The McVeigh ruling--a travesty of justice

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8 June 2001

The ruling handed down Wednesday by Federal Judge Richard Matsch denying Oklahoma City bomber Timothy McVeigh's request for a stay of execution is a flagrant attack on the constitutional principle of due process with ominous implications for basic democratic rights.

Matsch's ruling was upheld Thursday by the Tenth Circuit Court of Appeals in a rapid-fire decision that reeked of contempt for the constitutional issues raised by McVeigh's lawyers. “McVeigh has utterly failed to demonstrate substantial grounds upon which relief might be granted,” the court declared. Echoing Matsch, the appeals court judges dismissed out of hand McVeigh's complaint that the Federal Bureau of Investigation had prejudiced his trial and sentencing by illegally withholding thousands of pages of evidence from his attorneys.

Following Thursday's appeals court ruling, McVeigh instructed his attorneys to forego a final appeal to the US Supreme Court, making all but certain his execution by lethal injection on Monday, June 11 at 8 AM Eastern Daylight Time.

These rulings are a travesty of justice. They stink to high hell.

The enormity of the crime for which McVeigh was convicted does not give federal authorities license to withhold thousands of pages of evidence from his defense lawyers, and then rush him to the death chamber before his legal team can properly study the suppressed documents. Such a procedure makes a mockery of democratic rights.

The operating principle behind these rulings is the motto: “Dead men tell no tales.” Behind all of the official talk of “closure” and the manipulation of the families affected by the horrible crime in which McVeigh participated is an effort by the government and the courts, aided and abetted by the media, to conceal evidence of criminality by federal agencies that might point to their own complicity in the Oklahoma City bombing.

There is reason to believe that Matsch is far more aware of the forces that were at work in the bombing that killed 168 people in April of 1995 than McVeigh himself. The only plausible explanation for the unseemly rush on the part of the federal government and the courts to put McVeigh to death, riding roughshod over the legal rights of criminal defendants in the process, is their fear that a further delay in his execution and the reopening of an investigation will expose the government's connections to ultra-right forces and its own culpability.

Matsch handed down his ruling less than a month after Attorney General John Ashcroft revealed that the Federal Bureau of Investigation had withheld more than 3,000 pages of evidence from McVeigh's lawyers. Ashcroft made this announcement only days before McVeigh's original execution date, which Ashcroft then put off to June 11. Since then, the Justice Department has turned up nearly 1,000 additional pages of suppressed evidence, most of which McVeigh's defense team received less than two weeks before Matsch's ruling.

Matsch's decision stunned even government prosecutors, who argued against a stay of execution but were all but reconciled to the likelihood that the execution would be delayed, given the scale of the violation of McVeigh's rights and the obvious fact that McVeigh's lawyers had not had adequate time to study the evidence and pursue further investigations.

McVeigh's lawyers argued that their preliminary reading of the documents had uncovered evidence pointing to the existence of a wider conspiracy in the 1995 bombing of the Alfred P. Murrah Building in Oklahoma City. Some of the withheld evidence, they alleged, pointed to the involvement of FBI or Bureau of Alcohol, Tobacco and Firearms informants, and suggested that federal authorities had been given advance warning of the bombing.

They maintained that the suppression of this information had damaged McVeigh's defense. While not contesting the guilty verdict against their client, they asserted that the suppressed evidence could warrant a new hearing on McVeigh's sentence, potentially reducing it from death to life imprisonment.

The defense lawyers asked Matsch to delay the execution so that they could pursue a charge of fraud by federal authorities against the court and reopen McVeigh's appeal proceedings.

Without making any reference to specific evidentiary facts raised by the defense, the judge dismissed their arguments on the absurd grounds that even if their allegations of a wider conspiracy and the complicity of federal agencies could be substantiated, such revelations would have no impact on either the verdict or the sentence against McVeigh.

“The argument of defendant's counsel that the jury may not have found the death penalty was justified if the defense had been able to implicate additional perpetrators is just not tenable,” Matsch declared.

