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ESSAY

THE DEFENSE OF ONE KNOWN TO BE GUILTY: THE REPRESENTATION AND DEFENSE OF THE OKLAHOMA CITY BOMBER, TIMOTHY McVEIGH*

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The Crime and Arrest of Tim McVeigh

On April 19, 1995, an explosion destroyed the Alfred P. Murrah Federal Building in Oklahoma City, resulting in the deaths of at least 168 adults and children.¹ More than 500 people were injured, and the surrounding area sustained a total property loss approaching one billion dollars.² Two days later, Timothy James McVeigh was charged by the Complaint filed April 21, 1995, in the United States District Court for the

* This Essay was originally published by the Oklahoma Law Review. Stephen Jones & Jennifer Gideon, *United States v. McVeigh: Defending the "Most Hated Man in America"*, 51 Okla. L. Rev. 617 (1998).

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1. CITY OF OKLA. CITY DOCUMENT MGMT. TEAM, ALFRED P. MURRAH FEDERAL BUILDING BOMBING APRIL 19, 1995 FINAL REPORT 111 (Carol Smith ed., 1996).

2. *Id.*

Western District of Oklahoma for the explosion,³ violating 18 U.S.C. § 844(f).⁴

My Appointment as Counsel

The Federal Public Defender, Susan Otto, was initially appointed to represent Mr. McVeigh. At her request, John Coyle was appointed as co-counsel. Both Ms. Otto and Mr. Coyle subsequently moved to withdraw because of conflicts of interest.⁵ Their motions were not granted until May 8, 1995, when I was appointed.⁶

At approximately 9:00 p.m. on May 5, 1995, the Chief Judge of the United States District Court for the Western District of Oklahoma, David Russell, called me at my home.⁷ Judge Russell asked if I knew why he was calling. I did not. The judge then asked whether, if requested, I would agree to defend an individual “who has been, or would be, charged in the

3. See Complaint, *United States v. McVeigh*, No. 5:95-CR-00110 (W.D. Okla. Apr. 21, 1995) (on file with author). Within two hours after the bombing, McVeigh had been arrested by Oklahoma State Trooper Charles Hanger, north of Oklahoma City, one mile south of the Billings, Oklahoma, exit on I-35. McVeigh was charged with a series of misdemeanor offenses, including carrying a concealed weapon, not having proper insurance verification, and not having license tags. On April 21, he was being held in the Noble County Jail because no bail had been set when the FBI and ATF located him and subsequently arrested him on the federal complaint. The state charges were dismissed that same day. Royce Hobbs, a Perry attorney, attempted to see McVeigh after he had been called several times, but either jail officials or the FBI attempted to prevent Hobbs from seeing McVeigh. Hobbs then filed a formal motion with the Noble County District Court demanding access, which the associate district judge granted. Hobbs's actions were in the highest tradition of the bar. See *In re Ades*, 6 F. Supp. 467, 473 (D. Md. 1934). He simply refused to be put off or blocked from seeing someone in custody who wished to consult with an attorney.

4. *Id.* (charging, pursuant to 18 U.S.C. § 844(f)(1), that Mr. McVeigh did “maliciously damage and destroy by means of fire or an explosive, any building, vehicle and other personal or real property in whole or in part owned, possessed, or used by the United States, any department, or agency thereof.”).

5. See Motion to Withdraw & for Appointment of Substitute Couns., *United States v. McVeigh*, No. M-95-98-H (W.D. Okla., Apr. 24, 1995) (on file with author); Application for Appointment of Substitute Couns. & Concomitant Motion to Withdraw, *McVeigh*, No. M-95-98-H (W.D. Okla., Apr. 24, 1995) (on file with author).

6. *Stephen Jones: Defense Attorney for Timothy McVeigh*, VOICES OF OKLA. (Jan. 27, 2010), <https://voicesofoklahoma.com/interviews/jones-stephen/> [<https://perma.cc/W9RD-8YY4>] (transcript).

7. In an interview published in *Briefcase*, the periodical of the Oklahoma County Bar Association, Judge Russell outlines the reasons and circumstances for appointing me. Jeannie Pinkston, *The Right Decision: An Interview with Judge Russell*, BRIEFCASE, Apr. 1998, at 1, 2.

Oklahoma City Bombing.”⁸ I told him that I had no professional problem with it, but I would have to discuss it with my family and law partners.⁹ He gave me approximately twenty-one hours to consider, asking me to call him back at 6:00 p.m. the following day.¹⁰ After sitting in the darkness of my library for an hour, Sherrel came home.¹¹ She had a premonition that I would be called to defend Mr. McVeigh.¹² I had no such premonition and was not even on the Criminal Justice Panel, from which lawyers were assigned to represent indigent defendants when there was a conflict—as there was here—with the public defender’s office. After I informed her of the phone call, we began calling the children and people who knew me well in the community in order to get their opinions on the possible appointment.¹³

The following day, May 6, 1995, I informed Chief Judge Russell that I would agree to represent such a person, and he appointed me as Tim McVeigh’s lead defense counsel.¹⁴ He asked me to meet him in his chambers that Monday at 1:30 p.m.¹⁵

That weekend, I re-read the book by John Kaplan and Jon Waltz, *The Trial of Jack Ruby*.¹⁶ It was a manual of how *not* to defend an infamous murder case, which I read with sober attention.¹⁷ Two of the first questions that I reduced to writing were, “Why Oklahoma City?” and “Why the Murrah Building?”

On May 8, 1995, pursuant to the Crimes Act of 1790, codified now as the Criminal Justice Act, 18 U.S.C. §§ 3005, 3006A, I was formally appointed as Mr. McVeigh’s counsel.¹⁸ At the time of my appointment, I felt myself qualified to take on such a significant obligation: defending the

8. The background concerning my appointment and the reasons that I accepted the court’s invitation are set forth in detail in my book entitled *Others Unknown*. Nothing in the book violates Rule 1.6 of the Model Rules of Professional Responsibility. See STEPHEN JONES & PETER ISRAEL, *OTHERS UNKNOWN: THE OKLAHOMA CITY BOMBING CASE AND CONSPIRACY 10-27* (1st ed. 1998).

9. *Stephen Jones: Defense Attorney for Timothy McVeigh*, *supra* note 6.

10. *See id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. JOHN KAPLAN & JON R. WALTZ, *THE TRIAL OF JACK RUBY* (1996).

17. *See id.* (detailing the trial of Jack Ruby for murdering Lee Harvey Oswald, President John F. Kennedy’s assassin).

