

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 I

ERIC McDAVID,

Pages 1 to 184

Defendant.

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REPORTER'S TRANSCRIPT

JURY SELECTION

OPENING STATEMENTS

TRIAL PROCEEDINGS

MONDAY, SEPTEMBER 10, 2007

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

APPEARANCES

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For the Government:

McGREGOR W. SCOTT
UNITED STATES ATTORNEY
501 I Street, Suite 10-100
Sacramento, California 95814
BY: R. STEVEN LAPHAM
ELLEN ENDRIZZI
Assistant U.S. Attorneys

For Defendant, Eric McDavid:

MARK J. REICHEL
Attorney at Law
555 Capitol Mall, Suite 600
Sacramento, California 95814

I N D E X

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1 SACRAMENTO, CALIFORNIA

2 MONDAY, SEPTEMBER 7, 2008

3 ---oOo---

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

7 THE COURT: Thank you. Good morning, ladies and
8 gentlemen, and welcome to Courtroom 3 of the United States
9 District Court.

10 Once again, my name is Morrison England. I'm the
11 judge that's been assigned to preside over the matter that is
12 before us today. You have been summoned here, ladies and
13 gentlemen, in a criminal matter. It is entitled the United
14 States of America versus Eric McDavid.

15 Before I continue on, is there anyone who is having
16 difficulty hearing me at this time? If you are, would you
17 please raise your hand? All right. For the record, no one has
18 raised their hand.

19 Ladies and gentlemen, it's very important throughout
20 the entire proceedings, both through the jury selection this
21 morning, and, if you are selected as a juror, during the trial
22 itself, that each of you be able to hear all of the questions
23 that are asked of the witnesses or the prospective jurors, as
24 well as the responses that will be given to those particular
25 questions.

1 Counsel, are you ready to proceed?

2 MR. LAPHAM: Yes, Your Honor.

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

4 THE COURT: Thank you very much. Madam Clerk, will
5 you please call the roll of prospective jurors.

6 Ladies and gentlemen, when you hear your name called,
7 please respond audibly. Thank you.

8 THE CLERK: Vickie Alexander?

9 PROSPECTIVE JUROR: Here.

10 THE CLERK: Diane Bennett?

11 PROSPECTIVE JUROR: Here.

12 THE CLERK: Jennier Black?

13 PROSPECTIVE JUROR: Here.

14 THE CLERK: Joe Brandon?

15 PROSPECTIVE JUROR: Here.

16 THE CLERK: Paul Brown?

17 PROSPECTIVE JUROR: Here.

18 THE CLERK: Jeff Bryan?

19 PROSPECTIVE JUROR: Here.

20 THE CLERK: Mary Butler?

21 PROSPECTIVE JUROR: Here.

22 THE CLERK: Oscar David? Oscar David?

23 PROSPECTIVE JUROR: (No response.)

24 THE CLERK: John Day?

25 PROSPECTIVE JUROR: Here.

1 THE CLERK: Daniel Doolan?

2 PROSPECTIVE JUROR: Here.

3 THE CLERK: Lisa Ekdahl?

4 PROSPECTIVE JUROR: Here.

5 THE CLERK: Theresa Freitag?

6 PROSPECTIVE JUROR: Here.

7 THE CLERK: William Fuqua?

8 PROSPECTIVE JUROR: Here.

9 THE CLERK: Barbara Gaskin?

10 PROSPECTIVE JUROR: Here.

11 THE CLERK: Deborah Gerdin?

12 PROSPECTIVE JUROR: Here.

13 THE CLERK: Otto Gisler?

14 PROSPECTIVE JUROR: Here.

15 THE CLERK: Nell Hessel?

16 PROSPECTIVE JUROR: Here.

17 THE CLERK: Phillip Hinson?

18 PROSPECTIVE JUROR: Here.

19 THE CLERK: Hans Holmquist?

20 PROSPECTIVE JUROR: Here.

21 THE CLERK: Matthew Huiras?

22 PROSPECTIVE JUROR: Here.

23 THE CLERK: Jesse Ibarra?

24 PROSPECTIVE JUROR: Here.

25 THE CLERK: Derek Jones?

1 PROSPECTIVE JUROR: Here.

2 THE CLERK: Karen Kanas?

3 PROSPECTIVE JUROR: Here.

4 THE CLERK: Michele Kinaan?

5 PROSPECTIVE JUROR: Here.

6 THE CLERK: Floyd Kinser?

7 PROSPECTIVE JUROR: Here.

8 THE CLERK: Scott Leonhardt?

9 PROSPECTIVE JUROR: Here.

10 THE CLERK: Ann Meigs?

11 PROSPECTIVE JUROR: Here.

12 THE CLERK: Elaine Minow?

13 PROSPECTIVE JUROR: Here.

14 THE CLERK: Susan Murdock?

15 PROSPECTIVE JUROR: Here.

16 THE CLERK: Kathleen Neidlinger?

17 PROSPECTIVE JUROR: Neidlinger, here.

18 THE CLERK: Thank you. Catherine Orr?

19 PROSPECTIVE JUROR: Here.

20 THE CLERK: Ryan Page?

21 PROSPECTIVE JUROR: Here.

22 THE CLERK: Roger Parnell?

23 PROSPECTIVE JUROR: Here.

24 THE CLERK: Terri Pittman?

25 PROSPECTIVE JUROR: Here.

1 THE CLERK: Johnnie Powell?
2 PROSPECTIVE JUROR: Here.
3 THE CLERK: Richard Powers?
4 PROSPECTIVE JUROR: Here.
5 THE CLERK: Tracy Ramondini?
6 PROSPECTIVE JUROR: Here.
7 THE CLERK: Brian Regan?
8 PROSPECTIVE JUROR: Here.
9 THE CLERK: Judie Rogers?
10 PROSPECTIVE JUROR: Here.
11 THE CLERK: Maria Rubio-Pacheco?
12 PROSPECTIVE JUROR: Here.
13 THE CLERK: Carol Runge?
14 PROSPECTIVE JUROR: Here.
15 THE CLERK: Frank Schmidt?
16 PROSPECTIVE JUROR: Here.
17 THE CLERK: John Schuessler?
18 PROSPECTIVE JUROR: Here.
19 THE CLERK: Richard Separovich?
20 PROSPECTIVE JUROR: Here.
21 THE CLERK: Randall Smith?
22 PROSPECTIVE JUROR: Here.
23 THE CLERK: Lora Sotelo?
24 PROSPECTIVE JUROR: Here.
25 THE CLERK: Barbara Sullivan?

1 PROSPECTIVE JUROR: Here.

2 THE CLERK: Teresa Tackett?

3 PROSPECTIVE JUROR: Here.

4 THE CLERK: Judy Talley?

5 PROSPECTIVE JUROR: Here.

6 THE CLERK: Michele Tatum?

7 PROSPECTIVE JUROR: Here.

8 THE CLERK: Timothy Tidwell?

9 PROSPECTIVE JUROR: Here.

10 THE CLERK: Darin Tipton?

11 PROSPECTIVE JUROR: Here.

12 THE CLERK: Ethel Tozier-King?

13 PROSPECTIVE JUROR: Here.

14 THE CLERK: William Vranna?

15 PROSPECTIVE JUROR: Here.

16 THE CLERK: Jerry Walker?

17 PROSPECTIVE JUROR: Here.

18 THE CLERK: Janis Webster?

19 PROSPECTIVE JUROR: Here.

20 THE CLERK: Laura Wheeler?

21 PROSPECTIVE JUROR: Here.

22 THE CLERK: Jeanne Jacobson?

23 PROSPECTIVE JUROR: Here.

24 THE CLERK: Thank you. All present except for Oscar

25 David, Your Honor. Oscar David is present.

1 THE COURT: Thank you. Madam Clerk, will you please
2 administer the oath to the prospective jurors. If you can all
3 stand please and raise your right hand.

4 (Jury panel sworn by the Deputy Clerk.)

5 Jury panel in unison: I do.

6 THE CLERK: Thank you.

7 THE COURT: Please be seated.

8 THE COURT: All right. Ladies and gentlemen, is
9 there anyone that did not just take the oath of prospective
10 jurors? If you do not take the oath, would you please raise
11 your hand?

12 For the record, no one has raised their hand. All
13 prospective jurors have taken the oath.

14 Ladies and gentlemen, we're about to begin the
15 process of selecting a jury to hear this case. And before I
16 get into the actual voir dire process, the procedure I'm going
17 to follow at this point is to determine whether or not there is
18 anyone who wishes to declare a hardship.

19 A hardship, first of all, ladies and gentlemen, is
20 not the same as an inconvenience. There are certain basic
21 reasons why I would find that a hardship would be granted. But
22 in the event I do not find that there is a hardship that has
23 been granted, that does not mean that you will be on the jury.
24 We will retake your concerns that you have at a later time.
25 But I want to just find out if there's any major issues that we

1 have to deal with at this point.

2 This, again, is a criminal trial, and the expectation
3 is that the trial will last six court days, which will work out
4 to two court weeks. I will tell you that trials in this court
5 will go Monday, Tuesday and Wednesday. You will not be in
6 session for trial on Thursday or Friday. At least at the
7 outset. If we get near the end, and there may need a little
8 bit of extra time, we may have to squeeze in a part of a day on
9 a Thursday. But the anticipation is that we will be in trial
10 Monday, Tuesday and Wednesday from 9:00 a.m. until 4:30 p.m.

11 So that would be two court weeks but not the full
12 times. Most of you, if not all of you, should have been
13 screened by the jury administrator's office as to being
14 available for a trial of this length. If for some reason you
15 are not selected for this particular trial, let me advise you
16 that you are not excused from further jury service. You will
17 have to go back through the process again, and you may be
18 selected for another jury which may be even longer than this
19 trial.

20 So with that said, I'm going to start with the very
21 front row of people in the front of the actual audience. If
22 there's anyone who wishes to declare a hardship, would you
23 please raise your hand, we'll pass the microphone to you, ask
24 that you stand, please, state your reason, then have a seat,
25 and we'll pass it on. And at the end I will determine whether

1 or not any hardships have been stated.

2 Anyone in the front row here to my right? Yes, sir.
3 Just a moment. Get the microphone to you. State your name,
4 sir.

5 PROSPECTIVE JUROR: My name is Oscar David. Good
6 morning to everyone.

7 THE COURT: Good morning.

8 PROSPECTIVE JUROR: My hardship that I would like to
9 present to the Court is that I am the sole winner --
10 breadwinner in the family. I am a contractor by trade. And at
11 this present time, seeing the economy the way it is, I do have
12 several contracts that I have that are going into the winter
13 months. I presently am working on two contracts right now that
14 I just cannot back out of. And I feel that I must finish these
15 contracts before the winter sets in.

16 THE COURT: All right. And if you're not present,
17 the contracts will not be able to be completed?

18 PROSPECTIVE JUROR: Correct, sir. Yes.

19 THE COURT: Is that your only means of income at this
20 time?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you. Anyone else in the front row
23 here?

24 All right. We'll take it back to the actual the
25 second row now. Anyone who wishes to to declare a hardship,

1 raise your hand, please.

2 PROSPECTIVE JUROR: My name is Ethel Tozier-King. My
3 hardship is that I'm a stay-at-home mom of an infant, and I
4 have very limited child care options. And the ones that I do
5 have, it's going to cost me a lot more money than I'm getting
6 paid to be here, and that's difficult for my family.

7 THE COURT: All right. Are you the sole provider for
8 the family?

9 THE WITNESS: No. I'm stay-at-home mother.

10 THE COURT: All right. Would this be a financial
11 hardship to you?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: All right. Thank you. Anyone else in
14 that row?

15 PROSPECTIVE JUROR: My name is Michele Tatum, and I'm
16 not a stay-at-home mom, but I do have day care arrangements for
17 my children, my young children, three and five, and I need to
18 be able to be in Stockton to pick them up no later than
19 4:30 p.m. everyday. And I don't have anybody else at this
20 point that I could have pick them up.

21 THE COURT: Okay. Thank you. Anyone else? Next
22 row?

23 PROSPECTIVE JUROR: Good morning. My name is Karen
24 Kanas. I am also a stay-at-home mom. Every day is not a
25 hardship, but several days I do not have any other childcare

1 besides myself.

2 THE COURT: Kanas?

3 PROSPECTIVE JUROR: K-a-n-a-s.

4 THE COURT: Thank you.

5 PROSPECTIVE JUROR: Good morning. My name is Susan
6 Murdock, and I do not drive on the freeway. I suffer from
7 anxieties when I do, and I would have to have my husband bring
8 me. He is a paramedic. He would have to take off work to
9 bring me.

10 THE COURT: Okay. Thank you. Anyone else? Next
11 row?

12 PROSPECTIVE JUROR: My name is Darin Tipton. Well,
13 not only am I the sole provider for the household, but more
14 importantly, my mom goes in for major back surgery the 21st,
15 which I believe is not this coming Friday but the following
16 Friday, and I would surely hate to miss that.

17 THE COURT: You say you are the sole provider?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: And so if you were here, would you be
20 paid?

21 PROSPECTIVE JUROR: No, sir. I'm a construction
22 worker, drywall carpenter. Tools ain't on, money ain't comin'.

23 THE COURT: Thank you. Anyone else on that side?

24 PROSPECTIVE JUROR: My name is Floyd Kinser, and I
25 have a -- I'm on disability. I have a very limited income.

1 And I'm fighting cancer right now. Holistically. Not with a
2 doctor. And the stress of getting down on these freeways would
3 be very inconvenient for my health, I believe. It's crazy out
4 there. And I have a prepaid vacation. My sons are taking me
5 on a hunting trip to the State of Wyoming on the 29th, and I
6 would hate to have to miss that.

7 THE COURT: All right. No one else on that side?
8 All right. To this side, please, front row.

9 PROSPECTIVE JUROR: My name is Jesse Ibarra. It
10 would be a -- it would pose a hardship for me because I am the
11 sole provider for my household, for my wife and myself. And if
12 I don't go to work, I can't pay rent, and I can't pay bills.

