

13

PROCEEDINGS

14

(Reconvened at 2:48 p.m.)

15

THE COURT: Be seated, please.

16

going to MR. TIGAR: Your Honor, now that jurors are

17

invocation be occupying both rows in the box, we would request

18

counsel table. of the empty-seat rule on the Government's first

19

I do THE COURT: Well, we'll talk about that after

20

what I'm going to do here.

21

(Jury in at 2:49 p.m.)

22

PRELIMINARY JURY INSTRUCTIONS

23

the jury THE COURT: Well, welcome now to your role as

24

the jurors for the trial of this case. You've been selected as

25

in in this case, and we appreciate all that you have done

6272

1

sure at cooperating with us to go through this long and I'm

2

process of some times somewhat annoying and somewhat tedious

3

selected to selection. But you are the people who have been

4 hear the evidence in this case and to make the
decisions
5 necessary according to the law and the evidence.
6 Now, I want to start this trial, the trial
itself, on
7 Monday, November 3. I'm giving us time in between so
that each
8 one of you can make the arrangements necessary to begin
to work
9 according to the schedule that we've talked about
during the
10 individual questioning of you, which will be, as I
mentioned to
11 each one of you, I think, as you were in here before --
we will
12 be in the courtroom from 9 to 5 Monday through Thursday
and
13 from 9 to 1 on Fridays.
14 We're not going to hold you overnight -- there
is no
15 sequestration rule in effect in this case -- or over
the
16 weekends. The time when you're not here or in the
process of
17 going -- coming and going to the courthouse is yours;
but, of
18 course, you recognize the importance of being careful
during
19 all of those times, because what's going to happen
Monday when
20 you come in and when we start this trial at 9:00 is
that I'm
21 going to administer to you the oath that requires of

you

22 exactly what each one of you said that you could do,
and that
23 is to decide the case solely on the basis of the law
and the
24 evidence presented to you in the course of the trial,
setting
25 aside anything that you might previously have read,
seen, or

6273

1 heard about this case or about the subject matter of
it.

2 And in addition to setting aside the things
that you
3 heard before, of course, you must now be extremely
careful --
4 and I reemphasize and renew the instruction that I gave
you
5 before that you must be careful in how you watch
television,
6 listen to the radio, read newspapers, magazines, books,
7 publications and converse with others, to stay away
from
8 anything at all which could possibly influence or
affect you in
9 your duty as jurors in this case.

10 I want to give you a little explanation here
before

11 excusing you for the day and until Monday morning about

exactly

12 how the trial will proceed. During the time that we
asked you

13 some questions here, we did make some mention of it;
but just

14 as a preliminary with respect to instructing you about
what's

15 involved in the trial process, let me tell you that on
Monday

16 after there is the -- the oath has been taken, we'll
proceed to

17 what we call opening statements; and that's an
opportunity for

18 the lawyers on each side to speak directly to you about
what is

19 expected to be the evidence in the case. It is by way
of an

20 outline or introduction of what you can expect to see
and hear

21 as the case progresses with the evidence.

22 Now, because the Government has the burden of
proof in

23 the case, we proceed just as we had during the
questioning.

24 The Government lawyers will go first with respect to
opening

25 statements, and defense counsel may make an opening
statement

until a 1 immediately after that or may, if he chooses, wait
2 later point in the trial to make the opening statement.

of the 3 But the opening statements will not be a part
4 evidence in the case. They are by way of a preliminary
from 5 introduction to what you can expect, a kind of overview
6 each side.

phases of 7 And then there really are four stages or
8 every trial, and the first of it is the opening
statement. And

they are 9 as I will caution you when these statements are made,
10 not evidence. They are simply statements from the
lawyers of
11 what they expect the evidence to be.

of the 12 The evidence, of course, will be the testimony
13 witnesses who come in here one at a time and are sworn,
take
14 this witness stand, which is this area right here
between us,
15 and respond to the questions that are asked of them.

exhibits, 16 And the evidence also will consist of
17 documents or objects that are offered as evidence in
the course
18 of the trial.

taking of 19 Now, that is the second stage, then, the

20 evidence. And here again, the Government goes first
and calls

21 the witnesses.

