

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 VII

ERIC McDAVID,

Pages 940 to 1199

Defendant.

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REPORTER'S TRANSCRIPT

COURT PROCEEDINGS

MONDAY, SEPTEMBER 24, 2007

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

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1 SACRAMENTO, CALIFORNIA

2 MONDAY, SEPTEMBER 24, 2007

3 ---oOo---

4 (Jury out.)

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

8 THE COURT: Thank you. Good morning. We're here
9 outside the presence of the jury at this time.

10 Counsel, I don't know if you've been informed, but we
11 have a juror who is ill at this time. That would be Juror
12 Number 9. Juror Number 9 has indicated that he is too ill to
13 return to court today, and we don't have a prognosis, I
14 understand, for tomorrow.

15 In light of the uncertainty of his ability to return,
16 it would seem to me to be in the best interest of this trial to
17 replace Juror Number 9 with one of the two alternates, so that
18 we can proceed today.

19 From the Government's standpoint, any issues with the
20 Court's intended decision?

21 MR. LAPHAM: No, Your Honor, except we would ask the
22 next alternate in order be seated.

23 THE COURT: It would be a random decision as far as
24 the two.

25 MR. REICHEL: Just one moment, Your Honor.

1 (Discussion between defendant and Mr. Reichel.)

2 MR. REICHEL: Thank you, Your Honor. We would agree
3 to the selection of an alternate randomly.

4 THE COURT: All right. I have both names of the
5 alternates here. It will be shaken up, and the first one I
6 picked up, I have no idea who it is, but it will be Brian Regan
7 will be the person who will be seated.

8 All right. Bring the jury in, please. Let me ask
9 again, any objection to the methodology which the Court
10 utilized to select --

11 MR. REICHEL: None from the defendant, Your Honor.

12 MR. LAPHAM: No, Your Honor.

13 THE COURT: Thank you.

14 (Jury in.)

15 THE COURT: All right. Good morning, ladies and
16 gentlemen of the jury.

17 Ladies and gentlemen, you've probably noticed that
18 one of the jurors, Juror Number 9, is not present today. He
19 has contacted the Court and indicated that he is extremely ill
20 and will not be able to return today, and he is not certain
21 that he will be able to return even tomorrow based upon the
22 illness that he has.

23 In light of the fact that he is not able to
24 participate and the fact that we've already taken some time off
25 for other medical reasons, I have decided to proceed with the

1 trial today by inserting one of the alternate jurors in his
2 place and discharging Juror Number 9, Mr. Hinson.

3 And in so doing, I have randomly selected Brian Regan
4 to be the replacement for Juror Number 9. Mr. Regan, if you
5 would please take chair number nine here in the front. Thank
6 you.

7 And so that you know again, as far as the two
8 alternates, they were randomly selected. Literally, I drew
9 them out of a hat almost, if you will, to see who would be the
10 first. And the single alternate that we have left is yourself,
11 and we will see how that works out.

12 Counsel, are you ready to continue with the
13 examination today?

14 MS. ENDRIZZI: Yes, Your Honor.

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

16 THE COURT: All right. We would like to return to?

17 MS. ENDRIZZI: Zachary Jenson, Your Honor, for direct
18 examination.

19 THE COURT: Mr. Jenson, if you would please return to
20 the stand. And if I could have you raise your right hand
21 again. We'll swear you back in because we've had such a long
22 period of time.

23 (The witness was sworn by the Clerk.)

24 THE WITNESS: Yes, I do.

25 THE COURT: And I would ask you please to state your

1 name for the record once again and spell your last name for me.

2 THE WITNESS: Zachary Jenson, J-e-n-s-o-n.

3 ZACHARY JENSON,

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

7 DIRECT EXAMINATION (Cont'd)

8 BY MS. ENDRIZZI:

9 Q. Thank you, Your Honor.

10 When you last testified, you spoke about the
11 Republican National Convention in August 2004. After the RNC,
12 where did you go?

13 A. I travelled back to Seattle.

14 Q. And when was the next time that you saw Defendant
15 McDavid?

16 A. Late April, 2005.

17 Q. Where was that?

18 A. In Seattle.

19 Q. Okay. Did he come to visit you?

20 A. Yes, he did.

21 Q. Where did he stay?

22 A. He stayed with me at the house I was staying at.

23 Q. And for approximately how long was McDavid in
24 Seattle?

25 A. Two to three weeks.

1 Q. Following the time in Seattle, did the two of you
2 travel together again?

3 A. We did. We hitch-hiked down the West Coast together.

4 Q. And did you go all the way down the West Coast, did
5 you stay together?

6 A. Down the West Coast we stayed together. We split up
7 in Las Vegas.

8 Q. Do you have an understanding as to where Defendant
9 McDavid was headed?

10 A. I do. He went to Fort Lauderdale for an OAS protest.

11 Q. After you split up in Las Vegas, when was the next
12 time that you met up with McDavid?

13 A. In Philadelphia in June 2005.

14 Q. For what?

15 A. A biotechnology protest.

16 Q. And was that biotechnology protest in Philadelphia
17 the first time you met Lauren Weiner?

18 A. Yes, it is.

19 Q. And where did you stay during bio 2005?

20 A. Me and Eric stayed with Lauren Weiner.

21 Q. Now, after the RNC and bio 2005, had you noticed a
22 change in McDavid's position regarding protests and activism?

23 MR. REICHEL: Objection. Leading question.

24 THE COURT: Overruled.

25 MS. ENDRIZZI: You may answer.

1 THE WITNESS: Yes, I did.

2 Q. BY MS. ENDRIZZI: Could you describe that change?

3 A. He seemed a little bit more focused, had gone beyond
4 the typical anti-government, anti-war protest activity.

5 Q. Are you familiar with the term Spokes Council?

6 A. Yes, I am.

7 Q. What was your understanding of the term Spokes
8 Council?

9 A. It's basically a large discussion. Affinity groups
10 attending the protest will come to Spokes Council. They will
11 discuss the protest going on, any issues going on with it, if
12 people are in jail. They will discuss protest tactics.

13 Q. During the bio 2005 protest, did the defendant have
14 any role with regard to the Spokes Council at that protest?

15 A. Yes, he did.

16 Q. What was that role?

17 A. He was a mediator at one of the Spokes Councils.

18 Q. What does that mean?

19 A. Basically someone who facilitates a discussion, takes
20 down a list of everyone who wants to speak, calls on people
21 when their turn is up.

22 Q. By June 2005 what were McDavid's views as you had
23 observed them with regard to the effectiveness of protests?

24 MR. REICHEL: Objection, Your Honor. Leading
25 question. Calls for speculation as well.

1 THE COURT: Overruled.

2 THE WITNESS: He began to see protest as ineffective.

3 Q. BY MS. ENDRIZZI: During the bio 2005 protest did
4 there come a time when Eric McDavid discussed the use of
5 Molotov Cocktails?

6 A. Yes, he did.

7 Q. When was that, if you can describe the circumstances?

8 A. It was sometime during the biotech protest.

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

10 A. Yes.

11 Q. Was the comment about Molotov Cocktails typical of
12 McDavid's new attitude?

13 A. I would say so, yes.

14 Q. At some point during the Summer of 2005 did McDavid
15 mention a friend who was in trouble with the law?

16 A. Yes, he did.

17 Q. And could you describe the comment that he made?

18 A. He said that he had left California to avoid any
19 investigation regarding that friend.

20 Q. At some point from June 2005 until the present did
21 you find out who that friend was?

22 A. Yes, I did.

23 Q. Who was that?

24 A. Ryan Lewis.

25 Q. Okay. Turning your attention to July 2005, did you

1 attend the CrimethInc convergence in Bloomington, Indiana in
2 July 2005?

3 A. Yes, I did.

4 Q. Approximately how many people attended that
5 convergence?

6 A. 40 to 50.

7 Q. And during the Indiana convergence or the Bloomington
8 convergence, did Eric McDavid attend that?

9 A. Yes, he did.

10 Q. Did Anna attend that meeting?

11 A. Yes, she did.

12 Q. Do you have an understanding of what a skill share
13 is?

14 A. Yes, I do.

15 Q. Would you describe your understanding of what a skill
16 share is, please?

17 A. It's a small group of people meeting to teach other
18 people whatever the skill share is about. It's a very specific
19 skill that is taught at these skill shares.

20 Q. During the Bloomington convergence, did you attend
21 any skill share classes?

22 A. Yes, I did. I attended a guerilla warfare skill
23 share.

24 Q. And did Eric McDavid attend the guerilla warfare
25 skill share?

1 A. Yes, he did.

2 Q. Did Anna attend the guerilla warfare skill share?

3 A. I don't remember if she was there or not.

4 Q. Generally, what was taught during the guerilla
5 warfare skill share at the Bloomington convergence?

6 A. I don't remember the specifics of it.

7 Q. Okay. Generally, could you describe it?

8 MR. REICHEL: Objection, Your Honor. Asked and
9 answered. He doesn't recall.

10 THE COURT: Overruled.

11 MS. ENDRIZZI: Specifics.

12 THE WITNESS: Generally direct action against the
13 Government.

14 Q. BY MS. ENDRIZZI: And direct action being?

15 A. Probably destruction, direct confrontation.

16 Q. At some point during the Bloomington convergence did
17 you discuss targeting federal buildings?

18 A. Yes, I did.

19 Q. Would you summarize what you said?

20 A. I was talking to someone I met there. He had
21 mentioned targeting state buildings, and I said, no, target the
22 federal buildings.

23 Q. And do you feel the same way now?

24 A. No, I don't.

25 Q. But did you feel that way then?

1 A. Yes, I did.

2 Q. During the Bloomington convergence did Eric McDavid
3 identify any targets for direct action?

4 A. Yes. He identified mountain top removal projects,
5 banks, and communist party buildings.

6 Q. With regard to the banks what did Eric McDavid want
7 to do?

8 A. He wanted --

9 MR. REICHEL: Objection, Your Honor. Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: He wanted to burn them instead of rob
12 them.

13 Q. BY MS. ENDRIZZI: And the communist party buildings?

14 A. He mentioned that one because of the communist
15 betrayal of anarchists in the past.

16 Q. Do you have an understanding of that?

17 MR. REICHEL: Objection, Your Honor. It's
18 Mr. McDavid's understanding.

19 THE COURT: That's what she's asking for.

20 MS. ENDRIZZI: I'm asking for --

21 THE COURT: I understand. Overruled.

22 THE WITNESS: Could you repeat the question?

23 Q. BY MS. ENDRIZZI: Do you have -- you just testified
24 that Mr. McDavid was targeting communists because of their
25 betrayal of the anarchists. Do you have an understanding of

1 what that betrayal is?

2 A. Yes, I do.

3 Q. What is it?

4 A. One instance would be in May of 1968 in Paris when
5 there was a large scale revolt going on, and the communists
6 made a compromise with the government.

7 Q. Now, I'm going to turn your attention to
8 approximately August 6, 2005. Where were you at that time?

9 A. I don't remember where I was on that date.

10 Q. Okay. Generally, early August 2005?

11 A. I was in the Appalachian Mountains for a primitivist
12 gathering.

13 Q. At some point during August of 2005 did you return to
14 Philadelphia?

15 A. Yes, I did.

16 Q. For what?

17 A. Pointless Fest, which is a punk rock festival.

18 Q. I'm sorry?

19 A. Punk rock festival.

20 Q. Punk rock festival.

21 During Pointless Fest, did there come a time when
22 you, Eric McDavid, and Lauren Weiner met at a cafe?

23 A. Yes.

24 Q. Would you describe to the jury the events at the
25 cafe?

1 A. We had a discussion about protests being ineffective,
2 and we had a discussion about going beyond that and going to
3 direct action.

4 Q. Did you discuss supplies at all?

5 A. Generally, yes.

6 Q. Generally what was that discussion?

7 A. We agreed to collect supplies.

8 Q. Do you remember what kind of supplies?

9 A. Dark clothing, any sort of tools we might need,
10 talked about getting the Tivek material from the sides of
11 houses to waterproof the clothing.

12 Q. During that conversation did you plan a date to
13 reconvene?

14 A. Sometime in the winter.

15 Q. Now, who participated the most in that conversation?

16 A. Mainly Eric and Lauren.

17 Q. And why did you, the defendant and Lauren Weiner meet
18 at a cafe rather than, for instance, Lauren Weiner's apartment
19 in Philadelphia?

20 A. We had concerns about Lauren's apartment being
21 bugged.

22 Q. During the meeting at the cafe, did McDavid seem to
23 have an idea for direct action?

24 A. He seemed to, yes.

25 Q. What was that?

1 A. To carry out direct action.

2 Q. Okay. Did he have any methods or targets in mind?

3 MR. REICHEL: Objection, Your Honor. Speculation.

4 THE COURT: Sustained.

5 Q. BY MS. ENDRIZZI: What makes you believe that he had
6 an idea for direct action?

7 A. He had already alluded to it in the past, in the
8 summer.

9 Q. Following the meeting at the cafe, what was your
10 understanding about whether you, Lauren and McDavid were going
11 to go forward with some sort of direct action?

12 A. I had the idea that we were going to meet up again to
13 discuss it.

14 Q. And at that time, based on his actions and words, did
15 McDavid seem hesitant at all about implementing direct action?

16 A. No.

17 Q. During the period from August 2005 through the date
18 of arrest, which is January 13, 2006, did McDavid ever seem
19 hesitant about implementing direct action?

20 A. No.

21 Q. Following Pointless Fest, where did you go?

22 A. Me and Eric hitch-hiked back to the West Coast.

23 Q. And during that hitch-hike travel, were there any
24 discussions about explosives?

25 A. There was. It was somewhere in west Kansas. We

1 stopped at a gas station. We talked about either dropping
2 little bombs of sugar into the big gas containers underneath
3 the gas station or in gas tanker trucks.

4 Q. Do you have an understanding of what dropping sugar
5 or little bombs would do to the gas station or the gas itself?

6 A. Yes, I do.

7 Q. What is that?

8 A. It would either render it useless or ignite it.

9 Q. After that comment, while you and McDavid were
10 hitch-hiking your way across the West, was the idea of
11 targeting gas stations ever brought up again?

12 A. Not until the meeting in November.

13 Q. But it was brought up again in November?

14 A. Yes, it was.

15 Q. Was that conversation similar or different from the
16 one that you had in Kansas in terms of the targeting?

17 A. It was similar.

18 Q. I would like to turn your attention to that meeting
19 in November. Where were you during the weekend of November
20 18th through 20th, 2005?

21 A. At Eric's parents' house.

22 Q. Were you originally going to go to Eric's parents'
23 house?

24 A. We were originally going to go to a hotel to meet.

25 Q. Do you have an understanding why the location was

1 changed?

2 A. Security purposes I'm assuming.

3 Q. Did McDavid ever make a reference to his house and
4 law enforcement?

5 A. He said that it was a house of a known anarchist.

6 Q. And what did you understand that to mean?

7 A. That the police knew that he lived there.

8 Q. Upon your arrival at Eric McDavid's parents' house in
9 Foresthill, what happened, if you could walk us through from
10 the time of your arrival on that first day?

11 A. We were just hanging out when we first got there,
12 smoking some marijuana, talking. It was real casual, ate some
13 dinner, and then we went down to the fire pit in his backyard
14 where we had the important discussion.

15 Q. Okay. And how was that meeting down at the fire pit
16 started?

17 A. It was prefaced by Eric saying that the meeting
18 itself constituted an act of conspiracy.

19 Q. Did he say anything further about the conspiracy or
20 his willingness?

21 A. He said that it was already a criminal act, and he
22 was willing to go to jail for his beliefs.

23 Q. After McDavid spoke about conspiracy and prison, did
24 it appear to you that he knew what -- did it appear to you from
25 what he said and how he acted that McDavid knew what he was

1 doing was illegal?

2 MR. REICHEL: Objection, Your Honor. Speculation
3 about Mr. McDavid's mind.

4 THE COURT: The way it's phrased. Sustained.

5 Q. BY MS. ENDRIZZI: Okay. You can answer the question?

6 A. I'm sorry. Could I get the question once more?

7 Q. Sure.

8 THE COURT: Just so we're clear, I sustained the
9 objection.

10 MR. REICHEL: Thank you.

11 MS. ENDRIZZI: Sorry.

12 THE COURT: That's why I was looking at Mr. Reichel.
13 I wasn't sure if I missed something myself.

14 MS. ENDRIZZI: I missed it.

15 MR. REICHEL: Thank you, Your Honor. For your help.

16 THE COURT: No. As it was phrased, calling for the
17 conclusion of the "look appear to be guilty." That's the way
18 it was phrased.

19 MS. ENDRIZZI: Sure.

20 Q. BY MS. ENDRIZZI: Based on his statements and his
21 actions, did Mr. McDavid seem hesitant at all?

22 A. No.

23 MR. REICHEL: Your Honor, I would ask that it be
24 stricken as vague. Hesitant as to what?

25 THE COURT: Sustained.

1 Q. BY MS. ENDRIZZI: Based on his actions and his
2 statements, did Mr. McDavid appear hesitant at all to commence
3 a direct action?

4 A. No.

5 Q. I'll move on.

6 Now, during the discussion at the fire pit, were you
7 asked about how you felt about the group's plans for direct
8 action?

9 A. I was asked about how I felt about it. I answered
10 that I felt pretty comfortable with it.

11 Q. Okay. Were you comfortable with it at the time?

12 A. No.

13 Q. Who was concerned that you might not be engaged or
14 willing to commit direct action?

15 A. Eric and Anna.

16 Q. Okay. Was anything said to you?

17 A. Eric said he was a little nervous about me being so
18 quiet.

19 Q. Was that when you gave your response?

20 A. Yeah.

21 Q. During the weekend of November 18th to 20th, did Eric
22 McDavid reference Derrick Jensen's views on direct action?

23 A. Yes, he did.

24 Q. How did he do that?

25 A. He talked about an interview that he had read with

1 Derrick Jensen. It mentioned fence sitters in regards to
2 environmental actions, and he talked about how he didn't care
3 about the fence sitters and if they would be scared away by the
4 harsh tactics because they are going to be scared anyways.

5 Q. And during that review of the interview by Derrick
6 Jensen, did Derrick Jenson identify any targets in his
7 interview?

8 MR. REICHEL: Objection, Your Honor. Calls for
9 double hearsay.

10 THE COURT: Overruled.

11 THE WITNESS: I remember dams being mentioned in the
12 interview.

13 Q. BY MS. ENDRIZZI: As you listened to Eric McDavid
14 during that weekend, and later during January 2006, did Eric
15 McDavid seem to agree with Derrick Jensen's views regarding
16 direct action?

17 A. Yes, he did.

18 Q. During the weekend in Foresthill, did the group
19 discuss potential targets for direct action?

20 A. Yes. We discussed cell phone towers, billboards,
21 corporate buildings, and the Institute of Forest Genetics was
22 mentioned.

23 Q. Was it mentioned by name, the Institute of the Forest
24 Genetics?

25 A. It was called a tree factory.

1 Q. During the course of the discussion about direct
2 action, did Anna abdicate for a particular target?

3 A. No.

4 Q. During the course of the discussion about direct
5 action during the weekend of Forest -- in Foresthill, did Anna
6 ask a lot of questions?

7 A. Yes, she did.

8 Q. Did she ask people for their opinions?

9 A. Yes.

10 Q. Did Anna ask a lot of questions when the group was in
11 Dutch Flat as well?

12 A. Yes, she did.

13 Q. During the weekend in Foresthill, was there a
14 discussion about homemade C4?

15 A. There was. It was described as bleach and ammonia
16 mixed, crystals form on the top, scraped off, combined with
17 plumber's putty and attached with some sort of switcher charge.

18 Q. And the switcher charge, do you have an understanding
19 what that would have been?

20 A. Yes, either garage door opener as a switch or a
21 solar-powered charge.

22 Q. Who brought up the idea of homemade C4?

23 A. Eric did.

24 Q. As the weekend in Foresthill came to a close, what
25 was your understanding of the next steps the group was going to

1 take, if any?

2 A. My understanding was that we were going to meet up
3 again sometime after the New Year to begin.

4 Q. Okay. And thinking about what McDavid said and how
5 he acted during the weekend in Foresthill, did he seem
6 influenced by Anna?

7 A. No.

8 Q. Did McDavid appear through his words and actions
9 confident in his ideas for direct action?

10 MR. REICHEL: Objection, Your Honor. Calls for
11 speculation.

12 THE COURT: Sustained.

13 MS. ENDRIZZI: You don't answer that.

14 Q. BY MS. ENDRIZZI: During the weekend that you were in
15 Foresthill, did Eric McDavid appear hesitant at all?

16 MR. REICHEL: Objection, Your Honor. Vague question.

17 THE COURT: Overruled.

18 Q. BY MS. ENDRIZZI: About direct action?

19 A. No, he didn't.

20 Q. Now, you mentioned earlier in your testimony today
21 the term security culture. Are you familiar with the term?

22 A. Yes, I am.

23 Q. And what's your understanding of that?

24 A. It's basically a policy of watch-what-you-say. It's
25 a policy of communication -- or lack of communication

1 basically.

2 Q. And what's the purpose of security culture?

3 A. To not bring any suspicion upon yourself, to not give
4 out any information that might get you in trouble.

5 Q. During the course of when you knew Eric McDavid, from
6 2004 through January 2006, did Eric McDavid ever express what
7 he understood constituted security culture?

8 A. I don't remember if he did, but I assume that he
9 understood it.

10 MR. REICHEL: Objection, Your Honor. His assumption
11 about Mr. McDavid should be stricken.

12 THE COURT: Objection is overruled.

13 Q. BY MS. ENDRIZZI: During the period from Pointless
14 Fest until January 13th, 2006, were you given any directions
15 about how to implement security culture?

16 A. I don't remember.

17 Q. Do you have an e-mail address?

18 A. Not right now, no.

19 Q. Did you at the time between August 2005 and January
20 2006?

21 A. Yes, I did.

22 Q. And what was that e-mail address?

23 A. I had a Hotmail account around December 2006, though
24 I signed up for another e-mail account, which was -- which I
25 thought to be secure.

1 Q. And why did you sign up for a secure e-mail account?

2 A. So that all of us could communicate without fear of
3 being monitored.

4 Q. During the period between November 2005 and
5 January 2006, was there any discussion about future contact
6 with your families?

7 A. We decided that it would be best to cut communication
8 with our families after Christmastime.

9 Q. Why is that?

10 A. So that they wouldn't know what we were up to.

11 Q. Would they know where you were located?

12 A. No.

13 Q. Was there ever talk of a safe house?

14 A. We had discussed it as a possibility after the direct
15 action.

16 Q. And anything more specific about the safe house,
17 where it was located?

18 A. We discussed the possibility of somewhere in Wyoming.

19 Q. Based on his actions and his statements, how would
20 you describe McDavid's desire for security?

21 A. He wanted it to be pretty tight.

22 Q. I'm going to show you what's been marked for
23 identification as Government's Exhibit 45.

24 May I approach, Your Honor?

25 THE COURT: You may.

1 Q. BY MS. ENDRIZZI: Taking a minute to look at that, do
2 you recognize Government's Exhibit 45?

3 A. Yes, I do.

4 Q. How do you recognize it?

5 A. It's an e-mail I sent to Eric.

6 MS. ENDRIZZI: Your Honor, the Government would move
7 to have Government's Exhibit 45 entered into evidence.

8 MR. REICHEL: No objection.

9 THE COURT: 45 is admitted.

10 (Government Exhibit 45, 10/26/06 E-mail, admitted
11 into evidence.)

12 MS. ENDRIZZI: May we publish?

13 THE COURT: You may.

14 Q. BY MS. ENDRIZZI: Direct your attention to the e-mail
15 at the bottom of the page. Would you summarize for the jury
16 what this e-mail is about?

17 A. The one at the bottom?

18 Q. Yes. You know what, I'm going to withdraw that
19 question for a second.

20 Look at the top line where it says "from." What does
21 it say?

22 A. Sal Vasques.

23 Q. Do you have an understanding as to what Sal Vasques
24 is?

25 A. Yes, it's Eric.

1 Q. And to "Ollie Oxen," who is that?

2 A. That would be me.

3 Q. The date is October 26, 2005. Now I'd ask you to
4 review the body of the e-mail and briefly summarize the topic
5 of the e-mail?

6 A. We were talking about the meeting in November.

7 Q. Let me direct your attention to the fourth line of
8 the e-mail where it says, "oh, and if you talk to," would you
9 read that sentence?

10 A. (Reading): Oh, and if you talk to Firefly, tell her
11 to watch her mouth. If it starts runnin' anymore, I'm going to
12 turn into a ghost.

13 Q. Do you have an understanding what McDavid meant by
14 that?

15 MR. REICHEL: Objection, Your Honor. Speculation as
16 to what Mr. McDavid meant.

17 THE COURT: Sustained. As to the form of the
18 question.

19 Q. BY MS. ENDRIZZI: What did you understand that line
20 to mean?

21 A. I understood it to mean that Lauren was saying a
22 little bit too much, and she needed to watch what she said.

23 Q. Or what would happen?

24 MR. REICHEL: Objection, Your Honor. Speculation as
25 to --

1 THE COURT: Overruled.

2 THE WITNESS: Or else he would disappear, not meet up
3 with us.

4 Q. BY MS. ENDRIZZI: Now, how did you know that it was
5 Lauren that we were talking about in this sentence?

6 A. Firefly was a nickname that she used.

7 Q. Now, the next line? (Reading): A little pissed,
8 okay, a lot, and throw some SC websites at her too, for me,
9 would ya.

10 And what is your understanding of that line?

11 A. He was saying to send Lauren some websites on
12 security culture.

13 Q. And did you have an understanding about the "little
14 pissed, or, okay, a lot," what that meant?

15 A. Yes, I did.

16 Q. What is that?

17 A. Security culture was basically being violated, I
18 guess.

19 Q. Okay. Now, if you would take a look at the next
20 sentence that begins "apparently," would you read that?

21 A. (Reading): Apparently there needs to be some
22 brushing up on the subject.

23 Q. And what subject is that?

24 MR. REICHEL: Objection, Your Honor. This is
25 Mr. McDavid's e-mail to Mr. Jenson.

1 MS. ENDRIZZI: I'll rephrase.

2 THE COURT: Thank you.

3 Q. BY MS. ENDRIZZI: What do you understand that
4 sentence to mean?

5 A. I understand it to mean that she needed to brush up
6 on the subject of security culture.

7 Q. During the weekend in Foresthill in November 2005,
8 had McDavid asked Anna to do anything between that meeting and
9 when the group got together after Christmas to further the
10 plans for direct action?

11 MR. REICHEL: Objection, Your Honor. Leading
12 question.

13 THE COURT: Overruled.

14 THE WITNESS: He didn't ask her to do anything.

15 Q. BY MS. ENDRIZZI: I'm going to direct your attention
16 to the first two-and-a-half weeks of December. During that
17 time, December 2005, during that time, to your knowledge, did
18 Eric McDavid receive an e-mail from Anna in code?

19 MR. REICHEL: Objection, Your Honor. Speculation
20 that Mr. McDavid received an e-mail from someone.

21 MS. ENDRIZZI: We'll connect it up, Your Honor.

22 THE COURT: All right. Overruled for now.

23 THE WITNESS: I understand that he did, yes.

24 Q. BY MS. ENDRIZZI: Okay. How do you know that he did?

25 A. I helped him decode the e-mail.

1 Q. And what was sent in that coded e-mail?

2 A. It was a recipe for an explosive.

3 Q. And how did McDavid respond once he saw the
4 translated recipe for the explosive?

5 A. He was angry because it didn't make any sense.

6 Q. Now, I'd like to turn your attention to the time in
7 Dutch Flat during the period January 8th through 13th, 2006.

8 When you arrived in Dutch Flat, did you contribute
9 anything to buying supplies?

10 A. I bought \$100 worth of food for the cabin.

11 Q. How did you do that?

12 A. With the remaining Food Stamp money that I had.

13 Q. Are you familiar with what's known as the Burn Book?

14 A. Yes, I am.

15 Q. During the time in Dutch Flat, who held on to the
16 Burn Book the most?

17 A. It was mostly Eric.

18 Q. Now, I'd like to turn your attention to what's

19 already been admitted as Government's Exhibit 1, this

20 "concerns" page. Under "concerns" there is the letter "O."

21 What does that represent?

22 A. That represents me.

23 Q. Okay. And with respect to concerns, that list, what
24 is that?

25 A. It was a list of concerns that each of us had.

1 Q. And did those three, "surveillance, messages and
2 accidental death of civilians" represent your concerns?

3 A. Yes, they did.

4 Q. At the time that you were expressing concerns about
5 the accidental death of civilians, did McDavid give an opinion?

6 MR. REICHEL: Objection, Your Honor, under 403 and
7 relevance as well.

8 THE COURT: Overruled.

9 THE WITNESS: He said that he would avoid
10 intentionally hurting people, but that if it did happen, we
11 would consider it case-by-case.

12 Q. BY MS. ENDRIZZI: And how did you feel about the
13 accidental death of civilians during direct actions?

14 A. I didn't want to be a part of it at all.

15 Q. Now, did McDavid's response show that he felt the
16 same way that you did?

17 A. No.

18 Q. I'd like you to take a look at another page in the
19 Burn Book. Now, at the top of the page it says "Tuesday,
20 Wednesday, Thursday," is this an accurate accounting of the
21 group's schedule?

22 A. Yes, it is.

23 Q. Okay. Did the group do reconnaissance at Nimbus Dam
24 and Fish Hatchery?

25 A. Yes, we did.

1 Q. And did the group do reconnaissance at the Institute
2 of Forest Genetics in Placerville?

3 A. Yes, we did.

4 Q. When you arrived at the Institute of Forest Genetics,
5 where did the group park the car?

6 A. We parked it at a produce market across the street.

7 Q. Why did you do that?

8 A. So that they wouldn't see our license plate.

9 Q. Okay. Did the group talk with anybody while you were
10 at the Institute of Forest Genetics?

11 A. We talked with a couple people there, yes.

12 Q. Would you summarize those conversations?

13 A. We were just asking them what they had going on
14 there. We told them that we were students from a local
15 college.

16 Q. Okay. When you said that you were -- we told him,
17 that we were students from a local college, is that accurate?

18 MR. REICHEL: Objection, Your Honor. Leading
19 question.

20 THE COURT: Overruled.

21 THE WITNESS: Yes, it is.

22 Q. BY MS. ENDRIZZI: Okay. Did you have to sign in to
23 any sort of log?

24 A. We did, but Eric signed in for all of us.

25 Q. Do you have an understanding of how he signed in?

1 A. He wrote one of his aliases and wrote "group" after
2 it.

3 Q. Do you know which alias he used?

4 A. Sean Douglas, if I remember correctly.

5 Q. When you were at the Institute of Forest Genetics did
6 someone ask you for a compass?

7 A. Yes.

8 Q. Who was that?

9 A. That was Eric.

10 Q. Do you have an understanding as to why?

11 MR. REICHEL: Objection, Your Honor.

12 THE COURT: Overruled. He can answer if you can.

13 THE WITNESS: We were -- we wanted to know the
14 direction on the compass of where to come in, from where to
15 leave.

16 Q. BY MS. ENDRIZZI: Okay. Showing you the remainder of
17 this page in the Burn Book, do you have an understanding as to
18 what this page represents?

19 A. Yes, I do. It's a map of the Institute of Forest
20 Genetics.

21 Q. Who drew the map?

22 A. Eric did.

23 Q. On that day, did the group consider the Institute of
24 Forest Genetics a target for direct action?

25 A. We did.

1 Q. On Wednesday, January 11, 2006, did anyone from the
2 group use a laptop computer to do searches on the Internet?

3 A. Yes.

4 Q. Who was using the laptop?

5 A. It was a switch-off between Eric and Lauren.

6 Q. Do you know what they were searching for?

7 A. Chemistry supplies for putting the explosive
8 together.

9 Q. And was that search successful?

10 A. No, it wasn't.

11 Q. During the search, did they identify stores to visit?

12 A. Yes, they did.

13 Q. Did anyone in the group make phone calls to stores?

14 A. Yes.

15 Q. Who did that?

16 A. Eric called a few stores.

17 Q. During the week that you were in the cabin up at
18 Dutch Flat, was there any discussion about testing explosive
19 devices?

20 A. There was. There was some discussion about testing
21 one either in a desert area in western Nevada or up in an
22 isolated area in Susanville.