13 THE COURT: You are not paid if you are on jury duty?

14 PROSPECTIVE JUROR: No, sir. I work in a warehouse.
15 They won't pay unless I'm there.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR: Good morning, Your Honor. My
18 name is Bill Fuqua. I'm an Air Force Junior ROTC instructor at
19 Natomas High School. I begin training tonight that is required
20 to retain my teaching credential. The training is on Monday
21 nights only, 4:00 to 7:00.

22 THE COURT: Thank you. Anyone else on the next rows
23 that wish to declare a hardship?

24 All right. There appear to be no other individuals
25 who wish to make a declaration at this time. I would ask for

1 those of you that I do find a hardship, please remain seated
2 until I have stated all the names. For those of you that I
3 have not found a hardship, again, we will address this issue as
4 we go farther into the jury selection process, but the hardship
5 has been denied at this time.

6 If you are excused, you are to call the 800 number
7 for the jury administrator after 5:00 p.m. today. And that
8 goes for anyone who is excused from this panel, you are to call
9 the jury administrator's 800 number after 5:00 p.m. today.

10 I do find hardships for the following individuals:
11 Oscar David, Susan Murdock, Michele Tatum, Darin Tipton, and
12 Ethel Claudia Tozier-King.

13 The remaining I do not find hardships at this time.
14 Those that I found hardships, you are excused. Please follow
15 my instructions. Thank you very much.

16 All right. Ladies and gentlemen, for those of you
17 that are remaining, we are now going to begin the process of
18 selecting a jury. I want to remind all of you that the oath
19 that you took a few moments ago, the oath of prospective juror,
20 means that the answers that you're going to give to my
21 questions during this voir dire process are being made under
22 the penalty of perjury.

23 If there is any reason or fact why any of you might
24 be biased or prejudiced in any way toward either side, that is,
25 the Government or the defense, you must disclose that fact or

1 reasons when you are asked to do so. It is your sworn duty now
2 to make those full disclosures based upon the oath of
3 prospective juror that you have just taken.

4 I would like to now introduce the participants of
5 case. First, I would like to introduce my courtroom staff. To
6 my immediate, forward left is the courtroom deputy, Stephanie
7 Deutsch. To my right is our court reporter, Diane Shepard.
8 And to my far right, who will be assisting here during the
9 process, the judicial assistant for chambers Adele
10 Espana-Purpur.

11 With respect to the other participants in the trial,
12 let me introduce first the Government. Representing United
13 States of America, Mr. Lapham, if you would please stand and
14 state your name, and introduce those at your table, please?

15 MR. LAPHAM: Good morning, ladies and gentlemen. My
16 name is Steve Lapham. With me is Ellen Endrizzi, Assistant
17 United States Attorney, and FBI Special Agent Nasson Walker.

18 THE COURT: Would you all stand, please, so they can
19 all see you. Thank you.

20 Mr. Reichel, please introduce yourself and your
21 client.

22 MR. REICHEL: Thank you very much, Your Honor. I'm
23 Mark Reichel. I'm the attorney for the defendant in this case,
24 who is Eric McDavid. This is Mr. Eric McDavid here. This is
25 my assistant and investigator, Jed DePoy.

1 THE COURT: Stand please, to make sure they can see
2 everyone. Thank you.

3 Ladies and gentlemen, again, this is a criminal case.
4 And I will just give you a very brief overview of the nature of
5 the charges in this case.

6 In this case the defendant, that is Mr. McDavid, is
7 charged by an Indictment with one count of conspiracy to damage
8 and destroy property by means of fire and explosives in
9 violation of 18 United States Code, Sections 844(f), 844(i) and
10 844(n).

11 Mr. McDavid has pled not guilty to this charge, and
12 if you are selected as a juror in this case, it will be your
13 determination or your duty, rather, to determine whether or not
14 the Government has proved each of the elements of this offense
15 beyond a reasonable doubt.

16 Again, we believe that this case will take five to
17 six court days. That should take us within about the next two
18 weeks.

19 At this time I'm going to give you some basic
20 instructions on the law that's going to apply to this case.

21 What I'm going to tell you at this point is not
22 intended to be a substitute for the more detailed instructions
23 that you will receive at the end of the case. What I'm going
24 to tell you now is simply an aid to try to help you understand
25 the process that we're go to go through and also your duty as a

1 juror if you are, in fact, selected.

2 First of all, the charge that I read to you I stated
3 was in a document known as an Indictment. The Indictment is
4 nothing more than the statement of the charge that the
5 Government believes that the defendant has committed. The
6 Indictment itself is not evidence of anything whatsoever,
7 and/or it is not evidence that the defendant committed any
8 crime.

9 Because this is a criminal case, the prosecution
10 bears the burden of proving each of the elements of this
11 offense beyond a reasonable doubt.

12 The burden is always on the prosecution to prove the
13 criminal offense has been committed, and the defense never has
14 an obligation to prove anything. The burden always rests
15 squarely on the Government.

16 In deciding whether or not to call witnesses, or
17 whether or not to testify, the defendant is entitled to wait
18 and listen to the Government's complete case and determine if,
19 in fact, the elements have been proven or not beyond a
20 reasonable doubt.

21 If the defense does not believe that the elements
22 have been proven beyond a reasonable doubt, the defense does
23 not have to put on any witnesses, does not have to call any or
24 present any evidence or testify ever. Again, that burden rests
25 solely on the Government.

1 In a criminal action, a defendant is presumed to be
2 innocent. So as Mr. McDavid sits here at the table in this
3 courtroom, he is presumed to be innocent. And unless and until
4 his guilt is shown after 12 people unanimously declare it to be
5 otherwise, that standard and that cloak of innocence will be
6 with him during the course of this trial.

7 Now, reasonable doubt. I've said that several times.
8 Let me give you a brief definition of reasonable doubt. The
9 definition of reasonable doubt that I will give you at the end
10 of trial will be the instruction that will be controlling and
11 that which you will take into the jury deliberation room.

12 Reasonable doubt is proof that leaves you firmly
13 convinced that the defendant is guilty. It is not required
14 that the Government prove guilt beyond all possible doubt. A
15 reasonable doubt is based upon reason and common sense and is
16 not based purely on speculation.

17 It may arise from a careful and impartial
18 consideration of all of the evidence, or from a lack of the
19 evidence.

20 Now, as far as the jury. What the duty of the jury
21 is is to be judges of the facts. I will be the judge of the
22 law that will be given and applied in this case.

23 The 12 individuals who will be seated as jurors are
24 judges of the facts. In other words, it will be up to those
25 jurors to look at the evidence, to observe the witnesses,

1 understand and watch how they testify, look at their demeanor
2 and decide what weight, if any, they are going to give to the
3 evidence that's being presented.

4 It's very important that when this evidence is being
5 presented, that the jury, excuse me, pay close attention to
6 those witnesses and pay close attention to that evidence.
7 Because that is what the duty is of that juror.

8 Once the jury has determined what the evidence is,
9 based upon their view of the evidence, and that is the view
10 that they have only here in this courtroom, the jury will then
11 apply the law that I will give to them and then attempt to
12 reach their verdict.

13 In determining what the facts are by watching the
14 witnesses and the evidence and applying the law that I give to
15 you and hopefully to reach a verdict, I will tell you that it
16 would be a violation of your duty as a juror to make and decide
17 any verdict which will be based on sentiment, sympathy, pity,
18 passion, prejudice, public opinion, public feeling, guesswork
19 and/or speculation.

20 It is the jury's duty to conscientiously consider and
21 weigh the testimony and evidence and reach a just verdict
22 regardless of what the consequences may be.

23 There are certain admonitions that I want to tell you
24 now at this point, and you will be reminded about them
25 throughout the course of the trial. The first is that in order

1 to arrive at a fully and properly considered verdict in this
2 case, all of you must see and hear the same information. That
3 is the information that is presented here in the courtroom. It
4 would be improper if some of you had evidence that others do
5 not have.

6 So, for example, if a particular term would be used
7 during the course of the trial, and you are not familiar with
8 it, you are not permitted to go home, go on the Internet,
9 Google search it, look up a word in the dictionary, speak to a
10 friend who may be an attorney or law enforcement or anything
11 else. Everything that you are going to learn about this case
12 must come from this courtroom.

13 There will also be times when particular locations
14 will be discussed here in the courtroom. It would also be
15 improper that if you are familiar with a particular location,
16 that after trial, for example, you went on your own to go visit
17 that particular location.

18 The only time that one would be permitted to make a
19 viewing such as a location, which is described during the
20 course of the trial, would be if all 12 jurors, the attorneys,
21 parties, court staff, and everyone all went together, so that
22 whatever was going to be viewed was viewed under the same
23 lighting conditions, temperature, time, everything.

24 But I will tell you at this point in time that we are
25 not anticipating that there will be any type of trips taken to

1 any location. So once again the evidence that you're going to
2 hear will be what you receive here in this courtroom.

3 It is also very important throughout the course of
4 this trial, including this voir dire process, that you not
5 converse about the trial. And, in fact, you will hear me
6 admonish you every time that you are asked to please do not
7 discuss the case, including with each other, during the course
8 of the trial. The only time that you are going to be able to
9 speak about the case is after you've heard all of the evidence,
10 been instructed as to the law, and the 12 jurors are in the
11 jury room and no one else is present. Then you may discuss the
12 case but not until then.

13 I will also tell you that in this courthouse, as
14 probably every courthouse in the country, for the most part the
15 jurors and the attorneys, everyone, witnesses, all come through
16 the same front door. There are times that you may run across
17 someone who may be a part of my staff or may be one of the
18 attorneys, or you may see people that are involved.

19 It is important that no one speak to anyone who is a
20 participant in the trial. The attorneys, my staff, and
21 everyone knows that they are not to speak to you. So if you
22 run across someone, even out on the street or in the elevator
23 or somewhere, please don't think that they are being rude to
24 you. They have been instructed, and they understand their
25 ethics that they are not to speak to you at all. That is why

1 no one is going to be talking.

2 Please, again, do not think that they don't want to be
3 cordial or whatever. We all understand that that's just part
4 of the rules that we have to play by until such time that this
5 trial is over.

6 It's also very important that during the course of
7 the trial that you not start to form any opinions about the
8 trial. As evidence is brought into a case, it's very rare that
9 evidence is brought in in the exact same chronological order as
10 the events actually occurred. Many times what could have been
11 one of the last pieces of evidence in the actual presentation
12 may be presented first. Sometimes it's in the middle. A lot
13 of it has to do with scheduling and bringing witnesses in and
14 different things.

15 I think the human nature is we want to try to figure
16 out what's going on right away, and try to come up with an
17 idea, come up with your opinion as to who did what, when or
18 how. But I'm going to ask that you that you try to set that aside
19 as much as possible and wait until you've heard all of the
20 evidence. Let it all sink in, and then after you've heard all
21 the evidence, the instructions, then start to try to make up
22 your mind.

23 All right. We're going to call up the first 18 to
24 sit in the jury box and the front row of chairs. This is the
25 actual voir dire process, ladies and gentlemen.

1 And the voir dire process, that very loosely
2 translated means to seek or to get to the truth. And that's
3 what we're going to try to do now. There are no right or wrong
4 answers. You are not going to embarrass anyone. I tell people
5 I think I've heard every possible response that you can give to
6 questions, either to get off of a jury or to get on a jury,
7 either way. So I'm used to it. And we'll see how it works
8 out, but generally speaking we don't have to worry about that.
9 But just feel comfortable with saying what you need to say.

10 Now, if there's something that you want to say that
11 you think might be either personally embarrassing to you, or
12 you think might have some type of adverse impact on the actual
13 jury selection process, please let me know that, and we will
14 take the time to take that answer outside the presence of the
15 other prospective jurors. The parties and the courtroom staff
16 will be here, but we will try to do what we can to try to
17 eliminate the amount of other personnel who might be hearing
18 your response.

19 So, Madam Clerk, please call the first 18.

20 THE CLERK: Carol Runge, Lisa Ekdahl, Hans Holmquist,
21 Paul Brown, Laura Wheeler, Judie Rogers, Frank Schmidt, Terri
22 Pittman, Floyd Kinser, Diane Bennett, Otto Gisler, Scott
23 Leonhardt -- Mr. Leonhardt, can I have you wait before you are
24 sat real quick. One second.

25 Phillip Hinson, Deborah Gerdin, John Schuessler,

1 Daniel Doolan, Jerry Walker, Teresa Tackett.

2 THE COURT: All right. For those of you that have
3 joined us in the jury box in the front row, welcome. And one
4 of the first things I like to do to make sure everyone is
5 comfortable speaking in front of everyone here is to get you to
6 answer the questions on the blue card. That seems to help
7 break the ice a little bit.

8 So Ms. Runge, if we can get you to take the
9 microphone and answer the questions on the blue card, thank
10 you.

11 PROSPECTIVE JUROR 1: My name is Carol Runge, and I
12 live in Sacramento, Downtown. I'm currently employed by the
13 State of California, Department of Healthcare Services, as a
14 policy analyst in the Medi-Cal managed care division.
15 Previously I worked for the County of Sacramento several years
16 as a Medi-Cal eligibility worker. I have a Bachelor's Degree
17 English from San Francisco State University, and I have some
18 graduate work completed in public policy at Sac State.

19 I have no military service. I am separated from my
20 domestic partner. My separated partner is a software developer
21 for the Legislative Data Center. I have a 20-year-old son who
22 works at a deli and attends junior college. And I've never
23 been on a jury.

24 THE COURT: Thank you very much.

25 PROSPECTIVE JUROR 2: My name is Lisa Ekdahl. I live

1 in Bangor, California. It's a rural area just north of
2 Marysville. Currently, I'm the school secretary at the adult
3 school in Oroville. Before that I had a craft business.

4 My educational background is I had one year of
5 college. No military service. I have been married for
6 28 years -- 29 years -- and his -- my husband's job is -- he is
7 a para-educator and a bus driver at a local school district.

8 I have three children. The oldest is a
9 vice-president of lending at a credit union. My son is at the
10 R.N. program at Chico State. And my youngest has just started
11 college at Yuba College. And I haven't had jury experience
12 before.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR 3: My name is Hans Holmquist. I
15 live in Folsom. I work for the City of Folsom, park
16 maintenance, and I'm also going to school at Sierra College.
17 No military service. Single. No children. And no jury
18 experience.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR 4: Good morning, my name is Paul
21 Brown. I'm an engineer. I work in -- I'm sorry -- I live in
22 Placerville, up Highway 50. I'm an engineer at the local
23 television station. Previously, I worked at a production
24 company in the area for about 20 years.

