

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
OF INDIANA**

Jane GRAHAM , and	§	
V. Z. LAWTON	§	
Citizens of the State of Oklahoma,	§	
Plaintiffs	§	
	§	
v.	§	
	§	Cause No. _____
Harley LAPPIN , Warden	§	
United States Penitentiary	§	
Terre Haute, Indiana,	§	
Defendant	§	No Oral Argument Requested
	§	
The Honorable Steve CARTER ,	§	
Attorney General, State of Indiana,	§	
a necessary party for matters involving	§	
public charitable trusts doing business	§	
in Indiana,	§	
Necessary Party	§	

**PLAINTIFFS MOTION FOR (EMERGENCY)
TEMPORARY RESTRAINING ORDER**

Plaintiffs Motion

Plaintiffs move that this court issue a temporary restraining order. Specifically, Plaintiffs move that the court order the Warden to stand down from the scheduled execution of Timothy McVeigh, and to reschedule such execution only as permitted by this court.

The Basis

1. Relief in equity is appropriate when there is no adequate remedy at law. There is no remedy at law that will stay an execution.
2. Due to the unfortunate timing matters regarding the filing of this proceeding and the nearness of the presently schedule execution date, 16 May 2001, Plaintiffs humbly request that the court consider granting emergency, ex parte, relief, in the form of a Temporary Restraining

Order. That 10-day window would provide time for notice and an opportunity to be heard regarding Plaintiffs Motion for Temporary Injunction.

3. Further, since the private process servers are not the ones who can serve these papers on the Warden, there s another day, or so, getting these papers to the Sheriff for service.
4. The relative losses on each side for that 10 days weigh out this way.
 - A. If there is a valid basis for the execution, then, upon review of the facts and law raised here, that execution can proceed at a future date, and that governmental interest is fully maintained. Nothing is lost.
 - B. However, if there is no valid basis for the execution, or should it be established that the Plaintiffs interest in the evidence in the near future outweighs the government s interest in carrying out the sentence so promptly, then, without time to review the facts and law raised here, the Plaintiffs interest is permanently and irretrievably lost.
 - C. This balancing of the equities leans strongly in favor of granting the relief here requested.
5. The transferee (Colorado) trial court issuing the death penalty sentence lacked subject matter jurisdiction over all matters that arose in Oklahoma. Thus, such sentencing order is simply void and unenforceable. To proceed is to get dangerously close to acting, without justification or excuse, with the intent of taking another s life, which act might also qualify as knowingly destroying evidence.
6. The language in the indictment alleging murder is not admissible evidence of Law for any matter arising from the collapse of the Murrah Federal Building. Therefore, that pleading does not activate Article III subject matter jurisdiction, and those charges in the indictment are void on their face. Thus, the United States District Court had no authority to try the murder charges, and the adjudication of guilt and the order issuing the death penalty are

void and unenforceable.

7. Since McVeigh is allowing representatives to speak, to a national, and perhaps, international, audience, on his behalf about matters that would otherwise be privileged, it follows that McVeigh is now in a position to testify as to these matters, himself. Plaintiffs currently have pending a civil action in Oklahoma arising from the deaths and damages caused by the collapse of the Murrah Federal Building. The information possible to obtain from McVeigh, in the trial setting, where the information is fully subject to cross examination, is perhaps the most relevant evidence that Plaintiffs could hope to access. To execute McVeigh is to destroy that evidence. Again, the equities, when weighed, lean heavily in favor of preservation of that evidence, in order that the truth, the whole truth, and nothing but the truth, be obtained in the matter currently pending in Oklahoma, among other matters still pending and arising from the same facts and circumstances as Plaintiffs civil suit.
8. It is not expected that time will reasonably exist to get this Original Complaint and set of Motions and related documents to Warden Lappin in time to set a hearing for a Temporary Injunction. This timing is unfortunate. It is anything but a planned approach or deliberate strategy. Had Plaintiffs any other influence over the timing, it is likely this step would not even have been a thought.

Prayer for Relief

For these reasons, Plaintiffs respectfully request that this court issue a Temporary Restraining Order, ex parte, having the Warden stand down from the currently scheduled execution of Timothy McVeigh, and hold a hearing on Plaintiffs Motion for Temporary Injunction within 10 days from the date of signing the Temporary Restraining Order.

Respectfully submitted,

Harmon L. Taylor
Texas State Bar No. 19693800

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Lawyer for Plaintiffs

CERTIFICATE OF SERVICE

On this the 10th day of May, 2001, I certify that I have served upon the following parties, by process server, the foregoing Plaintiff s Motion for (Emergency) Temporary Restraining Order, and the related proposed Order:

Warden Lappin
United States Penitentiary
4200 Bureau Rd N
Terre Haute, Indiana 47808

Attorney General Carter
Indiana Government Center South, 5th Floor
402 West Washington Street
Indianapolis, Indiana 46204

Harmon L. Taylor