22 During the taking of the evidence, we will be
23 proceeding, of course, under what we call the adversary
system.

24 There are two sides to the case. Lawyers on each side
have a

25 professional responsibility to represent that side of
the case

6275

1 and to raise questions of admissibility of evidence.
So what

2 you're going to be hearing many times in the trial will
be a

3 witness is testifying and a lawyer for the Government
or for

4 the defense is asking questions; and the opposing
counsel will

5 interpose objections, raising an objection, stating it
briefly

6 as to what the objection is, and I rule on those
objections.

7 And in the event that the objection is
sustained, that

8 means that the lawyer has invoked a rule of evidence,
I've

9 applied it and excluded the testimony, and therefore
the

10 witness will not be permitted to answer that question.

11 And in such a situation, you should, of
course, first

12 of all recognize that's how the rules of evidence get
applied

13 in a case and not feel that the counsel who has raised
the

14 objection has in some way acted improperly or denied
you the

15 opportunity to hear something. It's part of the
responsibility

16 of lawyers in the case and of me as a judge in the case
to

17 apply these rules and to make these rulings.

18 The same may be true with respect to the
offering of

19 exhibits. An exhibit will be formally offered by one
side or

20 the other, objected to, and I will rule. And these
rulings

21 will simply state, generally speaking, that the
objection is

22 sustained or overruled.

23 Now, in the event that an objection is
overruled, that

24 means that the witness will be permitted to answer the

25 question. But the mere fact that an objection was
first heard

1 and overruled does not mean that that testimony, that
2 particular answer, is to be considered by the jury in
any way
3 different from all of the other testimony of the
witness. It
4 doesn't get special significance or insignificance
because an
5 objection was first raised and overruled.

6 And there will be occasions, I'm sure, when it
may be
7 necessary for me to discuss a matter of evidence with
counsel
8 outside of your hearing. There can be times -- and
we'll
9 certainly try to take -- keep them to a minimum -- when
I'll
10 call the lawyers up here to meet with me in a little
huddle at
11 the bench -- and we've got kind of a little sound
machine that
12 masks what we say here -- and discuss it briefly and
then I can
13 perhaps better make a ruling after I have the ability
to
14 answer -- or ask some questions of the lawyers. Don't
take any
15 offense at that, if it should happen.

16 There may be times -- and we'll certainly try
to keep
17 that to a minimum -- when it would be necessary to
excuse you

18 from the courtroom for a short period because there can
be
19 circumstances when I need actually to hear the witness
respond
20 before I can make a ruling.

21 So, you know, one thing that I can assure you,
each
22 one of you, is that we know that by pulling you out of
your
23 regular life and work routine and asking you to come in
here
24 and serve on this jury -- your time is valuable, and
we're not
25 going to waste it. So you can be certain that
everybody

6277

1 involved in this case appreciates what we've asked you
to do,
2 and we'll certainly not abuse your time.

3 Now, the -- as you've already heard, the
defense in a
4 case has no burden or duty of -- or obligation to call
5 witnesses, and the defendant does not have any
obligation to
6 testify. And of course, it is the choice of the
defense as to
7 whether they call witnesses after we've heard from all
of the
8 Government's witnesses. But the case proceeds by

taking the

9 evidence from the Government, then whatever evidence
may be

10 offered by the defense. Then there can be an
opportunity for

11 what we call rebuttal evidence, which is again back to
the

12 Government if there are some circumstances that warrant
or

13 justify it, where something came up in the defense case
to

14 which the Government may have evidence to offer in
15 contradiction of it.

16 Then when all of the evidence is completed in
the

17 case, you've heard from all of the witnesses, and all
of the

18 exhibits have been received that are going to be
received, so

19 the evidence is closed, as we say, then you will hear
from the

20 lawyers again directly on what are called closing
arguments.