25 I have a couple of Associate Degrees in electronics

1 engineering and television and film production. No military
2 experience. Been married for 25 years. Two children. My son
3 is El Dorado County Deputy Sheriff for the past three years.
4 My daughter is a student in Minnesota. And no prior jury
5 experience.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR 5: My name is Laura Wheeler. I
8 live in Davis, California. I'm a special education teacher and
9 have always been a special education teacher. I have a BA in
10 English and a Master's in Special Ed. No military service.
11 I'm married. My husband is also a special education teacher.
12 I have three children. One is at NYU. The others are grade
13 school. And I did serve on a jury once in Yolo County.

14 THE COURT: Was that a civil or criminal jury?

15 PROSPECTIVE JUROR 5: It was criminal.

16 THE COURT: Did you reach a verdict?

17 PROSPECTIVE JUROR 5: No.

18 THE COURT: Was there anything about your service on
19 that jury or the fact that you didn't reach a verdict that
20 might have some impact on you being fair and impartial in this
21 case?

22 PROSPECTIVE JUROR 5: I don't believe so. It was
23 many years ago.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR 6: My name is Judie Rogers, and I

1 live in Granite Bay, retired. I was a housewife. Educational
2 background, high school. No military service. Married. My
3 husband is a civil engineer. He is retired now, but civil
4 engineer, worked for the State. I have three children. One is
5 in sales of a computer, one owns a computer business, and the
6 other, a daughter, works for the Judiciary Council in
7 California. And previous jury experience, I've been on two
8 juries.

9 THE COURT: All right. Thank you. Your daughter
10 works for the Judicial Council?

11 PROSPECTIVE JUROR 6: Yes.

12 THE COURT: What capacity? Give the microphone back.
13 What capacity does she work there?

14 PROSPECTIVE JUROR 6: She's an accountant.

15 THE COURT: Not in a legal capacity then?

16 PROSPECTIVE JUROR 6: No.

17 THE COURT: And you say you've been on two juries?

18 PROSPECTIVE JUROR 6: Right.

19 THE COURT: Were they civil or criminal?

20 PROSPECTIVE JUROR 6: Criminal.

21 THE COURT: Both of them?

22 PROSPECTIVE JUROR 6: Uh-huh.

23 THE COURT: Is that "yes"?

24 PROSPECTIVE JUROR 6: Yes.

25 THE COURT: Thank you. Did you reach verdicts in

1 both of those trials?

2 PROSPECTIVE JUROR 6: Yes.

3 THE COURT: Was there anything about your service on
4 either of those trials that might have some impact on you being
5 fair and impartial to both sides in this case?

6 PROSPECTIVE JUROR 6: No.

7 THE COURT: Thank you very much. You may pass it on
8 down.

9 PROSPECTIVE JUROR 12: My name Scott Leonhardt, and I
10 work for Caltrans, and I live in Yuba City, California. And I
11 was selected for jury duty one time, but I was excused in Yuba
12 City. That was about it.

13 THE COURT: And you were excused from jury service?

14 PROSPECTIVE JUROR 12: Yeah.

15 THE COURT: How long ago was that?

16 PROSPECTIVE JUROR 12: It was about three years ago.

17 THE COURT: Was there anything about that experience
18 in any way that would affect you being a fair and impartial
19 person here?

20 PROSPECTIVE JUROR 12: No.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR 11: My name is Otto Gisler. I
23 live in Elk Grove, and I work for the Cosumnes Community
24 Service District on parks and recreation. I previously just
25 retired from the Hearst Corporation of newspapers. It was a

1 second job that I had for 27 years.

2 I graduated from the 12th grade. I've had no
3 military service. I've been married for 33 years. My wife is
4 currently working at the same location as I do as a pre-school
5 teacher's assistant. I have two children. Jenna and Tara.
6 They are ages 22 and 21. Jenna works at Raley's in the floral
7 department. And Tara just got a new job helping special
8 education children. And I've been on jury duty but never have
9 been selected for a panel.

10 THE COURT: All right. The fact that you were on the
11 duty but not selected, did that in any way affect you -- or
12 would it affect you in any way being fair and impartial here,
13 sir?

14 PROSPECTIVE JUROR 11: No, sir.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR 10: My name is Diane Bennett, and
17 I live in Folsom. I'm a speech therapist for the Elk Grove
18 District. I used to work for Fresno County as a speech
19 therapist. Do I sound like I have a lisp? I have a Master's
20 Degree. No military service. Married. My husband this
21 morning he worked for Countrywide as a loan consultant. I hope
22 he still does. One child who is a teacher of the deaf, and I
23 was on one jury.

24 THE COURT: Civil or criminal?

25 PROSPECTIVE JUROR 10: Criminal.

1 THE COURT: How long ago?

2 PROSPECTIVE JUROR 10: I think about 20 years.

3 THE COURT: Okay. Was there anything about your
4 service on that jury that might affect you being fair and
5 impartial here?

6 PROSPECTIVE JUROR 10: No.

7 THE COURT: Did you reach a verdict?

8 PROSPECTIVE JUROR 10: We did.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR 9: My name is Floyd Kinser. I
11 lived in Oroville for 60 years. I used to be in construction.
12 I am now disabled. I have a high school education. No
13 military service. I've been with my wife for 37 years. Her
14 occupation was raising six children. And they -- one has a
15 trucking outfit. One has a construction outfit. One of my
16 sons isn't working. One of my other sons is disabled. My
17 daughter -- oldest daughter works for Butte County. My
18 youngest daughter works for a gym outfit. I was called on --
19 selected for two juries and was dismissed.

20 THE COURT: And how long ago were you called for jury
21 duty? And the second question is: Would that in way affect
22 you being fair and impartial in this case?

23 PROSPECTIVE JUROR 9: One was about ten years ago and
24 one was about eight years ago. And, no, they wouldn't.

25 THE COURT: Okay. Thank you.

1 PROSPECTIVE JUROR 8: My name is Terri Pittman. I
2 live in Dobbins. My current occupation is a real estate
3 appraiser. My previous occupation was a stay-at-home mom,
4 home-schooling my kids. I have an AA Degree. Marital status
5 is I'm widowed. I have three children. One works at a frame
6 shop. One works at a deli and goes to Yuba College. And the
7 other one runs a boat dock at a private camping area. And I've
8 never been on a jury before.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR 7: My name is Frank Schmidt. I
11 live in Galt which is in southern Sacramento County. I
12 currently work for General Mills as a machine operator for
13 21 years. Previous to that I was a butcher.

14 I've had one year of college. No military service.
15 I am married. My wife is a middle school librarian. My
16 daughter is an elementary school teacher. And my son is a soil
17 technician for Wallace and Cool. I served on a criminal trial
18 about three years ago. No verdict was reached.

19 THE COURT: Anything about your service on that
20 trial, sir, that might have some impact on you being fair and
21 impartial to both sides in this case?

22 PROSPECTIVE JUROR 7: No.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR 1: Your Honor, I would like to
25 clarify. Although I've never been on a jury, I have been

1 called for duty three times, Superior Court, but never seated.

2 THE COURT: The same question for you. Is there
3 anything that would affect you being being fair and impartial
4 here?

5 PROSPECTIVE JUROR 1: No.

6 THE COURT: And Ms. Runge did something that I hope
7 you will all take heart to, and that is if we pass you with a
8 question, please don't feel bad about calling me back and
9 saying, I've got to give you some more information that I
10 didn't think of. Because many times when we go through this
11 process, you will go on a break or something will happen, and
12 it will trigger a memory or a thought that you haven't thought
13 about for a long time. And rather than let it go by, please do
14 as she did, and just say I need to either clarify or add to
15 whatever my previous response was. Thank you for very much
16 doing that. All right, sir, Mr. Hinson.

17 PROSPECTIVE JUROR 13: My name is Phillip Hinson. I
18 live in Sacramento in the Tahoe Park neighborhood. I am a
19 systems developer and web programmer for the Department of
20 Toxic Substances Control, State of California.

21 Before that I was an analyst for the same department.
22 I have BA in Fine Arts and Art History from Cornell College in
23 Mt. Vernon, Iowa. I have no military experience. I have been
24 divorced for four years. My former spouse's occupation is she
25 is a product manager for a private company in Roseville. I

1 have no children. And I have no previous jury experience.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR 14: My name is Deborah Gerdin. I
4 live in Truckee. I am a teacher at Tahoe Truckee Unified
5 School District. My educational background is a BA in
6 Education. No military service. I am married. My husband is
7 an architect. I have four children. One is a teacher, an
8 engineer, a golf pro, and one works in a cleaning service.
9 Previous jury, I have been selected, was dismissed during the
10 trial as I knew some -- one of the people involved.

11 THE COURT: Okay. Thank you.

12 PROSPECTIVE JUROR 15: My name is John Schuessler. I
13 live in Orangevale, California. I'm currently unemployed. My
14 most recent occupation was with the Governor's Office of
15 Emergency Services as a disaster assistant specialist. I will
16 be testing for that coming up in October. My previous
17 occupation was a plumber. I have one year of college. No
18 military service. Been married for 24 years. And my spouse
19 has got a home-based e-commerce business. I have two children.
20 And my previous jury experience was last month I was on a -- I
21 was chosen but then dismissed during the process. It was after
22 they had picked pretty much everybody. At the last minute they
23 dismissed me.

24 THE COURT: All right. You mentioned an e-commerce
25 business. What kind of business is that?

1 PROSPECTIVE JUROR 15: She sells swimsuits on Ebay.

2 THE COURT: Okay. And as far as the previous jury
3 service, was there anything about the way that was handled that
4 might have some impact on you being fair and impartial?

5 PROSPECTIVE JUROR 15: No. None whatsoever.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR 16: My name is Dan Doolan. I live
8 in Vacaville. My current occupation is Fleet Manager for the
9 City of Davis. My previous occupation was Fleet Maintenance
10 Superintendent for Albertson's Distribution Center.
11 Educational background, two years of college and many
12 vocational classes. Military service, none. I am married. My
13 wife is a medical records manager for Kaiser Hospital. I have
14 three children. Two in college. One in high school. And my
15 previous jury experience, I was summoned or let go before noon.
16 They had enough jurors.

17 THE COURT: All right. Anything about that service
18 that might affect you being fair and impartial here, sir?

19 PROSPECTIVE JUROR 16: No.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR 17: My name is Jerry Ann Walker.
22 I live in El Dorado County. I'm a retired school nurse and
23 science teacher. I have a BA in History, a BS in Nursing. No
24 military service. I'm single. Previous spouse's, Air Force,
25 Corrections, Department of Justice. I have one child who is in

1 the construction business. And I was on a Superior Court
2 criminal justice -- in Superior Court on a criminal case about
3 20 years ago.

4 THE COURT: All right. First of all, you said you
5 had a son I believe --

6 PROSPECTIVE JUROR 17: Construction.

7 THE COURT: Someone in corrections? Or spouse?

8 PROSPECTIVE JUROR 17: Well, that was the second
9 husband, Your Honor.

10 THE COURT: Okay. How long ago was that?

11 PROSPECTIVE JUROR 17: 20 years.

12 THE COURT: Would that have any effect on you in this
13 case?

14 PROSPECTIVE JUROR 17: No. Not this case.

15 THE COURT: And you were on a jury?

16 PROSPECTIVE JUROR 17: About 15 to 20 years ago,
17 Superior Court Sacramento County.

18 THE COURT: Criminal case?

19 PROSPECTIVE JUROR 17: Yes.

20 THE COURT: Did you reach a verdict?

21 PROSPECTIVE JUROR 17: Yes.

22 THE COURT: Any affect on you at all?

23 PROSPECTIVE JUROR 17: No.

24 THE COURT: Thank you very much.

25 PROSPECTIVE JUROR 18: My name is Teresa Tackett. I

1 live in Orangevale, California. I'm currently a customer
2 service specialist with Franklin Templeton Investments, which
3 is a mutual fund investment company. Previous to that I worked
4 as an instructional assistant with the San Juan School
5 District. College degrees in Psychology and Business. No
6 military service. I've been married 30 years. My husband is a
7 supervisor for after-school programs with the San Juan School
8 District. I have two children. My son is a technical support
9 person with a computer company, and my daughter is a student in
10 nursing at San Diego State. I have had two jury experiences
11 where I was on a jury, and we did reach verdicts in both cases,
12 and they were both criminal cases.

13 THE COURT: And anything about your experience on
14 those juries that have an impact on you here?

15 PROSPECTIVE JUROR 18: No.

16 THE COURT: Thank you.

17 All right. Anyone else? Yes. Follow-up question or
18 response, please?

19 PROSPECTIVE JUROR 11: One of the juror's names I
20 recognize from close to 10 years ago. Does that reflect --

21 THE COURT: That would be a question I'm going to ask
22 in about five minutes, if you know anyone. And sometimes that
23 does happen. Is the person in the box with you?

24 PROSPECTIVE JUROR 11: Yes.

25 THE COURT: All right. Let's go ahead and ask the

1 question. Do any of you know each other? In the top row? And
2 I ask -- well, that's one point. Some of the questions I'm
3 going to ask are going to call for verbal responses, like you
4 are doing now, and many times I will ask for non-verbal
5 responses. Those non-verbal responses, such as raising your
6 hand, will be under the same penalty of perjury as if they were
7 verbal.

8 So many times I may say, does anyone know me, for
9 example. If so, in the top row, please raise your hand. No
10 one raised their hand. Anyone in the second row? Third row?
11 That's the way we're going to go.

12 So does anyone know each other here on the jury or in
13 the potential jurors in the top row? Second row? I guess we
14 do. Yes, sir.

15 PROSPECTIVE JUROR 11: The juror's name that I
16 recognize, like I said, I haven't seen him for close to
17 40 years, his name is Frank Schmidt.

18 THE COURT: Here?

19 PROSPECTIVE JUROR 11: I believe he is on the end.

20 THE COURT: And that was a friendly relationship?

21 PROSPECTIVE JUROR 11: Well, I'm not sure if it's
22 even him, but I recognize the name, and he said he was from
23 Galt, so I put that together.

