

**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,	§	
	§	
The Honorable Steve CARTER ,	§	
Attorney General, State of Indiana,	§	
a necessary party for matters involving	§	
public charitable trusts doing business	§	
in Indiana,	§	
Necessary Party	§	

**ORIGINAL COMPLAINT
AND
APPLICATION FOR (EMERGENCY) TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

The Parties.

1. Plaintiffs are Citizens of Oklahoma City, Oklahoma County, Oklahoma.
2. GRAHAM is a victim/survivor of the collapse of the Murrah Federal Building on April 19, 1995, in Oklahoma City, Oklahoma County, Oklahoma. Among other information, from her location on the 9th floor, she felt both major explosions, and she saw the wet concrete filling in the 24-25 foot pits (craters) in the basement of the Murrah Federal Building, within hours after the explosions. Her testimony was refused for Grand Jury purposes and for trial purposes. She has been visited by officials who have tried to dissuade her from testifying as to the involvement of one Mr. Gary Hunt in the activities

surrounding the explosions that collapsed the Murrah Federal Building. She is a party plaintiff in a civil matter pending in Oklahoma arising from facts and circumstances of that bombing.

3. LAWTON is a victim/survivor of the collapse of the Murrah Federal Building on April 19, 1995, in Oklahoma City, Oklahoma County, Oklahoma. He was on the 8th floor that morning. He has worked with the Oklahoma City Bombing Investigation Committee, headed by Charles Key, former Oklahoma State Representative. He is a party plaintiff in a civil matter pending in Oklahoma arising from the facts and circumstances of that bombing.
4. Mr. LAPPIN, the Defendant, is the Warden of the United States Penitentiary located in Terre Haute, Indiana, a resident in which facility is Offender McVeigh. In his capacity as Warden, Mr. LAPPIN is the responsible party for the penitentiary regarding any execution or any stay of execution.
5. Mr. LAPPIN may be served personally through the following business address:

Mr. Harley Lappin, Warden
United States Penitentiary
4200 Bureau Rd N
Terre Haute, Indiana 47808
6. Mr. CARTER is the Attorney General of the State of Indiana, and, in this capacity, is a necessary party for matters involving public charitable trust entities doing business in Indiana. Time to determine with certainty the organizational structure of the prison facility is short, and counsel is preferring to err on the side of too much inclusion and too much notice.
7. Mr. CARTER may be served personally through the following business address:

The Honorable Steve Carter

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

The Authority of This Court.

8. Plaintiffs seek relief in equity. There is no adequate remedy at law.
9. In fact, time being short, Plaintiffs initially seek **emergency** equitable relief.
10. Plaintiffs have sufficient interest in, and stake in the outcome of, this matter to have standing.
11. This court has subject matter jurisdiction over these claims for relief and these parties as follows:
 - A. This Controversy arises under the Constitution, in particular under Article III, section 2, Article IV, section 2, and the Sixth amendment, to the effect that the transferee trial court in Colorado lacked subject matter jurisdiction to try any criminal matter that arose in Oklahoma.
 - B. This Controversy is between Citizens of the State of Oklahoma and at least one Citizen of the State of Indiana, namely the penitentiary, the responsible party of which is the Warden.
 - C. In the event this penitentiary is not a business entity, but rather an agency of the United States Government, then this matter could conceivably involve the United States Government as a party.
12. This court has personal jurisdiction over the parties, in that Mr. LAPPIN works in this State.
13. This court has proper venue, in that Defendant s place of business is in the same county in which this court sits.

Overview.

This effort intends to operate as a stay of execution of Timothy McVeigh, at least a temporary one. That execution is scheduled for early morning, Wednesday, 16 May 2001, which is less than one week from the date of likely filing of this pleading. Had there been *any* possible way to have initiated this sooner, Plaintiffs would certainly have done so.

This proceeding does not concern McVeigh, or the death penalty, as such. This proceeding concerns these Plaintiffs, specifically, and, in a general sense, the personnel of our Armed Forces. For the Plaintiffs, interests of truth and justice are paramount, which interests are furthered by allowing *all* relevant evidence into the courtroom. For our Armed Forces personnel, who throughout history have been willing to pay the ultimate sacrifice for our notions of limited government, for us, the ones they serve, to give away in the courtroom what our Armed Forces personnel are willing to die to preserve on the battlefield is an intolerable circumstance. To carry out an execution, based on a judgment from a court that so clearly lacks subject matter jurisdiction, is to show the epitome of disrespect to those who have died in service to us, and to those who presently serve us, because their job is concerned with preserving the government that prevents that very sort of exercise of power against us, their family, friends and neighbors.

Where a person is charged with criminal violations, let that person be tried in the judicial forum with authority to adjudicate. In this way, respect for the judicial process is maintained.

