

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Criminal Action No. 96-CR-68
4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 vs.
7 TERRY LYNN NICHOLS,
8 Defendant.

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9 REPORTER'S TRANSCRIPT
10 (Trial to Jury: Volume 137)
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12 Proceedings before the HONORABLE RICHARD P.
MATSCH,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 1:45 p.m., on the 19th day of
December,
15 1997, in Courtroom C-204, United States Courthouse,
Denver,
16 Colorado.
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24 Proceeding Recorded by Mechanical Stenography,
Transcription
 Produced via Computer by Paul Zuckerman, 1929 Stout
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25
629-9285

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1 APPEARANCES
2 PATRICK RYAN, United States Attorney for the
Western
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
JAMIE
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNS,
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6 ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the
Denver,
7 Attorney General, 1961 Stout Street, Suite 1200,
Colorado, 80294, appearing for the plaintiff.
REID
8 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHWELL,
Lincoln
9 NEUREITER, and JANE TIGAR, Attorneys at Law, 1120
for
10 Street, Suite 1308, Denver, Colorado, 80203, appearing

12 Defendant Nichols.

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14 PROCEEDINGS

15 (In open court at 1:45 p.m.)

16 THE COURT: Be seated, please.

17 We're going to bring in the jury and recess
their

18 deliberations for the weekend.

19 (Jury in at 1:46 p.m.)

20 THE COURT: Members of the jury, good
afternoon.

21 JURORS: Good afternoon.

22 THE COURT: Well, we were talking about
working till

23 2:00 today -- having you work till 2:00; but I notice
the

24 weather -- looks like it's going to be changing, and I
thought

25 we'd recess a little early to get you out ahead of
whatever

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home 1 might be coming in in the weather, make sure you get

2 safely.

talk to 3 But before doing that, of course, I want to

4 you a little about the situation as it stands. My

5 understanding is that you have asked to take the
weekend off

6 and not to deliberate during the weekend.

7 before you And I'm going to grant that request. But

I'm not 8 leave, I do want to again emphasize a few things. And

either. 9 just saying this so there is something in the record,

I know 10 You know, during the course of the trial, I often said

got to 11 you remember these things from time to time but I've

what I 12 repeat them because the rules require me to do it. But

13 am saying to you now I say with the greatest of
sincerity, and

14 I hope you listen carefully and will respond
accordingly, as I

15 am confident you will.

bit 16 A jury in deliberation, of course, is quite a

one 17 different from a jury in the course of the trial. It's

trial 18 thing for me to do, as every time we recess during the

to keep 19 and over the weekends during the trial -- to ask of you

about 20 open minds, to avoid discussion of the case or anything

or hear 21 it with others, to be careful that you not read, see,

22 of anything that would affect your verdict, and all
that, those

23 instructions that I gave you over and over again.

24 It is different. You've been working hard
this week,

25 I know. And you've been discussing the case, and you
know that

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have 1 you have the evidence and you have the law. And you

And 2 exchanged some views, I'm sure, in the course of this.

as we 3 again, I repeat what I said yesterday and what I said

must not 4 recessed and what I said in the instructions: that you

stands 5 reveal to the Court or to anyone else how the jury

until 6 numerically or otherwise on the questions before you

course, 7 you've reached a unanimous verdict. And that, of

opinions, 8 includes the discussions that you have, views,

All of 9 recollections that you've exchanged among yourselves.

and not 10 that is to be kept within your group, the 12 of you,

members of 11 shared with anyone else, not this court, not any

12 your family, not any friends, no one else.

13 And you know, there are a lot of ways to look
at how a

14 court should work with a deliberating jury. And I
suppose the

15 safest view that a lot of people have is, well, once
they start

16 deliberations, they ought to be kept separate and apart
from

17 everybody else, kept together until -- throughout the

18 deliberations. And during the time when the jury --
jurors are

19 not deliberating, they ought to be separated and ought
to be

20 sort of subject to censorship rules so that they don't
have

21 access to television and newspapers and the like.

22 Now, I suppose that's the -- a view that a lot
of

23 people take and say, well, that's the safe thing to do.
And

24 then you can be sure that jurors are not out talking
with

25 anyone or having anyone talk to them or being -- come
into

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1 contact with anything outside of the evidence.

2 But I've worked with juries, a lot of juries

in a lot

lot of 3 of difference trials, both as lawyer and judge over a

They're 4 years. And I've learned some things about jurors.