23 Q. During the day on January 12, 2006, that's a
24 Thursday, did the group come into contact with law enforcement?

25 A. Yes.

1 Q. Would you describe what happened, please?

2 A. Anna was driving. She ran a stop sign. A California
3 State Patrol Officer pulled her over at a gas station.

4 Q. Did she get a ticket?

5 A. No, she didn't.

6 Q. After the traffic stop, what was the mood in the car?

7 A. It was very tense.

8 Q. Did anyone blame Anna for the traffic stop?

9 A. Just a little bit.

10 Q. Was she criticized for blowing the red light or stop
11 sign?

12 A. I don't remember.

13 Q. On January 12, 2006, did anyone test fuses for
14 explosive devices?

15 A. Yes. Eric had pulled out some gunpowder from a
16 shotgun shell and was trying to see if that would work as a
17 fuse.

18 Q. And whose idea was it to use the gunpowder as a fuse?

19 A. It was Eric's.

20 Q. During the early evening on January 12, did someone
21 start mixing bleach and ammonia?

22 A. Yes.

23 Q. Who was that?

24 A. It was Eric.

25 Q. And was Eric the person who primarily mixed the

1 bleach and ammonia?

2 A. Yes.

3 Q. Did Anna come ask you to participate in mixing the
4 bleach?

5 A. She did.

6 Q. Did you actually stir the bleach mixture?

7 A. No, I did not.

8 Q. During the course that you -- of time that you were
9 in Dutch Flat, could you characterize anyone as the brains of
10 the operation?

11 A. Eric seemed most like the brains.

12 Q. Why do you say that?

13 A. He was coming up with most of the ideas, most of the
14 suggestions.

15 Q. Have you reviewed tapes and transcripts in this case?

16 A. Yes, I have.

17 Q. Which would you say Anna did most often, ask
18 questions or make demands?

19 A. Ask questions.

20 Q. In your experience with the group, and having
21 witnessed discussions and arguments, if Anna and McDavid
22 disagreed about an issue, whose opinion or position would
23 prevail?

24 A. Usually Eric's.

25 Q. Why do you say that?

1 A. He was the most to calm her down, sort of -- he just
2 wanted things to go smoothly.

3 MR. REICHEL: Excuse me, Your Honor. Not an
4 objection, but perhaps the lights could come back on.

5 Q. BY MS. ENDRIZZI: Was the plot moving too quickly for
6 you?

7 A. Yes, it was.

8 Q. I'd like to play for you what's already been admitted
9 into evidence as Government's Exhibit 30, excerpt number nine.
10 Transcripts?

11 You know, Your Honor, I realize that in my copy of
12 the transcripts, that I made a photocopy, there are asterisks,
13 so I would ask the Court instruct the jury to disregard them.

14 MR. REICHEL: That's fine.

15 THE COURT: All right. Ladies and gentlemen, the
16 papers that you have received, once again, are for your
17 assistance in listening to what you're going to hear. The
18 paper itself is not evidence. It will be collected at the end
19 of the playing of this portion of audio.

20 And the asterisks which are apparently on this
21 document are not for any purpose, and you are to disregard it
22 as you are going along. Go ahead.

23 MS. ENDRIZZI: Thank you, Your Honor.

24 (Audio playing.)

25 THE COURT: I can't hear it. Can you put the

1 microphone down?

2 MS. ENDRIZZI: It sounded so loud when I tested it.
3 We're going to repeat Exhibit 30-H.

4 (Audio playing. 9:52 a.m. to 9:53 a.m.)

5 Q. BY MS. ENDRIZZI: Does that recording accurately
6 reflect your feelings?

7 A. Yes, it does.

8 Q. Now, I'd like to direct your attention to the night
9 of January 12th. Did Anna stay at the cabin the entire
10 evening?

11 A. She left for about two hours.

12 Q. Okay. And during the time that Anna was gone from
13 the cabin, would you describe what happened?

14 A. I remember that we had a discussion about setting a
15 schedule for every day, so that people can have their space, so
16 things can go a little bit more smoothly.

17 Q. I would like to direct your attention to Government's
18 Exhibit 1. What is this?

19 A. It appears to be what we discussed that night.

20 Q. During the discussion, while Anna was outside of the
21 cabin, did anyone suggest that Anna be dropped from the group?

22 A. No.

23 Q. During the time that Anna was out of the cabin, did
24 anyone say that they wanted to pull out of the conspiracy?

25 A. No.

1 Q. After Anna left the cabin, did you believe that the
2 group was still going to try to destroy federal or commercial
3 property?

4 A. Yes.

5 Q. What was the group's plan for the morning of
6 January 13, 2006?

7 A. We were going to go get some more supplies to try and
8 put something together again.

9 MS. ENDRIZZI: Your Honor, I only have a few more
10 questions, but if I could take a moment.

11 THE COURT: Go ahead.

12 Q. BY MS. ENDRIZZI: During 2005 and 2006, how would you
13 describe your relationship with Eric McDavid?

14 A. It was a pretty close relationship. I saw him like a
15 brother.

16 Q. When the two of you were traveling, who took charge?

17 A. It was usually Eric.

18 Q. How did you feel about that?

19 A. I felt pretty comfortable with it.

20 Q. Did you at that time consider Eric McDavid your
21 friend?

22 A. Yes, I did.

23 Q. Do you still consider him your friend?

24 A. I do.

25 Q. How do you feel about testifying against him today if

1 he is your friend?

2 A. Before I got out of jail, he told me that I had to
3 take care of myself. And I figure that the facts would come
4 out regardless of me.

5 Q. Zach, during the period of August 2005 to January 13,
6 2006, did you conspire with Eric McDavid and Lauren Weiner?

7 A. Yes, I did.

8 Q. What was the goal of conspiracy?

9 A. To destroy property that was harming the environment.

10 MS. ENDRIZZI: No further questions, Your Honor.

11 THE COURT: Thank you.

12 CROSS-EXAMINATION

13 BY MR. REICHEL:

14 Q. Thank you, Your Honor. Hi, Mr. Jenson. How are you?

15 A. Good.

16 Q. Let's start at the beginning. It's fair to say you
17 and I have not talked much before, correct?

18 A. No, we have not.

19 Q. You were a defendant in this case from the beginning?

20 A. Yes.

21 Q. And I probably saw you in court a couple times, but
22 we've never actually had a conversation, right?

23 A. That's right.

24 Q. Okay. Now, for quite some time you reviewed the
25 video tapes and the audio tapes that were made undercover in

1 this case; do you remember that?

2 A. Yes, I do.

3 Q. And you looked at transcripts of those tapes for
4 quite some time, correct?

5 A. Yes.

6 Q. And this is what I'm talking about, I'm asking you
7 about is, well prior to the time that you actually pled guilty
8 and agreed to testify for the Government, you reviewed these
9 tapes and these transcripts, correct?

10 A. Yes.

11 Q. Okay. Do you remember an individual by the name of
12 Bob Story or Robert Story?

13 A. Yes, I do.

14 Q. And he was an investigator who worked -- from my
15 office?

16 A. Yes.

17 Q. Okay. And he actually reviewed the transcripts and
18 the video tapes with you as well at that time?

19 A. Yes, he did.

20 Q. Okay. And when you looked at the tapes, you would
21 make comments about --

22 MS. ENDRIZZI: Objection, Your Honor. We're getting
23 into the basis of privilege at the moment, and Zachary Jenson's
24 attorney is here in the Court.

25 THE COURT: Let me hear the rest of question.

1 Overruled for now.

2 Q. BY MR. REICHEL: Thank you, Your Honor.

3 You would make comments during viewing those tapes,
4 do you remember that?

5 A. Yes, I do.

6 Q. Okay. Because it was your first time really viewing
7 them after participating, but it's your first time seeing the
8 undercover tapes, right?

9 A. Yes.

10 Q. And the comments you would make were about things
11 like I can't believe that happened --

12 MS. ENDRIZZI: Objection, Your Honor. Again, basis
13 of privilege and joint defense at this point in time. And he
14 has not waived the privilege because the current charges, the
15 844(n), have not been dismissed against this defendant.

16 THE COURT: Approach sidebar, please?

17 (Begin sidebar conference.)

18 MR. REICHEL: I've got a proposal. I've leave that
19 area, and we can talk at the break.

20 THE COURT: He is not done with this yet.

21 MR. REICHEL: Then he shouldn't have made the
22 statements. He can't be called as a witness.

23 MS. ENDRIZZI: We're not taking the Fifth. It's
24 privileged, and he hasn't waived the privilege because the
25 charges still stand.

1 MR. REICHEL: He waives when he takes the stand for
2 the Government.

3 THE COURT: No, he doesn't. Not completely. I mean,
4 if we're going to go into this area, then we're going to have
5 to get counsel for him.

6 MR. REICHEL: But I'm going to leave that area.

7 THE COURT: Who is his counsel?

8 MR. REICHEL: Shari Rusk.

9 I'll leave the area, but I'll talk to you at the
10 break at 10:30.

11 (End sidebar conference.)

12 Q. BY MR. REICHEL: Mr. Jenson, let me take you back to
13 when you first met Mr. McDavid, that was in August of 2004,
14 right?

15 A. Yes.

16 Q. In Des Moines, Iowa?

17 A. Yes.

18 Q. And prior to that time, you had been in Georgia in
19 June of 2004, right?

20 A. Yes.

21 Q. And that's when you met Anna, right?

22 A. Yes, it is.

23 Q. That's the informant in this case, right?

24 A. Yes.

25 Q. Okay. And when you met her in June of 2004, you did

1 not pick her out to be an informant, correct?

2 A. No, I did not.

3 Q. Okay. You found her to be an intelligent and
4 interesting person?

5 A. I didn't talk to her that much in Georgia.

6 Q. But you got to know her, right?

7 A. Not at that time, no.

8 Q. You didn't know her at all after Georgia?

9 MS. ENDRIZZI: Objection, Your Honor. Misconstruing
10 the statement.

11 THE COURT: Sustained.

12 Q. BY MR. REICHEL: I mean, you met her in Georgia,
13 right?

14 A. Yes, I did.

15 Q. Okay. And you found her to be attractive?

16 A. I suppose so, yeah.

17 Q. Okay. Well, I mean, did you kind of think she was a
18 neat person to be around?

19 A. I only ran into her a few times.

20 Q. But you had conversations with her?

21 A. Not lengthy conversations.

22 Q. But did you have conversations with her?

23 A. There were small conversations, if any.

24 Q. In June of 2004 in Georgia, when you met Anna, were
25 you smoking marijuana at the time at that conference?

1 A. In Georgia, no.

2 Q. And prior to it, the days before were you smoking
3 marijuana?

4 A. No. I had taken a break from it when I took the bus
5 down there.

6 Q. Okay. And the reason you took a break is because you
7 felt you had been using it too much?

8 MS. ENDRIZZI: Objection, Your Honor. Speculation.

9 MR. REICHEL: Asking a question, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: No, I didn't feel like I was using it
12 too much at that time.

13 Q. BY MR. REICHEL: Okay. But you just wanted to take a
14 break from it?

15 A. Yes.

16 Q. Okay. So when you met Anna in Georgia in 2004 in the
17 summer there, you had no idea that she was an FBI informant,
18 right?

19 A. Not at all.

20 Q. Okay. She fooled you, right?

21 A. I guess so, yeah.

22 Q. Well, she did fool you, right?

23 A. Yes.

24 Q. Okay. And it's because of her clothing and the way
25 she was that she fooled you?

1 A. Yes.

2 Q. Okay. And you didn't -- did you have -- let's call
3 it -- did she flirt with you?

4 MS. ENDRIZZI: Objection, Your Honor. Relevance to
5 this defendant.

6 THE COURT: Sustained.

7 Q. BY MR. REICHEL: Did you develop a romantic
8 relationship with her at that point?

9 MS. ENDRIZZI: Objection, Your Honor. Relevance.

10 THE COURT: Sustained.

11 MR. REICHEL: I think it's relevant, Your Honor, to
12 have her modus operandi. How she --

13 THE COURT: Not to this defendant. Objection
14 sustained.

15 Q. BY MR. REICHEL: When you met Mr. McDavid in August
16 of 2004, did you tell him that you were very interested and
17 attracted to Anna?

18 A. No, I did not.

19 Q. Now, you observed Mr. McDavid then when he first met
20 Anna in August of 2004, right?

21 A. I did.

22 Q. And she was carrying the same persona in Des Moines
23 in August that she was in June in Georgia?

24 A. Yes.

25 Q. Okay. And that was that she was an activist, and she

1 was from Florida, and the variety of things like that, right?

2 A. Yes.

3 Q. And you believed her at that time as well, right?

4 A. Yes, I did.

5 Q. Okay. And you had just met Mr. McDavid, right?

6 A. Yes.

7 Q. Okay. And you came to become a very close friend of
8 his after that, right?

9 A. After that, yes.

10 Q. But when you first met him, you interacted with him
11 and you hung out with him in Des Moines, right?

12 A. Yes.

13 Q. Now, you saw that he met up with Anna, and you had
14 previously known Anna, right?

15 A. Yes.

16 Q. So you were watching the two of them in Des Moines
17 as they became friends, right?

18 A. Yes.

19 Q. Okay. And there weren't that many people there at
20 Des Moines, right?

21 A. Not in town.

22 Q. Okay. How about at the convergence that you went to?

23 A. About 40 people up there.

24 Q. Okay. Do you remember the sleeping arrangements the
25 first night there in Des Moines?

1 A. Not the first night.

2 Q. Do you remember when Mr. McDavid and Anna slept in
3 the same room together in a farmhouse?

4 A. Not in a farmhouse. I don't remember that.

5 Q. Okay. Where did you sleep in Des Moines?

6 A. I slept up in the attic of the house in town where
7 everyone was staying at.

8 Q. And Eric slept there?

9 A. He did occasionally, yes.

10 Q. But did you see him sleep there?

11 A. Yes.

12 Q. And did you see Anna sleep with him there?

13 A. Yes.

14 Q. Okay. Now, when you knew Mr. McDavid, you first meet
15 him in August of 2004, and you see him that he now meets Anna,
16 did Mr. McDavid have any money on him in August of 2004?

17 A. I don't believe he did.

18 Q. Okay. And did you see how he was kind of existing at
19 that point? Is it fair to say he was just basically homeless
20 and living off the land?

21 MS. ENDRIZZI: Objection, Your Honor. Calls for
22 speculation.

23 THE COURT: Overruled.

24 THE WITNESS: Yes. It was basically like that.

25 Q. BY MR. REICHEL: Okay. Was that your situation as

1 well?

2 A. Yes, it was.

3 Q. Okay. Now, when -- after the Des Moines convergence
4 there in August of 2004, do you recall that Anna then flew out
5 from that area on an airplane; do you recall that?

6 A. I didn't know she left on an airplane.

7 Q. Okay. Did you -- you didn't help take her to the
8 airport or anything?

9 A. No.

10 Q. Okay. Okay. Now, she -- is it fair to say, she
11 actually had money in Des Moines, she was somebody who had cash
12 on them?

13 A. I believe so.

14 Q. And she stood out from you and Eric, right?

15 A. Yes.

16 Q. Because she had the wherewithal to get groceries and
17 stuff like that, right?

18 A. Yes.

19 Q. Is that one of the times that she actually went and
20 bought groceries?

21 A. I don't remember going to get groceries with her, but
22 I remember going to a corner store with her to buy a few
23 things.

24 Q. Now, after Des Moines was over, right after it was
25 over, you and Eric McDavid maintained a friendship thereafter,

1 right?

2 A. Yes.

3 Q. So you had gotten to know him a little bit, right?

4 A. Yes.

5 Q. But your first meeting, when you first got introduced
6 to him, you found him to be -- you were a little standoffish,
7 correct?

8 A. Not exactly, no.

9 Q. Were you two just great friends right at the outset
10 there?

11 A. Well, no.

12 Q. And shortly thereafter when, you meet him at Des
13 Moines, did you find him to be an honest guy?

14 A. He seemed like a nice guy at the time.

15 Q. Okay. I thought him to be honest?

16 A. I thought so, yes.

17 Q. Nice?

18 A. Yes.

19 Q. Friendly?

20 A. Yes.

21 Q. Overly violent?

22 A. No.

23 Q. Okay. Someone peaceful that you could be around?

24 A. Yes.

25 Q. Okay. And you two decided then to travel on to the

1 RNC; is that what happened?

2 A. Yes.

3 Q. Okay. And you did travel on to the RNC?

4 A. Yes, we did.

5 Q. That's the Republican National Convention in New
6 York?

7 A. Yeah.

8 Q. Any problems when you were traveling out there
9 between the two of you?

10 A. Not at all. We had some small talk here and there,
11 and I was dealing with some romantic issues with friends, so I
12 was kind of quiet throughout the trip.

13 Q. But during the trip you found him to be a pleasant
14 person to be around still?

15 A. Yes.

16 Q. And your friendship continued?

17 A. Yes.

18 Q. And when you got to the RNC in New York City, from
19 when you were in Des Moines until New York was there a lot of
20 marijuana smoking going on?

21 A. Not a lot, no.

22 Q. When you say "a lot," let me ask you, did you smoke
23 pot at all from Des Moines until you were done with the RNC in
24 New York?

25 A. Actually, I don't remember if I did or not.

1 Q. Let me ask you about use of marijuana. When you used
2 marijuana -- because now you haven't used it in quite some
3 time, right?

4 A. Yes.

5 Q. Now, when you used marijuana, there were several
6 effects that you got from it, right?

7 MS. ENDRIZZI: Objection. Vague as to both time --

8 THE COURT: Overruled.

9 THE WITNESS: Yes, there was.

10 Q. BY MR. REICHEL: Okay. I'll just ask you in 2004
11 when you used marijuana, there were certain effects that you
12 would get from it, right?

13 A. Yes.

14 Q. In fact, those were the reasons that you would smoke
15 it because of the desired effects, correct?

16 A. Yes.

17 Q. And those effects would be that it would kind of
18 relax you?

19 A. Yes.

20 Q. It would make you have a little more fun, basically?

21 A. Yeah.

22 Q. Make you happier?

23 A. Yes.

24 Q. Definitely blur reality?

25 A. It was just another perspective on reality for me.

1 Q. Right. I mean, there is just one reality, and there
2 is a different perspective on it, is that what you believe?

3 A. Yes.

4 Q. But what I'm asking is is on marijuana don't you feel
5 a little bit divorced from reality or a little kind of not
6 really following everything?

7 A. Sometimes, yes.

8 Q. Well, are there times when you smoked marijuana in
9 2004 where you didn't feel the effects?

10 A. No.

11 Q. Okay. So when you would smoke it, you would feel the
12 effects?

13 A. Yes.

14 Q. And it would be fair to say that marijuana would
15 cause some memory issues as well, correct?

16 A. My understanding of marijuana is that it causes
17 disruption of short-term memory not long-term.

18 Q. But even short-term memory loss, you would feel those
19 effects?

20 A. Sometimes, yes.

21 Q. And another effect that you'd possibly be feeling
22 paranoid or something to that effect?

23 A. Yes, definitely.

24 Q. Feeling paranoid, correct?

25 A. Yes.

1 Q. So there's times in 2004 when you smoked marijuana
2 when you were high that you would feel paranoid, right?

3 A. Yes.

4 Q. And in 2005 when you smoked marijuana, is it just
5 fair to say that the same effects you had in 2004?

6 A. Yes.

7 Q. Okay. And before you got arrested in 2006 and you
8 smoked marijuana, you would get those same effects, right?

9 A. Yes.

10 Q. And those would include paranoia, right?

11 A. Yes.

12 Q. Blurred reality?

13 A. I suppose so, yes.

14 Q. And short-term memory loss?

15 A. On occasion, yes.

16 Q. Okay. Did it also kind of give you a freeing of your
17 spirit, so to speak, so you would write things that maybe you
18 didn't feel like you were motivated to write down or something
19 if you were not high?

20 MS. ENDRIZZI: Objection, Your Honor. Relevance.

21 THE COURT: Overruled.

22 MS. ENDRIZZI: Foundation.

23 THE COURT: Overruled.

24 THE WITNESS: I would say so, yes.

25 Q. BY MR. REICHEL: Let me ask you -- I mean you wrote,

1 correct?

2 A. Yes.

3 Q. And you still write?

4 A. I haven't written since May, but, yes, I do.

5 Q. You're working on a book right now, right?

6 A. Yes.

7 Q. And it's fair to say that you like writing?

8 A. Yes, I do.

9 Q. Okay. Now in '04 and '05, if you smoked marijuana,
10 would it make it easier for you to write sometimes?

11 A. Yes, definitely.

12 Q. Okay. And do you play any instruments, or are you a
13 musician?

14 A. I'm trying to learn the guitar right now.

15 Q. When you smoked marijuana, did you feel at least when
16 you were on the marijuana, feeling the effects, did you feel
17 more creative?

18 A. Yes, I did.

19 Q. An ability to -- I don't know -- just kind of do
20 things without having to overly think them?

21 A. Yeah, I suppose so.

22 Q. What I'm getting at is on the marijuana would you do
23 things without a lot of forethought, more spontaneous?

24 A. In my experience it's usually overly thought out.

25 Q. Okay. Even to a point that it kind of doesn't make

1 sense?

2 A. Yes.

3 Q. Okay. Now, in November of 2005, the group got
4 together at Mr. McDavid's parent's house in Foresthill,
5 correct?

6 A. Yes.

7 Q. And there was a discussion out by the fireplace for a
8 while, right?

9 A. Yes.

10 Q. Prior to that, you smoked marijuana with Mr. McDavid,
11 correct?

12 A. Yes, we did.

13 Q. And during that conversation you felt the effects of
14 marijuana, correct?

15 A. It was -- the effects were wearing off basically at
16 the tail end of it.

17 Q. Okay. But you had previously smoked marijuana prior
18 to that conversation?

19 A. Yes, I did.

20 Q. Okay. Do you recall Anna telling you that she was a
21 stripper in Florida at one point?

22 A. I do, yes.

23 Q. And as a result she had ready access to a lot of
24 cash, bills?

25 A. Yes.

1 Q. \$100 bills at times?

2 A. Yes.

3 Q. Money -- at least putting her hands on cash was not a
4 real big problem for her at all times, right?

5 A. Yes.

6 Q. And contrast that to Mr. McDavid, who the entire time
7 you knew him, is it fair to say that he was almost exactly the
8 same as when you first met him, that he didn't have much money
9 whatsoever?

10 A. I would say so, yes.

11 Q. Up until the arrest basically, correct?

12 A. Yes.

13 Q. And the arrest was January 13 of 2006?

14 A. Yes.

15 Q. He was really a pauper, correct?

16 MS. ENDRIZZI: Objection, Your Honor. Testifying.

17 And objection to the term "pauper."

18 THE COURT: Overruled.

19 THE WITNESS: Yes.

20 Q. BY MR. REICHEL: Okay. I mean, he was homeless and
21 penniless, correct?

22 A. That's correct.

23 Q. Okay. And you knew him well?

24 A. Yes.

25 Q. And he would eat out of dumpsters at times, right?

1 A. Yes.

2 Q. And did you ever know him to rent a home for a month?

3 A. No, I did not.

4 Q. Okay. And let me ask you about in January in Dutch
5 Flat. You mentioned that you had bought \$100 worth of
6 groceries on a Food Stamp card?

7 A. Yes.

8 Q. And was that the end of your Food Stamps?

9 A. Yes. It was was. It was all of it.

10 Q. So at the end of that food, you would have been
11 penniless as well?

12 A. Yes.

13 Q. And fair to say homeless as well?

14 A. Yes.

15 Q. And Mr. McDavid, he didn't contribute anything at
16 Dutch Flats as far as money, did he?

17 A. No, he didn't.

18 Q. And you knew him -- he would have been homeless but
19 for that cabin, right?

20 A. Yes.

21 Q. And he was penniless when he was there, right?

22 A. Yes.

23 Q. He existed on the kindness of strangers, correct?

24 A. Yes.

25 Q. Now, do you recall after the RNC you drove out West

1 or back to California with Mr. McDavid?

2 A. Yes, we both caught a ride with someone that was in
3 New York.

4 Q. And on the way out, Mr. McDavid talked to you about a
5 variety of things, correct?

6 Withdraw the question. On the way out, Mr. McDavid
7 talked to you about Anna?

8 A. I don't remember if he did.

9 Q. Okay. And do you recall him writing her letters,
10 handwritten letters on the way out?

11 A. I don't.

12 Q. Did you have a conversation with him about him
13 writing love letters to Anna on the way from New York to
14 California?

15 A. I don't remember.

16 Q. Do you recall seeing him writing them and commenting
17 on them to you?

18 A. No, I don't recall that.

19 Q. Okay. But he expressed to you on the way out that he
20 was starting to have a crush on Anna, correct?

21 A. I don't remember if he did.

22 Q. Why don't you remember? What happened on that ride?

23 A. It was a really hazy car ride. We were driving
24 straight. We didn't stop at a hotel or anything. It was
25 either I was sleeping or I was driving.

1 Q. You stopped in Colorado for awhile, right?

2 A. This is the car trip from the RNC, right?

3 Q. Yes. That's what I'm asking about.

4 A. No. We didn't stop in Colorado.

5 Q. You don't remember stopping and seeing a friend?

6 A. We stopped in Des Moines.

7 Q. Okay.

8 A. For just a few hours.

9 Q. But not in Colorado?

10 A. Not Colorado.

11 Q. And who did you see in Des Moines?

12 A. Some of the kids associated with the organizers of
13 the CrimethInc convergence. They were running a video store.

14 Q. And Mr. McDavid was still penniless and homeless at
15 that time?

16 A. Yes.

17 Q. And you got out to the West Coast, and then what
18 happened, where did you go?

19 A. We both went back to Seattle. He hung out there for
20 a couple weeks then took off.

21 Q. When did you hookup next?

22 A. Late April 2005.

23 Q. And that was to go to the, what, East Coast?

24 A. To start traveling for the summer.

25 Q. And you had -- in advance you had talked about the

1 two of you were going to travel for the summer?

2 A. Yes.

3 Q. And so in advance of April of '05 you guys had
4 somehow an agreement or discussion about travel the Summer of
5 '05?

6 A. Yeah, there was some -- couple of e-mails sent back
7 and forth in the Spring. Agreed to meet up.

8 Q. But there was no plan to -- there was no plan for
9 direct action or anything at that point, was there?

10 A. No, there wasn't.

11 Q. There was no plan for direct action, right?

12 A. No.

13 Q. Just travel the summer?

14 A. Yes.

15 Q. Okay. And Mr. McDavid, at that point, just before
16 you started traveling in April of '05, did he -- he expressed
17 no desire to commit any direct action outside of Auburn,
18 California, right?

19 A. That's correct.

20 Q. And you knew he was from roughly the Auburn area,
21 right?

22 A. Yes.

23 Q. Foresthill area?

24 A. He told me the Sacramento area.

25 Q. Uh-huh. And you knew he was from that area? You

1 believed that?

2 A. Yes.

3 Q. And you're going to go traveling for the entire
4 summer, and he doesn't say anything about doing direct action
5 at the end of it, does he?

6 A. No.

7 Q. Okay. So when you are going to get together in
8 April, this is a homeless and penniless guy, correct?

9 A. Yes.

10 Q. And he has spoken nothing to you about direct action
11 in the Auburn area, correct?

12 A. Not at all.

13 Q. Okay. In fact, at that time you still considered him
14 to be a pretty pleasant and easy-going guy to hang around?

15 A. Yes.

16 Q. And you were going to spend the summer with him,
17 right?

18 A. Yes.

19 Q. The two of you were going to spend the entire summer
20 together, right?

21 A. Yes.

22 Q. Did you find him to be -- at that point did you find
23 him to be like a generous person as well?

24 A. Yes, I did.

25 Q. And kind to others?

1 A. Yes.

2 Q. At that point, let's go to April of '05, did you find
3 him to be a pretty good person to hand around with for the
4 summer?

5 A. Yes.

6 Q. And you said earlier that he kind of led -- or he
7 took care of some of the things when you drove, okay, correct?

8 A. Well, hitch-hiking. He would usually know where to
9 go or how to do it. I usually took his lead because I wasn't
10 really experienced with it yet.

11 Q. Is it also because you just didn't really care about
12 it, just kind of going with the flow?

13 A. No. That's not correct.

14 Q. Okay. So he would know how to hitch-hike, and he was
15 better than you?

16 A. I would say so, yes.

17 Q. Okay. And what in hitch-hiking -- I mean, what made
18 you think that he was so much better than you at hitch-hiking?

19 A. He had a lot of confidence about it.

20 Q. Okay. And so you just felt confident following his
21 lead?

22 A. Yes.

23 Q. Was he good with maps or something?

24 A. Yes.

25 Q. Okay. And that helped you out?

1 A. Yes.

2 Q. Okay. Now, at some point you became aware that he
3 had an interest in Anna, the informant in this case, correct?

4 A. Yes.

5 Q. And when I say "interest," I mean romantic interest,
6 okay?

7 A. Yes.

8 Q. You became aware that he had a romantic interest in
9 her, right?

10 A. Yes.

11 Q. Is it fair to say that that develops at the
12 biodiversity in June of 2005?

13 A. I would say so, yes.

14 Q. Okay. Well, do you have -- I mean, as you sit here
15 today, as you sit here today and testify, do you have any doubt
16 that it was in June of 2005 that Eric McDavid started having
17 strong romantic interest in Anna, the informant?

18 A. I don't have any doubt about that.

19 Q. Okay. Now, right once you noticed that, did you
20 notice Anna rebuff him or in any way -- I mean, when you first
21 noticed it, spurn him or push him away?

22 A. I didn't notice it.

23 Q. In fact, they continued to be around each other at
24 that time in June of 2005? This is after you noticed that he
25 had an interest in her, right?

1 A. Yes.

2 Q. So it's fair to say, in your opinion, that she must
3 have known that he had a romantic interest in her, right?

4 A. Yes.

5 Q. And it was no secret to just about anybody that they
6 would be around, correct?

7 A. Yes.

8 Q. They hung around together, and they were mistaken for
9 being a couple, so to speak, by people?

10 MS. ENDRIZZI: Objection. Foundation.

11 THE COURT: Sustained.

12 Q. BY MR. REICHEL: Did you observe instances where
13 people mistook Anna and Eric as a couple?

14 A. I don't remember if I did observe any of those
15 instances.

16 Q. Let me ask you about your testimony here today.
17 Prior to your testimony, you viewed the video tapes in this
18 case and the undercover audio tapes, correct?

19 A. Yes.

20 Q. And you've read the transcripts of those tapes,
21 right?

22 A. Yes.

23 Q. And prior to your testimony, you met with -- you met
24 with the United States Attorney in this case, the Assistant
25 United States Attorney, Ms. Endrizzi, correct?

1 A. Yes.

2 Q. And in those meetings you talked about this case,
3 right?

4 A. Yes.

5 Q. And is it fair to say you had about four meetings or
6 so, they were roughly three hours each?

7 A. Yes, that's correct.

8 Q. So at least 12 hours of talking to her about the
9 case?

10 A. Yes.

11 Q. You've never testified before, right?

12 A. No, I have not.

13 Q. And she explained to you in these meetings what it
14 would be like to testify, right?

15 A. Yes.

16 Q. Did you actually come down to use this courtroom to
17 rehearse?

18 A. No.

19 MS. ENDRIZZI: Objection, Your Honor, to the term
20 rehearse.

21 THE COURT: Sustained.

22 Q. BY MR. REICHEL: Thank you. And did you do it in the
23 U.S. Attorney's office up there?

24 A. Yes.

25 Q. Okay. Do you recall that?

1 A. Yes.

2 Q. Okay. And was it like a conference room or
3 something?

4 A. I went to a conference room a few times.

5 Q. The other times was it just in an office?

6 A. Yes.

7 Q. Okay. Now, in those meetings, those four meetings
8 that were three hours each, did you talk about the questions
9 that were going to be asked during the trial?

10 A. We did talk about it, but she didn't give me the
11 exact questions that she was going to ask.

12 Q. Okay. But you talked about the areas that we were
13 going to talk about?

14 A. Yes.

15 Q. Okay. And were there times when you would say this
16 is my recollection of events, correct?

17 A. Yes.

18 Q. And there were times that she would say, well, we
19 think the recollection is something different; do you recall
20 that?

