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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,
Plaintiff,
vs.
TERRY LYNN NICHOLS,
Defendant.

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REPORTER'S TRANSCRIPT
(Trial to Jury: Volume 128)

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Proceedings before the HONORABLE RICHARD P. MATSCH, Judge, United States District Court for the District of Colorado, commencing at 12:45 p.m., on the 16th day of December, 1997, in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription Produced via Computer by Paul Zuckerman, 1929 Stout Street, P.O. Box 3563, Denver, Colorado, 80294, (303) 629-9285

APPEARANCES

PATRICK RYAN, United States Attorney for the Western District of Oklahoma, 210 West Park Avenue, Suite 400, Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON, GEOFFREY MEARNS, JAMIE ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the U.S. Attorney General, 1961 Stout Street, Suite 1200, Denver, Colorado, 80294, appearing for the plaintiff.

MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHWELL, REID NEUREITER, and JANE TIGAR, Attorneys at Law, 1120 Lincoln Street, Suite 1308, Denver, Colorado, 80203, appearing for Defendant Nichols.

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PROCEEDINGS

(Reconvened at 12:45 p.m.)

THE COURT: Please be seated.

I'll have a short side bar after the instructions, as we discussed.

MR. TIGAR: Yes, your Honor.

(Jury in at 12:46 p.m.)

JURY INSTRUCTIONS

THE COURT: Members of the jury, now that you have heard the evidence and the arguments, the time has come to instruct you as to the law governing you in this case. You each will have a copy of these instructions for your reference during deliberations.

Although you as jurors are the sole judges of the

facts, you are duty bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are of course to be governed by the instructions.

You're not to single out one instruction alone as stating the law, but you must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

You have been chosen and sworn as jurors in this case to try the issues of fact presented to you. You are to perform this duty without bias or prejudice as to anyone. The law does not permit jurors to be governed by sympathy, prejudice or public opinion. You are expected to carefully and impartially consider all of the evidence, follow the law as stated by the Court and reach a just verdict.

In determining the facts, you must rely upon your own recollections of the testimony heard by you. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. Bear in mind that the question put to a witness is not the evidence. It is the answer which is evidence. Nothing that I may have said during this trial or may say in these instructions should be considered as evidence or as any comment on the evidence. The stipulations which were read to you are included in the evidence. The exhibits received are also part of evidence. You will have access to all of the exhibits during your deliberations, excepting those used only for demonstrative purposes to illustrate some of the testimony. Exhibits offered and refused are not evidence and must be disregarded.

You are the sole and exclusive judges of the facts. The rulings I have made, my comments and questions to counsel, and any questions I have asked of witnesses during the trial must not be taken as expressing any opinions about the facts in this case. You are expressly instructed that the Court has no opinion as to what the verdict should be in this case.

As I told you many times during this trial, your verdict must be based solely on the evidence presented in this courtroom and in accordance with the law given in these instructions. You must completely disregard anything which you have read, seen or heard outside this courtroom relating to the

issues in this trial. It would be fundamentally unfair to consider anything not in evidence because the lawyers have no opportunity to challenge the accuracy of it or to make any comment about it. You must not allow public opinion to play any role in your deliberations. In short, you would violate your oaths as jurors if you permitted yourselves to be influenced in any manner by anything said or written by those who do not have any responsibility for a fair trial of these charges.

As I told you before the trial began, the attorneys have the duty, as advocates for their respective sides, to make objections and ask for court rulings on the admissibility of evidence. You must not consider or discuss those objections or draw any inferences or conclusions from the Court's comments and rulings. The rules of evidence provide important limitations on what the jury can fairly consider in deciding the facts in any case. The lawyers share with the Court the obligation to apply and enforce those rules by raising issues of admissibility. The attorneys also have a duty to prepare for trial and it is common practice for them to interview witnesses and to provide discovery information to opposing counsel in advance of the trial. Witnesses have the freedom to choose whether to grant requests for interviews.

The charges in this case are contained in an indictment returned by a federal grand jury in Oklahoma. An indictment is nothing more than a document that gives notice of the charges that the Government intends to prove. It is not evidence of any kind against the defendant.

The basic principle of our law is that the defendant, Terry Lynn Nichols, is presumed to be innocent of each and every charge brought against him in this indictment. Mr. Nichols' pleas of not guilty put in dispute everything that is alleged in the indictment. The presumption of innocence stays with the defendant throughout the trial and entitles him to a verdict of not guilty, unless and until you, the jury, find that the evidence received during the trial has established each and every essential element of the crimes charged beyond a reasonable doubt.

So the presumption of innocence means that Terry Lynn Nichols must be given the benefit of any reasonable doubt of his guilt that may remain in the minds of the jurors after they have given careful and impartial consideration to all of the evidence in the case.

The burden is always upon the Government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce evidence by cross-examining the witnesses for the Government.

A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A defendant is not to be convicted on mere suspicion or conjecture.

A reasonable doubt may arise not only from the

A reasonable doubt may arise not only from the evidence produced, but also from the lack of evidence. Since the burden is always on the prosecution to prove the accused guilty beyond a reasonable doubt of every element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.

Unless the Government proves, beyond a reasonable doubt, that Terry Nichols has committed each and every essential element of any offense charged in the indictment, you must find him not guilty of that offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions -- one of innocence, the other of guilt -- the jury must, of course, adopt the conclusion of innocence.

A separate offense is charged in each count of the indictment. Each charge, and the evidence pertaining to it, should be considered separately by the jury. The fact that you may find Mr. Nichols guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

You are here to decide whether the Government has proved beyond a reasonable doubt that the defendant is guilty of the crimes charged. Mr. Nichols is not on trial for any act, conduct or offense not charged in the indictment.