To back up this claim, Matsch noted that McVeigh had declined to reveal the names of other co-conspirators during the

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sentencing phase of his trial. “The defendant,” said Matsch, “must have knowledge of this fact: whether others were involved with him.”

But, as the defense lawyers pointed out in their brief to the appeals court, McVeigh might very well be unaware that certain individuals played a role in the bombing, and he would certainly be unaware of the participation of government agents or informants.

It is absurd on its face to claim that information concerning government complicity in the bombing, at whatever level or degree, could have no impact on the decision of a jury to send McVeigh to his death.

Moreover, as McVeigh's lawyers argued in their brief to the appeals court, existing law and precedent clearly hold that a defendant facing the death penalty has a right to present before the jury a wide scope of extenuating circumstances, including the involvement of others in the crime. McVeigh's ability to do so was clearly damaged by his ignorance of important facts that were known to the FBI.

During Wednesday's hearing, Matsch said he was outraged when he learned last month that thousands of pages of documents had been withheld by the FBI. “It is a good thing I was in quiet chambers because my judicial temperament escaped me,” he declared, adding, “It was shocking.”

Yet this statement, tantamount to an admission that the legal process had been seriously prejudiced, was in no way reflected in the decision he handed down. On the contrary, Matsch made the preposterous claim that even if the integrity of the FBI was undermined by its withholding of evidence, that in no way impacted the integrity of McVeigh's trial:

“It has been argued forcefully here by [defense attorney] Mr. Nigh that this calls into question the integrity of the process and that this court has a responsibility to protect that integrity. But I think there has to be drawn a distinction between the integrity of the Federal Bureau of Investigation and the integrity of the adjudicative process leading to these verdicts and recommendation. They are quite different things.”

The judge then proceeded to echo uncritically the government's contention that the suppression of evidence was inadvertent—“...there is a great deal of difference between an undisciplined organization or organization that is not adequately controlled or that can't keep track of its information...”—and concluded by declaring an amnesty for federal investigators: “We're not here for the purpose of trying the FBI.”

With this statement, Matsch jettisoned any pretense of judicial evenhandedness. Given the illegal actions of the FBI, any attempt by McVeigh to avoid the death penalty could only take the form of an indictment of the agency. What is the defense argument that the FBI's actions constitute a fraud upon the court if not an effort to “try the FBI?”

The rulings by Matsch and the appeals court—and virtually all of the commentary in the media—are premised on the contention that a defendant facing execution is obliged to show in advance that evidence illegally withheld by the state would be sufficient to prove his innocence. In fact, thousands of convictions have been thrown out and guilty people set free or given new trials because their constitutional rights were violated by the police, the prosecution or the courts. It has been an established principle of American jurisprudence that convictions obtained through forced confessions, illegal searches, denial of legal counsel, etc. are not valid.

This democratic principle has come under increasing attack, but never as openly as in the rulings handed down this week against McVeigh.

In this case, moreover, the defendant was not even suing for a new trial. He was merely asking that his execution be delayed. It is not uncommon even today, with defendants burdened by reactionary court rulings and laws, such as the Antiterrorism and Effective Death Penalty Act of 1996, for a decade or more to transpire between the date of a death sentence and the actual execution.

Notwithstanding Matsch's attempt at eloquence—“The United States government is not some abstraction... It is the American people...”—his ruling reeks of cover-up and conspiracy. Its significance goes far beyond the fate of McVeigh. It is symptomatic of a political establishment that is shedding any adherence to democratic rights. The federal judiciary in particular is increasingly dominated by right-wing ideologues.

The blatant violation of the rights of criminal defendants and the promotion of the death penalty are of a piece with the general assault on democratic rights that culminated in the 2000 presidential election. It was the US Supreme Court, it should be recalled, that intervened to block the counting of votes in Florida and hand the election to George W. Bush.

On the same day as Matsch's ruling, Attorney General Ashcroft released a Justice Department report claiming there was no racial or ethnic bias in the administration of capital punishment in federal cases. This sets the stage for the execution on June 19 of Juan Raul Garza, who is to become the second person, after McVeigh, to be put to death by the federal government since 1963.

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