24 THE COURT: Are you from -- where would it be?

25 PROSPECTIVE JUROR 11: We had sleep-overs. I was

1 actually friends with his brother.

2 THE COURT: Do you have a brother?

3 PROSPECTIVE JUROR 7: Yes, sir.

4 PROSPECTIVE JUROR 11: Dennis?

5 THE COURT: Dennis?

6 PROSPECTIVE JUROR 7: Yes.

7 THE COURT: So then it sounds like it's the same
8 person then.

9 Would there be any problem if the two of you were on
10 the jury as far as being able to discuss your viewpoints and to
11 have your own opinion as to what your position would be?

12 PROSPECTIVE JUROR 11: No, sir. But I would be
13 interested to see what he has been doing for the last 40 years.

14 THE COURT: That's fine. You can do that. As long
15 as you don't talk about the case while you're doing it, you are
16 free to do that.

17 Let me ask you, Mr. Schmidt, would that have any
18 effect on you if you were on the same jury with Mr. Gisler for
19 any reason at all?

20 PROSPECTIVE JUROR 7: No.

21 THE COURT: Thank you. All right. Anyone else in
22 that row know each other or anyone in the audience? Or how
23 about in the front row? All right. Thank you.

24 Let me -- before we go too much farther, let me just
25 explain something and ask a question, too. I indicated earlier

1 that Mr. McDavid has been charged in an Indictment with
2 conspiracy to damage and destroy property by means of fire and
3 explosives.

4 I should indicate to you the locations of these
5 alleged targets, so that we can determine if any one of you
6 might live near this area or have friends that live there, so
7 it may have some effect on you being a fair and impartial juror
8 in this case.

9 And the alleged targets for this were the United
10 States Forest Service Institute of Forest Genetics, Nimbus Dam
11 and Fish Hatchery and there were certain cell phone and
12 electrical towers that were also targeted.

13 First of all, do any of you in the top row have any
14 recollection of this particular case at all? Take the
15 microphone, pass it down.

16 THE COURT: Mr. Brown?

17 PROSPECTIVE JUROR 4: Yes.

18 THE COURT: You do have recollection of this?

19 PROSPECTIVE JUROR 4: Yes, I remember hearing about
20 it. I've volunteered with the Forest Service for probably, I
21 don't know, starting in the mid '80s, I guess, so I've been
22 involved here with them for quite a while.

23 THE COURT: What type of things were you doing at the
24 Forest Service, sir?

25 PROSPECTIVE JUROR 4: Public information mostly on a

1 volunteer basis on large events, large fires, that kind of
2 thing.

3 THE COURT: Are you still with the Forest Service?

4 PROSPECTIVE JUROR 4: I am not.

5 THE COURT: How long have you been away from the
6 Forest Service?

7 PROSPECTIVE JUROR 4: I transitioned from them -- I
8 started working for CalFire doing the same type of work
9 probably 15 years ago.

10 THE COURT: Do you still have friends that work in
11 the U.S. Forest Service?

12 PROSPECTIVE JUROR 4: I know some people that still
13 work in the supervisor's officer there in Placerville, yeah.

14 THE COURT: So you are familiar specifically with
15 this particular location?

16 PROSPECTIVE JUROR 4: I've been there, yeah. I've
17 been in there a few times.

18 THE COURT: Having heard what the nature of the
19 charges are in this case, do you feel that you would be able to
20 be fair and impartial to both sides in this case now?

21 PROSPECTIVE JUROR 4: I believe.

22 THE COURT: You do?

23 PROSPECTIVE JUROR 4: I think so.

24 THE COURT: That's the question, I think, that both
25 sides want to know here --

1 PROSPECTIVE JUROR 4: Right.

2 THE COURT: -- at this point. You said it has been
3 15 years since you've worked there.

4 PROSPECTIVE JUROR 4: Yes. I work for CalFire in the
5 same capacity and volunteer.

6 THE COURT: But you think that you'd be able to be
7 fair and impartial here?

8 PROSPECTIVE JUROR 4: I hope so. I think so.

9 THE COURT: Okay. Thank you. Anyone else in the top
10 row have any knowledge of this at all? Anyone in the second
11 row?

12 Or know of the areas that I've spoken about that may
13 have some connection with them at all, or friends or relatives?
14 No one in the second row.

15 How about in the front row? Anyone at all?

16 All right. Thank you.

17 PROSPECTIVE JUROR 18: Know of the area?

18 THE COURT: Microphone. Hold on one second.

19 PROSPECTIVE JUROR 18: You just happened to mention
20 know of the area, and I know of the area because it's not that
21 far from, actually, where I live, but I don't know anything.

22 THE COURT: You don't have any specific knowledge of
23 these particular allegations in this case at all?

24 PROSPECTIVE JUROR 18: No, I don't.

25 THE COURT: All right. Thank you. Anyone else at

1 all?

2 PROSPECTIVE JUROR 13: Well, you've mentioned knowing
3 of the area. I mean, you mentioned the hatchery, and I'm a
4 cyclist. I ride on the bike trail at the hatchery a lot. I've
5 been out there quite a bit. But as far as the allegations
6 involved, I don't know anything about that.

7 THE COURT: So you've ridden by the hatchery, Nimbus
8 Dam?

9 PROSPECTIVE JUROR 13: Yeah.

10 THE COURT: You know where those locations are?

11 PROSPECTIVE JUROR 13: Uh-huh.

12 THE COURT: Is that "yes"?

13 PROSPECTIVE JUROR 13: Yes.

14 THE COURT: The fact that we're discussing this at
15 this point in time, that's what the allegations involve, would
16 that in any way affect your ability to be fair and impartial to
17 both sides in this case?

18 PROSPECTIVE JUROR 13: No.

19 THE COURT: Thank you. Anyone else?

20 PROSPECTIVE JUROR 15: I too am familiar with the
21 area and the location. I frequent those. But I do not know
22 anything of the allegations.

23 THE COURT: So this would -- would it have any effect
24 on you being fair and impartial here?

25 PROSPECTIVE JUROR 15: None whatsoever.

1 THE COURT: Thank you. Anyone else? Thinking more
2 about it. All right. Thank you.

3 Going back into the questions that we're asking, let
4 me ask the question I started to ask: Do any of you know me or
5 any of my courtroom personnel, courtroom deputy, court
6 reporter, judicial assistant here? Any one of you in the top
7 row, if you would, just raise your hand? Second row? Third
8 row?

9 And it will be presumed for the record, counsel, that
10 unless I state otherwise, that no one has responded to the
11 questions.

12 Do any of you know the attorneys, the defendant or
13 anyone else, investigators, that you were introduced to earlier
14 here today? Recognize any of those people in the top row?
15 Middle row? And front row?

16 And I think I've asked the question once, but anyone
17 recognize anyone else here? Jurors? Out in the audience,
18 anywhere at all? All right. No one has raised their hand.
19 Screen, please.

20 THE CLERK: Yes, Your Honor.

21 THE COURT: In just a moment we're going to show you
22 some names of potential witnesses. Not everyone that's on the
23 list will necessarily be called. I want you to take just a few
24 moments to take a look and see if you recognize any of those
25 names. And if you're on the far wall here, if you need to move

1 over to take a look, please feel free to move over and take a
2 look at these names for just a moment.

3 (Pause in proceedings.)

4 THE COURT: Can everyone see? All right. Yes, I
5 think we have someone in the top row.

6 PROSPECTIVE JUROR 2: I may know Steve Fowler if he
7 lives in the Biggs Gridley area and is a wood carver. He used
8 to teach for Oroville adult education.

9 THE COURT: Apparently no. No?

10 MR. LAPHAM: No.

11 THE COURT: Thank you. Anyone else in the top row
12 recognize any names? Middle row? Front row? Thank you.

13 MR. REICHEL: Your Honor, defense has additional
14 witnesses. We filed a witness list last night that has
15 additional witnesses. May I read them in the record?

16 THE COURT: Let me have them. Government have you
17 seen this?

18 MR. LAPHAM: Yes, Your Honor.

19 THE COURT: Do you have any objection to this being
20 presented to the prospective jurors?

21 MR. LAPHAM: No, Your Honor.

22 THE COURT: Thank you. Would you publish that,
23 please.

24 (Pause in proceedings)

25 THE COURT: Okay. Page two.

1 (Pause in proceedings.)

2 THE COURT: All right. Thank you. Lights, please.

3 Do any of you in the top row recognize any of the
4 names that were added by the defense? In the middle row?
5 Front row?

6 All right. It appears that no other -- there has
7 been no other recognition of any of the other witnesses that
8 have been called.

9 All right. As we sit here today, do any of you have
10 any strong feelings or beliefs toward the parties, attorneys,
11 or witnesses, that would make it difficult or impossible for
12 you to act impartially to both the Government and to the
13 defense in this matter?

14 If you do at this point, would you raise your hand in
15 the top row? Middle row? Or the front row?

16 Based upon the small bit of information that I
17 provided you with, that is, what the nature of the charge is,
18 and the nature of the location of the allegations contained in
19 this charge, have any of you formed any opinions about this
20 case as you sit here today? Anyone in the top row? Middle
21 row? Front row?

22 Do any of you have any strong feelings about the
23 criminal justice system in general which would make it
24 difficult for you to be fair and impartial in this case?
25 Anyone in the top row? Middle row? Or the front row?

1 Do any of you belong to any organizations which
2 advocate a particular position with respect to the criminal
3 justice system? My examples that I give in trials would be
4 Mothers Against Drunk Driving, for example, or the ACLU,
5 different organizations that actually advocate a particular
6 position in the criminal justice system.

7 Do any have you belong to any groups or anyone close
8 to you or friends of yours belong to any such groups such as
9 that in the top row? Middle row? Front row?

10 Going one step further with respect to the groups, do
11 any of you belong to or support organizations that are known as
12 PETA, which would be --

13 MR. LAPHAM: People --

14 THE COURT: People for the Ethical Treatment of
15 Animals. In the top row? Middle row? Front row?

16 Or the -- what's known as the ELF, the Earth
17 Liberation Front, do any of you have any knowledge of that,
18 belong to that organization, or have any friends or relatives
19 who belong to that organization? In the top row? Middle row?
20 Or the front row?

21 Finally, organizations known as ALF, the Animal
22 Liberation Front, do any of you belong to that organization,
23 have any friends or relatives who either belong or support that
24 organization? In the top row? Middle row? Or the front row?

25 Do any of you have any moral or religious beliefs

1 that would make it difficult or impossible for you to sit in
2 judgment of another human being? Anyone in the top row?
3 Middle row? Or the front row?

4 You've heard the nature of the charges, that is,
5 conspiracy to damage and destroy property by means of fire and
6 explosives. Just the nature of the charges themselves, does
7 that tend to cause any of you to have a problem with the nature
8 of these charges, so that you would not be able to sit as a
9 trial juror in this case? Anyone in the top row? Yes.

10 PROSPECTIVE JUROR 4: Yes, sir. I might have more --
11 you know, more that I think about it, I might have trouble --
12 being that I've worked closely with fire agencies for quite a
13 few years on a volunteer basis, but, you know, I see the
14 results of human-caused fire, and it's troubling to me.

15 THE COURT: All right. So you think this particular
16 case is getting tougher for you to deal with at this point?

17 PROSPECTIVE JUROR 4: Perhaps. Knowing the
18 facilities involved, and my familiarity with them, and it might
19 be.

20 THE COURT: And I can understand that. And I think
21 everyone can. And if this -- you know, sometimes we have jury
22 trials that people would be great jurors, but it's just not the
23 correct trial. And I think what I would like to know is, do
24 you think this is the correct trial for you to be on in light
25 of your experiences and the feelings that are obviously

1 starting to come up now?

2 PROSPECTIVE JUROR 4: Yeah. It may not be the right
3 trial for me.

4 THE COURT: Counsel, will you approach, please.
5 We're going to take a recess in just a moment, too, ladies and
6 gentlemen. Right after this.

7 And hopefully, once in a great while, I will have to
8 have what are called sidebar conferences with counsel. And
9 when I do, they will be taken down on the record. But during
10 that time period, I will put on what we call white noise. It
11 will be over the jury, so that you won't actually hear the
12 conversation. But we will keep these to a minimum. Thank you.

13 (Begin sidebar conference.)

14 THE COURT: Juror number 4, Mr. Brown, very closely
15 connected with the situation, Forest Service. Particular
16 location. Any objections to challenge for cause?

17 MR. LAPHAM: No, Your Honor.

18 MR. REICHEL: No.

19 THE COURT: Thank you.

20 MR. REICHEL: Thank you, Your Honor.

21 (End sidebar conference.)

22 THE COURT: Mr. Brown, I'm going to go ahead and
23 excuse you at this time. I think this might be a tough jury
24 for you to be on for many different reasons, but I do
25 appreciate your candor in responding to my questions up to this

1 point.

2 Please remember the instructions to call the 800
3 number after 5:00 p.m. today. You are free to go now, sir.
4 Thank you.

5 And Madam Clerk, we will call the next in order who
6 would be?

7 THE CLERK: John Day.

8 THE COURT: Mr. Day, rather than come up at this
9 point in time, we're going to take our recess, which will be
10 our normal morning recess. We'll return in 20 minutes, which
11 would be approximately ten-minutes to 11:00. During the time,
12 please do not discuss the case with anyone or form any opinions
13 about the case. Thank you. Court is in recess.

14 (Jury out.)

15 THE COURT: All right. All prospective jurors have
16 left the courtroom. Mr. Lapham, anything on the record?

17 MR. LAPHAM: Your Honor, just a note of
18 clarification. On the witness list that we showed to the jury,
19 one of those names is "Anna" in quotes. We have provided --
20 that's obviously our undercover source. We've provided
21 accurate names and identifying information to the defense on
22 Anna. We're going to attempt, with Mr. Reichel's permission,
23 to refer to her in this trial simply as Anna to protect her
24 identity from the outside world.

25 MR. REICHEL: I think that's what we're going to do.

1 Let me ask Mr. McDavid something in that regard as well, Your
2 Honor.

3 THE COURT: All right.

4 (Discussion between Mr. Reichel and the defendant.)