The first count of the indictment alleges conduct that
may be criminal but is not one of the specific crimes charged against Mr. Nichols. The Government is permitted to make such allegations in an indictment. However, it is only the crimes charged in the eleven counts that are on trial here. Regardless of what you find with respect to these allegations of criminal conduct in Count One, you must acquit Mr. Nichols on any count if you have a reasonable doubt as to whether all of the essential elements of the particular crimes charged in that count have been proved.

It is alleged in Count One that, beginning on or about
September 13, 1994, and continuing until on or about April 19, 1995, at Oklahoma City, Oklahoma, and elsewhere, defendant Terry Lynn Nichols intentionally and willfully conspired with Timothy James McVeigh, and with others unknown, to use a weapon of mass destruction, namely an explosive bomb placed in a truck (a "truck bomb") against persons within the United States and against property that was owned and used by the United States and by a department and agency of the United States, namely, the Alfred P. Murrah Federal Building at 200 N.W. 5th Street, Oklahoma City, Oklahoma, and that the objects of the conspiracy were to kill and injure innocent persons and to damage property of the United States. The indictment goes on to allege means and methods used by Terry Nichols and Timothy McVeigh to further the objects of the conspiracy. You will have copies of the indictment with you during your deliberations.

The statute referred to in Count One, 18 United States
Code Section 2332a, provides, in pertinent part, that "a person who . . . conspires to use a weapon of mass destruction . . .

against any person within the United States; or against any property that is owned, leased or used by the United States" shall be guilty of a crime.

The indictment alleges that the conspiracy charged in Count One began on or about September 13, 1994, and continued thereafter until on or about April 19, 1995. Although it is necessary for the Government to prove beyond a reasonable doubt that the offense of conspiracy was committed on dates reasonably near those alleged in Count One, it is not necessary for it to prove that the conspiracy offense was committed precisely on the dates charged.

A criminal conspiracy is an agreement to violate a federal law. It is an independent offense which is separate and distinct from the actual violation of any specific federal statute that may or may not have happened as a result of the conspiracy.

To establish the Count One offense of conspiring to use a weapon of mass destruction against people and government property, the prosecution must prove each of the following three elements beyond a reasonable doubt:

(1) That two or more persons, including the defendant, Terry Nichols, agreed to use an explosive bomb in a truck as a weapon of mass destruction against a federal building and the persons inside it;

(2) That the defendant, Terry Lynn Nichols, knowingly and voluntarily became a member of the conspiracy, with the intent to advance or further its objectives; and

(3) That achievement of the objectives of the conspiracy would have substantially affected interstate commerce.

If you are not convinced beyond a reasonable doubt of any one of these elements of the offense, you must acquit Mr. Nichols of this charge in the indictment.

A criminal conspiracy is an agreement or a mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action.

A conspiracy or agreement to violate the law, like any
other kind of agreement or understanding, need not be formal, written, or even expressed directly in every detail.

To prove the existence of an illegal agreement, the Government is not required to produce a written contract between the parties or even produce evidence of an express oral agreement spelling out all of the details of their understanding. Nor is it required that the Government prove the identity of all of the members of the conspiracy or that all of the means and methods of furthering the conspiracy set out in the indictment were used or carried out.

What the Government must prove is that the defendant, Terry Lynn Nichols, and at least one other person, did knowingly and deliberately arrive at some type of an agreement that they, and perhaps others, would use a weapon of mass destruction against the Alfred P. Murrah Federal Building in Oklahoma City and the persons in it by means of some common plan or course of action as alleged in Count One of the

indictment. Proof of such a common understanding and deliberate agreement among two or more persons, including the defendant now on trial, is the key element of the charge of criminal conspiracy.

Mere presence at the scene of alleged -- an alleged transaction or event, or mere similarity of conduct among various persons and the fact that they may have associated with each other and may have assembled together and discussed common aims or interests, do not necessarily establish proof of the existence of a conspiracy. Also, a person who has no knowledge of a conspiracy, but who happens -- happens to act in a way which advances some object or purpose of the conspiracy does not thereby become a conspirator.

But a person may join in an agreement or understanding, as required for conviction, without knowing all the details of the agreement or understanding, and without knowing who all the members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally participates in it as something he wants to bring about.

Before you may find that Mr. Nichols became a member of the conspiracy charged in Count One of the indictment, the evidence in the case must show beyond a reasonable doubt that Mr. Nichols knew the purpose or goal of the agreement or understanding and deliberately entered into the agreement intending, in some way, to accomplish the goal or purpose by this common plan or joint action. Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at the place where a crime takes place or is discussed, or even knowing about criminal conduct does not, of itself, make someone a member of the conspiracy or a conspirator.

Individuals, including Mr. Nichols, have the right under the First Amendment to the Constitution to assemble and discuss even the most unpopular ideas, including discussion of unlawful acts, and such assembly and discussion does not by itself establish an unlawful agreement. Expressions of sympathy and support for those who commit unlawful acts do not, without more, constitute entry into an unlawful agreement, nor does vigorous criticism of the government. One may belong to a group, knowing that some of its members commit illegal acts, without having entered into an agreement that these unlawful acts be committed. A frank expression or exchange of political views or opinions, no matter how vehement, radical or unpopular, does not, without more, constitute an unlawful agreement.

Evidence has been received in this case that Timothy McVeigh, who is alleged in Count One of the indictment to be a co-conspirator of Terry Nichols, has done or said things during the existence or life of the alleged conspiracy in order to further or advance its goal.

Such acts and statements of Mr. McVeigh may be considered by you in determining whether or not the Government

considered by you in determining whether or not the Government has proven its allegations in the indictment against Mr. Nichols.

To the extent that these acts were performed and these statements made outside the presence of Mr. Nichols and even done or said without his knowledge, these acts or statements should be examined with particular care by you before considering them against Mr. Nichols, who did not do the particular act or make the particular statement.