21 MS. ENDRIZZI: Objection, Your Honor. Foundation.
22 And hearsay.

23 THE COURT: Sustained. Sustained.

24 Q. BY MR. REICHEL: When you were discussing testifying
25 here, in this case, okay -- do you recall that?

1 A. Yes, I do.

2 Q. Okay. With the prosecutor, "yes"?

3 A. Yes.

4 Q. Okay. Do you recall instances where you would say, I
5 recall this happening during the case, yes?

6 A. Yes.

7 Q. Because you had to at least talk to her about your
8 testimony at some point, right?

9 A. Yes.

10 Q. And do you recall instances where she would say --

11 MS. ENDRIZZI: Objection, Your Honor. Hearsay.

12 THE COURT: Overruled.

13 Q. BY MR. REICHEL: It's the effect on the hearer.

14 Do you recall instances where she would say, well, we
15 believe this is what actually happened, or something along
16 those lines?

17 MS. ENDRIZZI: Objection, Your Honor. Foundation and
18 hearsay.

19 THE COURT: Foundation. Sustained.

20 Q. BY MR. REICHEL: Were there times where you disagreed
21 with the United States on what happened, your recollection of
22 what happened?

23 A. There was a few times, yes.

24 Q. Okay. Now, you're testifying pursuant to a plea
25 agreement in this case, correct?

1 A. Yes.

2 Q. You remember being arrested, right?

3 A. Yes.

4 Q. And then you got brought into court here, correct?

5 A. Yes.

6 Q. And remember the Magistrate at the time at your first
7 appearance telling you what the charges were?

8 A. Yes.

9 Q. And told you what you were looking at if convicted,
10 remember?

11 A. Yes.

12 Q. There would be the minimum and the maximum; do you
13 recall that?

14 A. Yes.

15 Q. Okay. And then on the way back to the jail, you
16 would talk to, of course, Ms. Weiner and Mr. McDavid about that
17 information, right?

18 A. Yes.

19 Q. Because you were told that you were facing a minimum
20 of five years in prison, right?

21 A. Yes.

22 Q. And 20 years maximum, right?

23 A. Correct.

24 Q. Okay. Now, at some point you start -- you had to
25 start thinking about, wow, how do you get from the five to 20,

1 right?

2 A. Yeah.

3 Q. Right? I mean, what gets me 20 years?

4 A. Yes.

5 Q. Right? And you had an attorney?

6 A. When I first got arrested, I did not have an
7 attorney.

8 Q. Soon thereafter you had an attorney?

9 A. Yes. It was in February.

10 Q. Okay. But, anyway, you had an attorney right away?

11 A. It was a public defender, but, yes.

12 Q. Mr. Haydn-Myer?

13 A. That was the attorney I got in February.

14 Q. But the attorney right away was someone appointed by
15 the Court, correct? I'll withdraw the question.

16 You eventually got Ms. Rusk as your attorney,
17 correct, Shari Rusk?

18 A. I retained her in March.

19 Q. Okay. But before her you had another attorney, you
20 had Mr. Haydn-Myer?

21 A. Yes.

22 Q. And Mr. Haydn-Myer talked to you about the minimum
23 five years and the maximum 20 years on the charges, right?

24 A. Yes.

25 Q. Do you remember after your first appearance, you came

1 back to court shortly thereafter, and there was an arraignment
2 hearing in front of a Judge, who, again, told you what you were
3 looking at?

4 A. Yes.

5 MS. ENDRIZZI: Objection, Your Honor. Relevance as
6 to this line.

7 THE COURT: Overruled.

8 Q. BY MR. REICHEL: Do you recall attending a bail
9 hearing in the case originally?

10 A. Yes, I do.

11 Q. Where you were hoping to get out on bail, right?

12 A. Yes.

13 Q. And the United States took a position about your
14 bail, right?

15 A. Yes.

16 Q. And they said no bail originally, right?

17 A. Yes.

18 Q. And as a result you were actually detained?

19 A. That's correct.

20 Q. And you had to go back to the jail?

21 A. Yes.

22 Q. Now, Ms. Rusk became your attorney at some point,
23 right?

24 A. Yes.

25 Q. And you talked about the five years and the maximum

1 of 20 years, right?

2 A. Yes.

3 Q. And at some point the subject came up of how -- where
4 does the judge go in five to 20 years, right?

5 MS. ENDRIZZI: Objection, Your Honor. Into the area
6 of privilege again.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 Q. BY MR. REICHEL: Okay. And your attorney, Ms. Rusk,
10 explained the guidelines to you, correct, the federal
11 guidelines for sentencing?

12 A. Yes, that's correct.

13 Q. And explained, you know, what could happen if you
14 pled guilty or went to trial how you could get 20 years in
15 prison in this case, correct?

16 A. Yes.

17 Q. And as a result, it's fair to say, you started
18 thinking, well, how can I get the five years, right?

19 A. Yes.

20 Q. Right. I mean, is there any reason you would want to
21 go do 20 years in prison when you could do five years?

22 A. Not at all.

23 Q. Is there any reason that you would want to do five
24 years when you could do less than five years?

25 A. I'm not sure I understand the question.

1 Q. Sure. You would agree with me that you would rather
2 do no time than five years, right?

3 A. That would be nice, yes.

4 Q. Is there any hesitation on your part that five years
5 in prison would be better than no time in prison?

6 A. No.

7 Q. Good. So no time, you'll agree with me, is better
8 than five years?

9 A. Yes.

10 Q. Okay. And five years is way better than 20 years,
11 right?

12 A. Definitely.

13 Q. And you didn't like the jail, correct?

14 A. Not at all.

15 Q. You were in isolation there, right?

16 A. Yes, I was.

17 Q. And the diet was terrible?

18 A. Yes, it was.

19 Q. And as a result, you were very, very unhappy there
20 when you were there?

21 A. Yes, I was.

22 Q. Right. Now, it's then you decided to cut a deal with
23 the Government, correct?

24 A. Yes.

25 Q. You did cut a deal with the Government; isn't that

1 your understanding?

2 A. Yes, it is.

3 Q. It's an agreement, right?

4 A. Yes.

5 Q. And it is that you would plead guilty to a lesser
6 charge, right?

7 A. Yes.

8 Q. And you did plead guilty to a lesser charge, right?

9 A. That's correct.

10 Q. You plead guilty to something that has a maximum of
11 five years, right?

12 A. Yes.

13 Q. And has a possibility of no years, right?

14 A. That's correct.

15 Q. It goes from zero to five, correct?

16 A. Yes.

17 Q. Prior to that it was five to 20, right?

18 A. Yes.

19 Q. And that agreement is not with the Court, right?

20 A. That's correct.

21 Q. It's actually with the United States Attorney's
22 Office, right?

23 A. Yes.

24 Q. And they called you to testify in this case, right?

25 A. That's correct.

1 Q. And so it's fair to say you are their witness, right?

2 A. Yes.

3 Q. I didn't subpoena you here, right?

4 A. Not at all.

5 Q. They've asked you to come here?

6 A. Yes.

7 Q. And it's required under your agreement, right?

8 A. Yes.

9 MR. REICHEL: Do you want to stop now?

10 THE COURT: Yes, take our recess. Return in
11 20 minutes. Please remember your admonitions regarding
12 discussing the case and forming opinions. Thank you. Court's
13 in recess.

14 (Jury out.)

15 (Break taken.)

16 (Jury in.)

17 THE COURT: Proceed.

18 Q. BY MR. REICHEL: Thank you.

19 Mr. Jenson, just briefly I'm going to back up just a
20 little bit about the plea agreement because that's where we
21 left off. All right?

22 A. All right.

23 Q. Okay. So your understanding is -- first of all, you
24 pled guilty, right?

25 A. Yes.

1 Q. To that reduced charge, right?

2 A. Yes.

3 Q. Okay. You have not been sentenced yet, right?

4 A. That's correct.

5 Q. In fact, your sentencing was set quite some time ago
6 -- I mean, a while ago, right?

7 A. More than a year ago, yes.

8 Q. I'm sorry?

9 A. More than a year ago.

10 Q. Okay. And it's been continued a variety of times,
11 right?

12 A. Yes.

13 Q. And it's still not set -- I mean, it's set for after
14 this trial is over, right?

15 A. That's correct.

16 Q. And after this trial is over, it's your understanding
17 you will then be sentenced, right?

18 A. Yes.

19 Q. And at that time, the maximum you face under this
20 plea agreement is five years, right?

21 A. That's correct.

22 Q. That's your understanding, right?

23 A. Yes.

24 Q. Okay. And at that time, your attorney is going to
25 ask the Judge to -- on your behalf to give you a certain

1 sentence, right?

2 A. Yes.

3 Q. Now, is it fair to say, Mr. Jenson, that your goal
4 would be to get as least amount of time as possible, right?

5 A. I would say so, yes.

6 Q. Okay. You already told us five years is worse than
7 no time, right?

8 A. Yes.

9 Q. Three years would be worse than two years, right?

10 A. Yes.

11 Q. Okay. So you are clear on that, right?

12 A. Yes.

13 Q. Now, your attorney is going to ask the Judge on your
14 behalf to get you what you'd like to get out of this case,
15 right?

16 A. Yes.

17 Q. Do you have any doubt about that?

18 A. No.

19 Q. Okay. Now, you know how it's going to work is that
20 at that time the prosecutor is going to also make a
21 recommendation to the Judge about your sentence, right?

22 A. Yes, I understand that.

23 Q. Do you have any understanding as to whether or not
24 I'll make a recommendation to the Judge?

25 A. I understand that you probably won't.

1 Q. Thank you. Now, the Government who called you as a
2 witness in this case, it's your understanding that they are
3 going to make a recommendation to the Judge at sentencing,
4 right?

5 A. Yes.

6 Q. And there's no dispute -- I mean, it's fair to say
7 your goal would be for them to give you exactly what you'd like
8 to get out of this case as a sentence, right?

9 A. That would be nice, yes.

10 Q. And when you say "nice," that is because it would
11 mean less prison time, right?

12 A. Yes.

13 Q. And you've already told us that jail was terrible,
14 yes?

15 A. Yes.

16 Q. The food, the isolation?

17 A. Yes.

18 Q. And you don't want to go back to that, right?

19 A. Not at all.

20 Q. Now, it's your understanding that they are going to
21 make a recommendation at the end, and that's going to be based
22 on whether or not they feel that you were truthful when you
23 testified, right?

24 A. Yes.

25 Q. Is that your understanding?

1 A. Yes, it is.

2 Q. And that you were helpful to their case when you
3 testified, correct?

4 A. Yes.

5 Q. Okay. And that you provided them assistance in their
6 case, right?

7 A. Yes.

8 Q. Okay. Assistance would mean to help them, right?

9 A. I believe so, yes.

10 Q. Okay. Now, that came about after you agreed to plead
11 guilty, right?

12 A. Yes.

13 Q. Okay. You didn't have any agreement or offer to give
14 them assistance prior to pleading guilty, right?

15 A. That's correct.

16 Q. Okay. In fact, at that time, you viewed them as the
17 other party in the case or the opponent, right?

18 A. Yes.

19 Q. They are no longer the opponent in your mind, right?

20 A. That's correct.

21 Q. And do you have an understanding as to -- well, I
22 withdraw the question. I'm sorry.

23 Prior to your testimony, when you prepared the
24 12 hours or so with Ms. Endrizzi, she gave you some documents
25 to look at, correct?

1 A. That's correct.

2 Q. And your familiarity with this case includes the fact
3 that because you used to review these all sorts of transcripts,
4 right?

5 A. Yes.

6 Q. And all sorts of video tapes, right?

7 A. Yes.

8 Q. And all sorts of audio tapes, right?

9 A. Yes.

10 Q. And in your meeting with Ms. Endrizzi, it's fair to
11 say that you reviewed some of those items, right?

12 A. Yes.

13 Q. But not every single one of those items, right?

14 A. That's correct.

15 Q. Just certain selected ones, right?

16 A. Yes.

17 Q. And you selected those and brought them to her and
18 said let's talk about these today, correct?

19 A. Actually, she selected them.

20 Q. Oh, thank you. So she pulled these out and went over
21 these with you, right?

22 A. Yes.

23 Q. And that helped to refresh your recollection,
24 correct?

25 A. It did, yes.

1 Q. These items that you didn't get a chance to go over
2 with her, is it fair to say you have memory problems with
3 those?

4 A. It might be a little hazy, but I can try.

5 Q. What did you say to her when the issue came up of you
6 asking should you look at other things and testify on other
7 things? What did you exactly tell her when you felt that you
8 weren't seeing everything or talking about everything with her?

9 A. I'm not sure I understand the question.

10 Q. Is it that she was showing you things that she wanted
11 you to take a look at prior to your testimony?

12 A. Yes.

13 Q. And you didn't bring anything to her, right?

14 A. No.

15 Q. So she prepared you for your testimony by giving you
16 pieces of the evidence that you knew existed, right?

17 A. Yes.

18 Q. Okay. And it's -- you and I cannot do anything but
19 agree on the following: You want her to be happy with you as a
20 witness, right?

21 A. Yes.

22 Q. Okay. Because she'll make a sentence recommendation
23 for you to this Court, right?

24 A. Yes.

25 Q. Now, am I paying you anything for your testimony

1 here?

2 A. No.

3 Q. Okay. Am I offering any benefit to you for
4 testifying here?

5 A. No.

6 Q. Okay. Thank you.

7 Now, let me ask you about in October of 2005, the
8 exhibit you looked at, Exhibit 45, which was the e-mail you
9 looked at earlier?

10 A. Okay.

11 Q. Do you still have that up there?

12 A. Yep.

13 Q. Did you provide that to Ms. Endrizzi recently, or did
14 she provide that to you?

15 A. She provided it to me.

16 Q. And do you recall where Eric McDavid was when he sent
17 that e-mail?

18 A. Somewhere in the Sacramento area.

19 Q. And that's October 26th; isn't that right?

20 A. Yes.

21 Q. Now, prior to that, and this is 2005, you had all
22 been together back in August of '05 talking about getting
23 together in the future, right?

24 A. Yes.

25 Q. And Mr. McDavid in the beginning of that e-mail he

1 gives you some news, right?

2 A. Yes.

3 Q. And the news is that he can't make it, right?

4 A. That's correct.

5 Q. In fact, he is going to miss it, right?

6 A. Yes.

7 Q. So he is going to not be able to get together with
8 the group at the next meeting, right?

9 A. Yes.

10 Q. And that's because of family problems?

11 A. Yes.

12 Q. Family issues?

13 A. Yes.

14 Q. Okay. You had no reason to believe that he was
15 lying, right?

16 A. No, I did not.

17 Q. Well, let me ask you about the issue of anybody in
18 the group lying to each other, okay?

19 A. Okay.

20 Q. Okay. In late January just before the arrest, okay?

21 A. Okay.

22 Q. At that timeframe. You testified here today that you
23 felt reluctant or hesitant at some point, right?

24 A. That's true.

25 Q. Okay. And is it fair to say that you certainly

1 didn't want the group to know that, right?

2 A. Yes, that's true.

3 Q. Okay. So if you feel one way, which is hesitant or
4 reluctant, but you don't want them to know, you have to do
5 something, right?

6 A. Yes.

7 Q. And that's called acting, right?

8 A. Yes.

9 Q. You have to fool them, right?

10 A. I suppose so, yes.

11 Q. And it probably was just the flow of things there
12 that no one, is it fair to say, would want to upset the apple
13 cart or cause the others to think that somebody's getting out,
14 right?

15 A. Yes.

16 Q. Okay. And you knew that by -- I mean, you know
17 January 12th, January 10th of 2006, you know how Mr. McDavid
18 felt about Anna, right?

19 A. Yes, I did.

20 Q. Specifically romantically how he felt, right?

21 A. Yes.

22 Q. So you got Mr. McDavid who feels very romantic about
23 Anna, the informant, in January 10 of 2006, right?

24 A. Yes.

25 Q. And you felt that -- at that point reluctant, so as a

1 result you were acting a little bit at that time, right?

2 A. Yes, I was just going with the flow.

3 Q. Well, acting more gung-ho than what your true
4 feelings were?

5 A. Yes.

6 Q. Has the Government told you -- or withdraw the
7 question.

8 Have you reviewed some of the discovery in this case,
9 specifically the statement of Lauren Weiner in this case?

10 A. Yes.

11 Q. The one she gave to the FBI?

12 A. I haven't seen that, no.

13 Q. Okay. Let me ask you about the car ride back from --
14 well, let's back up.

15 On or about January 2nd of 2006, okay?

16 A. Okay.

17 Q. You drove out to California, right?

18 A. Yes.

19 Q. You drove out with Anna and Lauren?

20 A. Yes.

21 Q. And that car ride there was an audio recording device
22 in there, correct?

23 A. Yes.

24 Q. Is there a reason -- are you foggy about that?

25 A. I know now that there was.

1 Q. Okay. But you didn't then?

2 A. No, I did not.

3 Q. So when you spoke then, you didn't know you were
4 being recorded?

5 A. No, I did not.

6 Q. Okay. And you weren't acting at that point, right?

7 A. No.

8 Q. So that was the real Zach Jenson speaking on that
9 tape?

10 A. I suppose so, yes.

11 Q. Well, when you say "I suppose so," I just have to
12 follow that up. Is there some reason why you think that maybe
13 you weren't speaking honestly or truthfully at that time?

14 A. I was in the car ride. I was still saying things to
15 make them think that I was 100 percent good to go for it.

16 Q. So you were saying things to make them think that you
17 were 100 percent good to go for this whole thing, right?

18 A. Yeah.

19 Q. Were you hesitant about it a little, deep down inside
20 basically?

21 A. Yes.

22 Q. Okay. Reluctant?

23 A. Yes.

24 Q. Okay. Now, was that your car?

25 A. No, it was not.

1 Q. Was that Lauren Weiner's car?

2 A. No, it was not.

3 Q. Whose car was that?

4 A. That was Anna's car.

5 Q. And where did you drive from?

6 A. From Washington D.C. all the way out to the
7 Sacramento area.

8 Q. Okay. And did you pay for the gas?

9 A. No.

10 Q. Did Anna pay for the gas?

11 A. Yes.

12 Q. And why were you in Washington D.C.?

13 A. I met up with Lauren there, and there was plans to
14 meet up with Anna there also.

15 Q. Right. And to go to a cabin up in the Sacramento
16 area?

17 A. Yes.

18 Q. And you knew that Anna had gotten this cabin, had
19 rented it, right?

20 A. Yes.

21 Q. And you were feeling a little reluctant at that time,
22 but you got in Anna's car to go out to California, right?

23 A. Yes.

24 Q. To stay in Anna's cabin?

25 A. Yes.

1 Q. And is it fair to say that you were still the
2 homeless, penniless person that we were talking about earlier,
3 other than the Food Stamps of \$100?

4 A. Yes.

5 Q. And on the car ride out, I would like you to think
6 about some of the statements that you made, okay?

7 A. Okay.

8 Q. Do you recall a particular conversation with Anna
9 where she asked you a question about how do you feel about D,
10 referring to Eric McDavid, being our leader, do you remember
11 her asking you that?

12 A. I don't remember that, no.

13 Q. You don't recall that?

14 A. No.

15 Q. Have you looked at the transcript of that before?

16 A. I've looked at transcripts of that car ride, but I
17 haven't seen it in a year.

18 Q. Okay. And did the Government -- did the Government
19 in preparing you for testifying, did they give you a transcript
20 of that car ride?

21 A. No, they did not.

22 Q. Did they ask you to listen to the audio tape of that
23 car ride?

24 A. No, they did not.

25 Q. Do you recall a conversation in that car ride where

1 you told Anna something to the effect of you are our leader
2 Anna; do you remember that?

3 A. No, I don't.

4 Q. Do you remember the conversations in that car ride?

5 A. Some of them.

6 Q. Were any of them about a feeling you had that she was
7 leading you and the rest of the group into a trap?

8 A. I do remember having a conversation about that.

9 Q. And when you say a conversation about it, what I'd
10 like to know, was it you speaking to Anna?

11 A. Yes, it was.

12 Q. Okay. And it was where you said something to the
13 effect of, you know, I have this feeling that you, Anna, you're
14 leading us into a trap, right?

15 A. Yes.

16 Q. And you said, I think it's because something bad had
17 happened to her in the past or something, that's why she was
18 doing this?

19 A. Yes.

20 Q. And do you recall telling her that it's because she
21 was leading everybody on everything?

22 A. It seemed like it.

23 Q. Okay. And let me ask you to go back again. Sorry to
24 jump around. But if you would, with me, to about September,
25 early October of 2005, and this is after Pointless Fest, after

1 August of '05, prior to getting together at Foresthill in
2 November, okay?

3 A. Okay.

4 Q. And specifically security culture. Security culture.
5 Okay?

6 A. Okay.

7 Q. And you testified to that on direct for us, right?

8 A. Right.

9 Q. And do you remember Anna talking about -- to the rest
10 of the group having to learn more about security culture?

11 A. I don't remember that, no.

12 Q. Do you recall her telling Mr. McDavid that he had to
13 get a secure e-mail account, specifically anything Irish?

14 A. I remember she told him, but I don't know if he
15 actually got the account.

16 Q. Okay. But your recollection, as you sit here today,
17 is that she had told him around that timeframe that he needed
18 to get an e-mail account that was secure, and that anything
19 Irish provided those, right?

20 A. Yes.

21 Q. And that was Anna's suggestion, right?

22 A. Yes.

23 Q. And that was part of the security culture discussions
24 at the time, right?

25 A. Yes.

1 Q. Now, when you met in November of 2005 at
2 Mr. McDavid's parents' house, you were originally not supposed
3 to meet there, correct?

4 A. That's correct.

5 Q. You were supposed to meet in some hotel room
6 somewhere?

7 A. Yes.

8 Q. And one of the things that developed was Mr. McDavid
9 just couldn't get away, right?

10 A. Yes.

11 Q. Do you remember Anna being very unhappy and
12 communicating with the group that she was upset that
13 Mr. McDavid wouldn't make these -- this scheduled meeting?

14 A. I do remember that, yes.

15 Q. That there was friction, and the friction was because
16 Anna was upset that he couldn't make it, right?

17 A. Yes.

18 Q. Now, it was around that time that Mr. McDavid asked
19 you to help him decode an e-mail that he had got from Anna,
20 right?

21 A. Yes.

22 Q. So the e-mail came from Anna to Mr. McDavid, right?

23 A. Yes.

24 Q. And it was in code, right?

25 A. Yes.

1 Q. And it was a security culture code, right?

2 A. Yes.

3 Q. I mean it was some code, right?

4 A. Yes.

5 Q. And that was pursuant to the security culture stuff,
6 right?

7 A. Yes.

8 Q. He didn't know that code, did he?

9 A. No, he did not.

10 Q. Okay. He couldn't figure it out, right?

11 A. There was a key sent with the code in another e-mail,
12 so that he could decode it it.

13 Q. But do you remember at the beginning he couldn't
14 figure it out?

15 A. He caught on to it pretty quickly.

16 Q. You helped him, actually, do you remember that?

17 A. Yes, I do.

18 Q. Do you remember your direct testimony this morning?

19 A. Yes.

20 Q. Do you remember saying that you helped him to decode
21 that?

22 A. I do.

23 Q. Did that happen?

24 A. Yes.

25 Q. You helped him decode it, right?

1 A. Yes.

2 Q. Okay. And he needed -- I mean, you helped him,
3 right?

4 A. Yes.

5 Q. Okay, and there is a reason you helped him, right?
6 He hadn't figured it out yet on his own, right?

7 A. I was more just -- more like assisting him with the
8 code.

9 Q. Right. Okay.

10 A. Translating it.

11 Q. Okay. I understand. Now, that was a recipe from
12 Anna, right?

13 A. Yes.

14 Q. So this is, what, early November of 2005?

15 A. It was actually early December 2005 when we got the
16 code.

17 Q. So he is trying to, at least to your knowledge, he is
18 trying to figure out a recipe in December of 2005, right?

19 A. Yes.

20 Q. And it came from Anna, right?

21 A. Yes.

22 Q. Now, I mean it's fair to say that you'd known him for
23 -- you'd known him for over a year, right?

24 A. Yes.

25 Q. Okay. And he is still in December of 2005 trying to

1 get a recipe from Anna for explosives, right?

2 A. Yes.

3 Q. So you're not aware of any instance -- go ahead.

4 By December of 2005 are you aware of any instance
5 where Mr. McDavid in all of these discussions by December of
6 2005 said to Anna, I've got a recipe, I'm fine, I don't need
7 anymore help on this?

8 A. I don't remember that, no.

9 Q. Okay. Is that because that didn't happen?

10 MS. ENDRIZZI: Objection, Your Honor. Speculation.

11 THE COURT: Overruled.

12 THE WITNESS: No, it did not happen.

13 Q. BY MR. REICHEL: Now, you recall in December of 2005
14 that Lauren Weiner was also participating in showing
15 Mr. McDavid these recipes, right?

16 A. I don't remember her showing Eric any recipes.

17 Q. Do you remember books she was going to bring at a
18 later date? During the discussion she was going to bring books
19 about recipes?

20 A. Yes, I do.

21 Q. Okay. And you earlier had told us on your direct
22 examination that Mr. McDavid was the brains of the operation;
23 do you remember that?

24 A. Yes.

25 Q. Now, that was a question that the United States asked

1 you, right?

2 A. Yes.

3 Q. Okay. Had you talked to them, prior to your
4 testimony today, about that exact issue, about testifying as to
5 who the brains of the operation was?

6 A. Yes, I did.

7 Q. Okay. Now, did they -- in your discussions with the
8 Government in this case, did they say that to say that Anna was
9 the brains of the operation?

10 A. No.

11 Q. Okay. In your heart of the hearts, after being there
12 in this case with these people, fair to say that Anna at least
13 had the brain power, the wherewithal as Eric McDavid, correct?

14 A. She seemed to at the time.

15 Q. Okay. That's what you believed at the time, right?

16 A. Yes.

17 Q. Okay. And she told -- didn't she say she taught
18 chemistry that summer?

19 A. She did say that.

20 Q. And that she knew she was going to correct McDavid on
21 anything to do with this recipe, right?

22 A. Yes.

23 Q. And instruct McDavid on anything to do with this
24 recipe, right?

25 A. Yes.

1 Q. Okay. And did you see Lauren Weiner eventually bring
2 these books The Poor Man's James Bond to the group?

3 A. Yes.

4 Q. And the reason she brought those was for the recipes
5 in them, right?

6 A. Among other things, but yes.

7 Q. Now, let me back up to when you're talking to
8 Mr. McDavid in August of 2005 and July of 2005. Okay. Can you
9 orient to that?

10 A. Okay.

11 Q. And the subject I want to talk about is why he was
12 out there, and he had mentioned something about not wanting to
13 go to the West Coast?

14 A. Yes.

15 Q. So you guys were going to travel beginning in roughly
16 May of 2005 for the summer?

17 A. Yes.

18 Q. And you did travel for the summer, right?

19 A. Yes.

20 Q. And sometime in there, possibly July or so,
21 Mr. McDavid said to you that he didn't want to go to back to
22 California, right?

23 A. Yes.

24 Q. And that was on the advice of an attorney, correct,
25 he told you?

1 A. Yes.

2 Q. And the attorney had said so because he didn't want
3 to be wrapped up in an investigation regarding someone else in
4 California, right?

5 A. Yes.

6 Q. And that was Ryan Lewis you told us on direct, right?

7 A. Yes.

8 Q. You found that name out later on?

9 A. Yes, later on.

10 Q. Now, you subsequently learned that Ryan Lewis was
11 someone who was charged and convicted with doing arsons in the
12 Sacramento area, right?

13 A. Yes.

14 Q. Actually, out in the Auburn area, right?

15 A. Yes.

16 Q. Near where Mr. McDavid's family lived, right?

17 A. Yes.

18 Q. Where Mr. McDavid was from, right?

19 A. Yes.

20 Q. Okay. And is it fair to say your understanding the
21 summer you travelled with him 2005, based on your
22 conversations, being with him, knowing a lot about him, that
23 his views and his statements were that he wasn't going to come
24 out to the West Coast and be involved in any direct action, at
25 least, in California, right?

1 A. Yes.

2 Q. Okay. So, you know, that idea had to come somewhere
3 else at some point, right?

4 A. I suppose so, yes.

5 Q. Okay. Now, the laptops that were in this -- you guys
6 had laptops at some point, right?

7 A. Yes.

8 Q. Two of them?

9 A. Yes.

10 Q. And Mr. McDavid didn't bring those to the group, did
11 he?

12 A. No, he did not.

13 Q. Neither did Lauren nor did you?

14 A. That's correct.

15 Q. So they were supplied by Anna, the informant,
16 correct?

17 A. Yes.

18 Q. Do you remember the chemistry set she also brought to
19 the group at Dutch Flats?

20 A. Yes, I do.

21 Q. And did she bring that at the same time she brought
22 the laptops?

23 A. Yes.

24 Q. Do you recall that as late as I think it's January
25 10th, there is discussion about finding a hydrometer?

1 A. Yes, I remember that.

2 Q. Okay. And the -- not only the discussion, but the
3 search for a hydrometer -- hydrometer, excuse me, consumed
4 quite a bit of the group's time one day, right?

5 A. Yes.

6 Q. Is it fair to say that several members of the group
7 didn't know what a hydrometer was?

8 A. That's correct.

9 Q. And Anna would explain what it was, correct?

10 A. Yes.

11 Q. The chemistry teacher?

12 A. Yes.

13 Q. McDavid was one of the people who didn't know what a
14 hydrometer was, right?

15 A. Yes.

16 Q. And then you were around when Mr. McDavid was calling
17 around and trying to figure out where they could buy a
18 hydrometer, right?

19 A. Yes.

20 Q. And this was late -- I mean, this is in, you know,
21 January 10th or so, right?

22 A. Yes, it was.

23 Q. Okay. So according to your testimony on direct
24 examination, there was discussions about, you know, doing
25 direct action as far back as, I think, June or July, and I

1 don't want to misstate your testimony, but June, July of 2005
2 there was discussion about direct action, right?

3 A. Yes.

4 Q. Okay. And did you find it -- I mean, what was the --
5 what was the implication to you that in January the people you
6 are with don't know what a hydrometer is?

7 A. I didn't really think about it.

8 Q. Did you know what a hydrometer was at the time?

9 A. No, I did not.

10 Q. Did it strike you that you were maybe with people who
11 weren't overly sophisticated in the ways of chemistry?

12 A. At that time, no.

13 Q. Is that because you're just very unfamiliar with
14 chemistry?

15 A. Yes.

16 Q. At Dutch Flats in January of 2006, okay?

17 A. Okay.

18 Q. One of the things that was going on there was the
19 mixing of these chemicals and this bucket -- or in the glass
20 bowl, right?

21 A. Yes.

22 Q. And that was to make some type of precursor or
23 something for explosive devices, right?

24 A. Yes.

25 Q. Do you have any idea whether or not the final product

1 of that would actually use a fuse; do you have any idea?

2 A. I have no idea.

3 Q. Okay. Is it fair to say that it's possible that the
4 fuse could be for one different type of device, and the mixing
5 of bleach or the crystals is a totally separate device, right?

6 A. Yes.

7 Q. You would have no idea, right?

8 A. No idea.

9 Q. Okay. Now, the mixing of the chemicals, your
10 understanding -- and you were there -- so your understanding
11 was that there would be an end product, correct?

12 A. Yes.

13 Q. And that end product could then be used to test
14 things, right -- excuse me -- could be used for a test, right?

15 A. Yes.

16 Q. As a matter of fact, you were going to go test things
17 out somewhere out in Susanville or somewhere else, right?

18 A. Yes.

19 Q. And the purpose of the test was to see whether or not
20 it works, right?

21 A. Yes.

22 Q. And it would be a small amount, right?

23 A. Yes.

24 Q. And fair to say, you didn't think you were going to
25 do a test that was going to be this gigantic explosion, right?

1 A. No.

2 Q. There's just no way about that, right?

3 A. Yeah.

4 Q. It's going to be a small, little test, right?

5 A. Yes.

6 Q. Okay. So what was being prepared there on the 12th,
7 I think it is, is something to end up with a test product,
8 right?

9 A. Yes.

10 Q. Okay. And did you have an understanding what it was
11 going to be called, or were you guys going to call it C4, or
12 was there some phrase?

13 A. I didn't have an understanding of what it would be
14 called.

15 Q. Do you recall that -- well, was it your understanding
16 -- let me ask you this -- was it your understanding that after
17 that test, that if it worked, there would be further discussion
18 by the group as to what they would do with it?