5 MR. REICHEL: We're just going to refer to her as
6 Anna.

7 Your Honor, I agree with Mr. Lapham. She's going to
8 be identified as Anna. Leave it at that.

9 THE COURT: Anything else?

10 MR. REICHEL: Yes. Just briefly. The Government had
11 proposed voir dire about ELF and ALF and all that, and I filed
12 an opposition to it right away, and I didn't know what the
13 Court was going to do. I thought theirs was inflammatory, and
14 I don't know how far we're going --

15 THE COURT: We've covered it.

16 MR. REICHEL: And additionally --

17 THE COURT: Surprisingly, hardly anyone recognizes
18 this case or knows anything about it.

19 MR. REICHEL: Mr. McDavid has been provided a vegan
20 diet at the jail for the year and two months now. And last
21 Thursday, just before the trial confirmation hearing, he was
22 cut-off, and so he was trying to subsist on the commissary at
23 the jail, which provides peanuts and so forth and so on. And I
24 believe it was Saturday -- Sunday they cut the commissary off.
25 And so he is down to very, very limited items. And just the

1 timing. I mean, it was a year and two months that it went on.

2 THE COURT: What was the reason for it changing?

3 MR. REICHEL: We don't really know. We don't
4 understand other than it just stopped. So I don't want to
5 burden the Court with that, but I can tell you that, you know,
6 I can -- he can eat these Cliff Bars, and, as an officer of the
7 court, I could buy them down in commissary and bring them up.
8 The Marshals can look at them. Mr. Smith can look through them
9 and make sure it's the Cliff Bar.

10 Can I provide him with a couple of Cliff Bars
11 throughout the trial during the day subject to the Marshal's
12 approval? I know it probably violates most of their policies,
13 but, I mean --

14 U.S. MARSHALL: Your Honor, the investigator asked
15 earlier about bringing food, and that's fine with us.

16 MR. REICHEL: If he okays it, then we're fine.

17 THE COURT: If there's a problem, let me know. Thank
18 you.

19 MR. REICHEL: Thank you very much, Your Honor.

20 THE COURT: Recess.

21 (Break taken.)

22 (Jury panel in.)

23 THE COURT: Mr. Day. Good morning, Mr. Day. If you
24 would please answer the questions on the blue card for me.

25 PROSPECTIVE JUROR 4: My name is John Day. I live in

1 Sacramento. I'm currently a computer engineer for Hewlett
2 Packard. Previous occupation, computer geek for California
3 Canning Peach Association. Never completed my engineering
4 degree. Six years in the Navy. Married ten years. My wife is
5 a special education teacher. Two kids, both in elementary
6 school. And I only got called one time for the jury experience
7 -- or for the jury, but I was dismissed.

8 THE COURT: How long ago was that?

9 PROSPECTIVE JUROR 4: Like ten years.

10 THE COURT: And was there anything about your
11 experience being called and then dismissed that might have an
12 impact on you being fair and impartial in this case?

13 PROSPECTIVE JUROR 4: Negative.

14 THE COURT: All right. Did you hear all the
15 questions I asked the other prospective jurors?

16 PROSPECTIVE JUROR 4: That is correct.

17 THE COURT: And did you hear all the responses that
18 were given?

19 PROSPECTIVE JUROR 4: Yes.

20 THE COURT: Did any of the questions that I asked or
21 the responses that were given to those questions cause you to
22 think of anything that you should tell us regarding your
23 ability to serve as a fair and impartial juror?

24 PROSPECTIVE JUROR 4: No, I don't. There's nothing.

25 THE COURT: Any of the questions that I asked or any

1 of the responses that were given to those questions cause you
2 to question whether or not you would be able to act as a fair
3 and impartial juror in this case?

4 PROSPECTIVE JUROR 4: I think I would be able to act
5 as a fair and responsible juror.

6 THE COURT: Any reason at all why you should not be
7 on this jury, at least up to this point, sir?

8 PROSPECTIVE JUROR 4: No.

9 THE COURT: Thank you.

10 The next question I'm going to ask violates one of
11 the rules that I have for the attorneys, and that it's going to
12 be a compound question. And I can do that once in a while, so
13 this question, listen carefully, I think it will make sense
14 once I ask it.

15 But have any of you, any friend, or relative, or
16 close person in your life ever been accused of a crime, a
17 witness to a crime, or a victim of a crime? Accused? Witness?
18 Or victim?

19 Pretty much covers everything. And I just want to
20 know if any of you have any contact with anyone, either
21 yourself or someone else, anywhere involving criminal activity.
22 Start with the top row. Pass the microphone down.

23 PROSPECTIVE JUROR 1: I know a few friends who have
24 had DUIs. Personally, I've never been accused of a crime.
25 I've witnessed some assaults. And I think that's about it.

1 THE COURT: Would any of those situations that you've
2 mentioned, specifically those friends of yours that were
3 apparently arrested for DUI, that have been through the
4 criminal justice system, would any of those experiences that
5 you've mentioned have any effect on you being fair and
6 impartial in this case?

7 PROSPECTIVE JUROR 1: No, it wouldn't

8 THE COURT: Pass the microphone down.

9 PROSPECTIVE JUROR 2: Well, I have -- there has been
10 an office worker who had a nephew that was a victim of a
11 drive-by shooting. And off the top of my head that's as close
12 as I can think, and it wouldn't affect my judgment here.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR 3: I had a couple friends who were
15 accused of vandalism.

16 THE COURT: How long ago?

17 PROSPECTIVE JUROR 3: Two years ago.

18 THE COURT: Would that have any effect on you being
19 fair and impartial in this case?

20 PROSPECTIVE JUROR 3: No.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR 4: Just the same as knowing people
23 with DUIs, but me not personally ever accused or anything like
24 that.

25 THE COURT: Any effect on you at all?

1 PROSPECTIVE JUROR 4: Negative.

2 THE COURT: Thank you. Pass it to the front, please.
3 And just go on down. If you don't have anything, that's fine.

4 PROSPECTIVE JUROR 8: I had a brother-in-law who was
5 convicted of being on drugs and driving around a parking lot
6 with pipe bombs.

7 THE COURT: When was that?

8 PROSPECTIVE JUROR 9: Oh, four or five years ago.

9 THE COURT: Where was it?

10 PROSPECTIVE JUROR 9: Down in -- down by Livermore, I
11 think it was. Antioch.

12 THE COURT: What's the status at this point?

13 PROSPECTIVE JUROR 9: He is on probation.

14 THE COURT: Who was the arresting agency? Do you
15 recall if it was the sheriff's department, police department,
16 federal?

17 PROSPECTIVE JUROR 9: Sheriff's department, I
18 imagine. I don't know.

19 THE COURT: Are you very close to your brother?

20 PROSPECTIVE JUROR 9: My brother-in-law.

21 THE COURT: Brother-in-law?

22 PROSPECTIVE JUROR 9: Yeah. Yeah. I'm pretty close
23 with him.

24 THE COURT: Have you discussed his case with him?

25 PROSPECTIVE JUROR 9: His case?

1 THE COURT: Yes.

2 PROSPECTIVE JUROR 9: Yeah. I told him what an idiot
3 he was.

4 THE COURT: Would that in any way affect you being
5 fair and impartial to both sides in this case?

6 PROSPECTIVE JUROR 9: No, it wouldn't.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR 7: My son was convicted of a sex
9 crime because his girlfriend was a minor.

10 THE COURT: How long ago was that, sir?

11 PROSPECTIVE JUROR 7: About three years.

12 THE COURT: Was that here in Sacramento?

13 PROSPECTIVE JUROR 7: Yes.

14 THE COURT: Would that in any way affect your ability
15 to be fair and impartial to both sides in this case?

16 PROSPECTIVE JUROR 7: No.

17 THE COURT: Does it affect how you look at the
18 criminal justice system in general at all?

19 PROSPECTIVE JUROR 7: No.

20 THE COURT: Affect how you look at the prosecutors or
21 Government attorneys?

22 PROSPECTIVE JUROR 7: Not at all.

23 THE COURT: Or defense attorneys?

24 PROSPECTIVE JUROR 7: No.

25 THE COURT: Thank you, sir. Pass it forward.

1 PROSPECTIVE JUROR 13: I know people who have had
2 DUIs as well. I've never been accused of a crime or convicted
3 of a crime. I don't think that would in any way hamper my
4 ability to be impartial.

5 THE COURT: Thank you, sir.

6 PROSPECTIVE JUROR 14: A relative was convicted of a
7 theft crime. It would not.

8 THE COURT: How long ago was that?

9 PROSPECTIVE JUROR 14: About five years ago.

10 THE COURT: Where was that?

11 PROSPECTIVE JUROR 14: In Truckee.

12 THE COURT: Was it a state crime or federal crime, do
13 you know?

14 PROSPECTIVE JUROR 14: No, I don't.

15 THE COURT: And it would have no effect upon you
16 being fair and impartial in this case?

17 PROSPECTIVE JUROR 14: No.

18 THE COURT: Thank you, ma'am. Anyone else? Yes.
19 Pass it down.

20 PROSPECTIVE JUROR 16: Several of my son's friends
21 have been convicted of DUIs, and one of my associates in my
22 former job his nephew was killed in Vacaville, and the truck
23 that he was in burned up.

24 THE COURT: What was the cause, do you know?

25 PROSPECTIVE JUROR 16: I think it was drug related.

1 I don't know the whole story other than the fact that he was
2 killed.

3 THE COURT: Would that in any way affect you being
4 fair and impartial to both sides in this case?

5 PROSPECTIVE JUROR 16: No.

6 THE COURT: Thank you, sir. Anyone else? All right.
7 Thank you.

8 Have any of you had any contacts, be they good or
9 bad, with the United States Attorney's Office in this District
10 or in any other District that you are aware of? Anyone this
11 the top row?

12 PROSPECTIVE JUROR 1: Not with the Court but with an
13 attorney.

14 THE COURT: First of all, the United States Attorney;
15 in other words, the prosecution in this case?

16 PROSPECTIVE JUROR 1: No.

17 THE COURT: Anyone else in that top row? In the
18 middle row? Front row?

19 Has anyone had any dealings in this court, in the
20 federal court system, at all, personally, or any of their
21 relatives or friends, in the United States District Court in
22 this District or anywhere else? Anyone in the top row? Yes.

23 PROSPECTIVE JUROR 1: I believe it was in this court.
24 A friend of mine, his name is George Graves, I believe he was a
25 witness in this court, but I'm not certain.

1 THE COURT: How long ago was that?

2 PROSPECTIVE JUROR 1: Maybe five years ago. Four
3 years ago.

4 THE COURT: Do you remember the type of case it was?

5 PROSPECTIVE JUROR 1: It had to do with the
6 Department of Insurance. Quackenbush, earthquake, retirement
7 fund, whatever it was.

8 THE COURT: Would that have any effect on you in this
9 case?

10 PROSPECTIVE JUROR 1: No.

11 THE COURT: Thank you. Anyone else in that row?
12 Contacts with the U.S. Attorney's Office in this District or
13 anyone else? Anyone else in the middle row? Front row?

14 How about any of you had contacts with criminal
15 defense attorneys --

16 First of all, let me go back, not only with the U.S.
17 Attorney's Office but what about the District Attorney's
18 Office, that's a state level. Any of you had any contacts with
19 the District Attorney's Office of Sacramento County, or any
20 other county for that matter, any of your friends or relatives
21 in the top row? Middle row? Yes.

22 PROSPECTIVE JUROR 9: My son was given a ticket in
23 State parks, and we had to deal with the District Attorney on
24 the county level in Butte County.

25 THE COURT: Was there anything about the way that was

1 handled by the District Attorney's Office or the arresting
2 agency that might affect you being fair and impartial in this
3 case?

4 PROSPECTIVE JUROR 9: No.

5 THE COURT: Thank you. Anyone else in that row? How
6 about in the front row?

7 All right. Any of you had any dealings or contacts
8 with or any friends or relatives of yours dealing with criminal
9 defense attorneys, either privately, or with the federal
10 defender, or the public defender in any particular county? Any
11 of you in the top row? In the middle row?

12 PROSPECTIVE JUROR 7: My son has an attorney.

13 THE COURT: Public defender?

14 PROSPECTIVE JUROR 7: No. Private.

15 THE COURT: Private. Was there anything about the
16 way that your son was represented, or the way that that case
17 was handled that might have any effect on you being fair and
18 impartial here?

19 PROSPECTIVE JUROR 7: No.

20 THE COURT: Anyone else?

21 PROSPECTIVE JUROR 9: When my son was taken into
22 court the first time, the public defender come out and said if
23 you will plea bargain to this, this is what your fine will be.
24 And that kind of irritated me that they had already determined
25 that he was guilty of the so-called charges before he even went

1 to court.

2 THE COURT: Uh-huh.

3 PROSPECTIVE JUROR 9: And that kind of irritated me
4 that they have that kind of mentality. Not even letting you
5 present your defense or stand before the judge and hear all the
6 facts.

7 THE COURT: Now, when you say "they," who are you
8 referring to at that point, the attorneys?

9 PROSPECTIVE JUROR 9: The district attorney and the
10 public defenders.

11 THE COURT: Okay. So that's two governmental
12 agencies, if you will.

13 Do you think that that's going to affect you at all
14 in this particular case?

15 PROSPECTIVE JUROR 9: No.

16 THE COURT: If you are a juror?

17 PROSPECTIVE JUROR 9: No.

18 THE COURT: Are you sure that that's not going to --
19 you're not going to hold it against the Government's attorney
20 or hold it against Mr. Reichel because of way it was handled?

21 PROSPECTIVE JUROR 9: No.

22 THE COURT: Thank you. Anyone else in the front row?

23 Have any of you had any particularly good or
24 particularly bad experiences with a law enforcement agency?

25 When I say "you," I'm including yourself, friend or relative,

1 and by law enforcement agencies I'm referring to a police
2 department, sheriff's department, Department of Corrections,
3 FBI, Drug Enforcement, ATF, Alcohol Tobacco or Firearms, any
4 agencies that you had any particular good or bad experiences
5 with or anyone that works for any of those agencies? Anyone in
6 the top row?