18. *Stephen Jones: Defense Attorney for Timothy McVeigh*, *supra* note 6; Crimes Act of 1790, 1 Stat. 112.

man charged with the largest mass murder in the history of the country. I had been a lawyer for more than a quarter of a century, tried numerous homicide cases in both federal and state courts, was admitted to practice in all relevant federal courts, and had argued cases orally before the Tenth Circuit and the United States Supreme Court. In addition to a substantial civil practice,¹⁹ I had also served as a personal research assistant to Richard Nixon in New York City in 1964; special assistant to Senator Charles Percy of Illinois; administrative assistant to Congressman Paul Findley, the Republican nominee for U.S. Senate in 1990; and had represented three of the five Republican Governors.²⁰

I had a clear appreciation of my responsibility and of that “individual sense of duty which should and naturally would accompany the appointment of a selected member of the bar” to defend a case such as this.²¹ As Mr. McVeigh’s defense attorney, I was responsible for presenting his defense. He was often described as “the most hated man in America,” but my job was still to do and say for him what he could not do and say for himself, as well as to ensure that neither his life nor liberty was taken from him except by due process of law.²² During that meeting with Judge Russell, I told him that I would not defend Mr. McVeigh with one hand tied behind my back. I viewed my role as his defense counsel as one that required me to be zealous.²³

I considered my oath of obligation as a lawyer and believed that I had

19. Perhaps I did not realize it at the time, but in my senior year of high school and first two years of college, I worked for three funeral homes in Houston: Jack Carswell and Company, Landig Funeral Home, and Heights Funeral Home. Those duties included the removal and recovery of deceased human beings, including victims of bomb explosions (e.g., the Poe Elementary School Bombing in Houston, Texas, on September 15, 1959). This work prepared me emotionally for reviewing the files from the medical examiner’s office of the 168 men, women, and children killed by the bomb. See RICHARD A. SERRANO, *LAST OF THE BLUE AND GRAY: OLD MEN, STOLEN GLORY, AND THE MYSTERY THAT OUTLIVED THE CIVIL WAR* 171 (Duke Johns ed., Smithsonian Books ed. 2013); R. VICTOR LANDIG, *BASIC PRINCIPLES OF FUNERAL SERVICE* 18 (1956) (discussing the broad duties a funeral director and funeral home employees engage in); WILLIAM HENRY KELLAR & ELISABETH O’KANE, *SERVICE CORPORATION INTERNATIONAL: THE CREATION OF THE MODERN DEATH CARE INDUSTRY* (1st ed. 1990).

20. *Stephen Jones: Defense Attorney for Timothy McVeigh*, *supra* note 6.

21. *Powell v. Alabama*, 287 U.S. 45, 56 (1932).

22. See MODEL RULES OF PRO. CONDUCT r. 1.3 (A.B.A. 2023).

23. See MODEL CODE OF PRO. RESP., CANON 7 (A.B.A. 1980) (“A Lawyer Should Represent a Client Zealously Within the Bounds of the Law”); *but see* *State v. Richardson*, 514 N.W.2d 573, 576-77 (Minn. Ct. App. 1994) (“A prosecutor may not seek a conviction at any price.”).

a duty to accept.²⁴ Once I accepted, it was my duty to see that the legal system, established by our Constitution, worked and that nothing was taken from Mr. McVeigh except by due process of law.

The Indictment and Pre-Trial Issues

On August 10, 1995, an Indictment was returned by the United States Grand Jury for the Western District of Oklahoma, charging Timothy James McVeigh, Terry Lynn Nichols, and others unknown in connection with the bombing.²⁵ The Indictment identified 160 deceased: 152 were named in Count One, and 8 were named in Counts Four through Eleven. The eight were named separately because of their statuses as federal agents. On August 15, 1995, Mr. McVeigh and Mr. Nichols entered pleas of not guilty.

On August 22, 1995, I moved for Judge Alley²⁶ to recuse himself under 28 U.S.C. § 455(a) on the grounds that his courtroom and chambers had been damaged by the bombing and that one member of his staff had received a slight injury.²⁷ In addition, I argued for his recusal because of close familiarity with persons who were killed and injured, and because the “federal court family” was a victim.²⁸ Judge Alley denied the motion by formal order on September 14, 1995, the same day that he set the trial in Lawton, Oklahoma.²⁹ Judge Alley’s formal order found that it would be “chancy” to try to select a jury from the Oklahoma City area.³⁰ By October 21, 1995, the government stated its intention to seek the death penalty.³¹

The Nichols defense, using facts and evidence developed by

24. See MODEL RULES OF PRO. CONDUCT r. 6.2(c) (A.B.A. 2023); MODEL CODE OF PRO. RESP. EC 2-28, 2-29; Peter Applebone, *The Pariah as Client: Bombing Case Rekindles Debate for Lawyers*, N.Y. TIMES, Apr. 28, 1995, at A1.

25. 18 U.S.C. §§ 2(a)-(b), 844(f), 1111, 1114, 2332a(a) (1994) (charging McVeigh and Nichols with one count of conspiracy to use a weapon of mass destruction; one count of use of a weapon of mass destruction (a “truck bomb”); one count of destruction by explosives; and eight counts of first-degree murder).

26. Judge Wayne E. Alley received the case, pursuant to regular assignment, on August 10, 1995. Prior to Judge Alley’s appointment, Judge David Russell had been assigned to handle the pre-indictment issues.

27. Nichols v. Alley, 71 F.3d 347, 349-50 (10th Cir. 1995) (per curiam).

28. *Id.* at 350.

29. *Id.*

30. See Order entered September 14, 1995, at 20, United States v. McVeigh, No. 5:95-CR-00110 (W.D. Okla. Apr. 21, 1995).

31. Notice of Intention to Seek Death Penalty as to Defendant Timothy James McVeigh, United States v. McVeigh, No. M-95-98-H (W.D. Okla., Oct. 20, 1995).

McVeigh's defense team, petitioned the Tenth Circuit for a writ of mandamus requiring Judge Alley to recuse himself, which was subsequently granted.³² Tenth Circuit Chief Judge Stephanie Seymour assigned the case to Judge Richard P. Matsch of the United States District Court for the District of Colorado on December 4, 1995.

Because of the prolonged and massive amounts of prejudicial publicity in Oklahoma, the court granted the defendants' motion for change of venue, transferring the case to Denver on February 20, 1996.³³ On October 25, 1996, the court granted our Motion for Severance, ordering that McVeigh's trial would occur first.³⁴

Defense Costs

Reports have indicated that the defense of McVeigh cost somewhere between ten and fifteen million dollars. I do not know the precise figure, but I suspect that figure is fairly accurate. Judge Russell, Judge Alley, and Judge Matsch were fully committed to ensuring adequate funding for the defense, never "second guessing" our strategy. Although some people criticized the defense's travels overseas, Judge Matsch fully authorized such trips to find expert witnesses, interview fact witnesses, or pursue investigative leads, as many experts were not available to us in the United States. Each time, the defense counsel submitted *detailed* statements to justify all expenditures. These expenditures were not only appropriate but necessary. As Judge Matsch wrote on March 17, 1997:

Foundational fairness requires that the person accused has legal counsel with the skill, competence, experience and courage to provide him with effective representation of his interests at all stages of the proceedings. When counsel are appointed, they must be given adequate resources to support a separate and independent investigation, including technological tools and the expertise of those who have relevant knowledge and experience to assist in preparing to challenge the charges made against the defendant.³⁵

32. *Nichols*, 71 F.3d at 350, 352.