Count One alleges an illegal agreement to use a "weapon of mass destruction." That is a legal phrase that is also applicable to Count Two. A "weapon of mass destruction" means any "destructive device" that is designed or redesigned for use as a weapon. The term "destructive device" includes any explosive bomb. To determine whether it was designed or redesigned as a weapon, you may consider the physical structure of the device, the method of its normal operation, and the intent with which it was constructed.

The third and final element of Count One is that the objectives of the conspiracy would substantially have affected interstate commerce. A substantial effect on interstate commerce is also an element of Count Two. You're instructed for purposes of Counts One and Two that a crime substantially affects interstate commerce if it substantially interferes with, changes, or alters the movement or transportation or flow of goods, merchandise, money, or other property between one state and another. The necessary connection with interstate commerce may be provided if you find there was a substantial disruption of the operations of federal government agencies caused by destruction of a building housing them.

Count Two alleges that, on or about April 19, 1995, the defendant, Terry Lynn Nichols, "did knowingly, intentionally, willfully and maliciously use, aid and abet the use of, and cause to be used a weapon of mass destruction, namely an explosive bomb placed in a truck, against persons within the United States . . . ."

The relevant statute, 18 United States Code Section 2332(a), provides in pertinent part that "a person who uses . . . a weapon of mass destruction . . . against any person within the United States" shall be guilty of a crime.

To establish the Count Two offense of using a weapon of mass destruction, the Government must prove four elements beyond a reasonable doubt:

(1) That the defendant, Terry Lynn Nichols, used, or aided an abetted the use of, a weapon of mass destruction;

(2) The weapon of mass destruction was used against persons within the United States;

(3) That the use of the weapon of mass destruction against persons within the United States substantially affected interstate commerce; and

(4) That the defendant acted knowingly, intentionally, willfully and maliciously.

Count Three alleges that, on or about April 19, 1995, the defendant, Terry Lynn Nichols, "did knowingly, intentionally, willfully and maliciously damage and destroy, aid and abet the damage and destruction of, and cause to be damaged and destroyed, by means of an explosive, namely, an

explosive bomb placed in a truck, a building and other personal and real property in whole and in part owned, possessed and used by the United States, that is, the Alfred P. Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma . . . ."

The relevant statute, 18 United States Code Section 844(f), provides in pertinent part that: "Whoever maliciously damages or destroys . . . by means of fire or an explosive, any building . . . in whole or in part owned, possessed, or used by, or leased to, the United States" shall be guilty of a crime.

To establish the Count Three offense of destruction of
federal property by explosive, the Government must prove three elements beyond a reasonable doubt:

(1) That the defendant damaged or destroyed a building, or aided and abetted the damage or destruction of a building, by means of an explosive bomb;

(2) That the defendant acted knowingly, intentionally, willfully and maliciously; and

(3) That the building in whole or in part was owned, possessed, or used by or leased to the United States.

For purposes of Count Three, the term "explosive" means gun powders, powders used for blasting, all forms of high explosives, blasting materials, detonators, and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture or device or any part thereof, may cause an explosion.

The term "intentionally," as used in these instructions, means that the Government must have proven to you beyond a reasonable doubt that the act was done with the purpose to do the unlawful act or cause the unlawful result.

The term "knowingly," as used in these instructions, means that the Government must have proven to you beyond a reasonable doubt that the act was done voluntarily and intentionally, not because of mistake or accident.

The term "willfully," as used in these instructions, means that the Government must have proven to you beyond a reasonable doubt that the act was done both with the intent to violate a known legal duty and with a criminal state of mind. The term "maliciously" means with evil intent.

If you find the defendant, Terry Lynn Nichols, guilty of one or more of the crimes charged in Counts One through Three, you must then make an additional finding as to whether the evidence proved beyond a reasonable doubt that the crime resulted in the death of one or more of the persons named in the indictment. These offenses are different from the murder counts because the defendant's responsibility for the deaths of persons killed as a result of the criminal acts charged in Counts One through Three does not depend upon proof that he intended to kill anyone. It is sufficient if the jury finds, beyond a reasonable doubt, that death of one or more of these

persons was a foreseeable result of the criminal conduct charged in these counts.

Counts Four through Eleven are first-degree murder counts charging that, on or about April 19, 1995, Defendant Terry Lynn Nichols did unlawfully, willfully, deliberately, maliciously, and with premeditation and malice aforethought, kill, and aid, abet and cause the killing of eight named victims while those victims "were engaged in . . . the performance of their official duties as law enforcement officers." The victim named in Count Four is Mickey Bryant Maroney, who was employed as a special agent of the United States Secret Service. The victim named in Count Five is Donald R. Leonard, who was employed as a special agent of the United States Secret Service. The victim named in Count Six is Alan Gerald Whicher, who was employed as an assistant special agent in charge of the United States Secret Service. The victim named in Count Seven is Cynthia Lynn Campbell Brown, who was employed as a special agent of the United States Secret Service. The victim named in Count Eight is Kenneth Glenn McCullough, who was employed as a special agent of the United States Drug Enforcement Administration. The victim named in Count Nine is Paul Douglas Ice, who was employed as a special agent of the United States Custom Service. The victim named in Count Ten is Claude Arthur Medearis, who was employed as a special agent of the United States Custom Service. The victim named in Count Eleven is Paul G. Broxterman, who was employed as a special agent of the Department of Housing and Urban Development, Office of Inspector General.

Title 18 United States Code Section 1111 provides in pertinent part that: "Murder is the unlawful killing of a human being with malice aforethought. Every . . . willful, deliberate, malicious, and premeditated killing . . . is murder in the first degree." Title 18 United States Code Section 1114 in pertinent part, applies Section 1111 to certain federal officials and employees.

