

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 TIMOTHY JAMES McVEIGH and TERRY LYNN NICHOLS,

8 Defendants.

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10 REPORTER'S TRANSCRIPT
(Conference re Publicity)

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12 Proceedings before the HONORABLE RICHARD P. MATSCH,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 5:30 p.m., on the 28th day of February,
15 1997, in Chambers C-234, United States Courthouse, Denver,
16 Colorado.

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24 Proceeding Recorded by Mechanical Stenography, Transcription
25 Produced via Computer by Paul Zuckerman, 1929 Stout Street,
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1 APPEARANCES

2 PATRICK M. RYAN, United States Attorney for the
3 District of Oklahoma, 210 West Park Avenue, Suite 400, Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.

5 LARRY A. MACKEY, Special Attorney to the U.S. Attorney
6 General, 1961 Stout Street, Suite 1200, Denver, Colorado,
7 80294, appearing for the plaintiff.

8 STEPHEN JONES and RICHARD BURR, Attorneys at Law,
9 Jones, Wyatt & Roberts, 999 18th Street, Suite 2460, Denver,
10 Colorado, 80202, appearing for Defendant McVeigh.

11 REID NEUREITER, Attorney at Law, 1120 Lincoln Street,
12 Suite 1308, Denver, Colorado, 80203, appearing for Defendant
13 Nichols.

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15 PROCEEDINGS

16 (In chambers at 5:30 p.m.)

17 THE COURT: Well, we're convened on papers just filed
18 which constitute a motion to file under seal in 96-CR-68 and
19 then a civil action with Jones, Wyatt & Roberts, Timothy James
20 McVeigh, against The Dallas Morning News seeking to restrain
21 publication of what I'm told has been published.

22 MR. JONES: Yes.

23 THE COURT: So this is KIND of an emergency meeting to
24 see -- I've got counsel here in the criminal case because the
25 first responsibility is to the criminal case; so -- and

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1 Mr. Neureiter, you're, I guess, informed somewhat about this,
2 are you?

3 MR. NEUREITER: Yes, your Honor. I apologize for my
4 appearance. This was an emergency matter, and I had planned to
5 take the day off.

6 Our concern would be that there might have been a

7 violation of your Honor's order, and that might implicate our
8 client, because the article to some extent refers to our client
9 and implicates him.

10 THE COURT: Well, the article I have here is a copy of
11 a fax of what I understand to be something which went on the
12 internet --

13 MR. JONES: That's correct.

14 THE COURT: -- earlier today.

15 And we have counsel for the Government and Mr. Jones.

16 I don't know what we can do about a temporary
17 restraining order to something that's already published.

18 MR. JONES: Well, if I could, so the Court will be
19 fully informed on this matter, yesterday afternoon -- may I
20 proceed?

21 THE COURT: Yes, please.

22 MR. JONES: Yesterday afternoon -- actually, I guess
23 maybe it was yesterday morning -- I received a telephone call
24 from a person who identified himself as G. Robert Hillsman, a
25 reporter for The Dallas Morning News, asking if he could come

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1 by and meet him because -- if I could meet him because he was
2 the, quote, "new kid on the block," is the way he put it.

3 I said certainly; and he said, "Incidentally, where
4 will you be Friday afternoon at 4:00?"

5 I said, "Well, my mother has had a little stroke and I
6 had planned to leave Friday to drive back to Enid." I said,
7 "Why do you ask?"

8 He says, "Pete Slover will want to call you."

10 that important, he should contact me."

11 So when he showed up at 2:00, he introduced himself

12 and said he was moving to Denver and they had rented an
13 apartment here, The Dallas Morning News had, and that they had
14 four reporters. And it was kind of a social chat and how was I
15 being received in Denver and, you know, did I think I could get

17 I said, "Yes, things have gone very well."

18 He kind of told me how they were dividing
19 responsibility among the four of them; and I again said, "What
20 is Mr. Slover working on?"

21 He said, "Well, I can't really tell you. Why don't
22 you give him a call?"

24 Stephen Jones. I understand you want to know where I'm going
25 to be tomorrow. And I hope to be on the road, and I'm not sure

1 you can reach me. Is there something I can help you with now?"

2 And he said, "No." He said, "I don't have it." He
3 said, "I hope to have it tomorrow"; and he said, "I will then
4 call the parties when I have it and ask for a comment."

