

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.

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 141)

PROCEEDINGS

Proceedings before the HONORABLE RICHARD P. MATSCH,  
Judge, United States District Court for the District of  
Colorado, commencing at 4:38 p.m., on the 23d 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, and RANDAL SENDEL, Assistant U.S.  
Attorney for the Western District of Oklahoma, 210 West Park  
Avenue, Suite 400, Oklahoma City, Oklahoma, 73102, appearing  
for the plaintiff.

LARRY MACKAY, 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 THURSCHELL, 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

(In open court at 4:38 p.m.)

THE COURT: Please be seated.

The jury has sent word that they've arrived at a  
verdict. I'm going to return the jury now to the courtroom to  
return the verdict.

Before doing so, I want to caution all present to

avoid any audible or other response to the verdict and to  
maintain the appropriate decorum in the courtroom.

We'll return the jury.

(Jury in at 4:39 p.m.)

THE COURT: Members of the jury, good afternoon.

JURORS: Good afternoon.

THE COURT: Have you now arrived at a verdict?

JURORS: Yes, we have.

THE COURT: And if your foreperson will pass the verdict form to Mr. Manspeaker, the clerk.

Members of the jury, you'll please listen to the reading of your verdict.

#### VERDICT

THE COURT: Criminal Action 96-CR-68-M, United States vs. Terry Lynn Nichols, defendant. Verdict:

We, the jury, upon our oaths unanimously find as follows:

Count 1, conspiracy to use a weapon of mass destruction: Guilty.

Count 2, use of a weapon of mass destruction: Not guilty.

Count 3, destruction by explosive: Not guilty.

If you find the defendant guilty of one or more of the crimes charged in these three counts, then answer the following 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 resulted in the death of one or more of the persons named in the indictment? Yes.

If your answer is yes, then answer the following additional question: Was the death of such person or persons a foreseeable result of the defendant's criminal conduct?

Answer: Yes.

Count 4:

First-degree murder of Mickey Bryant Maroney: Not guilty.

Second-degree murder of Mickey Bryant Maroney: Not guilty.

Involuntary manslaughter of Mickey Bryant Maroney: Guilty.

Count 5:

First-degree murder of Donald R. Leonard: Not guilty.

Second-degree murder of Donald R. Leonard: Not guilty.

Involuntary manslaughter of Donald R. Leonard: Guilty.

Count 6:

First-degree murder of Alan Gerald Whicher: Not guilty.

Second-degree murder of Alan Gerald Whicher: Not guilty.

Involuntary manslaughter of Alan Gerald Whicher: Guilty.

Count 7:

First-degree murder of Cynthia Lynn Campbell-Brown: Not guilty.

Second-degree murder of Cynthia Lynn Campbell-Brown: Not guilty.

Third-degree murder of Cynthia Lynn Campbell-Brown: Not guilty.

involuntary manslaughter of Cynthia Lynn Campbell-  
Brown: Guilty.  
Count 8:  
First-degree murder of Kenneth Glenn McCullough: Not  
guilty.  
Second-degree murder of Kenneth Glenn McCullough:  
Not  
guilty.  
Involuntary manslaughter of Kenneth Glenn McCullough:  
Guilty.  
Count 9:  
First-degree murder of Paul Douglas Ice: Not guilty.  
Second-degree murder of Paul Douglas Ice: Not guilty.  
Involuntary manslaughter of Paul Douglas Ice: Guilty.  
Count 10:  
First-degree murder of Claude Arthur Medearis: Not  
guilty.  
Second-degree murder of Claude Arthur Medearis: Not  
guilty.  
Involuntary manslaughter of Claude Arthur Medearis:  
Guilty.  
Count 11:  
First-degree murder of Paul C. Broxterman: Not  
guilty.  
Second degree murder of Paul C. Broxterman: Not  
guilty.  
Involuntary manslaughter of Paul C. Broxterman:  
Guilty.

Dated 23 December, 1997, Niki M. Deutchman,  
Foreperson.  
Ms. Deutchman, were these and are these the jury's  
verdicts?

FOREPERSON: Yes, they are.

THE COURT: And I will ask each of you with respect  
to  
your individual verdict -- and I do so now referring to you by  
the chairs in which you sit, beginning with the foreperson in  
Seat No. 1.

The juror in Seat No. 1: Were these and are these  
your verdicts.

JUROR NO. 1: Yes.

THE COURT: The juror in Seat No. 2: Were these and  
are these are your verdicts?

JUROR NO. 2: Yes.

THE COURT: The juror in Seat No. 3: Were these and  
are these are your verdicts?

JUROR NO. 3: Yes, they are.

THE COURT: The juror in Seat No. 4: Were these and  
are these your verdicts?

JUROR NO. 4: Yes.

THE COURT: The juror in Seat No. 5: Were these and  
are these your verdicts?

JUROR NO. 5: Yes, sir.

THE COURT: The juror in Seat No. 6: Were these and  
are these your verdicts?