To establish the Counts Four through Eleven offenses of first-degree murder, the Government must prove four essential elements beyond a reasonable doubt:

(1) That the defendant, without lawful justification, killed or aided and abetted the killing of another human being;

(2) That the victim was a federal employee with law enforcement functions who was killed while engaged in the performance of official duties;

(3) That the defendant committed or aided and abetted the killing with "malice aforethought"; and

(4) That the defendant committed or aided and abetted the killing in a "premeditated" and deliberate manner.

The second element requires that you find: (a) that the victim was a federal employee with law enforcement functions; and (b) that the employee was killed while engaged in the performance of official duties.

Each of the persons named in Counts Four through Eleven was employed in a position having law enforcement functions.

Whether a federal employee was engaged in the performance of his or her official duties turns on whether the

federal officer was acting within the scope of what he or she was employed to do, or whether, instead, the employee was engaging in a purely personal frolic. If the employee was at his or her place of business during regular working hours at the time of the killing, he or she may still be found to have been engaged in the performance of official duties even though the employee may have been on a temporary break discussing some personal matter or arranging for food or drink. You should consider all of the facts and circumstances of the case in deciding whether the Government has proven this element.

"Malice aforethought" means that the defendant must have acted willfully and deliberately, intending to kill another person. Whether the defendant in a homicide case acted with malice at the time of the killing is an issue to be decided by inferences that may or may not be drawn from all of the surrounding facts and circumstances shown by the evidence. The law permits, but does not require, a jury to find that the defendant killed with malice aforethought if you find that he acted with callous and wanton disregard for human life.

Knowledge or awareness of a victim's identity and status as a federal law enforcement employee is not an essential element of these murder counts. Thus, the Government is not required to prove that the defendant knew who the victims were or what duties they were performing in their respective positions as federal employees. What the prosecution must show is that the defendant intended to kill someone and that these -- that these victims named in these counts died as a direct result of the defendant's deliberate acts.

Premeditation requires not only that the killing was willful and with malice but also that the defendant formed a specific intent to kill after planning and deliberation. This means that the defendant must have considered and reflected upon a preconceived killing at least long enough to give it a second thought.

With respect to each of Counts Four through Eleven, if the jury should unanimously find that the Government has proved each of the essential elements beyond a reasonable doubt, the foreperson should write "guilty" in the space provided, and the jury's consideration of that count is concluded.

However, the law also permits the jury to determine whether the Government has proven the guilt of a defendant for any less serious offense which is, by its very nature, necessarily included in the crime of first-degree murder charged in Counts Four through Eleven.

If the jury should determine unanimously that the Government has not proven each element of the offense charged in that count beyond a reasonable doubt, then the foreperson should write "not guilty" in the space provided and the jury should then consider the innocence of Mr. Nichols for the less serious offenses necessarily included in that count.

Furthermore, if, after reasonable efforts have been unsuccessful, the jury is unable to reach a verdict as to whether or not the Government has proven each element of the offense beyond a reasonable doubt, the jury should then consider whether or not Mr. Nichols is guilty or not guilty of

the less serious offenses which are necessarily included in that count.

The crime of first-degree murder charged in Counts Four through Eleven of the indictment necessarily includes two less serious offenses: second-degree murder and involuntary manslaughter.

Title 18 United States Code Section 1111 sets forth the elements of second-degree murder as well as first-degree murder. After stating that premeditation is an essential element of first-degree murder, Section 1111 provides that: "Any other murder is a murder in the second degree."

Thus, to establish the crime of second-degree murder, the Government must prove three essential elements beyond a reasonable doubt:

(1) That the defendant, without lawful justification, killed or aided and abetted the killing of another human being;

(2) That the victim was a federal employee with law enforcement functions who was killed while engaged in the performance of official duties; and

(3) That the defendant committed or aided and abetted the killing with malice aforethought.

If the jury should unanimously find that the Government has proven each of the essential elements of second-degree murder beyond a reasonable doubt, the foreperson should write "guilty" in the space provided, and the jury's consideration of that count is concluded.

If the jury should determine unanimously that the Government has not proven each element of the lesser offense of second-degree murder beyond a reasonable doubt, then the foreperson should write "not guilty" in the space provided, and the jury should then consider the guilt or innocence of Mr. Nichols for the second less serious offense necessarily included in that count, involuntary manslaughter.

Furthermore, if, after reasonable efforts have been unsuccessful, the jury is unable to reach a verdict as to whether or not the Government has proven each element of second-degree murder beyond a reasonable doubt, the jury should then consider whether or not Mr. Nichols is guilty or not guilty of involuntary manslaughter.

Title 18 United States Code Section 1112 provides that: "Manslaughter is the unlawful killing of a human being without malice." To be guilty of involuntary manslaughter under this statute, the Government must prove three essential elements beyond a reasonable doubt:

(1) That a federal employee with law enforcement functions was killed while engaged in the performance of official duties;

(2) That the victim was killed as a result of an act done by the defendant during the commission of a lawful act, done without due caution, which might produce death; and

(3) That the defendant knew that such conduct was a threat to lives of others or knew of circumstances that would reasonably cause the defendant to foresee that such conduct might be a threat to the lives of others.

The jury will bear in mind that the burden is always upon the Government to prove beyond a reasonable doubt each and

every essential element of any lesser offense which is necessarily included in Counts Four through Eleven. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Terry Nichols has been charged as a principal and also as an aider and abettor in Counts Two through Eleven. Title 18 United States Code Section 2 provides that a person may be found guilty if he aids, abets, counsels, commands, induces, or procures or willfully causes the commission of a federal crime by another person. Under this statute, a defendant is guilty as an aider and abettor if:

(1) He willfully associated himself with a criminal venture;

(2) He participated in it as something he wished to bring about;

(3) He sought by his actions to make it succeed; and

(4) The offense was committed by someone else and aided and abetted by the defendant.

A person may violate the law even though he or she does not personally do each and every act constituting the offense if that person aided and abetted or willfully causes the commission of the offense.