5 I said, "Well, all right. Why don't you just call my
6 office and they'll track me down."

7 Well, the more I got to thinking about it overnight,
8 the more I didn't like it; so I just decided to wait. I didn't
9 want to be on the road. I didn't like the sound of it.

10 So this afternoon, shortly after lunch, he called me
11 and he said, "We have some confidential defense documents from
12 a defense staff member that say the following"; and he read
13 some of this and some others things. And he said, "We want to
14 give you a chance to comment on it."

15 I said, "First of all I wouldn't possibly comment on
16 them. For all I know, you could be pulling my leg. I don't
17 know whether you got any defense documents or not, and I didn't
18 just fall off the pumpkin wagon," or words to that effect. I

19 said, "If you want to fax me a copy of what you got so that I
20 know you have something worth commenting on, I'll be glad to
21 tell you, if, in fact, it's a legitimate document; but for all
22 I know, you could just be fishing."

23 He said, "Well," he said, "suppose I read to you from
24 it and then you can decide whether you want to comment or not."

25 I said, "Well, that's fine. If you want it read from

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1 it, fine."

2 So he proceeded to read; and when he finished, I said,
3 "Well, Pete, you know, we probably spent several thousand hours
4 with Mr. McVeigh, and I don't pretend to know what everybody
5 has been told by him. Certainly I've never heard anything like
6 that from him; but," I said, "I'll search our computer base.
7 But right off the top of my head, it doesn't sound familiar."

8 And I said, "I'd like to know the name of your lawyer
9 and the name of the executive above you."

10 So he said, "Well, I don't feel I should give you the
11 executive, but I will give you the name of the lawyer."

12 I said, "Well, that's fine."

13 So I called the lawyer and I had a lengthy
14 conversation with him; and I said, "I don't suppose that you
15 will consider the reasons that you shouldn't do this in the
16 concept of a fair trial, although I will address those reasons.
17 Let me tell you why you shouldn't do it in view of your own
18 enlightened interest"; and so I told him briefly and I said,
19 "I'd like to talk with your editor."

20 So about 30 minutes later, he called back with the
21 chief executive of the Dallas Morning News, at least
22 represented he was. So I said, "First, I'm not going to

23 comment on whether it's accurate or not because first of all,
24 there is an order that I can't; and secondly, it could be
25 construed as some kind of waiver of the attorney/client

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1 privilege. But you either have a legitimate document that you

2 got illegitimately, or somebody is pulling your leg."

3 And so he said, "Well, what makes you think somebody
4 is pulling on our leg?"

5 And I said, "Because your reporter betrayed the
6 source."

7 He said, "He did?"

8 And I said, "Yes. He said he got it from a defense

9 investigator, and that limits it to six people and only one of
10 whom has been fired."

11 And I said, "I happen to know that J.D. Cash was down
12 to see him four days ago; and you got this information from
13 J.D. Cash and he got something from this individual."

14 I said, "Now, here's the rub for you: You've been set
15 up." I said, "I don't know if Mr. Slover told you or not, but
16 back on April 13, 1996, he called us about this individual and
17 he said this individual was favoring other reporters and not
18 The Dallas Morning News. And I have a memo here in front of me
19 of that telephone call, and he said this individual had
20 furnished them false leads and false information; and he told
21 me about this individual, and I fired the person that
22 Mr. Slover called me about."

23 I said, "Now, what I think has happened is if this is
24 a legitimate document (a) you'll send it to me, but I can't
25 imagine any reason in God's green earth why this individual

1 would favor The Dallas Morning News with a legitimate document;
2 so what I think has happened is you've been set up by both of
3 them."

4 And I could tell -- I don't read people's voices on
5 the phone. I didn't think I was telling something he already
6 knew.

7 I said, "Now, you print this, you are doing this for
8 temporary gain of circulation, for sensationalism. You're
9 thumbing your nose at the judge, your thumbing your nose at the
10 Tenth Circuit. You don't know whether it's an honest document
11 or not; and if it is, you're not supposed to have it. And if
12 it isn't an honest document, then you're perpetrating a fraud
13 like Howard Hughes' autobiography."