And 5 people. And they're human beings, and they get tired.

with the 6 there is a certain level of stress that is involved

recalling 7 job of sifting through the evidence and analyzing and

they 8 all that you've heard in the course of the trial. And

like 9 need a break from that. And it's one thing to give

like 10 deliberating jurors a break in some hotel or somewhere

lot more 11 that but yet stay together; but it's a lot easier, a

able -- 12 restful, for people to go to their own homes and to be

courthouse. 13 you know, jurors have lives other than in the

involved in 14 I respect that and recognize -- all of us who are

you to 15 this trial respect and recognize that. And so we want

16 have some time off.

it's 17 And indeed, sometimes, like in any other job,

I don't 18 good to get away from our fellow workers for a while.

working in 19 mean to suggest anything by that; but you've been

20 close quarters and working hard on this case, and you
probably

21 would all benefit from a little time out.

22 And of course, when I look at two-and-a-half
days, I

23 think that's a lot of time out; but I know that you
recognize

24 the responsibility that you have and the trust and
confidence

25 that have been placed in you. And accordingly, we're
going to

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1 grant your request and recess and permit you to
separate.

2 But once again, I want to emphasize how
important it

3 is that you must not discuss this case and certainly
not the

4 deliberations of the jury with anybody; not spouses,
not

5 children, not friends, not anybody you come into
contact with.

6 You know, I have the same thing. Judges have
lives

7 outside of courthouses, too -- although it might seem
strange

8 for you to realize that -- and families. And you know,
people

9 that I come in contact with say: Well, how is it going

down

talk 10 there? And, of course, I have to say: Well, I can't

to 11 about it; you know that. And that's the way you have

12 respond with anybody who questions you about it.

we're 13 Now, we also know that being human beings --

a slip: 14 fallible and things can happen. Sometimes there can be

that 15 You say something or somebody says something to you

during 16 shouldn't be. And I just want to remind you, as I did

slip-up with 17 the trial, that if you should in any way have some

let me 18 respect to these cautionary instructions, I want you to

as I said 19 know about it. And the way in which to do that, just

always 20 through the course of the trial at times when there was

say 21 the possibility that you'd see a headline or somebody

to the 22 something in front of you or to you that would relate

other juror 23 trial -- as I told you, don't discuss that with any

24 certainly and just write me a note about what happened.

happened 25 And so I repeat that again so that if it has

happened 1 or does happen, you just give me a note about what's
know -- 2 without talking to anybody else about it, because we
family 3 and particularly this time of year there are, you know,
this time 4 gatherings. You hear from friends and relatives at
people 5 of year and more than the usual contact. So naturally,
this jury 6 who find that you're on a jury or know that you're on
want to 7 are going to want to ask you about it or are going to
know with 8 talk to you about it. So be very careful and let me
happen. 9 a written note if anything like that has or does
careful. I'm 10 And then, of course, you do have to be
weekend. 11 not going to tell you to go sit in a dark room all
But be 12 You, I'm sure, have some things that you want to do.
is, you 13 very careful, because you know what your responsibility
resuming this 14 know that you're going to be back here on Monday
back 15 job that you have. And we want you to be able to come

16 refreshed, ready to take up where you've left off
today, and to

17 decide this case according to the law and the evidence.

18 So as I say, all of us here who participated
in this

19 will trial have the confidence and the trust in you that you

20 and the perform your duty according to the law and the evidence

21 oath that you've taken as jurors in this case.

22 number of You know, you were selected from a large

23 that's people as the jurors to try and decide this case. And

24 what we expect you to do.

25 on So with all of that, we'll ask you to be back

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1 Monday at the usual time and then to undertake your

2 deliberations then.

3 We have, as I think has been explained to you

--

4 know; and you've been working over there with the exhibits, I

5 have we have sealed that room, too, so that whatever you may

6 arrangement over there with respect to notes or whatever, the

that 7 that you may have the exhibits in, you can rest assured
that

the staff 8 others are not going to know about that, because even
the staff

the way 9 working here, of course, should not know anything about
the way

10 in which you're working.

be 11 So we have signs on those doors and that will
be

12 sealed, and no one will be going in there but you.

now 13 So with all that, members of the jury, you're
now

have a 14 excused until Monday morning. And we do hope that you
have a

now. 15 restful weekend and that you just put this matter aside
now.

don't, 16 That's the objective during this time. Of course, you
don't,

juror up 17 you know, as I told you before -- don't call another
juror up

this aside 18 and talk with her or him or anything like that. Put
this aside

request 19 for now. That's the spirit in which I'm granting your
request

we know 20 for a little rest and relaxation. You deserve it, and
we know

your duties 21 that you'll come back refreshed and ready to resume
your duties

22 on Monday.

23 You're excused until then.

24 (Jury out at 1:57 p.m.)

25 THE COURT: Court will be in recess subject to

call.

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1 (Recess at 1:58 p.m.)

2 * * * * *

3 REPORTER'S CERTIFICATE

4 I certify that the foregoing is a correct
transcript from

Dated 5 the record of proceedings in the above-entitled matter.

6 at Denver, Colorado, this 19th day of December, 1997.

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Paul Zuckerman

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