Before Mr. Nichols may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the Government prove beyond a reasonable doubt that the crime was committed and that Mr. Nichols knowingly, intentionally, willfully, and maliciously associated himself in some way with the crime charged and participated in it with the intent to commit the crime.

Mere presence at the scene of the crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that Mr. Nichols aided or abetted the commission of that crime.

The Government must prove that Mr. Nichols knowingly, intentionally, willfully, and maliciously associated himself with the crime in some way as a participant -- someone who wanted the crime to be committed -- not as a mere spectator.

You are here to determine whether the Government has proven the guilt of the defendant, Terry Lynn Nichols, for the crimes charged in the indictment beyond a reasonable doubt. You are not called upon to return a verdict as to any other person. You should consider evidence about the acts, statements, and intentions of persons other than Terry Lynn Nichols only as that evidence may relate to these charges against the defendant now on trial.

So if the evidence in the case convinces you beyond a reasonable doubt of the guilt of Terry Lynn Nichols for the crimes charged in the indictment, you should so find, even though you may believe that one or more other persons may also be guilty. But if any reasonable doubt remains in your minds after impartial consideration of all of the evidence in the case, it is your duty to find Terry Nichols not guilty.

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may

have produced them, and all facts which may have been agreed to or stipulated.

When the attorneys on both sides stipulate or agree to the existence of a fact, you may accept the stipulation as evidence and regard that fact as proved. However, because you are the sole judges of the facts, you are not required to do so.

Any proposed testimony or proposed exhibit to which an objection was sustained by me, the Court, and any testimony or exhibit ordered stricken by me must be disregarded entirely.

Anything you may have seen or heard outside the courtroom is not proper evidence in this case.

There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

It is a general rule that the law makes no distinction between direct and circumstantial evidence but simply requires that before convicting a defendant, the jury must be convinced of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

You have heard evidence in this trial of expressions of opinions and beliefs held by the defendant, Terry Nichols, and of books and articles found in his home. The defendant is not on trial for any of his thoughts, beliefs, or statements, which are protected by the First Amendment to the United States Constitution. The First Amendment, however, does not prevent the prosecution in a criminal case from offering evidence of the defendant's beliefs in an attempt to prove that he had some motive, knowledge, or intent for committing the crimes alleged in the indictment. Proof of motive is not essential in a case such as this; but, when proved, motive may be an item of circumstantial evidence that may bear on whether or why a defendant may have committed a criminal act. Whether you agree or disagree with the defendant's expressed opinions and beliefs is irrelevant. The defendant is on trial only for the crimes set forth in the 11 counts of the indictment, which the Government must prove beyond a reasonable doubt. You may no more convict the defendant because you may disagree with his opinions and beliefs than you may acquit him because you may agree with his opinions and beliefs.

Under the First Amendment to the United States Constitution, all individuals, including Mr. Nichols, have the right to assemble and discuss even the most unpopular ideas, including unlawful acts. Expressions of sympathy and support for those who commit unlawful acts do not, without more, constitute entry into an unlawful agreement, nor does vigorous criticism of the government. One may belong to a group knowing that some of its members commit unlawful acts without having entered into an agreement that these unlawful acts be committed. A frank exchange of political views and opinions, no matter how vehement, radical, or unpopular, does not, without more, constitute an unlawful agreement or evidence of a

without more, constitute an unlawful agreement or evidence of a crime.

You must be careful to consider this evidence solely for the limited purpose for which it was admitted. A failure to restrict your consideration of this evidence to the limited purpose is a violation of your duty and the oath you took. Equally important, it is contrary to the Constitution of the United States. No individual should ever be punished or presumed guilty for exercising his or her rights under the

Constitution of the United States.

You, as jurors, are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case, and only you determine the importance or the weight that their testimony deserves. After making your assessment concerning the credibility of a witness, you may decide to believe all of that witness' testimony, only a portion of it, or none of it.

In making your assessment, you should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness, in your opinion, is worthy of belief. Consider each witness' intelligence, motive to falsify, state of mind, and appearance and manner while on the witness stand. Consider the witness' ability to observe the matters as to which he or she has testified and consider whether he or she impresses you as having an accurate memory or recollection of these matters. Consider also any relation a witness may bear to either side of the case, the manner in which each witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

The reliability of eyewitness identification has been raised as an issue in this case and deserves your attention. Identification testimony is an expression of belief or impression by the witness. Its value depends upon the opportunity the witness had to observe the offender at the time of the offense and later to make a reliable identification, and upon the influence and circumstances under which the witness made the identification.

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide because of the witness's bearing or demeanor, or because of the inherent improbability of his or her testimony, or for other reasons sufficient to you that such testimony is not worthy of belief.

After making your own judgment or assessment concerning the believability of a witness, you can then attach some importance or weight to that testimony, if any, that you feel it deserves. You will then be in a position to decide whether the Government has proven the charges beyond a reasonable doubt.

The rules of evidence ordinarily do not permit witnesses to testify as to their own opinions or their conclusions about issues in the case. An exception to this rule exists as to those witnesses who are described as "expert witnesses." An "expert witness" is someone who by education or experience, may have become knowledgeable in some technical, scientific, or very specialized area. If such knowledge or experience may be of assistance to you in understanding some of the evidence or in determining a fact, an "expert witness" in that area may state an opinion as to relevant and material matter in which he or she claims to be an expert. Thus an "expert witness" is more accurately an opinion witness.

You should consider the testimony of each opinion witness received in evidence in this case and give it such weight as you may think it deserves. You should consider the testimony of opinion witnesses just as you consider other evidence in this case. If you should decide that the opinion of such a witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence including that of other opinion witnesses, you may disregard the opinion in part or in its entirety.

You must also remember that an opinion witness can be influenced by various motivations just as an ordinary witness. You the jury are the experts in the end -- you are the sole judges of the facts in this case.

