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P.O. Box 3563, Denver, Colorado, 80294, (303)

16000

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District of Oklahoma, and RANDAL SENDEL, Assistant U.S.

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13 Street, Suite 1308, Denver, Colorado, 80203, appearing  
for  
14 Defendant Nichols.

15 \* \* \* \* \*

16 PROCEEDINGS

17 (In open court at 5 p.m.)

18 THE COURT: Be seated, please.

19 (Jury in at 5 p.m.)

20 THE COURT: Members of the jury, we're at  
5:00, so

21 this is the time to recess your deliberations, just as  
we did

22 earlier when you were deliberating; but not long ago,  
you sent

23 out a communication. And I've reviewed that with  
counsel. And

24 I just -- I'm not going to read it, respond to it now;  
but I

25 want to simply mention a couple of things in response.

16001

1 I'm really -- well, first of all, I remind you  
that

2 all of your communications dealing with your  
deliberations

3 should be addressed to the Court. Only I can respond  
to your

4 communications, and your communications, of course,  
must be in  
5 writing to the Court.

6 But you put a rather pointed question, and I  
feel  
7 unable to answer such a direct and pointed question.

8 me explain: I gave you a copy of the original  
instructions  
9 with respect to the elements of the offense and, of  
course, all  
10 of the rest of them for your reference; and obviously,  
you have  
11 been making reference to it.

12 Now, in addressing the questions that are  
before you  
13 now and the instructions given to you today and the  
verdict  
14 form given to you today, the findings form, you must,  
of  
15 course, consider those earlier instructions and what I  
told you  
16 constituted the elements of the offense for which --  
and all of  
17 the offenses, for that matter, and your findings.

18 Now, I cannot and no one can ask you in detail  
with  
19 respect to your findings. You were judges of the  
evidence.

20 You made findings with respect to the evidence. Those  
21 findings, then, your evidentiary findings, have to be  
22 considered within the context of the law that was given

to you.

23                   So what I'm going to suggest to you is that  
when you  
24                   come back to resume your deliberations in the morning,  
you go  
25                   back to those instructions that were given to you,  
beginning

16002

1                   really on page 7 of the original instructions, and  
review what  
2                   I told you are the necessary elements of the offense of  
3                   conspiracy and the charge in the case and then review  
also  
4                   among yourselves the bases upon which you considered  
that count  
5                   and returned your verdict on that count and then look  
at the  
6                   findings -- or excuse me -- the instructions that I  
gave you  
7                   today and the definitions there are and the special  
findings  
8                   form and read them together.

9                   So perhaps that will assist you, if you will  
follow  
10                  that suggestion.

11                  And again, I feel that I cannot directly  
answer  
12                  questions where the answer depends upon your view of  
the

13 evidence in the case and your previous findings with  
respect to  
14 the evidence in the case, because I do not wish in any  
way, of  
15 course, to suggest to you what your decisions now  
should be.  
16 And I in all of my instructions to you and comments to  
you, of  
17 course -- they should be understood by you -- and I did  
not  
18 repeat in these instructions this morning that which I  
told you  
19 in the original: that the Court has no opinion with  
respect to  
20 what your findings should be. That's why I'm very  
careful in  
21 all of my comments to you and instructions to you and  
the  
22 manner in which I'm addressing your latest  
communication to me.

23 Now, of course, anytime I refer you to  
instructions, I  
24 again want to be understood by you as including among  
them the  
25 instruction that all of the instructions that were  
given to you

16003

1 must be considered together, as they are connected with  
and

2 related to each other as a whole. And anytime that I  
suggest  
3 to you a particular part of the instructions on the  
law, I want  
4 you to understand the importance of that instruction;  
that they  
5 are connected and related, and also that includes the  
6 instructions on the burden of proof and who has the  
burden of  
7 proof with respect to the matters that are now before  
you for  
8 your special findings.

9 Well, I hope this will be of some assistance  
to you  
10 and this suggestion as you proceed in the morning.

11 Would you like to start at 8:30 in the  
morning? Is  
12 that all right? It looks like that's the general view.

13 So we'll recess your deliberations now and  
again, of  
14 course, remembering that what you are discussing here  
is a  
15 matter to be saved for only the 12 of you who are  
deliberating  
16 in this case, so there should be no discussion with  
anyone else  
17 about these deliberations. And of course, you're not  
to again  
18 reveal to anyone how the jury stands numerically or  
otherwise  
19 on these questions before you until you have reached  
your

on the 20 verdict, just as I told you when you were deliberating  
21 counts in the case.

22 And I again emphasize that and also emphasize  
the need  
23 for you to decide the questions before you based solely  
on the  
24 law and the evidence presented to you in the course of  
this  
25 proceeding and the trial. And therefore, continue to  
be very

16004

26 careful to avoid anything outside what has been given  
to you in  
27 this courtroom in reaching your decision in the case on  
the  
28 questions before you.

29 You're excused, then, until you resume your  
you come  
30 deliberations at 8:30 in the morning. And again, when  
foreperson  
31 in, do not begin your deliberations until the  
32 convenes you for deliberations. Put the matter aside;  
let it  
33 rest overnight; come back to it fresh in the morning.

34 You're excused now.

35 (Jury out at 5:08 p.m.)

36 THE COURT: All right. We'll again be in

recess

12 subject to call.

13 (Recess at 5:08 p.m.)

14 \* \* \* \* \*

15 REPORTER'S CERTIFICATE

16 I certify that the foregoing is a correct  
transcript from

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

18 at Denver, Colorado, this 5th day of January, 1998.

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Paul Zuckerman

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