

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE MORRISON C. ENGLAND, JR., JUDGE

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 2:06-cr-0035

VOLUME II

ERIC McDAVID,

Pages 185 to 368

Defendant.

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REPORTER'S TRANSCRIPT

TRIAL PROCEEDINGS

TUESDAY, SEPTEMBER 11, 2008

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Reported by: DIANE J. SHEPARD, CSR #6331, RPR

APPEARANCES

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1 SACRAMENTO, CALIFORNIA

2 TUESDAY, SEPTEMBER 11, 2008

3 ---oOo---

4 (Jury out.)

5 THE CLERK: Calling criminal case 06-00035, United  
6 States v. Eric McDavid. On for jury trial, day two, Your  
7 Honor.

8 THE COURT: Thank you good morning. For the record,  
9 we're outside the presence of the jury at this time. Counsel  
10 and all parties are present.

11 Mr. Lapham, are we ready to proceed today?

12 MR. LAPHAM: We are, Your Honor. There is a little  
13 glitch. I think with my examination of the first witness, we  
14 can carry it through to the midmorning break before I have to  
15 use the court sound system, and I think we can use the break to  
16 maybe remedy whatever the problem is.

17 THE COURT: It's not working at this time?

18 MR. LAPHAM: Well, there are two audio clips that  
19 won't play on the overhead court system, and we have some  
20 makeshift speakers here. And if we can put them close enough  
21 to the jury, that might be a good fix.

22 THE COURT: Will there be playing of audio recordings  
23 here during this period also?

24 MR. LAPHAM: Not during the first session.

25 THE COURT: All right. When you have any of the

1 audio clips, just so I'll know, will you be providing the jury  
2 with any courtesy copies of transcripts?

3 MR. LAPHAM: Yes. We have copies for you. Actually,  
4 they are in your exhibit binder. And we have a copy of the  
5 transcript for each of the jurors.

6 THE COURT: All right. I will advise the jurors at  
7 that time that the transcripts are not evidence. It's purely  
8 to assist them in listening to the clips, if you will, and that  
9 they will be picked up at the end of the playing of the  
10 particular clips.

11 MR. LAPHAM: Understood.

12 THE COURT: Any other issues?

13 MR. REICHEL: Just briefly, Your Honor. The witness  
14 is going to testify, and Mr. Lapham is going to show, I think,  
15 clips of statements made by Mr. McDavid. I believe that some  
16 of them, I believe, are going to be, number one, irrelevant  
17 and, number two, violative of Rule 403, and that their  
18 probative value is outweighed substantially by the fact that  
19 it's going to confuse the jury and inflame their prejudices  
20 against him.

21 Specifically, the clips -- many of the clips that he  
22 is going to show do not have anything to do with the alleged  
23 targets in this conspiracy, the IFG, the dam, and cell towers.

24 And, finally, it violates Rule 404(b), and that it's  
25 clear he's just trying to show the character of Mr. McDavid.

1           So I know what he is going to show, and I'll  
2 interpose that objection briefly for the Court at that time.

3           THE COURT: You've adequately stated it here before  
4 we have even see it, Mr. Reichel. So I'll wait to see what  
5 they have and when they present it, and I'll expect to have  
6 your objection at that time.

7           Is this the sound system we're going to be dealing  
8 with now?

9           Is there anything else regarding witnesses that we  
10 need to deal with right now?

11          MR. LAPHAM: Only the swearing in of the witness.  
12 How that's going to be accomplished?

13          THE COURT: Was there a stipulation to that?

14          MR. REICHEL: Yes.

15          MR. LAPHAM: Yes.

16          THE COURT: Okay. Go to sidebar?

17          MR. LAPHAM: Yes.

18          THE COURT: That's fine. Do you want to do that now,  
19 or are we going to have her on the stand?

20          MR. LAPHAM: Actually, Your Honor, we probably could  
21 swear the witness in front of the jury, and that would probably  
22 be prudent. We just need to solicit her name for the record at  
23 sidebar.

24          THE COURT: That's fine.

25          MR. LAPHAM: And we would request an order that the

1 name not be made public or revealed to the defendant.

2 THE COURT: Understood. Mr. Reichel, anything?

3 MR. REICHEL: We have agreed that that's acceptable,  
4 Your Honor.

5 THE COURT: That stipulation will be entered. The  
6 witness' true name will not be revealed during the course of  
7 the proceedings.

8 MR. LAPHAM: Thank you, Your Honor.

9 MR. REICHEL: The name on sidebar now?

10 MR. LAPHAM: You want to do that with the witness,  
11 correct?

12 THE COURT: I would prefer to do it with the witness  
13 here.

14 MR. LAPHAM: I think that would be prudent.

15 THE COURT: Rather than you just telling us what the  
16 name is. Thank you. We can bring the jury in now.

17 (Jury in.)

18 THE COURT: All right. Thank you. For the record,  
19 all jurors and the alternates are now present.

20 Ladies and gentlemen, welcome, and good morning. I  
21 apologize for the delay in bringing you in. As much as we  
22 tried to be on time here today, we were held at the mercy of  
23 the technical-glitch gods. We were not able to get some  
24 electronic equipment working. It's still not quite working  
25 quite well, but we're going to try to proceed ahead.

1           So if there are some sounds that aren't quite as  
2 clear as they could be, please bear with us. We're trying to  
3 do everything we can to make sure that all of the audio and  
4 visual that you will be hearing this morning will be as good as  
5 possible, but just bear with us for this point. Thank you.

6           Counsel, are you ready to proceed?

7           MR. LAPHAM: Yes, Your Honor.

8           THE COURT: Mr. Reichel, ready?

9           MR. REICHEL: Yes, we are, Your Honor.

10          THE COURT: Please call your next witness.

11          MR. LAPHAM: Your Honor, the United States calls  
12 Anna.

13          THE COURT: Come to sidebar, please.

14          (Begin sidebar discussion.)

15          THE COURT: Good morning. For the record, all  
16 attorneys are present, and would you please state your name for  
17 the record?

18          MR. LAPHAM: Your true name.

19          THE WITNESS: [REDACTED]

20          THE COURT: Spell your last name?

21          THE WITNESS: [REDACTED]

22          THE COURT: Thank you very much.

23          MR. REICHEL: Is the witness aware of the  
24 confidentiality order?

25          THE COURT: Just so you are aware, there is a



1 stipulation, meaning an agreement, between the parties, and an  
2 order from this Court that your true name is not to be divulged  
3 at any time during these proceedings. Do you understand that?

4 THE WITNESS: Yes, I do.

5 THE COURT: So you will be referred to as Anna by all  
6 parties that are here at this time. All right. Thank you.

7 MR. LAPHAM: Thank you.

8 (End sidebar discussion.)

9 (The witness was sworn by the Clerk.)

10 THE WITNESS: Yes.

11 THE CLERK: Thank You.

12 The Court: Go ahead.

13 "ANNA",

14 a witness called by the Government, having been first duly  
15 sworn by the Clerk to tell the truth, the whole truth, and  
16 nothing but the truth, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LAPHAM:

19 Q. Thank you, Your Honor.

20 We just had a sidebar over there, and during that  
21 sidebar you revealed to the Judge and to the defense attorney  
22 your true name for the record?

23 A. Yes, I did.

24 Q. And but for purpose of today's proceedings, we're  
25 going to be referring to you by the name "Anna"; do you

1 understand that?

2 A. Yes, I do.

3 Q. And that was your name during the course of this  
4 investigation?

5 A. Yes.

6 Q. All right. Let me start by asking you, do you know  
7 the defendant, Eric McDavid?

8 A. Yes, I do.

9 Q. And how do you know him?

10 A. Eric McDavid was an anarchist that I was -- I met  
11 while I was undercover with the FBI.

12 Q. I'm going to ask you to pull that microphone a little  
13 closer to you, And you can scoot your chair forward.

14 A. How's that?

15 Q. Better.

16 So you were working as an undercover employee for the  
17 FBI?

18 A. Yes, I was.

19 Q. I want to ask you some background questions, first,  
20 about how you came to be in that position.

21 Let me direct your attention, first, to the Fall of  
22 2003. How old were you at that time?

23 A. I was 17 at that time.

24 Q. And what were you doing at that time?

25 A. I was a sophomore in college.

1 Q. In what state?

2 A. Florida.

3 Q. And you were taking classes in the Fall of 2003?

4 A. Yes, I was.

5 Q. And did you decide for one of those classes you would  
6 do an extra-credit project?

7 A. Yes, I did.

8 Q. What exactly was that extra-credit project?

9 A. It was for a political science class I was taking.

10 The extra credit project was to go down to the FTAA, Free Trade  
11 Agreement of the Americas, protests that were currently taking  
12 place in Miami.

13 Q. And did anybody suggest to you to do this?

14 A. No.

15 Q. Explain to the jury, if you would, why you decided to  
16 do that?

17 A. I decided to do an extra-credit project because I  
18 wanted to go further in my studies in the political science  
19 area. I had a very interesting professor that I wanted to  
20 impress, and this was a unique opportunity to see an  
21 international conference come to the Miami area.

22 Q. And how did you know that there would be some protest  
23 activities there?

24 A. The local media was covering the event quite  
25 extensively, and they also mentioned that there would be

1 significant protests there.

2 Q. Now, had you had any prior experience with protest  
3 movements up until this time?

4 A. No, I had not. And that's part of what piqued my  
5 interest.

6 Q. So what did you do?

7 A. When the protestors came to town, I decided that that  
8 would be the focus of my paper that I would write. I wanted to  
9 figure out what they were doing and why they were interested in  
10 doing what they were doing.

11 So I went to Goodwill, and I got some ratty clothes,  
12 because I knew that the protestors were more into a grunge  
13 lifestyle than your average Old Navy or Gap lifestyle.

14 And I went down to the protest area and attempted to  
15 just sort of sit back and listen and watch and learn and  
16 understand what and why they were doing.

17 Q. And did you have any success?

18 A. At first, no. They didn't really give me the time of  
19 day. And I came back and tried to look a little bit more as  
20 they were, from my first day when I went in. I adjusted my  
21 appearance a little bit. And I went back the second day with a  
22 friend. And this time we were more successful, and we were  
23 allowed into their final meeting the night before the main  
24 protest. And the next day we were at the protest, and we just  
25 walked around the crowd.

1 Q. How did you adjust your appearance?

2 A. I started wearing a mask for one. I wore camouflage  
3 fatigues. I wore a black long-sleeve shirt. And I believe the  
4 fact that I tried to cover my identity was what finally led me  
5 to be accepted into the main group.

6 Q. And why did you do all these things?

7 A. It seemed that that was the majority -- that was what  
8 the majority of the individuals in the group were doing.

9 Q. All right. So did that allow you access to certain  
10 areas of the protestors' movement?

11 A. I was allowed into their Spokes Council meeting,  
12 which was the meeting right before the main protest during the  
13 day. And that was the meeting where they talked about the  
14 different marches that they were doing, and the different  
15 actions that they were going to take in the morning.

16 Q. Are you familiar with something called the  
17 convergence center?

18 A. Yes, I am.

19 Q. What is that?

20 A. The convergence center is where the protests,  
21 anarchists and activists all meet before the trial -- not the  
22 trial -- before the event.

23 Q. Now, is that just at this particular event or other  
24 events as well?

25 A. No. That's at all large-scale protests and events, a

1 convergence center will be set up by the local activists in the  
2 area.

3 Q. And when you say activists, are you referring to  
4 primarily to anarchist-type activists?

5 A. Anarchist-type activists are a small subset of  
6 activists. The majority of activists are actually normal  
7 citizens who engage in legal protest.

8 Q. As opposed to what type of activities?

9 A. As opposed to non-legal activities, property  
10 destruction, violence, vandalism, trampling on other people's  
11 rights, harassment.

12 Q. And then you mentioned the Spokes Council meeting.  
13 What is that?

14 A. Spokes Council meeting, as I said before, is the  
15 meeting the night before the event took place where a lot of  
16 the groups that are involved in the protest the next day come  
17 together to discuss their final plans for the protest that will  
18 take place.

19 Q. So you were privy to the plans that the protestors  
20 had set out for the following day?

21 A. Yes.

22 Q. And you went back the following day?

23 A. Yes, I did.

24 Q. In what capacity?

25 A. In my -- in my capacity as a student researching, I

1 would say undercover, but not undercover under the direction of  
2 anybody. It was my own private research at that point.

3 Q. Actually what I meant, were you there as an observer,  
4 or did you actually participate?

5 A. As an observer.

6 Q. And what did you observe?

7 Let me rephrase the question. Did what you observe  
8 comport with the plans that had been set out the night before?

9 A. Yes.

10 Q. Did you wind up doing a paper for your class?

11 A. I did.

12 Q. And did you present that to the class?

13 A. I did.

14 Q. With what result?

15 A. When I presented the paper to the class, the class  
16 was very impressed, and one student in the class in particular  
17 was a former FHP officer, Florida Highway Patrol, who had moved  
18 over to the Florida Department of Investigations. And he came  
19 up to me after class and said I was very impressed with your  
20 report. Would you mind if I see a copy of it? And I said,  
21 yes, you may. And he said, I'm going to take this report and  
22 give it to my supervisor, just so you know.

23 Q. What happened after that?

24 A. I got a phone call the next morning. It was the FHP  
25 officer's supervisor. And he said, this is an excellent

1 report. I can't believe you did this. I'm going to pass it up  
2 to my supervisor.

3 Q. And what happened after that?

4 A. It went up the chain of supervisors. And at noon  
5 that day I got a call from Miami PD, who was the lead agency in  
6 charge of the protest. And they called me and said, hey, we  
7 would like to talk to you. We have some questions about what  
8 you did, what you saw. And would you mind coming in this  
9 afternoon for a question session.

10 Q. And you did that?

11 A. I did.

12 Q. And tell us about that?

13 A. When I got in there, the two Miami police officers  
14 and one FBI agent sat me down, and asked me to run through my  
15 report again, everything that I had seen, everything that I had  
16 done, and everything that I had heard. And after I ran through  
17 it for the second time, and they concluded their questions,  
18 they said that this is pretty extraordinary. Not many people  
19 can do this. Would you be interested in doing this again for  
20 us?

21 Q. And how did you react to that?

22 A. I thought that was a very interesting idea. I had  
23 never heard of that before, and it was interesting. I was  
24 intrigued, so I said, yes, I would be interested.

25 Q. And you ultimately wound up doing some additional



1 undercover work?

2 A. I did.

3 Q. Specifically what were you asked to do?

4 A. At that time, I was asked to go undercover at the  
5 G-8, the DNC and the RNC protests.

6 Q. What's the G-8?

7 A. The G-8 is the Group of Eight. It's a conference  
8 that's held between the -- President Bush and, I guess, the  
9 other seven major world leaders. And it's annual. And that  
10 year, in 2004, it was going to take place in Brunswick,  
11 Georgia.

12 Q. And the DNC?

13 A. Democratic National Convention and the protests that  
14 were going to take place along with it.

15 Q. And the RNC?

16 A. Republican National Convention and the protests that  
17 were going to go along with that.

18 Q. And where was the Democratic National Convention that  
19 year?

20 A. Boston.

21 Q. And how about the Republican National Convention?

22 A. New York City.

23 Q. So you traveled to those three locations?

24 A. I did.

25 Q. At the request of the FBI?

1 A. I did.

2 Q. And let me ask you first, did you have any  
3 expectation of any financial gain as a result of that?

4 A. I did not.

5 Q. What was the understanding? Or what did they tell  
6 you?

7 A. I was told that I would be paid for expenses, the  
8 gas, hotels, and food.

9 Q. And I assume that happened?

10 A. Yes.

11 Q. After you completed those assignments, did you  
12 receive any money as a result of your work?

13 A. After the G-8, I did get a small payment, and I was  
14 surprised. I did not know that that would happen.

15 Q. All right. Let's talk about briefly what you did  
16 with respect to those particular events.

17 Let me ask you first, what was your mission, what  
18 were you being asked to do at each of those events?

19 A. I was asked to go undercover and report on any  
20 potential illegal activity that was taking place. I was asked  
21 to keep eyes and ears open for anyone that would possibly get  
22 ready to commit vandalism, property destruction, or harm  
23 another individual.

24 Q. Were you asked to report back on any -- the  
25 expression of any opinions or political views?

1 A. No.

2 Q. Just illegal activities?

3 A. Yes.

4 Q. And was this supposed to be after-the-fact reporting  
5 or real-time?

6 A. Real-time.

7 Q. So did you have some way of communicating real-time  
8 with law enforcement?

9 A. I did. I had my cell phone on me at all times, and  
10 it was a mixture of cell phone communication and text  
11 messaging.

12 Q. And can you give the jury some examples of what types  
13 of things you would report?

14 A. During some of the protests, there would be permitted  
15 marches, and then there would also be what's called break-away  
16 marches, where certain individuals would break away from the  
17 permitted march, and try and go down an un-permitted route, and  
18 along the way cause some sort of property destruction or  
19 vandalism.

20 So if I heard word of a break-away march or what  
21 route that would be, I would send that information via text  
22 message. If there was a rumor going around that a black block  
23 would form up at a certain point, I would send that information  
24 via text message.

25 Q. Let me stop you there. What's a black block?

1 A. A black block is a group of individuals who decide to  
2 dress entirely in black, obscure their identity with a mask,  
3 and commit vandalism, property destruction and/or violent acts.

4 Q. And let me turn your attention now to the G-8 Summit.  
5 That was in Brunswick, Georgia?

6 A. Correct.

7 Q. And you attended that?

8 A. Yes, I did.

9 Q. And I asked you if you knew the defendant, Eric  
10 McDavid. Do you also know an individual named Zachary Jenson?

11 A. Yes, I did.

12 Q. Was he at the G-8 Summit?

13 A. Yes, he was.

14 Q. In what capacity?

15 A. He was there as a protestor.

16 Q. And describe for the jury, if you would, what  
17 happened at the G-8 Summit or what you did?

18 A. At the G-8 about 30 protestors showed up. Zachary  
19 Jenson was one of them. They committed some symbolic protests.  
20 And then on the last day, they did a break-away march off of  
21 their permitted route, across the causeway towards the  
22 conference center where President Bush was. And during the  
23 week, I had been undercover at the convergence center, at the  
24 Indy Media Center. And on the last day, when the break-away  
25 march was announced, I was able to relay that information.

1 Q. How about the Democratic National Convention? That  
2 was in Boston, you said?

3 A. Yes, it was.

4 Q. And was that in July of 2004?

5 A. Yes, it was.

6 Q. Would you tell the jury what you did there? And I'll  
7 leave it at that.

8 A. Shortly after the G-8, I traveled up to Boston for  
9 preliminary meetings with the DNC organizers. And I was able  
10 to listen in on some of their plans.

11 At that time, there were not any any illegal actions  
12 planned. Then when the DNC finally rolled around, I went out  
13 to the DNC, again, in an undercover capacity, and integrated  
14 with the crowd, met again with the organizers. Some of the  
15 protestors there were planning illegal activities. And the  
16 activities that I was able to learn of beforehand I was able to  
17 relay to the Boston FBI.

18 Q. And what types of activities were those?

19 A. More un-permitted marches. There was something  
20 called a banner drop in which protestors will gain illegal  
21 access to a building or construction site and drop a banner  
22 from a high vantage point to be viewed from around the area.

23 There was also an individual who had a paper mache  
24 facsimile of a Molotov Cocktail. And while we didn't know  
25 whether it was functional or not, I sent that report to the

1 Bureau anyway.

2 Q. All right. And then you also attended the RNC?

3 A. Yes, I did.

4 Q. And when was that?

5 A. It was in August of 2004.

6 Q. And you said that was New York City?

7 A. That was New York City.

8 Q. Why don't you describe for the jury what happened  
9 there?

10 A. This was the largest protest by far that I had  
11 attended that year. Hundreds of thousands of people were in  
12 New York City. And I was able to integrate into the crowd and  
13 send a little bit. I wasn't able to send all, by any means, of  
14 the information that I gathered from individuals in the crowd  
15 that were planning illegal or harmful actions.

16 Q. All right. Incidentally, was it typical to see some  
17 of the same people at each of these events?

18 A. Yes, it was.

19 Q. So they would travel from one to the other, just kind  
20 of like what you were doing?

21 A. Yes.

22 Q. And is that one of the ways you gained credibility,  
23 by being seen at these various events?

24 A. Yes.

25 Q. That summer, the Summer of 2004, did you also attend

1 something called the CrimethInc Convergence?

2 A. Yes, I did.

3 Q. Where was that?

4 A. That was that Des Moines, Iowa.

5 Q. And how did that come about?

6 A. At the DNC I met with several individuals, one of  
7 whom was a protestor who had previously attended the CrimethInc  
8 Convergence the year before, and he asked me if I was attending  
9 the CrimethInc Convergence this year. I hadn't heard of it at  
10 that time. And I said, no, I have no plans to as of yet. He  
11 told me that it would be within my interest to go and gave me a  
12 contact to attend.

13 Q. Now, are these kind of exclusive gatherings?

14 A. They are.

15 Q. In what sense?

16 A. You have to either be invited to go, or you have to  
17 be vetted to go by the organizers.

18 Q. And how would you be vetted to go?

19 A. They would check contacts that you have, make sure  
20 that you've been at protests, make sure that people know who  
21 you are.

22 Q. So the fact that you had an invitation from some  
23 individual gave you a right to go to that?

24 A. Correct.

25 Q. And when was that held?

1 A. That was held shortly before the RNC, in August of  
2 2004.

3 Q. So you went to that in between the DNC and the RNC?

4 A. Correct.

5 Q. Was Mr. McDavid there?

6 A. Yes.

7 Q. Is that where you first met him?

8 A. Yes.

9 Q. Did you form any impression of him at that time?

10 A. At the time I thought he was inconsequential. I  
11 thought he was a college student and not of interest to the  
12 FBI.

13 Q. So you did no reporting on him?

14 A. I mentioned that he was there, and that was it.

15 Q. And I assume you mentioned other people who were  
16 there?

17 A. Yes.

18 Q. How many people were there that year?

19 A. No more than 15.

20 Q. So a very small gathering?

21 A. Very small gathering.

22 Q. What kinds of things go on at CrimethInc Convergence?

23 A. They are basically anarchist conferences, and they do  
24 what are called skill shares, where anarchists get together and  
25 share information and ideas and perhaps skills together on



1 different facets of anarchist life.

2 Q. What kinds of skills?

3 A. At that CrimethInc Convergence that year it was skill  
4 share on security concerns, which was how to recognize  
5 undercover law enforcement and infiltrators.

6 Q. So you met Mr. McDavid in a skill share regarding how  
7 to spot undercover informants?

8 A. Yes, I did.

9 MR. REICHEL: Objection, Your Honor, as leading the  
10 witness.

11 THE COURT: Overruled. But I'll ask that you not  
12 repeat it again. Thank you.

13 Q. BY MR. LAPHAM: After attending these four events,  
14 did you have any expectations that you would be doing any more  
15 work for law enforcement?

16 A. I did not.

17 Q. Did you seek them out to try and get further  
18 assignments?

19 A. No.

20 Q. What was your attitude at that point?

21 A. I felt that my obligation to them and our agreement  
22 was over, and that I was no longer going to be working for the  
23 FBI.

24 Q. Incidentally, the original agreement was to go to  
25 these three events?

1 A. The three events.

2 Q. And you wound up going to four events. Did you get  
3 -- did you have some discussion with the FBI regarding going to  
4 that CrimethInc conference?

5 A. We discussed it, and we felt that it was for the  
6 benefit of gaining additional intelligence at the RNC, and that  
7 I should go to the CrimethInc Convergence.

8 Q. So your expenses were paid for that as well?

9 A. Yes, they were.

10 Q. And then following that did you receive any lump-sum  
11 payment?

12 A. I did.

13 Q. Was that expected?

14 A. No, it was not.

15 Q. All right. After completing those four assignments,  
16 did you get another call from law enforcement?

17 A. I did.

18 Q. What were they asking this time?

19 A. It was in January of 2005, and they were asking me if  
20 I would be willing to travel to Washington D.C. to report on  
21 any illegal activities taking place during the inaugural  
22 protest.

23 Q. And who was asking you to do that?

24 A. Miami FBI under the suggestion of the Secret Service.

25 Q. And did you agree to that?

1 A. I did.

2 Q. So you attended that. Why don't you tell the jury  
3 briefly about that experience?

4 A. The protests were for January 20th, 2005, the day of  
5 the inauguration. I travelled up to Washington D.C. I went to  
6 the convergence center in Washington D.C. McDavid was not  
7 present, nor were any other members of the cell. But  
8 individuals that I had met previously at other protests were,  
9 and I was able to use them to gain credibility and access into  
10 the D.C. protest.