19 A. That was my understanding.

20 Q. Right. And if it didn't work, there would be
21 discussion about what we're doing?

22 A. Yes. That was my understanding.

23 Q. Okay. And did you feel that that was the
24 understanding collectively of the others?

25 A. Yes.

1 Q. And then it didn't even come to fruition, right, I
2 mean it burned the bowl, right?

3 A. Yes, the bowl broke.

4 Q. Okay. Would you say on the scale of 1 to 10, for a
5 success, that was a one or a zero?

6 A. Yeah, probably a one or a zero.

7 Q. Yeah. That was a failure, right?

8 A. Yeah.

9 Q. You were going to get a test product and then
10 possibly test it, and then discuss thereafter what you could
11 do, right?

12 A. Yes.

13 Q. And if it didn't work, you would have to discuss
14 still what you were going to do, right?

15 A. Yes.

16 Q. But you didn't even get to that stage, right?

17 A. That's right.

18 Q. The bowl broke?

19 A. Uh-huh. Yes.

20 Q. Okay. And then you recall Lauren then -- Lauren
21 Weiner then talking about her knowledge of why the bowl broke?

22 A. Yes, I do remember that.

23 Q. And her suggestions on how to fix it and how to
24 change it for the next time, right?

25 A. Yes.

1 Q. And did that cause a lot of tension in the group,
2 that failure of that bowl, the break of the bowl?

3 A. It added to already existing tension.

4 Q. Did it make it seem like it was a bunch of real
5 amateurs that didn't know what they were doing?

6 A. A little bit, yes.

7 Q. Well, you didn't know what you were doing, right?

8 A. Not at all.

9 Q. Okay. Did you really believe that Lauren Weiner knew
10 a whole lot about what she was doing?

11 A. I believe that she knew a little bit.

12 Q. Okay. More than you?

13 A. Yes.

14 Q. Okay. And did it just seem that Anna seemed to be
15 the one that was somewhat of the brains going on at that time,
16 right, brains of the operation at that point at least?

17 A. In regards to the chemistry stuff, yes.

18 Q. Okay. As far as the targets on the Burn Book that
19 you've looked at here, Exhibit 1?

20 A. Okay.

21 Q. Okay?

22 A. Yep.

23 Q. And if you recall, it lists "O" and "A" and then "O,"
24 "A," in there in the early pages?

25 A. Yes.

1 Q. Okay. And it talks about different issues that each
2 person had, right?

3 A. Yes. That's correct.

4 Q. And it says "O," which is Ollie?

5 A. Yes.

6 Q. And talks about a couple of things, right?

7 A. Yes.

8 Q. About surveillance and so forth?

9 A. Yes.

10 Q. And below that was "A," right?

11 A. Yes.

12 Q. And that stood for Anna, right?

13 A. Yes, it did.

14 Q. Okay. And that said "targets" on it, right?

15 A. If I remember correctly, yes.

16 Q. Okay. Well, Your Honor, permission to approach and
17 show the defendant what's previously marked as Government's
18 Exhibit 1.

19 THE COURT: Granted.

20 MR. REICHEL: Thank you.

21 Q. BY MR. REICHEL: Just so we're clear, at the top it
22 says "O," that's Ollie, right?

23 A. Yes.

24 Q. And it lists your issues that you want to talk about?

25 A. Yes.

1 Q. And the purpose of this Burn Book, this book here,
2 was to focus the group and keep it together, right?

3 A. Yes.

4 Q. So it didn't wander off into other areas, right?

5 A. That's correct.

6 Q. Like an organizational tool for everyone, right?

7 A. Yes.

8 Q. And Anna brought that, right?

9 A. Yes, she did.

10 Q. And Anna urged and encouraged everyone to please
11 write down in it, correct?

12 A. Yes, she did.

13 Q. Now, "O" is Ollie, "A" is Anna, and under that is
14 "O/A," right?

15 A. Looks like "O/R."

16 Q. And "R" is who?

17 A. That would be Ren or Lauren.

18 Q. So we've got "O" for Ollie, "A" for Anna, and "O" and
19 "R" for Ollie and Ren, right?

20 A. Yes.

21 Q. There is no, you know, David or Eric or "EM" in
22 there, right?

23 A. No, there's not.

24 Q. Those that are just -- there are three of the four --
25 three of the four, but not Mr. McDavid, right?

1 A. Yes.

2 Q. And it lists under "A," which is the second, it lists
3 targets, right?

4 A. Yes.

5 Q. And that was Anna's concern about targets, right?

6 A. Yes.

7 Q. She wanted to talk about targets?

8 A. Yes.

9 Q. And it says "one or two each"?

10 A. Yes, it does.

11 Q. And it has other entries in there about targets?

12 A. Yes.

13 Q. So that we're clear, down at the bottom, Ollie and
14 Ren, it lists other things, right?

15 A. Yes, it does.

16 Q. And are legitimately your and Ren's -- or Lauren's
17 concerns to be talked about, right?

18 A. Yes.

19 Q. And they were things to do afterwards and so forth?

20 A. Yes.

21 Q. Again, there's nothing -- you know, there's no "D,"
22 which was his nickname, or Eric, right?

23 A. No.

24 MR. REICHEL: Permission to approach the witness,
25 Your Honor?

1 THE COURT: Granted.

2 Q. BY MR. REICHEL: So at least from this Burn Book and
3 that entry in there, Mr. McDavid's goals or -- they just
4 weren't listed originally, right?

5 A. No, they weren't.

6 Q. Okay. One minute, Your Honor.

7 The night of the 12th -- the afternoon of the 12th of
8 January of 2006 at Dutch Flats, okay?

9 A. Okay.

10 Q. There is the big argument where Anna leaves?

11 A. Yes.

12 Q. Okay. You've watched that video tape, right?

13 A. Yes, I have.

14 Q. And you watched it several times, right?

15 A. Yes.

16 Q. You felt that was an important video tape actually,
17 right?

18 A. Yes.

19 Q. Kind of interesting, right?

20 A. Yes.

21 Q. Okay. And that's one you focused in either your
22 preparation or back when you were, you know, defending the
23 case?

24 MS. ENDRIZZI: Your Honor, can we have a
25 clarification as to what video tape?

1 THE COURT: Please.

2 Q. BY MR. REICHEL: Sure. Do you remember seeing a
3 video tape, an undercover video tape, of the meeting that you
4 had at Dutch Flats in the afternoon, with all four of you, and
5 this was something the Government has a video camera, and the
6 video tape shows the discussion or the meeting in the room, I
7 think it's the living room?

8 A. Yes.

9 Q. Okay. And you've seen the transcript of that, right?

10 A. Yes, I have.

11 Q. And it's fair to say what you find important about
12 that is that seems to be people's -- the four really starting
13 to talk about what you're really going to do, right?

14 A. Yes.

15 Q. I mean, that seems to be the meeting of, I would say,
16 everybody getting real; does that sound about the good --

17 MS. ENDRIZZI: Your Honor, again. This is a little
18 vague. If we've got the tape or a transcript --

19 THE COURT: Sustained.

20 MR. REICHEL: I'll withdraw the question, Your Honor.
21 But he can testify to his recollection of the --

22 THE COURT: Well, be specific.

23 Q. BY MR. REICHEL: You recall meeting in the living
24 room, right?

25 A. Yes.

1 Q. Okay. And, I mean, that video tape was accurate,
2 right, what was shown on there is what you recall happened,
3 right?

4 A. Yes.

5 MS. ENDRIZZI: Objection, Your Honor. Again, what
6 time, what conversation?

7 THE COURT: Sustained. Be more specific as to what
8 time you're referring to.

9 Q. BY MR. REICHEL: Sure. On January 12, 2006, do you
10 remember that day?

11 A. Yes, I do.

12 Q. At Dutch Flats, California?

13 A. Yes.

14 Q. At the cabin Anna rented?

15 A. Yes, I do.

16 Q. And there is a living room at that cabin, right?

17 A. Yes.

18 Q. Okay. Do you recall having a meeting in that living
19 room around 5:00 Pacific Standard Time, in that living room
20 with all four of you?

21 A. Yes, I do.

22 Q. Okay. And at that time, you discussed a variety of
23 things about what had been going on the last couple of days, to
24 say the least, right?

25 A. Yes.

1 Q. And that's the conversation where you start saying,
2 this is going too fast for me, right?

3 A. Yes. That's correct.

4 Q. Okay. Do you remember Mr. McDavid being there?

5 A. Yes, he was.

6 Q. Okay. Do you remember him advocating to Anna your
7 position?

8 A. I do remember that, yes.

9 Q. Like sticking up for Zach, right?

10 A. Yes.

11 Q. Saying, Zach says this is going too fast for him,
12 right?

13 A. Yes.

14 Q. Now, do you remember Mr. McDavid saying, maybe we
15 could just do billboards?

16 A. Yes, I do.

17 Q. Okay. And do you recall Lauren Weiner's position at
18 that point, how she was acting?

19 A. Vaguely.

20 Q. Did she seem to be acting gung-ho, or was she trying
21 to pull the throttle back, so to speak?

22 A. She was trying to pull the throttle back.

23 Q. Okay. And prior to that meeting, just prior to that
24 meeting, when the chemicals were being mixed earlier, do you
25 recall Lauren Weiner being in the kitchen and not wanting to

1 come out to mix?

2 A. Yes, I do remember that.

3 Q. And do you remember Anna encouraging her to please
4 come out?

5 A. Yes, I do.

6 Q. And it caused friction between the two of them,
7 right?

8 A. Yes.

9 Q. Yes?

10 A. Yes.

11 Q. And do you recall Eric McDavid sticking up for Lauren
12 at that point?

13 A. Yes, I do.

14 Q. Saying, leave her alone, so to speak?

15 A. Yes.

16 Q. And let everybody do whatever they want, right?

17 A. Yeah.

18 Q. Don't push people, right?

19 A. Correct. Yes.

20 Q. So at that point, you know, Eric was vocalizing that
21 Anna was being pushy, so to speak, right?

22 A. Yes.

23 Q. And at that point you felt like -- you know, you were
24 reluctant, you were hesitant by that time, right?

25 A. Yes, I was.

1 Q. And you found Anna to be pushy at that point, right?

2 A. Yes, I did.

3 Q. And you saw her pushing Lauren, right?

4 A. Yes.

5 Q. And Lauren was having some type of anxiety attack or
6 something about the bleach and didn't want to come outside?

7 A. I don't remember her having an anxiety attack, but I
8 do remember that she did not want to come out.

9 Q. And then there is a meeting in the living room
10 shortly thereafter or soon thereafter, right?

11 A. Yes.

12 Q. And Eric advocates your position that you feel you're
13 going too fast so far?

14 A. Yes.

15 Q. And he says something about maybe we should just do
16 billboards or something to that effect?

17 A. Yes.

18 Q. And then an argument kind of ensues between Anna and
19 Lauren, right?

20 A. If I remember correctly, yes.

21 Q. And then Anna leaves?

22 A. Yes, she did.

23 Q. And do you remember right after that that you had
24 concerns that you said to Mr. McDavid, something about Anna's
25 cell phone, you sure hoped she turned it off?

1 A. Yes, I remember that.

2 Q. And earlier that day you had actually approached her
3 about turning her cell phone off, right?

4 A. Yes.

5 Q. That was part of the security culture?

6 A. Yes.

7 Q. And that's because you thought there could be a
8 tracking device or something like that?

9 A. Yes.

10 Q. Or it was just compromising security, right?

11 A. Yes.

12 Q. Now, it wasn't Mr. McDavid that told her to turn her
13 cell phone off, right?

14 A. I don't remember if he told her that or not.

15 Q. But you recall telling her, right?

16 A. Yes.

17 Q. And you recall after she left, that you were very
18 concerned that she -- whether she had her cell phone with her,
19 or whether she had turned it off, right?

20 A. Yes.

21 Q. The point I'm getting at is, you had your own
22 security culture views and feelings, right?

23 A. Yes.

24 Q. And you were trying to abide by them, right?

25 A. Yes.

1 Q. And Anna portrayed that as well, right?

2 A. Not sure I understand.

3 Q. Sure. I'll ask another question. Anna talked about
4 security culture?

5 A. I don't remember if she did.

6 Q. Well, fair to say she would really stick out if -- in
7 your group -- she would have really stuck out if she didn't
8 have talked the talk of security culture, right?

9 A. Yes.

10 Q. So, I mean, Lauren, did she seem to portray, you
11 know, act like she was in conformity with this security culture
12 you've talked about on your direct examination today?

13 A. Yes, I would say so.

14 Q. And Anna also, right?

15 A. Yes.

16 Q. Okay. So it's fair to say that -- well, I'll
17 withdraw the question. Let me ask you about your view on
18 anarchy. Okay?

19 A. Okay.

20 Q. You were a self-described anarchist at one time,
21 right?

22 A. Yes.

23 Q. And you studied anarchy?

24 A. I read a lot of literature about it, yes.

25 Q. Can we call that studying or use a different term?

1 A. I prefer it called learning.

2 Q. Okay. Did you learn about anarchy?

3 A. Yes.

4 Q. And you learned about what it meant for you?

5 A. Yes.

6 Q. And you learned that it meant different things to
7 different people, right?

8 A. Yes, I did.

9 Q. And you learned about famous anarchists, correct?

10 A. I learned a little bit about that, yes.

11 Q. Did you learn about anarchists that are in mainstream
12 society?

13 A. No, I did not.

14 Q. Did you learn about any professors or famous people
15 that are anarchists?

16 A. I learned a little bit about Noam Chomsky, who is a
17 professor and also an anarchist.

18 Q. He's a professor at MIT, does that sound right?

19 A. Yes.

20 Q. That's Massachusetts Institute of Technology?

21 A. Yes.

22 Q. And he is considered an anarchist?

23 A. Yes.

24 Q. So it's a political view, right?

25 A. Yes.

1 Q. And when you became an anarchist, you found the other
2 people that you considered to be anarchists to be pretty, let's
3 see, egalitarian people?

4 A. Yes.

5 Q. Concerned for others?

6 A. Yes.

7 Q. And they kind of had good intentions, so to speak?

8 A. Yes.

9 Q. I mean, at the time you didn't have bad intentions
10 when you became an anarchist, right?

11 A. No.

12 Q. And you were going to travel, and you were friendly,
13 and your view was that the poor should be helped, right?

14 A. Yes.

15 Q. Those that didn't have anything should be helped,
16 right?

17 A. Yes.

18 Q. And that was the anarchist view that Mr. McDavid
19 shared with you, right?

20 A. Yes.

21 Q. Okay. So what I'm getting at is there can be -- in
22 your opinion, there can be peaceful anarchists and non-peaceful
23 anarchists, right?

24 A. That's correct.

25 Q. There's an entire spectrum for anarchy, right?

1 A. Yes.

2 Q. What about direct action, that phrase? Do you
3 understand?

4 A. Yes.

5 Q. Direct action can be a lot of things, right?

6 A. It usually involves some sort of direct
7 confrontation.

8 Q. Right. Direct confrontation. Direct action, fair
9 enough to say, can be a break-away march?

10 A. Yes, it can.

11 Q. It can be a sit-in when you're told to keep moving,
12 right?

13 A. Yes, it can.

14 Q. I mean, you get arrested if you don't keep moving and
15 you sit down, that's direct action, right?

16 A. Yes.

17 Q. Direct action can be gluing the doors together,
18 gluing the locks together at a department store, right?

19 A. Yes, it could.

20 Q. Direct action can be spray painting something at a
21 McDonald's, right?

22 A. Yes, it could.

23 Q. Direct action can be, you know, a group of bicyclists
24 that do the convergence where they just ride the bikes through
25 the streets of the city and shut the avenues down for a while,

1 right?

2 A. It could, yes.

3 Q. Okay. Now, direct action can go all the way to real
4 violent stuff, though, too, right?

5 A. Yes, it can.

6 Q. Okay. So someone can talk about and be in favor of
7 direct action, and you wouldn't know exactly what they're
8 talking about unless they were specific about what type of
9 direct action, right?

10 A. That's correct.

11 Q. So if someone says, well, I'm for direct action,
12 protests don't work anymore, okay; do you understand that
13 concept?

14 A. Yes.

15 Q. They could mean something a little more than just
16 protesting, right?

17 A. Yes.

18 Q. Okay. So someone can be in favor of direct action,
19 but unless you know exactly what they're planning -- or excuse
20 me -- what they're in favor of kind of, it's kind of a wide
21 area, right?

22 A. It can be, yes.

23 Q. Right. Same with anarchy, right -- anarchists,
24 right?

25 A. Yes.

1 Q. In fact, you feel that anarchists quite often don't
2 commit violent acts, right?

3 A. That's correct.

4 Q. Because they are afraid of police presence, right?

5 A. Yes.

6 Q. And of getting caught?

7 A. Yes.

8 Q. And sometimes, like you say, they can be very
9 peaceful individuals that don't believe in any type of violence
10 that causes harm to others, right?

11 A. Yes.

12 Q. And that's how you were when you met Mr. McDavid,
13 right?

14 A. That's correct.

15 Q. And that's the same way Mr. McDavid was when you met
16 him, right?

17 A. Yes.

18 Q. Now, after Anna left on January 12 of 2006, and she
19 left this meeting in the living room around 5:00 or so; do you
20 recall that night?

21 A. Yes, I do.

22 Q. Do you remember Mr. McDavid and Ms. Weiner then
23 smoking marijuana?

24 A. Yes, I do remember that.

25 Q. And that's the marijuana that Ms. Weiner had bought

1 in San Francisco, right?

2 A. Yes, that's correct.

3 Q. And after they smoke marijuana, for all intents and
4 purposes to you they seemed to be under the influence of it,
5 right?

6 A. Yes.

7 Q. Okay. And you didn't smoke it because you had just
8 stopped that day, you decided enough was enough, right?

9 A. Yes.

10 Q. Okay. You've smoked marijuana with Mr. McDavid in
11 the past, right?

12 A. Yes, I have.

13 Q. And that night he smoked with Ms. Weiner, and Anna
14 was gone, right?

15 A. Yes.

16 Q. At that point, do you recall Mr. McDavid and
17 Ms. Weiner then writing in the Burn Book?

18 A. Yes, I do.

19 Q. Okay. And they wrote the plans for the next day,
20 right?

21 A. Yes.

22 Q. Okay. And of those plans, one of them was that it
23 was going to be to organize how things were going to go from
24 now on, right?

25 A. Yes.

1 Q. And that was because things were moving too fast for
2 some people, right?

3 A. Yes.

4 Q. Anna had just gotten angry and left?

5 A. Yes.

6 Q. And Mr. McDavid and looks like Lauren were going to
7 try to mediate this and figure out a way to try to resolve
8 this, right?

9 A. Yes.

10 Q. So they put in the Burn Book that the night before
11 they would make plans, right?

12 A. That's correct.

13 Q. And it's fair to say that there were no real plans
14 done at the end of that night, though, the 12th, right?

15 A. No.

16 Q. No real plans for the next day, right?

17 A. No.

18 Q. So if what they wrote down was, "every night we'll
19 prepare for the next day," it's fair to say that would go into
20 effect the following night, the night of the 13th, right?

21 A. It went into effect that night.

22 Q. You didn't have any plans that night, right, at the
23 end of that night?

24 A. We discussed it later on.

25 Q. That night?

1 A. Yes.

2 Q. And Mr. McDavid discussed that with Ms. Weiner and
3 you and Anna?

4 A. Yes.

5 Q. Okay. While he was high on marijuana?

6 A. Yes.

7 Q. Okay. While Ms. Weiner was high on marijuana, right?

8 A. Yes.

9 Q. Okay. And it also said that after breakfast there
10 would be -- it said in there in the Burn Book that after
11 breakfast there would be a 30-minute break or something where
12 everyone could relax and be by themselves?

13 A. If I remember correctly, it was 30 minutes of alone
14 time before breakfast.

15 MR. REICHEL: Your Honor, may I have permission to
16 approach the witness?

17 THE COURT: Yes.

18 Q. BY MR. REICHEL: I'm going to show you what's been
19 marked as Government's Exhibit 1. I'm going to ask you to look
20 at the page that I presented, that's open for you.

21 A. Okay.

22 Q. Do you see where it says, "ideas the night before"?

23 A. Yes.

24 Q. It says "alone time"?

25 A. Yes, it does.

1 Q. "Meet for breakfast"?

2 A. Yes.

3 MR. REICHEL: Permission to approach, Your Honor?

4 THE COURT: Yes.

5 Q. BY MR. REICHEL: Did the 30-minute morning alone
6 time, the next morning on the 13th, did that happen?

7 A. Sort of. It happened a little bit. I saw Eric
8 outside by himself, and I went out to join him for a cigarette.

9 Q. Okay. My point is, let me ask you, had you seen this
10 -- by the end of the night on the 12th, had you seen those
11 entries for the next day's agenda?

12 A. I don't remember if I had seen it or not.

13 Q. Maybe it was just Mr. McDavid and Lauren writing
14 things down?

15 A. It was written down during a discussion later that
16 night.

17 Q. After Anna got back?

18 A. Yeah.

19 Q. And that's while Mr. McDavid was high?

20 A. I believe so, yes.

21 Q. And Anna -- that discussion which resulted in -- for
22 the next day, before Anna left, had she said, we need to write
23 something down for what we're going to do tomorrow?

24 A. No.

25 Q. When she came back, though, and Mr. McDavid was high,

1 she then talked about we need to write down what we're going to
2 do tomorrow, right?

3 A. I don't remember if she said that or not.

4 Q. But you were present, right?

5 A. Yes, I was.

6 Q. And what about Lauren Weiner and how she felt about
7 Anna, I would like to ask you about that, okay?

8 A. Okay.

9 Q. She really liked Anna, right?

10 A. Yes, she did.

11 Q. She thought a lot of her, right?

12 A. Yes.

13 Q. She socialized with her like she was her sister,
14 right?

15 A. Yes.

16 Q. And she said that to everyone, right?

17 A. Yes.

18 Q. And she really looked up to Anna?

19 A. Yes, that's correct.

20 Q. And she thought the world of her?

21 A. Yes.

22 Q. She said those things?

23 A. I don't know if she said that she thought the world
24 of her, but she considered her a pretty good friend.

25 Q. Right. And on 13th you -- the group got in the car

1 -- got in Anna's car and drove to get supplies, right?

2 A. Yes.

3 Q. And do you recall Anna giving Eric McDavid the money
4 for that, for those supplies?

5 A. Yes, I do remember that.

6 Q. \$100 bill?

7 A. Yes.

8 Q. And let me ask you back on the meeting on the 12th in
9 the afternoon, around 5:00, where Anna gets up and leaves and
10 storms out, okay?

11 A. Okay.

12 Q. Your goal during that meeting was to tell everyone
13 that you thought the group was going too fast, right?

14 A. Yes.

15 Q. And you picked up that Lauren Weiner was also saying
16 that it was either going too fast, or she just wasn't
17 comfortable with how things were, right?

18 A. Yes.

19 Q. Okay. And Eric McDavid was also discussing with the
20 group a variety of options, as well, right?

21 A. Yes.

22 Q. Is it fair to say that when Anna was questioning him
23 about what exactly he wanted to do, he was with the both of
24 you, and by the both of you, I mean Lauren and Zach, with we
25 don't really know what we want to do right now?

1 A. The idea was to slow down, and he was on board with
2 us about that.

3 Q. Right. Well, let me ask you about flash and the
4 concept of firefly, okay?

5 A. Okay.

6 Q. And the term "flash," are you familiar with that as
7 far as planning these direct actions?

8 A. Yes, I am.

9 Q. Okay. And flash is -- let's call it a strategy for
10 direct actions, how's that?

11 A. Yes.

12 Q. And flash would be something that you would find to
13 be an effective strategy, right?

14 A. Yes.

15 Q. Because you're going to avoid deception -- or
16 detection? Excuse me.

17 A. Yes.

18 Q. Okay. And still make a statement, right?

19 A. Yes.

20 Q. And flash could be -- it would separate different
21 actions by time?

22 A. Yes.

23 Q. Place?

24 A. Yes.

25 Q. Geographic places?

1 A. Yes.

2 Q. And methods and styles of doing -- methods and styles
3 of the direct action, right?

4 A. Yes, that's correct.

5 Q. So flash could involve, you know, vandalizing a
6 billboard for a company you weren't happy with, right?

7 A. Yes.

8 Q. And doing it in red paint or something?

9 A. Yes.

10 Q. And then so you don't get caught doing something
11 else, damaging some other properties somewhere far away with a
12 different method, like, you know, either setting it on fire,
13 or, you know, throwing mud on it or something like that, right?

14 A. Yes.

15 Q. And that would be flash, right?

16 A. Basically, yes.

17 Q. And then firefly is real similar to that, "firefly,"
18 right?

19 A. Yes.

20 Q. It is, right?

21 A. Yes.

22 Q. And it's, you know, the firefly comes up here in one
23 area, then a firefly comes up in another area, right?

24 A. Yes.

25 Q. And it's hard to detect that way, right?

1 A. Yes.

2 Q. And that's, you know, how -- I mean, you agreed with
3 that on the 12th, the afternoon of the 12th at 5:00 in that
4 living room, did you agree that that would be the best thing
5 for this group?

6 MS. ENDRIZZI: Objection, Your Honor. Vague.

7 THE COURT: Sustained.

8 Q. BY MR. REICHEL: On the afternoon of the 12th, the
9 conversation in the living room, okay?

10 A. Okay.

11 Q. Where you said things are going too fast?

12 A. Okay.

13 Q. Did you think that firefly or flash, that strategy of
14 direct action, was the best way to go for this group at that
15 time?

16 A. At that time, yes.

17 Q. And that's because that would be the most minimal
18 amount of direct action, right?

19 A. I considered it the most safe and effective method of
20 direct action.

21 Q. But that would involve targets at locations not
22 nearby, right?

23 A. Yes.

24 Q. And with different, you know, styles, right?

25 A. Yes.

1 Q. And it's fair to say that Lauren Weiner was doing
2 that, was talking about that that afternoon also?

3 A. Yes.

4 Q. Okay. And it's fair to say that Eric McDavid was in
5 complete agreement with that, right?

6 A. Yes.

7 Q. Okay. Now, is it fair to say also that in anarchy
8 groups there is no leader, right?

9 A. There's usually not, no.

10 Q. There is no leadership position held by, you know,
11 any one real person, right?

12 A. Yes.

13 Q. Okay. And in January, January of 2006, at Dutch
14 Flats, okay?

15 A. Okay.

16 Q. If you hadn't gone down to that cabin, what was your
17 plan from January 2006?

18 MS. ENDRIZZI: Objection, Your Honor. Speculation.

19 THE COURT: Overruled.

20 THE WITNESS: My plan probably would have been to
21 hang out in San Francisco.

22 Q. BY MR. REICHEL: Is it fair to say you didn't have a
23 plan?

24 A. At that time?

25 Q. Yeah, let's say, Dutch Flats didn't work out, the

1 cabin wasn't rented or something, what would you be -- I
2 mean --

3 A. The plan at that time was to be in Dutch Flat.

4 Q. I understand. But if it hadn't have occurred, would
5 you have had any reason to be in Dutch Flats?

6 A. No.

7 Q. Okay. You would have continued to live your
8 existence that was going on at that time, right?

9 A. Yes.

10 Q. I mean, that's my point?

11 A. Okay.

12 Q. And you were relatively homeless at that point,
13 right?

14 A. Yes.

15 Q. You were living in collectives of free housing?

16 A. Yes.

17 Q. And you were pretty much penniless, right?

18 A. Yes.

19 Q. And what you knew of Eric McDavid is kind of the same
20 answer, right?

21 A. Yes.

22 Q. January 2006, if he wasn't in Dutch Flats there, your
23 knowledge and the knowledge was good that he was homeless and
24 penniless as well, right?

25 A. Yes.

1 Q. Okay. I'm sorry, Your Honor. Just one moment.

2 Let me ask you, the moniker, Sal Vasques, the e-mail
3 name that Mr. McDavid used.

4 A. Okay.

5 Q. Was it Anna who told him to use that name?

6 A. No, she didn't.

7 Q. Were you there, or did he tell you that he came up
8 with that on his own?

9 A. The name?

10 Q. Yeah.

11 A. Yeah.

12 Q. I'm sorry?

13 A. Yes.

14 Q. Okay. There was no conversation over an e-mail
15 telling him he needed to change his name to Sal Vasques on --

16 MS. ENDRIZZI: Objection, Your Honor. Asked and
17 answered.

18 THE COURT: Sustained.

19 Q. BY MR. REICHEL: What about the Swashbuckler account,
20 was that something that -- Swashbuckler e-mail account that he
21 had, was that what Anna told him to get?

22 A. No, it was not.

23 Q. Okay. Well, anything Irish, though, she told him to
24 get, right?

25 A. Yes.

1 Q. Now, let me ask you just briefly about any excessive
2 drug usage in, let's say, '04/'05, other than marijuana, okay?

3 A. Okay.

4 Q. LSD?

5 A. I've never used it.

6 Q. You've never used LSD?

7 A. No.

8 MS. ENDRIZZI: Objection, Your Honor. Foundation and
9 relevance.

10 THE COURT: Sustained.

11 Q. BY MR. REICHEL: How about the drug Ecstasy?

12 MS. ENDRIZZI: Objection, Your Honor. Foundation and
13 relevance.

14 THE COURT: Foundation.

15 Q. BY MR. REICHEL: Do you understand what the drug
16 Ecstasy is?

17 MS. ENDRIZZI: Objection, Your Honor. Foundation.

18 THE COURT: 403.

19 MR. REICHEL: His ability to recall, Your Honor, and
20 his ability to perceive things and to recall them today if
21 there's extensive Ecstasy usage.

22 MS. ENDRIZZI: Your Honor, we've gone through this.

23 THE COURT: Sustained. 403.

24 MR. REICHEL: Thank you, Your Honor.

25 Q. BY MR. REICHEL: Is there anything that you testified

1 to here to today that would impede your ability to recall the
2 events of 2004, 2005 and 2006?

3 A. While I was traveling, I didn't use drugs as much as
4 I did while in Seattle. It was mostly marijuana use.

5 Q. When you traveled?

6 A. Yeah.

7 Q. But in Seattle it was different?

8 A. Yes, it was.

9 Q. Is that your home area?

10 A. Yes.

11 Q. And your writings, your zines, so to speak, okay?

12 A. Okay.

13 Q. You're familiar with what I'm talking about?

14 A. Yes.

15 Q. It's kind of like a blog that you would write?

16 A. Yes.

17 Q. Your thoughts, writing them on the computer?

18 A. Yes.

19 Q. And it's posted or e-mailed?

20 A. Yes.

21 MS. ENDRIZZI: Objection, Your Honor. Relevance.

22 THE COURT: Overruled.

23 Q. BY MR. REICHEL: Would you write those during this
24 relevant time period, 2004 to 2006, while you were under the
25 influence of drugs?

1 A. Sometimes, yes.

2 Q. Drugs other than marijuana?

3 A. Not other than other drugs. It was usually just
4 marijuana.

5 Q. Okay. But there were times when it wasn't just
6 marijuana?

7 A. Yeah, but I wasn't writing under the influence of
8 those.

9 Q. As far as your plea agreement goes with the United
10 States, your understanding is that you pled guilty to a
11 lesser-included offense, right?

12 A. Yes.

13 Q. Okay. And it was a lesser charge that carried a
14 five-year maximum, right?

15 A. Yes.

16 MS. ENDRIZZI: Objection, Your Honor. We're going
17 through again.

18 THE COURT: We've been through this earlier today,
19 Mr. Reichel.

20 MR. REICHEL: Just a different question then.

21 Q. BY MR. REICHEL: And that was a general conspiracy
22 statute, right?

23 A. Yes.

24 Q. Just guilty to conspiring to violate federal laws,
25 right?

1 A. Yes.

2 Q. And the maximum amount is five years, right?

3 A. Yes.

4 Q. And the minimum is no time, right?

5 MS. ENDRIZZI: Objection, Your Honor.

6 THE COURT: Sustained. Asked and answered
7 previously. 403.

8 MR. REICHEL: I have nothing further, I believe, at
9 this point, Your Honor. One moment, Your Honor.

10 Q. BY MR. REICHEL: Let me ask you about the e-mail,
11 Government's Exhibit 45. Do you have that in front of you?

12 A. Yes, I do.

13 Q. And when you wrote it to Mr. McDavid, when you put --
14 the stuff you put in there, was that the truth?

15 A. Yes, it was.

16 Q. That's how you felt?

17 A. Yes.

18 Q. There is no reason to lie in that e-mail to
19 Mr. McDavid?

20 A. No.

21 Q. Let me ask you about the Nimbus Dam. You drove out
22 to the Nimbus Dam and took a look at that?

23 A. Yes, we did.

24 Q. Do you recall that?

25 A. Yes, I do.

1 Q. Okay. Now, there was discussion among the group
2 about that dam being a target of the group's direct action,
3 right?