14 I said, "You're impacting upon the trial, place, and
15 timing and perhaps the verdict." And I said, "It's extremely
16 important this trial be seen as fair, and you are about it
17 cloud the judgment of history and act in an irresponsible way.
18 And on top of that, you've betrayed your own source and you're
19 going to be held up to ridicule by the rest of the media. And
20 I don't think you should run it, and I've notified the Court
21 and I think you should reconsider."

22 And I said, "When are you going to run it?"

23 He said, "Well, we can't tell you that."

24 So that's a summary of the conversation.

25 So I asked the office immediately to prepare these

1 papers; and approximately an hour later, a national newspaper
2 called me and said this was moving on the internet. And after

3 that, the phone lit up; so it has moved on the internet.

4 I then made a statement to one television station only
5 in the Dallas Forth Worth area that I had asked to see this
6 document, did not know whether it was genuine or not; that I
7 had conducted a computer search, I had not found anything that
8 remotely resembled this on the computer search, and that The
9 Dallas Morning News was acting irresponsibly, period.

10 They wanted to know if Mr. McVeigh had ever said
11 anything like that; and I said, "Well, I can't tell you whether
12 he has or he hasn't for two reasons: There is a court order in
13 place, and there is the Oklahoma Code of Professional
14 responsibility."

15 So we called the Dallas Morning News at 4:15, their
16 lawyer, and told them that they should be here by 4:30; that we
17 would be here between 4:30 and 5.

18 So we filed a civil suit and then simply attached it
19 to a motion in the criminal case, because obviously without
20 more time to research, we didn't know what was the best way to
21 proceed.

22 THE COURT: Well, I'm troubled as to how it can be
23 sealed and also heard and particularly with the party being a
24 news organization; but I'm also troubled, you know -- it is a
25 little late to grant the relief, because now secondary

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1 publication, I'm sure, is taking place now by other news
2 organizations.

3 MR. JONES: It is; and there is no doubt in my mind
4 that they intended this to run Sunday or perhaps tomorrow.
5 That's why they originally were going to call me at 4. And
6 when they found out that I was going to respond the way I did,
7 I think they quickly put it on the internet in order to prevent

8 a TRO from even being considered.

9 THE COURT: Yeah.

10 MR. JONES: Of course, we were continuing to prepare
11 the papers even as it was appearing on the TRO (sic). So I
12 agree with the Court, I don't --

13 THE COURT: And I have -- I guess my instinctive
14 response is that we can make this matter a lot more serious
15 than it may now be by holding a hearing on it and doing it
16 suddenly, rashly. I'm not suggesting, you know, that your
17 action in filing this was a rash act; but I believe our -- the
18 primary interest of everybody here is to protect the integrity
19 of this trial and the lead-up to the trial. And for us to hold
20 a hearing on this relief, I think, is going to aggravate a very
21 disturbing situation.

22 MR. JONES: I was talking with Mr. Burr as we were
23 coming over here; and I said I hope that we're not putting fuel
24 to the fire. And I've been thinking about it. And I
25 appreciate the Court meeting with Government Counsel and myself

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1 and Mr. Burr first -- and Mr. Neureiter. And the more I've sat
2 here mulling on it, the more I think you're right.

3 THE COURT: Yeah. At least I think we ought to take
4 some time to consider whether you want to pursue this remedy.

5 I don't know, Mr. Mackey, Mr. Ryan, for the Government
6 here, do you have any comment on this or reaction to it?

7 MR. RYAN: Your Honor, we have no position other than
8 wanting to ensure a fair trial; so we join in whatever the
9 Court thinks is the best way to minimize the impact of this
10 disclosure.

11 MR. NEUREITER: Your Honor, I did have one concern;

12 and that is in articles of this nature, if it is not -- if this
13 article does not encompass the entire store of material that's
14 been made available to The Dallas Morning News, frequently
15 media organizations will have a lead story and then follow up
16 for several days if they really think it's a benefit.

17 If these documents are legitimate and there were, in
18 fact, revelations from inside the attorney/client privilege
19 realm of the McVeigh defense, it might not be possible to put
20 this toothpaste back in the tube; but at some point a cap on
21 those kinds of documents should be put on, if possible.

22 THE COURT: The difference, however, is that if we
23 were to go to the attorney/client approach, the authenticity of
24 the document is going to be an issue and it would be much more
25 damaging, I would think, to all concerned to have a hearing and

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1 have it determined judicially that these notes came from
2 somebody who talked to Mr. McVeigh and these are Mr. McVeigh's
3 words.