11 MR. REICHEL: Your Honor, I would move to strike the  
12 portion of her response which was "members of the cell."  
13 There's been no --

14 THE COURT: That's fine. Hold on. Objection  
15 sustained. No foundation for the use of that term at this  
16 point.

17 Q. BY MR. LAPHAM: Let me ask you about one other event  
18 that you attended that year. Did you go to an OAS conference  
19 in Fort Lauderdale?

20 A. I attended the protests that were around the OAS  
21 conference, yes.

22 Q. And OAS is Organization of American States?

23 A. Yes.

24 Q. How did you come to go to that?

25 A. The Miami FBI office again called me and requested my

1 presence at the protest to report on any illegal activities  
2 taking place.

3 Q. And so the same kind of things you were doing before?

4 A. Yes.

5 Q. Anything of significance happen there?

6 A. No. Nothing happened there.

7 Q. In all this time did you ever report on any  
8 particular individual as having any violent intentions or  
9 anything of that sort?

10 A. I did not.

11 Q. So all this time you are basically giving real-time  
12 reports on what the protestors are doing?

13 A. Correct.

14 Q. I want to direct your attention now to June of 2005.  
15 Were you asked to go to Philadelphia?

16 A. I was.

17 Q. For what purpose?

18 A. To travel to the Philadelphia Biotech Convention and  
19 the protests surrounding that and report on any illegal  
20 activities taking place within the protest.

21 Q. Who asked you to do that?

22 A. Philadelphia FBI.

23 Q. And how did you get there to Philadelphia?

24 A. The biotech protests were immediately after the OAS  
25 protests, and one the protestors at the OAS, a woman by the

1 name of Sarah Seeds, asked me to drive her from Fort Lauderdale  
2 up to Philadelphia. So I traveled up to Philadelphia by car  
3 with her in my car.

4 Q. When did you find out that -- in relation to that  
5 that the FBI wanted you to go to the biotechnology conference?

6 A. While I was undercover at the OAS, I received an  
7 e-mail asking that if I would be available after the OAS  
8 protests, would I mind traveling up to Philadelphia as well.

9 Q. And, incidentally, this is the summer. Are you out  
10 of school?

11 A. I was.

12 Q. And so you traveled to Philadelphia. And what did  
13 you do when you got there?

14 A. I dropped Sarah Seeds off at the convergence center  
15 and then her friend's house. After that, I was on my own. And  
16 I met with the Philadelphia FBI agents for a brief meeting  
17 before contacting Eric McDavid and meeting up with him and  
18 Zachary Jenson.

19 Q. Now, had you kept in contact with the defendant since  
20 you first met him in August of 2004 at the CrimethInc  
21 Convergence?

22 A. After August of 2004 we did not keep in e-mail  
23 contact until early 2005, when I began receiving sporadic  
24 e-mail contacts from him again.

25 In the Spring of 2005, I received an e-mail from him

1 stating that he had to leave town, and he needed to go away  
2 under the direction of someone, and that we would not be  
3 receiving further e-mails from him.

4 He then proceeded to travel through the Southwest. I  
5 started receiving e-mails from him on his travels, at which  
6 point he contacted me and said that he would be showing up at  
7 the OAS protest, and he would like to meet me there.

8 Q. Well, let me ask you first. When he said he had to  
9 leave town, do you know where he was at that point?

10 A. I believe he was in his hometown in Northern  
11 California.

12 Q. And do you know how he was traveling?

13 A. He was traveling by hitch-hiking or train-hopping.

14 Q. And you said he had planned to attend the OAS  
15 conference. Did he in fact do that?

16 A. He did not.

17 Q. Did you later learn from him why?

18 A. Yes, I did.

19 Q. What did he say?

20 A. He attempted to get to Fort Lauderdale to attend the  
21 OAS protests, but since I was unable to offer him housing or a  
22 couch to sleep on, he ended up sleeping in the park with a  
23 friend, and the police came and found him in the park and  
24 escorted him outside of the city.

25 Q. So he was not able to make it to the --

1 A. He was not.

2 Q. -- OAS conference?

3 Why did you seek him out when you went to  
4 Philadelphia?

5 A. I was going to use him to gain access to the other  
6 protestors that were there, and use him to build my credibility  
7 to gain further access of the convergence center as I had at  
8 the other protests.

9 Q. Because he is somebody who had seen you at the  
10 CrimethInc conference?

11 A. Correct.

12 Q. And you said Mr. Jenson was there also?

13 A. Jenson was there as well.

14 Q. Where were they staying?

15 A. Mr. McDavid and Mr. Jenson were staying at  
16 Ms. Weiner's apartment.

17 Q. Did you attend any planning sessions for the  
18 protestors at that biotechnology conference?

19 A. I went to the convergence center and met with some of  
20 the protests -- protestors, rather -- and there were a few  
21 gathering sessions before the main protest marches that we  
22 attended together.

23 Q. And, incidentally, I guess we should explain to the  
24 jury what this biotechnology conference was. Could you explain  
25 that?

1 A. The biotechnology conference was a conference in  
2 Philadelphia designed to talk about certain areas of the  
3 biotechnology pharmaceutical arena of business. And the  
4 protests were basically focused on three areas: Environmental  
5 concerns, healthcare concerns, and war profiteer or war  
6 protesting concerns.

7 Q. And who were the typical attendees at the conference  
8 itself?

9 A. At the conference or the protestors?

10 Q. No. I mean, who attend the the actual biotechnology  
11 conference?

12 A. Scientists, pharmaceutical representatives,  
13 executives of pharmaceutical and agricultural companies, some  
14 executives from certain defense contracting industries.

15 Q. Both national and international?

16 A. National and international.

17 Q. And I think I interrupted you when you started to  
18 explain what protest activities were planned. Could you  
19 explain that to the jury?

20 A. One of main protest activities were three marches.  
21 They were labelled red, green and blue. Green march was going  
22 to go on a route that bypassed all the agricultural concerns,  
23 offices, and sectors of the area of Philadelphia and meet up  
24 with the other two marches outside the convention center.

25 The blue march focused on the healthcare industries,



1 and wound its way through the Philadelphia City through  
2 GlaxoSmithKline and other big pharmaceutical companies.

3 The red march was focused on war profiteers, defense  
4 contractors, and defense industry businesses. And that was the  
5 un-permitted march, and that march, along with the green and  
6 blue marches, were all going to converge on the Philadelphia  
7 Convention Center.

8 Q. And just so we're clear on this, you've been  
9 referring throughout your testimony to permitted marches and  
10 un-permitted marches. Would you explain what you mean by that?

11 A. Permitted marches were marches permitted by law  
12 enforcement. They had a permit to march in the streets and  
13 block the flow of traffic. Un-permitted marches were  
14 unscheduled marches that did not have that permit.

15 Q. Now, did Eric McDavid express a preference for one of  
16 those three marches?

17 A. He did.

18 Q. Which one?

19 A. The red march.

20 Q. That would be the un-permitted one?

21 A. Yes.

22 Q. Did he seem to be -- have a different attitude at the  
23 biotechnology conference than when you saw him at the  
24 CrimethInc convergence the year before?

25 MR. REICHEL: Objection, Your Honor. It's a leading

1 question.

2 THE COURT: Overruled.

3 THE WITNESS: Yes, he did. His attitude had changed  
4 remarkably from the Des Moines CrimethInc convergence the year  
5 before to when I saw him in the biotechnology conference in  
6 2005.

7 Q. And how did -- what change did you notice?

8 A. He seemed to have become radicalized. He went from  
9 being a unobtrusive college student to a radical activist who  
10 seemed to espouse very firm beliefs in very extremist  
11 viewpoints.

12 Q. What type of viewpoints did you hear him express?

13 MR. REICHEL: Objection, Your Honor, I would again  
14 object under relevance 403 and 404(b). That it's character  
15 evidence.

16 THE COURT: Overruled.

17 THE WITNESS: He expressed viewpoints in regards to  
18 Earth First or Earth Liberation Front activities. He was very  
19 interested in being -- having a connection with Mother Nature  
20 and very upset at the course that civilization had taken in  
21 destroying Mother Nature and Mother Earth, and wanted to  
22 actively seek the return to a more primitive lifestyle.

23 Q. BY MR. LAPHAM: And with specific reference to the  
24 protest activities that were being planned at this  
25 biotechnology conference, did he express a point of view?

1 A. He felt that protests were no longer working, and  
2 that mass protests by individuals in a peaceful sense can no  
3 longer accomplish any reasonable goals that he had.

4 Q. So was he proposing anything in lieu of that?

5 A. He was proposing more individual and group -- small  
6 group-oriented direct action including property destruction,  
7 vandalism, violence.

8 Q. During that protest, did a police officer die?

9 A. Yes.

10 MR. REICHEL: Objection, Your Honor, as to relevance.

11 THE COURT: Overruled.

12 Q. BY MR. LAPHAM: And he died of a heart attack; isn't  
13 that correct?

14 A. Yes, he did.

15 Q. Not through any assault?

16 A. Correct.

17 Q. But do you know the circumstances under which he  
18 died?

19 A. There was a -- after the three marches had convened  
20 on the convention center, tensions were rising, and there was a  
21 small escalation between the protestors at the front of the  
22 police line and the police themselves. And when the tensions  
23 got very high and people started pushing back and forth, one of  
24 the police officers at the front started keeling over and  
25 having chest pains. And the stress was too high for him, and

1 he ended up collapsing

2 MR. REICHEL: Objection, Your Honor. She has no  
3 personal knowledge of this and ask that it be stricken.

4 THE COURT: Foundation. Sustain on foundation.

5 Q. BY MR. LAPHAM: Was this something that was discussed  
6 at the -- among the protestors?

7 A. Yes, it was.

8 MR. REICHEL: Objection as to hearsay, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Yes, it was.

11 Q. BY MR. LAPHAM: Including Mr. McDavid?

12 A. Yes, it was.

13 Q. Well, let me ask you first, did the protestors plan  
14 any events as a result of the officer's death?

15 A. Yes. The news that the officer had passed away  
16 travelled pretty quickly through the crowd once it became  
17 known. And many members of the crowd wanted to hold a  
18 candlelight vigil for this officer. They wanted to have some  
19 sort of prayer session that evening.

20 And other protestors felt that that was not the  
21 appropriate thing to do. And in lieu of that, an event was  
22 held called the Lost Film Fest, where videos of an anarchist  
23 nature were shown to a group of protestors.

24 Q. Did Mr. McDavid express a viewpoint about the death  
25 of the officer?

1           MR. REICHEL:  Objection, Your Honor, as to 403 as to  
2           relevance.

3           THE COURT:  Overruled.

4           THE WITNESS:  Yes, he did.

5           Q.           BY MR. LAPHAM:  What did he say?

6           A.           He said that the death of the officer was something  
7           that should be celebrated, and he wished that he had been there  
8           to witness it, and he wished that he could participate in  
9           killing more police officers.

10          Q.           This film festival -- I can't remember exactly what  
11          you called it.

12          A.           Lost Film Fest.

13          Q.           Lost Film Fest.  Did they show -- they showed videos  
14          there?

15          A.           Yes, they did.

16          Q.           What did they show?

17          A.           There was a video shown that stands out clearly in my  
18          mind.  And it was a police cruising car that was pushed onto  
19          the screen, and then a group of anarchists amassed -- or a  
20          group of individuals amassed spouting anarchist philosophy,  
21          came forward with Molotov Cocktails and began assaulting the  
22          police cruising car.

23          Q.           And firebombing the car?

24          A.           Firebombing the car.

25          Q.           Was Mr. McDavid there -- incidentally, I'm not sure

1 if I asked you this. As between the two types of events that  
2 were planned as a result of officer's death, the vigil or the  
3 Film Fest, did Mr. McDavid attend either one?

4 MR. REICHEL: Objection, Your Honor.

5 THE WITNESS: He attended the Lost Film Fest.

6 THE COURT: Excuse me.

7 MR. REICHEL: I would object, Your Honor, that it  
8 violates Rule 403 and 404(b).

9 THE COURT: Objection is overruled.

10 THE WITNESS: He attended the Lost Film Fest.

11 Q. BY MR. LAPHAM: And you were there also?

12 A. Yes, I was.

13 Q. Did Mr. McDavid express an opinion after seeing the  
14 film regarding the firebombing of the police car?

15 A. He thought the video was very interesting and  
16 entertaining and liked viewing it.

17 Q. At some point -- oh, incidentally, was Mr. Jenson  
18 there?

19 A. Yes, he was.

20 Q. How about Ms. Weiner?

21 A. Yes, she was.

22 Q. Now, Lauren Weiner, we haven't talked about her very  
23 much. How do you know her?

24 A. Ms. Weiner was the individual whose apartment  
25 Mr. McDavid, Mr. Jenson, and several other individuals stayed

1 at while attending the biotech conference.

2 Q. And did you stay there also?

3 A. I did.

4 Q. Is that the first time you met Lauren Weiner?

5 A. Yes, it was.

6 Q. After the Lost Film Fest where did you go?

7 A. We returned to Ms. Weiner's apartment.

8 Q. At that apartment did you have anymore discussions  
9 about protest activities?

10 A. Yes. There were further discussions on the  
11 uselessness of mass protests, and how it was -- it was more  
12 beneficial to do small-group actions or individual actions and  
13 engage in more violent actions.

14 Q. And who was expressing that opinion?

15 A. Mr. McDavid.

16 Q. Did he suggest any specific action?

17 A. He suggested actions against GlaxoSmithKline  
18 executives and their homes.

19 Q. And what specifically did he say?

20 A. Property destruction involving bricks going through  
21 windows, attacking security cameras outside, spray painting the  
22 doors, spray painting the houses.

23 Q. Now, did he indicate where these individuals lived?

24 A. Yes, he did.

25 Q. What did he say?

1 A. Earlier in that day there was a protest that had gone  
2 on sponsored by a Philadelphia protest group called Hugs For  
3 Puppies. And they took a group of protestors, of which McDavid  
4 was a part of, on a tour through the city for all the  
5 GlaxoSmithKline executives' houses. And at these houses they  
6 started chants of animal killer and puppy killer. That was how  
7 McDavid knew where the residences were.

8 Q. Did the defendant indicate to you at that time that  
9 he had something else to tell you?

10 A. He did.

11 Q. What are the circumstances of that conversation?

12 A. One evening McDavid and I were standing on Lauren  
13 Weiner's balcony, and he expressed to me that he was very glad  
14 to see me again. He had missed me. And that it had been a  
15 very eventful year, and that he had a lot of things he wished  
16 to discuss with me.

17 Q. And did he discuss those things at that time?

18 A. He did not. He said that there were too many ears  
19 around to discuss about the things that he wished to discuss  
20 with me.

21 Q. Did he give you an indication of what it was that he  
22 wanted to talk about?

23 A. He did not. But he did say that I have something big  
24 to tell you.

25 Q. As a result of some of the statements that



1 Mr. McDavid made, did you report that back to the FBI?

2 A. I did.

3 Q. And were you asked to undertake any further  
4 activities?

5 A. Yes, I was.

6 Q. What were you asked to do?

7 A. I was told by Philadelphia FBI that after running a  
8 criminal check, McDavid's name had popped on a persons of  
9 interest list out here in Sacramento. And I was asked to  
10 follow him closely and see if he made any comments about any  
11 criminal activity that took place in Sacramento the year  
12 before.

13 MR. REICHEL: Objection, Your Honor. 401. It's 403  
14 as well. As it's prejudicial. No probative value. And  
15 404(b), Your Honor.

16 THE COURT: Disagree on 403 and 404. Objection is  
17 overruled. Probative value is outweighed at this time. Go  
18 ahead.

19 Q. BY MR. LAPHAM: Did you -- I'll just digress here for  
20 a moment.

21 Did you ultimately learn from Mr. McDavid what it was  
22 in Sacramento that had caused him to leave town, as you said?

23 A. I did.

24 Q. What did he tell you about that?

25 A. He told me that a close friend of his by the name of

1 Ryan Lewis had got together with several of his friends, and  
2 over Christmas had committed arson and property destruction to  
3 apartment complexes in the Auburn area.

4 Q. All right. And is that what you were referring to  
5 when you said you were told by the FBI about this -- him  
6 popping on their database?

7 A. Yes.

8 Q. All right. We're going to talk about that a little  
9 bit more in a minute, but I want to ask you, first, about the  
10 -- what you were next asked to do. Where did you go?

11 A. From the Philadelphia biotech?

12 Q. Yes.

13 A. From Philadelphia biotech I went to the Bloomington  
14 CrimethInc convergence, which was the CrimethInc convergence  
15 for the next year, 2005, following the one from Des Moines.

16 Q. Now, why did you go?

17 A. I was again invited to, and McDavid was also in  
18 attendance. And I was told to start to follow him to try and  
19 glean information about the Sacramento activities.

20 Q. Did you know in advance he would be there?

21 A. He told me at the biotech.

22 Q. And did you meet up with him at the CrimethInc  
23 convergence?

24 A. Shortly before actually.

25 Q. Incidentally, the CrimethInc convergence in Iowa, the

1 previous year, had a turn out of about 15 people you said?

2 A. Correct.

3 Q. How about this one?

4 A. This one was quite large.

5 Q. Approximately how many?

6 A. About 200 people.

7 Q. And what kinds of things, what kinds of activities  
8 went on at this convergence?

9 A. There was a wide range of skill shares at this  
10 convergence including vegan lifestyle, herbology, prison  
11 support, urban guerilla warfare, urban survival tactics,  
12 train-hopping, et cetera.

13 Q. Are these things held in the Hilton Hotel?

14 A. No.

15 Q. Where are they held?

16 A. This was held at a very remote campsite outside of  
17 the city limits.

18 Q. And how do you find out about how to get to these  
19 places?

20 A. I was initially led by e-mail instructions to the  
21 library in the center of town. And from the library I was told  
22 to contact another individual on a street corner where I  
23 received covert instructions on how to get to the campsite.

24 Q. And are there further instructions about where to  
25 park your car if you have one and so forth?

1 A. Yes. There are instructions on keeping the car  
2 parked separately, away from everyone, and behind the bushes,  
3 that you couldn't readily see them from the road.

4 Q. All right. How did you meet the defendant at this  
5 convergence?

6 A. After the Philadelphia biotech, I returned to  
7 Florida. And from Florida, I then drove up to Beckley, West  
8 Virginia, where Mr. McDavid and several other individuals were  
9 currently protesting the strip mining in West Virginia. And I  
10 picked him up at a town in West Virginia called Beckley. Drove  
11 him from Beckley, West Virginia, to Bloomington, Indiana.

12 Q. And that was at his request?

13 A. That was at his request.

14 Q. What did you do once you got to the convergence?

15 A. Once we got to the Bloomington CrimethInc  
16 convergence?

17 Q. Yes.

18 A. We parked the car. We started assembling our  
19 campsite. I made an excuse to go into town. And at that time  
20 I meet with the Bloomington FBI agents.

21 Q. And they gave you further instructions?

22 A. Yes.

23 Q. What did they tell you?

24 A. They wanted to know what sort of illegal activities  
25 were being discussed within the CrimethInc convergence. They

1 didn't care about the vegan lifestyles being discussed, but  
2 they had a high amount of interest in any sort of illegal  
3 activities being discussed in regards to the I-69 highway that  
4 was being built through Bloomington.

5 Q. And what was that all about?

6 A. The I-69 highway?

7 Q. Right.

8 A. It's a new highway, interstate, that's being built in  
9 that area for increased commerce that many of the protestors  
10 were protesting against that, and the FBI was concerned that  
11 illegal actions and property destruction and vandalism,  
12 possibly violence would take place in regards to that.

13 Q. Did the subject of Ryan Lewis come up at the  
14 CrimethInc convergence?

15 A. Yes, it did.

16 MR. REICHEL: Objection, Your Honor. It's  
17 irrelevant. 403 and 404.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, it did.

20 Q. BY MR. LAPHAM: How did that come up?

21 A. McDavid took my hand and led me to a skill share at  
22 one point, and said this is a very important skill share for  
23 me. I want you to listen to this one with me. And it was a  
24 prison solidarity skill share.

25 And as we sat down and started listening to the

1 prison support instructions and information, he turned to me  
2 and said, I have a buddy in California who is looking at  
3 approximately 40 years.

4 Q. And did he indicate to you the name of that buddy?

5 A. At that time he did not. It was later that he did.

6 Q. All right. So you attended that workshop?

7 A. Yes.

8 Q. Did you attend other skill-share workshops?

9 A. I did not.

10 Q. You mentioned the urban guerilla warfare --

11 A. Yes.

12 Q. -- workshop. Did you attend that?

13 A. I did not.

14 Q. Do you know if Mr. McDavid did?

15 A. Mr. McDavid did.

16 MR. REICHEL: Objection, Your Honor. Personal  
17 knowledge.

18 THE COURT: Overruled.

19 THE REPORTER: I'm sorry. I am having a very  
20 difficult time hearing you, Mr. Reichel.

21 THE COURT: Can you pull the microphone closer to  
22 you, please.

23 MR. REICHEL: Yes.

24 Q. BY MR. LAPHAM: How do you know that Mr. McDavid  
25 attended that workshop?

1 A. Mr. McDavid discussed the workshop with me and a  
2 group of other individuals.

3 Q. Okay. Do you know if Mr. Jenson attended that  
4 workshop?

5 A. Yes, he did.

6 Q. Did Mr. McDavid tell you what that workshop was all  
7 about?

8 A. It was about tactics and strategies for armed  
9 resistance against the State.

10 Q. And specifically what type of armed resistance --

11 MR. REICHEL: Objection, Your Honor, as to relevance,  
12 403 and 404.

13 THE COURT: Overruled.

14 THE WITNESS: Overthrowing of the Government,  
15 overthrowing of certain commercial institutions and commerce  
16 institutions, trade institutions.

17 Q. BY MR. LAPHAM: Did Mr. McDavid indicate to you that  
18 the subject of attacking federal buildings came up?

19 MR. REICHEL: Objection, Your Honor. Again, 401, 403  
20 and 404(b).

21 THE COURT: Overruled.

22 THE WITNESS: Yes, he did.

23 Q. BY MR. LAPHAM: And did he indicate what views were  
24 expressed during the course of that workshop both by the other  
25 people talking and his response?

1 A. Another individual expressed their interest in the  
2 conversation by saying that he liked how the point was brought  
3 up by another individual how federal buildings should not be  
4 attacked, as that would be a sharp increase in your criminal  
5 punishment should you be caught.

6 Mr. Jenson stated, I don't know, that sounds like a  
7 great idea to me. We really need to get things started. And  
8 he was referencing violent actions, violent opposition to the  
9 State. And at that time, McDavid nodded vigorously and was in  
10 agreement with that statement.

11 Q. Where did you go after the CrimethInc convergence?

12 A. After the CrimethInc convergence I drove McDavid up  
13 to Chicago at his request.

14 Q. And did you have further discussions regarding Ryan  
15 Lewis at that time?

16 A. Yes, we did.

17 Q. And incidentally, did anybody else go with you on  
18 that trip?

19 A. No.

20 Q. Describe -- well, how did the subject of Ryan Lewis  
21 come up?

22 MR. REICHEL: Objection, Your Honor, as to relevance,  
23 403 and 404(b).

24 THE COURT: Overruled.

25 THE WITNESS: Once we were in the car and away from



1 Bloomington, I mentioned that there were no other ears present,  
2 and we could freely talk now about what he had brought up in  
3 Philadelphia.

4 And on that same subject, would he mind telling me  
5 what he meant about his friend in Sacramento who was looking at  
6 40 years.

7 Q. BY MR. LAPHAM: All right. And by the subject that  
8 was raised in Philadelphia, what did you mean?

9 A. When he said that we have something big to discuss,  
10 but we cannot discuss it here.

11 Q. All right. And how did he respond to that?

12 A. He started by telling me about Ryan Lewis, and he  
13 used his name, Ryan Lewis. And indicated that Ryan was a very  
14 good friend of his. Stated that Ryan was the individual that  
15 had introduced him to anarchy and the anti-capitalist  
16 philosophies. And he described the incident in Sacramento to  
17 me.

18 Q. What did he describe to you?

19 A. He said that Ryan and three of his friends had gotten  
20 together over Christmas, and had got together some diesel fuel,  
21 some jugs, some timers, and had gone to an apartment complex in  
22 the Auburn area and set those on fire and used ELF tags and the  
23 CrimethInc logo.