4 A. There was discussion about it, yes.

5 Q. Okay. And let me just ask you: Do you understand
6 that dams can be a target for direct action by environmental
7 activists or anarchists?

8 A. Yes, I do.

9 Q. And, in fact, when we talk about dams, we talk about
10 many different types of dams, right?

11 A. Yes.

12 Q. I mean, there's dams like the Nimbus Dam, right?

13 A. Yes.

14 Q. And then there's also dams that would be along the
15 coast somewhere, right?

16 A. Yes.

17 Q. Close to the coast, right?

18 A. Yes.

19 Q. That would prevent the Salmon from coming into the
20 rivers and so forth?

21 A. Yes.

22 Q. Do you recall discussions with Mr. David -- Mr.
23 McDavid about targets of direct action being those types of
24 dams near the ocean?

25 A. There was some discussion about it.

1 Q. Do you recall that?

2 A. Yes, I do.

3 Q. Do you recall Mr. McDavid stating that the Nimbus Dam
4 was nowhere near like that, correct?

5 A. I don't remember that.

6 Q. Do you recall discussions by the group that the
7 Nimbus Dam shouldn't be a target?

8 A. We did talk about that, yes.

9 Q. Everyone agreed, right?

10 A. Yes.

11 Q. Let me ask you about cell phone towers, okay, right?

12 A. Okay.

13 Q. You know what a cell phone tower is, right?

14 A. Yes, I do.

15 Q. An understanding of what one is, right?

16 A. Yes.

17 Q. Now, did the group have any specific cell phone tower
18 identified as a target?

19 A. There was no specific cell phone tower identified as
20 a target.

21 Q. Was it Lauren Weiner that talked about cell phone
22 towers a bit?

23 A. She did talk about them a little bit, yes.

24 Q. Is it fair to say that on the 13th, prior to your
25 arrest, okay -- you got arrested, I think, in the morning,

1 around there?

2 A. Yes.

3 Q. Prior to the arrest, if the group said to you, "Zach,
4 go to the cell phone tower that we're going to target," you'd
5 have no idea what cell phone tower they were talking about,
6 right?

7 A. That's true.

8 Q. Because there was no one or group of cell phone
9 towers identified by the group, right?

10 A. Yes.

11 Q. As a direct action target, right?

12 A. Yes.

13 Q. So it could have been a cell phone tower in New
14 Hampshire, right?

15 A. It could have been.

16 Q. All right. In fact -- but the group hadn't all
17 agreed yet on any one fixed target as of the 13th, right?

18 A. That's correct.

19 Q. So cell phone towers may not have actually even been
20 on the table anymore, correct?

21 A. It was still considered a possibility.

22 Q. And that was Lauren that desired that, right?

23 A. It was Eric and Lauren who talked about that.

24 Q. Had they fixed on it and said that's definitely a
25 target, we're going to do that?

1 A. No, they hadn't.

2 Q. Still in the discussion stage, so to speak?

3 A. Yes.

4 Q. Now, your familiarity with people at some of these
5 convergences that you attended, I want to ask you about that,
6 okay?

7 A. Okay.

8 Q. At those convergences, people will say things about
9 direct action, right?

10 A. Yes.

11 Q. They will say a good thing to do would be this type
12 of direct action, right?

13 A. Yes.

14 Q. And others would say a another good thing to do with
15 be this action, right?

16 A. Yes.

17 Q. And remember you in fact said something about --
18 someone said state buildings, and you said, no, I think a
19 direct action target would be "a"?

20 A. Federal building.

21 Q. Thank you. And that was back in, let's say, August
22 of '05 or so?

23 A. July.

24 Q. So it's fair to say that people get together in these
25 things and kind of just talk generally about the targets for

1 direct action?

2 A. Yes.

3 Q. And they list all sorts of things, right?

4 A. Yes.

5 Q. Banks, right?

6 A. Yes.

7 Q. The World Bank in New York, right?

8 A. Yes.

9 Q. I mean, targets in South America, right?

10 A. Yes.

11 Q. Brazil?

12 A. Yes.

13 Q. Okay. And that kind of discussion was going on in
14 the afternoon of the 12th, evening of the 12th, right?

15 A. Yes.

16 MR. REICHEL: Okay. I have nothing further, Your
17 Honor.

18 THE COURT: Thank you.

19 MS. ENDRIZZI: We'll have a substantial redirect,
20 Your Honor.

21 THE COURT: Take our recess at this time, ladies and
22 gentlemen. Return at 1:30 p.m.

23 Please remember your admonitions regarding discussing
24 the case and forming opinions. Thank you. Court's in recess
25 for the noon hour.

1 (Jury out.)

2 (Lunch break taken.)

3 (Jury in.)

4 THE COURT: Ready to proceed?

5 MS. ENDRIZZI: Yes, Your Honor.

6 THE COURT: Thank you.

7 REDIRECT EXAMINATION

8 BY MS. ENDRIZZI:

9 Q. For redirect we're going to go back in chronological
10 order rather than jumping around.

11 A. Okay.

12 Q. With regard to your plea agreement, in order to be
13 able to plead to that general conspiracy charge, the 371, what
14 did you have to do?

15 A. I had to have a debriefing session, initially, to
16 make sure that I was telling the truth. And I pled guilty, and
17 after that I was required to cooperate with the Government.

18 Q. And does this cooperation involve testifying?

19 A. Yes, it does.

20 Q. Have you also had to speak with agents about persons
21 unconnected to these charges?

22 A. Yes, I have.

23 Q. What happens if you were to lie on the stand here
24 today?

25 A. If I were to lie on the stand here today, the

1 original charges would be reinstated, and I could be charged
2 with either obstruction of justice or perjury, and I could also
3 be charged with -- or I could also be charged according to any
4 information I provided.

5 Q. Would the Government have to follow through on any of
6 its recommendations?

7 A. No.

8 Q. Now, according to the plea agreement -- you reviewed
9 the plea agreement, correct?

10 A. Yes.

11 Q. All right. Can the Government recommend the full
12 five years?

13 A. Yes, they can.

14 Q. Has all your testimony today been truthful?

15 A. Yes.

16 Q. Has any past drug use affected your ability to recall
17 the events as you testified to them today?

18 A. No.

19 Q. Let's talk about the romantic relationships. You
20 testified earlier about sleeping arrangements in Iowa in 2004
21 up in an attic.

22 A. Okay.

23 Q. How many people were sleeping up there in that attic?

24 A. Four or five.

25 Q. Okay. And you were there?

1 A. Yes, I was.

2 Q. McDavid was there?

3 A. Yes.

4 Q. Anna was there?

5 A. Yes.

6 Q. Did McDavid have a physical relationship with any one
7 or multiple people during the Summer of 2005?

8 A. Yes. He was having a physical relationship with Anna
9 and also Jenny Esquevel.

10 Q. Jenny Esquevel?

11 A. Yes.

12 Q. Now, when you say he had a physical relationship with
13 Anna?

14 A. It was more just like cuddling, sleeping next to each
15 other.

16 Q. They didn't have sex?

17 A. Not to my knowledge, no.

18 Q. They didn't make out in front of you?

19 A. No.

20 Q. Did you ever see them make out?

21 A. No.

22 Q. What about Sarah Stryer (phonetic), are you familiar
23 with her?

24 A. Yes, I am.

25 Q. Did McDavid have a physical relationship with her

1 during the Summer of 2005?

2 A. Yes.

3 Q. Did Anna, in your opinion, encourage a romantic
4 relationship with McDavid?

5 A. No.

6 Q. Did you have a discussion with Eric McDavid late 2005
7 where you were concerned that he was forcing himself on her?

8 A. I did. Lauren talked to me about that, said she had
9 heard something from Anna about him forcing himself on to Anna.
10 So I talked to him, and he said he never did that. He just
11 asked her a question about where the relationship was going.

12 Q. And to your understanding was the relationship going
13 anywhere?

14 A. No, it wasn't.

15 Q. Okay. Now, let's talk a little bit about your
16 testimony about the homelessness and impoverishness?

17 Q. When you were traveling with Eric McDavid, how did
18 you eat?

19 A. Usually ate out of dumpsters, shoplifted the food, or
20 panhandled for a little bit of money.

21 Q. So if you got money, you'd buy food?

22 A. It was rare.

23 Q. Did you beg for food?

24 A. We didn't beg for food. Sometimes people gave us
25 food just because they were kind hearted. No, we didn't.

1 Q. Okay. So stealing, people giving you food, out of
2 the dumpsters. Take a look at the defendant now. Back when
3 you were dumpster-diving and stealing and getting food for
4 free, was he the same size as he is now?

5 A. No, he wasn't.

6 Q. Could you describe the difference?

7 A. He looks like he has lost about 20 pounds.

8 Q. So he was bigger when he was dumpster-diving?

9 A. Yeah.

10 Q. Okay. If you needed something from a store, an item,
11 anything, how would you get it?

12 A. Usually by shoplifting it.

13 Q. During the period that you were traveling with Eric
14 McDavid, did Eric's parents kick him out of their house?

15 A. No, they didn't.

16 Q. During the period that you were traveling with Eric,
17 what was your understanding about whether McDavid could go home
18 to his parents' house if he needed a place to stay?

19 MR. REICHEL: Objection, Your Honor. Foundation.
20 Mr. McDavid's relationship with his parents.

21 THE COURT: Overruled.

22 THE WITNESS: I understood that he could go home any
23 time he wanted to.

24 Q. BY MS. ENDRIZZI: When the group met in Foresthill
25 during the weekend of November 2005, was McDavid housesitting

1 for his parents?

2 A. No. He was living there at the time.

3 Q. Okay. During that same meeting in November 2005, did
4 Eric McDavid make a statement about his bringing ideas to the
5 table?

6 A. He did.

7 Q. What was that?

8 A. He claimed that he was the idea man in the discussion
9 we had about what we would bring to the group.

10 Q. Now, did there come a time when you wanted Sarah
11 Stryer to join the group for direct action?

12 A. There was. In October 2005.

13 Q. And what happened with that?

14 A. She had to go back home for family reasons.

15 Q. Did the group want her to join?

16 A. No.

17 Q. Why not?

18 A. They felt it might be a security risk.

19 Q. During the period of July 2004 through January 2006,
20 did you have conversations with Eric McDavid about using
21 Molotov Cocktails?

22 A. Yes.

23 Q. Did Eric discuss himself using a Molotov Cocktail?

24 A. He at one point expressed a desire to.

25 Q. During the trip out west after Pointless Fest, you

1 said that McDavid brought up the idea of putting little
2 explosives or sugar into gas station reservoirs or gas station
3 tanker trucks. At that time, did McDavid seem capable of doing
4 that sort of direct action? And when I say "capable," I mean
5 could he have poured the sugar down the tube?

6 A. He could have, but he didn't have the means to.

7 Q. Okay. And in the sense -- What do you mean by that?

8 A. He didn't have the tools to. He didn't have the
9 supplies to.

10 Q. Did he seem to want to?

11 MR. REICHEL: Objection, Your Honor. Speculation.

12 THE COURT: Overruled. Can you answer the question?

13 THE WITNESS: Yes, he did. He didn't seem hesitant
14 about it.

15 Q. BY MS. ENDRIZZI: Did the group buy a gasoline can
16 when you were up in Dutch Flat?

17 A. Yes, we did.

18 Q. What was the gas can for?

19 A. It was to be filled with diesel fuel if we were ever
20 to need it.

21 Q. And what were you going to use the diesel fuel for?

22 A. In some sort of explosive device.

23 Q. Had you discussed using an explosive device with
24 diesel fuel?

25 A. There was some discussion about it, yes.

1 Q. On January 13th, when the group went to Kmart that
2 morning to buy more supplies, was Eric McDavid high on
3 marijuana?

4 A. No, he wasn't.

5 Q. To the outward appearance and what you observed, did
6 Eric appear willing to go to Kmart?

7 A. Yes, he did.

8 Q. If Anna had not had any money that day at Kmart,
9 would you still have been able to get those supplies?

10 A. It would have been harder, but yes.

11 Q. Now, I'd like to play for you, again, an excerpt from
12 Government's Exhibit H. Do you have Exhibit H in front of you?

13 A. Yes.

14 Q. Same disclaimer applies about the asterisks and such.

15 (Audio playing 1:51 p.m. to 1:54 p.m.)

16 Q. BY MS. ENDRIZZI: Is that an accurate description of
17 that conversation?

18 A. Yes, it is.

19 Q. During that conversation, who was giving the answers
20 to the group?

21 A. That was mostly Eric.

22 Q. Now, you reviewed the evidence in this case when you
23 were first indicted, correct?

24 A. Yes.

25 Q. You reviewed the facts?

1 A. Yes.

2 Q. Did you review the recordings?

3 A. Yes, I did.

4 Q. Did you talk to your attorney?

5 A. Yes.

6 Q. How did you feel when you reviewed the evidence in
7 this case?

8 A. Pretty much scared me.

9 Q. Why is that?

10 A. Because there's a lot against us.

11 Q. And did you assess the facts and the evidence before
12 you pled guilty?

13 A. Yes, I did.

14 Q. And did that play a role in your pleading guilty?

15 MR. REICHEL: Objection, Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, it did.

18 Q. BY MS. ENDRIZZI: Were you guilty?

19 A. Yes.

20 MR. REICHEL: Objection, Your Honor.

21 THE COURT: Overruled.

22 MS. ENDRIZZI: That's all, Your Honor.

23 THE COURT: Thank you. Recross.

24 RE-CROSS-EXAMINATION

25 BY MR. REICHEL:

1 Q. Mr. Jenson, the recording that was just played for us
2 and the transcript was 30-H?

3 A. Yes.

4 Q. Okay. That was just played now?

5 A. Yes.

6 Q. Okay. That wasn't -- when that excerpt ended, that
7 wasn't the end of that conversation, right?

8 A. No, it wasn't.

9 Q. The conversation went on for quite awhile, right?

10 A. Yes, it did.

11 Q. And in that conversation there is a lot of other
12 people that eventually start talking quite a bit, right? After
13 that transcript ended that you just saw. Not the one you just
14 saw. After that.

15 MS. ENDRIZZI: Objection, Your Honor. Vague as to
16 time.

17 THE COURT: Sustained.

18 Q. BY MR. REICHEL: Okay. The excerpt you just heard is
19 referenced in a transcript that's in front of you, right?

20 A. Yes.

21 Q. Okay. And that's from a conversation that actually
22 happened, right?

23 A. Yes.

24 Q. That conversation continued on for quite some time,
25 right?

1 A. Yes, it did.

2 Q. And -- but we didn't just play the rest of that
3 conversation, right?

4 A. No, we didn't.

5 Q. Okay. Now, in that conversation that continued on
6 for a while, the others at the house there participated in that
7 conversation, right?

8 MS. ENDRIZZI: Your Honor, objection. If he wants to
9 go through those conversations, he can play the tape.

10 THE COURT: Overruled.

11 Q. BY MR. REICHEL: So the conversation continued,
12 right?

13 A. Yes, it did.

14 Q. Okay. Now, others continue to participate in that
15 conversation, right?

16 A. Yes.

17 Q. Okay. And, in fact, at some point that's when Anna
18 leaves, right?

19 A. Yes.

20 Q. And she had a big argument with Lauren Weiner just
21 prior to her leaving, right?

22 A. It was more like an argument with all of us.

23 Q. Okay. And when you say an argument with all of us,
24 my point would be that you, Eric and Lauren are talking with
25 Anna about the same subject matter, right?

1 A. Yes.

2 Q. Okay. And all four are putting in their thoughts and
3 are participating, right?

4 A. Yes.

5 Q. And we just heard an excerpt, but the conversation
6 that continued wasn't just Mr. McDavid answering questions for
7 people, right?

8 A. That's correct.

9 Q. In fact, at many points Mr. McDavid sits silent,
10 right?

11 MS. ENDRIZZI: Objection, Your Honor. Foundation.

12 THE COURT: Overruled.

13 Q. BY MR. REICHEL: During that conversation?

14 A. There are some points, yes.

15 Q. Where he says something, like, "uh-huh" or just sits
16 quietly, right?

17 MS. ENDRIZZI: Objection, Your Honor. He's stating
18 facts that are not in evidence.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, that's true.

21 Q. BY MR. REICHEL: It's true, right?

22 A. Yes.

23 Q. And that's because you were at that conversation?

24 A. Yes.

25 Q. Okay. And you've seen the tapes of that

1 conversation, right?

2 A. Yes.

3 Q. And you've seen the transcript of that conversation,
4 right?

5 A. Yes.

6 Q. So what you just got was a snippet from that
7 conversation, right?

8 A. That's correct.

9 Q. Okay. So if the question is asked that -- at a later
10 point in that conversation Lauren Weiner starts giving her
11 views on what should take place, right?

12 A. Yes.

13 Q. And is it fair to say that Mr. McDavid was supportive
14 of Ms. Weiner at that point as well, right?

15 A. Yes.

16 Q. Okay. And there are times where you spoke out about
17 your views after this excerpt, right?

18 A. Yes.

19 Q. And Mr. McDavid sat silently many times throughout
20 those conversations, right?

21 A. Yes. He sat silently to consider our thoughts.

22 Q. Right. And you found him to be supportive of your
23 thoughts, right?

24 A. Yes.

25 Q. And he was supportive of Ms. Weiner's thoughts,

1 right?

2 A. Yes.

3 Q. And then Anna left, and it's fair to say because
4 there was a disagreement by all three with Anna, right?

5 A. Yes.

6 Q. Okay. I'm sorry, Your Honor. One moment.

7 Just a moment ago Ms. Endrizzi asked you if any of
8 your drug usage had affected your memory, ability to recall,
9 correct?

10 A. Yes.

11 MS. ENDRIZZI: Objection, Your Honor. Misstates my
12 question.

13 MR. REICHEL: I'll withdraw the question.

14 THE COURT: Thank you.

15 Q. BY MR. REICHEL: On the subject of the drug usage,
16 which you just testified on a moment ago, in the e-mail that
17 you sent Mr. McDavid in October of 2005 --

18 MS. ENDRIZZI: Objection, Your Honor. Beyond the
19 scope.

20 THE COURT: Sustained.

21 MR. REICHEL: That's fine, Your Honor. Let me just
22 make sure. I may have one more question.

23 We have nothing further, Your Honor. Thank you very
24 much.

25 THE COURT: Thank you.

1 MS. ENDRIZZI: One question, Your Honor.

2 FURTHER REDIRECT EXAMINATION

3 BY MS. ENDRIZZI:

4 Q. You and Mr. Reichel were just discussing about how
5 Mr. McDavid was supportive of you and of Lauren Weiner,
6 etcetera, etcetera, correct?

7 A. Yes.

8 MR. REICHEL: Objection, Your Honor. Leading
9 question.

10 THE COURT: Overruled.

11 Q. BY MS. ENDRIZZI: Was the agreement to commit
12 destruction of property by fire or explosives still in place at
13 that time?

14 MR. REICHEL: Objection, Your Honor. Leading
15 question.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, it was.

18 MS. ENDRIZZI: Thank you.

19 THE COURT: Recross?

20 FURTHER RECROSS-EXAMINATION

21 BY MR. REICHEL:

22 Q. Fair to say it was still alive in your mind, correct?

23 A. Yes.

24 Q. Okay. You have no idea whatsoever what was in
25 Mr. McDavid's mind, correct?

1 A. That's correct.

2 MR. REICHEL: Thank you.

3 THE COURT: Anything else?

4 MS. ENDRIZZI: Briefly, Your Honor.

5 FURTHER REDIRECT EXAMINATION

6 BY MS. ENDRIZZI:

7 Q. When we were listening to excerpt 30-H, did
8 Mr. McDavid express opinions about going forward?

9 A. It seemed like it, yes.

10 MS. ENDRIZZI: Thank you. Nothing further.

11 FURTHER RECROSS-EXAMINATION

12 BY MR. REICHEL:

13 Q. Your Honor, just briefly. This was the time period
14 that you were reluctant but were acting differently, correct?

15 A. Yes.

16 Q. Okay. And you have no reason to know whether
17 Mr. McDavid was reluctant and was just acting, correct?

18 A. That's correct.

19 Q. You have no -- no reason to know, right?

20 A. That's correct.

21 MR. REICHEL: Thank you.

22 MS. ENDRIZZI: Nothing further, Your Honor.

23 THE COURT: Thank you. You may step down. And
24 pursuant to the previous stipulation, this witness is excused.

25 MS. ENDRIZZI: Thank you, Your Honor.

1 MR. REICHEL: He may be subject to recall. Your
2 Honor, I would ask he be subject to recall for the defense
3 case-in-chief.

4 THE COURT: All right. You are not excused at this
5 time. You may be subject to recall, so can we find out and get
6 a time, Mr. Reichel?

7 MR. REICHEL: I think tomorrow, Your Honor.

8 THE COURT: Well, I will leave that to after we have
9 a break to try to determine the time period, so that we can
10 make this as expeditious as possible.

11 MS. ENDRIZZI: Thank you, Your Honor. The United
12 States would call Randy Meyer.

13 (The witness was sworn by the Clerk.)

14 THE WITNESS: I do. No Bible?

15 THE CLERK: Please state your full name and spell
16 your last name for the record.

17 THE WITNESS: Randy Thomas Meyer, M-e-y-e-r.

18 RANDY THOMAS MEYER,
19 a witness called by the Government, having been first duly
20 sworn by the Clerk to tell the truth, the whole truth, and
21 nothing but the truth, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. ENDRIZZI:

24 Q. Mr. Meyer, by whom are you employed?

25 A. Department of Agriculture, U.S. Forest Service.

1 Q. And where are you stationed?

2 A. My home office is in Albany, California. I work in
3 Placerville, Institute of the Forest Genetics.

4 Q. And what's your position there?

5 A. I'm a biological technician in the lab.

6 Q. And how long have you been a biological technician?

7 A. There or total?

8 Q. Total?

9 A. Sixteen years.

10 Q. Okay. And what are some of your responsibilities
11 while you are at the Institute of Forest Genetics?

12 A. Safety, receiving plant material, purchasing
13 inventory and supplies, processing plant material to do genetic
14 determinations on it.

15 Q. Okay. What's the mission of the Institute of Forest
16 Genetics?

17 A. It's a repository for genoplasm or plant material.
18 We have plantations all over the western part of the United
19 States, predominantly in California where they store, through
20 living specimens, genetics for future use.

21 Q. And among those who study forestry, is the IFG
22 world-renowned?

23 A. Pretty much so for the genetics component of it.

24 Q. At the IFG do you interact with college students?

25 A. Yeah, on a daily basis.

1 Q. Would you describe those interactions?

2 A. As a lead technician, I show them what they need to
3 do in order to get our mission accomplished.

4 Q. Are they interested in forestry?

5 A. For the most part they are. That's why they're
6 there. They're either there as interns, summer employment, or
7 more of a long-term employment as they are working towards
8 getting their degree.

9 Q. Okay. And you have students who are pursuing
10 graduate degrees who visit the IFG?

11 A. We have everything from high school students that
12 volunteer up to post Ph.D. students.

13 Q. Are tours given at the IFG?

14 A. Yes. Almost on a daily business. At least on a
15 weekly basis.

16 Q. On the whole are those tour scheduled or impromptu?

17 A. Predominantly scheduled, but we do have walk-in or
18 impromptu tours.

19 Q. When visitors come to the IFG, do they have to
20 register somewhere?

21 A. Yes. That's part of our policy as a security
22 measure.

23 Q. And what do you have them do?

24 A. We ask them to sign in, and normally ask if they are
25 there to see anybody in particular, and then ask them to put

1 the time that they are in, and then we issue a badge as a guest
2 or visitor, depending on what the case may be, and then when
3 they are done with their visit, they sign out with a time.

4 Q. Okay. I'd like to turn your attention to
5 January 10th, 2006. Were you at work that day?

6 A. Yes.

7 Q. I'm going to show you what's been marked for
8 identification as Government's Exhibit 10.

9 Your Honor, may I approach?

10 THE COURT: You may.

11 Q. BY MS. ENDRIZZI: If you would take a look at that,
12 please. Do you recognize it?

13 A. Yes, I do.

14 Q. How do you recognize it?

15 A. It's our visitor log, our registration book that we
16 use at the front desk.

17 MS. ENDRIZZI: Your Honor, the Government would move
18 for the admission of Exhibit 10.

19 MR. REICHEL: No objection, Your Honor.

20 THE COURT: 10 is admitted.

21 (Government Exhibit 10, IFG Visitor Log, admitted
22 into evidence.)

23 Q. BY MS. ENDRIZZI: Now, I direct your attention to the
24 third entry for January 10, 2006, what does it say there?

25 A. (Reading): 1/10, Sean Douglas group, Patrick,

1 Laurie, American River Junior College, time in 3:00.

2 Q. Now, there seems to be a mark next to the Sean
3 Douglas group, a square box on the left-hand side?

4 A. Yes.

5 Q. What is that?

6 A. That's for the date.

7 Q. Okay. And our picture here is shaded gray, is it
8 colored on your book?

9 A. Pink.

10 Q. Do you know why it's shaded pink?

11 A. I shaded it pink.

12 Q. Why did you do that?

13 A. I was a little nervous with this group.

14 Q. Okay. And have you done that before?

15 A. No.

16 Q. Now, let's go back and talk about your interactions
17 with the Sean Douglas group that day. Do you recognize anyone
18 in the courtroom as belonging to the Sean Douglas group?

19 A. Yes.

20 Q. Who do you recognize?

21 A. The gentleman with the fine haircut there at the
22 defense table.

23 Q. What I need you to do is describe a piece of clothing
24 he is wearing or what color hair, if any, etcetera?

25 A. He has got my kind of haircut. He's got a striped

1 tie and a white shirt.

2 Q. And when I say your kind of haircut, is it real
3 close-cropped?

4 A. Actually, no, I don't think it's cropped at all. I
5 think it's gone.

6 THE COURT: The record will reflect that the witness
7 has identified the defendant.

8 THE WITNESS: He is baldheaded.

9 Q. BY MS. ENDRIZZI: And how do you recognize the
10 defendant?

11 A. I believe he was there on the 10th.

12 Q. Did he introduce himself to you?

13 A. Yes. After a fashion.

14 Q. And what name did he give you?

15 A. I believe it was Sean Douglas.

16 Q. All right. Now, if you would, walk us through your
17 initial contact with the group that day?

18 A. I had an occasion to walk from my end of the
19 building. We're laid out in kind of a large L in our office
20 complex. And as I was approaching the center portion of our
21 office, there was a group of what appeared to be younger people
22 wandering around the halls. I asked if they needed anything,
23 or if I could help them. And I believe at that time they told
24 me they were students, and they picked up some information on
25 the Internet and wanted to check the Institute out.

1 Q. Okay. Did you give them any directions as to taking
2 a tour?

3 A. Yeah. I gave them some brochures that we have
4 available in the front of the foyer there, and then pointed out
5 our arboretum. It's got some history. Also, we have a
6 self-guided tour, walk-thru with plaques that describe some of
7 our specimens. We have Conifer trees from all over the world.

8 And I said after they availed themselves of our
9 arboretum, they could come back and we'd go through and take a
10 look at some other stuff.

11 Q. Now, in the interim, after you send them out to look
12 at the arboretum, did there come a time when you saw the group
13 again?

14 A. Yeah. They weren't quite doing what I thought they
15 were going to do, and they ended up wandering around. I met up
16 with them again in our central parking area, showed them three
17 specimens of Redwood, described that a little bit.

18 And during the time we spent together, I was getting
19 a little uneasy. Some of the questions about classes they were
20 taking at American River and instructors and their responses
21 weren't making a whole lot of sense.

22 Q. What about their responses?

23 A. Well, I believe at that time the school was dark, in
24 other words, they weren't in session. Some of the responses
25 just seemed off. We know a few of the instructors. They bring

1 classes up periodically during the school year.

2 And some of the classes that they talked about taking
3 just weren't making sense.

4 Q. Did you speak with the entire group or primarily with
5 one individual?

6 A. Primarily with the defendant with the nice haircut.
7 The other three were fairly non-communicative. In fact, I did
8 not get the name of one female. The other two I was able to
9 extract their names and --

10 Q. What were those?

11 A. Patrick and Laurie.

12 Q. Now, the female that gave you the name Laurie, could
13 you give a brief description of her?

14 A. She's a little on the heavy side, not real tall.

15 Q. Now, take a look at Government's Exhibit 10. Did you
16 add any of those names or did --

17 A. I had to put Patrick and Laurie down just for future
18 reference, if we had a problem. I wasn't sure about the group.
19 It was awfully hard to get them to sign in, which was unusual.

20 Q. Now, I'd like you to take a look at what has already
21 been admitted as Government's Exhibit 1. May I approach?

22 THE COURT: You may.

23 Q. BY MS. ENDRIZZI: Okay. Is this an accurate map of
24 the locations of IFG buildings?

25 A. It's not to scale, but it's fairly close.

1 Q. Is this the first time you've seen this map?

2 A. The second time.

3 Q. And how did you react the first time you saw this
4 map?

5 A. It was pretty detailed. I thought that if somebody
6 wanted to do some mischief up there, they would be able to do
7 it with this map.

8 Q. Now, based on the detail in this map, did the
9 defendant go beyond the bounds of the regular tour area?

10 A. Yes, I would say so.

11 Q. How do you know that?

12 A. Normally, down at the very bottom of the map, if you
13 go over to the right of the map a little bit, and up, up, right
14 in there is our greenhouse.

15 Q. I'm going to give you the laser pointer.

16 A. I promise I won't shoot you with it.

17 Q. So we're oriented --

18 THE COURT: Excuse me. There you go. Actually,
19 would you do me a favor on that and push the button. It will
20 be a dot instead of a line. There we go.

21 THE WITNESS: Just like constant. That's the
22 greenhouse.

23 THE COURT: The one in front.

24 THE WITNESS: Greenhouse, steps behind the
25 greenhouse, have a chemical shed back here. Lab. That is not

1 quite accurate in the scale, but it's close enough.

2 Q. BY MS. ENDRIZZI: Do you see those little squares
3 where you have the lab coming together, I think there is a C in
4 the little squares?

5 A. Those are security cameras.

6 Q. And are there security cameras posted on that
7 laboratory wall there?

8 A. Yes. There is, and they are pointed towards the
9 greenhouse.

10 Q. Now, I would like you to take a look at the upper
11 right-hand corner of the map where it says "house," little
12 square?

13 A. North residence, yes.

14 Q. What is that?

15 A. We have three barracks or quarters complexes on the
16 -- in the -- at the site. And that's one of the housing that
17 are available for scientists and students.

18 Q. Back in 2006, early 2006, would those homes have been
19 occupied, that housing?

20 A. This house here was in the middle of a renovation.
21 We had a bathroom that was being taken out, but the rooms were
22 available. We had a long-term scientist that would have been
23 right there.

24 Q. And that's the upper right-hand corner?

25 A. Yeah. It would be the upper-right. It's not in this

1 building. Then we have a staff house that we try to keep open
2 for people to come in for short periods.

3 Q. Are there industrial-sized propane tanks on the
4 property at the IFG?

5 A. Yeah. There's -- this is the greenhouse, and there's
6 one right back in here.

7 Q. Okay.

8 A. And then there's one behind this house.

9 Q. Okay. Is there a building on the main property of
10 the IFG that houses gasoline and fuel?

11 A. We have a gas house here. We store limited amounts
12 of fuel. There's other flammable chemicals that are stored
13 there. We also have flammables and toxic chemicals down here.

14 Q. We'll talk about that in few minutes.

15 Based on this map, would the defendant have seen the
16 propane tanks and the gasoline storage facility?

17 MR. REICHEL: Objection, Your Honor. He has no
18 knowledge who made the map. Foundation, Your Honor.

19 THE COURT: Sustained.

20 Q. BY MS. ENDRIZZI: When you saw the group together for
21 the tour, were they together?

22 A. Yes. All four.

23 Q. And when you saw them the second time when they were
24 wandering?

25 A. They were still somewhat together but not such a

1 tight group.

2 Q. Okay. Could you show the jury where you saw them
3 wandering on this map?

4 A. Okay. They entered the main building right here,
5 which is the front office area, walking around the front foyer.
6 I met them there, set them up. And then this is the access
7 road that goes out to Carson Road. One of our arboretums is
8 right out here. I directed them out to the arboretum.

9 Q. And this is the left-hand side of the map you are
10 pointing to?

11 A. The left-hand side of the map.

12 Q. And then there looked like they were spread out a
13 little bit. And then I noticed them again walking in kind of a
14 dispersed group back into this main centralized parking area.
15 And that's where I made contact with them again and tried to
16 herd them. It's like herding cats, though.