7 PROSPECTIVE JUROR 2: Before I was born, my father
8 was an FBI agent. I don't know if that's what you need to
9 know.

10 THE COURT: It is. Of it was before you were born,
11 did you ever talk to him about his work at all?

12 PROSPECTIVE JUROR 2: We tried to. You know, as kids
13 you ask questions, but I don't know much about it.

14 THE COURT: There may be FBI agents that are called
15 to testify here in this court during the course of this trial,
16 do you think that you would give their testimony any greater
17 weight than any other witnesses simply because of their
18 profession?

19 PROSPECTIVE JUROR 2: I don't think so. I don't
20 know. Maybe I would.

21 THE COURT: Would it be just because they're an FBI
22 agent?

23 PROSPECTIVE JUROR 2: No.

24 THE COURT: Because you can give weight to any
25 witness you want to. It's up to you.

1 PROSPECTIVE JUROR 2: I consider myself very fair
2 minded, so, no, I don't think I would add any extra weight to
3 that.

4 THE COURT: Thank you. Pass it down.

5 PROSPECTIVE JUROR 4: My stepmom is a retired
6 correctional officer.

7 THE COURT: How long and where did she work?

8 PROSPECTIVE JUROR 4: Folsom State Prison. And, I
9 don't remember, another one down in, like, Stanislaus I think
10 somewhere. Thirty years she worked there. And she retired
11 just three years ago on disability.

12 THE COURT: Do you think that would have any effect
13 on you being fair and impartial to both sides in this case?

14 PROSPECTIVE JUROR 4: Maybe, yeah.

15 THE COURT: And in what way?

16 PROSPECTIVE JUROR 4: I kind of tend to believe more
17 if like a --

18 THE COURT: Do you think you'd give greater weight to
19 someone who may be in law enforcement?

20 PROSPECTIVE JUROR 4: Yes. Exactly what I'm trying
21 to say.

22 THE COURT: I don't want to put words in your mouth,
23 but I want to help you out a little bit. In this situation,
24 though, would you be able to listen to all the witnesses and
25 just decide whether you believed one or the other?

1 PROSPECTIVE JUROR 4: Yeah. I can do it.

2 THE COURT: Because that's the question. You know,
3 there may be a situation, you know, for me, if I were called to
4 sit on a jury -- which I have been three times -- and if
5 another judge was called as a witness, the question would be,
6 would I give that judge's testimony greater weight. My
7 response would be, no, I'm going to wait and see if I believe
8 him or not. Just like I would a clergyman or a nun or a doctor
9 or -- it doesn't really matter what their position is. Or it
10 could be the person who's driving a taxicab or whatever. They
11 are all the same when they sit here. It's whatever weight you
12 want to give to them.

13 So with that understanding, would you be able to
14 listen to witnesses and testimony and just give it the weight
15 that you think it deserves?

16 PROSPECTIVE JUROR 4: Yes.

17 THE COURT: Maybe we'll come back and ask you about
18 that a little bit later on.

19 Anyone else in that row? Any contacts with law
20 enforcement? How about the middle row? Front row? Yes.

21 PROSPECTIVE JUROR 14: I have a relative that's a
22 fire investigator.

23 THE COURT: A fire investigator?

24 PROSPECTIVE JUROR 14: Uh-huh.

25 THE COURT: Where?

1 PROSPECTIVE JUROR 14: Auburn.

2 THE COURT: Auburn. And how long?

3 PROSPECTIVE JUROR 14: A year-and-a-half.

4 THE COURT: Do you -- is that male or female?

5 PROSPECTIVE JUROR 14: Male.

6 THE COURT: Do you discuss with him his work as a
7 fire investigator?

8 PROSPECTIVE JUROR 14: No.

9 THE COURT: Do you think that would have any effect
10 on you being fair and impartial in this case at all?

11 PROSPECTIVE JUROR 14: Not at this point.

12 THE COURT: Thank you. Anyone else?

13 All right. Have any of you had any legal training,
14 that is, you've gone to law school, paralegal school, or
15 anything such as that in the top row?

16 PROSPECTIVE JUROR 2: Would that include Notary
17 Public?

18 THE COURT: Not really. I'm looking for more of a
19 law school where something where you may have been trained in a
20 particular -- in criminal law, for example. Anyone received
21 any training such as that, whether it be law school maybe even
22 military, military police, for example? Anyone in the middle
23 row? Front row? Yes, sir.

24 PROSPECTIVE JUROR 4: Just real quick, when I was in
25 the military I did have to do shore patrol from time to time,

1 but that was pretty much just picking up drunk sailors kind of
2 a thing. That was it.

3 THE COURT: But nothing that would affect you here in
4 this case; is that correct?

5 PROSPECTIVE JUROR 4: Correct.

6 THE COURT: Thank you.

7 As I explained earlier, there is a presumption of
8 innocence that Mr. McDavid has as he sits here today. But
9 there are some who I have heard who believe that if you are
10 even here in court, something must have happened. That's not
11 the law. Just simply not the law.

12 The law is that as he sits here, he is innocent.
13 Until proven otherwise he will remain innocent. Is there any
14 one of you that cannot follow that rule of law at this point in
15 time? In the top row? Raise your hand if you cannot. Second
16 row? Middle row -- front row?

17 It is possible that Mr. McDavid may testify, but it's
18 also possible he may not testify depending on the state of the
19 evidence after the Government's case-in-chief.

20 If he does not testify, is there any one of you in
21 the top row that would hold that against him? If so, raise
22 your hand? In middle row? Front row?

23 Once again, he is not required to testify or present
24 any other evidence.

25 Also, the burden of proof that I've told you about is

1 beyond a reasonable doubt. That doesn't mean all possible
2 doubt. It doesn't mean I'm pretty darn sure. It doesn't mean
3 by a preponderance of the evidence. It doesn't mean by clear
4 and convincing evidence. It is the standard of beyond a
5 reasonable doubt. You will have the instruction of what that
6 means when you go to deliberate.

7 Is there anyone who will not be able to follow that
8 rule, that instruction regarding beyond a reasonable doubt when
9 you begin to deliberate? In the top row? Middle row? Front
10 row?

11 If you are selected as a juror in this case, you will
12 be instructed that you are going to have to perform your duty
13 without regard to what the penalty or punishment may be, if
14 any. So that that is not to even be brought up during the
15 course of your discussions.

16 Is there anyone who would not be able to follow my
17 instruction regarding not discussing penalty or punishment as a
18 part of the decision-making process? In the top row? Middle
19 row? Or the front row?

20 Do any of you have any medical conditions, or are you
21 taking any type of medication that would make it difficult or
22 impossible for you to sit on this jury?

23 Let me just make sure I reiterate that we go from
24 9:00 until 4:30 p.m., but we will go from 9:00 until 10:30. We
25 will take a 20-minute recess. Return at ten to 11:00, and we

1 will continue on until noon. We will take our noon recess from
2 12:00 until 1:30. We will resume at 1:30 p.m., and we will
3 break again at 3:00. We will be on break from 3:00 to 3:20.
4 And then we will resume our trial from 3:20 until 4:30.

5 With that understanding, is there anyone who has a
6 medical condition, or is taking any medication that would not
7 be able to serve on the jury based upon the schedule that I've
8 just announced? Anyone in the top row? Middle row? Front
9 row?

10 Do any of you know of any reason whatsoever -- pass
11 the mic over -- and I'll ask each one of you individually to
12 please respond either in the affirmative or the negative --
13 having heard the questions that I've asked, having heard the
14 nature of the case, the length of time that we are going to be
15 in this case, everything that you've heard here today, do you
16 have any reason at all why you should not sit on this jury?

17 This is the time and place for you to tell me any
18 reason at all why you should not be here. So we'll start with
19 Ms. Runge and pass the microphone.

20 Any reason at all why you should not sit on this
21 jury?

22 PROSPECTIVE JUROR 1: I have no reason, Your Honor.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR 2: No.

25 PROSPECTIVE JUROR 3: No.

1 PROSPECTIVE JUROR 4: No.

2 PROSPECTIVE JUROR 5: No.

3 PROSPECTIVE JUROR 6: No.

4 PROSPECTIVE JUROR 12: No.

5 PROSPECTIVE JUROR 11: No.

6 PROSPECTIVE JUROR 10: No, Your Honor.

7 PROSPECTIVE JUROR 9: No.

8 PROSPECTIVE JUROR 8: No.

9 PROSPECTIVE JUROR 7: No.

10 PROSPECTIVE JUROR 13: No.

11 PROSPECTIVE JUROR 14: No.

12 PROSPECTIVE JUROR 15: No.

13 PROSPECTIVE JUROR 16: No.

14 PROSPECTIVE JUROR 17: No, Your Honor.

15 PROSPECTIVE JUROR 18: No.

16 THE COURT: Thank you. I'm going to give each side
17 up to ten minutes for follow-up examination.

18 Mr. Lapham or Ms. Endrizzi, would one of you like to
19 have follow-up, please.

20 MR. LAPHAM: Thank you, Your Honor.

21 THE COURT: Go ahead.

22 MR. LAPHAM: Good morning everybody. I just have a
23 few follow-up questions. Most of you are going to escape this
24 one.

25 Mr. Holmquist, you currently attend Sierra College?

1 PROSPECTIVE JUROR 3: Yes.

2 MR. LAPHAM: And what year are you there?

3 PROSPECTIVE JUROR 3: Third.

4 MR. LAPHAM: And so you've been going there for a
5 couple years?

6 PROSPECTIVE JUROR 3: Yes. I'm about to graduate.

7 MR. LAPHAM: And what are you studying?

8 PROSPECTIVE JUROR 3: Welding.

9 MR. LAPHAM: Did you run across an individual there
10 by the name of Ryan Lewis?

11 PROSPECTIVE JUROR 3: Name sounds familiar. I don't
12 know if I've met him though or not.

13 MR. LAPHAM: Not a friend of yours?

14 PROSPECTIVE JUROR 3: No.

15 MR. LAPHAM: And Mr. McDavid, did you ever see him
16 there?

17 PROSPECTIVE JUROR 3: I don't believe so.

18 MR. LAPHAM: There is a club there, or maybe a class
19 called the Social Justice Club. Was that anything you were
20 involved in?

21 PROSPECTIVE JUROR 3: No.

22 MR. LAPHAM: And you mentioned you've had some
23 friends who were convicted or arrested for vandalism?

24 PROSPECTIVE JUROR 3: Yes.

25 THE COURT: Was that vandalism associated with any

1 kind of political protest?

2 PROSPECTIVE JUROR 3: No.

3 MR. LAPHAM: Do you know what that vandalism
4 consisted of?

5 PROSPECTIVE JUROR 3: Yes. It was -- they went and
6 took tractors at houses that were being built and took --
7 bulldozed them over.

8 MR. LAPHAM: Okay. Do you know for what purpose?

9 PROSPECTIVE JUROR 3: Just they were bored, yeah.

10 MR. LAPHAM: Couldn't find any cows to tip over.

11 And Mr. Kinser, if you could pass the microphone
12 right in front of you.

13 You were the one with the brother-in-law who had the
14 pipe bombs?

15 PROSPECTIVE JUROR 9: Yes.

16 MR. LAPHAM: Do you know why he had those pipe bombs?

17 PROSPECTIVE JUROR 9: No idea.

18 MR. LAPHAM: Was that involved with any kind of
19 political movement?

20 PROSPECTIVE JUROR 9: No.

21 MR. LAPHAM: Okay. If you will pass the microphone
22 up to Ms. Gerdin. Did I get that name right?

23 PROSPECTIVE JUROR 13: Yes.

24 MR. LAPHAM: And you are from Truckee, and I always
25 want to know -- that's about a two-hour drive from here. Is

1 that going to present any hardship for you?

2 PROSPECTIVE JUROR 13: It does.

3 MR. LAPHAM: Are you -- do you plan on coming down
4 every single day and going back home?

5 PROSPECTIVE JUROR 13: I am not sure. I'm a teacher
6 and also it's just the beginning of school, so it does present
7 a hardship.

8 MR. LAPHAM: Have you worked out how you are going to
9 do that?

10 PROSPECTIVE JUROR 13: No.

11 MR. LAPHAM: Okay. What we're concerned about here
12 is whether or not we can have your full, undivided attention,
13 and if you are thinking about that long drive home, if it's
14 going to make you tired and unable to pay attention, those are
15 the kind of things were concerned about. What do you think
16 about that?

17 PROSPECTIVE JUROR 13: Well, it is difficult. It's
18 the beginning of school, and I'm trying to just get a set of 20
19 children organized and parents, so, yeah, it does make a
20 hardship, a difficulty.

21 MR. LAPHAM: I'm not trying to push you in any
22 direction here. I want to make sure we're going to have your
23 undivided attention. You said that you were willing to sit.
24 Is that still your answer?

25 PROSPECTIVE JUROR 13: I am, but it is very

1 difficult.

2 MR. LAPHAM: Okay. That's all. Thank you.

3 THE COURT: Thank you. Mr. Reichel.

4 MR. REICHEL: Thank you, Your Honor.

5 My question would be for Ms. Runge. Your connection
6 with Mr. Graves you mentioned. Are you a good friend of
7 Mr. Graves?

8 PROSPECTIVE JUROR 1: Yes. I'm a good friend of
9 his.

10 MR. REICHEL: Did you talk about his participation in
11 that criminal case?

12 PROSPECTIVE JUROR 1: I didn't.

13 MR. REICHEL: So there wasn't extensive discussion
14 about that?

15 PROSPECTIVE JUROR 1: No.

16 MR. REICHEL: Anything about your relationship with
17 him or his involvement in that case that would affect you
18 sitting as a juror in this case?

19 PROSPECTIVE JUROR 1: No.

20 MR. REICHEL: Your Honor, I have no further follow-up
21 questions for the jury.

22 THE COURT: Thank you. Mr. Reichel, would you pass
23 for cause?

24 MR. REICHEL: Yes, Your Honor.

25 THE COURT: And Mr. Lapham and/or Ms. Endrizzi, does

1 the Government pass for cause?

2 MR. LAPHAM: Yes, Your Honor.

3 THE COURT: Thank you. Ladies and gentlemen, we're
4 at the start of the process known as peremptory challenges.
5 And this is when each side has the opportunity to have the
6 Court thank and excuse the jurors from the 12 of you in the box
7 to be replaced by the six of you in the front row.