You have heard testimony from Michael Fortier, who pleaded guilty to certain charges after entering into a plea agreement with the Government to testify. There is evidence that the Government agreed not to prosecute this witness on other charges in exchange for the witness's agreement to plead guilty and testify at this trial against the defendant. The Government also promised to bring the witness's cooperation to the attention of the sentencing court.

The Government is permitted to enter into this kind of plea agreement. You should bear in mind that a witness who has entered into such an agreement has an interest in this case different from any ordinary witness. A witness who realizes that he may be able to obtain his own freedom, or receive a lighter sentence by giving testimony favorable to the prosecution, has a motive to testify falsely. Therefore, you must examine his testimony with caution and weigh it with great care. If, after scrutinizing his testimony, you decide to accept it, you may give it whatever weight, if any, you find it deserves.

You are instructed that you are to draw no conclusions
or inferences of any kind about the guilt of the defendant on trial from the fact that a prosecution witness pleaded guilty

to charges that may relate to this case. That witness's decision to plead guilty was a personal decision about his own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendant on trial here.

Certain witnesses in this case admitted under oath to drug and alcohol abuse. The testimony of drug and alcohol abusers must be examined and weighed by the jury with greater care than the testimony of a witness who does not abuse drugs or alcohol. The jury must determine whether the testimony of the drug or alcohol abuser has been affected by drug or alcohol use, the need for drugs or alcohol, or the threat of prosecution for drug use and possession.

The fact that a witness has previously been convicted of a felony, or of a crime involving dishonesty, is a factor you may consider in weighing the credibility, or believability, of a witness.

The fact of such a conviction does not necessarily destroy the witness's credibility, but is one of the circumstances you may take into account in determining the weight to be given to his testimony.

You may also consider any bias, prejudice, or hostility of a witness toward or against Mr. Nichols or the Government in determining the weight to be accorded to the testimony of that witness.

You have heard testimony from several law enforcement officials. The fact that a witness may be employed by the federal government or a state or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case. It is your decision, after reviewing all of the evidence, whether to accept the testimony of a law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

Charts or summaries have been prepared by the Government and the defense and shown to you during the trial for the purpose of explaining facts that are allegedly contained in books, records, and other documents which are in evidence in the case. Such charts or summaries are not evidence in this trial or proof of any fact. If you find that these charts or summaries do not correctly reflect facts or figures shown by the evidence in the case, the jury should disregard the charts or summaries.

In other words, such charts or summaries are used only as a matter of convenience for you, and the extent to -- and to the extent that you find that they are not, in truth, summaries of facts or figures shown by evidence in the case, you can disregard them entirely.

Some charts or summaries prepared by the Government and the defense have been admitted into evidence, and have been shown to you during the trial for the purpose of explaining facts that are allegedly contained in books, records, or other documents which are in evidence in the case. You may consider the charts and summaries as you would any other evidence.

the charts and summaries as you would any other evidence admitted during the trial and give them such weight or importance, if any, as you feel they deserve.

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has made statements which are inconsistent with the witness's present testimony. The testimony of a witness may be discredited, or, as we sometimes say, impeached by showing that he or she previously made statements which are different from or inconsistent with his or her testimony here in court. The earlier inconsistent or contradictory statements are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements made somewhere other than here during trial. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has made prior inconsistent or contradictory statements. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If any witness is shown to have testified falsely concerning any material matter, you have the right to distrust such witness's testimony in other particulars and you may reject all of the testimony of that witness or give it such credibility as you may think it deserves.

Evidence relating to any alleged statement by a defendant to law enforcement agents should always be considered by the jury with great caution and weighed with great care. All such alleged statements should be disregarded entirely unless the other evidence in the case convinces the jury that the statement was made or done knowingly and voluntarily.

In determining whether any statement alleged to have been made by a defendant to law enforcement agents was knowingly and voluntarily made or done, the jury should consider all of the circumstances surrounding the alleged making of the statement. Such factors you should consider can include, but are not limited to, the defendant's age, his training, education, occupation, and physical and mental condition while in custody or other interrogation as shown by the evidence in the case. You should consider the totality of the circumstances under which the alleged statement was made in making your decisions about its worth or value, if any.

If after considering the evidence you determine that a statement was made or done knowingly and voluntarily, you may give it such weight as you feel it deserves under the circumstances.

Statements knowingly and voluntary made by any person upon being informed or learning that a crime has been committed or upon being accused of a criminal charge may be considered by the jury.

When a person voluntarily offers an explanation or voluntarily makes some statement tending to show his innocence or lack of knowledge and it is later shown that the person knew that the statement or explanation was false, the jury may, but need not, consider this as a showing of consciousness of guilt since it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an

explanation or statement tending to establish his innocence or lack of knowledge.

Whether or not evidence as to a person's explanation or statement points to a consciousness of guilt on his part and the significance, if any, to be attached to such evidence are matters exclusively within the province of the jury as the sole judges of the facts of this case.

In your evaluation of evidence of an exculpatory statement shown to be false, you may be -- you may consider that there may be reasons -- fully consistent with innocence -- that could cause a person to give a false statement showing their innocence. Fear of law enforcement, reluctance to become involved, and simple mistake may cause a person who has committed no crime to give such a statement or explanation.

When a person voluntarily agrees to meet about FBI agents, and, after being informed of his constitutional right to remain silent, answers their questions, the agents are not required by law to stop their questioning and arrest the person, or inform him immediately upon the issuance of a warrant for his arrest as a material witness.

You are cautioned that because the right to remain silent when being questioned by the FBI or any other law enforcement officials is a fundamental right under the United States Constitution, the failure of a person being questioned to answer any question may not be considered. Accordingly, with respect to any testimony that Mr. Nichols did not answer questions put to him by FBI -- FBI agents, you are instructed that you must draw -- excuse me -- that you must not draw any inferences or conclusions as to what the answers might have been or why he did not answer those questions.