33. *United States v. McVeigh*, 918 F. Supp. 1467, 1475 (W.D. Okla. 1996).

34. *United States v. McVeigh*, 169 F.R.D. 362, 371 (D. Colo. 1996).

35. *United States v. McVeigh*, 955 F. Supp. 1281, 1282 (D. Colo. 1997).

There were substantial reasons for such extraordinary expenses. The crime and specific charge (use of a weapon of mass destruction) was unprecedented, as the bombing was the largest act of domestic terrorism on American soil at the time. We had to examine 168 files of the State Medical Examiner's Office; 30,000 witness interviews; 100,000 photographs; 156 million calls; 1 million hotel/motel registrations; 500 hours of audio; 400 hours of video; and 25,000 pages of lab reports and worksheets. We also had to defend against approximately 100 ancillary actions filed in the case by victims, organizations for victims, media, and strangers to the case.

Additionally, we filed a number of motions that were vigorously contested by the government, including, but not limited to, motions to dismiss all or portions of the Indictment;³⁶ a challenge to the death penalty statutes and procedures; motions for the recusal of the court;³⁷ orders requiring handwriting exemplars;³⁸ a motion for a change of venue;³⁹ a subsequent motion for a change of venue;⁴⁰ a motion to suppress and preclude evidence;⁴¹ a motion for severance;⁴² motions in limine; motions for access; motions for discovery; and motions for Rule

16 material.⁴³ Almost none of these issues were conceded by the government, consequently requiring us to stipulate to nothing at trial.

Efforts to Secure a Fair Trial

Though Mr. McVeigh was ultimately convicted and given the death

36. See *United States v. McVeigh*, 940 F. Supp. 1541 (D. Colo. 1996); *United States v. McVeigh*, 940 F. Supp. 1571 (D. Colo. 1997); *United States v. McVeigh*, 955 F. Supp. 1281 (D. Colo. 1997).

37. See *Pinkston*, *supra* note 7.

38. See *United States v. McVeigh*, 896 F. Supp. 1549, 1551-52 (D. W.D. Okla. 1995).

39. See *United States v. McVeigh*, 918 F. Supp. 1467, 1474 (D. W.D. Okla. 1996).

40. See *United States v. McVeigh*, 955 F. Supp. 1281, 1281 (D. Colo. 1997).

41. See *United States v. McVeigh*, 940 F. Supp. 1541, 1545 (D. Colo. 1996) (granted in part, denied in part).

42. See *United States v. McVeigh*, 169 F.R.D. 362, 370 (D. Colo. 1996) (motion granted).

43. See *United States v. McVeigh*, 923 F. Supp. 1310, 1311 (D. Colo. 1996) (granting in part and denying in part a motion for discovery); *United States v. McVeigh*, 954 F. Supp. 1454, 1457 (D. Colo. 1997) (denying a motion in limine); *United States v. McVeigh*, 955 F. Supp. 1278, 1279-80 (D. Colo. 1997) (denying McVeigh's motion for *Daubert* hearing).

penalty, we worked zealously on his behalf and accomplished significant legal protection of his interests. Shortly before the trial, however, disclosures by the *Dallas Morning News* and *Playboy* destroyed any prospect of an acquittal for McVeigh.⁴⁴

The *Dallas Morning News* claimed that it had “legally” acquired confidential defense memoranda, establishing that McVeigh had made incriminating admissions concerning his role in the bombing.⁴⁵ The article achieved national publicity and came at a time when members of the jury panel were summoned.⁴⁶ The following week, *Playboy* magazine published yet another claim to have possession of a “chronology” from the defense files, which contained incriminating admissions.⁴⁷ ABC News also carried a repeat on its evening broadcast.⁴⁸

J.D. Cash, a reporter for the *McCurtain County Gazette*, issued a written statement that he was familiar with the document and that it was not a confession or admission but rather prepared by the defense team to have a “security blanket.”⁴⁹ It was thought by the defense to be necessary because investigators often questioned people who were paranoid or who

44. Of course, I still believe that the reporter from the *Dallas Morning News* had obtained the documents illegally, without the consent of their owner, Tim McVeigh, or his attorneys. See generally *United States v. Morison*, 844 F.2d 1057 (4th Cir. 1988) (discussing convictions of defendants under the Espionage Act, 18 U.S.C. § 793); *United States v. Rosen*, 445 F. Supp. 2d 602 (E.D. Va. 2006), *aff'd*, 557 F.3d 192 (4th Circuit, 2009) (same); see also *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 588 n.15 (1976) (Brennan, J., concurring in the judgment) (“Of course, even if the press cannot be enjoined from reporting certain information, that does not necessarily immunize it from civil liability for libel or invasion of privacy or from criminal liability for transgressions of general criminal laws during the course of obtaining that information.”).

This case was not the first time that a *Dallas Morning News* reporter had faced the possibility of serious criminal sanctions for using information that he had illegally obtained. See *People v. Kunkin*, 100 Cal. Rptr. 845, 850 (Cal. Ct. App. 1972), *rev’d on other grounds*, 9 Cal. 3d 245 (1973); Lionel S. Sobel, *Government Documents as “Stolen Property”*: Reflections on the “Free Press” Case, 49 L.A. BAR BULL. 291, 294-96 (June 1973). A person who has received a document or other material that is known to be stolen or accessed without authorization and who travels across state boundaries with the document or disseminates it over telephone lines, may be charged with violation of federal law prohibiting interstate transportation of stolen property. 18 U.S.C. § 2314.; see *United States v. Riggs*, 739 F. Supp. 414, 423 (N.D. Ill. 1990).

45. *United States v. McVeigh*, 153 F.3d 1166, 1180 (10th Cir. 1998).

46. *Id.* at 1180-81.

47. *Id.* at 1180.

48. *Id.* at 1182 n.3.

49. See generally Darcy O’Brien, *Oklahoma Scoops*, NEW YORKER: TALK OF THE TOWN, Mar. 10, 1997, at 1 (discussing Cash’s articles in reference to the *Dallas Morning News* article).

had violent, criminal backgrounds. Therefore, the internal production of what might loosely be described as a “Zinoviev Telegram”⁵⁰ was assumed by those who prepared it to be proper and right under the circumstances, to protect the physical safety of our investigators and to assist us to get the truth.

The “defense chronology” did not contain damaging or incriminating admissions by McVeigh but had been prepared by numerous persons without accurate information.⁵¹ All material in the chronologies came from either interviews; public sources; media; 302s, or FBI reports; and they were updated every ten days.

Neither reporter obtained the documents “legally.” To this day, neither the reporters nor the corporations have been able to explain, without authorization, how they could obtain confidential defense documents “legally.”

