

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
OF INDIANA,
TERRE HAUTE DIVISION**

Jane GRAHAM , and	§	
V. Z. LAWTON ,	§	
Citizens of the State of Oklahoma,	§	
Plaintiffs	§	
	§	
v.	§	
	§	Cause No. TH 01-104-C-T/H
Harley LAPPIN , Warden,	§	
United States Penitentiary	§	
Terre Haute, Indiana,	§	
Defendant	§	
	§	
The Honorable Steve CARTER ,	§	
Attorney General, State of Indiana,	§	
a necessary party for matters involving	§	
public charitable trusts doing business	§	
in Indiana,	§	
Necessary Party	§	

**SUPPLEMENTAL STATEMENT
IN SUPPORT OF
PLAINTIFFS MOTION FOR (EMERGENCY)
TEMPORARY RESTRAINING ORDER**

Supplemental Statement

As might be the case when dealing with discovery matters, as new information warrants a different or new perspective on the handling of the matters pending before a court, supplementation of information and arguments are appropriately filed. Thus, and along the policy lines of supplementation, on the various internet news services, as of late evening Thursday, 10 May 2001, and by way of the regular television, radio and newspaper reporting media, of Friday, 11 May 2001, information along the following lines has been published nationally. This information qualifies as information of which the court can take judicial notice. Key among this new information is this:

1. The FBI has found some 3,000 pages of documents not before handed over to defense counsel pursuant to discovery regularly carried out in criminal matters, in the underlying criminal litigation in Colorado.
2. The position of the FBI, and, perhaps more importantly, of the US Attorney s Office, is that this material is not exculpatory, as a practical matter, and that the merits of the trial are not affected by this failure to comply with the trial court s discovery guidelines and related orders.
3. The execution originally scheduled for Wednesday, 16 May 2001, has been ordered stayed, but not for any longer than a month, in that an other date in June has already been set.
4. On a no evidence point, in none of the proceedings in Colorado, as confirmed by the absence of such in all of the reports, has anyone made inquiry of Plaintiffs interests in the matter (as is proper, for Plaintiffs are not interested parties in *that* litigation).

To address some relevant points very briefly, since the facts are presented, and since the legal points are briefed, there is the following:

- A. All respect being offered for the Colorado trial court, it is still the case that the trial court has no more subject matter jurisdiction to say stop than it does to say go. There s nothing about this new discovery information that alters the State line limitation in criminal litigation.
- B. Further, there s nothing about this new discovery information that alters the subject matter jurisdiction limitation in the United States District Courts regarding murder charges and Cases, generally, and these in particular.
- C. Also, there s nothing about the new discovery information that allows Plaintiffs here to

participate as parties in the matter there (not a complaint, for this is fully proper with our system of justice; just a statement of fact).

- D. Plaintiffs are aware of no other matter in the country that raises the points raised in this proceeding, and it is hoped that such matter would also be filed with this court, such that at least this court would be aware of such claims.
- E. From the perspective that there is no other matter raising the issues and points raised here, Plaintiffs see that there is only one court that has the authority to enter an Order to stay that execution.
- F. For Plaintiffs (Graham's and Lawton's) interests in this matter, if the Colorado court can still say "stop and go," what is there to prevent the court from further amending the now amended order to say "go," on Wednesday, 16 May 2001, as originally scheduled? Even though McVeigh has the benefit of counsel from Mr. Chambers and Mr. Nigh, what if, for reasons unknown, and as unlikely as it may be, they report a conclusion similar to what the FBI, and Justice Department report, and that any further postponement of the execution is unnecessary?
- G. In other words, for so long as an execution of McVeigh can possibly be scheduled, Plaintiffs' interests are still very much at risk.
- H. While Plaintiffs do see, as a practical matter, that an instant reversal of position from the Colorado court as unlikely, there are so many items about this case that have happened that were not all that predictable, that for this court, which court does have the authority to enter a Temporary Restraining Order in this matter, to enter the Order would add certainty and consistency to the matters that involve Plaintiffs' interests, which interests are still very much at risk, the execution having been rescheduled. Doing so

supports the well-founded policy of avoiding inconsistent rulings where possible, and the inconsistency has to do with the various matters arising from the facts and circumstances of that 19 April 1995 disaster.

- I. And, even if by the efforts of Mr. Chambers and Mr. Nigh, the Colorado court orders a new trial, the same issues still exist: McVeigh is still subject to execution, by order of a United States District Court, to be carried out by the United States Government authorities, all arising from a murder Case. Therefore, the general interests of justice, both of this matter, and of the related matters in various courts not presently before this court, support this court's intervention at the earliest possible time.
- J. Since the new information, subject to admission by judicial notice, is that the execution is still scheduled, and since that schedule is still subject to alteration, per facts and circumstances presently unknown to these Plaintiffs and to this court, and in a proceeding beyond the authority of this court to affect directly, it is fully appropriate for this court to issue the (Emergency) Temporary Restraining Order requested by Plaintiffs.

Prayer for Relief

For the reasons stated in this Supplemental Statement, given the new developments in the underlying case in Colorado, Plaintiffs still request that this court grant Plaintiffs Motion for (Emergency) Temporary Restraining Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this the 15th day of May, 2001, I certify that I have served upon the following parties, by certified mail, return receipt requested, the foregoing Supplemental Statement In Support Of Plaintiff s Motion for (Emergency) Temporary Restraining Order:

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