Under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial, hard-core question that you must ask yourselves as you sift through the evidence is: Has the Government proven the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has proven that the defendant is guilty of the crimes charged solely on the basis of the evidence and subject to the law as I give it to you in these instructions. It must be clear to you that once you let fear or prejudice, or bias or sympathy interfere with your thinking there is a risk that you will not arrive at a true and just verdict according to the law and the evidence.

If you have a reasonable doubt as to a defendant's guilt, you should not hesitate for any reason to return a verdict of not guilty. But on the other hand, if you should find that the Government has met its burden of proving the defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to return a verdict of guilty.

Remember that the question before you can never be: Will the Government win or lose the case? The Government always wins when justice is done regardless of whether the verdict is guilty or not guilty.

The law does not compel Mr. Nichols or any defendant

in a criminal case to take the witness stand and testify and you must not draw any inference from the fact that Mr. Nichols did not testify. It is up to the Government to prove Mr. Nichols guilty beyond a reasonable doubt. It is not up to Mr. Nichols to prove that he is not guilty. The fact that Mr. Nichols did not testify should not be discussed by you in any way or play any part in your deliberations.

I explained to you individually at the time that you were being questioned for possible service as jurors in this case the various possible stages, including jury sentencing in a capital case. Your function at this stage of the trial is to weigh the evidence in the case and to determine whether or not the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot allow a consideration of the punishment which may be imposed upon the defendant, if he is convicted, to influence your verdict or even to enter into your deliberations.

Upon retiring to the jury room, you will select one of your number to act as the foreperson. The foreperson will preside over your deliberations and speak for you in court.

A form of verdict has been prepared for your convenience.

You understand that your verdict must be unanimous. All of you must be in agreement. Until you all have agreed, you have not reached a verdict.

You will take this form with you to the jury room and when you have reached unanimous agreement as to your verdict, the foreperson will fill in and sign the form to state the verdict upon which you have agreed and then you will return with your verdict to the courtroom.

Now, the verdict form looks like this. Actually you will have, in addition to the verdict form, work copies that each of you will have. I think that the verdict form is self-explanatory, but let me go over it briefly with you to make sure.

It says -- has of course the title of the court and case. Verdict form says, "We the jury, upon our oaths, unanimously find as follows." And then separately for each count, as you must consider separately each count under the law and the evidence, it says, "Count One," and reminds that is conspiracy to use a weapon of mass destruction. There is a blank line under which are the words "not guilty or guilty." When you have reached unanimous agreement with respect to that count, then the person whom you have selected as foreperson will write in on the line the words that describe your verdict, be they not guilty or guilty.

With respect to Count Two, it reminds that's use of a weapon of mass destruction. Again, the space to fill in the verdict.

Count Three, destruction by explosive; again, the line upon which the foreperson will write in your decision.

Then it has this on page 2: "If you find the defendant guilty of one or more of the crimes charged in these three counts, then answer the following question."

There is then written this question: "Do you find that the Government proved beyond a reasonable doubt that the

crime or crimes committed by the defendant, Terry Lynn Nichols, as found above --" that is, with respect to the first three counts "-- resulted in the death of one or more of the persons named in the indictment?"

Here there is a line under it, the words "yes or no," and the foreperson would fill in the word "yes" or "no" depending upon your unanimous finding.

Then it asks this additional question: "Was the death of such person or persons a foreseeable result of the defendant's criminal conduct?"

Again, "Yes or no." That's with respect to the first three counts or charges of the indictment.

The verdict form then goes on, separately, to ask with respect to the murder counts, each of Counts Four through Eleven.

Count Four it says, "First-degree murder of Mickey Bryant Maroney." Again, guilty or not guilty.

But then it goes on and says, "First less serious offense," and reminds in parentheses, "(To be filled out only if you find the defendant not guilty of first-degree murder under Count Four or are unable to reach a verdict as to first-degree murder under Count Four.)"

Then as these instructions have told you, you would consider second-degree murder under the instructions with respect to the elements of that lesser included offense.

The verdict form goes on and says: "Second less serious offense," and again reminds, "(To be filled out only if you find the defendant not guilty of either first- or second-degree murder under Count Four or are unable to reach a verdict as to first- or second-degree murder under Count Four)."

So you would be down here only if the decision has been not guilty on first-degree murder and second-degree murder. Then you would consider involuntary manslaughter as these instructions have explained that offense to you.

Similarly with respect to each of the other of the first-degree murder counts, there is the same form so that you can consider the lesser included offenses if you find that the evidence does not prove the first-degree murder count beyond a reasonable doubt or if you're unable to reach a verdict as to that count.

Then after going through each of these murder counts, the last one being of course Count Eleven on page 7, having completed all of this, then the foreperson will sign his or her name over the word "foreperson" and fill in the date of your decision and advise that you have arrived at a decision, and you would then be returned to court for the return of your verdict and its announcement.

Now, if it should become necessary during your deliberations to communicate with the Court, you may do so in writing; but you must bear in mind that you are not to reveal to the Court or to any person how the jury stands numerically or otherwise on the questions before you until after you have reached your unanimous verdict.

So as I have said before, as I explained to you, I think yesterday, we have set up the exhibits in this case in a

think yesterday, we have set up the exhibits in this case in a separate room. It is an adjacent courtroom. The deliberating jurors will be the only persons having access to that area and will be free to go and come to that room to look at the exhibits as you choose to see them and view them. How you use the exhibits in the case is of course a matter entirely for your choice.

All that has been received in evidence will be there. Things that have not been received in evidence will not be there and will not be provided at your request because, for example, you may as you deliberate and discuss the case remember some document or object being discussed in the testimony but not actually received in evidence. We can't change the evidence now, and it would not be provided to you even if you requested it.

Also, there have been these things, as I have mentioned to you from time to time and as I did in these instructions refer to them as demonstrative or illustrative exhibits, both with respect during the time of the testimony of witnesses and also at times in the argument of the case. Those will not be provided because they have not been received in evidence and are not therefore a part of the evidence.