JUROR NO. 6: Yes.

THE COURT: The juror in Seat No. 7: Were these and

THE COURT: The juror in Seat No. 7: Were these and are these your verdicts?

JUROR NO. 7: Yes.

THE COURT: The juror in Seat No. 8: Were these and are these your verdicts?

JUROR NO. 8: Yes.

THE COURT: Juror in Seat No. 9: Were these and are these your verdicts?

JUROR NO. 9: Yes, sir.

THE COURT: Juror in Seat No. 10: Were these and are these your verdicts?

JUROR NO. 10: Yes.

THE COURT: Juror in Seat No. 11: Were these and are these your verdicts?

JUROR NO. 11: Yes, sir.

THE COURT: Juror in Seat No. 12: Were these and are these your verdicts?

JUROR NO. 12: Yes, your Honor.

THE COURT: Now, we're going to return the alternate jurors to the courtroom at this time.

(Alternate jurors in at 4:46 p.m.)

THE COURT: The alternate jurors have been returned to the courtroom for the reason that the verdict in this case that has been arrived at by the 12 deliberating jurors is that the defendant has been found guilty of on Count 1, the conspiracy to use a weapon of mass destruction.

The jury found the defendant not guilty of Count 2, the use of a weapon of mass destruction, and Count 3, destruction by explosive.

The juror -- the jury also found that with respect to Count 1 that the Government proved beyond a reasonable doubt that death resulted of one or more of the persons named in the indictment and that such death was foreseeable.

With respect to the first-degree murder counts, the jury found the defendant not guilty of first-degree murder, not guilty of second-degree murder, but guilty of involuntary manslaughter on each of those counts.

What that means -- and I am now addressing all of you -- is that because the conspiracy count, Count 1, of which the defendant has been found guilty and which also has resulted in foreseeable deaths of the persons named in the indictment, carries the possibility of a sentence to death, there is a further hearing that is required. Each of you will recall that when we went through the jury selection process and we went through your views with respect to capital punishment and the possibility of a sentencing stage that this was mentioned to you. And, of course, for you alternate jurors, you must accept the verdict of the deliberating jurors in this case, but you're going to be asked to return to participate in the sentencing hearing, along with the other jurors. And the reason for that is the possibility that as that hearing goes forward, some juror may be unable to continue for illness, accident, or other reason. And therefore, we need the alternate jurors once again. So you're going to be able -- going to be asked to return to serve further.

Now, given that tomorrow is a day of religious significance for some persons and is also the day preceding

another day of religious significance for other persons and that Thursday is an additionally a national holiday, I'm going to wait to begin the trial on the question of punishment or sentencing on Monday. And that, indeed, will then be a new matter at that time. And, of course, as I explained to you in the course of the voir dire again, the time that you were being selected as jurors and alternate jurors, that stage involves the same sort of process that the trial has followed: that there will be witnesses and exhibits -- opening statements, witnesses, exhibits, and oral argument in the same fashion. I cannot now tell you with any degree of certainty the exact length of that trial; but here again, it is a matter that requires our attention and patience and care.

And I am going to let you go home now and to, you know, take the time off between now and Monday to do as you see fit; but there are some cautions here. I anticipate that during the -- as a result of the time that has been involved in the trial that some of the news media have identified some of you or all of you; that I, of course, announced the name of the foreperson here. And I want to simply advise you of this: that if anybody in any way attempts to contact you and in any way seeks to ask you about your verdict in this case, you who deliberated in the case, or in any way seeks to influence you in what lies ahead, the decisions that lie ahead, you will, of course, refuse to talk to any such persons in any way about this case and report such a contact to me through the means that you have been given here by calling the number that you have called and let me know immediately. You are not to be contacted by anybody during this time, not the deliberating jurors and not the alternate jurors.

Similarly, on your part, you're not to discuss the case with anyone. You know, this verdict, of course, is now public. I'm sure even as we speak, it is public. So I want you to recognize your continuing responsibility in this matter. It is not your -- your job is not done.

And what, of course, is required of you is that in reaching the next decision to be reached here -- and again, just so that all of you have this well in mind, what you will be asked to do is to hear additional evidence, hear from both sides in the case; and then you'll be asked to make a decision as to what the punishment in this case should be for this conspiracy that resulted in death, whether that punishment should be death, life in prison without the possibility of ever being released, or a lesser sentence, in which case what you essentially do is turn the matter over to me to decide. So those -- you know, that's what the choices will be, so that you're clearly informed about that ahead of time. I don't want you to -- the fact that we have these several days between now and the penalty phase -- I don't want you to be uncertain about that.

I will, of course, at the conclusion of the taking of the evidence in that phase give you additional instructions about how to approach that -- those questions that will be before you. But the answers will have to be based upon what happens in this courtroom and nothing else.