Our team was able to secure the recusal of Judge Alley, the change of venue from Oklahoma City to Denver, the suppression of Terry Nichols’s statement as evidence against our client, the severance of trials, the delayed trial date, and the financial support sufficient to enable us to prepare the defense that we did.⁵² We also received a number of favorable rulings from the court that required the government to produce evidence

50. The comparison here is that the so-called investigator’s statement containing McVeigh’s “admissions” was a Zinoviev Telegram to be used to protect members of the defense staff when interviewing individuals who had a reputation for a propensity to violence in the furtherance of their political objectives in the event they were of the belief we were accusing them of the bombing. See Richard Norton-Taylor, *Zinoviev Letter was Dirty Trick by MI6*, GUARDIAN (Feb. 3, 1999, at 22:09 EST), <https://www.theguardian.com/politics/1999/feb/04/uk.politicalnews6> [<https://perma.cc/3MNP-UA EJ>] (discussing how there is a strong suspicion that the Zinoviev Letter was a forgery and was deliberately leaked by the British Secret Services who intercepted it, shortly before the October 1924 general election, in order to scare voters to the Conservative party).

51. See Kevin Flynn & Lou Kilzer, *Nichols’ Role Big, McVeigh Document Says*, ROCKY MOUNTAIN NEWS (Jan. 18, 1998), <https://web.archive.org/web/19980709212300/http://insidedenver.com/extra/bomb/0118okc1.html> (on file with the Oklahoma City University Law Review) (pointing out the many factual mistakes in the document, implying that if McVeigh was the source for the details, then he didn’t know what he was talking about. If this is so, then the document is exculpatory and its language does not suggest guilty knowledge so much as it does that he was accepting responsibility for something he didn’t do to protect others, or the document, as we said, did not contain information from McVeigh).

52. See *United States v. McVeigh*, 940 F. Supp. 1541, 1545 (D. Colo. 1996).

which it had previously been unwilling to produce.⁵³

Finally, the court entered a series of rulings on evidentiary matters that were beneficial to the defense. Initially, Judge Russell ruled that McVeigh's failure to give handwriting exemplars could be introduced into evidence,⁵⁴ but Judge Matsch overturned that ruling partially on the grounds that opinion testimony by "handwriting experts" would not be permitted under the *Daubert* test.⁵⁵ There was no science that recognized handwriting comparison. Additionally, as a result of our "vetting" and challenges to the government's eyewitness identification testimony and evidence, the government did not call any witness who claimed to have seen McVeigh in Oklahoma City on April 19. Of the four witnesses at Elliott's Body Shop, only one was called to testify.⁵⁶ Early on, the government's witness list included a witness who allegedly claimed to have seen McVeigh on I-35 in the early morning hours of April 19, but the government likewise did not call the witness to testify.⁵⁷ The government also did not offer any evidence concerning the so-called Roger Moore robbery, claims that the bomb had been built at Geary State Lake north of Herrington, Kansas, or claims that the conspiracy began at Vian, Oklahoma.

Evidence concerning the identity of "others unknown" in the conspiracy (as alleged in the Indictment) was ultimately denied by Judge Matsch, though portions of this evidence were admitted during Nichols's trial. Additionally, in the sentencing stage, the defense wished to prove, as a fact, that the government had violated the Branch Davidians' constitutional rights at Mt. Carmel, ranging from murder to illegal

53. See *United States v. McVeigh*, 923 F. Supp. 1310, 1312-16 (D. Colo. 1996) (discussing the impact of *Brady v. Maryland*, 373 U.S. 83, 83 (1963), requiring the government to turn over all exculpatory evidence); see also Tr. of Dec. 13, 1995, 45-46 (directing the government not only to furnish exculpatory evidence, but to organize it by categories, including lab reports, dictation, analysis, and other materials from the bombing) (on file with the Stephen Jones Oklahoma City Bombing Archive at the University of Texas at Austin); but see 923 F. Supp. at 1313 (refusing to order the government to provide national intelligence data, but reminding the government of its obligation under *Brady*).

54. *United States v. McVeigh*, 896 F. Supp. 1549, 1562-63 (W.D. Okla. 1995).

55. See Order, *United States v. McVeigh*, 1997 WL 47724 (D.Colo.Trans. Feb. 5, 1997) (on file with author). Defendant's brief, reprinted 11 BNA Criminal Practice Manual 88 (No. 5, Feb. 26, 1997).

56. The only one called was Eldon Elliot.

57. See generally Transcript, Defendant's Motion to Suppress Eyewitness Identification, Vol. I-III, February 18-20, 1997. The government's final list of "eyewitnesses" was approximately eleven people. Most testified at a hearing before trial. This hearing was resisted by the government, but necessary because the witnesses had refused to talk to the defense.

trespass.⁵⁸ The defense made a substantial offer of proof based on eyewitness testimony, trial deliberations, expert opinion, congressional hearings, report and testimony, reports from the government's expert witness, and a videotape from the FBI overhead surveillance plane on the morning of April 19, 1993.⁵⁹ Evidence that the defense had concerning the government's possible prior knowledge of the bombing was not admitted.

Organization of the Defense Team and Experts Retained

Seventeen attorneys from this country, in addition to attorneys from the London solicitor law firm Kingsley Napley,⁶⁰ represented McVeigh. The defense was organized by me into six teams, each team having a leader. Rob Nigh, the deputy principal defense counsel, served as the leader of Team One, which prepared for the first stage of the trial. Team One handled matters relating to the Classified Information Procedures Act, directed the international aspects of the investigation, oversaw the review of evidence concerning the "Daryl Bridges" Telephone Debit Calling Card, supervised the investigation of the so-called Roger Moore robbery, handled forensic evidence, and managed eyewitness identification.

Team Two's leader was Richard Burr, who served with the NAACP Legal Defense Fund and argued several death penalty cases. This team prepared an excellent presentation on mitigation for the sentencing phase,

58. See *United States v. Branch*, 91 F.3d 699, 709-10 (5th Cir. 1996) (denying rehearing and rehearing en banc).

59. See Richard Leiby, *Waco: Still Burning*, WASH. POST, Apr. 17, 1997; DICK J. REAVIS, *THE ASHES OF WACO: AN INVESTIGATION* (Simon & Schuster ed. 1995); *ARMAGEDDON IN WACO: CRITICAL PERSPECTIVES ON THE BRANCH DAVIDIAN CONFLICT* (Stuart A. Wright ed., Univ. of Chi. Press ed. 1995); see also DAVID B. KOPEL & PAUL H. BLACKMAN, *NO MORE WACOS: WHAT'S WRONG WITH FEDERAL LAW ENFORCEMENT AND HOW TO FIX IT* (Prometheus Books ed. 1997); *Activities of Federal Law Enforcement Agencies Toward the Branch Davidians*, J. Hearing Before the Subcomm. on Crime of the H. Comm. on the Judiciary & the Subcomm. on Nat'l Sec., Int'l Affs., & Crim. Just. of the H. Comm. on Gov't Reform & Oversight, 104th Cong. (1995).