4 MR. JONES: There is, of course, another possibility
5 that avoids that, and that is that we ask for alternative
6 relief of a replevin. They say they are what they are; so we
7 say, "Well, taking you at your word that that's what they are,
8 it's clear you're not supposed to have them. They're our
9 property; and so what you need to do is give them back to us,
10 all copies you've made, any notes you made from them, because
11 they're not your property. Now, if they're false, then you can
12 do with them whatever you want to do."

13 THE COURT: Yeah, but to prove that they're your
14 property is to prove the truth of the matter that's being
15 stated, not necessarily the truth, but getting closer to it,
16 because it would be saying that someone in your employ made

17 these notes and presumably prepared them for your use.

18 Now, we have to be careful in what you even say to
19 me --

20 MR. JONES: Sure. Of course.

21 THE COURT: -- or these people now.

22 MR. JONES: I have considered that possibility; but if
23 the notes originate from whom I think they originate, then he
24 is purporting -- well, let's assume for a moment that they're
25 true. Then clearly they're our property, not his. But let's

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1 assume for a moment that they're false --

2 MR. RYAN: Mr. Jones, can I interrupt and just say,
3 would you prefer that Mr. Mackey and I stepped out of the room?

4 THE COURT: No, I don't.

5 MR. RYAN: Excuse me.

6 THE COURT: I think you have an interest in this, as I
7 do; and if Mr. Jones at sometime wants to proceed ex parte, of
8 course, he can ask for it, but --

9 MR. RYAN: Pardon me, Stephen.

10 THE COURT: We need everybody's thoughts on this, I
11 think.

12 MR. JONES: See, I truly believe that what has
13 happened is The Dallas Morning News has been set up, because I
14 have found this memo of the conversation with this reporter and
15 I can kind of vaguely remember that he had called about this,
16 because it's been almost a year ago and; but I didn't know
17 whether we had it in writing, and so someone found it.

18 When I read this, then I was convinced that 2 plus 2
19 was 4 and that because it's the same reporter, it's the same
20 person. And that's what I think has happened.

21 But if they are false -- and I haven't completed my
22 computer search. Up till the time we left here, no such series
23 of words had appeared on any computer printout from a private
24 investigator; but if they are false, then he has created them
25 and represented that he did it while he was our agent --

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1 THE COURT: Yes.

2 MR. JONES: -- in which case I think they're still our
3 property, or at least he's breached his contract.

4 THE COURT: Well, all of those things are
5 possibilities; but I'm very wary of proceeding to make any kind
6 of determination that would influence public opinion as to
7 whether these are truthful statements.

8 MR. RYAN: Your Honor, the concern that Mr. Mackey and
9 I expressed before this hearing began was precisely the point
10 that your Honor makes: If there is in fact a direct assault
11 and challenge on The Dallas Morning News, I mean they are going
12 to fight back. And the way they're going to fight back is
13 exactly what the Court has forecasted. Most likely, they're
14 going to say, "This is a legitimate document, it was turned
15 over to us voluntarily by a defense investigator."

16 And of course, I don't know the facts but from what
17 Mr. Jones says. And of course, if that comes out on a public
18 record, to me that's going to escalate where we are now and
19 possibly make the situation much, much worse.

20 THE COURT: This dispute becomes the focus of
21 everybody's attention in the --

22 MR. MACKEY: It will fuel the fire.

23 MR. JONES: Then I would like to ask if the Dallas
24 Post (sic) lawyer is here if the Court would consider bringing
25 him in and just in informal discussion point out that this is

1 extremely irresponsible.

2 MR. MACKEY: Judge, I think the article predicts what
3 they're going to say. It's on the first page: The newspaper
4 obtained the documents legally.

5 THE COURT: Well, that's what I looked to and

7 Mr. Manspeaker.

8 And you got it from some local reporter?

9 MR. MANSPEAKER: I did, from the Rocky Mountain News,
10 yes, sir.

11 THE COURT: Frankly, I think we should all think about
12 it and go through a cooling-off period. I understand your

14 but I'm just very concerned that we're going to aggravate it.

15 MR. JONES: Well, you could be right. I mean, after
16 all, if they had any consideration other than their
17 circulation, they wouldn't have published it until the Court
18 ruled on it.