24 Q. Used ELF tags?

25 A. Used ELF tags.

1 Q. So E-L-F?

2 A. E-L-F.

3 Q. Did he have a comment on that action that Ryan Lewis  
4 had taken?

5 A. He commented that Ryan Lewis had made the mistake of  
6 doing the actions too close to home.

7 Q. Did he indicate support or lack of support for what  
8 Ryan Lewis had done?

9 A. He said he supported them, but, again, that they were  
10 too close to home. And that Mr. Lewis had made some mistakes  
11 in regards to how he carried out his attacks.

12 MR. REICHEL: Your Honor, I would object and ask that  
13 it be stricken as prejudicial under 403, and character evidence  
14 under 404(b).

15 THE COURT: Objections are both overruled. Proceed.

16 Q. BY MR. LAPHAM: How did the conversation proceed from  
17 there?

18 A. I asked him if he had any involvement with the  
19 actions that Ryan Lewis took over Christmas, and he denied it.

20 I further asked him -- I said, you know, I know a  
21 little bit about you. I think you might have been involved.  
22 It seems like something you'd be interested in. He says, no, I  
23 didn't do that. I have my own plans.

24 Q. And did you probe that topic?

25 A. I did.

1 Q. How did that conversation proceed?

2 A. I asked him what his plans were. And that was when  
3 he stated that Ryan Lewis had made the mistake of doing the  
4 actions too close to home, and that McDavid's actions would  
5 take place nationwide.

6 And I again asked him, well, what are you planning?  
7 And he said that he had gotten a bomb recipe for C4 from an  
8 individual in West Virginia. And his plan was to make little  
9 C4 bombs. And he showed me in detail what he was planning to  
10 do. And take remote garage door openers and insert them into  
11 the putty balls, and then use those to blow up certain targets  
12 that he had in mind.

13 Q. Did he describe to you how he would make --

14 THE COURT: Excuse me.

15 MR. REICHEL: Objection, Your Honor. My only comment  
16 would be on the last answer and response she gave, she made  
17 hand signals about the size of, I would say, a snowball, that  
18 need to be reflected on the record for the size that he was  
19 supposedly talking about that day. I think Mr. Lapham can  
20 direct her through that.

21 THE COURT: Absolutely.

22 Q. BY MR. LAPHAM: That's fair enough.

23 Ma'am, you were gesturing with your hands as you were  
24 describing the C4 --

25 A. Yes.

1 Q. -- in kind of a circular fashion like you were  
2 holding a ball?

3 A. Yes.

4 Q. Is that correct?

5 A. Yes.

6 Q. About how big were your hands apart?

7 A. About snowball size, softball size.

8 Q. Softball. That's something we all know. All right.

9 Did the defendant indicate in that conversation a  
10 further knowledge of explosives?

11 A. He did not. He said he wished he gained more  
12 knowledge of explosives.

13 Q. Although -- well, did he describe a recipe that he  
14 was aware of?

15 A. He spoke of a C4 recipe and said it involved mixing  
16 bleach and ammonia, and then scraping the crystals that would  
17 occur after the bleach and ammonia mixture had dried, and  
18 mixing that with some sort of putty to create an explosive.

19 Q. Did he mention any target that he was interested in  
20 using the C4 on?

21 A. He did.

22 MR. REICHEL: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: He did.

25 Q. BY MR. LAPHAM: What did he say?

1 A. He mentioned a list of targets including banks, cell  
2 phone towers, a tree facility in Placerville, California, gas  
3 stations, and communist party facilities.

4 Q. The tree facility in Placerville, did he indicate why  
5 he had an interest in that?

6 A. He said it was a tree farm, and that they were  
7 messing with the genetics of the trees.

8 Q. And what about banks? Did he indicate why that was a  
9 target?

10 A. Yes, he did. He said that he wanted to bring down  
11 some of the capitalist structure of the United States and mess  
12 with the commerce in the country.

13 Q. During the trip to Chicago, did he say anything to  
14 you of a threatening nature?

15 A. Yes, he did.

16 Q. How did that come up?

17 MR. REICHEL: Your Honor, I would object again as to  
18 the relevance of it. I would object under 403 that its  
19 probative value is substantially outweighed by its prejudice  
20 and risk of confusing the jury and inflaming the prejudice of  
21 the jury, as well inappropriate 404(b) character evidence of  
22 the defendant.

23 THE COURT: Anything else?

24 MR. REICHEL: That's all I can think of.

25 THE COURT: Objection is overruled both as to 403 and

1 404.

2 Q. BY MR. LAPHAM: You can answer the question.

3 A. Shortly after he started discussing his plans and  
4 finished discussing his list of targets, he lapsed into  
5 silence. And then after a little while, he turned to me and  
6 said there's something I have to get off my chest. He paused  
7 and he said again and the direct quote is: If you are a cop or  
8 you're working with law enforcement, I will fucking kill you.

9 Q. Those were his words?

10 A. Those were his words.

11 Q. Did he expand on that statement?

12 A. Yes, he did. He described that his method of killing  
13 me would be to go for --

14 MR. REICHEL: Your Honor, I would object again.

15 THE COURT: Overruled.

16 MR. REICHEL: Thank you.

17 THE WITNESS: -- go for the neck and then for the  
18 main artery in the leg.

19 Q. BY MR. LAPHAM: With what instrument?

20 A. With the hunting knife that he carried on him at all  
21 times.

22 Q. He had a hunting knife at that time?

23 A. Yes, he did.

24 Q. Would you describe that for the jury?

25 A. It was an eight-inch long, straight knife, hunting

1 knife. I mean, standard-issue hunting knife.

2 Q. Carried it on his hip?

3 A. Yes, he did.

4 Q. And every time you encountered him, did he have that  
5 knife?

6 MR. REICHEL: Objection as to leading, Your Honor.

7 THE COURT: Sustained.

8 Q. BY MR. LAPHAM: How frequently did you see him with  
9 that knife?

10 A. Every time I saw him.

11 Q. During that same driving trip to Chicago, did he say  
12 anything more about his plans to go on the bombing campaign?

13 A. He said that he was going to do some training,  
14 individual training in the autumn, and that winter was the time  
15 for his bombing campaign to start.

16 Q. Did he indicate in any fashion he wanted you to  
17 participate?

18 A. He did. In my role as being undercover with the  
19 protestors I had always used the role of a medic. I was a  
20 street medic with the protestors. And I carried that role  
21 further as I continued being undercover with McDavid. McDavid  
22 asked me specifically to be his medic while he was constructing  
23 and testing these bombs.

24 Q. After dropping off -- well, what did you do when you  
25 got to Chicago?

1 A. I dropped him off at the airport.

2 Q. And what did you do?

3 A. What did I do?

4 Q. Yeah.

5 A. I turned around and left Chicago and drove right back  
6 to Bloomington, Indiana.

7 Q. What's the next time you saw the defendant?

8 A. The next time I saw the defendant was in November of  
9 2005.

10 Q. Before that time, did you attend -- did you go back  
11 to Philadelphia?

12 A. I did. I saw -- excuse me. I saw the defendant in  
13 Philadelphia briefly before 2005 in November.

14 Q. Okay. And that was to attend something that was  
15 happening in Philadelphia?

16 A. Yes. It was called the Pointless Fest.

17 Q. What is Pointless Fest?

18 A. A music festival that anarchists put together, and  
19 it's held, I believe, annually, but I'm not sure.

20 Q. Why you attend that?

21 A. I attended that because I knew McDavid was going to  
22 be in Philadelphia at the time, and I needed to give him an  
23 answer as to whether I would be joining him on his bombing  
24 campaign or not.

25 Q. You had talked to the FBI in the meantime?



1 A. I had.

2 Q. About whether or not you would continue down this  
3 road that you were on?

4 A. Yes.

5 Q. And what happened in Philadelphia?

6 A. In Philadelphia, McDavid was attending the Pointless  
7 Fest, and he was again staying with Jenson at Weiner's  
8 apartment. I was in Philadelphia very briefly on my way back  
9 to Florida, and I stopped for approximately half an hour and  
10 spoke with McDavid outside of Weiner's apartment.

11 And at that time, he asked me if I was still  
12 interested in being with him in the wintertime to work on the  
13 bombs and go on his bombing campaign.

14 Q. And how did you respond?

15 A. I said, yes, I was interested.

16 Q. Did he ask you to do anything at that time?

17 A. He did.

18 Q. What did he ask you to do?

19 A. He asked me to find him a chemical equivalency list.

20 Q. And what is that?

21 A. A chemical equivalency list is something that's found  
22 in the Anarchist's Cookbook, and it's a list that showcases the  
23 long name of certain chemicals and shows what their equivalent  
24 is in a household product.

25 Q. And did you agree to do that?

1 A. I did.

2 Q. Did you go to Lauren Weiner's apartment that day?

3 A. I did not.

4 Q. This discussion with Mr. McDavid occurred outside the  
5 apartment?

6 A. Yes, it did.

7 Q. Did you later find out from Lauren Weiner what  
8 occurred after you had left?

9 MR. REICHEL: Objection as to hearsay, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I did.

12 Q. BY MR. LAPHAM: And did that relate to your  
13 invitation to come into the bombing plot?

14 A. Yes, it did.

15 Q. When did she tell you that?

16 MR. REICHEL: Objection as to hearsay, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: We had a meeting in October in  
19 Philadelphia, Ms. Weiner and myself. And at that time, she  
20 told me that that same day that I was outside on the sidewalk  
21 talking with McDavid, McDavid had also invited Jenson and  
22 Weiner into the bomb plot as well.

23 MR. REICHEL: Objection as to multiple hearsay, Your  
24 Honor. She's repeating what Ms. Weiner supposedly heard from  
25 Mr. McDavid.

1 THE COURT: Overruled.

2 Q. BY MR. LAPHAM: Did you have much contact with  
3 Ms. Weiner during the period August to October?

4 A. Sporadical e-mail contact.

5 Q. E-mail contact?

6 A. E-mail contact.

7 Q. And in those e-mail contacts did she indicate to you  
8 that she had something to tell you?

9 A. Yes, she did.

10 Q. And then you finally talked to her in person on  
11 October 24th?

12 A. Yes.

13 Q. After learning that Mr. Weiner -- Ms. Weiner and  
14 Mr. Jenson had been invited into the conspiracy, did you  
15 consult with the FBI?

16 MR. REICHEL: Objection, Your Honor. Assumes facts  
17 not in evidence.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, I did.

20 Q. BY MR. LAPHAM: And I assume you told them -- you  
21 related the information Ms. Weiner had given to you?

22 A. Yes.

23 Q. What happened next?

24 A. The FBI was very interested in the fact that the bomb  
25 plot had now increased to three individuals plus myself, and

1 they wanted me to gather more information on what was  
2 occurring.

3 Q. What type of information did they want you to gather?

4 A. They wanted me to find out where McDavid was at that  
5 time, since no one could reach him on e-mail. And wanted to  
6 find out if the group was still intending to use winter as the  
7 time to begin their bombing campaign.

8 THE COURT: Thank you. Take our recess at this time.  
9 Return at ten minutes to 11:00.

10 Ladies and gentlemen, please do not discuss the case  
11 or form any opinions at this time. Court is in recess.

12 (Jury out.)

13 (Break taken.)

14 (Jury in.)

15 THE COURT: Go ahead, please.

16 MR. LAPHAM: Thank you Your Honor.

17 Q. BY MR. LAPHAM: I think when we left off, we were  
18 talking about you had just been notified by Lauren Weiner that  
19 she had been invited into the conspiracy?

20 A. Yes.

21 Q. Did she express -- or what was her attitude about the  
22 conspiracy?

23 A. She was very excited.

24 Q. Did she express any specifics to you beyond that?

25 MR. REICHEL: Objection, Your Honor, as to hearsay

1 from Ms. Weiner.

2 THE COURT: Overruled.

3 THE WITNESS: She was very excited and was looking  
4 forward to joining the plot and joining the campaign, and was  
5 looking forward to moving out to California in the wintertime.

6 Q. Before we move on, I realize there is a question I  
7 probably should have asked you earlier about your appearance  
8 when you were attending all of these events. I assume you were  
9 not dressed as you are today?

10 A. I was not dressed as I am today.

11 Q. What did you do to alter your appearance?

12 A. When I was undercover at the protests, I wore the  
13 dirtiest clothes that I could find or produce, very old  
14 clothes, very torn, faded, dirty, smelly clothes. I altered my  
15 hairstyle at different times while I was undercover. I had  
16 pink hair, green hair, purple hair. At one point I had long  
17 multi-colored dreadlocks. I never wore any make-up. I never  
18 wore any jewelry. I was quite disgusting.

19 Q. All right. Now, you had -- you talked about your  
20 contact with the defendant at Pointless Fest in August. When  
21 did you next see the defendant?

22 A. I didn't see the defendant again until November.

23 Q. And did you have any communication with him during  
24 that period of time?

25 A. We fell out of communication for a period of time

1 before resuming sporadic e-mail contact and one cell phone call  
2 through Lauren Weiner.

3 Q. And was that any part of the plan that the defendant  
4 had discussed with you?

5 A. No. We were worried as to where he had disappeared  
6 to.

7 Q. Did you understand -- did he relate to you at some  
8 point what was going on during that period of time?

9 A. Yes, he did.

10 Q. What did he tell you?

11 A. He said that during the time that he was out of  
12 contact with us, he was doing some, quote, family time,  
13 spending a lot of time with his family, with his sisters,  
14 working through some family issues that he said he had.

15 Q. Now, when did you understand, based on your contact  
16 with Mr. McDavid, that the bombing campaign would begin?

17 A. From what we had discussed, he said that the bombing  
18 campaign would begin in wintertime.

19 Q. And, incidentally, on the subject of your contacts  
20 and communications with the defendant, did he indicate to you  
21 some level of security consciousness?

22 A. He did.

23 Q. What was he -- what did he express to you?

24 A. He did not trust cell phones. He did not trust a lot  
25 of e-mail contact. In fact, one thing that he tried to do at

1 the Bloomington CrimethInc convergence was figure out a way to  
2 develop secure e-mail access and capability, so we could talk  
3 openly. But he did not trust e-mail very much. He didn't  
4 speak openly over e-mail. He rarely spoke on a cell phone. He  
5 never used the post.

6 Q. And how did you, if at all, did you obtain  
7 information about Mr. McDavid's whereabouts during that period  
8 of time?

9 A. It was after he had returned contact with us that we  
10 found out that he was dealing with family time. And also  
11 through Lauren Weiner. She had said that she believed he was  
12 with his family from a previous communication she had had with  
13 him.

14 Q. All right. So she was in some contact with him?

15 A. Right.

16 Q. All right. So did you -- I guess you just testified  
17 that you -- the next time you met the defendant was in  
18 November?

19 A. Correct.

20 Q. How did that meeting come about?

21 A. The FBI was concerned that McDavid hadn't made any  
22 contact with me in quite a while, and they asked me to figure  
23 out a way to make contact with him again. And since McDavid  
24 was on the West Coast, and Jenson was on the West Coast, we  
25 formulated a plan to get me out to the West Coast under the

1       guise of a sick aunt that I was visiting. And while I was on  
2       the West Coast, try to make contact with McDavid.

3       Q.           Did any of that have to do with the recent  
4       information you had learned about Weiner and Jenson coming into  
5       this conspiracy?

6       A.           Yes. The FBI was very concerned that now there were  
7       additional members of the plot, and this plot was taken far  
8       more seriously.

9       Q.           So what step did you take at that point?

10      A.           I -- through Weiner I attempted to contact McDavid.  
11      We made cell phone contact shortly before the trip. And I  
12      expressed interest to McDavid that I would be flying out to  
13      California, and could we meet up and discuss what we needed to  
14      discuss.

15      Q.           Did you indicate why you were coming to California?

16      A.           I did.

17      Q.           What did you say?

18      A.           I told him that I was visiting a sick aunt in the Bay  
19      Area.

20      Q.           And how did the defendant respond to that?

21      A.           He felt sorry that I had a sick family member and was  
22      looking forward to seeing me after that.

23      Q.           What I meant was, did he -- your suggestion that you  
24      get together to talk about the bomb plot.

25      A.           He was very excited about that.



1 Q. Did he indicate to you -- what did he indicate to you  
2 about Weiner coming?

3 A. He asked if Weiner was coming, and at that point I  
4 offered Weiner, would you like to come as well, can you come as  
5 well, and would you be able to.

6 Q. And how did she respond to that?

7 A. She was interested in coming, but she was concerned  
8 that she did not have the finances to fly out there.

9 Q. And how did you resolve that?

10 A. I told her that I could pay for part of the ticket  
11 myself if she would pay me back.

12 Q. And did she agree to that?

13 A. She did.

14 Q. So the two of you flew out to California?

15 A. We did.

16 Q. Together or separately?

17 A. Separately.

18 Q. And what did you do upon arriving in California?

19 A. I met with the Sacramento FBI agents.

20 Q. That would include Special Agent Walker?

21 A. Yes.

22 Q. And what kind of instructions did you get at that  
23 meeting?

24 A. I was instructed to attend the meeting that the four  
25 of us would have, listen to any targets and tactics that they

1 were discussing, figure out what their plans were. And above  
2 all, keep my safety as a primary concern.

3 If it seemed as if they were becoming violent, or if  
4 they were catching on to who I truly was, then make an egress  
5 right away.

6 Further instructions were given into my role within  
7 the group, within the plot. I was told very specifically to  
8 assume no leadership role, never suggest anything, never give  
9 directions, and to never volunteer information unless it was  
10 previously asked for by one of the members.

11 Q. And were you given instructions or advice on how to  
12 maintain your persona as a co-conspirator?

13 A. I was told that to maintain my persona I had to  
14 volunteer information at some point. I had to be an active  
15 member of the plot. But to only do so -- when questions were  
16 asked of me, to only volunteer information at that point.

17 Q. All right. After leaving the FBI, how did you make  
18 contact with the defendant and Ms. Weiner and Jenson?

19 A. I picked up Ms. Weiner at the airport, and we  
20 travelled to Downtown Sacramento, where we met up with Jenson,  
21 who had either hitch-hiked or train-hopped down from where he  
22 was to the Sacramento area, and McDavid at Cesar Chavez Park.

23 Q. And where did you go from there?

24 A. I didn't know where we were going to go from there.  
25 But McDavid said that we were all welcome to his parents'

1 house, and we headed there.

2 Q. He gave you directions on how to get there?

3 A. Yes, he did.

4 Q. Describe what happened upon arriving at the house?

5 A. We arrived at the house, and McDavid's first words on  
6 exiting the car were, "you all have to know, this is the house  
7 of a known anarchist."

8 Q. And what happened from there?

9 A. We discussed what he meant by that, and he related  
10 the story of Ryan Lewis. And how as part of Ryan Lewis' trial,  
11 FBI and police officers were sent to his parents' house to find  
12 him and talk with him about the case.

13 And after discussing that, we moved inside where we  
14 had dinner and sat around in the kitchen having a chitchat for  
15 a little bit.

16 Q. Now, do you recall which weekend in November this  
17 was?

18 A. It was before Thanksgiving.

19 Q. The weekend before Thanksgiving?

20 A. I'm not certain, but I know it was before  
21 Thanksgiving.

22 Q. Okay. After dinner, what did you do?

23 A. After dinner, we moved outside to the fire pit, which  
24 was a couple levels down on his porch, and we began talking  
25 about the plot.

1 Q. Now, at some point during the evening, did the  
2 defendant show you and the other members of the plot an  
3 article?

4 A. He showed us two articles.

5 Q. Actually, I call it an article, but it was actually  
6 an interview with Derrick Jensen; is that correct?

7 A. Yes.

8 MR. LAPHAM: Your Honor, may I approach?

9 THE COURT: Yes, you may.

10 Q. BY MR. LAPHAM: Show you what's been marked as  
11 Government's Exhibit 21 for identification. Do you recognize  
12 that?

13 A. I do.

14 Q. What is that?

15 A. This is the Derrick Jensen interview that McDavid  
16 requested we all read. And he said it was the basis for a lot  
17 of his thoughts.

18 MR. LAPHAM: Your Honor, I move to admit Government's  
19 21.

20 MR. REICHEL: Objection as hearsay, Your Honor.

21 THE COURT: Objection is overruled.

22 (Government Exhibit 21, Interview of Derrick Jensen,  
23 admitted into evidence.)

24 Q. BY MR. LAPHAM: So he suggested that you and the  
25 other members read this article?

1 A. Yes, he had asked us -- asked us if we had read it  
2 previously. And if not, then we should read it.

3 Q. Did he indicate what type of inspiration he took from  
4 this article?

5 A. He was inspired by the article for a variety of  
6 reasons. One of which was Derrick Jensen's belief on people  
7 that were not for or against the cause. People that were,  
8 quote, fence sitters, and that these fence sitters cannot be  
9 swayed either way and to just forget about them. He also was  
10 inspired by the targets that Derrick Jensen was talking about  
11 in the article.

12 Q. Do you recall what those targets were?

13 A. Cell phone towers, fish hatcheries and transit  
14 systems.

15 Q. Now, you indicated that you went somewhere following  
16 the dinner?

17 A. Yes, we did.

18 Q. Where did you go?

19 A. We went down to the fire pit.

20 Q. Where is that located?

21 A. It's on the porch behind the house.

22 Q. Did all four members go to the fire pit?

23 A. Yes, we did.

24 Q. And did you have a discussion there?

25 A. Yes, we did.

1 Q. Would you describe just in general terms what kinds  
2 of things you talked about?

3 A. At the fire pit we talked about the bomb plot in  
4 general, bomb recipes that McDavid had, his desire to get more  
5 bomb recipes for the different explosives. Targets that the  
6 whole group had in mind. And how to claim responsibility or  
7 how to go about finishing the actions that they were planning.

8 Q. Were you wearing a body recorder that night?

9 A. I was.

10 Q. Is that the first time you had used one?

11 A. No, it was not.

12 Q. Is it the first time you used one of this type, this  
13 particular type?

14 A. Yes.

15 Q. Did you have some difficulty with it that night?

16 A. Yes, I did.

17 Q. Would you describe for the jury what kind of  
18 difficulty you had?

19 A. The recorder was very well hidden, and the switch was  
20 difficult to operate. And on normal switches there is a way to  
21 see whether it's on or off, and on this recorder there was not.  
22 And at some point after turning it on and off a couple times to  
23 save battery and recording time, I had become confused as to  
24 which one was on and which one was off.

25 Q. All right. The dinner table conversation was just

1 chitchat?

2 MR. REICHEL: Objection as to leading, Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: Yes.

5 Q. BY MR. LAPHAM: I believe that's what you previously  
6 said, correct?

7 A. Yes.

8 Q. Was the recorder on or off during that period of  
9 time?

10 A. I believe it was off.

11 Q. And that was to save the battery?

12 A. Correct.

13 Q. And then you became confused at some point whether it  
14 was on or off?

15 A. Correct. During the dinner conversation, it seemed  
16 as if they were about to talk about something, and I attempted  
17 to turn it on. They ended up not discussing anything  
18 substantial. I attempted to turn it off again and became  
19 confused as the switch was halfway in between, and I didn't  
20 know which way it was. The switch was very difficult to get  
21 to. The recorder was not your standard body recorder.

22 Q. And when you went down to the fire pit, do you know  
23 if it was on or off at that time?

24 A. I believed it was on at that time.

25 Q. And was it?

1 A. I don't believe so.

2 Q. At some point in time were you able to turn it on?

3 A. Yes.

4 Q. Now, before coming into court today, did I ask you to  
5 listen to some of the recordings from that night at the fire  
6 pit?

7 A. Yes, you did.

8 Q. And did you -- were you also provided with  
9 transcripts of those --

10 A. Yes, I was.

11 Q. -- recordings?

12 And did you read those transcripts and compare them  
13 to the recordings themselves for accuracy?

14 A. Yes, I did.

15 Q. And were they accurate insofar as you could  
16 determine?

17 A. Yes, they were.

18 MR. LAPHAM: Your Honor, at this time I'd ask  
19 permission to play excerpt number one from Plaintiff's  
20 Exhibit 30.

21 THE COURT: Do we have transcripts?

22 MR. LAPHAM: A copy of the recording has been  
23 provided to the defense. We have multiple copies of the  
24 transcripts for the jury.

25 THE COURT: First of all, counsel will you stipulate



1 that the court reporter will not have to take down the actual  
2 audio recording into the transcript?