60. Sir David Napley, former President of the Law Society of England, was one of the founding partners of Kingsley Napley. He, along with Christopher Murray and George Carman, Q.C., successfully represented Jeremy Thorpe, the leader of the British Liberal Party, when he was charged with conspiracy to commit murder. Sir David represented the individual charged with the attempted assassination of The Princess Royal, Princess Anne. See *SIR DAVID NAPLEY, NOT WITHOUT PREJUDICE: THE MEMOIRS OF SIR DAVID NAPLEY* (1st ed., George G. Harrap & Co. Ltd. 1982). Kingsley Napley was retained by the defense in order to assist us with a factual investigation in Europe and to obtain experts in bomb trace analysis in the United Kingdom. John Clitheroe and Christopher Murray of the firm provided invaluable counsel and advice.

should our client be found guilty.

Team Three's leader was Robert "Bob" L. Wyatt, IV. Originally, this team was designed to control, record, receive, and examine evidence and other discovery materials. As the problem arose with the FBI laboratory, this team also reviewed the forensic evidence and claims that the government made on behalf of such evidence, organizing the defense's counterattack.⁶¹ Bob Wyatt mastered the evidence concerning bomb trace analysis.

Team Four's leader was Michael Roberts. This team was the management or administrative branch of the defense that supervised the preparation of motions to authorize expenses and handled all administrative matters except personnel, which were reserved for me.

Team Five was our legal counsel office, headed by Professor Randy Coyne of the University of Oklahoma College of Law. Professor Coyne was an academic expert on death penalty litigation and the author of a standard law school textbook on capital punishment.⁶²

Finally, Team Six was litigation support, headed by Sam Guiberson. In addition to supervising and operating our computer retrieval and screening system, this team was responsible for the preparation of transcripts based upon court authorized electronic interception of conversations between the Fortiers and members of McVeigh's family.

The defense team also consisted of various defense investigators from the United States, Hong Kong, and the Philippines. Law student Ann Bradley, served as our researcher and aide-de-camp, assisting me with media inquiries and the collection of material for closing arguments. The defense team also used various bomb trace analysis experts from Scotland⁶³ and England.⁶⁴ We were assisted by explosive experts; Dr.

61. For security reasons, one defense lawyer was authorized to carry a concealed sidearm, and Robert Warren was designated.

62. See RANDALL COYNE & LYN ENTZEROTH, CAPITAL PUNISHMENT AND THE JUDICIAL PROCESS (Carolina Acad. Press ed. 1994).

63. See BRIAN CADDY, ASSESSMENT AND IMPLICATIONS OF CENTRIFUGE CONTAMINATION IN THE TRACE EXPLOSIVE SECTION OF THE FORENSIC EXPLOSIVE LABORATORY AT FT. HALSTEAD (1996) (presented to Parliament by the Right Honorable Michael Howard, the Secretary of State for the Home Department by Command of Her Majesty) (on file with author). Professor Caddy's credentials include: B.Sc., Ph.D., CChem, MRSC, Director of the Forensic Science Unit, University of Strathclyde, Glasgow.

64. See BOB WOFFINDEN, MISCARRIAGES OF JUSTICE (Hodder & Stoughton ed. 1987); Ludovic Kennedy, *I Accuse*, SUNDAY TIMES, Feb. 25, 1990, at C1; *The Birmingham Six: A Terrible Truth Unfolds*, ECONOMIST, Mar. 2, 1991, at 58; see also IN THE NAME OF THE FATHER, Apple TV (Universal Pictures 1993).

Jehuda Yinon was the author of one of the only textbooks on bomb trace analysis in the English-speaking world.⁶⁵ Various doctors and psychiatrists assisted us by performing examinations on McVeigh, both physical and psychological. Dr. Stephen Sloan advised the defense on a consulting basis with respect to issues of terrorism.⁶⁶ Ed Simonson, of TeleDesign Management, was a consulting expert for the “Daryl Bridges” Debit Calling Card.

The defense had experts who assisted in consulting on gun control, architecture, toolmarks examination, document examination, coding and scanning, victim impact, fingerprints, tire imprints, filming, Waco, venue, hair and fiber analysis, chemistry, weather, audio and video, penalty phase, engineering, still and video photography, Iraq, daily news transcripts, voir dire, witness coordination, intelligence, security, military records, and firearms and weapons. All of these consulting experts assisted from various states and countries. Various lawyers and academics also assisted the defense in “vetting” the other side’s experts. Peter Tytell,⁶⁷ psychologists, and other academics gave consulting assistance for matters ranging from document analysis to the “unidentified leg” issue. British and Irish barristers and solicitors gave their knowledge and expertise in defending bombing cases. Stuart Wright⁶⁸ and Dick Reavis⁶⁹ assisted in fully understanding the issues concerning the Branch Davidians. Finally, the defense was assisted by Dr. T.K. Marshall, C.B.E. M.D.F.R.C.Path. of Belfast, Northern Ireland, who had performed more autopsies and medical examinations of deceased victims from ammonium nitrate bombs than any other person in the world. It was Dr. Marshall who gave compelling testimony concerning the significance of the unidentified leg recovered at the bombing site.

Aspects of the Defense Work

For the defense, we became familiar with some of the most advanced

65. See JEHUDA YINON & SHMUEL ZITRIN, *MODERN METHODS AND APPLICATIONS IN ANALYSIS OF EXPLOSIVES* (Wiley ed., 1993).

66. See SEAN K. ANDERSON & STEPHEN SLOAN, *HISTORICAL DICTIONARY OF TERRORISM* (3d ed. 2009).

67. Tytell’s father, Martin, was a consulting expert for Alger Hiss. See also ALLEN WEINSTEIN, *PERJURY: THE HISS-CHAMBERS CASE 571* (First Vintage Books ed. 1979) (1978).

68. See *ARMAGEDDON IN WACO: CRITICAL PERSPECTIVES ON THE BRANCH DAVIDIAN CONFLICT*, *supra* note 59.

69. See REAVIS, *supra* note 59.

techniques of the United States government for intelligence gathering in criminal investigations. Representing McVeigh meant the reality of having more than a half-dozen security incidents at my home, FBI investigations on threats against my life, the presence of armed guards on our property for two and a half years, and my wife and I living in a secure and heavily monitored atmosphere.

I viewed the photographs of 168 men, women, and children; saw where their bodies were found, recovered, and identified; and held in my hand the leg that still cannot be identified. This representation meant, on many occasions, twenty-hour days. While it meant getting lunch with prominent reporters like Barbara Walters, Diane Sawyer, Dan Rather, and others, it also meant meeting some of the most bizarre, paranoid, and fanatical people.⁷⁰

I traveled to various countries and states to find people and information to help McVeigh's defense. We traveled by jumbo jet, airbus, automobile, taxi, limousine (paid for independently by the defense), foot, small aircraft, bicycle, and even once by camel. We met with individuals in settings ranging from the elegant Athenaeum Club in London and atop an ancient Roman amphitheater in the Syrian Desert, to the confines of King's College London, remote trailer parks, and Kansas co-ops.