17 Pointed out the three Redwood specimens we had there,
18 and then told them they could take a quick look down there but
19 don't go into any of the buildings. And then met them back out
20 here again.

21 Q. Now, based on this map, regardless of what the actual
22 drawer of the map was, would whoever have created this map have
23 seen the propane tanks and the gasoline house?

24 MR. REICHEL: Objection, Your Honor. You don't have
25 to see it to draw it --

1 THE COURT: Objection is overruled.

2 Q. BY MS. ENDRIZZI: You may answer.

3 A. Okay. They are kind of hard to miss. If you're back
4 in this area, you can see the propane tank down here. And then
5 if you get back into this area, the propane that's used for our
6 entomology office in the three houses. Neither one of them are
7 hidden. They are out in plain view.

8 Q. I would like to show you what's been marked as
9 Government's Exhibit 10-A.

10 Your Honor, may I approach?

11 THE COURT: You may.

12 Q. BY MS. ENDRIZZI: Do you recognize Government's
13 Exhibit 10-A?

14 A. Yeah. That's from our self-tour pamphlet that we use
15 for tours there at the Institute.

16 Q. Did you see the defendant or any of the group take
17 that self-tour pamphlet with them?

18 A. No. I had a hard time getting them to take any of
19 our printed material, but it was all available to them.

20 Q. But they did not take the self-tour map?

21 A. No, they did not. It was available to them, though.

22 MS. ENDRIZZI: Your Honor, the Government would move
23 for the Exhibit of 10-A -- the admission of 10-A and request to
24 publish.

25 MR. REICHEL: Your Honor, I object. I don't

1 understand where it came from. I mean, if it's a self-tour map
2 that he said they didn't take.

3 MS. ENDRIZZI: We'll connect it up rather than
4 working off the drawing from the Burn Book.

5 THE COURT: All right. That's fine.

6 MS. ENDRIZZI: Thank you, Your Honor.

7 THE COURT: For the record, the exhibit is admitted.

8 (Government Exhibit 10-A, Map of Institute of Forest
9 Genetics grounds, admitted into evidence.)

10 Q. BY MS. ENDRIZZI: Now, earlier in your testimony you
11 mentioned a chemical building. Do you see that on this map
12 here?

13 A. It's down on the lower left-hand side of the map.

14 Q. Now, just above and to the right there is a
15 greenhouse. Was that greenhouse represented on the map that is
16 in Exhibit 1?

17 A. It's not quite like it's drawn here, but there is a
18 large rectangular structure that's got a "GH" on it.

19 Q. Now, is that chemical storage building clearly marked
20 from the outside?

21 A. Yes, it is.

22 Q. And does the IFG have a response plan filed with the
23 Placer Fire Department for that building?

24 A. It would be the El Dorado County Fire Department.
25 Yes.

1 Q. And why is that?

2 MR. REICHEL: Objection, Your Honor, as for
3 relevance.

4 THE COURT: Overruled.

5 MS. ENDRIZZI: You may answer.

6 THE WITNESS: It's mandated by the State of
7 California.

8 Q. BY MS. ENDRIZZI: What is it about a chemical storage
9 shed that --

10 A. There is chemicals in there that if they start fire
11 are toxic, and your first responders need to know that before
12 they go in. There could be an occasion where they let it burn
13 and get people evacuated from the area. Or if the fire's not
14 totally involved, they can go in and try to put to out.

15 Q. But it would release toxic chemicals?

16 A. Yeah. Just about any of our buildings up there if
17 they burnt would release some kind of toxic gas or smoke.

18 MS. ENDRIZZI: Thank you, Your Honor. Nothing
19 further.

20 THE COURT: Cross.

21 CROSS-EXAMINATION

22 BY MR. REICHEL:

23 Q. Mr. Meyer, at the IFG there, had you been -- prior to
24 this group's arrival, hadn't you been advised that they were
25 coming out there?

1 A. No. We were in the process of supplementing our
2 security program. We received some money from our station, our
3 home office, and Homeland Security to beef up front gate
4 access, rear access, put in some cameras, but we weren't
5 previously informed anybody was going to show up.

6 Q. No one at the IFG had told you that there was a group
7 the FBI was watching and they may come out there?

8 A. No. That was one of my bone of contentions with our
9 law enforcement branch. I'm also an employee advocate, and I
10 was kind of tweaked that we weren't told.

11 Q. And you found out later on that they were watching
12 them?

13 A. Yeah, and they didn't let us know. I thought that
14 put my employees in jeopardy.

15 Q. Did you see what car they came out there in that day?

16 A. That was one of the indications we may have a
17 problem. They walked in, and that was the first time that's
18 ever happened.

19 Q. Did you follow them when they walked back?

20 A. Back where?

21 Q. When they left, did you follow them?

22 A. No. At that time we knew there was an issue.

23 Q. All four of them, though, seemed to be, I mean,
24 together on their mission, so to speak? They were a group,
25 right?

1 A. They were a group. I thought your client was
2 probably the leader. The two that appeared younger appeared to
3 be immature.

4 Q. Did you see the one gal with the camera?

5 A. No, I didn't notice the camera that I can recall.

6 Q. You don't recall seeing her taking pictures of the
7 area?

8 A. I don't recall that.

9 MR. REICHEL: Nothing further, Your Honor.

10 MS. ENDRIZZI: Nothing further, Your Honor.

11 THE COURT: Thank you very much. You may step down.

12 MS. ENDRIZZI: The Government would rest, except we
13 have one stipulation. If you'd like, we can read it into the
14 record or submit it to the Court.

15 THE COURT: Is this a stipulation that you are aware
16 of, Mr. Reichel?

17 MR. REICHEL: Yes, Your Honor.

18 THE COURT: We'll do it now.

19 Ladies and gentlemen, once again, a stipulation is an
20 agreement between the attorneys regarding the facts. Whenever
21 you have a stipulation that has been reached by the attorneys,
22 you are to deem whatever fact has been stipulated to as having
23 been proven here in trial, no further evidence is required to
24 make the stipulation effective.

25 MS. ENDRIZZI: (Reading): Caption reads:

1 Stipulation regarding jurisdictional element of Title 18 of the
2 United States Code, Sections 844(f) and (i).

3 It is hereby stipulated and agreed by the plaintiff
4 and defendant, by and through their undersigned counsel as
5 follows: One, that cell phone towers are structures that are
6 used in an activity affecting interstate and foreign commerce;
7 two, that the Nimbus Dam and Power Plant are owned and operated
8 by the United States Bureau of Reclamation; three, that the
9 Nimbus Fish Hatchery is operated by the State of California
10 with funds provided by the United States Bureau of Reclamation;
11 four, that the Institute of Forest Genetics, Placerville,
12 California, is owned and operated by the United States Forest
13 Service.

14 It is dated with today's date and signed by attorney
15 Mark Reichel and Attorney Steven Lapham.

16 THE COURT: Thank you. That will be filed and made a
17 part of the records, please.

18 Is there anything else before the Government rests?

19 MS. ENDRIZZI: No, Your Honor.

20 THE COURT: All right. The Government rests.

21 Ladies and gentlemen, that is all of the evidence
22 that you will hear from the Government as far as their
23 case-in-chief is concerned.

24 Mr. Reichel, do you wish to present any evidence on
25 behalf of your client at this time?

1 MR. REICHEL: I do, Your Honor. But I also have a
2 motion out of the presence of the jury to make at the close of
3 the Government's case.

4 THE COURT: All right. Ladies and gentlemen, I'm
5 going to take a motion outside of your presence. I don't
6 believe it will take much more than about five minutes or so,
7 ten minutes.

8 I would ask that you please return to the jury
9 deliberation room during this time period, and please do not
10 discuss the case or form any opinions at this time.

11 We'll have you back here in just a few moments.

12 (Jury out.)

13 THE COURT: All right. We're outside the presence of
14 the jury at this time. Mr. Reichel?

15 MR. REICHEL: Thank you, Your Honor.

16 First, I would make a motion to renew the pretrial
17 motions -- the defense pretrial motions to dismiss the charges
18 based on outrageous Government misconduct. Submit it on the
19 record based on the testimony that was developed in those
20 areas. And make a renewal of that motion at this time.

21 THE COURT: All right. The renewal of the motion is
22 noted, and the evidence that has been presented during the
23 course of the trial does not lead the Court to find any
24 differently than its first ruling, which is that there was no
25 such outrageous Government conduct that would require the

1 charges against the defendant to be dismissed. Motion denied.

2 MR. REICHEL: Thank you, Your Honor. Additionally, I
3 would renew the defense motion which was to suppress the
4 evidence, specifically the audio and the video tapes from
5 inside of the residence at Dutch Flat -- Dutch Flats,
6 California.

7 Pretrial, I had moved to suppress the evidence
8 because I believe under the Fourth Amendment and Ninth Circuit
9 case law that a video camera and an audio tape without a
10 warrant and prior judicial approval was illegal, violated the
11 Constitution and the Fourth Amendment.

12 And in light of the facts that developed at the
13 trial, which was specifically from Anna's testimony that there
14 was not a place in the house that the recorders couldn't reach,
15 that was both video and audio, including the bedrooms, was her
16 testimony, Your Honor, I would ask the Court to, at this time,
17 grant the defense motion to suppress that evidence based on the
18 case law provided in the original pretrial motion.

19 THE COURT: Do you wish to respond?

20 MR. LAPHAM: Only to say, Your Honor, I think that
21 misstates the evidence. Anna never testified that there was no
22 place in the house where the audio and video couldn't reach.
23 Just the opposite. But I know she never testified to that.

24 THE COURT: But as to the merits of the motion?

25 MR. LAPHAM: As to the merits of motion, these were

1 all consensually-recorded conversations. The source was wired
2 up for those conversations. The tapes were only operated in
3 her presence. The -- with respect to the cabin at Dutch Flat,
4 that was a cabin that was rented by the Government, and it was
5 -- no warrant was required.

6 THE COURT: Thank you. I agree with Mr. Lapham's
7 assessment. And for the reasons stated today and also
8 previously, the motion is denied. Next?

9 MR. REICHEL: Thank you, Your Honor.

10 The next motion of the defense is actually a motion
11 for a judgment of acquittal at the close of the Government's
12 case, pursuant to Federal Rules of Criminal Procedures, Rule
13 29, that the Government has not established all of the elements
14 of the crime beyond a reasonable doubt at this point. And I
15 would submit the matter on the evidence the Court has heard.

16 THE COURT: Mr. Lapham, response? Or Ms. Endrizzi?

17 MR. LAPHAM: Your Honor, I think at this point
18 there's overwhelming evidence that the defendant was the
19 initiator of this plot. He invited the other two defendants
20 into the plot. We have them on tape talking about his desires.
21 There are plenty of overt acts from the procuring of The Poor
22 Man's James Bond to the surveillance of the -- or
23 reconnaissance of the Nimbus Winery (sic) and the Institute of
24 Forest Genetics to the mixing of the chemicals. And I would
25 submit it on that.

1 THE COURT: Under Rule 29, the Court, after motion of
2 the defendant, may order entry judgment of acquittal if the
3 evidence, once it's closed, is insufficient to sustain the
4 conviction on such offense.

5 The evidence that has been presented up to this point
6 clearly shows that there has been sufficient reason to believe
7 that the defendant may have been involved or committed the
8 crimes, and that may be sufficient evidence to sustain a
9 conviction.

10 If for no other reason, I think that the defendant's
11 own statement on the tape that -- I'm paraphrasing -- but words
12 to the effect of, "even sitting here and talking about this I
13 know is against the law, and we could be arrested for even
14 doing this," would tend to show some knowledge and intent and
15 purpose of the formation of the group.

16 Listening to the evidence presented even here today
17 by the witness that he was, in fact, guilty of conspiracy as
18 far as he was concerned, he also had heard the same comments, I
19 think that there's been ample evidence presented by the
20 Government to allow the Court to deny the Rule 29 motion.

21 Accordingly, Rule 29 motion is denied.

22 All right. Bring the jury back in. Are you going to
23 present any evidence?

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

25 THE COURT: Thank you.

1 MR. LAPHAM: Your Honor, while the jury is getting
2 seated, could we have a sidebar?

3 THE COURT: Yes.

4 (Begin sidebar conference.)

5 MR. REICHEL: Specifically, Your Honor -- this is
6 Mark Reichel for the record.

7 The witness, Zach Jenson, has a plane to catch today
8 at 5:00 out of Sacramento, and we had considered recalling him
9 in the defense case-in-chief.

10 We've put on no evidence yet, and we would like the
11 opportunity to put on some defense evidence on. I know the
12 trial's gone on, however, there are a few tape recordings that
13 we would like to play for him to authenticate that's his voice.
14 These are the tapes provided by the Government in discovery.
15 There can't be any dispute. I don't have any tapes anywhere
16 else. And for Mr. Jenson -- these are for defense excerpts in
17 their case-in-chief as excerpts and exhibits to be provided and
18 admitted into evidence for the defense to the jury, and we need
19 Mr. Jenson to say, yes, that's my voice, and, yes, I said that.

20 THE COURT: How long do you anticipate?

21 MR. REICHEL: Very brief.

22 THE COURT: How long?

23 MR. REICHEL: Probably no more than 20 to 30 minutes.

24 THE COURT: I should say for the record, too, at
25 sidebar, that Shari Rusk, the attorney for Mr. Jenson is also

1 present.

2 MS. RUSK: Thank you, Your Honor.

3 THE COURT: Is there something to stipulate to the
4 authenticity?

5 MR. LAPHAM: We can stipulate to the authenticity.
6 Steve Lapham for the Government. We can certainly stipulate to
7 the authenticity.

8 MR. REICHEL: I mean --

9 THE COURT: Do you know what you are asking for?

10 MR. REICHEL: Yes.

11 THE COURT: Why can't we simply stipulate to the
12 authenticity?

13 MR. REICHEL: We've got transcripts, too. We've got
14 transcripts that we made in my office that are the same as the
15 Government's.

16 MR. LAPHAM: Which we haven't seen, so we don't know
17 if they are accurate.

18 MR. REICHEL: You can listen to the tape and look at
19 the transcripts. The transcript's not the evidence. The tape
20 is.

21 THE COURT: He may not even have to have a
22 transcript.

23 MR. REICHEL: Well, the thing is, the car ride back
24 from New York to California in January, on the way out here
25 there is an audio tape, and we transcribed it, and this is what

1 was provided by the Government, and this is Mr. Jenson saying
2 some things that are helpful to the defense.

3 MS. ENDRIZZI: Ellen Endrizzi for the United States.
4 The defense started to go into this during cross-examination,
5 so the act of recalling him to go through something he may have
6 just remembered when he had him up on the stand and talking
7 about the car ride out from Washington to California seems
8 improper.

9 MR. REICHEL: We had several days of the Government.

10 THE COURT: My point right now --

11 MS. RUSK: I would say, Mr. Jenson, if he can get on
12 his flight -- Shari Rusk representing Zach Jenson -- if we
13 could get him on his flight to go home, and there can be an
14 agreed-upon stipulation, or if there's a dispute, we can call
15 him back, but I would like to get him home.

16 MR. REICHEL: Why can't he go home tomorrow at noon?

17 MS. RUSK: Just that he was supposed to be home the
18 week before last, and he does have a job. He has checked out
19 of his hotel.

20 THE COURT: We took last week off because of your
21 injury.

22 MR. REICHEL: Yeah.

23 THE COURT: And that's put us behind the eight-ball,
24 so I am just saying that if we need to come back here, I can do
25 that, but I don't see why. It seems to me that if it's the

1 Government's tapes, and you have them, and you've made what can
2 be a transcript, if there's dispute -- I mean, dispute of what
3 an interpretation of a word would be, that's the only thing I
4 can think of.

5 MR. LAPHAM: Exactly right. I mean, you are asking
6 us to stipulate to something we haven't seen yet. This is
7 another reason we're behind the eight-ball, because Mr. Reichel
8 could have given these transcripts to us, so that they could be
9 shown to the witness, and we could have had him vet the
10 transcripts before he takes the stand.

11 Now you are apparently asking him to take the stand
12 without seeing any transcripts at all.

13 MR. REICHEL: He is not my witness. We have no
14 access to him. It's the defense case-in-chief.

15 THE COURT: I don't want to argue about this, about
16 what your strategy is right now. I'm thinking of the most
17 expeditious way to keep this trial moving and deal with all the
18 problems that we have.

19 MS. RUSK: There may not be a dispute.

20 THE COURT: There may not be a dispute right now.
21 Your client gets on a plane and goes home. And if we need him
22 back here, it's only an hour flight to get him back here. In
23 the meantime, I would like for you two to try to resolve it.
24 If there's a problem, and if it comes down to what did he say,
25 if he remembers it, that means he is going to probably have to

1 be here unless it's otherwise stipulated to.

2 MS. RUSK: Thank you.

3 MR. LAPHAM: Copy of the transcript?

4 THE COURT: Yes, I would hope by the break. Thank
5 you.

6 (End sidebar conference.)

7 THE COURT: I apologize for the lengthy sidebar,
8 ladies and gentlemen, but I need to resolve that particular
9 issue outside of your presence.

10 All right. Mr. Reichel, do you wish to call your
11 witness now?

12 MR. REICHEL: Thank you, Your Honor. The defense
13 would call Eric Gonzalez to the witness stand.

14 (The witness was sworn by the Clerk.)

15 THE WITNESS: I do.

16 THE CLERK: Please state your full name and spell
17 your last name for the record?

18 THE WITNESS: Eric Gonzalez, G-o-n-z-a-l-e-z.

19 MR. REICHEL: Your Honor, may I have permission to
20 approach the witness and clear out the exhibits?

21 THE COURT: Yes, please.

22 ERIC GONZALEZ,

23 a witness called by the Defendant, having been first duly sworn
24 by the Clerk to tell the truth, the whole truth, and nothing
25 but the truth, testified as follows:

DIRECT EXAMINATION

1

2

BY MR. REICHEL:

3

Q. Good afternoon, Mr. Gonzalez.

4

A. Good afternoon.

5

Q. Where do you reside?

6

A. In Sacramento, California.

7

Q. Where?

8

A. Citrus Heights.

9

Q. Do you know Eric McDavid?

10

A. I do.

11

Q. How long have you known Eric McDavid?

12

A. Since '92, so 15 years.

13

Q. And how old are you now?

14

A. I'm 29.

15

Q. Do you know his age?

16

A. He is going to be 30 on October 8th.

17

Q. Okay. Do you know his birth date?

18

A. Yeah.

19

Q. Would you tell us how you came to know Eric McDavid?

20

A. In school, high school.

21

Q. What high school?

22

A. Casa Roble in Orangevale.

23

Q. Sorry?

24

A. In Orangevale. Casa Roble.

25

Q. Did you go to high school together?

1 A. Yeah.

2 Q. And were you in the same grade?

3 A. Yeah.

4 Q. And did you become -- what kind of a friendship did
5 you have?

6 A. Very good friends, if not best friends.

7 Q. Okay. Would you say that you are Eric's best friend?

8 A. I would say that, yeah.

9 Q. Would you say that he is your best friend?

10 A. I would.

11 Q. You would?

12 A. Yeah.

13 Q. And let me ask you about your relationship with him
14 through high school.

15 A. All right.

16 Q. You had a good opportunity to observe him and be
17 around him?

18 A. Sure. Yes.

19 Q. Do you feel that you got to know him well?

20 A. Yes.

21 Q. Okay. Do you feel that you got to know his qualities
22 well?

23 A. Very well, yeah.

24 Q. So, by the time of high school you thought you knew
25 his personal qualities well?

1 A. Yeah.

2 Q. And his characteristics?

3 A. Sure, yeah.

4 Q. Did you get to know his family?

5 A. Absolutely.

6 Q. His sisters?

7 A. Yeah.

8 Q. Parents?

9 A. Yeah.

10 Q. Okay. And did you and Eric spend a lot of time
11 together in high school?

12 A. Yeah.

13 Q. And as best friends?

14 A. Yeah.

15 Q. Okay. And did you share secrets with each other and
16 so forth?

17 A. Uh-huh, yeah.

18 Q. Would you say you had a very open relationship with
19 him?

20 A. Yeah.

21 Q. Okay. And did you find him at that time -- why don't
22 you describe him for us, what characteristics he had when you
23 knew him in high school?

24 MR. LAPHAM: Objection. Relevance as to time period.

25 THE COURT: Sustained.

1 MR. REICHEL: Your Honor, I think as a character
2 witness he is allowed to explain how long he has known him and
3 what he knew of him in that time period.

4 THE COURT: No.

5 Q. BY MR. REICHEL: After high school, did you stay good
6 friends with him?

7 A. Yeah.

8 Q. Okay.

9 THE COURT: Sir, can I get you to say "yes" or "no"
10 to make sure we have a clear record here, please. Thank you.

11 THE WITNESS: Yes.

12 Q. BY MR. REICHEL: Thank you. And you guys stayed good
13 friends after high school?

14 A. Yes.

15 Q. Okay. And did you know his characteristics and his
16 nature, so to speak, after high school?

17 A. Yes.

18 Q. Okay. And when was the last time you saw Eric
19 McDavid before he was arrested in this case?

20 A. Just before -- actually, New Year's Eve. So it must
21 have been the first of the year, second of the year.

22 Q. In 2006?

23 A. Yes.

24 Q. Let's go to the years, 2004, let's start there. Did
25 you see him a lot in the year 2004?

1 A. Yes.

2 Q. Where there a period in 2004 where he actually lived
3 with you?

4 A. Yes.

5 Q. And why did he live with you?

6 A. He was working in construction, and it was -- he was
7 residing up in Foresthill, and he was working down in
8 Sacramento, so he would spend the week with me. Closer
9 commute.

10 Q. Okay. And you let him stay there because he was your
11 best friend?

12 A. Yes.

13 Q. How about his characteristics for -- did you find him
14 to be an honest person?

15 A. Yes.

16 Q. Did you find him to be a kind person?

17 A. Yes.

18 MR. LAPHAM: Objection. Relevance.

19 THE COURT: Sustained.

20 MR. REICHEL: For relevance?

21 THE COURT: At this time. At this point in time,
22 it's sustained.

23 Q. BY MR. REICHEL: Thank you, Your Honor.

24 In 2004, okay, I would like to focus there. You had
25 a lot of opportunity to be with him, right?

1 A. Yes.

2 Q. Did you -- did he ever express any violent thoughts
3 to you in 2004?

4 A. No.

5 Q. Did you find him to be somebody who was prone to
6 violence in 2004?

7 A. No.

8 Q. And why do you say "no"?

9 A. He was never involved in any kind of violence or
10 talked about it during that time.

11 Q. What did you think of him by, let's say, the Summer
12 of 2004, how would you describe Eric McDavid in the Summer of
13 2004?

14 A. Very good friend.

15 Q. Okay. What about his qualities, how would you
16 describe his qualities in 2004?

17 MR. LAPHAM: Objection. Overly broad and general.

18 THE COURT: Sustained.

19 Q. BY MR. REICHEL: How about his characteristics in the
20 Summer of 2004?

21 MR. LAPHAM: Same objection.

22 THE COURT: Sustained.

23 MR. REICHEL: Your Honor, I think --

24 THE COURT: No. Not yet. At this point in time
25 sustained.

1 Q. BY MR. REICHEL: Did you have an opportunity to know
2 Eric McDavid well in the Summer of 2004?

3 A. Yes.

4 Q. Did you have an opportunity to know his
5 characteristics in 2004?

6 A. Yes.

7 Q. Okay. Did you know his characteristics, his, let's
8 say, nature for violence in the Summer of 2004?

9 MR. LAPHAM: Your Honor, the objection is to the time
10 period.

11 THE COURT: 2004.

12 MR. REICHEL: August of 2004 he met --

13 MR. LAPHAM: Prior to the conspiracy.

14 MR. REICHEL: He met the informant in August of 2004.
15 Zach Jenson in August of 2004, Your Honor.

16 THE COURT: Isn't that the same time?

17 MR. LAPHAM: The start of the conspiracy is in June
18 of 2005.

19 MR. REICHEL: Your Honor, he met the informant in
20 August of 2004, stayed with the informant in August of 2004.

21 THE COURT: The objection is sustained.

22 MR. REICHEL: That's when he first met the Government
23 agent, Your Honor.

24 THE COURT: Objection sustained.

25 Q. BY MR. REICHEL: Thank you.

1 Now, did you have an occasion to continue to know
2 Mr. McDavid after August of 2004?

3 A. Yes.

4 Q. Okay. Let's say January of 2005, did you know him
5 then?

6 A. Yeah. The months and the years, I didn't go more
7 than a couple months without seeing him. And telling you
8 exactly what we did in the Summer of 2004 or January of 2005, I
9 wouldn't be able to tell you. But there didn't go more than a
10 couple of months between seeing each other.

11 Q. Okay. And 2005 you know he travelled, right?

12 A. Absolutely, yeah.

13 Q. And when he was done traveling, would he stop in and
14 see you?

15 A. Yes.

16 Q. Would he stay with you?

17 A. Yes.

18 Q. And with your wife as well?

19 A. Yes.

20 Q. And you let him stay there and you trusted him,
21 right?

22 A. Yes.

23 Q. Okay. And did he tell you about his travels, the
24 stuff he would do?

25 A. Yes.

1 Q. That he would hitch-hike around and so forth?

2 A. Yes.

3 Q. Okay. And by the Summer of 2005, you had had
4 opportunities for several years to get to know Eric, right?

5 A. Yes.

6 Q. He was still your best friend?

7 A. Yes.

8 Q. Okay. What about his characteristics for, let's say,
9 the issue of violence in the Summer of 2004; do you have an
10 opinion as to that?

11 MR. LAPHAM: Objection. This is the same question.

12 THE COURT: Sustained.

13 Q. BY MR. REICHEL: I thought this was the beginning of
14 the conspiracy?

15 THE COURT: No. It's not. Sustained. 2005.

16 Q. BY MR. REICHEL: In August of 2005 did you know
17 Mr. McDavid?

18 A. Yes.

19 Q. Thank you. And did you have an opinion as to his
20 nature for violence?

21 A. No.

22 Q. No. What did you think about Eric as a violent
23 person in August of 2005?

24 A. He wasn't.

25 Q. And why do you say that?

1 A. As a friend, we would, you know, do what friends do.
2 Play golf and those sorts of things. There's no violence on
3 the golf course. He never talks about being violent. There's
4 just wasn't -- wasn't violence.

5 Q. Did you find him to be a gentle person?

6 A. Yes.

7 Q. A nice person?

8 A. Yes.

9 Q. Okay. And this is August of 2005?

10 A. Like I said, the month, the year, he wasn't a nice
11 person just in August of 2005.

12 Q. Okay. And did he -- did he strike you as someone
13 that would be involved in the making explosives in August of
14 2005?

15 A. No.

16 Q. And why is that?

17 A. Never talked about it. I wouldn't see any reason for
18 it.

19 Q. Okay. Did he -- I mean, did he volunteer to help
20 others?

21 A. Yes.

22 Q. Would you describe him in August of 2005 as someone
23 who was kind to others?

24 A. Yes.

25 Q. On a scale of one to ten, where would you put him on

1 "kind" in August of 2005?

2 A. Ten.

3 Q. Okay. Would he do things for you and your wife
4 around the house?

5 A. Yes.

6 Q. Is it fair to say he would do anything you asked him
7 to do, basically?

8 A. Yes.

9 Q. And was he -- what kind of disposition did he have?
10 Was he a happy person? Peaceful person? Or was he angry?

11 A. He was always happy.

12 MR. LAPHAM: Objection. Relevance and compound.

13 THE COURT: Sustained. Compound.

14 Q. BY MR. REICHEL: In August of 2005 was he a happy
15 person?

16 A. Yes.

17 Q. Okay. And is that consistent with how you had known
18 him for the whole time?

19 A. Yes.

20 Q. Was he -- did he appear outwardly angry or upset
21 about anything?

22 A. No.

23 Q. Okay. In the fall of 2005 did you have conversations
24 with him about his love life, so to speak?

25 A. That was two years ago.

1 Q. Okay. Is that something you would commonly discuss,
2 though?

3 A. Yeah. Yes.

4 Q. That's something he would normally share with you?

5 A. Yeah. Yes.

6 Q. In the time that you knew him -- in the time that you
7 knew him, did you ever hear him talk about making explosives?

8 A. No.

9 Q. Did you ever have occasion to -- well, did you have a
10 view that he knew a lot about explosives?

11 A. No.

12 Q. But you had an opportunity to know him well, right?

13 A. Yes.

14 Q. So it would be a surprise if in August of 2005 you
15 found out that he knew a lot about explosives, right?

16 A. Yes.

17 Q. And why do you say that?

18 A. Well, in January of 2006, reading in the papers and
19 everything, I was surprised.

20 Q. And why were you surprised?

21 A. Because it's out of character for Eric, the Eric I
22 knew.

23 Q. And when you say it's out of character, why? What
24 was his character that you knew?

25 A. Like I said, he was the guy we called when we needed,

1 you know, the fence blew down in the back, he would be there
2 the next day. My sister needs help moving. He would be there
3 the next day. Went on our family trips with us. He was part
4 of the family.

5 Q. With your family he went on trips?

6 A. Yeah.

7 Q. And how did your parents view him?

8 A. They liked him.

9 Q. Okay. And did you find him to be someone that would
10 be interested in harming other people?

11 A. No.

12 Q. Why is that? Why do you feel that way?

13 A. I knew him for 15 years. He never harmed anybody.

14 Q. Did you ever hear him talk about harming anyone?

15 A. No.

16 Q. Did you have an opinion that he didn't have a
17 character trait for harming others?

18 A. Didn't have the character trait for harming others?

19 Q. Yes.

20 A. No. I don't think he had the -- he never talked of
21 it, so no.

22 MR. REICHEL: Okay. I have nothing further from this
23 witness, Your Honor.

24 THE COURT: Thank you. Cross.

25 CROSS-EXAMINATION

1 BY MR. LAPHAM:

2 Q. Mr. Gonzalez, my name is Steve Lapham. I'm
3 prosecuting this case.

4 Let me ask you a few questions. Who is Derrick
5 Jensen?

6 A. Derrick Jensen?

7 Q. Derrick Jensen?

8 A. I don't know.

9 Q. Never heard of Derrick Jensen?

10 A. No.

11 Q. The defendant never talked to you about Derrick
12 Jensen?

13 A. No.

14 Q. So he never indicated to you that this was a person
15 that affected his life quite a bit?

16 A. No.

17 Q. In fact, the defendant never talked to you about any
18 political ideas, did he?

19 A. Well, we talked back and forth on, you know, just
20 what we believe in, you know, just what stands I had on what
21 was going on, but --

22 Q. And he never talked about his own political views,
23 did he?

24 A. No.

25 Q. No. So you don't know what his political views are?

1 A. I know bits and pieces.

2 Q. Did he ever tell you he was an anarchist?

3 A. No.

4 Q. Never told you that?

5 Did he ever tell you what he was doing in all that
6 time that he was going back and forth across the country?

7 A. He shared stories with me.

8 Q. What kind of stories?

9 A. Just about hitch-hiking and people he met along the
10 way.

11 Q. Never told you he was going to protests?

12 A. Yeah. He did tell me he was going to protests.

13 Q. Did he ever tell you he went to something called
14 CrimethInc?

15 A. He did.

16 Q. And do you know what CrimethInc is?

17 A. No.

18 Q. You never asked?

19 A. Yeah, I did.

20 Q. Do you know that CrimethInc is an organization that
21 talks about how to mess with the system?

22 MR. REICHEL: Asked and answered, Your Honor. He
23 answered he didn't.

24 THE COURT: Overruled.

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

1 A. No.

2 Q. What did the anarchist lifestyle mean to you?

3 A. I don't really know what anarchist lifestyle is.

4 Q. So that's another thing that the defendant never
5 talked to you about?

6 A. No.

7 Q. You saw him on New Year's Eve. Now that would be
8 2005?

9 A. Correct.

10 Q. So New Year's Day would be 2006?

11 A. Correct.

12 Q. And he stayed with you?

13 A. Yes.

14 Q. And he told you that he was going to Seattle, didn't
15 he?

16 A. I knew he was leaving. Where he was going, I don't
17 know.

18 Q. Didn't he tell you that he was leaving the town or
19 leaving the location?

20 A. When he left, there was no -- I didn't know where he
21 was going and didn't know when he was coming back.

22 Q. You were interviewed by the FBI in April of 2006; do
23 you recall that?

24 A. Yes.

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

1 THE COURT: You may.

2 Q. BY MR. LAPHAM: I'm going to show you a report of
3 that interview, and I want you to just read to yourself the
4 last line of the paragraph I'm indicating on page two. It's
5 the second paragraph, full paragraph.