3 MR. REICHEL: Yes, Your Honor. That's fine.

4 MR. LAPHAM: Yes, Your Honor.

5 THE COURT: All right. Thank you very much.

6 And ladies and gentlemen, you are about to be given  
7 transcripts by Mr. Lapham. And I want to advise you that these  
8 transcripts are being given to you only as an aid to help you  
9 try to listen to the actual audio tape. The actual paper that  
10 you are going to have in your hands is not evidence. And, in  
11 fact, at the end of the playing of this audio recording, they  
12 will be picked up again and taken away. They are not evidence.  
13 The actual evidence is what you hear on the audio.

14 Again, this is just a device to help assist you in  
15 listening to the words as they are said. Mr. Lapham.

16 MR. LAPHAM: Would you like me to pass them out?

17 THE COURT: If you'd please.

18 MR. LAPHAM: And, Your Honor, you have a copy of the  
19 transcript in your exhibit binder.

20 THE COURT: Excuse me. What was the --

21 MR. LAPHAM: It's Exhibit 30-A.

22 THE COURT: 30.

23 MR. LAPHAM: Letter A is the transcript number.

24 THE COURT: Thank you.

25 MR. LAPHAM: And, Your Honor, just for the record,

1 the actual exhibit is a CD containing -- Exhibit 30 is a CD  
2 containing eleven excerpts.

3 THE COURT: Thank you.

4 Q. BY MR. LAPHAM: Now, just to set this up for the  
5 jury, do you recall a discussion during this discussion at the  
6 fire pit regarding Mr. Jenson's commitment to this enterprise?

7 A. Yes, I did.

8 Q. How would you characterize his involvement during the  
9 discussions?

10 A. At first, Mr. Jenson was quiet. He is normally a  
11 quiet individual. And McDavid became concerned that Mr. Jenson  
12 wasn't volunteering enough information. And he asked Jenson:  
13 How do you feel about this plot? How do you feel about what's  
14 going on?

15 And Jenson was quiet for a bit, and he said: I'm  
16 excited about this. I'm looking forward to it. I think it's a  
17 good idea.

18 Q. And that's what this first excerpt concerns?

19 A. Correct.

20 (Audio playing 11:11 a.m.-11:12 a.m.)

21 Q. BY MR. LAPHAM: Prior to that back and forth, had the  
22 defendant talked about the legality of what you all were doing?

23 A. Yes, he did.

24 Q. What did he say about that?

25 A. Shortly after we sat down at the fire pit, he made

1 the comment that just us sitting down and discussing what we  
2 were discussing was, in itself, conspiracy, and that we were  
3 broaching on the area of terrorism.

4 Q. Did he use those two words?

5 A. He did.

6 Q. Conspiracy and terrorism?

7 A. He did.

8 Q. And is that one of the reasons that he was trying to  
9 draw the group to express their level of involvement?

10 MR. REICHEL: Objection, Your Honor. He is asking  
11 for her to speculate as to the mind of Mr. McDavid.

12 THE COURT: Sustained.

13 Q. BY MR. LAPHAM: I'll withdraw the question.

14 During the discussion at the fire pit, was there a  
15 discussion about targets?

16 A. Yes, there was.

17 Q. And was there also -- well, what do you recall about  
18 that discussion?

19 A. Various members of the group were asked to input  
20 targets that they had thought would be beneficial or meaningful  
21 to attack and destroy for their cause. And I believe Jenson  
22 expressed interest in oil tankers and oil tanker trucks. Gas  
23 stations were mentioned. The U.S. Forest Service Institute in  
24 of Placerville was mentioned.

25 Q. And who mentioned that?

1 A. McDavid. Cell towers were mentioned.

2 Q. Can you think of anything else?

3 A. Banks were mentioned, ATMs -- though not in your  
4 traditional hold-up-the-bank-and-steal-all-the-money sense, it  
5 was more to destroy the money in the bank and destroy the ATM's  
6 capabilities. And more transit systems.

7 Q. With specific reference to the tree factory -- what  
8 did you call it?

9 A. U.S. Forest Service.

10 Q. U.S. Forest Service facility, did the defendant  
11 present the group with an article that night?

12 A. He did.

13 MR. LAPHAM: Your Honor, may I approach?

14 THE COURT: You may.

15 Q. BY MR. LAPHAM: Showing you Government's Exhibit 20,  
16 do you recognize that article?

17 A. I do.

18 Q. What is that?

19 A. That's an article on genetically-engineered trees.

20 Q. And on the back page -- actually, it's a two-page  
21 document -- there's some writing in the margin?

22 A. There is.

23 Q. Do you know what that writing relates to?

24 A. That is the address of the U.S. Forest Service  
25 facility in Placerville.

1 Q. And do you know who wrote that address on there?

2 A. Mr. McDavid wrote that.

3 Q. And just so we can see what you are referring to,  
4 that is the article From Chainsaws to Gene Guns,  
5 Genetically-Engineered Trees?

6 A. Correct.

7 Q. And on the back of the last page of that article, in  
8 the margin, is an address, 2480 Carson Road, and that's the  
9 address that you were referring to?

10 A. Correct.

11 Q. Now, was there a discussion that night also about how  
12 you would attack some of these targets?

13 A. Yes, there was.

14 Q. What do you recall about that?

15 A. The discussion revolved around McDavid's planned  
16 recipe for the explosives, the C4 bombs that he had previously  
17 discussed. He was talking about using those to blow up certain  
18 facilities in certain areas. And he also mentioned that he  
19 wanted more explosives recipes, as the C-4 recipe that he had  
20 he didn't think would be able to cover all the targets that he  
21 had in mind.

22 MR. LAPHAM: Your Honor, if I can have just a minute.

23 At this time, Your Honor I would like to play excerpt number  
24 three from Exhibit 30. I think they got a little switched  
25 around. And I would ask permission to pass this out to the

1 jury.

2 THE COURT: Let's pick up the first one first. So  
3 we're clear, excerpt three is actually Exhibit -- pardon me --  
4 excerpt three is actually Exhibit 30-C?

5 MR. LAPHAM: The transcript is, yes.

6 THE COURT: Yes. The transcript. Thank you. Will  
7 you please collect those. Thank you.

8 (Audio playing. 11:19 a.m.-11:24 a.m.)

9 MR. LAPHAM: Your Honor, do you want to have the jury  
10 pass the transcripts down?

11 THE COURT: Please. If you would pass them down  
12 again, please.

13 Q. BY MR. LAPHAM: Now, a couple questions about that  
14 last excerpt. The defendant mentions EF'rs. Do you know what  
15 that refers to?

16 A. Yes.

17 MR. REICHEL: Objection, Your Honor, speculation.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, I do.

20 Q. BY MR. LAPHAM: What does that refer to?

21 A. Refers to Earth First.

22 Q. And he references this recipe about forming the  
23 crystals?

24 A. Yes, he does.

25 Q. Did that recipe come up later in your discussions

1 about this plot with Mr. McDavid?

2 A. Yes, it did.

3 Q. Would you explain that for the jury?

4 A. He mentioned that he had this bleach and ammonia  
5 recipe where you mix the bleach and ammonia together, and after  
6 it dries -- or the bleach and ammonia mixture evaporates, you  
7 have the crystals that are collected. And his plan was to take  
8 the crystals, mix it in some form of putty, and use the putty  
9 with the explosive detonator as the bomb.

10 Q. And that's what he described in the excerpt?

11 A. Yes.

12 Q. Did he ask you to do anything after this November  
13 meeting with respect to that recipe?

14 A. Yes, he did. He asked me to look further into that  
15 recipe and to see if I could find anymore explosive recipes for  
16 him.

17 Q. Now, at the end of that excerpt Ms. Weiner references  
18 a book that she says has other explosive recipes, you saw that?

19 A. Yes.

20 Q. And that was Poor Man's James Bond?

21 A. Yes, it was.

22 Q. After this encounter in November, was she tasked by  
23 Mr. McDavid to do anything with respect to that?

24 A. She was instructed to get the book, The Poor Man's  
25 James Bond.

1 Q. Now, we're still at this discussion at the fire pit.  
2 Was there a discussion about how to claim responsibility for  
3 any of these actions you were planning on taking?

4 A. Yes, there was.

5 Q. And tell the grand jury if you would -- or tell the  
6 jury, if you would, how that discussion went?

7 A. There was a heated discussion about how to claim  
8 responsibility for these attacks. The -- we were trying to  
9 figure out whether it would be claimed under the ELF tag or  
10 not, the Earth Liberation Front claim of responsibility, or  
11 whether they would be unknown attacks to try and bring down the  
12 State.

13 And some of the cons of claiming Earth Liberation  
14 Front responsibility for the attacks were that it would draw a  
15 high amount of FBI and law enforcement attention to their plot.  
16 And they didn't know if they could sustain themselves under all  
17 of that attention.

18 But, obviously, the pros of claiming responsibility  
19 with the ELF tag meant then that everyone knew what they were  
20 doing. There was no guesswork. That everyone would know  
21 exactly what their motives and intentions were with these sorts  
22 of attacks.

23 Q. And is this a topic that reoccurs later in the life  
24 of this plot?

25 A. Yes, it does.



1 Q. Do you recall approximately when?

2 A. This discussion happens again in January.

3 Q. All right. Now, the discussion about claiming  
4 responsibility in November, in the November discussion, is that  
5 recorded on tape as far as you know?

6 A. I believe it is.

7 Q. Did you find it? Do you know where that is?

8 A. Did I confuse transcripts?

9 Q. I don't know. I wasn't aware that it was recorded.

10 A. I believe I confused the transcripts then. The  
11 discussion was repeated in January.

12 Q. Was there a discussion at the fire pit regarding what  
13 the group would do after taking these actions?

14 A. After taking the actions, the group was supposed to  
15 flee the area. McDavid had again brought up that his friend  
16 Ryan Lewis made the mistake of doing these actions too close to  
17 home, and was, thus, easily caught.

18 So they wanted to do actions under the philosophy of  
19 something called flash actions whereby an action or an  
20 explosion or occurrence takes place in one area, they  
21 immediately vacate the area. Head to a different area and set  
22 up for another explosive action.

23 MR. LAPHAM: Your Honor, I would ask for permission,  
24 at this time, to play excerpt number two, which is Government's  
25 Exhibit 30-D.

1           THE COURT: Go ahead. Of course, ladies and  
2 gentlemen, remind you each time you receive a transcript,  
3 again, please follow my initial instructions that the  
4 transcript itself is not evidence. What you hear on the actual  
5 recording is the actual evidence. And these, of course, will  
6 be picked up at the end of the playing.

7           (Audio playing. 11:30 a.m.- 11:34 a.m.)

8           Q.           BY MR. LAPHAM: Ma'am, was there any physical  
9 activity planned for this November meeting, or was this  
10 primarily just talking?

11          A.           It was mostly just talking.

12          Q.           Did the group make plans to get together at a  
13 subsequent point in time?

14          A.           There was no solid date fixed, but we did plan to get  
15 together after Christmastime.

16          Q.           Were specific locations discussed as to where to  
17 meet?

18          A.           McDavid had said repeatedly that he wanted to go down  
19 to a compound or a commune in Fresno, and certain members of  
20 the group, Ms. Weiner included, felt that it would be better to  
21 isolate themselves away from other individuals and focus more  
22 on forming the plot within the group.

23                       And further discussions were how to go about finding  
24 a place to live while we were planning this plot.

25          Q.           And how was that resolved?

1 A. I volunteered to procure a cabin for the group in the  
2 Northern California mountains.

3 Q. Was that something you had been instructed to do?

4 A. Yes, it was.

5 Q. Would you explain that?

6 A. The FBI instructed me to try to be allowed to procure  
7 a cabin for the group due to wanting to ensure my safety within  
8 the group. It would have been far more difficult for the FBI  
9 to keep a track on me and make sure I was safe if we were  
10 camping out in the wilderness somewhere, than if we had a cabin  
11 that we could wire up with audio and video and have me under  
12 constant surveillance.

13 Q. What was discussed as to the relative time you would  
14 get back and meet?

15 A. We had always thrown around winter as the time for  
16 the individuals in the group to come back together. And people  
17 started asking, well, what does winter mean. And someone asked  
18 is that before Christmas, and McDavid said, no, we should leave  
19 Christmas to be with our families. We should have some family  
20 time before we move away, and come together, and don't see them  
21 for several years since we're going to be doing this plot.

22 Q. Was someone advocating getting together before  
23 Christmas?

24 A. No one was advocating it, but it was a question as to  
25 what time-frame should we all return together.

1 Q. It was raised?

2 A. Yes.

3 Q. And how was it resolved as to when you would meet  
4 again?

5 A. We decided to meet after Christmas, sometime around  
6 the new year.

7 Q. Were any of the members assigned tasks to perform in  
8 that interim period between November and after the first of the  
9 year?

10 A. Yes, they were.

11 Q. Specifically who?

12 A. Weiner was tasked with getting the book the The Poor  
13 Man's James Bond. I was tasked with finding the cabin,  
14 location for the group to live in while planning these bomb  
15 attacks. And Jenson had a similar task. He was supposed to  
16 bring his stealth-like Ninja abilities to the training, so we  
17 could all learn from him.

18 Q. He claimed to have skills in that area?

19 A. He did.

20 Q. So the group dispersed at the conclusion of the  
21 November weekend?

22 A. Yes, we did.

23 Q. Did you stay in contact with the defendant between  
24 November and January?

25 A. Yes, I did.

1 Q. And how did you do that?

2 A. Through e-mail.

3 Q. Did the defendant have an e-mail address that you  
4 were familiar with?

5 A. Yes, he did.

6 Q. What was that?

7 A. He had several, one of which he used most frequently  
8 was swashbuckler@rock.com.

9 MR. LAPHAM: Your Honor, may I approach?

10 THE COURT: You may.

11 Q. BY MR. LAPHAM: I'll show you what's been marked as  
12 Government's Exhibit 5, 6, 7 and 8. And 8 has four subparts.  
13 Do you recognize those?

14 A. Yes, I do.

15 Q. What are those?

16 A. These are e-mails between McDavid and myself.

17 MR. LAPHAM: Now, Your Honor, I would move to admit  
18 Government's 5, 6, 7, 8-A, B, C and D?

19 MR. REICHEL: Your Honor, perhaps we can just start  
20 with 5.

21 THE COURT: Did she qualify all of them or just 5? I  
22 wasn't sure.

23 MR. LAPHAM: Your Honor, I can go through them one at  
24 a time.

25 THE COURT: Would you. Make sure we have them all.

1 Q. BY MR. LAPHAM: With respect to Government's  
2 Exhibit 5, that's an e-mail from Sal Vasques to -- and the "to"  
3 line is blanked out?

4 A. Correct.

5 Q. Who is Sal Vasques?

6 A. Sal Vasques is Eric McDavid.

7 Q. That's a name he was using?

8 A. Correct. Over his e-mail.

9 Q. And the e-mail account you are referring to is  
10 swashbuckler@rock.com?

11 A. Correct.

12 Q. And who is in the "to" line that's blacked out?

13 A. That would be myself.

14 Q. And that's blacked out to protect your e-mail  
15 address?

16 A. Correct.

17 Q. So that's an e-mail that you received from Eric  
18 McDavid on December 7th, 2005?

19 A. Correct.

20 MR. LAPHAM: Your Honor, move to admit Government's  
21 Exhibit 5.

22 MR. REICHEL: No objection.

23 THE COURT: 5 is admitted.

24 (Government Exhibit 5, Article From Chainsaws to Gene  
25 Guns, Genetically-Engineered Trees" admitted into evidence.)

1 Q. BY MR. LAPHAM: Showing you Government's Exhibit 5,  
2 would you explain the contents of that?

3 A. The content of this e-mail?

4 Q. Yes.

5 A. This e-mail was sent to me by Eric McDavid, and he  
6 was asking about any further bomb recipes that I might have  
7 discovered since the November meeting.

8 Q. So when he says "recipe," he is referring to bomb  
9 recipe?

10 A. Yes, he is.

11 Q. That's sent to you on December 7, 2005?

12 A. Correct.

13 Q. And directing your attention to Government's  
14 Exhibit 6, that is another e-mail from Sal Vasques?

15 A. Yes, it is.

16 Q. To you?

17 A. Yes.

18 Q. And that is sent a few hours later?

19 A. Yes.

20 MR. LAPHAM: Your Honor, move to admit Government's  
21 Exhibit 6.

22 MR. REICHEL: No objection.

23 THE COURT: 6 is admitted.

24 (Government Exhibit 6, E-mail from defendant,  
25 admitted into evidence.)

1 Q. BY MR. LAPHAM: And that's the e-mail that we're  
2 discussing?

3 A. Correct.

4 Q. (Reading): Just make a note of the missing  
5 ingredient, if there will be a problem getting ahold of them,  
6 we'll deal with it when the time comes, or we can always use  
7 another recipe.

8 That was in reference to an explosive recipe?

9 A. Yes, it was.

10 Q. Did you ultimately get back to him -- well, actually  
11 there's one more I want to show you first.

12 Looking at Government's Exhibit 7. And would your  
13 testimony be the same, that's an e-mail from Sal Vasques aka  
14 Eric McDavid to you?

15 A. Yes, it is.

16 MR. LAPHAM: Your Honor, move to admit Government's  
17 Exhibit 7. Ask to display it.

18 MR. REICHEL: No objection.

19 THE COURT: 7 is admitted.

20 (Government Exhibit 7, E-mail from defendant,  
21 admitted into evidence.)

22 Q. BY MR. LAPHAM: "You looked into that Christmas  
23 cookie recipe," what does that refer to?

24 A. That refers to another explosives recipe.

25 Q. A different explosive recipe than the one discussed



1 in the other e-mails?

2 A. Yes.

3 Q. How would you distinguish the two?

4 A. He had asked me to find more explosive recipes for  
5 him, and this was just him asking if I had anymore recipes.

6 Q. All right. And then he references, "but that book  
7 about Poor James that FF was taking about getting," who is  
8 "FF"?

9 A. FF is the code name for Lauren Weiner. FF refers to  
10 Firefly.

11 Q. That was a nickname that she used?

12 A. That was the nickname she chose.

13 Q. And the Poor James reference, what did you understand  
14 that to mean?

15 A. The Poor Man's James Bond.

16 Q. And that was the book referenced by Ms. Weiner at the  
17 November meeting?

18 A. Yes, it was.

19 Q. And he continues on, "hold some alternatives as to  
20 the ingredients so that should be obtained if possible," and  
21 then he says, "I'll be looking for other recipes that may  
22 work"?

23 A. Correct.

24 Q. Again, you understood that all to be referencing  
25 explosive recipes?

1 A. Correct.

2 Q. Now, did you ever get back to the defendant with an  
3 explosives recipe?

4 A. I did.

5 Q. Before doing that, did you have discussions with the  
6 FBI as to how to proceed?

7 A. Yes.

8 Q. And what kind of instructions did you have?

9 A. We had lengthy discussions together, the FBI and  
10 myself, on how to go about giving McDavid what he had asked  
11 from me. We couldn't give him a functional explosives recipe,  
12 just couldn't do that. But he had still asked me for an  
13 explosives recipe.

14 We ended up sitting down with some bomb technicians  
15 from the Philadelphia FBI office, and we put together a recipe  
16 that could be sent to him that was a -- basically a safe bomb.  
17 It wasn't a bomb. It wasn't an explosive. But it was the  
18 initial initiator part of an explosive.

19 That if it was set off, it would make some smoke, a  
20 bang, maybe a flash, and he would think that he had something  
21 that could be used as an explosive. But without a far larger  
22 and very difficult to obtain explosive next to it, nothing  
23 would occur.

24 Q. All right. I want you to take a look at Government's  
25 Exhibit 8-A, if you would, and you can pull it out of the

1 protective sheet there. Do you recognize that e-mail?

2 A. Yes, I do.

3 Q. What is that?

4 A. This is an e-mail that I sent to McDavid.

5 Q. On what date?

6 A. Saturday, December 10th.

7 Q. Of 2005?

8 A. 2005.

9 Q. And, again, you sent to the Sal Vasques account?

10 A. Yes.

11 Q. And before I display it to the jury, what is  
12 contained in that e-mail?

13 A. This is a coded e-mail, and this is the recipe that  
14 the FBI gave me for the safe bomb.

15 MR. LAPHAM: Your Honor, move to admit Government's  
16 Exhibit 8-A.

17 MR. REICHEL: No objection, Your Honor.

18 THE COURT: 8-A is admitted.

19 (Government Exhibit 8-A, Coded e-mail, admitted into  
20 evidence.)

21 Q. BY MR. LAPHAM: All right. So to probably most of us  
22 this is just a jumble of letters. How do you decipher this  
23 code?

24 A. You add six letters.

25 Q. So you go six letters forward?

1 A. Forward in the alphabet.

2 Q. And that's how you translate it?

3 A. Correct.

4 MR. LAPHAM: And, Your Honor, we had meant to have a  
5 translation prepared. We don't have that yet. But we can  
6 present that maybe after the noon hour.

7 THE COURT: All right.

8 MR. LAPHAM: I don't think it's marked as an exhibit.  
9 But I'll show that to you when you resume the stand.

10 Q. BY MR. LAPHAM: And did you get a response to this  
11 e-mail?

12 A. I did.

13 Q. From Mr. McDavid?

14 A. Yes.

15 Q. Directing your attention to Exhibit 8-B, is that the  
16 response?

17 A. Yes, it is.

18 Q. And that was sent on December 11, a few hours later  
19 after you sent yours?

20 A. Correct.

21 MR. LAPHAM: Your Honor, move to admit and display to  
22 the jury.

23 THE COURT: Objection?

24 MR. REICHEL: No objection, Your Honor.

25 THE COURT: Admitted. That's 8-B.

1 (Government Exhibit 8-B, Response e-mail from  
2 defendant, admitted into evidence.)

3 Q. BY MR. LAPHAM: So what's in the bottom portion of  
4 that e-mail is your -- what you sent, and then at the top is  
5 the reply?

6 A. Correct.

7 Q. And how did he reply? Why don't you just read it  
8 into the record?

9 A. (Reading): Do you see what you sent me? Lay off the  
10 caffeine, chica.

11 Q. So, evidently, he didn't know how to decipher your  
12 code?

13 A. Correct.

14 Q. How did that resolve itself?

15 A. Through the next e-mail.

16 Q. Showing you Exhibit of 8-C, that's a return e-mail  
17 from you to the defendant?

18 A. Correct.

19 MR. LAPHAM: Your Honor, I would move to admit 8-C.

20 MR. REICHEL: No objection.

21 THE COURT: 8-C is admitted.

22 (Government Exhibit 8-C, Return e-mail to defendant,  
23 admitted into evidence.)

24 Q. BY MR. LAPHAM: So how do you respond? Why don't you  
25 go ahead and read it?

1 A. (Reading): Hey, how about you make your other e-mail  
2 account, so I don't have to do things like that, and we can  
3 talk openly. Also, why don't you think a little broader about  
4 what I sent you. Then ask Firefly why I sent you a bunch of  
5 random numbers and letters, maybe she'll give you the key.

6 Q. Why don't you explain that first paragraph, what are  
7 you referring to there?

8 A. First paragraph refers to what McDavid had agreed to  
9 do at the Bloomington CrimethInc convergence in Indiana earlier  
10 that year, that summer. And he had intended to make a, quote,  
11 FBI-proof e-mail account, from an offshore e-mail server such  
12 as a Irish or a Russian e-mail account. And he never actually  
13 got around to doing that, but that had been the plan within the  
14 members of the plot to communicate openly without fear of FBI  
15 tracking.

16 Q. And is that something he explained to you that he  
17 thought it would -- an e-mail account could be made FBI proof?

18 A. Yes.

19 Q. And how could that be done?

20 A. By using an offshore e-mail server such as Hotmail  
21 based overseas.

22 Q. Okay. How about the second paragraph, would you  
23 explain that to the jury?

24 A. In the second paragraph, I was trying to let him know  
25 that the e-mail was coded, and Firefly, or Lauren Weiner, would

1 have the key. The members of the group talked in a very  
2 circular fashion. We all talked to each other, so if we wanted  
3 to share information among each other, Weiner might be given a  
4 piece of the key, and McDavid might be given the code, and if  
5 they came together separately, they would be able to crack the  
6 code.