19 THE COURT: I don't think my telling -- is it
20 Mr. Kelley who is here?

21 MR. MANSPEAKER: That's correct, and another
22 gentleman.

23 THE COURT: Telling Mr. Kelley that I think it's
24 irresponsible is not going to have any favorable influence on
25 their determination of what's in their interest in publishing

1 this sort of thing.

2 We live in a time when unfortunately there is a
3 hostile environment for anybody trying to do a fair trial.

4 I think that you should -- this is a delicate balance

5 here; but I think you can make a public statement without
6 violating my order, if you make a public statement -- and I
7 don't know what you can say but that, you know, make some
8 denial of this.

9 MR. JONES: Well, I thought about just simply saying
10 that we had brought this to the Court's attention and had the
11 benefit of your wisdom on the subject and that The Dallas
12 Morning News has acted irresponsibly and I don't think the
13 people of the northeast area of Colorado are going to be
14 influenced by what some Dallas, Texas newspaper said; and
15 that's all I have to say.

16 THE COURT: Well, I don't think that's bad. I think
17 that's about the best you can do. And you can comment that I
18 have met with you.

19 MR. JONES: Now, we have the civil suit pending.
20 Perhaps we should just dismiss it.

21 THE COURT: I think you should, but then --

22 MR. JONES: I agree. That's the reason we came over
23 to talk to you.

24 THE COURT: Yeah.

25 MR. JONES: Once they ran it --

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1 THE COURT: You know, as we all have heard so many
2 times, the only way you can win a quarrel with a newspaper is
3 to have another newspaper that's bigger and has more ink; but I
4 just don't want the focus of the public's attention to go from
5 what we're trying to do here and conduct a fair trial to a
6 quarrel with a news organization.

7 MR. JONES: If you'll, remember John F. Kennedy said
8 they were a sorry newspaper.

9 MR. RYAN: If either you or Mr. Jones, your Honor,

10 thinks that the Government counsel can do anything to assist in
11 the public's not giving weight to this, of course, we'll
12 cooperate in any request the Court or Mr. Jones makes.

13 MR. JONES: I do want to state on the record -- and I
14 told Mr. Ryan when we came in -- I don't have any reason to
15 believe the Government is any part of this.

16 THE COURT: No, I --

17 MR. JONES: I'm sure they're not.

18 MR. NEUREITER: Your Honor, if I may ask for
19 clarification, we in our office have been receiving numerous
20 phone calls from the press asking for comment on what is
21 claimed to be a confession by Mr. McVeigh that also implicates
22 Mr. Nichols. I'm not saying that we would seek to comment to
23 the press to also deny, but I would have to talk with Mr. Woods
24 and Mr. Tigar. But with respect to this limited document,
25 would we also be given permission to respond appropriately

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1 without violating your Honor's order?

2 THE COURT: Well, what do you mean when you say
3 "respond appropriately"? If you're talking about something
4 similar to what Mr. Jones intends, yes.

5 MR. NEUREITER: The general approach we've taken is
6 not to comment, and that would be along the lines of what we
7 would seek to do.

8 THE COURT: Well, this is my instinct; and if you want
9 to withdraw this, you can.

10 MR. JONES: Well, I'd like to ask leave to withdraw
11 it. I don't know. Did we give a copy to The Dallas Morning
12 News?

13 MR. BURR: I don't think so.

14 MR. JONES: Why don't you ask Scott?
15 Now, that was the minor thing I wanted to talk to you
16 about. The important thing . . .
17 Well, we'll go out and do the Lord's work, Judge.
18 THE COURT: Well, I guess you live from day to day and
19 not -- you don't know what's going to happen.
20 How is your mother?
21 MR. JONES: Well, she was telling the hospital how
22 they should run their business, so I assume she's in good
23 shape.
24 THE COURT: Sounds like she's all right.
25 MR. NEUREITER: Mr. Jones, would you like these

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1 returned to you?

2 THE COURT: Well, thank you for your help.

3 (Recess at 5:55 p.m.)

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5 REPORTER'S CERTIFICATE

6 I certify that the foregoing is a correct transcript from
7 the record of proceedings in the above-entitled matter. Dated
8 at Denver, Colorado, this 29th day of February, 1997.

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Paul A. Zuckerman

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