Claim 1: Lack of subject matter jurisdiction in the transferee trial court, in general. Criminal matters can be tried only in the State in which they are alleged to have occurred. Since these

charges were tried not in Oklahoma, but rather in Colorado, it follows that the transferee Colorado court lacked subject matter jurisdiction to try any criminal matter that arose or occurred within the State of Oklahoma.

Claim 2: Lack of subject matter jurisdiction in any United States District Court to try murder Cases, in particular. Congress has no power or authority, for the purposes of generating admissible evidence of Law of the United States, on the subject of murder. Congress does have exclusive legislative Authority, as regards the District of Columbia, and property owned by the United States Government, to define and punish murder. However, these Cases against McVeigh involve neither the District of Columbia nor property owned by the United States Government. Further, even if there were to come to existence evidence supporting the position that the property on which stood the Murrah Federal Building was property owned by the United States Government, it is still the case that such language, which is admissible evidence of Law only in the District (and for US property), is not the basis for any litigation in a court exercising the Article III judicial Power, for such judicial Power does not extend to matters arising under Law of the District.

Claim 3: Preservation of McVeigh as evidence. There is still litigation pending, both civil and criminal, as a result of the deaths and damage resulting from the collapse of the Murrah Federal Building. The building itself, is one of the best sources of evidence as to what took place that morning, and that evidence has already been destroyed. It is an interesting and unique view, to be sure, to consider McVeigh as evidence, but this is an accurate and justiciable point. What he knows, and, even what is in, or not it, his body, is relevant evidence to the continuing litigation, both civil and criminal. To execute McVeigh is to destroy evidence needed for the continuing litigation.

The Facts.

Claim 1: The scheduled execution of Timothy McVeigh should be indefinitely postponed, because the death sentence judgment against McVeigh is void and unenforceable. No trial court in Colorado, whether a State or United States trial court, has subject matter jurisdiction to try any Case that arises in Oklahoma.

14. The bombing of the World Trade Center in New York resulted in criminal litigation, which litigation took place in the State of New York.
15. More recently, the bombing of the church in Alabama resulted in criminal litigation, which litigation took place in the State of Alabama.
16. The Cases against McVeigh arise from acts and events that took place in Oklahoma City, Oklahoma.
17. Oklahoma is a State.
18. The Murrah Federal Building was located in Oklahoma City, which city is within the State of Oklahoma.
19. The Murrah Federal Building collapsed after the ignition of multiple explosions, which building collapse caused the tragic deaths of those victims.
20. As proved by the Eglin Air Force Base Blast Effects Study, led by Brigadier General Benton K. Partin, United States Air Force, retired, former director of the Air Force Armament Technology Laboratory and one of the world's premier explosives and ordnance authorities, among other evidence, in particular the evidence collected and preserved under the direction of Charles Key, former Oklahoma State Representative, it is highly unlikely that the truck bomb, the only explosion attributed to McVeigh, was sufficient to cause the building to collapse.

21. Since the primary purpose of trial is to place responsibility where it belongs, it follows that the judicial process to date has failed to accomplish its primary purpose.
22. Further, no criminal matter, not even Treason, can be tried by a court, whether a State or a United States trial court, outside the State in which those acts occurred.
23. Yet, the Cases against McVeigh were transferred across the Oklahoma State line, namely to Denver, Colorado.
24. Because the transferee court was not in Oklahoma, the transferee court lacked subject matter jurisdiction to hear any Case against McVeigh.
25. Therefore, the adjudication of guilt and the and sentence of death against McVeigh are void and unenforceable.
26. Therefore, there is no authority to carry out any execution of McVeigh. Because there is no authority in an order or judgment from a court that lacks the authority to try the Cases, one primary concern behind this proceeding is that it is possible that such act amounts to another act of murder, and of destruction of evidence, of which we have had more than enough in this matter already.
27. If McVeigh is a murderer, then let such charges be tried in a court that has the authority to try those Cases, namely the State District Court in Oklahoma County, Oklahoma.

Claim 2: The scheduled execution of Timothy McVeigh should be indefinitely postponed, because the death sentence judgment against McVeigh is void and unenforceable. The language used in the indictment on the murder charges is not admissible evidence of Law for any of the Cases charged against McVeigh.