Once even, I met an individual atop the Syrian mountain. We had, by field work in the Philippines, come tantalizingly close to tying the Murrah building bombing to Terry Nichols's clandestine activities in the Philippines. His frequent trips to the Philippines for no apparent purpose; his father-in-law's discovery of bomb-making materials in Nichols's suitcases; the contacts he made in the Muslim community; Nichols's

70. I was also interviewed by two sons of the novelist John LeCarre (*The Spy Who Came in From the Cold*, *The Little Drummer Girl*, and *Tinker, Tailor, Soldier, Spy*), who worked for British "quality newspapers"; the author David Yallop (*To The Ends of the Earth: The Hunt for the Jackal*, *To Encourage the Others*, and *Beyond a Reasonable Doubt?*); and the controversial historian, David Irving, who graciously gave their time. David Leppard, of *The Sunday Times* of London and author of the best-selling book on the bombing of PanAm Flight 103, agreed to help me with my inquiries, as did John Gillespie, the Scottish police officer who initially found the criminal evidence in the plane wreckage that proved a bomb had brought the plane down. See DAVID LEPPARD, ON THE TRAIL OF TERROR: THE INSIDE STORY OF THE LOCKERBIE INVESTIGATION (Vintage Publ'g ed. 1991); AIR ACCIDENTS INVESTIGATION BRANCH, U.K. DEP'T OF TRANSP., REPORT ON THE ACCIDENT TO BOEING 747-121, N739PA AT LOCKERBIE, DUMFRIESSHIRE, SCOTLAND ON 21 DECEMBER 1988 (1990). Finally, there are some individuals here and abroad whose identities I must necessarily hold *in petto*. Retired intelligence officers, active journalists, foreign government officers, retired and active diplomats, and representatives of diverse religious and political organizations, here and elsewhere, have requested anonymity.

claimed apprehension that he would be murdered while in the Philippines; a tip-off from Abraham Mossad to his jailer in “The Tombs” (a.k.a. the New York City Jail); and the disclosures of the Bojinka plot, all seem to brush against Terry Nichols. Were such seemingly irrelevant tidbits just coincidental, or had we stumbled across something?

Judge Matsch, when briefed, appeared interested in determining whether this was credible. I told him that there was only one individual whom I felt could tell me. This individual was a senior international diplomat who had served his Communist government while in Canada and as an Ambassador to the United Nations who, I believe, was: familiar with the positive active measures of groups who were able to inflict injury on the United States; close to the inner circles of Mikhail Gorbachev (former Soviet head of state); knew the leader of every Communist nation; and was someone who I had known and befriended as a part of my tasks in Washington thirty years prior. For surveillance security concerns, we felt that the mountain top was the perfect meeting point.

I handed him a twenty-page memo detailing what we knew, found, or inferred. He read it twice and returned it to me folded in half. He then turned to me and said, “It’s possible, indeed probable. You see, Stephen, during the Cold War, when we were on opposite sides, no one in the West seriously questioned the authority of the President of the United States. In the East, in the camp of ‘real socialism,’ no one seriously questioned the political authority of the General Secretary of the Central Committee of the Communist Party of the Soviet Union. The Cold War was like two scorpions in a bottle, but the Cold War is over, and the West won. The bottle is broken. The scorpions have escaped, and one of them laid eggs. The eggs have hatched, and what you have seen and found is a look into the future.”

On September 11, 2001, I understood exactly what he meant. Perhaps our uncertain steps while following a trail of foreign involvement could not be proven sufficiently to introduce into evidence, but as Ann Bradley said about “The Tombs” informant, “Perhaps he is wrong on the specific, but right on the general.” Meaning, when he wrote that foreign terrorists in the Philippines had caused the Murrah bombing, he was wrong, but that when a group of terrorists planned to fly hijacked planes into the CIA headquarters and other government buildings in Washington, D.C., he was right. Tim McVeigh claimed that he knew “nothing” about Terry Nichols’s activities in the Philippines. I did not dispute that claim.

Our trips overseas were necessary to interview fact witnesses in the Philippines where Mr. Nichols had traveled several times and to locate

expert witnesses in the U.K. and in the Middle East on the subject of terrorism, bomb engineering, and trace analysis because such witnesses were not available to us in the U.S.

As part of my duties, I met in secret locations with members of international Jewish organizations here and abroad who were just as interested in American neo-Nazis and whether they had a connection with the bombing. In other locations, I met with representatives of arguably the world's most successful terrorist organization, the Provisional Irish Republican Army.

Representing McVeigh meant reviewing satellite photographs taken above downtown Oklahoma City and rural Kansas, missing my son's high school graduation, and being unable to see my mother for nearly four weeks after she suffered a stroke. I stood in my apartment on the

second anniversary of the bombing and listened to more than 200 churches ring their bells 168 times in memory of the dead.

Obstacles to our Work

In our representation of McVeigh, we worked against a backdrop of repeated congressional criticism, interference in the proceedings, and successful efforts to change the law in the middle of the case to overturn rulings made by Judge Matsch.⁷¹ Though we won many, but not all, contested legal points of any significance, we were constantly bombarded with lacerating, sarcastic, and critical commentary by so-called media experts who were often lawyers that were either not in the courtroom during the trial or didn't know the facts. Very few of them had any experience in defending a capital case. We were not simply charged with representing a man accused of serial homicides or mass murder, but we were defending a man charged with revolutionary violence and terror on a scale never before seen in this country.

Media

From the first few minutes after the bomb exploded, through the

71. See, e.g., 18 U.S.C. § 3510 ("The Victim Rights Clarification Act of 1997"); Penny Owen, *Survivors Seek Clarification of Trial Rules*, OKLAHOMAN (Apr. 5, 1997), <https://www.oklahoman.com/story/news/1997/04/05/survivors-seek-clarification-of-trial-rules/62318738007/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z115422d00—v115422b0061xxd006165&gca-ft=184&gca-ds=sophi> [https://perma.cc/8EG8-F4Z7].

completion of Terry Nichols's trial, the bombing attracted the widespread interest of the media. There was no "public affairs" spokesman for the defense other than me. In fact, all members of the defense team were specifically prohibited from speaking with the press except for a select few. The purpose of these tight restrictions was to minimize the possibility of information being released that might injure our client, the defense, or violate the court's orders.

Our contacts with the media were completely consistent with our duties as McVeigh's counsel, and Judge Matsch so found.⁷² Judge Matsch never found it to be the contrary, though asked repeatedly to do so by the government.

During the course of representing McVeigh, I dealt not only with representatives of major networks, newspapers, and radio stations, but also with smaller entities, both domestic and international. At the trial itself, more than 2,500 reporters were accredited, and several hundred were present at any one time.