7 Q. All right. And then finally there is a follow-up  
8 e-mail which is Government's Exhibit 8-D.

9 A. Correct.

10 Q. Do you see that?

11 A. Yes, I do.

12 Q. And that was sent from the defendant on  
13 December 12th, 2005, to you?

14 A. Yes.

15 Q. Responding to your last e-mail?

16 A. Correct.

17 MR. LAPHAM: Your Honor move to admit Government's  
18 Exhibit 8-D.

19 MR. REICHEL: No objection.

20 THE COURT: 8-D is admitted.

21 (Government Exhibit 8-D, E-mail from defendant to  
22 witness, admitted into evidence.)

23 Q. BY MR. LAPHAM: All right. And how does he respond?

24 A. (Reading): Yatta, yatta, don't take it so hard, or  
25 me so seriously, Chica. You could have just let it be.

1           Anyway, I'm on it, and I'll drop you an Iry line. Talk to you  
2           soon.

3           Q.           What does he mean by Iry line?

4           A.           Iry line refers to the Irish e-mail accounts that we  
5           were supposed to set up. Irish e-mail accounts were free  
6           e-mail based on a server in Ireland.

7           Q.           What was your belief or Mr. McDavid's belief as he  
8           expressed it to you regarding that account?

9           A.           That those accounts would be FBI proof.

10           MR. LAPHAM: All right. Your Honor, I'm happy to  
11           continue on, and I know it's your preference to go right up to  
12           the noon hour. This is a -- I'm about to break to the January  
13           events.

14           THE COURT: We'll go ahead and break now then. I  
15           think that will be fine. We'll recess at this time, ladies and  
16           gentlemen, and return to testimony at 1:30 p.m. Please  
17           remember your admonitions regarding discussing the case and  
18           forming opinions. Thank you. Court's in recess.

19           (Jury out.)

20           THE COURT: All right. Mr. Lapham, outside the  
21           presence of the jury. The rest of the afternoon?

22           MR. LAPHAM: Your Honor, surprisingly enough, we're  
23           just about to get to the meat of it, and I think I've got  
24           several excerpts to play. I think we can finish up within an  
25           hour with my direct.



1 THE COURT: So by 2:30?

2 MR. LAPHAM: I think so, yes.

3 THE COURT: All right. Then?

4 MR. REICHEL: Cross, probably an hour, I think, at  
5 the most.

6 THE COURT: All right. So she could be on for the  
7 remainder of the day possibly, but you have someone else just  
8 in case?

9 MR. LAPHAM: Yes, we do.

10 THE COURT: Very well.

11 MR. REICHEL: Briefly, Your Honor, I have a motion  
12 about the expert yesterday that I would like to make on the  
13 record.

14 THE COURT: Which is?

15 MR. REICHEL: To strike his testimony.

16 THE COURT: Who was the person?

17 MR. REICHEL: Mr. Bruce Naliboff, who testified for  
18 the Government.

19 THE COURT: You referred to him as an expert, and he  
20 was never qualified as such.

21 MR. REICHEL: I understand. I would like to strike  
22 his testimony that he has not been qualified as an expert, yet  
23 he testified to something which was, I believe, in the province  
24 of expert testimony. Specifically, his specialized skill and  
25 his knowledge and training. He testified about ELF, ALF,

1 anarchy and all that stuff, and he was never qualified as an  
2 expert or submitted to the Court as an expert by the  
3 Government. So I would ask to strike his testimony as lay  
4 witness testimony, and it's inadmissible, not a percipient  
5 witness, wasn't an eyewitness. Instead, he gave his  
6 opinions --

7 THE COURT: What opinions did he give?

8 MR. REICHEL: I'm sorry?

9 THE COURT: What opinions did he give?

10 MR. REICHEL: Your honor, he gave extensive opinions  
11 what ELF stands for, what ALF stands for, what anarchy does,  
12 what their goals are, what their motives are, what their modus  
13 operandi is, how they achieve their goals, how they operate,  
14 how they implement, and their relationship with the green  
15 anarchist movement and the anarchist movement.

16 And I think it was all -- he testified that it was a  
17 result of his specific training and his skills and so forth.  
18 And I believe that under 702, the Supreme Court has held --  
19 under Federal Rule of Evidence 702, Your Honor, the Supreme  
20 Court has held that pursuant to the language of 702, as well,  
21 that when someone testifies based on his specialized training  
22 and skill that is not in the province of the jury and it aids  
23 the jury, so that qualifies as expert testimony. And it's  
24 outside the field of 701, which is lay witness testimony, Your  
25 Honor.

1 THE COURT: Response.

2 MR. LAPHAM: Well, Your Honor, number one, there was  
3 no contemporaneous objection regarding any of this. But second  
4 of all, Mr. Reichel himself based his entire cross-examination  
5 on the fact that this was all public-source information that  
6 can be acquired on the Internet.

7 Mr. Naliboff was doing no more than relaying that  
8 information to the jury, and it's highly relevant. We haven't  
9 quite gotten there yet. There are quite a bit more references  
10 to ELF in the taped discussions we're going to play after the  
11 noon hour.

12 THE COURT: All right. At this time, the objection  
13 is overruled. I don't believe that the testimony that was  
14 provided yesterday went into the area of opinion testimony at  
15 this point.

16 The witness had a great deal of experience as he  
17 indicated as being a law enforcement officer, working at U.C.  
18 Davis, and why he became involved in the -- I hate to say the  
19 movement, if you will, back from 1987, due to the bombing of  
20 the veterinarian clinic at U.C. Davis, which is what piqued his  
21 interest, initially, which is why he has become a person who  
22 has read up on this.

23 But up to what I heard yesterday, the testimony was  
24 rather limited to his experiences. And, again, Mr. Reichel,  
25 you did cross-examine him on the fact that there were some very

1 -- these are commonplace Internet websites that I can go on,  
2 you can go on, anyone can go on and look at them and read what  
3 is stated there.

4 So at this point, I don't find that he has given  
5 exert testimony to the extent that it would be violative to the  
6 Federal Rules of Evidence. Objection is overruled.

7 MR. REICHEL: Thank you.

8 MR. LAPHAM: Thank you, Your Honor.

9 THE COURT: Court's in recess.

10 (Lunch break taken.)

11 (Jury in.)

12 THE COURT: Mr. Lapham. Would you continue, please.

13 MR. LAPHAM: Thank you, Your Honor.

14 Q. BY MR. LAPHAM: Ma'am, when we left off, we were  
15 about to go into January. And I want to get right to that.

16 But I want to clear up a loose end that we discussed  
17 the last hour. You had discussed some e-mails that you had  
18 sent to Mr. McDavid, and one of those was a coded e-mail. Do  
19 you recall that?

20 A. Yes.

21 Q. I want to show you what's been marked as Government's  
22 Exhibit 8-E for identification,

23 MR. LAPHAM: Your Honor, may I approach?

24 THE COURT: You may.

25 Q. BY MR. LAPHAM: Do you recognize that?

1 A. Yes, I do.

2 Q. What is that?

3 A. This is the de-code of the coded e-mail.

4 MR. LAPHAM: All right. Your Honor, I would move to  
5 admit Government's Exhibit 8-E, and ask to display it to the  
6 jury.

7 MR. REICHEL: No objection, Your Honor.

8 THE COURT: 8-E is admitted.

9 (Government Exhibit 8-E, Recipe of bomb (decoded  
10 e-mail, admitted into evidence.)

11 Q. BY MR. LAPHAM: Why don't you just go ahead and read  
12 that into the record, if you would?

13 A. (Reading): I think this is what you meant at your  
14 house. If you want the rest, tell me. Step one, hot plate,  
15 hydrometer, large glass bowl, potassium chloride, salt  
16 substitute at a health food store. Heat one gallon bleach, add  
17 63 grams potassium chloride, boil till hydrometer reads 1.3,  
18 cool in fridge, filter and save crystals, repeat filter and  
19 save crystals, mix crystals with distilled water, 56 grams per  
20 100 milliliters, heat till boiling, then cool, save crystals,  
21 filter and grind consistency of face powder, and heat gently to  
22 kill any moisture, mix with petroleum jelly and sugar.

23 Q. BY MR. LAPHAM: And this was the recipe that you had  
24 vetted with the FBI before sending this e-mail to Mr. McDavid?

25 A. Yes, it was.

1 Q. And the one that you previously described would not  
2 have resulted in a real bomb?

3 A. Correct.

4 Q. All right. Let's move on to January then.

5 Did the group ultimately reconvene after the first of  
6 the year?

7 A. Yes, they did.

8 Q. And when did you do that?

9 A. I drove from Philadelphia after picking up Weiner and  
10 Jenson in D.C. We drove across the country and arrived, I  
11 believe, the 3rd or the 4th of January in the Sacramento area.

12 Q. All right. And where did you physically reconvene?

13 A. We convened in Sacramento, downtown, where we all met  
14 up again, and then we moved to a cabin that I had secured for  
15 them in the Dutch Flat area.

16 Q. The defendant was already in California?

17 A. Yes, he was.

18 Q. And you picked him up here in Sacramento?

19 A. Sacramento.

20 Q. And where did you go?

21 A. We went to the cabin in Dutch Flat.

22 Q. Incidentally, did you go straight there?

23 A. We stopped and had dinner first.

24 Q. So approximately what time did you get to the cabin?

25 A. Mid-evening, probably around 7:00.

1 Q. And we'll see photographs of this in later testimony,  
2 but could you describe for the jury what this cabin looked  
3 like?

4 A. The cabin was small, two bedrooms, one bath. It was  
5 set off the main road in Dutch Flat. It was up on a hill with  
6 several -- with a plot of land around it to make it private.  
7 And from the road, when you drove by, you could not see the  
8 cabin or the yard surrounding it from the front drive.

9 Q. Now, what was the reaction of your fellow  
10 conspirators to the cabin?

11 A. They were very pleased with the cabin and with the  
12 town of Dutch Flat. Dutch Flat was a tiny, tiny town buried in  
13 the mountains. And upon entering Dutch Flat, we crossed over a  
14 set of active set of train tracks, which they were very excited  
15 about.

16 They were very excited that the cabin was set so far  
17 from the main road. And along with being in a small, private  
18 town, it was a small, private cabin.

19 Q. This was a group discussion?

20 A. Yes.

21 Q. What did you all do upon first arriving at the cabin?

22 A. We unpacked the car. We started choosing beds and  
23 rooms and couches to sleep upon. And then we sat down and had  
24 dinner and then had some more idle chitchat.

25 Q. And which rooms did the various players select?

1 A. McDavid and Weiner chose the master bedroom and  
2 shared the queen bed. Jenson stayed in the second bedroom and  
3 slept on one of the single beds. Later on in the week, he  
4 joined the other two in the master bedroom, and I slept on the  
5 couch out in the front room for the duration of the time that  
6 we were there.

7 Q. Was there any discussion of the plot that night?

8 A. There was not substantial discussion about it. What  
9 we did discuss was that we would reconvene the next morning and  
10 discuss further topics of the plot. And that night we wrote  
11 down a list of topics to discuss for the next morning.

12 MR. LAPHAM: All right. Your Honor, may I approach?

13 THE COURT: You may.

14 Q. BY MR. LAPHAM: Let me show you what's been marked as  
15 Government's Exhibit 1 for identification. Do you recognize  
16 that?

17 A. I do.

18 Q. What is that?

19 A. This is the book where the group recorded all of  
20 their ideas, targets, tactics, bomb recipes, reconnaissance,  
21 shopping lists, schedules, etcetera.

22 Q. And who provided that list or that book to the group?

23 A. I provided the book.

24 Q. And why did you provide that?

25 A. I was asked by McDavid to provide bomb recipes,



1 chemical equivalency list, and certain other information, and I  
2 recorded it all into the book and presented it to the group.

3 Q. And what was your proposal with respect to the book?

4 A. I told them that at the end of the training session,  
5 we could burn the book and thereby destroy all evidence in it.

6 Q. Was there some discussion about the wisdom of using  
7 this book?

8 A. Weiner was initially reluctant to, but McDavid told  
9 her that the book would be burned, and it would be safe to  
10 record everything into it.

11 MR. LAPHAM: Your Honor, move to admit Government's  
12 Exhibit 1.

13 MR. REICHEL: No objection.

14 THE COURT: 1 is admitted.

15 (Government Exhibit 1, Small black book, "Burn Book"  
16 admitted into evidence.)

17 Q. BY MR. LAPHAM: Now, I just want to go through the  
18 first several pages of this book.

19 Is it accurate to say that those were created by you?

20 A. Correct.

21 Q. What do the first two pages depict?

22 A. First two pages are counter culture, inspirational  
23 sayings, photos, poems, pictures. They were placed there for  
24 esthetic purposes.

25 Q. All right. And then pages two and three?

1 A. Same thing.

2 Q. Now, and then pages four and five?

3 A. Same thing.

4 Q. And how about five and six?

5 A. Five is the same thing. Six is the beginning of the  
6 information that I put in there at the request of McDavid.

7 Q. And, specifically, what had he requested you to do?

8 A. He requested me to provide -- he requested of me  
9 bomb-making recipes, information on fuses, information on how  
10 to make bigger and better bombs.

11 Q. And this is the request -- the request you are  
12 referring to was at the November meeting?

13 A. At the November meeting.

14 Q. And the e-mail traffic in between?

15 A. Correct.

16 Q. All right. Moving on to the next two pages, what are  
17 we looking at here?

18 A. These are more fuses, and then an equipment list, and  
19 on the next page, that one, is the beginning of the chemical  
20 equivalency list.

21 Q. All right. And, again, what is the chemical  
22 equivalency list?

23 A. It is a list that takes a chemical in its scientific  
24 form and breaks it down to the household name.

25 Q. And that's what he had requested you provide back in

1 Philadelphia?

2 MR. REICHEL: Objection as to leading, Your Honor.

3 THE COURT: Sustained.

4 Q. BY MR. LAPHAM: And the next two pages?

5 A. Continuation of the chemical equivalency list.

6 Q. And next two pages?

7 A. Further continuation of the chemical equivalency  
8 list.

9 Q. And the final two pages?

10 A. Further continuation.

11 Q. All right. How about the next page?

12 A. This is the first recipe that -- and it's very  
13 similar to the one that the Bureau allowed me to give to  
14 McDavid, and the one that McDavid also initially was discussing  
15 at the November meeting.

16 This is the bomb recipe that I was told to give to  
17 McDavid, and that McDavid had requested that I give to him.

18 Q. All right. And just for the record, that top of that  
19 page is labelled Potassium Chloride?

20 A. Correct.

21 Q. How about the next page?

22 A. That's a rudimentary or crude drawing of a potential  
23 explosive device.

24 Q. And why did you include that?

25 A. At the behest of the FBI and at McDavid's request.

1 Q. And how about the next page?

2 A. That is a Potassium Chloride recipe as well, but in a  
3 different delivery system. This is a firebomb instead of an  
4 explosive device.

5 Q. And how about the next page?

6 A. This is another explosives recipe that was solicited  
7 by McDavid.

8 Q. And the next page?

9 A. Another pictorial representation of that recipe.

10 Q. And the next page?

11 A. Same thing.

12 Q. How about the next two pages?

13 A. Further recipes that were included in the book at the  
14 behest of McDavid.

15 Q. And the next page?

16 A. Pictorial representation of the next recipe.

17 Q. And the page following that, which is labelled  
18 "ANFO"?

19 A. ANFO. That's another explosives recipe that was  
20 included at the behest of McDavid.

21 Q. And the next two pages?

22 A. The same thing. Further recipes included at the  
23 behest of McDavid.

24 Q. And the next page, can you read the label at the top  
25 of the page?

1 A. Says Picric Acid.

2 Q. And what do these two pages depict?

3 A. The first is the list of ingredients, and the second  
4 is the method by which to make the explosive.

5 Q. And, again, was that something that you entered at  
6 the request of Mr. McDavid?

7 A. Correct.

8 Q. And the next two pages?

9 A. Same thing. Further explosives recipes included at  
10 the behest of McDavid.

11 Q. And the next page?

12 A. The same thing. Another explosives recipe included  
13 at the behest of McDavid.

14 Q. All right. And that brings us up to this page, and  
15 that's -- explain to the jury, if you would, what that depicts?

16 A. This is the list that we made that first night we  
17 were at the cabin. This is a list of concerns that the members  
18 of the group had that were going to be addressed and discussed  
19 the next morning.

20 Q. And before we move on to that, let me just ask you a  
21 question about all of those pages we looked at before.

22 To your knowledge, would any of those recipes or  
23 formulas have actually resulted in a bomb?

24 A. They would not have.

25 Q. And why is that?

1 A. Each of those recipes was vetted by the FBI, and they  
2 all were missing a key piece of explosives recipe.

3 Q. All right. Now, some of the information on this page  
4 is in black ink and some is in blue ink?

5 A. Correct.

6 Q. Can you explain that?

7 A. The night before the meeting that the group had, we  
8 pulled out the Burn Book and started writing down in the book  
9 the concerns that the various members had.

10 And this is one of the last times that I've written  
11 in the Burn Book. I was the one who wrote the concerns in the  
12 black ink. And the following morning, the book was turned over  
13 to McDavid for continuing the entries.

14 Q. And after that point, when it was turned over to  
15 McDavid, who maintained control of the Burn Book --

16 A. McDavid.

17 Q. I'm sorry. -- for most of that time period?

18 A. Sorry. McDavid did.

19 Q. All right. All right. Let's go down the list of  
20 concerns here. The first topic in the black ink is  
21 surveillance. And there is an "O" to the left of that. Do you  
22 understand that reference?

23 A. Yes, I do.

24 Q. What is that?

25 A. The "O" refers to Ollie, which is also the nickname

1 that Zachary Jenson had.

2 Q. And what's the reference to surveillance?

3 A. Surveillance refers to whether the group was  
4 concerned about being under police surveillance or FBI  
5 surveillance.

6 Q. How about messages?

7 A. Messages refers to how to share messages with outside  
8 individuals, either family or the media.

9 Q. And then finally accidental death of civilians, is  
10 that what that stands for?

11 A. Yes. It says accidental death of cities means  
12 accidental death of civilians.

13 Q. And what did that refer to?

14 A. That referred to the possibility of civilians being  
15 kill or injured during their bombing campaign.

16 Q. And all three of these were concerns that Zachary  
17 Jenson had raised?

18 A. Correct.

19 MR. REICHEL: Objection, Your Honor, leading the  
20 witness.

21 THE COURT: Overruled.

22 THE WITNESS: Correct.

23 Q. BY MR. LAPHAM: Now, we drop down a little bit.  
24 What's the next entry in black?

25 A. The next entry is "A" select targets. That refers to

1 Anna, myself, and my concern or topic to discuss the next day,  
2 which was the selection of targets.

3 Q. And below that it says one or two each?

4 A. Correct.

5 Q. And how did that come to be entered into the book?

6 A. We were having a group discussion, and we decided to  
7 select targets for the group. And each of us decided to  
8 contribute one or two targets, individually.

9 Q. Okay. And then the final entry in black, what does  
10 that refer to?

11 A. O slash R, referring to Ollie slash Ren, which are  
12 the nicknames for Zachary Jenson and Lauren Weiner. And it  
13 says, "what to do when leave," backslash, "how," with a bullet  
14 of "travel."

15 And that refers to how to leave the area after a  
16 crime has been committed, or after they have completed their  
17 explosives campaign.

18 Q. All right. So what you've been talking about is the  
19 night before all of these things were discussed?

20 A. Correct.

21 Q. And that would be what night?

22 A. I believe that was January 9th.

23 Q. Was that the first night you got there?

24 A. We got there the 8th, I believe, and this would be on  
25 the 8th. And then the morning of the 9th we had the



1 discussion.

2 Q. So that leads me to my next question. What did you  
3 do, or what did the group do the following morning, the morning  
4 of the 9th?

5 A. The morning of the 9th is when we had the discussion  
6 regarding these concerns, and then that discussion evolved into  
7 a further discussion about tactics, targets, and bomb-making  
8 abilities.

9 Q. And how long did that discussion last?

10 A. Several hours.

11 Q. And are those discussions reflected partially in the  
12 Burn Book in these two pages?

13 A. Yes, they were.

14 Q. Incidentally, I refer to it as the Burn Book. Is  
15 that how you refer to it?

16 A. It is how the group referred to it, yes.

17 Q. And that is because?

18 A. Because the group's intention was to burn the book  
19 after the training session was completed.

20 Q. All right. Now, let's look at this same page in the  
21 Burn Book, and I'm going to ask you to explain the references  
22 that are in the blue ink.

23 And as you explain them, if you could tell the jury  
24 whose handwriting that is, if you know? Let's start with  
25 "opposite surveillance."

1           A.           "Opposite surveillance" in blue ink. The group had  
2           decided that if we felt we were under electronic surveillance  
3           or physical surveillance, that an e-mail would be sent out or a  
4           code phrase would be used, such as, the blackberries here are  
5           ripe for the pickin's, and that is written by McDavid.

6           Q.           And there's nothing next to "messages."

7                        But we drop down to "accidental death of civilians,"  
8           and would you explain that reference?

9           A.           After a long discussion, the group decided that if  
10          there were any accidental deaths of civilians during the  
11          bombing campaign, that those would be dealt with on a  
12          case-by-case basis, and that was written by McDavid.

13          Q.           How about "select targets"?

14          A.           Next to "select targets" in McDavid's handwriting it  
15          says "recon," and that refers to the reconnaissance that the  
16          group was planning to take on the following list of targets  
17          that's right next to it.

18                        The list of targets includes "WB" for World Bank, "B"  
19          underneath that, and next to that it says "hold-ups" for a bank  
20          hold-up -- actually I -- the writing is too small for me to  
21          read it from here.

22                        Thank you. "Power structures" is underneath that.  
23          "CDF" referring to the California Department of Forestry, which  
24          refers to the U.S. Forest Service Institute in Placerville.  
25          "Huntington" referring to Huntington Life Sciences, and that is

1 a facility that is not in California but is on the East Coast.

2 Q. Let me stop you there. Do you understand the  
3 significance of the reference to Huntington?

4 A. I do.

5 Q. Was that something discussed by the group?

6 A. Huntington Life Sciences, it refers to a corporation  
7 called Huntington Life Sciences that engages in preliminary  
8 animal testing for cosmetics and pharmaceutical products. And  
9 having that as a target also implies that the cell -- excuse  
10 me, not the cell -- implies that the group was also interested  
11 in potentially expanding into ALF territory as well as ELF.

12 Q. Let's continue on down.

13 A. Underneath Huntington, it says "gas stations," and  
14 underneath that it says "tractor trailers."

15 In the next column, at the top, "cell towers,"  
16 underneath that "freeways," in parens "that includes bridges,"  
17 underneath that, "dams," underneath that, "bearing factory"  
18 referring to a ball-bearing factory.

19 And I'm having a difficult time making out -- oh,  
20 Government buildings is the last one.

21 Q. Okay. And can you tell whose handwriting -- is this  
22 in one person's handwriting?

23 A. It is a mixture of several people's handwritings.

24 Q. Can you tell whose handwriting it is?

25 A. World Bank, bank, power structures, CDF, Huntington,

1 cell towers, freeways and dams, I believe are all in McDavid's  
2 handwritings.

3 Bearing factory and Government buildings I believe  
4 are in Weiner's handwriting.

5 Q. And so this book is being passed around during this  
6 discussion?

7 A. Correct.

8 Q. All right. Now, have you listened to tape recordings  
9 of this discussion?

10 A. Yes, I have.

11 Q. You were wired up at the time?

12 A. Yes, I was.

13 Q. And also the cabin itself was wired for sound and  
14 video?

15 A. Yes, it was.

16 Q. All right. And have you compared those discussions  
17 with transcripts for accuracy?

18 A. Yes, I have.

19 Q. In a similar fashion as the previous transcripts  
20 we've discussed?

21 A. Yes, I have.

22 MR. LAPHAM: Your Honor, at this time I'd ask to play  
23 the three additional excerpts from Government's Exhibit 30, and  
24 that would be excerpts 4, 5 and 6.

25 THE COURT: Which are exhibits 30-D, E, F?

1 MR. LAPHAM: Yes.

2 THE COURT: Objection?

3 MR. REICHEL: No, Your Honor.

4 THE COURT: 30-D, E and F will be admitted and  
5 allowed to be played into evidence. And, again, remind you of  
6 the admonition regarding the transcripts that you are  
7 receiving, ladies and gentlemen.

8 (Government Exhibits 30-D, 30-E, 30-F, Transcripts  
9 from excerpts 4, 5 and 6, (audio only) admitted into evidence.)