6 A. (Witness reviewing document.)

7 Q. Do you see that?

8 A. I do.

9 Q. Does that refresh your recollection about what you
10 told the FBI then?

11 A. Yeah. If I told them -- that was a lot fresher in my
12 mind when talking with the FBI.

13 Q. And you told the FBI that Eric McDavid had told you
14 that he was leaving for Seattle?

15 A. Yes.

16 Q. Right. After staying with you that New Year's Eve?

17 A. Yes.

18 Q. All right. And so if he wasn't -- if he did not, in
19 fact, have plans to go to Seattle, that would have been a lie,
20 or he would have not been telling you the truth?

21 A. Well, I mean, to be honest with you, this plan to go
22 to Seattle, I mean, it's in this statement. But he's -- if
23 he's told me he's going to Seattle, and he didn't go to
24 Seattle, I don't know if I would consider it a lie.

25 Q. But he did tell you he was going to Seattle?

1 A. Yes.

2 Q. And then after his arrest, you found out that he had
3 not gone to Seattle, correct?

4 A. Correct.

5 Q. In fact, he was arrested just 13 days later, and you
6 found out that he never had gone to Seattle?

7 A. Yes.

8 MR. LAPHAM: Thank you, Your Honor.

9 THE COURT: All right. Let's take our recess now.
10 Return at 3:20. Ladies and gentlemen, please remember your
11 admissions regarding discussing the case or forming opinions.
12 Thank you. Court's in recess.

13 (Jury out.)

14 THE COURT: All right. The jury has left the
15 courtroom.

16 MR. REICHEL: Thank you, Your Honor. It's on the
17 issue of the character witnesses I intend to call are going to
18 talk about Mr. McDavid as of August 2004, which is when the
19 individual, Anna, specifically who was working for the
20 Government, met with Mr. McDavid, stayed with Mr. McDavid, kept
21 in contact with Mr. McDavid, kept up contact with Mr. McDavid
22 pursuant to her work for the Government until May of 2005, June
23 of 2005.

24 She testified about sending out e-mails to him,
25 keeping in contact. They went to the Republican National

1 Convention together. She testified --

2 THE COURT: The witness can go ahead and leave the
3 courtroom, please.

4 MR. REICHEL: Thank you, Your Honor.

5 And I would like the Court, during the break, to just
6 take a look at a Ninth Circuit authority on that issue. And I
7 can give the Court a copy. I have a copy for Mr. Lapham as
8 well.

9 It's the case of Poehlman, P-o-e-h-l-m-a-n. It's a
10 seminal entrapment case that discusses the factors in an
11 entrapment case. I believe it's an opinion from Judge
12 Kozinski. And I would like to -- here is the Kozinski opinion.

13 I would ask to give the Court a copy because I do
14 intend to ask my other character witnesses about Mr. McDavid in
15 August of 2004, and I think that's seminal to his defense.

16 THE COURT: All right. You can present it.

17 MR. LAPHAM: Your Honor, we're not questioning that
18 character evidence can be admitted. The question is as to what
19 time.

20 This conspiracy is alleged to have started in June of
21 '05. What is relevant is what Mr. McDavid's character was in
22 2005, not what it was at some earlier point in time.

23 THE COURT: That's the point.

24 MR. REICHEL: I'll let the Court read the opinion
25 because Mr. Lapham has a point. The Indictment does state that

1 this conspiracy supposedly started in June of 2005; however,
2 the Ninth Circuit teaches, actually, that you look at the
3 timeframe when the Government agent meets the defendant, and
4 you look at the defendant's predisposition at the offense prior
5 to being contacted by Government agents.

6 Quoting, it is, predisposition is the defendant's
7 willingness to commit the offense prior to being contacted by
8 Government agents coupled with the wherewithal to do so.

9 And then it goes on and discusses about
10 predisposition and wherewithal and goes on to talk about
11 inducement.

12 Mr. McDavid meets her in August of '04. She is
13 working at that time to find individuals to call back to the
14 FBI. She called back to the FBI in August of '04 about
15 Mr. McDavid. He alleges, correctly, in the Indictment -- he is
16 correct that the Indictment states the conspiracy began. But
17 you don't absolutely throw out the predisposition element of
18 the defendant prior to the date the conspiracy starts. The
19 Ninth Circuit clearly teaches the opposite in this Poehlman
20 case, and I'd ask the Court to take a look at it over the
21 break.

22 And I would like to ask my character witnesses, after
23 you get a chance to look at this case, about those issues.

24 MR. LAPHAM: The problem here is there is absolutely
25 no evidence in the record of any inducement by the Government,

1 period. Much less one that occurred in August of 2004.

2 In August of 2004, Anna testified that she reported
3 back to the FBI that this guy is not anybody to be worried
4 about. It was only later that that came up. And there is
5 still no evidence of any Government inducement, ever, in this
6 case. The two co-defendants testified they were recruited by
7 McDavid. The source, Anna, testified she was recruited by
8 McDavid. So we don't even get to the issue of character unless
9 there is some threshold foundation of entrapment and lack of
10 predisposition, and that's totally absent on the state of the
11 record now.

12 MR. REICHEL: My response, Your Honor, is that's
13 completely contrary to settled law.

14 THE COURT: That may be the law, but what are the
15 facts in this case. Anna was not the person who was involved
16 with doing anything with Mr. McDavid at this early stage that
17 you're talking about.

18 Mr. Lapham correctly related she said he was
19 basically nothing, and there was nothing to be concerned about.
20 And the fact that someone has knowledge of another person
21 should not automatically kick into effect the character of the
22 person at that time.

23 I mean, there has to be something more than just mere
24 acquaintance or knowledge. Just to say that they knew of each
25 other -- if it was ten years ago, does that mean that you'd be

1 able to go back and take in character evidence from ten years
2 prior to the start of the conspiracy? No, you can't do that.

3 MR. REICHEL: No, Your Honor, but the Ninth Circuit
4 clearly teaches that in this case it is not June of 2005, it's
5 August of 2004 when the Government agent goes to this place on
6 a criminal investigation and meets this defendant, converses
7 with this defendant, talks to this defendant, develops a
8 relationship.

9 THE COURT: But that's -- you're assuming that every
10 time someone speaks to someone that's from the Government, that
11 they are trying to set up a case.

12 MR. REICHEL: She was working for the FBI.

13 THE COURT: She could have been working for the FBI
14 and CIA and everyone else, but what did she do with respect to
15 him. That's the difference here.

16 You can't bootstrap every meeting, every contact,
17 every person that works for the Government as being somehow
18 ready to entrap an individual. Working for the Government does
19 not necessarily equate to being a person who is looking to
20 entrap someone. There must be something else done besides
21 simply having knowledge of that person.

22 MR. REICHEL: That's correct, Your Honor. And I'm
23 not arguing inducement. I'm arguing the two elements. There
24 are two elements that are very clear in entrapment. One is the
25 predisposition of the defendant. And, secondly, you look at

1 the inducement by the Government.

2 THE COURT: Where is the inducement in June of 2004?

3 MR. REICHEL: The inducement may not even begin until
4 June of 2005, but in August of 2004 his predisposition is
5 relevant. It's clearly relevant under the Poehlman decision.

6 THE COURT: All right. I'm going to take a look at
7 this, and I'll see.

8 MR. REICHEL: Thank you very much, Your Honor.

9 (Break taken.)

10 (Jury in.)

11 THE COURT: Counsel, sidebar, please.

12 (Begin sidebar conference.)

13 THE COURT: Mr. Reichel, honestly, can you point to
14 me to what you are saying?

15 MR. REICHEL: Sorry?

16 THE COURT: It's a rather lengthy opinion.

17 MS. ENDRIZZI: Thirteen.

18 MR. REICHEL: Well, it's -- I'm not going to ask him.
19 I'm going to ask my other witnesses.

20 THE COURT: Did you have a chance to read it?

21 MR. LAPHAM: Truthfully, no.

22 MS. ENDRIZZI: I've read the decision, and I
23 understand the point that he is making about prior contact;
24 however, that case cites Jacobson, which is a Supreme Court
25 case where the Government repeatedly -- and here is a summary

1 of Jacobson -- repeatedly contacted this defendant prior to him
2 ever buying pornography, so it's contact, contact, contact,
3 come buy this child porn, which is not the case that we have
4 here at all.

5 MR. LAPHAM: And I think that's the Government's main
6 point. We have no triggering event that Mr. Reichel can point
7 to. There is nothing in the evidence that would go back to
8 August of '04.

9 THE COURT: Is this the case?

10 MR. REICHEL: Yeah.

11 THE COURT: Well, if this is it, and is this all of
12 it, Mr. Reichel?

13 MR. REICHEL: I'm sorry, Your Honor. I would ask
14 that you read that.

15 THE COURT: Thank you.

16 MR. REICHEL: I'm not going to ask him about that
17 timeframe.

18 THE COURT: Do you have another witness after this?
19 Here?

20 MR. REICHEL: Yes.

21 (End sidebar conference.)

22 THE COURT: Again, I apologize for the lengthy
23 sidebar, ladies and gentlemen.

24 Q. BY MR. LAPHAM: Thank you.

25 Mr. Gonzalez, I'm not trying to give you a hard time.

1 I'm just trying to suggest that maybe there's some things that
2 the defendant didn't tell you even though you may be good
3 friends.

4 A. I agree.

5 Q. You wouldn't disagree?

6 And correct me if I'm wrong, but you haven't heard
7 any of the tape recordings that were made in this case?

8 A. No.

9 Q. So you haven't heard the defendant discussing any of
10 his plans that are alleged in the Indictment?

11 A. No.

12 Q. And, specifically, if the defendant talked about the
13 possibility that his plans would result in the accidental death
14 of someone --

15 MR. REICHEL: Objection, Your Honor. Asked and
16 answered. He testified he hadn't heard any of these.

17 THE COURT: Overruled.

18 Q. BY MR. LAPHAM: You are not aware of that?

19 A. No.

20 Q. And if you heard the defendant talking about possibly
21 killing someone in the process of his plans, that might change
22 your opinion about whether or not he is a violent person?

23 A. I would be shocked, yeah.

24 Q. All right. And I don't want to go into this in any
25 detail, but your own political views are conservative?

1 Well, let me rephrase the question. Are you a
2 Republican?

3 A. I'm not -- I haven't voted, so. I wouldn't consider
4 me a Republican. I believe in a lot of what the Republicans
5 and what the Democrats...

6 Q. You consider yourself mainly apolitical, in other
7 words, not having really strong political beliefs?

8 A. Correct.

9 Q. And so you don't discuss many of your political views
10 with the defendant?

11 A. No.

12 MR. LAPHAM: All right. Thank you. I have no further
13 questions.

14 REDIRECT EXAMINATION

15 BY MR. REICHEL:

16 Q. Mr. Gonzalez, your wife, does she know Mr. McDavid?

17 A. Yes.

18 Q. How long has she known him?

19 A. I better get this right. We've been together for
20 13 years, so 13 years.

21 Q. Okay. And does she consider him one of her good
22 friends also?

23 A. Yes.

24 MR. REICHEL: Okay. I have nothing further, Your
25 Honor.

1 THE COURT: All right. Anything else?

2 MR. LAPHAM: No, Your Honor.

3 THE COURT: Recross? Thank you. You may step down.

4 MR. REICHEL: Can we have a brief sidebar, Your
5 Honor?

6 THE COURT: Very briefly, please.

7 (Begin sidebar discussion.)

8 MR. REICHEL: This is Mark Reichel. I think the
9 issue raised in the case that I provided the Court is
10 significant, and I think it does clearly support my position,
11 and so, you know, if it requires we take a five-minute break
12 for the Court to review it and hear from Mr. Lapham and
13 Ms. Endrizzi, their views on it, that's fine with me. I
14 apologize for the inconvenience, but, you know, I think it's
15 very clear on entrapment.

16 It says in there, "prior to the time the Government
17 agents," and I think it's error for the Court to disallow a
18 defendant to get into his lack of predisposition position, and
19 I don't mean to make any showing. It's in the evidence, but to
20 preclude me now from going into predisposition or lack thereof
21 prior to meeting Government agents is error.

22 THE COURT: All right. What's your response?

23 MR. LAPHAM: I don't think we differ on the essential
24 question. The question is, however, when do we mark the first
25 Government contact. The first time the evidence shows the

1 first time this plot was ever mentioned was in August of 2005.
2 That's when the clock starts to run. What was his
3 predisposition at that point in time? To back it up to July or
4 August of 2004 is not reasonable.

5 MR. REICHEL: Your Honor, I'm sorry I have to reply.
6 Unfortunately, we went extensively into the Government's
7 case-in-chief through the informant about the things
8 Mr. McDavid told her in June of 2005 at the first Philadelphia
9 meeting, the second one at the July meetings.

10 (End sidebar discussion.)

11 THE COURT: Excuse me, ladies and gentlemen, we're
12 going to take a ten-minute recess. I'll have to ask you to
13 step into the jury deliberation room, please. I'm sorry for
14 the delay.

15 (Jury out.)

16 THE COURT: All right. We're outside the presence of
17 the jury at this time. Go ahead, counsel.

18 MR. REICHEL: Thank you, Your Honor.

19 Again, I would ask the Court -- I believe that
20 Poehlman is the Ninth Circuit law. It's cited with approval to
21 this day. There's an opinion -- I don't have it on me. It's
22 actually somewhere in my file or it's else back in my office.
23 August of 2007, an opinion that expands upon Poehlman, cites
24 Poehlman for that exact language.

25 And the language in Poehlman that I'm speaking about

1 is obviously predisposition, which comes directly from
2 Jacobson, which states that predisposition is viewed as the
3 defendant prior to meeting the Government agents in the case.

4 And in this case, August of 2004 -- and I think
5 Poehlman is so important that, you know, if the Court needs
6 time to fully digest the legal opinion, I would, you know, urge
7 the Court for all of us to take the time to do that. Now, if
8 you'd like, I can --

9 THE COURT: Response? Because what he is citing is
10 the relevant timeframe for assessing a defendant's disposition
11 comes before he has any contact with Government agents, which
12 is doubtless why it's called predisposition.

13 MR. LAPHAM: Well, I don't think that can be taken
14 literally. Contact has to mean contact relating to this crime
15 or the suggestion of this crime. This crime isn't even talked
16 about until a year later. And there was -- and there's very
17 minimal contact between the defendant and Anna prior to that.

18 Mr. Reichel has made no showing of what possible
19 contact, relevant contact, there would be on the predisposition
20 issue.

21 MR. REICHEL: I just think Mr. Lapham has misstated
22 the law. It's actually black letter, very clear law from the
23 Ninth Circuit.

24 MR. LAPHAM: No. We agree that predisposition is a
25 relevant issue in the case. The question is when. Do we go

1 all the way back to high school? It's got to be predisposition
2 with respect to the crime that is charged.

3 THE COURT: Here's the situation. I see this
4 predisposition, but one of things that it appears, Mr. Reichel,
5 that you are going into is just his general character of a time
6 period that was far back before even any of this even came
7 about initially.

8 We're going back to high school and going through
9 different things and leading up to this. There has to be some
10 nexus with what we're talking about here in this particular
11 case.

12 And that's a concern that I have is that this is a
13 very specific time period, and that, as I said previously, the
14 fact that there is contact with a Government agent does not in
15 and of itself automatically trigger the predisposition aspect
16 of entrapment.

17 And that's -- if you read this literally, when they
18 said they are referring to contact with Government agents, the
19 case must be talking about contact with Government agents that
20 led to the particular crime in question with Jacobson, which
21 was child pornography.

22 It wasn't just the fact that there was -- he may have
23 had contact with Government agents a year before, two years
24 before for other reasons, but that wouldn't be the relevant
25 time period that -- in Jacobson that they would have been

1 looking to determine whether or not the governmental agent
2 contact somehow dealt with his predisposition.

3 I see what you are saying, but I think that it's a
4 true literal reading of it. Because any contact with
5 Government agents can't mean just any contact with a Government
6 agent.

7 MR. REICHEL: I understand. I agree, Your Honor.

8 THE COURT: It has to have some nexus to what the
9 case is about.

10 MR. REICHEL: Thank you, Your Honor.

11 There is no reason, then, that the Government went
12 into what goes on in August of '04 at CrimethInc. Why was Anna
13 there? There is no reason the Government went into the
14 summer --

15 THE COURT: Was it to investigate the alleged bombing
16 of Nimbus Dam, the Institute for Forest Genetics, and cell
17 phone tower destruction?

18 MR. REICHEL: It hadn't been discussed.

19 THE COURT: Well, if it hadn't been discussed, how
20 could there be predisposition to do those three things?

21 MR. REICHEL: Because the Ninth Circuit in Jacobson
22 teaches that that's where you must --

23 THE COURT: No. But in Jacobson they are talking
24 about -- this is child pornography, whether or not this person
25 was predisposed to purchase child pornography. That's when the

1 Government agent contact came into play. Not the simple fact
2 that there were just Government agents who had contact with
3 Jacobson.

4 MR. REICHEL: The Government has alleged that in June
5 of 2005 the defendant actually committed the crime. That's the
6 start they say. That's the start, they say, of this
7 conspiracy.

8 THE COURT: Correct.

9 MR. REICHEL: And the Ninth Circuit, quoting
10 Jacobson: Obviously, the time the defendant actually commits
11 the crime he will have become disposed to do so. However, the
12 relevant timeframe for assessing a disposition of a defendant
13 comes before he has any contact with Government agents, which
14 is that was why it's called predisposition.

15 So, therefore, if Mr. Lapham says the crime begins on
16 June of 2005, if we're going to look at predisposition, we have
17 to look prior to June of 2005.

18 The ruling that Mr. Lapham would like you to make is
19 that we look at June of 2005 that day and nothing prior.

20 THE COURT: No. What it would seem to me to be is
21 that you would look to prior to June 2005 to see if Mr. McDavid
22 were discussing with anyone else the concept of engaging
23 allegedly in these three acts.

24 MR. REICHEL: Your Honor, you would look at prior to
25 2005 to see if -- June of 2005 to see if Mr. McDavid was

1 predisposed to commit these types of acts.

2 In that line, you can call character witnesses.

3 There's a lot of entrapment cases that rely on character
4 witnesses to talk about a relevant trait of character of the
5 defendant prior to the time he met Government agents.

6 And, additionally, in this case, August of '04, Anna
7 is working for them. She goes to CrimethInc. She is reporting
8 back repeatedly to the FBI on everyone. She talks to McDavid.
9 She talks to Zach Jenson. She said that she agreed with them
10 to go to the RNC demonstration.

11 THE COURT: But the fact of the matter is, she said
12 there's nothing -- that he was nothing, or words to that
13 effect. How does that -- at that point, Mr. McDavid is not
14 even on the radar screen for any governmental agency.

15 MR. REICHEL: Well, if that's a correct statement
16 then, it does cause one to wonder why she was continuing to
17 e-mail him to come out to Florida in May -- excuse me -- to
18 come to Florida and Philadelphia. But that's a side issue.

19 But more importantly, Your Honor, I think it is clear
20 that if, you know, there is time taken to read these opinions,
21 that when the Government agents meet the individual, you look
22 at predisposition at that point.

23 And if it's a cop pulling you over for a speeding
24 ticket, that's one thing. But if it's the informant that makes
25 the case you're in, who is actively working, who acknowledges

1 they actively worked you, acknowledges they contacted the FBI
2 about you, acknowledges that at that time you were not
3 predisposed, that is powerful evidence for the defendant that
4 he was not predisposed. Her testimony is he was not
5 predisposed in August of '04.

6 THE COURT: The only problem I have is that the
7 evidence that's been presented here shows that there's no
8 connection between Anna and your client prior to June --
9 roughly June of 2005 that dealt with the conspiracy at issue.
10 There was contact. There is no question about that. But the
11 contact that has been described here in this courtroom had
12 nothing to do with this alleged conspiracy, Mr. Reichel. It
13 had nothing to do with it.

14 The fact that there's contact with a Government agent
15 -- and I keep reading the same sentence over and over again --
16 but you can't take a sentence out of context. It must be read
17 in the context of the case itself.

18 And in Jacobson they are talking about something
19 entirely different. This was contact with a Government agent
20 over a specific type of conduct. The contact that we have with
21 the Government agent in this case does not involve conduct
22 that's even remotely similar to what is the basis of the
23 original -- or the actual conspiracy. It's not there yet. In
24 June of 2004 it wasn't there.

25 MR. REICHEL: In June of 2005 they are having the

1 same conversations --

2 THE COURT: And that's when it becomes relevant when
3 they start having the conversations regarding the conspiracy.
4 Once the talk turns to the conspiracy that they are dealing
5 with, at that point you start to look and see what is happening
6 with predisposition. And that's when you look at that.

7 But there was never any talk about it. This is not
8 the situation where in Jacobson as they talk about whether or
9 not he was actually buying these types of magazines prior to,
10 and that the Government here said the fact that he was willing
11 to -- that he never resisted and the different things that are
12 said here are not the same.

13 MS. ENDRIZZI: Your Honor, I have a summary of
14 Jacobson if you would like to look at one paragraph.

15 THE COURT: No. In Jacobson's case the Government
16 said -- it was said that he was harangued by the Government for
17 over two years to get him to order this.

18 Now, that's involvement before -- prior to the crime
19 occurring. It was two years of haranguing prior to, so that as
20 of the date of the crime, then everything that happened prior
21 to that, which would have been the two years that the
22 Government agent harangued him, that would be relevant.

23 Here, there's been no evidence that I can recall of
24 any talk about the conspiracy to deal with Nimbus, the
25 Institute of Forest Genetics, or the cell towers prior to June

1 of 2005.

2 MR. REICHEL: I believe that's correct, Your Honor.
3 I don't think there was any evidence --

4 THE COURT: There's no evidence. So if there's no
5 evidence, how do you -- how does it become instructive at all?

6 MR. REICHEL: Well, if that's -- if the conversation
7 occurs on that date, and we'll call it July of 2005, how do we
8 know the character of Mr. McDavid? Do we just begin on July
9 whatever of 2005, and view him for the jury with character
10 witnesses to say from July of '05 on what was he like? I would
11 submit, you know, not.

12 As they said in Jacobson, you know, you're disposed
13 by the time you commit the crime. Prior to that, the question
14 of predisposition is relevant.

15 THE COURT: That's where I distinguished Jacobson.
16 He was, quote, unquote, harangued by a Government agent for two
17 years before he committed the crime. So there is evidence that
18 there was Government agent contact, Government agents were
19 pushing him into doing something, so, yes, it is very relevant
20 at that time as to whether or not he is predisposed because the
21 crime didn't actually occur until he purchased the materials or
22 took possession of them. Then it's relevant.

23 In this case, there is nothing that says that they
24 were talking about anything other than trying to be -- how to
25 secure e-mails, how to do other things that were -- that had

1 nothing to do with this particular conspiracy.

2 MR. REICHEL: I think, Your Honor, that's joining it
3 with inducement, which is a completely separate element. And
4 there may be no Government inducement, the Government may
5 believe, as of August of '04, but there certainly is the
6 relevant issue of predisposition prior to any inducement, prior
7 to any Government conduct.

8 That has got to be explored. I mean, that's the
9 foundation for it. That's what the jury is supposed to
10 determine, whether this individual was predisposed at the time
11 of contact with Government agents especially on the case.

12 THE COURT: Do you have anything else from the
13 Government?

14 MR. LAPHAM: Your Honor, just on that last point.
15 They go hand-in-hand. It's just that there has to be some
16 inducement. If there's no inducement, you don't even get to
17 the question of whether the defendant was predisposed to commit
18 the crime. We've gone through this entire trial, Mr. Reichel
19 has never pointed to one act on behalf of Anna's part to
20 constitute inducement.

21 MR. REICHEL: I think we can be heard on argument on
22 that, Your Honor, that there's nothing but Ninth Circuit
23 authority that says that paying for things like this, providing
24 the cabin, all of this stuff, paying for the food is
25 inducement. You know, a lot of authority.

1 THE COURT: There's case law about people that are
2 actually having sexual relations as being not --

3 MR. REICHEL: That's correct, Your Honor.

4 THE COURT: -- excessive Government entanglement, and
5 we're not even close to that in this case.

6 MR. REICHEL: Well, that's not the only argument of
7 inducement, Your Honor.

8 THE COURT: I understand, but when you talk about
9 outrageous Government conduct, when you read the cases on
10 entrapment and see the types of things that you might consider
11 to be outrageous, we're not close to that in this case.

12 MR. REICHEL: That's correct, Your Honor. But like
13 they stated in Jacobson and they state in the Ninth Circuit,
14 that if the defendant doesn't have the wherewithal, then you do
15 look at the inducement of the United States -- excuse me -- the
16 Government agent, and that includes many things, not just
17 whether there is sexual relations.

18 THE COURT: And you've seen the cases, I'm sure
19 you've read about the Government actually supplying illegal
20 drugs, actually taking illegal drugs with the person. And
21 that's not found to be outrageous Government conduct.

22 MR. REICHEL: I agree on the outrageous Government
23 misconduct, Your Honor. It's a separate issue from entrapment.

24 THE COURT: That's part of the entrapment, though.
25 It's all hand-and-glove. It all works together.

1 The bottom line is, my ruling is that the evidence as
2 far as character will be limited to the time of this
3 conspiracy, June 2005.

4 MR. LAPHAM: Correct.

5 THE COURT: June 2005. That's my ruling.

6 MR. REICHEL: And backward at all or just from that
7 day on?

8 THE COURT: From that day. Unless I have some other
9 evidence showing that there was something else that went on.
10 Because there's been no evidence presented during the course of
11 this trial, during the Government's case-in-chief, that there
12 was any discussions or anything else about this conspiracy
13 involving these three locations prior to June of 2005.

14 MR. REICHEL: There was testimony from Anna, Your
15 Honor, that they were going to re-meet in June of 2005 in
16 Philadelphia, I believe, and that's what she was e-mailing.

17 THE COURT: But those meetings were not about this
18 particular conspiracy. I got to hone you in on what we're
19 talking about here.

20 The fact -- this is not putting the anarchist
21 movement or the fact that there are conventions, or that
22 there's CrimethInc, or anything else, that's not what is on
23 trial here. What's on trial is what we're talking about, the
24 conspiracy, allegedly, to destroy these three entities.

25 The fact that they met, the fact that there's a

1 Government agent, the fact that they were great friends, the
2 fact that they even discussed other viewpoints does not relate
3 to this particular issue that we have at hand.

4 MR. REICHEL: Your Honor, one passage from Poehlman
5 states: Despite Jacobson's willingness to commit the offense
6 at the first opportunity afforded to him, the Supreme Court
7 held that the Government had failed to show a predisposition
8 because it failed to show that he would have been disposed to
9 buy the materials before the Government started its
10 correspondence.

11 And the correspondence with him is about the -- about
12 the crime. And in this case it's June of 2005. Jacobson
13 teaches that we have to examine his predisposition prior to the
14 decision to enter the crime.

15 THE COURT: But in this case it was two years of
16 governmental contact.

17 MS. ENDRIZZI: That's correct, Your Honor. And with
18 regard to Jacobson, it was -- yes, Jacobson had purchased child
19 pornography while it was legal in February of 1984. Three
20 months later Congress enacts a statute to make it illegal.

21 From that point on, the postal inspectors, they got
22 on the mailing list. They did harangue him for two years. It
23 was two separate agencies, five fictitious organizations, and a
24 bogus penpal for that two-year period.

25 So, yes, he was predisposed to buy it in '84 when it

1 was legal. However, they could not do it once it was illegal,
2 because they had to take two years to finally bash this man
3 into buying the child pornography.

4 THE COURT: That's right. Distinguishing Jacobson
5 and Poehlman from this particular case.

6 MS. ENDRIZZI: Right.

7 THE COURT: Because you're bootstrapping,
8 Mr. Reichel, the simple fact that there was contact between a
9 Government agent and your client. And from what you're saying,
10 once there's contact, your client's character becomes at issue.

11 MR. REICHEL: Yes, Your Honor, based on the type of
12 contact. She was an undercover agent exploring, looking for
13 these types of individuals, working for the FBI. She became a
14 very close confidant of his. They then traveled together, met
15 together, stayed in contact.

16 She's acknowledged he then wrote her love letters,
17 Your Honor, prior to the date of this conspiracy, and she was
18 working as a Government agent. That is absolutely you would
19 look at the timeframe that they met, which is what is expressly
20 taught by Jacobson.

21 And the facts of this case don't have to be on all
22 fours with another case for us to be required to follow the
23 express dictates of the law.

24 THE COURT: The situation here, Mr. Reichel, is that
25 in reading this case, the excerpt, and listening to you argue

1 your case more, even makes me more convinced that I'm correct
2 in what I'm saying.

3 Contact alone by a Government agent does not go to
4 the level that you say that it is. Because that's what you're
5 saying continually is that she was a Government agent, working
6 for the Government, had contact with him, e-mailed him, went to
7 concerts, went to conferences.

8 What of any of that is the Government doing that's
9 improper, inappropriate?

10 MR. REICHEL: That's inducement, Your Honor. Whether
11 there's inducement or not is a separate issue. That comes
12 later.

13 THE COURT: The predisposition, they are simply
14 talking. And according to her and what she did report, he is
15 nothing, nothing to worry about.

16 MR. REICHEL: Which is strong evidence that he was
17 not predisposed, Your Honor, prior to the time that she gave
18 him --

19 THE COURT: And that's what the jury's heard, that
20 she said it was nothing.

21 MR. REICHEL: That he was not predisposed.

22 THE COURT: So it would be up to the jury to decide
23 that he was a nothing as far as the conspiracy was concerned.
24 So it's up to them, they've heard that evidence, to now decide
25 was there a conspiracy, and if there was, was he predisposed,

1 was there inducement by the Government. The jury's heard all
2 this evidence.

3 MR. REICHEL: But, Your Honor --

4 THE COURT: Nothing happened before that,
5 Mr. Reichel. Nothing happened.

6 MR. REICHEL: But they haven't heard from the defense
7 case as to his character prior to that time. And that's very
8 relevant for his defense, his entrapment defense. It's very
9 relevant whether he was predisposed or not at that time.

10 THE COURT: And I've ruled on when I believe the
11 predisposition and inducement will begin.

12 MR. REICHEL: June of 2005?

13 THE COURT: Yes.

14 MR. REICHEL: Thank you very much, Your Honor.

15 THE COURT: Thank you, Mr. Reichel. Bring the jury
16 back in. We'll resume.

17 (Jury in.)

18 THE COURT: Thank you, ladies and gentlemen. Again,
19 I apologize for the delay.

20 THE COURT: Ready?

21 MR. REICHEL: Thank you very much, Your Honor. The
22 defense would call to the stand Sarah Gonzalez.

23 (The witness was sworn by the Clerk.)

24 THE WITNESS: Yes, I do.

25 THE CLERK: Please speak clearly into the microphone.

1 Please state your full name and spell your last name for the
2 record.

3 THE WITNESS: Sarah Gonzalez, G-o-n-z-a-l-e-z.

4 THE CLERK: Thank you.

5 SARAH GONZALEZ,

6 a witness called by the Defendant, having been first duly sworn
7 by the Clerk to tell the truth, the whole truth, and nothing
8 but the truth, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. REICHEL:

11 Q. Hi, Mrs. Gonzalez, do you know Eric McDavid?

12 A. I do.

13 Q. How long have you known Mr. McDavid?

14 A. Thirteen years.

15 Q. How well do you know him?

16 A. Very well.

17 Q. And were there times that he stayed or lived with you
18 and your husband?

19 A. Yes.

20 Q. And you are married to Eric Gonzalez?

21 A. Correct.

22 Q. Who just testified?

23 A. Yes.

24 Q. And how long have you been married?

25 A. Five years.

1 Q. And where do you reside?

2 A. In Citrus Heights.

3 Q. Okay. And how long have you resided there?

4 A. Six years.

5 Q. And the years, the year 2000- -- let's say the middle
6 of 2005, June of 2005, did you know Mr. McDavid at that time?

7 A. Yes.

8 Q. Okay. And how well do you think you knew him?

9 A. Very well.

10 Q. Okay. And why did you think you knew him pretty
11 well?

12 A. Eric was like a brother to me growing up. He was in
13 my life. He was there for me, and I was there for him.

14 Q. In June of -- as far as June of 2005, if we asked you
15 if you had an opinion about him, what he was like, would you
16 have that opinion?