21 As the term implies, that's the opportunity for lawyers
on each

22 side to go through the evidence with the jury,
explaining an

23 interpretation of the evidence and the position of that
side as

24 to how the jury may view the evidence. And of course,
these

25 arguments will be disagreeing; and that's why we have
lawyers

6278

1 on both sides of the case.

I will
you in the
have,
here. And
"Do you
the
will be
must apply
11 in the case.

2 And then the final thing that happens is that
3 give to you instructions on the law that will govern
4 case. And you've heard me mention that and the lawyers
5 too, as we've gone through the questioning process
6 each of you recalls on the questionnaire, there was,
7 agree that it's necessary to follow the instructions of
8 Court," and all of you said you do agree with that and
9 understand the necessity of it. And that, of course,
10 the detailed principles and the details of law that
11 in the case.

12 I may also give instructions at times in the
course of
called
14 limiting instructions that will restrict the jury's
15 consideration of particular types of evidence to
particular
16 points being raised, and I'll explain all that when we

come to

17 it.

18 But I just wanted to take a few minutes of
your time

19 now to kind of give you an overview of exactly what
happens at

20 a trial so that you can have that in mind and it won't
be all

21 mysterious to you as far as the procedure is concerned
when you

22 come in here to begin this trial Monday morning.

23 Now, recognizing that I've said we're going to
start

24 Monday morning and that I'm taking this time between
now and

25 then to accommodate whatever needs you have to make,

6279

1 arrangements with your employers, child care, whatever
is

2 necessary so that you can come in here and focus on the
case,

3 do any of you know right now whether you have a problem
4 beginning this case Monday morning?

5 Okay. Good.

6 And then as I say, we're going to follow this
7 schedule, and you can rely on it. And we know, as I've
already

waste it. 8 said, that we're taking a lot of your time. We won't

want to 9 So just before I excuse you now for the day, I

going to get 10 repeat again and renew and emphasize -- and you're

it to you 11 tired of hearing me say this because I'm going to say

the oath 12 every day, and that is you've just got to be true to

have 13 that you will take here and to the assurances that you

decide this 14 each given to us just this afternoon that you will

in the 15 case according to the evidence that's presented to you

in the 16 course of this trial and the law that is given to you

17 instructions.

jury, 18 So when people find out that you are on this

asked 19 your friends, your family, you know, the things that we

they 20 you about: Well, what did they say? What reaction did

at home 21 have? Now, you know, you're going to get reactions now

you're on the 22 and with others; and when you report to employers

you must 23 jury, you can expect some things. But obviously, what

anything 24 do is avoid any discussion now about the case or

25 connected to it, not only directly to you but in your
presence,

6280

1 to be able to do what all of us count on you in doing,
and
2 that's deciding this case fairly. And "fairly" means
on the
3 law and the evidence.

4 Now, in the event that anything, you know --
we can
5 tell you that, you can agree to that and do your best;
but
6 there is always the possibility that something happens
and that
7 you inadvertently come into contact with something that
you
8 shouldn't. Anything like that happens or if any of you
have
9 any situation where somebody is persisting in trying to
talk to
10 you or anything like that, you let us know.

11 You've got a number to call here and the
arrangement
12 also that we will have here for you, and then the
understanding
13 is that, you know, if between the time you were excused
from
14 the courtroom and you come back in something like that
has

me. I 15 happened, you just hand -- write a note. Give it to
-- I 16 mean, you give it to the staff who will give it to me
to let us 17 won't be meeting with you outside of the courtroom --
this to 18 know what happened, so that I just -- I don't expect
what to do, 19 happen, but in the event it did, I want you to know
and then 20 which is to write a note and it will be given to me,
21 we'll see what the problem is.

22 So those are the points that I wanted to
mention to
we 23 you now and so that you know better what to expect when
24 start this trial Monday.

of the 25 Also, I can explain to you that in the course

6281

you 1 trial, it may be that questions come to your mind and,
ask a 2 know, as we go through this process you would want to
don't do 3 question or want a lawyer to ask a question or me. We
process; and 4 it that way. You are on the receiving end of the

valid 5 I hope you understand that there are reasons, good and
has gone 6 reasons. You know, this process we're talking about
and-true 7 on for several centuries now, so it's a pretty tried-
8 process. So please understand the restrictions on it.