10 Q. BY MR. LAPHAM: All right. Now, just to set this up  
11 for the jury, was there a discussion at that time on  
12 January 9th about how to claim credit for the actions that the  
13 group was planning?

14 A. Yes, there was.

15 Q. And it was a discussion about claiming credit on  
16 behalf of what group?

17 A. On behalf of the Earth Liberation Front or ELF.

18 (Audio playing. 1:57 p.m.-2:01 p.m.)

19 Q. BY MR. LAPHAM: All right. Returning to the Burn  
20 Book, the next topic on the list, "accidental death of  
21 civilians," was that something that was discussed the following  
22 morning?

23 A. It was.

24 Q. And would you describe for the jury the general  
25 nature of that conversation?

1           A.           McDavid brought up the topic, and he threw it out  
2 there in the morning, and said, okay, next we have to talk  
3 about accidental death of civilians. And at first the group  
4 was a little bit stunned. And he goes on to explain to them  
5 that his personal philosophy is that it's okay if civilians are  
6 hurt or killed during this bombing campaign. That they are  
7 just, quote, fence sitters, and they will not be with us, they  
8 will not be against us, so just forget them.

9           MR. LAPHAM: Your Honor, at this time I'd ask  
10 permission to play Government's Exhibit 5, which is Government  
11 Exhibit 30-E.

12           THE COURT: No objection. It's already been  
13 admitted.

14           MR. REICHEL: Your Honor, I would object under Rule  
15 401, 403 and 404(b) again.

16           THE COURT: This is what you already did not have an  
17 objection to. Are you now raising an objection to E?

18           MR. REICHEL: I don't believe he has played this tape  
19 yet.

20           THE COURT: No. But he had offered 30-D, E and F  
21 earlier, and there was no objection, which I admitted D, E and  
22 F. And so I'm asking now, are you objecting to E?

23           MR. REICHEL: Yes, I am, Your Honor.

24           THE COURT: Objection is overruled.

25           MR. REICHEL: Thank you.

1 THE COURT: Are you objecting to F as well? Inasmuch  
2 as I previously ruled that it was admitted in evidence.

3 MR. REICHEL: Your Honor, yeah, on 30-F I would  
4 object under 401 as relevance, 403 as prejudicial, and 404(b)  
5 as character evidence, inadmissible.

6 THE COURT: Court's previous rulings as to Exhibits  
7 30-D, E and F remains. Objection is overruled. Go ahead.

8 MR. LAPHAM: Thank you, Your Honor.

9 (Audio playing. 2:04 p.m.-2:14 p.m.)

10 Q. BY MR. LAPHAM: All right. Going back to the Burn  
11 Book again, Exhibit 1. The next entry down, "select targets,"  
12 did you have a discussion that day about various targets?

13 A. We did.

14 Q. And could you describe for the jury the general  
15 nature of that discussion?

16 A. We had a discussion whereby we each threw out  
17 different ideas and different topics on what targets we would  
18 like, and from there we discussed the pros and cons of each  
19 target.

20 Q. And what types of targets did you discuss?

21 A. Gas stations, cell phone towers, the U.S. Forest  
22 Service Institute in Placerville, various factories, various  
23 commerce institutions.

24 Q. Did you discuss dams and fish hatcheries also?

25 A. We did.

1 MR. LAPHAM: Your Honor, at this time I would ask  
2 permission to play Government's Exhibit 30-F, that's the  
3 transcript, and it would be excerpt number 6.

4 THE COURT: Granted.

5 (Audio playing. 2:16 p.m.-2:24 p.m.)

6 Q. BY MR. LAPHAM: I want to ask you just a few  
7 follow-up questions on that.

8 Throughout that conversation there is a reference to  
9 GMO's. Do you understand that reference?

10 A. I do.

11 Q. What does that stand for?

12 A. Genetically-modified organisms.

13 Q. And at one point in the conversation, I think it's  
14 Lauren Weiner, raises a problem that she refers to as tracking  
15 procedures?

16 A. Correct.

17 Q. Do you know what that refers to?

18 A. Tracking procedures as in how to track the group's  
19 movement or their involvement or actions within an area.

20 Q. And who would be doing the tracking?

21 A. Law enforcement or the FBI.

22 Q. All right. And how would they be doing this  
23 tracking?

24 A. Through criminal investigation after an arson or bomb  
25 attack.



1 Q. Was -- now, Ms. Weiner in that discussion was saying  
2 you have to do things differently each time?

3 A. Correct.

4 Q. And why is that?

5 A. She didn't want to establish a pattern that the FBI  
6 or the law enforcement officials could use to follow the group  
7 as they went around the country doing their arson, their  
8 explosive attacks.

9 Q. All right. Now, finally, at the end of that excerpt  
10 there is a reference to an Animal Liberation Front manual?

11 A. Correct.

12 Q. And someone leaves to go retrieve that?

13 A. Yes.

14 Q. And who left?

15 A. Lauren Weiner.

16 MR. LAPHAM: Your Honor, may I approach?

17 THE COURT: Yes.

18 Q. BY MR. LAPHAM: Let me show you what's been marked as  
19 Government's Exhibit 4 for identification. Do do you recognize  
20 that?

21 A. I do.

22 Q. What is that?

23 A. This is the Animal Liberation Front Handbook.

24 Q. And have you looked at that?

25 A. I have.

1 Q. What kind of information does this contain?

2 A. Contains a lot of information on the Animal  
3 Liberation Front, their philosophy, their history, how to form  
4 an Animal Liberation Front cell, how to recruit the members of  
5 the group, and how to carry out attacks in the ALF name.

6 MR. LAPHAM: Your Honor, I would move to admit  
7 Government's Exhibit 4.

8 MR. REICHEL: Your Honor, I object as it's hearsay,  
9 and also under 403, 401 and 404(b).

10 THE COURT: The objection under 401, 403 and 404 is  
11 overruled. Proceed.

12 MR. LAPHAM: Thank you.

13 (Government Exhibit 4, Animal Liberation Front  
14 handbook, admitted into evidence.)

15 Q. BY MR. LAPHAM: This is the Animal Liberation Front  
16 primer that you were just talking about?

17 A. Yes.

18 Q. And it talks about the history of ALF, talks about,  
19 does direct action work, and you also indicated it starts -- or  
20 talks about how to form cells?

21 A. Yes, it does.

22 Q. Is that in the page I'm displaying right now, page  
23 two?

24 A. Yes, it is.

25 Q. All right. And another topic is security procedures?

1 A. Yes.

2 Q. And then there's a long topic labelled "arson."

3 A. Yes.

4 Q. Is that what Ms. Weiner was referring to when she  
5 went out to get the primer?

6 A. Yes, it was.

7 Q. And that contains various recipes for how to commit  
8 arsons?

9 A. Yes, it does.

10 Q. And this was shared with the group?

11 A. Yes, it was.

12 Q. Now, let's go back to the Burn Book. We've talked  
13 about this page in the Burn Book. We've completed our  
14 discussion on that. The next page says "prepaid blackberries"?

15 A. Yes.

16 Q. Do you know what that reference is to?

17 A. It was a question that the cell -- that the group,  
18 rather, never -- never answered. We were wondering if it was  
19 possible to get prepaid blackberries to stay in communication  
20 contact with each other, if we should ever have to split up.

21 Q. How about the next page?

22 A. This is a code that Lauren Weiner came up with. It  
23 was an e-mail code to send to her friends and associates. If  
24 she needed a safe place to stay after an action, she would send  
25 an e-mail to someone saying, "Firefly flying your way."

1 Q. And Firefly was again her nickname?

2 A. Yes.

3 Q. What does the reference on the next page refer to?

4 A. Gas stations.

5 Q. Incidentally, whose handwriting is that?

6 A. That is mine.

7 Q. The one referring to "Firefly flies away"?

8 A. Correct.

9 Q. How about the next page?

10 MR. REICHEL: Objection, Your Honor. There is no  
11 foundation as to the next handwriting.

12 THE COURT: Of the which handwriting?

13 MR. REICHEL: There is no foundation this witness  
14 would know this handwriting.

15 THE COURT: Foundation sustained.

16 Q. BY MR. LAPHAM: During the course of this week when  
17 the Burn Book was being passed around, did you physically  
18 observe people making entries into the book?

19 A. Yes, I did.

20 Q. And as a result of that, and your observations in the  
21 book, did you become familiar with the handwriting of your  
22 three co-conspirators?

23 A. Yes, I did.

24 Q. So I'll return to the question then. With respect to  
25 this page, what does that refer to?

1 A. This page refers to gas stations.

2 Q. And whose handwriting is that?

3 A. I believe that is McDavid's handwriting.

4 Q. And would you explain the reference on that --  
5 references on that page to the jury?

6 A. At the top it says "GS," which stands for gas  
7 station, Shells preferably, meaning Shell gas stations were the  
8 preferred target.

9 Q. Why were they the preferred target?

10 A. They were the preferred target due to Shell being a  
11 major gas corporation that had both national and international  
12 connections.

13 Q. And did one member of the group express particular  
14 sentiments about that?

15 A. Yes. Lauren Weiner did.

16 Q. What about the rest of the references?

17 A. These were instructions and observations for how to  
18 approach or attack a gas station.

19 (Reading): Make sure smaller holes with either a  
20 crowbar or a bolt for the gas station manhole cover, normally  
21 one camera on the pumps -- referring to the surveillance  
22 cameras on the gas station pumps -- and check out new  
23 development or strip malls, which refers to the preference for  
24 targeting gas stations in new housing developments or strip  
25 mall areas.

1 Q. Why was that?

2 A. Strip malls and new housing developments were already  
3 targets, so if you could hit gas stations in new developments  
4 or in strip malls, that was just an extra bonus.

5 Q. And did the group discuss specifically how they would  
6 attack these gas stations?

7 A. Yes, they did.

8 Q. What did they talk about?

9 A. Part of their discussion was going to the gas  
10 stations and trying to lift off the manhole covers to throw  
11 something down into the underground gas storage tank that would  
12 either cause an explosion or mess up the fuel mixture for the  
13 car.

14 Q. Turning back to the Burn Book. The next page is  
15 entitled "research," and it has various listings below that.  
16 Could you explain those references?

17 A. This page was written as a list of topics and items  
18 to research on the Internet.

19 Q. And the first item is "Placerville CDF." What did  
20 that refer to?

21 A. That refers to the U.S. Forest Service Institute in  
22 Placerville.

23 Q. Who made that entry?

24 A. This is my handwriting.

25 Q. And then below that, you can just read them off.

1 A. (Reading): Power stations backslash grid, gas  
2 stations, new house communities, bridges backslash freeway.

3 Q. And how did you come to make those entries into the  
4 Burn Book?

5 A. I wrote those in the Burn Book at the behest of  
6 McDavid.

7 Q. As a result of discussions which were going on at  
8 that time?

9 A. Yes.

10 MR. REICHEL: Objection as to leading, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: Correct.

13 Q. BY MR. LAPHAM: What about the entry at the top of  
14 the page?

15 A. This was written by McDavid while the group was  
16 traveling in the car. He observed that at the North Flynn Road  
17 exit there were cell phone towers that would be easy to attack.

18 Q. How about the next page?

19 A. This is again McDavid's handwriting, and 2480 Carson  
20 Road is the address of the U.S. Forest Service facility, and  
21 directions on how to get there, "49 to 50, exit number 48,  
22 following down to Carson Road, 2.1 miles on the right."

23 Q. How about the entry below that?

24 A. Below that is San Francisco, San Mateo and Alameda  
25 Counties, which are the three counties around the Bay Area

1 where the group wanted to blow up power stations and power  
2 substations in order to blackout the Bay Area.

3 Below that is a drawing of a neighborhood called  
4 Potrero Hills in the San Francisco area that McDavid was  
5 familiar with, and that he knew there was a power substation  
6 nearby that could be blown up.

7 Q. And is that signified by the "X"?

8 A. Yes, it is.

9 Q. Did the defendant specifically talk about that power  
10 station with the group?

11 A. Yes, he did.

12 Q. All right. That brings us to the next page, and it  
13 has a heading up at the top: Tuesday, Wednesday and Thursday.  
14 Would you explain those entries?

15 A. This was a calendar of tasks and things to do on  
16 Tuesday, Wednesday and Thursday.

17 Q. Is this something that the group discussed?

18 A. Yes, it was.

19 Q. And agreed upon?

20 A. Yes, it was.

21 Q. Whose handwriting is that?

22 A. This is a combination.

23 "Tuesday, recon U.S. Forest Service, bank, auto,  
24 power grid, Sac," that is all in my handwriting. I wrote that  
25 at the behest of McDavid after consultation with the group.



1           "Nimbus and GS," referring to gas stations, are in  
2       McDavid's handwriting.

3           "Wednesday, SF materials, up the coast to check on  
4       dam" is McDavid's handwriting.

5           And Thursday, "play with toys" is also McDavid's  
6       handwriting.

7       Q.       All right. Let's talk about Tuesday then. That's  
8       "Tuesday recon."

9       A.       Correct.

10      Q.       Did the group actually accomplish the things on this  
11      list that day?

12      A.       Yes, they did.

13      Q.       That would be then Tuesday, January 10th?

14      A.       Correct.

15      Q.       Describe what the group did on that Tuesday, let's  
16      start with waking up in the morning?

17      A.       We woke up in the morning. We had a simple  
18      breakfast. From there, we left the cabin and drove down into  
19      the neighboring town of Auburn.

20              In Auburn, the group stopped at a coffee shop where  
21      we attempted to gain wireless Internet access to download  
22      Google Earth and do Internet research.

23              Only one of the laptops worked, so McDavid and myself  
24      left the coffee shop, leaving Jenson and Weiner there, and we  
25      travelled to the Auburn library to do more internet research on

1 different targets.

2 Q. What type of research were you and Mr. McDavid going  
3 to do?

4 A. We were looking into power stations and dams.

5 Q. And how about Weiner and Jenson?

6 A. Weiner and Jenson were looking into how to download  
7 the Google Earth program to look for satellite surveillance and  
8 try and find power station sites in the area by zooming in with  
9 the satellite.

10 Q. Let's talk about your task first, the one that you  
11 shared with the defendant. Where did you go?

12 A. We went to the Auburn library.

13 Q. And were you able to access the Internet that way?

14 A. We were.

15 Q. What specifically did you do?

16 A. McDavid and myself went online and looked up the  
17 locations of different power facilities in the region, both in  
18 Sacramento and the California coast, and in the Southern  
19 California and Central Coast area.

20 We found a long list of power stations, substations,  
21 transformers, electrical grids, all sorts of information. We  
22 also found further information on the local fish hatchery,  
23 Nimbus Dam and an electrical station there.

24 Q. Approximately how long did all that take?

25 A. Took over an hour.

1 MR. LAPHAM: Your Honor, may I approach?

2 THE COURT: You may.

3 Q. BY MR. LAPHAM: Show you what's been marked as  
4 Government's Exhibit 13-A and 13-B. Do you recognize that?

5 A. Yes, I do.

6 Q. What are those?

7 A. These are the printouts that we received from the  
8 Auburn library after our research.

9 Q. And is there -- if you look in the bottom of those  
10 printouts, is there a date?

11 A. There is.

12 Q. What's the date?

13 A. 1-10-06.

14 MR. LAPHAM: Okay. Your Honor, move to admit  
15 Government's Exhibit 13-A and B.

16 MR. REICHEL: No objection, Your Honor.

17 THE COURT: 13-A and B are admitted into evidence.

18 (Government Exhibits 13-A, 13-B, Internet research on  
19 power stations, admitted into evidence.)

20 Q. BY MR. LAPHAM: And just showing you Government's  
21 Exhibit 13-A. I'll show you the big document first. I'm sure  
22 you can't read anything on there from your vantage point, but  
23 what is this that we're looking at?

24 A. This is a spreadsheet of different power facilities  
25 all over California, their name, their location, their type of

1 power, any special information in the electrical world that  
2 they might have.

3 Q. All right. And then zooming in on it, just to take  
4 some examples.

5 A. The second one down would read, (reading): Oakland,  
6 Duke Energy, Oakland. The facility would be oil and gas. Next  
7 to that, general oil and gas, primary fuel, distilled oil,  
8 technology, gas turbine, Cogen -- which I do not know what that  
9 means -- not Cogen, date online, followed by year online,  
10 service, and county.

11 Q. And directing your attention to Government's  
12 Exhibit 13-B. This is another listing of various Government  
13 power stations?

14 A. Correct.

15 Q. And goes on for several pages, ten pages to be exact,  
16 it looks like?

17 A. Correct.

18 Q. Well, multiple pages, let's say.

19 After completing and downloading this research, did  
20 you rejoin Mr. Jenson and Ms. Weiner?

21 A. Yes.

22 Q. And were they still at the coffee shop?

23 A. They were.

24 Q. Did you provide any of this information to them or  
25 show it to them?

1 A. Yes, we did.

2 Q. Okay. Incidentally, I think I left one out here.

3 MR. LAPHAM: Your Honor, may I approach?

4 THE COURT: You may.

5 Q. BY MR. LAPHAM: Let me show you what's been marked as  
6 Government's Exhibit 12, and that's a two-page document  
7 relating to the Folsom Dam?

8 A. Yes, it is.

9 Q. Do you recognize that document?

10 A. Yes, I do.

11 Q. Is that one of the documents that you downloaded  
12 during your Internet research with Mr. McDavid?

13 A. Yes, we did.

14 MR. LAPHAM: Your Honor, move to admit Government's  
15 Exhibit 12.

16 THE COURT: Is there an objection?

17 MR. REICHEL: No objection, Your Honor.

18 THE COURT: 12 is admitted.

19 (Government Exhibit 12, Internet research on Folsom  
20 Dam, admitted into evidence.)

21 Q. BY MR. LAPHAM: And this particular document relates  
22 to the Folsom Dam?

23 A. Yes, it does.

24 Q. All right. And as with the other downloads, did you  
25 share this with Ms. Weiner and Mr. Jenson?

1 A. Yes, we did.

2 Q. What did you do after rejoining Jenson and Weiner at  
3 the coffee job?

4 A. We stayed at the coffee shop for only a short while  
5 longer, and after that, in the afternoon, we proceeded to  
6 conduct our first reconnaissance trip.

7 Q. And where was that?

8 A. First, we went to the Nimbus Dam and Fish Hatchery,  
9 and then the Folsom Dam right nearby, and after that we went to  
10 the U.S. Forest Service facility.

11 Q. Okay. Let's talk about the trip to the Nimbus Dam  
12 and Fish Hatchery. You got there by car?

13 A. Yes, we did.

14 Q. Was there further discussion along that drive  
15 regarding some of the targets that the group had discussed?

16 A. Yes, there was.

17 Q. Would you relate that discussion to the jury?

18 A. The group was discussing further targets in regards  
19 to the fish hatchery, the dam. There was more discussion on  
20 power stations and how to go about finding power stations.  
21 Further discussion on gas stations, and whether those were a  
22 viable target or not, and further discussion on the U.S. Forest  
23 Service facility.

24 Q. Did you also talk about cell phone towers?

25 A. Yes, we did.

1 Q. Were any members of the group pointing out potential  
2 targets?

3 A. McDavid had previously written in the Burn Book on  
4 the North Flynn Road exit that there was a cell phone tower  
5 that would be easy to blow up. And they were always on the  
6 lookout for cell phone towers in the area.

7 Q. Now, when you got to the dam, Nimbus Dam and Fish  
8 Hatchery, what did you do? And when I say "you," I mean the  
9 group.

10 A. We got out of the car, and we talked to the Fish  
11 Hatchery, and we took a self-guided tour of the fish hatchery,  
12 looked at the fish in the ladders and swimming around in the  
13 lakes and the pools. Then we went inside the Fish Hatchery  
14 facility where they have information and brochures that we  
15 could take.

16 From there, we left the fish hatchery and crossed  
17 underneath the overpass, and walked on a dirt path to where we  
18 could get a better view of the Folsom Dam, which is the larger  
19 of the two dams, and from there we had discussions on the best  
20 way to blow up the Folsom Dam.

21 Q. Before we get to that, was there a discussion about  
22 taking any action against the Fish Hatchery itself?

23 A. There was.

24 Q. Would you relate that discussion to the jury?

25 A. The discussion revolved around how to blow up the

1 fish ladders that allowed the fish to get into the fish  
2 hatchery but did not allow them to get out. There was a  
3 discussion revolving around the fish-be-free Salmon continue to  
4 swim in the rivers, and that was the reason for wanting to blow  
5 up the fish hatchery.

6 Q. All right. And then you went over to the other side  
7 of the road and viewed the dam from a closer level?

8 A. Uh-huh.

9 THE COURT: Is that "yes"?

10 THE WITNESS: Yes.

11 Q. BY MR. LAPHAM: Some members of the jury may not be  
12 familiar with the layout, could you kind of give them a visual  
13 tour of that?

14 A. We were at the fish hatchery, which is on this side.  
15 And we basically walked in a U-turn path. We walked underneath  
16 the overpass, which was approximately this way, and a U-turn,  
17 and stopped shortly after the overpass and faced the Folsom Dam  
18 in this direction. (Indicating.)

19 Q. The Nimbus Dam?

20 A. The Folsom Dam.

21 Q. Now you're at the Nimbus Dam?

22 A. I'm at the Nimbus Dam? Okay.

23 MR. REICHEL: Objection.

24 THE COURT: I understand. Just so the jury is clear  
25 and the record's clear, are you aware of how Folsom Dam and



1 Nimbus Dam are configured within relation to each other? Are  
2 they parallel? Perpendicular? Can you describe the distances?

3 THE WITNESS: There's one after the other.

4 THE COURT: If you would maybe lay a bit more  
5 foundation on that, please.

6 MR. LAPHAM: I will.

7 THE COURT: Thank you.

8 Q. BY MR. LAPHAM: When you were at the Folsom Dam --  
9 sorry, now I'm doing it -- the Nimbus Dam and Fish Hatchery,  
10 did you obtain some of those brochures that you had mentioned?

11 A. We did.

12 MR. LAPHAM: May I approach?

13 THE COURT: You may.

14 Q. BY MR. LAPHAM: Showing you Government's Exhibit 11A,  
15 B and C, do you recognize those?

16 A. Yes, I do.

17 Q. And what are those?

18 A. These are brochures from the Nimbus Hatchery --  
19 Nimbus Fish Hatchery.

20 Q. All right. And you collected those at the time that  
21 you did your recon of this area?

22 A. Correct.

23 Q. Now, do you have it straight in your mind -- did you  
24 ever go to the Folsom Dam, by the way?

25 A. The Folsom Dam?

1 Q. Yes.

2 A. I believe that was the bigger of the two dams?

3 Q. Yes.

4 A. No, we did not.

5 Q. So the only dam you ever visited was the --

6 A. The Nimbus Dam.

7 Q. -- the Nimbus Dam? And that was the one that you  
8 were describing?

9 A. Nimbus Dam is the dam closest to the fish hatchery.  
10 There is the fish hatchery, and then the Nimbus Dam, and  
11 further up the Folsom Dam,

12 MR. LAPHAM: And, Your Honor, if I didn't move to  
13 admit Government's 11-A, B and C, I would do so now.

14 MR. REICHEL: No objection, Your Honor.

15 THE COURT: 11-A, B and C are admitted.

16 (Government Exhibits 11-A, 11-B, 11-C, Brochure: A  
17 Visitor's Guide to Nimbus Fish Hatchery, admitted into  
18 evidence.)

19 Q. BY MR. LAPHAM: I don't have any particular questions  
20 about these. I'll just display them for the jury, so they can  
21 take a look at them. This is Government's Exhibit 11-A, 11-B,  
22 and 11-C.

23 Now, you talked about action that the group might  
24 take with respect to the Fish Hatchery. Now I want to direct  
25 your attention to whatever discussion there was with respect to

1 the Nimbus Dam. And why don't you relate that conversation to  
2 the jury?

3 A. After we left the fish hatchery, we proceeded down  
4 the path to where we could get a better view of the Nimbus Dam.  
5 And at the Nimbus Dam, the group came together, and as we were  
6 looking at the dam, the discussion was how could the group best  
7 blow up the Nimbus Dam. And it was a -- it's a very large  
8 structure, and there's very thick concrete.

9 And the group made the -- we had the discussion that  
10 it would take a lot of explosives to blow up that amount of  
11 concrete. And the decision was made that we should go out and  
12 buy concrete to test the explosives that we had to see how  
13 strong we would have to make it to blow up concrete in various  
14 degrees of thickness.

