

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Criminal Action No. 96-CR-68
4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 VS.
7 TERRY LYNN NICHOLS,
8 Defendant.

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10 REPORTER'S TRANSCRIPT
 (Hearing on Motions)

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MATSCH,
13 Proceedings before the HONORABLE RICHARD P.

14 Judge, United States District Court for the District of
August,

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

16 1997, in Courtroom C-204, United States Courthouse,
Colorado.

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24 Proceeding Recorded by Mechanical Stenography,
Transcription
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1 APPEARANCES

2 LARRY A. MACKEY, SEAN CONNELLY, BETH
WILKINSON,

3 GEOFFREY S. MEARS, JAMIE ORENSTEIN, andAITAN 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
THURSCHWELL,

8 REID NEUREITER, and JANE TIGAR, Attorneys at Law, 1120 Lincoln

for 9 Street, Suite 1308, Denver, Colorado, 80203, appearing

10 Defendant Nichols.

11 * * * *

12 PROCEEDINGS

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

in 14 THE COURT: Be seated, please. We're convened

Nichols. 15 Criminal Action 96-CR-68, United States vs. Terry Lynn

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

Oklahoma. 17 Government lawyers from the Western District of

 18 Appearances, Mr. Mackey.

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

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

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

 22 THE COURT: And Mr. Tigar?

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

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

 25 THE COURT: Good afternoon.

3

Jane 1 MR. TIGAR: We have Ron Woods, Reid Neureiter,

a 2 Tigar, and Adam Thorschwell.

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

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

4

presence. 1 Wednesday, when we can be assured of Mr. Ryan's
the 2 reason for that, Judge, is Mr. Ryan is the only person,
motion. 3 only lawyer, that's now the subject of the current
Mr. Ryan 4 MR. WOODS: Your Honor, we would request that
said that 5 be here because there are going to be certain things
motion 6 only he can respond to, and I was going to make that
that we 7 this afternoon when I learned that Mr. Ryan is not here
it's out of 8 postpone it so that Mr. Ryan can be here. We think
9 fairness that Mr. Ryan be available to respond.
witness, 10 THE COURT: You don't intend to call him as a
11 do you?
of a 12 MR. WOODS: Well, your Honor, we're just all

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

get to the point where we want him to testify.

here that 18 THE COURT: Well, I don't want it to appear

in 19 Mr. Ryan ducked out on us.

office, a 20 MR. WOODS: I understand there is an emergency

understand 21 Oklahoma City concerning one of the personnel in his

 22 death in his office, and he had to be there; so we

 23 fully that this was not --

that the 24 THE COURT: Yeah. Is there any indication

relate 25 events which cause him not to be available today could

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

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

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

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

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.

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

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

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

6

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

7

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 ago to discussed a motion that the defense had made some time

5 checked recuse Mr. Mackey and Mr. Mendeloff. We went back and

6 wanted our records. And part of that was public, and we just

7 you -- to tell the Court -- and I believe Mr. Woods will tell

8 recuse that they have now decided to withdraw that motion to

9 based Mr. Mackey.

10 MR. WOODS: Yes, your Honor. We withdraw that

11 manner; 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

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

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.)

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16 REPORTER'S CERTIFICATE

17 I certify that the foregoing is a correct
transcript from
Dated 18 the record of proceedings in the above-entitled matter.
19 at Denver, Colorado, this 6th day of August, 1997.
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Zuckerman

Paul A.

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