Though many judges, and some lawyers, criticize lawyers who speak with the press about a case, there is a substantial latitude in allowing lawyers to speak with the media under the applicable Model Rules of Professional Responsibility, the American Bar Association's Prosecution and Defense Standards, and the Department of Justice guidelines. Media contact was permissible, even necessary in our judgment, under the Model Rules and Judge Matsch's orders. Judge Matsch, himself, specifically recognized that the representation of McVeigh included representation in the "court of public opinion."⁷³ The velocity of coverage on the case, much of it based on false and misleading information, required a defense "truth squad" in order to slow down a rush to judgment before the first witness testified.

During the course of representing McVeigh, the court's orders with respect to what could and could not be discussed were modified four times.⁷⁴ To the media, we explained some legal positions that the defense

72. *See* *United States v. McVeigh*, 964 F. Supp. 313, 315 (D. Colo. 1997) (holding that "defense lawyers have a legitimate need to communicate with the news media in preparing for trial" and that "Stephen Jones, lead counsel for Timothy McVeigh, conducted a very active and aggressive campaign to mitigate the negative effects of statements from government sources and from broadly circulated speculations about what could be 'evidence' against his client.").

73. *See* *United States v. McVeigh*, 955 F. Supp. 1281, 1282 (D. Colo. 1997).

74. *See* Order of May 12, 1997, *United States v. McVeigh*, 964 F. Supp. 313 (D. Colo. 1996); *id.* at 315-16 ("While this case was in Oklahoma, all counsel were subject to the limitations imposed by Rule 27 of the Local Rules Governing Proceedings in the Western

was taking, causes of delay in proceedings, media policy, and attempted to correct a variety of public misinformation. These disclosures were necessary so that the public, witnesses, and jurors did not receive misimpressions about the integrity of the defense.

Defense counsel was never sanctioned, censured, reprimanded, or criticized by the court for any violation of the court orders.

Trial

Jury selection commenced on March 31, 1997. Opening arguments began on April 24. The government rested on May 21, and the defense rested on May 28. Oral arguments were on May 29, and the jury returned a guilty verdict on June 2. Evidence in the second stage began on June 3. The mitigation defense began June 6, and the case went to the jury on June 12. On June 13, 1997, the jury returned a sentence of death. On July 7, a motion for new trial was filed, supported by a brief of approximately 250 pages. The motion was subsequently overruled on August 11.

The government's witness list identified over 327 potential witnesses, but only 141 were actually called in both stages. The defense called twenty-five witnesses in the first stage and twenty-six in the second stage.

The government's case against McVeigh centered around six points: (1) the testimony of Michael and Lori Fortier as cooperating witnesses; (2) the arrest of McVeigh by an Oklahoma state trooper on I-35 approximately an hour and a half after the bombing; (3) reports from the FBI forensic laboratory concerning the examination of certain tangible objects, which allegedly tied McVeigh to the bomb; (4) the "Daryl Bridges" Telephone Debit Calling Card, sometimes known as the "Spotlight" calling card; (5) McVeigh's political opinions; and (6) the purported identification of McVeigh as "Robert Kling," the individual who rented the Ryder truck in Junction City, Kansas, on April 17, 1995.

The defense could not dispute the second and fifth issues. McVeigh's arrest and his political opinions were established facts. The defense did, however, differ with the interpretation of these facts. McVeigh's political views, while extreme, were possibly shared by several million people. His arrest helped us because there wasn't enough time for him to travel from Oklahoma City to his arrest location. The other four contentions were all disputed.

District of Oklahoma."); *id.* at 316 (outline of Order of April 24, 1997); *see* Order of June 13, 1996, *United States v. McVeigh*, 931 F. Supp 756 (D. Colo. 1996).

The Fortiers had received significant benefits from the government in return for their testimony, which conveniently changed from what they had said for several weeks following the bombing. They also faced greater prison sentences for their drug charges than they would have received for charges in connection with the bombing. In addition, we attempted to demonstrate not only their inconsistency and lack of credibility but cross-examined them on their recorded statements about making millions off of the case. We also attempted to demonstrate that almost every “fact” that they testified to was available in the media before they began to “correct” their stories.

We challenged the Spotlight debit calling card on several grounds, including the fact that it was impossible to prove who actually made the calls in question. It did not have an electronic chain of billing, so the billing had to be recreated out of millions of phone records; thus, the possibility of error was great.

The testimony of the “eyewitnesses” was offered at only minimal levels by the government, likely as a result of the defense’s investigation of those witnesses and our own cross-examination of them at the hearing on the motion to suppress held February 18–20, 1997. I believe that the cross-examination destroyed the credibility of many witnesses. Witnesses also gave conflicting statements about McVeigh’s physical appearance while he was using the alias “Kling,” some of which were inconsistent with the obvious features of McVeigh’s weight, face, and clothing. Of particular assistance was a security tape of McVeigh at the McDonald’s in Junction City approximately twenty minutes before the Ryder truck was rented. This showed him wearing clothing remarkably different from that described as being worn by “Kling” when he rented the truck.

The defense was assisted in the cross-examination of the FBI witnesses and others by access to the Inspector General’s report of its investigation into the FBI lab. It described the work of the lab in many high-profile cases as nothing more than working backwards to support the field agent’s hypothesis of guilt. They even purposefully left out their most capable bomb-trace analyst from the investigation.

In the second stage, the government relied again on victim-witness testimony, which was emotionally draining and gut-wrenching. The defense called numerous witnesses, friends, and neighbors of McVeigh to paint a dramatically different picture than what the nation had been exposed to by the news coverage. I wanted to present, as a mitigating defense, that mercy is a greater virtue than justice. Or, as The Holy See’s Apostolic Delegate to the United Kingdom Archbishop H. Eugene

Cardinale told me, “The imposition of capital punishment by the State in all cases is contrary to the teachings of Christ and his Church.” Our efforts through a Polish senior diplomat to obtain, from the Holy See, some support for a life rather than a death sentence, perhaps was realized in a pastoral letter written by the Archbishop of the Archdiocese of Denver and read aloud from the pulpit at the 11:00 mass on the second anniversary of the bombing in every Catholic Church in the Archdiocese. Shortly before the scheduled execution of Tim McVeigh, His Holiness (Saint) John Paul II handwrote a letter, which was delivered to President George W. Bush, seeking a commutation of the death sentence. These efforts were unavailing. Public opinion polls taken on the day after my client was executed showed the highest level of support for the death penalty in the history of such polling.⁷⁵

The defense also wanted to prove as a matter of fact and law that the government had committed murder against the Branch Davidians at Waco, but Judge Matsch restricted the defense only to sources that McVeigh used. Since many of these were inflammatory and lacked objectivity, the defense was not assisted by this limited evidence. Had the jury heard the complete evidence concerning Waco, the verdict in the second stage may have been different.

