend to call him as a
witness,
11 do you?

12 MR. WOODS: Well, your Honor, we're just all
of a

These 13 sudden finding out some facts that only he knows.
advised me 14 people -- excuse me -- the other prosecutors have
on 15 they don't know. They're having to check with Mr. Ryan
we may 16 these things, so either he can respond in argument; or
17 get to the point where we want him to testify.

18 THE COURT: Well, I don't want it to appear
here that 19 Mr. Ryan ducked out on us.

20 MR. WOODS: I understand there is an emergency
in 21 Oklahoma City concerning one of the personnel in his
office, a 22 death in his office, and he had to be there; so we
understand 23 fully that this was not --

24 THE COURT: Yeah. Is there any indication
that the 25 events which cause him not to be available today could
relate

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1 to or may relate to the subject of the motion?

2 MR. MACKEY: I know so little about the
circumstances,

3 Judge, I hesitate to say anything. I do know that one

of his

4 assistants committed suicide, and that's the state of
the

5 affairs; but -- and by reason of that, he felt
compelled to be

6 in Oklahoma City.

7 THE COURT: Yeah. Do -- Your reply, Mr.
Woods, refers

8 to a telephone conversation with Ms. Wilkinson.

9 MR. WOODS: Yes, your Honor.

10 THE COURT: And I didn't know that we might
have an

11 evidentiary hearing. Now, you're not asking for one.
You need

12 more information.

13 MR. WOODS: We just need more information, and
14 Mr. Ryan is the only one that has firsthand knowledge
of it,

15 your Honor.

16 THE COURT: And, Ms. Wilkinson, has there been
-- I

17 don't know where you got the information you apparently
relayed

18 to Mr. Woods. Was it from Mr. Ryan?

19 MS. WILKINSON: Not directly, your Honor. I
had heard

20 some of these facts as I've been working on the case;
and when

21 Mr. Woods raised with me last night Ms. Bucella's
testimony, I

22 volunteered this information. I then went back to some

of the

clarify 23 people in Oklahoma City, not directly to Mr. Ryan, to

I said 24 one issue that Mr. Woods and I had discussed. And what

the 25 to him this morning is I cannot represent that this is

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victims in 1 scope of the victims or people who are related to

had any 2 the office. And I just wanted to assure him that if he

to say 3 other questions we'd ultimately have to go to Mr. Ryan

some loss, 4 these are all the people in the office who suffered

5 which I think is something he considers relevant.

Ryan to an 6 THE COURT: Well, do you know enough about the
7 situation in Oklahoma City to be able to commit Mr.

8 appearance here next Wednesday? Mr. Mackey?

9 MR. MACKEY: I do believe he can be here next
10 Wednesday, yes. Mr. Connelly --

to 11 THE COURT: And also do whatever is necessary

it's 12 develop the additional information about -- I take it

13 about who in that office may have been impacted by the

14 explosion and the following events.

15 MR. MACKEY: I think we know, but the extra
days will
16 give us more time to verify that truly we have all the
details
17 tied down, so yes.

18 THE COURT: Well, obviously this is a matter
we ought
19 to rule on as soon as possible, but in the -- where
both sides
20 tell me you don't have enough information and indeed
where
21 Mr. Ryan is the subject of it, even if he weren't -- if
it
22 weren't necessary for him to provide additional
information, he
23 ought to have a chance to speak to it.

24 MR. WOODS: Yes, your Honor.

25 THE COURT: Because it affects him as an
officer of

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1 the Court and as the official voice of the Justice
Department
2 resident in Oklahoma City. So I don't think I have a
choice
3 but to grant the agreed motion and come back at this
next
4 Wednesday at the same hour.

Honor. 5 MR. WOODS: That's convenient with us, your

it to 6 THE COURT: All right. Well, we'll continue

or 7 then with the understanding that these additional facts

communicated 8 whatever will be obtained during the interim and

9 to opposing counsel so that hopefully we don't need an

10 evidentiary hearing in connection with it.

evidentiary 11 MR. WOODS: We prefer not to have an

12 hearing.

choice, I'll 13 THE COURT: Yeah. All right. Having no

14 grant it.

Nichols 15 The -- I do need to meet with counsel, and Mr.

matters, 16 is invited to meet in chambers on several scheduling

jury 17 including some matters dealing with the methodology of

the 18 selection in this case. What I have to discuss meets

date by 19 criteria of the order entered -- I ought to know the

guess 20 heart by now, but I don't. The January -- what, '96, I

would not be 21 it was, establishing the criteria for when matters

who have 22 in open court. So because I see in open court those

23 an interest in the public interest, both under First
and Sixth
24 Amendment principles here, I would advise you that we
are going
25 to meet in chambers; and, of course, there will be a
record.

8

1 Yes, Ms. Wilkinson.

2 MS. WILKINSON: Your Honor, we have one other
matter.

3 Last week in chambers when we were discussing
scheduling, we
4 discussed a motion that the defense had made some time
ago to
5 recuse Mr. Mackey and Mr. Mendeloff. We went back and
checked
6 our records. And part of that was public, and we just
wanted
7 to tell the Court -- and I believe Mr. Woods will tell
you --
8 that they have now decided to withdraw that motion to
recuse
9 Mr. Mackey.

10 MR. WOODS: Yes, your Honor. We withdraw that
based
11 on the deposition of Mr. Manning. That only came up in
12 Mr. Nigh's questioning, so it won't relate to us in any
manner;

13 so we withdraw the Mackey challenge -- the Mr. Mackey
14 challenge.

15 THE COURT: Okay. So I guess that was -- that
was a
16 motion that was made by both counsel -- counsel for
both
17 defendants.

18 MR. WOODS: No, your Honor, I don't believe --

19 THE COURT: Actually, Mr. McVeigh joined in in
part
20 with counsel for Mr. Nichols. That's the state of the
record.

21 So you're withdrawing --

22 MR. WOODS: We withdraw our challenge, your
Honor.

23 THE COURT: All right.

24 MS. WILKINSON: Just for the record, your
Honor,
25 Mr. McVeigh did not join in the motion to recuse Mr.
Mackey,

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1 but I think it's probably moot now.

2 MR. WOODS: That's my memory, your Honor. I
don't
3 think he's ever joined in any such motion.

4 THE COURT: It was to suppress the Manning
deposition.

5 MS. WILKINSON: Yes.

6 THE COURT: That's what the motion was.

7 MR. WOODS: Yes.

8 THE COURT: I'm beginning to have a little
better

9 confidence in my memory now that counsel have assisted
me.

10 Appreciate it.

11 May we meet in chambers in 10 minutes?

12 MR. WOODS: Yes, your Honor.

13 THE COURT: All right.

14 (Recess at 2:10 p.m.)

15 * * * * *

16 REPORTER'S CERTIFICATE

17 I certify that the foregoing is a correct
transcript from

18 the record of proceedings in the above-entitled matter.
Dated

19 at Denver, Colorado, this 6th day of August, 1997.

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Zuckerman

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Paul A.