17 A. To me, he has always been special, so he always has
18 been a good person, and I would say that being June, July
19 August, December, January.

20 Q. When you say "good person," what was he like?

21 A. Oh, he was caring, loving, would give the shirt off
22 of his back for anyone. He watched our house when he went out
23 of town if he wasn't on our trips with us. He watched our dog.
24 He is family. He wasn't just a friend. He was a brother to
25 me.

1 Q. Let me ask you about December of 2005. Did you have
2 an opinion as to Mr. McDavid's character for violence?

3 A. No. He has never been a violent person.

4 Q. Okay. Did you -- December of 2005 did you believe
5 him to be a peaceful person?

6 A. Yes.

7 Q. And why do you say that?

8 A. Because when Eric was around us, he was the same
9 loving person then as he was years before or even after.

10 Q. Were you surprised by these charges?

11 A. Extremely.

12 Q. And I'm talking about the charges in this case?

13 A. Yes.

14 Q. Did you read about them in the newspaper?

15 A. Yes.

16 Q. And that's about January of 2006?

17 A. Yes.

18 Q. Okay. Had you seen him just before that?

19 A. Yes.

20 Q. When?

21 A. Shortly before. He spent New Year's with us.

22 Q. So 2005 did you have -- you obviously had
23 conversations with Mr. McDavid?

24 A. Yes.

25 Q. Do you remember a specific conversation where he had

1 come back from traveling, and he talked about finding a certain
2 woman that he was interested in?

3 MS. ENDRIZZI: Objection, Your Honor. Hearsay.

4 THE COURT: Overruled.

5 MS. ENDRIZZI: Statement of the defendant, Your
6 Honor.

7 THE COURT: Overruled.

8 Q. BY MR. REICHEL: What did he tell you?

9 A. Well, Eric had met a lot of people along his trips
10 and --

11 THE COURT: Excuse me. There wasn't actually an
12 answer to the question.

13 Do you remember a specific conversation where he had
14 come back from traveling, and he talked about finding a certain
15 woman that he was interested in? You never responded. Do you
16 remember that?

17 THE WITNESS: No. I can't recall that specifically.

18 Q. BY MR. REICHEL: Okay. Did he ever -- did he talk to
19 you about a woman named Anna?

20 A. Yes.

21 Q. What did he say about Anna?

22 A. That Anna was a friend that he had met along
23 traveling, and I know that he enjoyed her company and looked
24 forward to having further meetings with her. And I recall
25 asking Eric if we would ever have a chance to meet her at one

1 point, and he just kind of giggled.

2 But to the extent of it, it was more of a traveling
3 companion, somebody that he really enjoyed having that company
4 with is how I remember him speaking about Anna.

5 Q. Okay. And he brought that up to you?

6 A. Yes.

7 Q. It wasn't something you asked him about?

8 A. No.

9 Q. It was more like he had something to tell you?

10 A. Yes.

11 Q. Okay. What was his attitude like when he talked
12 about her?

13 A. Excited.

14 Q. Did you sense a romantic interest on his part?

15 A. No, I don't recall that.

16 Q. Just generally excited about her?

17 A. Yeah.

18 MR. REICHEL: Okay. I have nothing further, Your
19 Honor.

20 THE COURT: Thank you. Cross.

21 MS. ENDRIZZI: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. ENDRIZZI:

24 Q. Mrs. Gonzalez, I'm Ellen Endrizzi. I'm one of the
25 prosecutors.

1 In June 2005, were you with Mr. McDavid in
2 Philadelphia?

3 A. No.

4 Q. And in July 2005 were you with Mr. McDavid in
5 Indiana?

6 A. No.

7 Q. And in August of 2005 were you with Mr. McDavid in
8 Philadelphia?

9 A. No.

10 Q. Have you ever traveled with Mr. McDavid up to
11 Seattle?

12 A. No.

13 Q. Did Mr. McDavid ever talk to you about Derrick
14 Jensen?

15 A. Um, I don't -- the name sounds familiar, but I
16 couldn't say either way.

17 Q. Did Mr. McDavid talk to you about anarchists?

18 A. No.

19 Q. Did Mr. McDavid talk to you about Ryan Lewis?

20 A. Yes.

21 Q. Did he discuss Ryan Lewis? Did he tell you that he
22 had left California during Ryan Lewis' investigation?

23 A. No, I don't recall that.

24 Q. Did Mr. McDavid talk to you about direct action and
25 what that was?

1 A. No.

2 Q. Did Mr. McDavid talk to you about Earth Liberation
3 Front?

4 A. No.

5 Q. Did Mr. McDavid tell you that he was headed to
6 Seattle after the New Year?

7 A. I don't recall where he was going.

8 Q. Did Mr. McDavid ever talk to you about the
9 construction of Molotov Cocktails?

10 A. No.

11 MS. ENDRIZZI: Just a moment. Nothing further, Your
12 Honor.

13 MR. REICHEL: We have nothing further, Your Honor.

14 THE COURT: Thank you very much. You may step down
15 and you are excused. Next witness.

16 MR. REICHEL: Your Honor, the defense would call
17 Sarah McDavid.

18 (The witness was sworn by the Clerk.)

19 THE WITNESS: I do.

20 THE CLERK: Please state your full name and spell
21 your last name for the record.

22 THE WITNESS: Sarah Beth McDavid, M-c-D-a-v-i-d.

23 SARAH McDAVID,

24 a witness called by the Defendant, having been first duly sworn
25 by the Clerk to tell the truth, the whole truth, and nothing

1 but the truth, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. REICHEL:

4 Q. Hi, Sarah, how are you?

5 A. Good.

6 Q. I'm going to ask you -- you've known your brother all
7 your life, right?

8 A. Yes.

9 Q. And did you live together in the same house growing
10 up?

11 A. Yes.

12 Q. And your parents are still married?

13 A. Yes.

14 Q. And you have another sister?

15 A. Yes.

16 Q. And would you describe the family as close?

17 A. Yes.

18 Q. Okay. So you feel -- do you feel that you know your
19 brother well?

20 A. Yes.

21 Q. And directing your attention to, let's say, the
22 middle part of 2005?

23 A. Okay.

24 Q. Okay. Did he -- what was your brother doing in
25 December of 2005?

1 A. In December of 2005 --

2 Q. I'm sorry. The early summer?

3 A. Summer. He was traveling around the country.

4 Q. What did he do for money in 2005?

5 A. I honestly don't --

6 MR. LAPHAM: Objection. Calls for speculation.

7 THE COURT: Foundation. Sustained. Foundation.

8 Q. BY MR. REICHEL: Do you know what -- I mean, you're
9 familiar with him in 2005?

10 A. Yes.

11 Q. Okay. And do you know -- you would know if he had a
12 job?

13 A. Yes.

14 Q. Did he have a job?

15 A. Not that I'm aware of.

16 Q. You saw him in 2005, right?

17 A. Yes.

18 Q. And you kept in contact with him?

19 A. Yes.

20 Q. Do you feel that you would know whether or not he had
21 any money in 2005?

22 A. Yeah.

23 Q. What do you know?

24 A. He didn't to my knowledge.

25 Q. Okay. In June of 2005, based on having known him --

1 A. Uh-huh.

2 Q. -- did you have an opinion as to certain character
3 traits of Eric?

4 A. Yes.

5 Q. Okay. Let's talk about his character trait for
6 violence. What did -- what was your opinion about that?

7 A. My brother is completely non-violent.

8 Q. Why do you say that?

9 A. Because it's not in his character.

10 Q. Why do you say that?

11 A. He is extremely peaceful and sensitive. It's not in
12 his character.

13 Q. And, well, in 2005 did he have a chance to go to the
14 church camp?

15 A. Test my dates here. I don't think it was 2005 that
16 he was there at the church camp.

17 Q. And in 2005, let's say, the Summer of 2005 --

18 A. Uh-huh.

19 Q. -- your views and your opinions on Eric toward --
20 well, how would you generally describe him?

21 A. I would describe him as, like I said, a very
22 sensitive and loving man.

23 Q. Okay. How about -- was he -- was he a happy
24 individual?

25 A. Yes.

1 Q. Did he come off as very happy or just moderately
2 happy or what?

3 A. I guess just -- I don't know -- normally happy.

4 Q. But was he always happy, or, I mean, what was his
5 disposition?

6 A. Like overall?

7 Q. Yeah. Summer of 2005?

8 A. Summer of 2005. I know that -- I should say I feel
9 that he was a happy individual overall.

10 Q. Okay. And you had occasion -- or did you have
11 occasion to stay close with him throughout the Fall into the
12 Winter of 2005?

13 A. Yes.

14 Q. And did you see him in that time period?

15 A. Yes.

16 Q. Okay. And where were you living in 2005?

17 A. I was living in Sacramento.

18 Q. Okay. Prior to that where were you living?

19 A. I lived with my parents for six months.

20 Q. In Foresthill?

21 A. Yes.

22 Q. Okay. And so in the Fall of 2005, in the Winter of
23 2005, did you continue to have an opinion about Eric's
24 character traits and so forth?

25 A. Yes.

1 Q. And did it change?

2 A. No.

3 Q. Did your opinion of him change at that time?

4 A. No.

5 Q. And was -- he was home for Christmas in 2005?

6 A. Yes.

7 Q. Over the holidays there?

8 A. Yes.

9 Q. And so it was -- was it a family Christmas in 2005?

10 A. Yes.

11 Q. And Eric was there?

12 A. Yes.

13 Q. What was he like?

14 A. Happy. I think he was happy to be there and just
15 spent time with us and had a good time.

16 Q. Okay. And when he was arrested in this case, what
17 were your thoughts?

18 A. I was completely surprised.

19 Q. Why?

20 A. Because of what the media was saying about my
21 brother.

22 Q. What were they saying that surprised you?

23 A. They were saying that he was like this eco-terrorist
24 or stuff like that and --

25 Q. Why did that surprise you?

1 A. Because he's not.

2 Q. What made you think he's not? Why do you say that?

3 A. Because I know my brother. And I know that he loves
4 nature. But I also know that he is not some eco-terrorist.

5 Q. What are his views on killing people?

6 A. He's not okay with it.

7 Q. He's not. Let me ask you this, June of 2005, do you
8 have an opinion as to his views on killing people?

9 A. Not that -- I know my brother to be a very sensitive
10 and caring and non-violent person, so that's what my view of --

11 Q. Do you like think those are his principles?

12 A. Yes, absolutely.

13 Q. Did any of that change by December of 2005?

14 A. No.

15 Q. Okay. And when he was arrested, the allegations, did
16 that square with your opinion of his character?

17 A. Absolutely not,

18 MR. REICHEL: Okay. I have nothing further, Your
19 Honor.

20 THE COURT: Thank you. Cross.

21 CROSS-EXAMINATION

22 BY MR. LAPHAM:

23 Q. Ms. McDavid, how many conversations have you had with
24 your brother about killing people?

25 A. Zero.

1 Q. So as you sit here, you really don't know what his
2 view on that is?

3 A. I don't agree with that, but --

4 Q. Well, you've never talked to him about that
5 particular subject?

6 A. No.

7 Q. Okay. And he does have certain views on the
8 environment?

9 A. Sure.

10 Q. And you've discussed those views with him?

11 A. Yes.

12 Q. Has he ever discussed the Earth Liberation Front with
13 you?

14 A. No.

15 Q. Were you aware of any affiliation he had with the
16 Earth Liberation Front?

17 A. No.

18 Q. Or with the Animal Liberation Front?

19 A. No.

20 Q. In November -- well, let me ask you first, are you
21 aware that the Indictment charges that in November of 2005 he
22 had a meeting at your parents' home in Foresthill?

23 A. Yes, I'm aware of that.

24 Q. Were you aware at the time that he was meeting other
25 people there?

1 A. I knew he was having friends up to the house.

2 Q. Did he tell you anything about what that was all
3 about?

4 A. No.

5 Q. Did you ever ask him?

6 A. No.

7 Q. And have you heard any of the tape recordings that
8 were made in this case?

9 A. Yes.

10 Q. What have you heard?

11 A. A lot of it.

12 Q. Is that as a result of not -- well, I guess you
13 haven't been sitting here in court?

14 A. Right. No, I have not.

15 Q. You heard them outside court?

16 A. Right. Exactly.

17 Q. So you are aware that he talked about building
18 explosives?

19 A. Yes.

20 Q. And you are aware that he talked about the
21 possibility that somebody might accidentally be killed as a
22 result of those explosives?

23 A. Yes.

24 Q. All right. You are also aware that he talked about
25 blowing up dams and cell phone towers?

1 A. Yes.

2 Q. All right. And this is him talking himself?

3 A. I don't remember specifically, but I have read the
4 conversations about it.

5 Q. All right. And you know that he did reconnaissance
6 at a Forest Service facility that he had talked about blowing
7 up?

8 A. I know that he went there, yes.

9 Q. You also know that he was very fond of an individual
10 named Derrick Jensen?

11 A. Yes.

12 Q. And that's a person who -- well, were you aware that
13 that's a person who espoused taking violent action on behalf of
14 the environment?

15 A. I'm -- am I aware? Is that what you are asking?

16 Q. Yes.

17 A. I'm aware that he is a well-known author, and that he
18 does speak strongly about the environment. I haven't read his
19 books. I mean, I think I've read one, but it was really about
20 how much we need to take care of Mother Nature and stuff like
21 that, so.

22 Q. And despite listening to all those things, your
23 opinion is still that your brother is a non-violent person?

24 A. Absolutely.

25 Q. And that's because he's your brother?

1 A. That's because I know his character.

2 MR. LAPHAM: I have nothing further.

3 THE COURT: Redirect?

4 MR. REICHEL: I have nothing further, Your Honor.

5 THE COURT: All right. You may step down. Witness
6 is also excused. Next witness?

7 MR. REICHEL: Your Honor, we were prepared to play
8 excerpts actually, and that's why we needed to discuss with the
9 United States about -- we just haven't had time.

10 THE COURT: Do you have other witnesses here that we
11 can use up to that point?

12 MR. REICHEL: No, we don't, Your Honor. We were
13 going to play the excerpts at this point, but we didn't resolve
14 the stipulation on that.

15 THE COURT: Let me see you at sidebar quickly. Off
16 the record. I'm just looking for timing.

17 (Off-the-record sidebar discussion.)

18 THE COURT: All right. Ladies and gentlemen, after
19 conferring with counsel, it appears that we've moved along
20 fairly well. What I anticipate at this point in time is that
21 the defense will have approximately one hour --

22 MR. REICHEL: At the most.

23 THE COURT: -- at the most of evidence that we'll
24 start with tomorrow morning.

25 At that time, the Government will have some

1 relatively short rebuttal. We more than likely -- what I'm
2 hoping to be able to do is to release you tomorrow morning a
3 little before noon, allow us time to work on settling the jury
4 instructions, bring you back at 1:30 p.m., and start with
5 closing arguments from both the Government and defense,
6 instruct you, and have you sent out to deliberate by tomorrow
7 afternoon hopefully. That's best I can do right now, but I
8 think we are pretty close.

9 If we don't finish tomorrow, at that point we're
10 going to be extremely close to sending you out to deliberate.
11 Any questions at this point? Any issues I should deal with?
12 If you could be a little bit flexible for me tomorrow, I would
13 appreciate it. But I think if we can do this, we will be able
14 to get this pretty well wrapped up by tomorrow, tomorrow
15 afternoon.

16 If no other thoughts, please remember your
17 admonitions. Do not discuss the case with anyone including
18 each other. Do not read any newspaper accounts or listen to
19 any television or radio reports. Thank you very much. See you
20 tomorrow at 9:00 a.m.

21 (Jury out.)

22 THE COURT: Anything else, counsel?

23 MR. REICHEL: Mr. Lapham, I'll have two or three
24 things that we need to resolve prior to tomorrow. I don't
25 think we need the Court right now.

1 Actually what time -- if we go out now and try to
2 resolve some of these, is the Court available in half an hour,
3 or do you want to shoot for 8:30 instead tomorrow maybe or
4 something?

5 THE COURT: I'll be available at 8:30 a.m. tomorrow
6 in case there's some things that need to be addressed. If
7 you'd let me know beforehand, that would be great. Leave a
8 message by 8:00. Court's adjourned.

9 Mr. Reichel, with respect to bringing your client
10 over tomorrow, unless he is willing to -- he has the right to
11 be present at all proceedings, and if we have to go on the
12 records at 8:30, he needs to be here.

13 MR. REICHEL: Okay. For the Marshals.

14 THE COURT: So I need as much information. Do we
15 plan on having him here at 8:30?

16 MR. REICHEL: I think so based on our conversation
17 just now, but maybe we should do something now since we've got
18 him here.

19 THE COURT: How are you going to be able to review
20 the transcripts?

21 MR. LAPHAM: It's a different issue.

22 MR. REICHEL: It's another issue.

23 THE COURT: All right. Let's deal with what we can
24 right now then.

25 MR. REICHEL: Thank you, Your Honor.

1 When the Anna -- first of all, backing up, I sent
2 numerous letters to the United States about discovery regarding
3 Anna, and I cc'd the Court file on every single one, actually.

4 And then as the trial approached, I kept sending
5 letters to Mr. Lapham. And as the trial began, I sent letters
6 to Mr. Lapham, and they are all cc'd to the District Court file
7 for the record.

8 And I asked for everything regarding Anna that was
9 discoverable, including any statements or prior statements of
10 hers, or anything else.

11 On her direct examination she testified to a
12 psychological assessment profile that she did, that she
13 forwarded to the FBI, and that's the first we'd heard of it.

14 But backing up, Mr. Lapham had advised me that I had
15 everything on Anna that he had that was available. That I had
16 everything that he had, and that there was in fact not really
17 much of a file. That she would just communicate, and she was
18 kind of freelancing. And therefore there was no real file
19 maintained on her. And I don't think that -- I don't think he
20 was misleading me. I think he just didn't know what there was.

21 Nevertheless, she testified about this assessment.
22 And after she was done testifying, we talked about it. And
23 Mr. Lapham said it would be very difficult to obtain. No one
24 knew if it really existed yet and what it consisted of.

25 But after she was done, and she's done from her

1 cross, he provided to me -- after she was done from her cross
2 and gone -- the assessment. It's 254 -- 254 questions over
3 several pages.

4 MR. LAPHAM: 240.

5 MR. REICHEL: 240 questions.

6 THE COURT: Just so we're clear, this assessment is
7 of your client?

8 MR. REICHEL: Yes.

9 THE COURT: This was for her to be able to understand
10 how to respond to certain questions he might ask.

11 MR. REICHEL: Yes. And it was in November of 2005 is
12 when she filled it out, provided it to the FBI. They then gave
13 her directions. And there's scores on it and their own
14 profile, or their own psychological assessment of Mr. McDavid
15 with it. And I never saw it before. I never heard of it until
16 she was done testifying was the first time I heard of it.
17 Mr. Lapham gave it to me after she was done of
18 cross-examination. I got it that night. And that's because he
19 had just got it at that point, Your Honor.

20 Nevertheless, it is very relevant as to what she was
21 saying about him, her views of him. You know, when she would
22 answer questions, she had to answer "strongly agree," "agree,"
23 "neutral," "strongly" -- excuse me -- "disagree" or "strongly
24 disagree."

25 And the questions are extensive, and they are a

1 psychological assessment profile. And like I said, 240
2 questions. And they are very good and probing questions
3 specifically as to predisposition or lack thereof, and it also
4 shows her statements about him.

5 I believe it clearly qualifies under the Jencks Act,
6 but regardless, it's just clearly relevant to the defense. We
7 got it, and I'm thankful that I got it from him. I would like
8 to introduce it to the jury. It shows exactly what she told
9 the FBI about him, how she felt about him at a highly relevant
10 point, November of 2005. And I want to introduce it to the
11 jury.

12 Mr. Lapham has advised me that one problem he has is
13 it's an internal FBI document, and that it would, you know,
14 show cutting-edge FBI psychoanalysis and so forth. And I don't
15 want to take secrets from the FBI. But I looked on the net in
16 19 seconds, and I found that that specific form is available
17 for anybody at a very cheap price. And it's actually provided
18 to psychologists all over the country, to therapists all over
19 the country. It's a very patterned psychological assessment
20 profile, and there is a workbook that comes with it, there is
21 an answer key that comes with it.

22 THE COURT: So what is the bottom line that you are
23 trying to get to with her?

24 MR. REICHEL: He doesn't think it's relevant.

25 MR. LAPHAM: I asked the same question. I want to

1 know the bottom line. What does he want to do with this?

2 I maybe can agree or disagree, but I never said it
3 was cutting-edge technology. That's a bit of a hyperbole.

4 MR. REICHEL: That's not that bad for me, though.

5 MR. LAPHAM: No, it's not.

6 MR. REICHEL: Thanks.

7 MR. LAPHAM: But I'm trying to find out what
8 Mr. Reichel has in mind.

9 MR. REICHEL: Every e-mail of my client, just about
10 everything, I mean, everything that was recovered at the house,
11 if it had any writing on it becomes a Government exhibit.

12 She fills out a 240 questionnaire about my client for
13 the FBI, which then tells her on how to interact with my client
14 during this investigation. The jury should be entitled to
15 that.

16 THE COURT: Well, I'm still saying, well, what's the
17 relevance that you're trying to show with it, though?

18 I mean evidence in and of itself, even though it is
19 relevant, isn't necessarily admitted, as we're aware of. There
20 still is a 403 analysis as far as, is it going to be unduly
21 time consuming, is it going to be confusing.

22 Shorthand version of is it going to cause a trial
23 within a trial to figure out whether or not that test, if you
24 want to call it that, is trustworthy, what's it used for, does
25 it really have an effect upon your client directly.

1 It was only used so that she would know how to
2 respond to your client if questions became unfamiliar.

3 MR. REICHEL: It's statements of her mindset about
4 him, her thoughts about him. It's very revealing about what
5 she thinks about him. It says very flattering things about him
6 as well. She finds him on the scale of kindness to be the most
7 kind, so forth, helping others. There's all sorts of very
8 helpful stuff for the defendant.

9 Additionally, Your Honor, you know, the Government
10 has moved into evidence slongs (sic) of documents that were
11 found at the place, and, you know, I've done -- you know, I'm
12 not saying that that's a 403 on the Derrick Jensen issue.
13 Every time they introduce something, I could do a 403 analysis
14 and say that's going to spend us here forever.

15 You know, it's something she testified to. It's not
16 just found at the cabin. It's something significant that she
17 interacted with the FBI. It should have been provided to me
18 long before the trial.

19 THE COURT: I'm still not sure what you want to do
20 with this 240 question --

21 MR. REICHEL: Introduce it as a defense exhibit, that
22 this is what Anna testified about, that she provided to the FBI
23 in November of 2005. And it shows her statements about him.
24 She answers to the FBI her statements about him. Is he this?
25 Is he that? Is he this? How do you rate him?

1 THE COURT: Okay. And the relevance of this would
2 be?

3 MR. REICHEL: She's the Government informant in the
4 case who is very familiar with him, who is working inside this
5 conspiracy with him, and it shows things that he's done to --
6 shows what she has observed and seen him do in the last several
7 months as well as her view of him.

8 To not let the jury see that, Your Honor, I think it
9 is error, and it should have been provided. And I'm not
10 holding him accountable that wasn't provided beforehand, but
11 it's very relevant. It's a statement of a Government witness
12 after they've testified that -- you know, it's a statement of
13 her that she made about him.

14 MR. LAPHAM: Your Honor, I question whether we're --
15 we're beyond this, I know -- but I question whether it's even
16 Jencks because it's not about the crime. It's about a
17 psychological assessment of the defendant, which was used to
18 aid her in reacting to him.

19 But having said that, I have a potential solution. I
20 think it would be totally confusing to put this in front of the
21 jury and let them try and figure out what this is. It's 240
22 questions, and it's a circle-the-right-answer, the answer
23 that's most appropriate. They are never going to figure that
24 out.

25 If Mr. Reichel has specific questions he wants to ask

1 about Anna -- or ask of Anna, I think he can use this document
2 to probe that.

3 MR. REICHEL: That's no problem, Your Honor. But you
4 talk about time, that's going to be her on the witness stand,
5 which, you know, I didn't know we were recalling her. I'm not.
6 But that's her on the witness stand. You know, 240 questions.

7 I need to give it to the Court because it says -- the
8 jury doesn't need a book to figure it out. It says, on a scale
9 -- you know, on a scale of one to ten, how do you rate him
10 helpful? Ten being the most. And she puts ten. Honest.
11 This, that, and the other thing. Helpful to the poor. You
12 know, lazy. We talked about lazy, whether he's energetic. All
13 of these things, it's a psychological profile of him by her at
14 the height of the conspiracy.

15 It's probative of her, you know, observations of him,
16 and her -- it's, you know, like a long interview she gave --
17 it's an extremely long interview to the FBI she gave about him.
18 I mean, I would say there is not a lot of criminal cases where
19 this has come up, where you have psychological profile prepared
20 by the informant.

21 THE COURT: Well, the psychological profile was
22 prepared in anticipation of him making romantic advances toward
23 this person. It's not a psychological profile as to his
24 predisposition to engage in these types of activities for which
25 he is on trial now. What you're trying to admit is I guess

1 that he is a nice guy?

2 MR. REICHEL: No, Your Honor, we have no evidence
3 that it was prepared solely whatsoever to determine --

4 THE COURT: That's the evidence that she gave us on
5 the witness stand was that because she was concerned that there
6 might be a potential for your client making certain romantic
7 advances toward her, that she contacted the FBI. They gave her
8 the questionnaire and said to respond to it, so they could
9 prepare a psychological profile of how she should respond in
10 the event these types of comments and/or advances were made.
11 That was what she testified to. That's the evidence that's
12 before the jury. What I've heard.

13 It wasn't about give us a psychological profile, so
14 that we can determine whether or not Mr. McDavid is
15 predisposed, or is likely to commit a crime, or he was involved
16 in the conspiracy. It's got nothing to do with that. The only
17 evidence that you have is that it was to assist her in trying
18 to figure out how to respond to questions on the romantic
19 level.

20 MR. REICHEL: Unfortunately, she was not correct on
21 her testimony under oath. That psychological assessment
22 actually has zero to do with romantic interests. That is a
23 common, unfortunately for Anna, psychological assessment
24 profile that is advertised on the Internet, that is used by
25 psychologists all over it. It says it on the top. It says it

1 on the bottom. It has nothing to do with, you know, fill this
2 out to repel a sexual advance.

3 THE COURT: That's not the point though. There are
4 multitude of psychological tests and batteries that can be
5 given, which I am certain that one, if they were sufficiently
6 well-versed in the technique of psychometry, the art of
7 testing, that one could use the MMPI, the Minnesota Multiphasic
8 Personality Inventory, commonly used for an IQ test, could be
9 used to determine how a person would respond to a certain
10 stimuli, but that's not the main reason for that examination.
11 It's one tool that can be used.

12 And so I don't think that to say that this was a test
13 on how to repel someone's romantic interest is accurate. It's
14 not accurate. It's simply a series of questions that may have
15 been interpreted under certain ways, could be interpreted under
16 various ways.

17 MR. REICHEL: She said, Your Honor -- and I thought
18 the Government's position about a minute-and-a-half ago was
19 that it was a test specifically on how to deal with his
20 romantic interests. But my point is also --

21 THE COURT: Here's my problem, Mr. Reichel. To take
22 a 240-question examination or a psychological profile and admit
23 it into evidence and to a jury and say, here you go.

24 MR. REICHEL: This is what she said about him. This
25 is what she said about him.

1 THE COURT: Well, what relevance and under what
2 context do you give that? There's been nothing that shows how
3 she was asked to respond.

4 MR. REICHEL: Right. It's her honest responses, Your
5 Honor, to these questions which are the same questions, similar
6 questions to what they asked her --

7 THE COURT: It would have to be in a context, though.
8 Have to be in the proper context.

9 MR. REICHEL: Your Honor, they were allowed in their
10 direct examination to talk and ask her opinion and to ask her
11 to testify about reluctance, hesitancy, excited, whether he was
12 interested in doing these things. How he acted, what he said.

13 THE COURT: I'm not having a problem with you asking
14 her these questions. It's the fact that you're saying I'm
15 going to take a 240-question psychological profile and just
16 say, here you go, to the jury. That's where I'm having the
17 problem. I don't have a problem asking her the questions that
18 just came out.

19 MR. REICHEL: It's four or five pages, I believe.

20 THE COURT: I would prefer that you spend the time
21 asking her the questions then, than this taking a 240-question
22 test that many of those questions I'm sure would be irrelevant.

23 MR. REICHEL: No, they are all highly relevant, Your
24 Honor. They are all about her views of Mr. McDavid.

25 THE COURT: Well, that's to the n'th degree if you

1 take it that far, Mr. Reichel, I understand, everything is
2 relevant relevant.

3 MR. REICHEL: Well, they break them down. I mean,
4 they go into certain areas and they break them down. But
5 there's none that are, what's his favorite sport team. It's
6 always about, you know, what kind of person is he, and what has
7 he done in your presence.

8 THE COURT: Okay.

9 MR. LAPHAM: Your Honor, you hit the nail on the
10 head. This is a personality index. It has general questions,
11 not focused on any sexual aspect, not focused on any explosive
12 bombing campaign. It is what type of personality does this guy
13 have.

14 If Mr. Reichel wants to go into it
15 question-by-question, I almost guarantee I'm going to have
16 probably about 240 objections as to relevance. It has nothing
17 to do with this case.

18 MR. REICHEL: Your Honor, just because he says he is
19 going to object on relevance doesn't mean it's not relevant.
20 It's what she said about this individual during this timeframe.
21 She's a main witness.

22 THE COURT: If it's somehow contradicting her prior
23 testimony?

24 MR. REICHEL: Sure.

25 THE COURT: Is it?

1 MR. REICHEL: Yes.

2 THE COURT: All of those questions?

3 MR. LAPHAM: If he can point out any examples, we
4 might be in business here.

5 MR. REICHEL: Can we give the Court a copy of this?

6 THE COURT: Well, that's my point. Right now I'm
7 sure that there may be some questions that are relevant.

8 MR. REICHEL: Thank you.

9 THE COURT: But to simply say, with sight unseen,
10 that all 240 questions are relevant, and I should admit that
11 before the jury, I think that I would be shirking my
12 responsibilities as the gatekeeper here, as the judge, by
13 allowing that to happen. Because that's -- as you know, all
14 evidence that is relevant is not always admissible. And that's
15 the point. And it's got to have a context. And just to give
16 it to them, I'm not going to do that.

17 So the request to just admit the 240-page personality
18 inventory or questionnaire is denied, but that does not mean
19 that you cannot go into those certain questions with her.

20 MR. REICHEL: Thank you. I'll get to the ones that
21 help.

22 THE COURT: It seems to me that there should be a way
23 to get right to those questions pretty directly.

24 MR. REICHEL: If Mr. Lapham stays outside while I'm
25 doing it, yes, I think so.

1 MR. LAPHAM: I'll consider that.

2 THE COURT: I have a sua sponte obligation, also, as
3 well, too.

4 MR. REICHEL: Thank you.

5 THE COURT: Thank you.

6 MR. REICHEL: I believe that's it. The Court will
7 get a copy of it tomorrow or the next day. I was going to
8 lodge a copy tonight for the Court.

9 THE COURT: If you can do so. Electronically?

10 MR. REICHEL: Not. Not electronically because I
11 thought you didn't want it public.

12 MR. LAPHAM: Yes. We'd prefer that it not be
13 electronically filed, but we have no objection to giving it to
14 you.

15 THE COURT: Make a copy and I can take one. All
16 right. Anything else?

17 MR. REICHEL: We'll get it to you.

18 THE COURT: Mr. Reichel, are you going to submit any
19 jury instructions?

20 MR. REICHEL: Yes, I will do them tonight. I already
21 have submitted. You just need the Word Perfect version?

22 THE COURT: Correct. That's what we're concerned
23 about. Yes. All right. Anything else?

24 MR. REICHEL: Thank you, Your Honor.

25 MR. LAPHAM: Thank you, Your Honor.

1 THE COURT: Court's adjourned.

2 (Court adjourned. 4:29 p.m.)

3
4 CERTIFICATION

5
6 I, Diane J. Shepard, certify that the foregoing is a
7 correct transcript from the record of proceedings in the
8 above-entitled matter.

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10
11 /S/ DIANE J. SHEPARD
12 DIANE J. SHEPARD, CSR #6331, RPR
13 Official Court Reporter
14 United States District Court
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