Appeal

Following the imposition of judgment and sentence on August 14, I filed a timely Notice of Appeal. Thereafter, I asked the Tenth Circuit to appoint Rob Nigh to assist me on the appeal and filed a separate motion asking to withdraw. Both motions were granted. Mr. McVeigh’s appeal was argued April 28, 1998, and the Tenth Circuit affirmed McVeigh’s conviction and sentence on September 8, 1998.⁷⁶ Additionally, the circuit ruled against the *Dallas Morning News* in its appeal to unseal certain pretrial pleadings.⁷⁷ McVeigh was subsequently executed on June 11, 2001, just three months prior to the 9/11 attacks on the Twin Towers in New York City.⁷⁸

75. See *Opinion Polls Indicate High American Support for McVeigh Execution*, VOICE OF AMERICA (Oct. 27, 2009) <https://www.voanews.com/a/a-13-a-2001-06-08-1-opinion-66412317/549707.html> [<https://perma.cc/GP6J-75V2>].

76. See *United States v. McVeigh*, 153 F.3d 1166, 1222 (10th Cir. 1998).

77. See *United States v. McVeigh*, 119 F.3d 806, 807, 815 (10th Cir. 1997).

78. See *The Encyclopedia of Oklahoma History and Culture*, OKLA. HIST. SOC’Y <https://www.okhistory.org/publications/enc/entry?entry=OK026> [<https://perma.cc/3B9G-TPSS>] (last visited Oct. 23, 2025).

Concluding Thoughts

In summary, representing Tim McVeigh was challenging, but I spent more time with him during the years I represented him than any other person, and I got to know him very well. When I think of Mr. McVeigh, I am reminded of William Faulkner's short story, *Tomorrow*.⁷⁹

There, Mr. Bookwright was charged with the murder of Buck Thorpe.⁸⁰ The county attorney tells the story of Stonewall Jackson Fentry.⁸¹ Fentry ended up on the jury trial of Bookwright and would not vote to acquit him.⁸²

The most sobering part of the experience was when I learned who my friends were. In her wonderful novel *To Kill A Mockingbird*,² Harper Lee's fictional lawyer, Atticus Finch, tells his daughter, Scout, "[S]imply by the nature of the work, every lawyer gets at least one case in his lifetime that affects him personally. This one's mine"⁸³ Well, this one was mine, though it has certainly not been the only one that has affected me personally.

Before the trial, I asked Ann Bradley to use the literary technique of the New Criticism, which I learned decades before at the University of Texas in a class entitled "Southern Literature," to deconstruct, from an analysis of Tim McVeigh's own words, his description of what he had done.⁸⁴ Ann pursued this assignment for several weeks, reviewing every transcript and memorandum of conversations with Tim.

She concluded:

As it now stands, Tim has been betrayed by everyone around him, his family, cohorts, and what few friends he had. He is a dead man, irrespective of the verdict, and

79. WILLIAM FAULKNER, *Tomorrow*, in KNIGHT'S GAMBIT 89 (First Vintage Int'l ed., Vintage Books 2011) (1949).

80. *Id.* at 90.

81. *Id.* at 93-101.

82. *Id.* at 110 ("It wasn't Buck Thorpe, the adult, the man. [Fentry] would have shot that man as quick as Bookwright did, if he had been in Bookwright's place. It was because somewhere in that debased and brutalized flesh which Bookwright slew there still remained, not the spirit maybe, but at least the memory, of that little boy, that Jackson and Longstreet Fentry, even though the man the boy had become didn't know it, and only Fentry did. And you wouldn't have freed him either. Don't ever forget that. Never.").

83. HARPER LEE, *TO KILL A MOCKINGBIRD* 86 (HarperCollins Publishers 1999) (1960).

84. *Stephen Jones: Defense Attorney for Timothy McVeigh*, *supra* note 6.

damned for eternity if he did actually do this. For the sake of argument, if he were a mere foot soldier or getaway driver, a minor player in a larger conspiracy, but he's the one who gets caught and blamed, why would he not claim all of the credit? He is dead and damned either way, so why not take credit for it all? Who wants to go out as a bit player when they can go out as the mastermind? Best of all, he knows no one else is going to come forward and dispute his story, and he can't assuage his sense of honor and integrity by keeping his mouth shut and protecting those whose opinions he values. And it would all work, too, if he didn't have the misfortune of having a defense team bent on finding the truth.⁸⁵

Despite what Tim McVeigh became, I knew that he was someone and something to many. He was from a blue-collar family, won a small college scholarship, received the Army Commendation Medal with two upgrades for Valor, and received the Bronze Star for service in Operation Desert Storm, but somewhere along the way, he lost his way. Somewhere, somehow, he became the instrument of death and tragedy inflicted upon so many. But I was his lawyer. I voluntarily accepted that responsibility and did my best to see that neither his life, liberty, nor property was taken from him except by due process of law. I cannot remember a day in which I was not tinged with some element of adventure: either of hope, disappointment of failure, or achievement. The confidence and closeness that we created as attorney-client slowly dissipated by his desire to assume all of the blame for such a horrible

85. *See id.*; Assignment from Ann Bradley to Author (on file with author).

morning in Oklahoma City.⁸⁶ I set out to secure his acquittal and save his life, but ultimately, I failed.

86. In so doing, Tim McVeigh almost entirely waived the attorney-client privilege. *See, e.g.,* *Tasby v. United States*, 504 F.2d 332, 336 (8th Cir. 1974) (discussing that a waiver of attorney-client privilege occurs when a client directly “attacks his attorney’s competence in giving legal advice.”); *State v. Moreno*, 625 P.2d 320 (Ariz. 1981) (“The claim of ineffective assistance of counsel is a direct attack on the competence of an attorney and constitutes a waiver of the attorney-client privilege.”); *Laughner v. United States*, 373 F.2d 326 (5th Cir. 1967) (explaining that the client waived attorney-client privilege by alleging breach of duty by client’s lawyer). This waiver was confirmed in orders issued by the Tenth Circuit and by the Oklahoma Bar Association. *See United States v. McVeigh*, 9 F. App’x 980 (10th Cir. 2001), *aff’g*, 118 F. Supp. 2d 1137 (D. Colo. 2000). Tim’s seventy-five hours of tape-recorded interviews with two Buffalo, New York, reporters, who subsequently published the transcriptions in a book, and his numerous misstatements of counsel’s actions in his defense, filed in his post-conviction relief application, eviscerated the attorney-client privilege and the rule of confidentiality. *See* Anna Geronimo Hausmann, *American Journalists: Lou Michel, Dan Herbec & the Timothy McVeigh Story*, BUFFALO SPREE (2001), https://www.buffalospree.com/app/buffalospreamagazine/archives/2001_0708/070801journalist.html [<https://perma.cc/55T2-UDTF>]; LOU MICHEL & DAN HERBECK, *AMERICAN TERRORIST: TIMOTHY McVEIGH & THE OKLAHOMA CITY BOMBING* (1st ed. 2001); Jo Thomas, ‘No Sympathy’ for Dead Children, *McVeigh Says*, N.Y. TIMES, Mar. 29, 2001, at A12. I have NOT disclosed those few remaining confidences, which Tim did not waive.