Alternatively, and in addition, to the foregoing,

28. Congress has no legislative Power to define and punish murder (which term here intends to cover any instrumentality by which is caused the death of another) as a matter of admissible evidence of Law of the United States.
29. While Congress does have exclusive legislative Authority to define and punish murder, for purposes of admissible evidence of Law of the District of Columbia, which is the Seat of the Government of the United States, the Murrah Federal Building was not in the District of Columbia.
30. While Congress does have exclusive legislative Authority to define and punish murder, for purposes of admissible evidence of Law for matters that occur on property owned by United States Government, the Murrah Federal Building was not on property owned by the United States Government.
 - A. There is no deed or receipt showing ownership in the United States Government, and no such document or evidence was ever introduced at trial.
 - B. There is no Consent by the Oklahoma State Legislature to any such transfer into the hands of the United States Government, and no such document or evidence was ever introduced at trial.
31. The murder charges in the indictment were based on language that is not Law of the United States. If that language is Law, it can only be Law of the District of Columbia. Outside that geographical limit, that language is admissible evidence of Law only for matters arising on, or somehow pertaining to, property owned by the United States Government. Since the Murrah Federal Building was not located on property owned by the United States government, the language of the indictment regarding these charges of murder cannot be the basis for any murder charge arising from the facts and

circumstances of these Cases. (Any statutory language regarding murder can be provided only by the Oklahoma Legislature.)

32. Since no language produced by the Oklahoma Legislature was the statutory basis for any murder charge against McVeigh, the indictment, as regards those particular charges, is void on its face.
33. Since the murder charge language of the indictment does not assert a Case that arises under the Constitution, or under the Laws of the United States, or under any Treaty, and since such murder charge language does not assert a Case affecting any Ambassador, other public Minister or Consul, and since such murder charge language does not assert a Case of admiralty or maritime Jurisdiction, not only is the failure in that pleading not subject to waiver, but also such failure amounts to a failure to establish subject matter jurisdiction in any United States District Court regarding those murder charges.
34. Since it is the causing the death of another language, in that or those statutory provisions, that led to the death penalty sentence, it follows that the order handing down that sentence, as regards the murder charges, is void and unenforceable.
35. Therefore, there is no authority to carry out any execution of McVeigh, meaning that it is likely that such act amounts to nothing more than another act of murder, and another act of destruction of evidence, of which we have had more than enough in this matter already.
36. If McVeigh is a murderer, then let such charges be brought by the Grand Jury of Oklahoma County, the one body in the entire country that has the authority to assert such murder charges, which charges, in this case, can be based only on Law of the State of Oklahoma, whether common law or legislative enactment, as the case may be.

Claim 3: The scheduled execution of Timothy McVeigh should be indefinitely postponed, because destroying McVeigh is another act of destruction of evidence. For so long as litigation exists, and there is still litigation pending as a result of the collapse of the Murrah Federal Building, both civil and criminal, McVeigh is a source of evidence, both as to what he knows and to his physical body.

Alternatively, and in addition, to the foregoing,

37. Broadcast nationally through various news programs have been the comments both of McVeigh's psychiatrist and his former defense counsel. Specifically mentioned by the psychiatrist has been McVeigh's consent to the disclosure of that otherwise privileged information. Since, in these ways, McVeigh has communicated his willingness to provide evidence, what makes sense is to hear this information from him directly, rather than through his representatives. It's application of the best evidence rule.
38. Even though litigation continues as a result of the collapse of the Murrah Federal Building, the building, itself, which is a vital source of evidence as to what took place that morning, was razed, and that evidence was destroyed.
39. Even though litigation continues, one key party to a particularly relevant set of events and circumstances, namely McVeigh, is scheduled to be destroyed.
40. Even though litigation continues, one key item of evidence, namely the physical body of McVeigh, itself, is scheduled to be destroyed.
41. Since the judicial proceedings to date have done far more to raise questions than to answer them, to raise doubts than to dispel them, it follows that all who have interests in the currently pending litigation, and in any timely initiated litigation that may follow,

should be allowed the fullest accessibility to every possible remaining shred of evidence, even that of the living, physical body of McVeigh, and of the information McVeigh himself has, as regards all elements and facets of these extraordinary circumstances.

42. Since such matters are still in the trial stage, potentially subject to appeal and retrial, it follows that until there is no possible additional proceeding for which evidence that McVeigh can provide is relevant, McVeigh must be preserved as evidence.
43. Many properly convicted individuals spend a great *many* years on death row. Thus, there seems an unusual hurry to execute McVeigh, especially in light of the lack of subject matter jurisdiction to impose the sentence of death, both as to the trial court, generally, and as to the murder charges, specifically, and in light of the destruction of evidence of the Murrah Federal Building, itself.

Prayer for Relief

Wherefore, premises considered, Plaintiffs request that the court grant the following relief:

1. Issue a temporary restraining order, probably *ex parte*, as the circumstances may initially require, which should allow time to schedule a hearing for a temporary injunction.
2. Issue a temporary injunction, upon hearing, effectively staying the execution of Timothy McVeigh.
3. Grant a permanent injunction, upon trial, to stay the execution of Timothy McVeigh.
4. Grant any and all other relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

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