One modification with respect to the actual exhibits have been made. There are, as you know, a number of firearms that have been received in evidence. Those firearms are in the exhibit room and available for your inspection there. There was also received in evidence ammunition. Some of that ammunition fits in some of the firearms. Now, just as a matter of safety, we are withholding the ammunition and substituting for it photographs of that ammunition so that, you know, the guns are rendered safe. You don't have to in any way feel danger with respect to handling of firearms, if you wish to do so. There's no ammunition in them, and you will see that there's a device in there preventing it from being used; but we don't want any accidents, so we're keeping the ammunition separated and available, you know, as a matter of photographs.

Now, if you will for just a moment bear with us, I'm going to ask counsel to approach the bench and have a matter to discuss with them. You can stand and stretch during this time. I'm going to turn on this noise machine, too, so you can't hear us.

(At the bench:)

(Bench Conference 128B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: Now with respect to the deliberations here, there are 18 of you seated here in the jury box. The law provides that the decision will be made by 12 people, a jury of 12. We have had six more jurors here as to be available as alternate jurors, and they have of course been available to participate in the deliberations if that were necessary.

The people who are seated here in the first row, counting from my left to your right Chair No. 1 through 6, and also in the second row beginning again at my extreme left, your right, and for six seats in the second row are the 12 persons who will serve as the jurors to decide this case and deliberate. The other six of you are alternate jurors.

Now, the time of deliberation will of course be a matter of the 12 people who are deliberating. They're going to take whatever time they find necessary to decide the case, and that's a matter for them to decide as they go along, and we will provide that time that is necessary for fair deliberation in the case. I'm going to ask the other six of you to remain available; and in fact, we have arranged to keep you together during the time that 12 people are deliberating in the case.

Once again, there's no sequestration order here. I would expect the deliberations to run the usual court day, 8:30 to 5; in the absence of your request to do something different from that, that that would be the normal schedule. And we'll arrange for those who are the alternate jurors to be together at another suitable place so that in the event that it may be necessary to go on with further hearing in the case, the alternate jurors will remain available to serve with us in the same fashion as through the trial here. Whether that is or is not necessary, of course, as you recognize, depends on the verdict in the case.

I want you, alternate jurors, first of all, to accept our thanks for your being with us and also in advance thank you for what I'm now going to tell you is required of you, and that is that you not deliberate among yourselves. You're not a shadow jury here. So in the same way as you have complied with my instructions throughout the trial, I'll ask of you that you not discuss the case among yourselves and of course not with any other person and that you continue to be extremely careful; that you avoid radio, television, news, magazines, newspapers, or whatever, and anything that may contain -- be contained in them that would relate to this case, recognizing that it is possible that you will have the responsibility to come back and rejoin us for another stage of the case, as I say, if that

should be necessary.
So you're in a true standby situation. We will attempt so far as possible to provide you with some -- something to do during that time that will be -- make the time more passable to you; but again, I want to emphasize the importance of your availability and our appreciation for it.
I will ask now that the six alternate jurors please go to the jury room and pick up whatever you have there that is personal to you, and then you will be escorted to the place where we'll ask you to be in waiting. So if the alternate jurors will please leave at this time and remain available.
(Alternate jurors out at 2:11 p.m.)
THE COURT: And for those now on the jury, as we wait for the alternate jurors to pick up their things and leave the area where you've all been together, I just want to emphasize again that the course of the deliberations is entirely up to you; that as I told you in these instructions, you will select one of your number to act as the foreperson, and that be the person that presides over your deliberations and will then speak for you here in court.
As I mentioned in these instructions -- and you will have, each of you, a complete copy of the instructions as well as copies of the indictment and the verdict forms so you don't have to pass a paper around all the time. Each will have that in front of you. And you will be free to use this area that you know all too well and also access to the courtroom where only you will have access to the exhibits and so that you can make such use of them as you see fit.
Again, I would remind you as I did in the instructions
that if you have some need to communicate with the Court, you may send a note. Do so only in writing. You will communicate with the Court only in writing, and you will send the note.
I believe you have met Mr. Manspeaker here, who is the
clerk of this court and who will be available to you. There is a buzzer system in the jury room that you may or may not know about. He can explain that to you quickly now; and if you need anything, you can buzz him and he will be available to you.
Will you check.
We're just going to check to see if the others are -- now, you know, also each time that I excuse you as jurors in this case and of course the time of your deliberation, as I've said earlier, is up to you. But we only anticipate your working up to 5:00, just as we have been throughout the course of the trial, because I think some of you may have commitments with child care and other things; and we'll try to keep this so that you can continue with that schedule. We'll always bring you back into the courtroom, however, before recessing you to of course remind you about your obligations as members of the jury.
So with these instructions, members of the jury, you will now retire to your jury room to select a foreperson and begin your deliberations in this case.
(Jury out at 2:14 p.m.)
THE COURT: As I advised the jury, we will -- our practice will be to ask every one of counsel and the defendant

practice will be to ask every one of counsel and the defendant
to be here at 10 minutes before 5, if you haven't heard from us before that, so that we may bring the jury in and give them cautionary instructions to recess their deliberations and probably to suggest that they have deliberations from 8:30 to 5 as the regular workday; and of course it's also my practice to take any questions or communications from the jury that require response by first meeting here in the courtroom and discussing them. So I need counsel to be available on about 10 minutes' notice so that we can deal with that without having the jury wait for us.

Now, with that, either side have anything further at this time?

MR. TIGAR: No, your Honor, not from defense.

MR. MACKEY: Nothing at this time, your Honor. Thank you.

THE COURT: All right. Then the Court will be in recess subject to call.

(Recess at 2:15 p.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 16th day of December, 1997.

____

Kara Spitler

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