15 Q. Do you recall who made that suggestion?

16 A. It was a conference between McDavid and Weiner.

17 Q. All right. And as best you recall how did that  
18 conversation go?

19 A. Weiner was unsure if there was a possibility of even  
20 being able to blow up the dam. It was -- it's a very large  
21 structure and very thick concrete. She wasn't sure if it was  
22 even a viable target. And McDavid came back and said to her,  
23 no, this is a viable target. We just need to test it and make  
24 sure that this will work. We can do this.

25 Q. All right. And going back to the Burn Book,

1 Government's Exhibit 1, we're at the page where we're talking  
2 about Tuesday, Wednesday and Thursday.

3 And then the page following that contains a list of  
4 items, many of which are crossed out; do you see that?

5 A. Correct, yes.

6 Q. And what is that list with all the cross-outs?

7 A. That is a shopping list. The items that are crossed  
8 out had already been purchased at the time.

9 Q. All right. And do you see concrete on that list?

10 A. Yes, I do.

11 Q. Who created this list, by the way?

12 A. This list was a combination of everyone's  
13 handwriting.

14 Q. And by "everyone"?

15 A. The four people in the group.

16 Q. Why don't you -- can you decipher which is which?

17 A. Can you blow it up?

18 Q. Yes.

19 A. Thank you.

20 At the top, "hot plate, distilled water, hydrometer,  
21 Potassium Chloride, diesel fuel" would all be in McDavid's  
22 handwriting:

23 "Jugs, sports bottle, petroleum jelly, glass Pyrex  
24 bowl," would be in Weiner's handwriting.

25 "Filter of some kind," would be in Jenson's.

1           "Concrete" is in my handwriting. "Glass jars and  
2 brown bags" would be in my handwriting.

3           "Battery," I believe, is McDavid's handwriting.

4 Q.           All right. And then across from that are certain  
5 listings kind of in brackets?

6 A.           That refers to the type of store that these items  
7 could be purchased at. At the top, "Walmart," then "hardware  
8 store," and at the bottom, "grocery store."

9 Q.           Did the group ever get far enough down the track to  
10 buy concrete?

11 A.           No, they did not.

12 Q.           Where was your next stop after the Nimbus Dam and  
13 Fish Hatchery?

14 A.           After leaving the Nimbus Dam, the group drove up to  
15 the U.S. Forest Service tree facility in Placerville.

16 Q.           Okay. And that's also called the Institute of Forest  
17 Genetics?

18 A.           Correct.

19 Q.           Was there any discussion along the way as to how the  
20 group would conduct itself once they got to the Forest Service  
21 location?

22 A.           Yes, there was.

23 Q.           Would you relate that discussion to the jury?

24 A.           The group decided that once the group arrived at the  
25 Forest Service facility, that we would park outside of the

1 facility and walk in to try and gain better reconnaissance of  
2 the area from the outside.

3 The facility was set back from the main road by about  
4 a quarter mile, so parking outside and walking in allowed the  
5 group to better view the area on foot and take more time in  
6 figuring out entrance/exit locations.

7 Q. And so there was parking actually closer to the  
8 Forest Service facility?

9 A. Yes, there was.

10 Q. But the group chose not to use that?

11 A. Correct.

12 Q. Was there also discussion as to what you would say  
13 once you got to that facility?

14 A. McDavid had told us that we would pretend to be  
15 college students once we were at the U.S. Forest Service  
16 facility.

17 Q. And what happened once you got there?

18 A. When we got to the Forest Service facility, McDavid  
19 did most of the talking and led the group into the building,  
20 where we met a Forest Service employee.

21 At that point, McDavid introduced himself under a  
22 fake name. Jenson gave a fake name. Weiner gave a fake name.  
23 And the McDavid at this point said that they were college  
24 students from the American River College, doing a report for a  
25 class that they had. And they were at the U.S. Forest Service

1 facility to do research for their class project.

2 Q. Did you have to sign in in any fashion?

3 A. Yes, we did.

4 Q. How was that accomplished?

5 A. Eric McDavid, Jenson and Weiner gave fake names into  
6 the sign-in book.

7 MR. LAPHAM: Your Honor, may I approach?

8 THE COURT: You may.

9 Q. BY MR. LAPHAM: Showing you what's been marked as  
10 Government's Exhibit 10 for identification; do you recognize  
11 that?

12 A. I do.

13 Q. And what is that?

14 A. This is the visitor register from the Forest Service  
15 Institute.

16 Q. And directing your attention to the last page of that  
17 book, is there an entry for January 10th?

18 A. Yes, there is.

19 Q. And is that the entry you were just referring to?

20 A. Yes, it is.

21 Q. What is it -- what's it say?

22 A. Says, (reading): 1:10, the Sean Douglas group.  
23 Underneath that it says Patrick. Underneath that it says Lori.  
24 And it says that they are from American River Junior College.

25 MR. LAPHAM: Your Honor, move to admit Government's

1 Exhibit 10.

2 MR. REICHEL: No objection, Your Honor.

3 THE COURT: 10 is admitted.

4 (Government Exhibit 10, Visitor's Register, admitted  
5 into evidence.)

6 Q. BY MR. LAPHAM: And that's the entry you are  
7 referring to?

8 A. Yes, it is.

9 Q. That is highlighted in pink?

10 A. Yes.

11 Q. All right. Where did the group -- or what happened  
12 at that point?

13 A. The Forest Service employee spoke with us for a  
14 little bit and took us on a little miniature tour of the main  
15 building in there and told us a little bit about what the  
16 mission of the Forest Service facility was.

17 He then said, why don't you guys go walk around the  
18 arboretum for a little bit and look at some of our trees. And  
19 we did. We left the main building, walked into the arboretum,  
20 and walked around the tree area.

21 And then once we left the arboretum where the trees  
22 were growing, we walked behind the main building and in between  
23 the lab building and the greenhouse building and started  
24 observing where the surveillance cameras were.

25 McDavid pulled out the Burn Book and started drawing



1 a map of the facility with all the buildings labeled and  
2 anything that he saw. He specifically notated where the  
3 surveillance cameras were. And as we walked through the  
4 facility there was discussions about trying to orient the map  
5 in the correct way and look out for extra targets.

6 At one point he asked Jenson for a compass to try to  
7 orient the map in the correct way for further reconnaissance  
8 planning.

9 We were approached again by the same Forest Service  
10 employee after we had come through the back of the lab in the  
11 greenhouse building. And at that point, the Forest Service  
12 employee began asking us again, you know, what do you think of  
13 the facility, and he began explaining to us the three trees at  
14 that area -- the three trees of the Forest Service facility.

15 At the same time, he also pointed out that there were  
16 scientists' living quarters in the corner of the facility. And  
17 we were about 30 or 40 yards away at that point. And as he  
18 pointed them out, he said, you know, scientists live here year  
19 round. There are visiting scientists from around the world.

20 And as the Forest Service employee left again, and we  
21 began walking back the way we had come into the parking lot, in  
22 an attempt to leave the Forest Service facility, McDavid made  
23 the comment that it didn't matter that there were scientists  
24 living on the premises. It was still okay. It was still a  
25 viable target. It could still be blown up.

1 Q. Did he refer to those scientists in any particular  
2 fashion?

3 A. They were evil scientists or not important.

4 Q. He used those words, evil scientists?

5 A. Yes, he did.

6 Q. At the time -- you indicated in your last answer that  
7 as you were taking this self-guided tour, the defendant pulled  
8 out the Burn Book and started drawing a map?

9 A. Yes, he did.

10 Q. That's contained in the Burn Book?

11 A. Yes, it is.

12 Q. Showing you just for reference the same page that the  
13 -- the same page that the Tuesday, Wednesday, Thursday notation  
14 is on, in the lower portion of that page and then continuing  
15 over, is that the map, the hand-drawn map that Mr. McDavid  
16 made?

17 A. Yes, it is.

18 Q. And maybe if you can just take the jury on a little  
19 self-guided tour of your own, can you point out what's  
20 depicted?

21 A. Thank you. That's good.

22 At the very top, it says "main entrance" with an  
23 arrow pointing out of the drawing.

24 THE COURT: Excuse me. We are probably getting to a  
25 little bit more time here, probably about two minutes away, I

1 think. Why don't we take the recess now, and we will return at  
2 3:20 and we'll just start on with the map.

3 Ladies and gentlemen, please remember your  
4 admonitions regarding discussing the case and forming opinions.  
5 Thank you. Court's in recess.

6 (Jury out.)

7 THE COURT: We're outside the presence of the jury.  
8 Any matters that need to go on the record?

9 MR. LAPHAM: No. Except I don't know what I was  
10 thinking when I gave you an hour estimate.

11 THE COURT: I was wondering about that.

12 MR. REICHEL: Excuse me, Your Honor?

13 THE COURT: We were trying to determine Mr. Lapham's  
14 ability to tell time and to estimate as being an hour, and it's  
15 been an hour and a half and he was saying --

16 MR. REICHEL: Yeah.

17 THE COURT: -- he was mistaken. At this point it  
18 doesn't matter, but how much more do you think?

19 MR. LAPHAM: Well, I think about half an hour's  
20 worth.

21 THE COURT: Okay. It will take most of the day then  
22 today then?

23 MR. REICHEL: Yeah, I think --

24 THE COURT: I'm sure it will. That's fine. Off the  
25 record.

1 (Break taken.)

2 (Jury in.)

3 THE COURT: Proceed, please.

4 MR. LAPHAM: Thank you, Your Honor.

5 Q. BY MR. LAPHAM: When we left off, we were talking  
6 about the sketch that Mr. McDavid had made while you were doing  
7 the tour of the Forest Service facility, and I was about to ask  
8 you if you could point out where on this map the cameras are  
9 depicted?

10 A. The cameras are depicted at the corners where the two  
11 buildings that say "lab," and then there is little squares with  
12 "C's" inside of them and the direction that the video recorders  
13 are in.

14 Q. You are indicating --

15 A. Correct.

16 Q. -- these two right there?

17 A. Correct.

18 Q. All right. Where did the group go after completing  
19 its tour of the Forest Service facility?

20 A. We returned to the cabin.

21 Q. And what did you do, if anything, that night?

22 A. That night we talked about our plans to make a trip  
23 to San Francisco the following day.

24 Q. All right. And returning to the Burn Book, so we're  
25 up to Wednesday now?

1 A. Correct.

2 Q. And the plan for Wednesday is to go to San Francisco?

3 A. Correct.

4 Q. Now, was there a reason you were going to San  
5 Francisco?

6 A. The group was going to San Francisco to -- for a  
7 multitude of reasons. One, to conduct further research. Two,  
8 to buy materials for the explosives recipes outside of the  
9 Sacramento area. The group felt that if they bought some of  
10 the components in different areas, it would be more difficult  
11 to track the group by law enforcement. And, three, Jenson  
12 wanted to go to San Francisco, rather, to sell some of his  
13 writings and procure money for the group.

14 Q. All right. Let's go over a couple of those -- so the  
15 group, are these all things that the group discussed as a unit?

16 A. Yes.

17 Q. And respecting the answer you gave about going to  
18 San Francisco to buy things outside of the Sacramento area,  
19 would you explain that in more detail?

20 A. The group wanted to try and make their actions as  
21 difficult to trace as possible by law enforcement or by the  
22 FBI, so they felt that if they bought materials in the  
23 Sacramento area, the San Francisco area, and in other areas  
24 where they traveled, they could more easily cast off law  
25 enforcement.

1 Q. Avoid detection?

2 A. Correct.

3 Q. What about Jenson trying to raise money, how was he  
4 going to do that?

5 A. Jenson wrote for Indy Media, for himself, for certain  
6 other anarchist organizations or "Zeens" or "Zines," and he  
7 intended to go to San Francisco to sell some of the writings he  
8 that had written. About 20 bucks per writing, I believe, was  
9 the rate.

10 Q. And was it your understanding he had already sold  
11 some of these writings?

12 A. No. He was going down to San Francisco to collect  
13 the money for writings that he was about to sell.

14 Q. All right. And where in San Francisco did you  
15 actually go?

16 A. We ended up at the Main Public Library in San  
17 Francisco.

18 Q. Approximately what time did you get there?

19 A. Around lunchtime or early afternoon.

20 Q. And did all four of you go into the library?

21 A. Yes, we did.

22 Q. And what did you do there?

23 A. When we got to the library, we started doing more  
24 research on targets, and specifically a little more research on  
25 cell phone towers. And after that, we began to look into

1 chemical supply stores to look for a battery hydrometer for the  
2 group to use in the explosives recipe.

3 Q. And you were wearing a wire at this time?

4 A. I was.

5 Q. And were these discussions in the library caught on  
6 tape?

7 A. Yes, they were.

8 Q. And you've listened to that?

9 A. Yes, I have.

10 Q. Why don't you summarize that for us, what was it you  
11 were trying to do that day?

12 A. Specifically in the library, McDavid was looking up  
13 the locations and phone numbers of chemical supply stores in  
14 the area, and he was calling each of the chemical supply stores  
15 to see if he could buy or purchase some of the supplies needed  
16 for the explosives recipe.

17 Q. All right. Referring your attention back to  
18 Government's Exhibit 1.

19 May I approach, Your Honor?

20 THE COURT: Yes, you may.

21 Q. BY MR. LAPHAM: In the back of that book is there a  
22 little pocket?

23 A. There is.

24 Q. In the very -- the flap on the back?

25 A. There is.

1 Q. Is there something in that pocket?

2 A. There is.

3 Q. Would you pull it out, please?

4 A. (Witness complies.)

5 Q. What is that?

6 A. This is a scrap of paper from the library where you  
7 write down the call number and books when you go to find them  
8 after you've found them on the central computer system.

9 McDavid wrote down the name and address and phone  
10 numbers of certain chemical supply stores in and around the Bay  
11 Area that he had found from the Yellow Pages at the library.

12 Q. And that's what's depicted on that little piece of  
13 paper?

14 A. Correct.

15 Q. Now, did you attempt or did Mr. McDavid attempt to  
16 call any of those chemical supply houses?

17 A. Yes, he did.

18 Q. For what purpose?

19 A. To see if they had a hydrometer that he could  
20 purchase.

21 Q. And did you participate in some fashion in those  
22 phone calls?

23 A. I was next to him while he made the phone calls.

24 Q. So you listened while he was making phone calls?

25 A. Yes, I did.



1 Q. What kind of information did he obtain?

2 A. He obtained the location, and he asked if they were  
3 open to the public to see if he could get in there and purchase  
4 his own hydrometer.

5 Q. With what result?

6 A. They said, no, they were not open to the public.  
7 They were only a distribution center.

8 Q. Did he make several attempts, in other words, attempt  
9 to call several different places?

10 A. Yes, he did.

11 Q. With pretty much the same result?

12 A. Yes.

13 Q. And I will place this back in the pocket part of  
14 Exhibit 1.

15 Where did you go -- where did the group go after  
16 leaving San Francisco?

17 A. After leaving San Francisco, the group drove back up  
18 to Sacramento.

19 Q. Did you stop anywhere on the way back?

20 A. Yes, we did.

21 Q. Approximately what time of day did you leave?

22 A. We left in the early evening, probably about 6:00 or  
23 7:00.

24 Q. So you left San Francisco in the early evening?

25 A. Left San Francisco, yes.

1 Q. And, I'm sorry, where did you stop on the way back?

2 A. We stopped at Walmart in Sacramento on the way back.

3 Q. For what purpose?

4 A. We were going to buy supplies for the explosives  
5 recipe.

6 MR. LAPHAM: All right. May I approach, Your Honor?

7 THE COURT: Yes, you may.

8 Q. BY MR. LAPHAM: Showing you Government's Exhibit 17  
9 for identification; do you recognize that?

10 A. Yes, I do.

11 Q. And what is it?

12 A. These are the Walmart receipts for the supplies that  
13 we bought.

14 Q. And that's a Walmart located where?

15 A. This is a Walmart located in Sacramento.

16 MR. LAPHAM: Move to admit Government's Exhibit 17.

17 MR. REICHEL: No objection, Your Honor.

18 THE COURT: 17 is admitted.

19 (Government Exhibit 17, Walmart receipt dated  
20 1/11/06, admitted into evidence.)

21 Q. BY MR. LAPHAM: Did all four people go into the  
22 Walmart store?

23 A. Yes, they did.

24 Q. Showing you the receipt. What were -- what was the  
25 reason for purchasing these items?

1 A. These items were purchased as they were supplies  
2 necessary for the mixing of the explosives recipe.

3 Q. The first item is listed "canning jars," what was  
4 that for?

5 A. The canning jars were one of the methods of delivery  
6 for the explosives recipe. An explosive would be placed inside  
7 the canning jars, and the jars would be thrown at something.

8 Q. What's the next entry below that?

9 A. Battery.

10 Q. Is that a car battery?

11 A. That is a car battery.

12 Q. And what was the purpose for obtaining a car battery?

13 A. The car battery was needed to extract the sulfuric  
14 acid within the car battery, which was a component of one of  
15 the explosive recipes.

16 Q. Coffee filter, what's that -- I'm skipping over  
17 one -- but coffee filter, what's that for?

18 A. The coffee filters were to be used with the bleach  
19 and ammonia recipe. After the bleach and ammonia was supposed  
20 to be mixed and had evaporated, crystals were supposed to be  
21 left to form, and the coffee filter was supposed to strain out  
22 the crystals.

23 Q. How about the next item, mixing bowls?

24 A. Mixing bowls were the bowls to be used for the  
25 explosives recipe and the mixing of the bleach and ammonia.

1 Q. What's the next item?

2 A. Single burner.

3 Q. What does that refer to?

4 A. That's a hot plate used to heat the explosives  
5 mixture to boiling.

6 Q. Do you know what VPJ refers to?

7 A. I do not.

8 Q. And how about the next item below that?

9 A. I don't recall.

10 Q. Then below that is bleach?

11 A. Bleach.

12 Q. And what was that to be used for?

13 A. That was a critical component of the bleach and  
14 ammonia explosives recipe.

15 Q. How about the following -- the last three items, do  
16 you know what those are?

17 A. "Cube tap" I do not recall. "Battery tester" and  
18 "battery tester" and the battery hydrometers that were used in  
19 the explosives recipe.

20 Q. That's the thing you were trying to find at chemical  
21 supply houses?

22 A. Correct.

23 Q. Or one of the things?

24 A. Correct.

25 Q. And just for the record, the time reflected on this

1 receipt is down at the bottom of the receipt itself.

2 Does that sound about the right time when you made  
3 those purchases?

4 A. Yes, it does. Yes, it does.

5 Q. So 22:53?

6 A. Correct.

7 Q. All right. Let's go back to the Burn Book one more  
8 time. And the agenda for Thursday is "play with toys"?

9 A. Yes.

10 Q. Do you know what that reference is to?

11 A. Yes, I do. The "play with toys" refers to mixing and  
12 potentially testing the explosives recipes that were created  
13 that day.

14 Q. So was that the purpose for obtaining all these  
15 ingredients the night before?

16 A. Yes.

17 Q. And did the group actually carry that plan out on  
18 Thursday?

19 A. Yes. Thursday morning there was a trip into Auburn  
20 to get a few more supplies, and then after the Auburn trip,  
21 they returned to the cabin and immediately began to mix one of  
22 the explosives recipes together in an attempt to make the first  
23 components of the explosive.

24 Q. Let's talk about that trip to Auburn that morning,  
25 the Thursday morning. Did all four members go?

1 A. Yes, they did.

2 Q. And who was driving?

3 A. I was driving.

4 Q. And where was Mr. McDavid sitting?

5 A. McDavid was in the front passenger seat.

6 Q. Who was in possession of the Burn Book at that time?

7 A. McDavid was.

8 Q. And was that typical for him?

9 A. Yes.

10 MR. LAPHAM: Your Honor, at this point I would like  
11 to play a video-only clip, no sound, which is excerpt number  
12 seven of Government's Exhibit 30. So there is no associated  
13 transcript with it.

14 THE COURT: All right. That's fine. Thank you.

15 (Video playing. 3:37 p.m.-3:38 p.m.)

16 Q. BY MR. LAPHAM: Now, on that drive into Auburn, did  
17 something happen that caused you some concern?

18 A. Yes.

19 Q. Would you describe that for the jury?

20 A. On the drive down into Auburn, there was -- a wire  
21 had fallen out of the dash of the car, and as McDavid was  
22 fiddling with the wire, the recording device in the car fell  
23 out of the dash into his hand.

24 As we were driving down the road, I realized he was  
25 holding the recording device in his hand. And I didn't know

1 what to do at first because he looked at it, and he said, oh,  
2 what is this, doesn't look like a car component.

3 And I took the recorder out of his hand, and I shoved  
4 it back into the dashboard. And I said, stupid old car, just  
5 a, quote, POS, forget it.

6 Q. POS?

7 A. Quote, "piece of shit."

8 Q. Okay. And how did he react to that?

9 A. He let it go. He didn't question me further about  
10 it, but he acted strange as if somewhere in his subconscious he  
11 knew that that was a weird occurrence, but he never pressed me  
12 about it.

13 My reaction was extreme stress. He had basically  
14 just found me out but didn't quite know it.

15 Q. Let's continue on the trip to Auburn.

16 Incidentally, I don't think I asked you this  
17 question. In the last video clip, what he pulled out of his  
18 pocket, what was that?

19 A. That was the Burn Book.

20 MR. LAPHAM: Your Honor, at this time I would like to  
21 play the next video/audio clip, which is Government's excerpt  
22 eight from Government's Exhibit 30.

23 THE COURT: 30-G?

24 MR. LAPHAM: I'm sorry. Yes. 30-G is the  
25 transcript.

1 Q. BY MR. LAPHAM: Now, where is it you are going on  
2 this particular occasion?

3 A. We are driving from Dutch Flat into Auburn, and we  
4 are going to a store to acquire various materials for the  
5 explosives recipe.

6 Q. And do you know which store you are going to?

7 A. During the drive I did not. McDavid was directing me  
8 to the store.

9 Q. So that's essentially what this audio/video clip  
10 depicts?

11 A. Correct.

12 (Audio/video playing. 3:41 p.m.-3:45 p.m.)

13 Q. BY MR. LAPHAM: All right. Right at the end there,  
14 before you come to a stop, he pulls out something from his  
15 pocket, and he says the words, "Potassium Chloride"?

16 A. Yes, he does.

17 Q. What was he pulling out of his pocket at that point?

18 A. The Burn Book.

19 Q. And you were going to a natural foods store?

20 A. Yes, we were.

21 Q. And for what purpose?

22 A. We needed to find Potassium Chloride, which is a salt  
23 substitute. Couldn't find it at Walmart the night before. And  
24 he believed that we could find it at this natural food store.

25 Q. Did any of the members of the group purchase anything



1 else at that natural food store?

2 A. McDavid left the natural food store and purchased  
3 trick candles, which are prank birthday candles that cannot be  
4 blown out. And Weiner purchased hair dye.

5 Q. Let's talk the trick candles first. What were those  
6 for?

7 A. Those were to create fuses for the explosive. He  
8 felt that -- McDavid felt that if he had trick birthday candle  
9 wicks as fuses, they would be very difficult to extinguish or  
10 blow out, and he could use those as a very reliable method for  
11 constructing a fuse.

12 Q. And did Ms. Weiner indicate to you why she wanted to  
13 buy hair dye?

14 A. Yes, she did. She was attempting to change or  
15 conceal certain aspects of her identity.

16 Q. So she was going to dye her hair?

17 A. Yes, she was.

18 Q. Did you make any other stops in Auburn before  
19 returning to the cabin?

20 A. Yes, we did.

21 Q. Where did you go?

22 A. We stopped at a Kmart at the request of McDavid.

23 Q. And why did you stop there?

24 A. McDavid went into the Kmart and purchased two boxes  
25 of shotgun shells.

1 MR. LAPHAM: Your Honor, may I approach?

2 THE COURT: You may.

3 Q. BY MR. LAPHAM: Showing you Government's Exhibit 16  
4 for identification; do you recognize that?

5 A. Yes, I do.

6 Q. Is that the Kmart receipt for that purchase?

7 A. Yes, it is.

8 MR. LAPHAM: Your Honor, move to admit Government's  
9 Exhibit 16.

10 MR. REICHEL: No objection.

11 THE COURT: 16 is admitted.

12 (Government Exhibit 16, Kmart receipt dated 1/12/06,  
13 admitted into evidence.)

14 Q. BY MR. LAPHAM: Now, showing you that exhibit, it  
15 shows purchase of two items reflected as Clays; do you see  
16 that?