8 The fact that you are asked to be excused does not
9 necessarily mean that anyone feels that you would not be a good
10 juror, or you were biased or prejudiced in any way. This is
11 just simply the time that the attorneys have an opportunity to
12 try to select a jury of 12 persons which they believe will
13 adequately and fairly represent the citizens of the Eastern
14 District of California.

15 So we're going to pick 12 jurors, and we're also
16 going to pick two alternates. And the procedure that we're
17 going to follow is that the Government will start, and we will
18 be referring during this process only to the -- we call it the
19 top 12 here.

20 So that if there is a person who is excused, the
21 first one, Mr. Hinson, you will then take their chair, and we
22 follow this order until we get down to 11 in the box, for
23 example, or if we have two passes, then it becomes a jury, and
24 then we will call the next seven, and we will have a much more
25 expeditious examination of those that are brought forward.

1 So with that, I would ask each of you, if you are
2 excused, to please follow the instructions to call the 800
3 number after 5:00 p.m. today, and, please, thank you very much
4 on behalf of the Eastern District of California. And also I'm
5 sure on behalf of both the Government and the defense in this
6 case.

7 With that, Mr. Lapham or Ms. Endrizzi, your first
8 peremptory. Then to Mr. Reichel who will have two.

9 MR. LAPHAM: In open court?

10 THE COURT: Yes.

11 MR. LAPHAM: Your Honor, the United States would
12 thank and excuse juror number 9, Mr. Kinser.

13 THE COURT: Thank you, Mr. Kinser. Appreciate your
14 time, sir. And Mr. Hinson, if you would please take chair
15 number 9. Mr. Reichel, two.

16 MR. REICHEL: Thank you, Your Honor. I'm not sure I
17 will pronounce the names correctly, I would apologize. But
18 defense would thank and excuse juror who is currently number
19 two, Ms. Ekdahl.

20 THE COURT: Ms. Ekdahl, thank you very much. And we
21 will get Ms. Gerdin, if you would please take number two.

22 MR. REICHEL: Your Honor, the defense would also
23 thank and excuse Ms. Rogers.

24 THE COURT: Number six, Ms. Rogers. Thank you very
25 much, ma'am. Mr. Schuessler. Thank you. To the Government.

1 MR. LAPHAM: Your Honor, the United States passes.

2 THE COURT: United States pass.

3 MR. REICHEL: Just one minute, Your Honor. Sorry.

4 Again, Your Honor, apologize if I mispronounce the
5 name, but the defense would thank and excuse Mr. Leonhardt.

6 THE COURT: Thank you, sir.

7 MR. REICHEL: And also we would thank and excuse
8 Mr. Pittman.

9 THE COURT: Ms. Pittman.

10 MR. REICHEL: Ms. Pittman, Your Honor. Thank you.

11 THE COURT: Thank you, Ms. Pittman. And Ms. Walker
12 if you would please take chair number eight. Right here,
13 Ma'am. Back to the Government.

14 MR. LAPHAM: And, Your Honor, sorry to make her move
15 around so much, but we'll thank and excuse Ms. Walker.

16 THE COURT: Ms. Walker, thank you very much, ma'am.
17 Ms. Tackett, if you would please take that chair number eight.
18 And Mr. Reichel.

19 MR. REICHEL: Thank you, Your Honor. The defense
20 would thank and excuse Ms. Tackett.

21 THE COURT: Thank you, Ms. Tackett,

22 MR. REICHEL: And thank and excuse --

23 THE COURT: Hold on. We'll go on right there. I'm
24 going to bring up the next seven then we'll start from there.
25 All right. The next seven in order, please.

1 THE CLERK: Lora Sotelo, Ryan Page, Roger Parnell,
2 Barbara Gaskin, William Fugia, Michele Kinaan, Matthew Huiras.

3 THE COURT: All right. Thank you. And we'll start
4 off with Ms. Sotelo, if you would please answer the questions
5 on the blue card for me.

6 PROSPECTIVE JUROR 8: My name is Lora Sotelo. I am a
7 resident of Elk Grove. I am a media assistant for the
8 California Farm Bureau Federation in their communications news
9 division. Previous to that, I spent almost ten years in the
10 food service industry. I have a Bachelor of Science in
11 agricultural business with a minor in governmental policy. And
12 I am currently a student of Golden Gate University, getting my
13 Master's in public relations.

14 I do not have military service. I have been married
15 for 17 years and have a seven-year-old. My husband is a
16 special education consultant for the State Department of
17 Education in the Special Education Unit. Prior to that, he was
18 with the Department of Mental Health as a manager.

19 My child is a student. And I've never had jury
20 experience before.

21 THE COURT: Thank you. Hold on just for a second.

22 Did you hear all the questions that I asked the other
23 prospective jurors?

24 PROSPECTIVE JUROR 8: Yes, sir.

25 THE COURT: And did you hear all the answers that

1 were given?

2 PROSPECTIVE JUROR 8: Yes, sir.

3 THE COURT: Did any of the questions that I asked or
4 the answers that were given cause you to think of anything that
5 you should advise the Court or the parties concerning your
6 ability to serve as a fair and impartial juror in this case?

7 PROSPECTIVE JUROR 8: In terms of I've never had any
8 interactions with the court for myself. My uncle has had
9 several DUIs, but that doesn't affect my opinion of the court.
10 And other than being around the court system for the lobbyist
11 at the Farm Bureau, no, I have no other reason to think that I
12 couldn't be a juror.

13 THE COURT: Did any of the questions raise any doubt
14 in your mind whether you would be able to act as a fair and
15 impartial juror in this case?

16 PROSPECTIVE JUROR 8: I do have a working knowledge
17 of the media and the Forestry Service because of the nature of
18 what I do for the California Farm Bureau and personal interest
19 in agriculture, but I don't think that that would allow me to
20 decide -- or it wouldn't make me impartial.

21 THE COURT: And is there any reason at all why you
22 think that you should not be on this jury at this time?

23 PROSPECTIVE JUROR 8: Not at this time, sir.

24 THE COURT: Thank you. Pass it on to Mr. Page.
25 Answer the questions for me, please, sir.

1 PROSPECTIVE JUROR 13: My name is Ryan Page. I live
2 in Tracy, California. I am currently a Ph.D. student and
3 instructor at U.C. Davis. My previous occupation was in the
4 music industry. My educational background is I have a
5 BA in English, an MFA and an MA in Dramatic Art and in English.
6 I have never served in the military. I am single. I have no
7 children. And I have no previous jury experience.

8 THE COURT: Thank you. Did the hear all the
9 questions and answers given to my questions previously?

10 PROSPECTIVE JUROR 13: Yes, I did.

11 THE COURT: Did any of those questions and/or answers
12 cause you to think of anything that you should advise the Court
13 regarding your ability to serve as a fair and impartial juror?

14 PROSPECTIVE JUROR 13: The only thing I would advise
15 the Court about is that I was a victim of a violent crime at
16 one point.

17 THE COURT: How long ago was that, sir?

18 PROSPECTIVE JUROR 13: Seven years ago.

19 THE COURT: Will you be comfortable in divulging the
20 nature of the crime?

21 PROSPECTIVE JUROR 13: Sure. I was a victim of an
22 armed robbery when I was a manager of a music store, and we
23 were -- everything was taken from the store. We were taken in
24 the back and made to lay down on our stomachs and had a gun
25 pointed to my head and was threatened with death.

1 THE COURT: Did you have to go to court and/or
2 testify in this case?

3 PROSPECTIVE JUROR 13: No, I did not.

4 THE COURT: Was there anything about the way that
5 this case was handled from law enforcement, the district
6 attorneys, defense attorneys, the courts, anything at all that
7 might have some effect on you being able to be fair and
8 impartial in this case?

9 PROSPECTIVE JUROR 13: I don't believe so, no.

10 THE COURT: Did any of the questions raise any doubt
11 in your mind whether you would be able to act as fair and
12 impartial juror in this case?

13 PROSPECTIVE JUROR 13: No. I believe I would be.

14 THE COURT: Is there any reason at all why you should
15 not be on this jury, sir?

16 PROSPECTIVE JUROR 13: No.

17 THE COURT: Thank you very much. Mr. Parnell?

18 PROSPECTIVE JUROR 14: My name is Roger Parnell, I
19 live in Susanville, California. I'm currently a school
20 psychologist, working for Lassen County Office of Education. I
21 have a Master's Degree in Psychology. No military service.

22 I'm on my second marriage. We've been married for
23 11 years. My wife is a speech therapist working for Lassen
24 County Office of Education. We have four children between us.
25 Two stay-at-home moms, and a son who has just graduated from

1 college and is applying for jobs now. My other son is working
2 for a music store in Fort Bragg. I've been called to jury
3 several times but never called -- never served.

4 THE COURT: Never served.

5 Was there anything about the way that was handled
6 with you, sir, that might affect you being fair and impartial
7 here?

8 PROSPECTIVE JUROR 14: Not at all.

9 THE COURT: And did you hear all the questions and
10 answers earlier today, sir?

11 PROSPECTIVE JUROR 14: I did.

12 THE COURT: Was there anything about the questions or
13 any of the answers that were given that would cause you to
14 think of anything that you should tell us regarding your
15 ability to serve as a juror in this case?

16 PROSPECTIVE JUROR 14: The only thing that stood out
17 to me is when I was a juvenile, I did go to juvenile court.
18 Joy riding.

19 THE COURT: Would that have an effect upon you here
20 today?

21 PROSPECTIVE JUROR 14: Not at all.

22 THE COURT: Is there any reason why you not be able
23 to act as a fair and impartial juror in this case?

24 PROSPECTIVE JUROR 14: The other thing was I have --
25 my son-in-law is a CHP.

1 THE COURT: Okay. So the question would be then, if,
2 for example, a member of a law enforcement agency, such as CHP
3 or a federal agency, FBI, one of them, were to testify as a
4 witness, would you tend to give that person's testimony any
5 greater weight automatically just because of their profession?

6 PROSPECTIVE JUROR 14: No, sir.

7 THE COURT: Is there any reason at all why you think
8 you should not be on this jury, sir?

9 PROSPECTIVE JUROR 14: No, sir.

10 THE COURT: Thank you very much.

11 PROSPECTIVE JUROR 15: I'm Barbara Gaskin. I live in
12 Granite Bay. I'm a retired teacher, 37 years. Previous
13 occupation, waitress going through school. Graduate work. No
14 military service. I've been married for 47 years. My husband
15 is a retired automobile manager. I have two children. My son
16 is a stockbroker, and my daughter is a principal in Redding
17 School District. I've been called twice, but I wasn't needed
18 for juries.

19 THE COURT: Anything about the way that was handled
20 that might affect you being fair and impartial in this case,
21 ma'am?

22 PROSPECTIVE JUROR 15: No.

23 THE COURT: Did you hear all the questions that I
24 asked and all the answers that were given to those questions?

25 PROSPECTIVE JUROR 15: I did.

1 THE COURT: And was there anything that was brought
2 to your mind that you think you should tell us regarding your
3 ability to serve as a fair and impartial juror here?

4 PROSPECTIVE JUROR 15: Unfortunately, I have to tell
5 you that my grandson was arrested for drunk driving.

6 THE COURT: How long ago was that?

7 PROSPECTIVE JUROR 15: May of this year.

8 THE COURT: Okay. So it's rather fresh in your mind?

9 PROSPECTIVE JUROR 15: It is.

10 THE COURT: Where was that?

11 PROSPECTIVE JUROR 15: That was in Rose- -- Rocklin,
12 actually.

13 THE COURT: Okay. Was there anything about the way
14 that that has been handled, or is currently being handled by
15 anyone involved with this case, that would have an effect upon
16 you being fair and impartial here?

17 PROSPECTIVE JUROR 15: No. It wouldn't. I just
18 think we were lucky, and that he was picked up.

19 THE COURT: All right. Is there any doubt in your
20 mind whether you would be able to act as a fair and impartial
21 juror here?

22 PROSPECTIVE JUROR 15: There's no reason. No, I
23 could.

24 THE COURT: Is there any reason at all why you should
25 not be a juror in this case?

1 PROSPECTIVE JUROR 15: No.

2 THE COURT: Thank you very much. Mr. Fuqua?

3 PROSPECTIVE JUROR 16: Your Honor, my name is Bill
4 Fuqua. I live in Rocklin. I'm an Air Force Junior ROTC
5 instructor at Natomas High School. I am retired Air Force. I
6 have a BS in Political Science and a Master's in Science of
7 Administration. I am retired Air Force. Been married to my
8 wife since May of '81. She works for Hewlett Packard as an
9 analyst. My children, three, 25, 23, and 20. One is a
10 contractor. The other is in sales. And the other one is a
11 waitress.

12 Previous jury experience, I've been called twice but
13 not served. I served on two court martials when I was active
14 duty military.

15 THE COURT: With respect to the court martials, in
16 what capacity --

17 PROSPECTIVE JUROR 16: I was a juror.

18 THE COURT: You were a juror. And were those
19 criminal cases in the court martial?

20 PROSPECTIVE JUROR 16: Criminal.

21 THE COURT: And you understand that the UCMJ, The
22 Uniform Code of Military Justice, is different than what we
23 would be looking at here?

24 PROSPECTIVE JUROR 16: Absolutely.

25 THE COURT: And you would be able to follow the

1 instructions that I give you on the law here, even though
2 you've been experienced with the military system?

3 PROSPECTIVE JUROR 16: Yes, Your Honor.

4 THE COURT: With respect to the times that you were
5 called and summoned, I guess would be a better word for jury
6 duty, but not actually called in, was there anything about the
7 way that that was handled that might have some effect upon you
8 being fair and impartial here?

9 PROSPECTIVE JUROR 16: No, Your Honor.

10 THE COURT: You've heard all the questions and all
11 the answers as well?

12 PROSPECTIVE JUROR 16: I have.

13 THE COURT: Was there anything that you should tell
14 us regarding your ability to serve as a fair and impartial
15 juror in this case?