There is no doubt that the verdict of the jury in

this

case will receive considerable public attention and will generate considerable comment in a number of ways and may be criticized by some, praised by others -- all of that. You, of course -- you who have the responsibility for deciding the future of the defendant must avoid all of that publicity, any of that comment, so that you can again return to this courtroom and participate in this process according to the law and the evidence and your oath.

Now, that is not going to be easy for you to do. I realize that. I have some experience in making decisions that get public comment. And it is the same for you. You have judged the facts of this case, and there will be people who judge your judgment. But each one of you must recognize that you are indeed judges of the facts and that you will now have the responsibility to make an additional judgment that has to be made on the basis of the law and the evidence as it will be given to you.

So please be very careful. And the best thing that you can do, of course, is to -- and it really is required that you turn off, turn out, turn away from anything that will appear and including the comments, you know, of family and friends.

During this time between now and the conclusion of the penalty phase hearing, you must consider that your job. The priority is this case and the responsibilities that you have here; and, you know, nothing should interfere with that. You don't go back to work during this time. You continue to be on the job.

Now, with that, members of the jury, I'm going to excuse you now, recess, and we will return Monday following the process, you know -- you'll be given some instructions when we recess here and will return to your responsibilities on Monday morning and resume at 8:45.

You are all now rejoined as a group of 18. And for those who did not deliberate in this case, the alternate jurors, I don't want you to question these folks in any respect: Well, how did you decide this or that; tell me about your deliberations -- a natural thing now to want to do. Don't do it. These folks don't have to answer to anybody for their decision, and that anybody includes the six of you.

So you must accept their decision without question.

I trust that you all understand that.

All right. You're now going to be excused, and we'll resume with this on Monday morning, the 29th, I guess that is.

Yes, the 29th.

All right. Rest.

(Jury out at 4:47 p.m.)

THE COURT: Ms. Hasfjord, exhibit the verdict form to counsel and the defendant.

Mr. Tigar . . .

#### DEFENDANT'S MOTIONS

MR. TIGAR: Your Honor, because I'm uncertain, given the bifurcated proceeding, we move at this time pursuant to Rule 29 of the Federal Rules of Criminal Procedure for judgment

RULE 29 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE FOR judgment of acquittal and pursuant to Rule 37 of the Federal Rules of Criminal Procedure in arrest of judgment; and we ask the Court to record the fact that we made that motion and ask for a briefing date on those to be set by the Court 28 days after the verdict in a penalty phase, if there is a penalty phase.

THE COURT: The Rule 29 motion: I don't understand the need for briefing with regard to that.

MR. TIGAR: Well, your Honor, we would request the opportunity to brief it. If the Court is disposed to decide it now --

THE COURT: Well, you know, my understanding of the procedure here is that none of the times for motions begins on the verdicts, because I think the verdicts are interrelated. And while, of course, the verdicts on the -- the not guilty verdicts are not affected by this and the verdicts on Counts 4 through 11, I don't think -- you know, we should not separate out --

MR. TIGAR: I understand. I'm not moving under Rule 33 for precisely that reason.

THE COURT: Yes. All right.

MR. TIGAR: The court understands that's why I'm moving under 29 and 37.

THE COURT: We don't have a whole and we don't have a final verdict yet in my view of the procedure until there is a verdict on the sentencing phase.

MR. TIGAR: I understand your Honor's position. I want it to be on record because the rule is not clear.

THE COURT: I understand.

MR. TIGAR: And the time limits are jurisdictional.

THE COURT: Well, the motion has been made.

MR. TIGAR: Thank you, your Honor.

THE COURT: And I'm not going to set briefing on it now. I think you've preserved your position.

I do, of course, have some other matters to deal with counsel, motions to be heard prior to what I told the jury the penalty phase to begin on Monday.

MR. TIGAR: Well, your Honor, the -- of course, the -

-  
I understand the United States' position is that despite acquittals on Counts 2 and 3 that they intend to go forward. Whether the United States believes that given the verdicts on Counts 4 through 11 they can under Ash vs. Swenson go forward is a different question; and that, we would be prepared to address at the earliest procedural hour.

THE COURT: Yes. Well, I can hear it tomorrow. I can hear it Friday. I'm at your --

MR. MACKEY: Tomorrow morning would be fine, Judge.

THE COURT: I suggest we do it as early as possible.

MR. TIGAR: Tomorrow morning, your Honor.

THE COURT: Tomorrow morning at 9?

MR. TIGAR: Fine.

THE COURT: And we'll address that here, of course.

I want you to review the verdict form before I recess and return it to the clerk. I don't want to lose track of it.

Show it to Government counsel, too, please, a party  
in  
interest.

Let me just pronounce further that as I instructed  
the  
jury, they are not going to comment to anyone on their verdict.  
And it is my view that anyone attempting to contact these  
jurors and the alternate jurors to question them concerning  
this verdict or their continuing responsibilities in this  
case -- that such a contact would constitute an obstruction of  
justice.

We'll be in recess till 9:00 tomorrow morning.  
(Recess at 5:03 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 23d day of December, 1997.

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Paul A. Zuckerman

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