17 A. Yes, I do.

18 Q. What does that refer to?

19 A. Those refer to the two boxes of shotgun shells that  
20 McDavid purchased.

21 Q. And did the defendant indicate to you why he wanted  
22 to buy two boxes of shotgun shells?

23 A. After he bought them, he returned to the car and  
24 explained to the group that he was going to extract the gun  
25 powder within the shotgun shell and use that for the fuses.

1 Q. He had not previously explained that to you?

2 A. He did not.

3 Q. Before returning to the cabin, was there another  
4 encounter that you had that caused you some stress?

5 A. Yes, there was.

6 Q. Would you describe that for the jury?

7 A. I became distracted while exiting the freeway, and I  
8 rolled through a stop sign, and a CHP officer pulled me over  
9 immediately with the members of the group inside the car, and  
10 he pulled us over at the gas station at the Dutch Flat exit.

11 Q. And how did that encounter go?

12 A. He stopped us. I was the driver, so he came to my  
13 side and asked for the license and registration and insurance.  
14 And did I know that I had just run the stop sign. And I said,  
15 no, I did not. I was obviously distracted, and I'm very sorry  
16 about that. And he let me go. He did not give me a ticket.  
17 But he warned me to be more observant in the future.

18 Q. How did the group react to that?

19 A. The group was very upset by that. The group  
20 naturally avoids all encounters with law enforcement and are  
21 very freaked out by any encounters with law enforcement or  
22 police officers, and so that did not make them feel happy in  
23 any way, shape or form.

24 Q. Were they upset with you or just the fact of the  
25 encounter?

1 A. They were upset with me a little bit for being so  
2 distracted on the road. They thought, you know, if I had been  
3 paying a little more attention, obviously the officer would  
4 have no reason to pull me over, and the officer would never  
5 have seen us.

6 Q. And how did that make you feel?

7 A. I felt a little excluded. I felt like I was being  
8 pushed out of the group a little bit at that point. They were  
9 all a little bit angry with me.

10 Q. Describe where you went at that point?

11 A. We left the gas station after the officer had let us  
12 go and returned to the cabin.

13 Q. And what did the group do the -- what did the various  
14 members of the group do at that point?

15 A. Immediately upon returning to the cabin, McDavid  
16 started tearing into the salt substitute that had been  
17 purchased in Auburn and got out some various supplies that were  
18 in the cabin and began mixing in earnest and trying to create  
19 this explosives recipe.

20 Q. And what did he do after that?

21 A. While we were waiting for the explosives recipe to  
22 continue to boil and develop, he began breaking open the  
23 shotgun shells and extracting the black powder within it, and  
24 taking the black powder and sifting it through something to try  
25 to get the little ball bearings out, and then taking the black

1 powder and laying it down in lines.

2 And after that, he took the trick birthday candles  
3 and scraped away the wax from them, and he laid down the prank  
4 birthday candles at the end of the lines of black powder, lit  
5 one end of the wick and timed how long it took for the wick to  
6 burn down to the powder, and then for the powder to burn to the  
7 end of the line.

8 Q. So the first thing he started doing was mixing some  
9 chemicals together, and then he started boiling bleach?

10 A. Correct.

11 MR. REICHEL: Objection as to leading, Your Honor.

12 THE COURT: Sustained.

13 Q. BY MR. LAPHAM: What did he do after mixing the  
14 chemicals?

15 A. He waited for the bleach to boil, and -- he waited  
16 for the bleach to boil, and while he was waiting for the bleach  
17 to boil he was attempting to create fuses.

18 And instead of -- before he could just create the  
19 fuses and put them into his explosive, he wanted to time the  
20 length of time it took for the fuse to burn from beginning to  
21 end.

22 Q. Okay. All I'm trying to do is direct your attention  
23 to the period of time where the bleach is boiling.

24 A. Okay.

25 Q. What are you doing at that point?

1 A. At this point, I am watching McDavid. My role within  
2 the group was to be the medic, so I was supposed to stand back  
3 and observe. And in case anyone got injured, then I would  
4 intervene and help the injured person.

5 Q. And what were the other members of the group doing at  
6 that point?

7 A. While McDavid was working on the fuses, and while he  
8 was watching the boiling of the bleach and occasionally  
9 stirring and taking readings, Weiner and Jenson were watching  
10 in the beginning. And then towards the end of the boiling  
11 mixture, Weiner and Jenson began to actively participate and  
12 take readings and stir the mixture as well.

13 Q. Was Ms. Weiner a little tentative about that?

14 A. In the beginning she was reluctant to approach the  
15 boiling bleach mixture, but she overcame her reluctance and  
16 went towards the bleach mixture and began taking readings with  
17 the battery hydrometer.

18 Q. Now, let me direct your attention to the gunpowder,  
19 and McDavid is extracting the gunpowder from the shotgun  
20 shells?

21 A. Yes, he is.

22 Q. What are you doing at that point?

23 A. I am watching him. I am standing nearby and watching  
24 him and attempting to get good audio and video footage of what  
25 he was doing.

1 Q. Was there a problem there?

2 A. There was a problem.

3 Q. What was the problem?

4 A. One of the video hookups did not work, and, thus, we  
5 had to rely on the video hookup inside the cabin.

6 Unfortunately, the vantage point was such that you couldn't  
7 accurately see what the individuals outside were doing with the  
8 mixture and with the gunpowder, so I was receiving instructions  
9 via cell phone to move certain items of furniture within the  
10 cabin, so that they could get a better line of sight with the  
11 video cameras within the cabin.

12 Q. Incidentally, speaking of cell phones, did it become  
13 an issue at any point during this week that you had a cell  
14 phone?

15 A. Yes, it did.

16 Q. Would you explain that to the jury?

17 A. That night there was a discussion, and Jenson  
18 specifically mentioned that he was very uncomfortable with the  
19 fact that I still had my cell phone, as the rest of the members  
20 of the group did not carry cell phones and had no desire to  
21 carry cell phones, and felt that cell phones were a method for  
22 law enforcement to track them. So they began to pressure me to  
23 get rid of my cell phone.

24 Q. That night -- and now we're talking about Thursday  
25 night, the 12th -- were there harsh words exchanged between the

1 group?

2 A. There were.

3 Q. Incidentally, I guess before we get there, did  
4 something happen with the explosive mixture, the mixing of the  
5 chemicals?

6 A. Yes.

7 Q. Would you explain that to the jury?

8 A. McDavid finished his fuse timers and returned to the  
9 mixture in the bowl, and the battery hydrometer began to give  
10 the correct readings for what McDavid was looking for. And he  
11 assumed that the mixture had boiled to completion, and all he  
12 had to do now -- or at that point was to let it cool.

13 He turned the hot plate off and allowed the mixture  
14 to cool. At that time it was January 12th, and we were up in  
15 the mountains, and it was very cold. And so as the mixture  
16 began to rapidly cool, it cooled too fast for the glass bowl on  
17 the metal burner.

18 And the glass shattered, and the bleach and ammonia  
19 mixture that was within the bowl spilled all over the burner  
20 and into the ground, and the whole mixing experiment was a  
21 disaster.

22 Q. And as a result of that problem were there harsh  
23 words among the group?

24 A. Yes, there were.

25 Q. What did that center around?



1 A. Shortly after the glass bowl broke and the mixture  
2 spilled all over the ground, Weiner had made a comment, quote,  
3 I knew that was going to happen. And I shot back at her, if  
4 you had known that was going to happen, why didn't you say  
5 anything? And this started an argument within the group as to  
6 people's different levels of involvement.

7 Q. Ms. Weiner purported to have some experience in a  
8 particular field?

9 A. Yes. Lauren Weiner at that time was a college  
10 student at the Philadelphia College of Art, and she was an Arts  
11 and Crafts major, I believe, and had extensive experience in  
12 glass blowing and glass manufacturing.

13 Q. So that's why she made the comment about knowing that  
14 the glass would break?

15 A. Correct.

16 Q. Did that argument escalate that evening? I'll leave  
17 it at that.

18 A. Yes, it did.

19 Q. What eventually happened?

20 A. The argument escalated to the point where I no longer  
21 felt comfortable within the group. I was stressed out from  
22 everything that had happened that day. From finding the  
23 recording device in the morning, to being pulled over by the  
24 police officer in the afternoon, and then with the bowl  
25 breaking, I felt that a great amount of evidence had been lost,

1 and my stress level was sky high.

2 And then with some of the comments made by the  
3 members of the group that night, I felt like my place in that  
4 group, my role as an undercover within that group, was no  
5 longer as secure as it had been. And I felt excluded by the  
6 members of the group. And after our argument, especially, I  
7 needed to get away and calm down for a little bit, and I left  
8 the cabin to go on a walk.

9 Q. All right. And how long were you gone from the  
10 cabin?

11 A. A couple of hours.

12 MR. LAPHAM: Your Honor, at this time I would like to  
13 play excerpt number nine, which is Government's Exhibit 30-H.

14 We still have to collect the last transcript.

15 THE COURT: Yes. Thank you. Again, hearing no  
16 objection, I assume there is no objection.

17 MR. REICHEL: Sorry, Your Honor. No objection.

18 THE COURT: Thank you.

19 MR. LAPHAM: You know -- and I've just realized, all  
20 these times I've been playing these transcripts, you have not  
21 been provided with a copy.

22 THE WITNESS: No, I have not.

23 MR. LAPHAM: Your Honor, I would ask permission to  
24 get a copy and show it to the witness?

25 THE WITNESS: That's fine.

1 Q. BY MR. LAPHAM: Now, as a result of this argument  
2 that's brewing, was there a discussion about maybe slowing up,  
3 taking everything a little slower?

4 A. Yes. After the explosives recipes and the mixture  
5 had -- it broke on the hot plate, a lot of frustrations were  
6 vented. And some of the members of the group felt that maybe  
7 it was going too fast and expressed that concern. And through  
8 the group discussion that concern was addressed.

9 MR. LAPHAM: At this time I would like to play  
10 excerpt nine.

11 THE COURT: Granted.

12 Q. BY MR. LAPHAM: Incidentally, this is a -- the video  
13 on this is not very good, correct?

14 A. No, it is not very good.

15 Q. And you viewed all of the video from this week and  
16 none -- the video is all of this quality, is that --

17 A. The video recordings from within the cabin are of  
18 that quality.

19 Q. All right.

20 (Video playing. 4:00 p.m.-4:03 p.m.)

21 MR. LAPHAM: What was your -- I guess we better  
22 collect the transcripts first, Your Honor.

23 THE COURT: Please.

24 Q. BY MR. LAPHAM: What was your attitude about this  
25 conversation?

1           A.           I was confused about this conversation. It seemed to  
2           come out of left field almost. The group had seemed to be  
3           cohesive, and then suddenly, with the mixture and the bowl  
4           breaking, and the day being somewhat of a disaster, it seemed  
5           like everything was coming apart at the seams.

6                        And it seemed like the rest of the group was coming  
7           together and being cohesive with themselves and knowing what  
8           they were doing, but I was still on the outside for some  
9           reason. And I didn't know if that stemmed from allowing the  
10          CHP officer to pull us over, or if we were just at different  
11          steps, and things hadn't been explained coherently to the  
12          different members of the group.

13          Q.           This conversation continues?

14          A.           Yes, it does.

15          Q.           And you've listened to excerpt number ten?

16          A.           Yes, I have.

17          Q.           Is that a continuation of this general conversation?

18          A.           Yes, it is.

19                       MR. LAPHAM: Your Honor, I would ask permission to  
20          play excerpt ten now, which is the transcript is Government's  
21          Exhibit 30-I.

22                       THE COURT: No objection?

23                       MR. REICHEL: No objection, Your Honor.

24                       THE COURT: Thank you.

25          Q.           BY MR. LAPHAM: Now, just as a lead-in to this

1 conversation, what's happening here?

2 A. This is an argument between myself and the various  
3 members of the group, Lauren Weiner especially.

4 Q. And what's the nature of the argument?

5 A. At this point, I feel like I am being excluded from  
6 the group, and the group is making decisions and doing things.  
7 I haven't been a part of whatever they have decided at this  
8 point.

9 Q. What are you upset about? It starts off indicating  
10 that they are trying to get you to talk about something?

11 A. They were trying to get me to express my feelings and  
12 talk about what was really wrong. And at that point, I was so  
13 frustrated and so stressed out and so wound up, that all I  
14 wanted to do was just go on my walk and be alone.

15 MR. LAPHAM: All right. At this time, Your Honor,  
16 permission to play excerpt ten?

17 THE COURT: Granted.

18 (Video playing. 4:07 p.m.-4:14 p.m.)

19 Q. BY MR. LAPHAM: All right. Was this an indication  
20 that the plot was coming apart?

21 A. I don't believe so. The plot and the group still  
22 seemed to be coherent and cohesive. The three other members of  
23 the group had a clear idea of what was happening and what was  
24 going on. It seemed as if I was being excluded, and I felt as  
25 if I was on the outside of this plot.

1 Q. Now, at the end of that last excerpt, Ms. Weiner is  
2 talking about a different way of doing this, and she talks  
3 about a metal pot?

4 A. Correct.

5 Q. And did the -- well, let me just ask you this. You  
6 went off for a certain period of time on your own?

7 A. I did.

8 Q. How long were you gone?

9 A. A couple hours.

10 Q. And let me just digress a minute and ask you what  
11 were you actually doing in that couple-hour period?

12 A. When I left the cabin to go on my walk, I went down  
13 to the FBI field headquarters that was outside in Dutch Flat,  
14 and I met with the agents that were there.

15 Q. And how was your demeanor at that point?

16 A. I was very upset.

17 Q. And what was your feeling about continuing in your  
18 undercover role?

19 A. My stress level had reached such a point where I  
20 didn't feel that I could continue in my undercover role for  
21 very much longer.

22 Q. Did you ultimately return to the cabin?

23 A. I did. That evening.

24 Q. Did you have an understanding as to what would happen  
25 the next day?

1 A. Yes, I did.

2 Q. And did that -- what was your understanding would  
3 happen?

4 A. When I returned to the cabin, it was my understanding  
5 that the individuals in the group would be arrested the  
6 following morning.

7 Q. Now, when you returned to the cabin, what was the  
8 attitude or the mood of the other three members?

9 A. The three members were much calmer. They seemed  
10 pleased to see me. They were welcoming me back to the cabin.  
11 And they asked if I had had a good walk, and if I had calmed  
12 down as well. I said, yes, I had, you know, I feel much better  
13 now. And they said, well, you know, we've done something for  
14 you. We have something to show you.

15 Q. And what was that?

16 A. They had written inside the Burn Book a schedule for  
17 the group to follow, which involved certain activities and  
18 times in the morning for individuals, and group time, and  
19 planning time, and strategy time together. And they presented  
20 it to -- this schedule to me and said, you know, this is sort  
21 of our gift to you. Let's become more cohesive now and really  
22 become together again and be on the same page.

23 Q. And referring to the Burn Book again, is that the  
24 page in the Burn Book that reflects what you've just discussed?

25 A. On the left, yes.

1 Q. And I'll see if I can -- well, can you read it well  
2 from there?

3 A. Yes, I can.

4 Q. Would you explain that to the jury?

5 A. The top section of the page in bullet says,  
6 (reading): Ideas the night before, 30 minutes AM alone, and  
7 meeting during while breakfast of what to do that day.

8 And that refers in a miniature version to the  
9 schedule that the group was going to try to hold themselves to  
10 that they were showing me.

11 Q. This is what they explained to you?

12 A. Yes.

13 Q. What else?

14 A. Underneath that it says, (reading): PM, and crossed  
15 out "what needs to be done" and "when," question mark, "leave,"  
16 that's crossed out. And instead it says, "what people would  
17 like to see happen the next day." The time for the meeting is  
18 forecasted based on the meetings for the next day, and will be  
19 two hours before departure -- illegible -- and under that it  
20 says, "any time prior in the AM is private time."

21 Q. All right. And so the group is proposing to you a  
22 plan for going forward?

23 A. Correct.

24 Q. When you got up the next morning, what was the group  
25 doing?



1 A. The next morning, the group ate breakfast, and then  
2 we decided to take another journey down into Auburn to buy more  
3 supplies to continue -- or, rather, to attempt to, again, make  
4 an explosives mixture. The one that had failed the previous  
5 day.

6 MR. LAPHAM: All right. And, Your Honor, at this  
7 time I would like to play the final excerpt, excerpt number  
8 eleven, which is -- the transcript is Government's  
9 Exhibit 30-J.

10 MR. REICHEL: No objection.

11 THE COURT: Thank you.

12 (Audio/video playing. 4:20 p.m.-4:26 p.m.)

13 Q. BY MR. LAPHAM: Now, in that last excerpt was the  
14 defendant reading from something?

15 A. Was the defendant reading from something?

16 Q. Yes. Was he referring to something?

17 A. Yes, he was.

18 Q. What was he referring to?

19 A. Referring to a shopping list that was created, I  
20 believe, the shopping list in the Burn Book.

21 Q. Let me show you the last page -- or at least the last  
22 page bearing writing in the Burn Book. I think at one point in  
23 the dialogue he refers to really fine mesh, and he emphasizes  
24 the word "really"?

25 A. Yes, he does.

1 Q. This is what he was referring to, that list there?

2 A. Yes, he was.

3 Q. And that was the shopping list for that day's  
4 shopping journey to Auburn?

5 A. Correct.

6 Q. Did you actually go into Auburn that day, the group?

7 A. Yes, we did.

8 Q. And where did you go?

9 A. We went to the Kmart in Auburn.

10 MR. LAPHAM: Your Honor, permission to approach?

11 THE COURT: Granted.

12 Q. BY MR. LAPHAM: Showing you Government's Exhibit 15  
13 for identification; do you recognize that?

14 A. Yes, I do.

15 Q. And does that receipt bear -- what is that?

16 A. This is a Kmart receipt from the Kmart store in  
17 Auburn.

18 Q. Does that bear a date on it?

19 A. Yes, it does.

20 Q. What date?

21 A. January 13, 2006.

22 MR. LAPHAM: Your Honor, I move to admit that and  
23 present it to the jury.

24 MR. REICHEL: No objection, Your Honor.

25 THE COURT: It will be admitted into evidence.

1                   (Government Exhibit 15, Kmart receipt dated 1/1/06,  
2 admitted into evidence.)

3           Q.           BY MR. LAPHAM: And what was purchased on that date?

4           A.           That receipt shows a mixing bowl, something  
5 transparent and a respirator.

6           Q.           And to the best of your knowledge, what were those to  
7 be used for?

8           A.           I believe it's the mixing bowl. I believe the  
9 transparent item in the mylar. And the respirator -- I don't  
10 recall what that is.

11          Q.           What happened after these purchases were made?

12          A.           The group had split into two groups. It was myself  
13 and McDavid, and Weiner and Jenson. And as McDavid went to get  
14 the bleach and ammonia, I faked that I was getting a phone call  
15 on my cell phone, and told him I would meet him back out by the  
16 car. He stayed inside the Kmart and bought the final  
17 materials.

18                   Jenson and Weiner also went into the Kmart, bought  
19 their materials. And as the three of them covered on the car  
20 where I was sitting, Sacramento FBI surrounded the car and  
21 placed the three of them under arrest.

22                   THE COURT: Mr. Lapham, is this a breaking point?

23                   MR. LAPHAM: Yes. I think I've only got a few more  
24 questions, but this is a fine time to break.

25                   THE COURT: A few more meaning?

1           MR. LAPHAM: I was going to ask her about the  
2           compensation she received.

3           THE COURT: Will we be done in less than five  
4           minutes?

5           MR. LAPHAM: I think so.

6           THE COURT: Go ahead.

7           Q.           BY MR. LAPHAM: Thank you.

8           Now, you've described in your testimony working in  
9           various undercover capacities starting in the Fall of 2003?

10          A.           Correct.

11          Q.           Actually, your first assignment would have been --

12          A.           My first assignment was the G-8. That started in  
13          January with preliminary meetings, leading up to the G-8, which  
14          was held in June.

15          Q.           So from January of 2004 until January of 2006 is when  
16          you worked in an undercover capacity?

17          A.           Correct.

18          Q.           Now, during that time, did you receive compensation  
19          from law enforcement for your services?

20          A.           I did.

21          Q.           Where did that come from?

22          A.           That came from the FBI.

23          Q.           And how much did you receive over that two-year  
24          period of time?

25          A.           I received approximately \$65,000 over two years.

1 Q. And that \$65,000 consisted of what?

2 A. 35,000 of that were reimbursable expenses, that is to  
3 say, I spent \$35,000 that the FBI reimbursed me for. And  
4 approximately \$31,000 of that, and a little change, were  
5 service payments, or payments the FBI gave me for my service.

6 Q. All right. And those reimbursable expenses, what  
7 kinds of things would that be for?

8 A. That would be gas, food, hotel bills, flights, things  
9 that I purchased, but then the FBI turned around and repaid me  
10 for what I had purchased.

11 Q. And in some cases did the FBI pay those expenses  
12 directly?

13 A. In some cases they did.

14 Q. So the money didn't even go through you?

15 A. Correct.

16 Q. Now, the remaining -- what did you say, \$31,000?

17 A. 31-and-change, yes.

18 Q. And that was paid to you in lump sums along the way?

19 A. In lump sums sporadically along the way, yes.

20 Q. Now, did you have any expectation of receiving any  
21 money from the FBI over and above compensating you for -- or  
22 reimbursing you for expenses?

23 A. No, I did not. The initial agreement in Miami, when  
24 I was first approached to work for the FBI, was that they would  
25 pay for my travel expenses such as gas, flights, hotels and

1 food, what's called per diem, which is the whole thing lumped  
2 together. And that was the understanding that I had at the  
3 time.

4 Q. And after the biotechnology conference in June of  
5 2005, when you were tasked to undertake the assignment relating  
6 to this conspiracy, did you have any understanding as to  
7 whether you would be compensated for your services there?

8 A. There was no understanding. I was doing this to  
9 fulfill my undercover role to prevent McDavid from finalizing  
10 and finishing his conspiracy, and that only expenses would be  
11 paid.

12 MR. LAPHAM: Thank you. I have no further questions.

13 THE COURT: Thank you very much.

14 Ladies and gentlemen, that will conclude the evidence  
15 for today. We'll return tomorrow morning.

16 Mr. Reichel, I presume, will be starting your  
17 cross-examination?

18 MR. REICHEL: We're not going to begin now, are we?

19 THE COURT: No. Tomorrow morning. And we will start  
20 then tomorrow morning with cross-examination.

21 Ladies and gentlemen, please do not discuss the case  
22 with anyone, including each other, form any opinions about the  
23 case, and, importantly, please do not read any news accounts,  
24 television, radio, anything that may be relating to this  
25 particular case or any case similar to it until you have been

1 discharged.

2 Are there any questions regarding timing or anything  
3 else that you need to know about for tomorrow? That will be  
4 the last day of evidence for this week. If not, thank you very  
5 much. We'll see you tomorrow morning.

6 (Jury out.)

7 THE COURT: All right. We're outside the presence of  
8 jury at this time.

9 Counsel, is there anything that needs to be on the  
10 record outside the presence of the jury?

11 MR. LAPHAM: No, Your Honor.

12 MR. REICHEL: Very briefly, Your Honor. In  
13 cross-examination I plan to ask her some questions about  
14 Mr. Lapham's excerpts that he played. And what was -- I mean  
15 are those CD's going to be admitted as evidence? Is that the  
16 exhibit itself?

17 MR. LAPHAM: Yeah, the exhibit is the CD.

18 THE COURT: Correct.

19 MR. REICHEL: May I just -- I mean, I'm going to  
20 replay that -- can I use that one tomorrow?

21 MR. LAPHAM: Yes.

22 MR. REICHEL: Thanks.

23 THE COURT: All right. Anything else?

24 MR. LAPHAM: No, Your Honor.

25 THE COURT: Mr. Reichel?

1 MR. REICHEL: Nothing further on the record, Your  
2 Honor.

3 THE COURT: Very well.

4 And I will close the proceedings today in memory of  
5 the sixth anniversary of September 11, 2001. Thank you.  
6 Court's adjourned.

7 (4:35 p.m. Court adjourned.)  
8

9 CERTIFICATION

10  
11 I, Diane J. Shepard, certify that the foregoing is a  
12 correct transcript from the record of proceedings in the  
13 above-entitled matter.  
14

15  
16 /S/ DIANE J. SHEPARD  
17 DIANE J. SHEPARD, CSR #6331, RPR  
18 Official Court Reporter  
19 United States District Court  
20  
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24  
25