9 And there certainly are times when there is a
10 particular witness on the stand and you may want to
hear more 11 about something from that witness. Well, you know,
these are 12 experienced lawyers on both sides. They know what
they're 13 doing, and some of the things that might be a question
in your 14 mind at one time may be answered by another witness
much later, 15 or maybe there is no answer.

16 So we simply ask that you recognize the
process for 17 what it is.

18 Also, I'm not going to have you taking notes
in the 19 course of the trial. That's going to seem strange to
you, too. 20 Some of you are used to taking notes and things; and,
you know, 21 you see people in the courtroom, including me, taking
notes.

22 But a part of this process is to -- you know, we didn't
test

or 23 you on how well you take notes or do you know shorthand
we don't 24 something like that; so that's part of the reason why
all not 25 permit note-taking in juries, so that there is first of

6282

you are 1 a difference among jurors as to how good a note-taker
of 2 but also, you know, anybody taking notes has the risk
behind in 3 missing something. You're maybe a couple of minutes
And one 4 the notes and you can miss something that's important.
at the 5 of the other things is that we want you to be looking
the stand. 6 witnesses and observing their demeanor and manner on
credibility 7 That's a part of how you're going to be judging the
distracted by 8 of the witnesses, and we don't want you to be
9 notebooks or that kind of thing.

some 10 One of the things that, you know, can give you
own 11 comfort and assurances: You don't have to rely on your
of all of 12 memory as to what is said, because it is the memories

will be 13 you who participate in deliberations in the case that
14 useful to you in making the decision.

15 So this is where we're going to be Monday
morning,
16 9:00. You're excused now; and what I want you to do is
gather
17 here back in the jury room, because we want to get you
18 acquainted with the logistics of the place where you're
going
19 to work. I mean, this area behind us here is going to
be your
20 area. There won't be any interferences with that, and
you'll
21 get some logistical information from the staff, too,
with
22 respect to going and coming to the courthouse, and so
forth.

23 So we'll see you all Monday morning. You're
excused
24 until then.

25 (Jury out at 3:08 p.m.)

6283

told you 1 THE COURT: We do have some motions that I
2 we'd hear tomorrow; and as I recall it, there are some
that
3 deal with discovery and some matters that have to be

done

4 outside of the courtroom, and then are there some -- I
don't 5 have a list of them in front of me right now.

6 MR. TIGAR: Your Honor, we took a look at the
pending 7 matters, and they all appear to deal with admissibility
of 8 evidence, in-limine-type motions and discovery matters.

And 9 thus it would be our submission that they could and
should be 10 in chambers.

11 THE COURT: That was my impression when I last
looked 12 at everything that was pending, and I think -- is there
13 anything that doesn't fit the criteria for the in-
chambers 14 meeting?

15 MR. MACKEY: Based on my review, no, your
Honor. I 16 think that would be appropriate.

17 MR. TIGAR: And I think the Court could also
find in 18 that connection in compliance with your Honor's earlier
order 19 that given the fact that opening statements are
imminent and 20 media attention is particularly high that that's --
interest in 21 a fair trial is particularly acute at this moment.

what 22 THE COURT: All right. Well, may I suggest --
23 time do you suggest? 9:00?
24 MR. MACKEY: That's fine, your Honor.
25 THE COURT: Meet with counsel and with Mr.
Nichols in

6284

1 Chambers at 9? So the courtroom is going to be for
this trial 2 in recess until 9:00 Monday morning.

3 Court is in recess.
4 (Recess at 3:10 p.m.)
5 * * * * *

6 INDEX

Page
6271

7 Item
8 Preliminary Jury Instructions

9 * * * * *

10 REPORTER'S CERTIFICATE

11 I certify that the foregoing is a correct
transcript from
12 the record of proceedings in the above-entitled matter.

Dated

13 at Denver, Colorado, this 30th day of October, 1997.
14

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Paul Zuckerman

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