16 PROSPECTIVE JUROR 16: Good friend of mine is a
17 retired FBI agent, and my son was arrested Saturday before
18 last.

19 THE COURT: Okay. Start with the FBI agent. Your
20 good friend. How long have you known him?

21 PROSPECTIVE JUROR 16: Since 1979.

22 THE COURT: And is he local?

23 PROSPECTIVE JUROR 16: No, Your Honor. East Coast.
24 Living in Connecticut.

25 THE COURT: And do you speak to him frequently about

1 his work?

2 PROSPECTIVE JUROR 16: It's been a few years, but I
3 have spoken to him about his work in the past.

4 THE COURT: The question I'm getting to then, is that
5 in the event there were an FBI agent to testify here, for
6 example, would you tend to give that agent's testimony any
7 greater weight simply because of the profession he or she is
8 in?

9 PROSPECTIVE JUROR 16: No, Your Honor.

10 THE COURT: All right. You said your son weekend
11 before last was involved with law enforcement?

12 PROSPECTIVE JUROR 16: Yes, Your Honor.

13 THE COURT: Locally?

14 PROSPECTIVE JUROR 16: Roseville.

15 THE COURT: Okay. Is there anything about the way
16 that this is being handled by either the law enforcement or any
17 of the other agencies or the attorneys that might have some
18 effect on you being fair and impartial in this case?

19 PROSPECTIVE JUROR 16: No, Your Honor.

20 THE COURT: Is there any doubt in your mind whether
21 you would be able to act as a fair and impartial juror in this
22 case?

23 PROSPECTIVE JUROR 16: None.

24 THE COURT: Is there any reason at all why you should
25 not be a juror in this case?

1 PROSPECTIVE JUROR 16: No, Your Honor.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR 17: My name is Michele Kinaan. I
4 live in Fair Oaks, California. I am a professional geologist.
5 I work for an engineering company called CH2M Hill as a project
6 manager. Previous occupation was petroleum geologist. I have
7 a BS in geology. No military service. I'm married and my
8 husband is a Sergeant with the California Highway Patrol in
9 North Sac. I have one child that's six years old, in first
10 grade. And I've been called to jury half a dozen times but
11 never selected.

12 THE COURT: All right. Anything about the way that
13 you were called but never selected that might affect you being
14 fair and impartial in this case?

15 PROSPECTIVE JUROR 17: No.

16 THE COURT: Your husband is currently with CHP North?

17 PROSPECTIVE JUROR 17: Yes.

18 THE COURT: Would that in any way affect your ability
19 to be fair and impartial to both sides in this case?

20 PROSPECTIVE JUROR 17: No. I just hear a lot of
21 stories and negative input about the criminal element, but in
22 this particular case I would be fair.

23 THE COURT: Well, that's the question I'm sure
24 everyone wants to know. If you have heard a number of stories,
25 is that going to taint your mind to the extent that either side

1 here, whether it's the Government or the defense, would not
2 have a fair trial?

3 PROSPECTIVE JUROR 17: I hope not, but it's -- it
4 would be tough because I hear -- married for 16 years and hear
5 a lot of stories.

6 THE COURT: But knowing that you would be the person
7 to listen to the stories and make the decision whether you
8 believe them or not is the question here.

9 PROSPECTIVE JUROR 17: Yeah. I think I usually hear
10 one side in my experience, so I think that I can be impartial
11 if I were to hear both sides.

12 THE COURT: That's exactly the question. Would you
13 be willing to listen to the other side?

14 PROSPECTIVE JUROR 17: Yes.

15 THE COURT: All right. Thank you. That covers my
16 question whether you'd be able to act as a fair and impartial
17 juror.

18 Is there any reason at all why you should not be on
19 the jury?

20 PROSPECTIVE JUROR 17: Well, I do have another --
21 from one of the previous questions you asked -- was victim of a
22 violent crime.

23 THE COURT: When was that?

24 PROSPECTIVE JUROR 17: 1996.

25 THE COURT: Are you willing to tell me what that was?

1 THE WITNESS: I would like to in private, if
2 possible.

3 THE COURT: All right. Fine. We'll pass you down.
4 Thank you.

5 PROSPECTIVE JUROR 18: My name is Matthew Huiras. I
6 live just east of Stockton in the unincorporated area of
7 Stockton. I am an elementary school teacher right now. My
8 previous occupation was that I was a support staff for people
9 with developmental disabilities and mental illness. I have a
10 Bachelor's in Social Science, and I have some graduate work in
11 education as well as, of course, my teaching credential. No
12 military service. I've been married for three years. My wife
13 is a job coach and manager at a day program for people with
14 developmental disabilities and mental illness. No children
15 currently. And I have served on a criminal jury before, and
16 the case was dismissed.

17 THE COURT: All right. Is there anything about your
18 service on that jury that would affect you being fair and
19 impartial in this case, sir?

20 PROSPECTIVE JUROR 18: No, Your Honor.

21 THE COURT: You've heard all the questions and the
22 answers?

23 PROSPECTIVE JUROR 18: Yes, sir.

24 THE COURT: And is there anything that you should
25 tell us at this time regarding your ability to serve as a fair

1 and impartial juror?

2 PROSPECTIVE JUROR 18: The only thing that popped in
3 my mind is that I am a PETA supporter. I'm not a member. But
4 that came up earlier, so, yes, I'm a PETA supporter.

5 THE COURT: But you would still -- that wouldn't --
6 or when you say a supporter, how do you support?

7 PROSPECTIVE JUROR 18: I follow some of their
8 guidelines as far as, you know, animal foods that aren't tested
9 in cruel ways, things like that, but I don't believe that it
10 would affect my ability to be impartial on this jury.

11 THE COURT: Is there any doubt in your mind whether
12 you would be able to act as a fair and impartial juror in this
13 case?

14 PROSPECTIVE JUROR 18: No, Your Honor.

15 THE COURT: Is there any reason at all why you should
16 not be on this jury?

17 PROSPECTIVE JUROR 18: No, sir.

18 THE COURT: Thank you. Ms. Kinaan, can I get you to
19 come over to the sidebar, and I will take the statement that
20 you want to give us out of the presence. Counsel, approach.

21 (Begin sidebar conference.)

22 THE COURT: You had indicated that you were the
23 victim of violent crime some time ago. Would you indicate what
24 that is?

25 PROSPECTIVE JUROR 17: My father -- witnessed my

1 father being murdered in a robbery that was at a rest stop in
2 Arkansas, and then I had to testify. And it just gives me the
3 creeps to be in a courtroom, and I -- not that I would judge
4 this person based on a crime committed against my father, but
5 it's very uncomfortable for me to be here.

6 THE COURT: All right.

7 MR. REICHEL: This is Mark Reichel, and I would ask
8 that she be removed for cause.

9 MR. LAPHAM: Can you flesh that out? Kind of gives
10 you the creeps?

11 PROSPECTIVE JUROR 17: Well, I just makes me very --
12 just makes me very shaky and nervous and upset. And it was --
13 you know, brutally shot four times. I observed it. I had to
14 try to revive him. And I don't -- makes me -- brings it all
15 back and makes me very upset.

16 MR. LAPHAM: We will agree.

17 THE COURT: Thank you very much. We'll be able to
18 excuse you. Thank you for your time. Appreciate it.

19 (End sidebar conference.)

20 THE COURT: Again ma'am, thank you very much. We do
21 appreciate it. And if you would follow the instructions of
22 after 5:00 call the 800 number. Next in order, please.

23 THE CLERK: Brian Regan.

24 THE COURT: Good morning, Mr. Regan. If you would
25 please answer the questions on the blue card for me.

1 PROSPECTIVE JUROR 17: Good morning, Your Honor. My
2 name is Brian Regan. I live in Fair Oaks. I'm a retired
3 federal bank examiner. And currently I do consulting work and
4 homemaker. Previous occupation was a bank examiner for FDIC
5 for 27 years. I have a BS in accounting. No military service.
6 I'm married. And my wife runs her own business in residential
7 property management. I have a daughter who is eight, in third
8 grade. And previous jury experience, called a couple of times
9 and served once in a case that was -- did reach a conclusion.

10 THE COURT: Civil or criminal?

11 PROSPECTIVE JUROR 17: Criminal.

12 THE COURT: And you did reach a verdict?

13 PROSPECTIVE JUROR 17: Yes, we did.

14 THE COURT: And was there anything about your service
15 on that criminal jury that might affect you being fair and
16 impartial in this case?

17 PROSPECTIVE JUROR 17: Not at all.

18 THE COURT: And did you hear all the questions and
19 answers to those questions earlier today, sir?

20 PROSPECTIVE JUROR 17: Yes, I did.

21 THE COURT: Did anything that you heard cause you to
22 think of anything that you should tell us regarding your
23 ability to serve as a fair and impartial juror in this case?

24 PROSPECTIVE JUROR 17: Yes from a point of
25 disclosure. Not that I think it would impact. But I testified

1 as an expert witness, I guess, in a criminal case in Anchorage,
2 Alaska. Called by the U.S. Attorney and to testify on their
3 side of the case.

4 THE COURT: How long ago was that?

5 PROSPECTIVE JUROR 17: That was about 15, 17 years
6 ago. A little while.

7 THE COURT: All right. And you say that that would
8 not affect you at all in this particular case?

9 PROSPECTIVE JUROR 17: No. Not at all.

10 THE COURT: Is there any doubt in your mind whether
11 you would be able to act as a fair and impartial juror in this
12 case?

13 PROSPECTIVE JUROR 17: No, there is not.

14 THE COURT: Is there any reason at all why you should
15 not be on this jury?

16 PROSPECTIVE JUROR 17: Not that I can think of at
17 this time.

18 THE COURT: Thank you. Mr. Lapham, do you have
19 follow-up examination?

20 MR. LAPHAM: Yes, Your Honor. Mr. Fuqua, I think
21 we'll start with you. You probably know what I'm going to ask.
22 You originally said you had a hardship because you teach junior
23 ROTC in Folsom.

24 PROSPECTIVE JUROR 16: I teach in Natomas.

25 MR. LAPHAM: Natomas. Would you explain that to me?

1 You have training on Monday nights, and that's important to
2 renewing your credential?

3 PROSPECTIVE JUROR 16: As a matter of fact, it starts
4 tonight. Specifically, it's a course designed around English
5 learners, the ability to enhance their lesson plans in order to
6 give them a quality education. Again, it starts tonight. And
7 those hours are 4:00 to 7:00, and that will go on until
8 December.

9 MR. LAPHAM: So the class is going to go on for
10 several months?

11 PROSPECTIVE JUROR 16: Yes, sir.

12 MR. LAPHAM: And if you are late getting to class
13 tonight and perhaps next Monday, do you think that's going to
14 cause you any problems?

15 PROSPECTIVE JUROR 16: To be honest with you, I don't
16 know.

17 MR. LAPHAM: Well, that makes it kind of tough. Is
18 there anybody that you can talk to about that?

19 PROSPECTIVE JUROR 16: I'm sure that there is someone
20 at my district that I can speak to about it.

21 MR. LAPHAM: The class goes from 4:00 until when?

22 PROSPECTIVE JUROR 16: 7:00.

23 MR. LAPHAM: Okay.

24 THE COURT: Where is the class?

25 PROSPECTIVE JUROR 16: Folsom, Your Honor.

1 MR. LAPHAM: All right. Would you please pass the
2 mic to Mr. Parnell. And is it Dr. Parnell?

3 PROSPECTIVE JUROR 14: No, it isn't. Master's
4 Degree.

5 MR. LAPHAM: I'm going to ask you the same question I
6 asked Ms. Gerdin. You're coming from even farther away than
7 she is, Susanville.

8 PROSPECTIVE JUROR 14: Yes.

9 MR. LAPHAM: That's a long trek. Have you figured
10 out what you're going to do?

11 PROSPECTIVE JUROR 14: I've covered it with my
12 employer.

13 MR. LAPHAM: And that's not going to be a problem?

14 PROSPECTIVE JUROR 14: It won't be a problem.

15 MR. LAPHAM: And then Mr. Page, you are coming from
16 Tracy?

17 PROSPECTIVE JUROR 13: Yes.

18 MR. LAPHAM: Have you solved that problem?

19 PROSPECTIVE JUROR 13: Well, I come from Tracy to
20 teach at Davis, so I'm used to the commute, so I don't think
21 it's problem for the next two weeks.

22 MR. LAPHAM: That's all. Thank you.

23 THE COURT: Thank you. Mr. Reichel?

24 MR. REICHEL: Just one minute, Your Honor. Your
25 Honor, we have no follow-up questions for the potential jurors.

1 THE COURT: Thank you. Pass for cause?

2 MR. REICHEL: Yes, Your Honor.

3 THE COURT: For the seven brought in, pass for cause?

4 MR. LAPHAM: Yes, Your Honor.

5 THE COURT: All right. We can return to the
6 peremptory challenges at this time.

7 Mr. Reichel, you had one to be number six.

8 MR. REICHEL: That's correct, Your Honor.

9 THE COURT: And, ladies and gentlemen, once again, if
10 you are asked to be thanked and excused, we do appreciate your
11 time today and ask that you follow the previously-given
12 instructions. Again, thank you very much for your time and the
13 candor in responding to our questions.

14 MR. REICHEL: Your Honor, defense would thank and
15 excuse Mr. Day.

16 THE COURT: Mr. Day, thank you very much, sir.
17 Mr. Page would you please take chair number four. And we are
18 onto the Government, number four.

19 MR. LAPHAM: Sorry, Your Honor?

20 THE COURT: Your fourth, if you wish.

21 MR. LAPHAM: Your Honor, at this point we're not
22 restricted to the first 12 in the box?

23 THE COURT: Yes. We're still on the 12.

24 MR. LAPHAM: The Government will pass.

25 THE COURT: Government passes. Mr. Reichel, number

1 seven.

2 MR. REICHEL: Thank you, Your Honor. The defense
3 would thank and excuse Mr. Page.

4 THE COURT: Thank you, Mr. Page. Appreciate your
5 time.

6 MR. REICHEL: We did get the name wrong, Your Honor.
7 I'm sorry. I apologize. Your Honor, we got our names wrong.

8 THE COURT: Go back and have a seat there again, sir.
9 Hold on.

10 MR. REICHEL: Just one second, Your Honor. We wrote
11 the name down wrong.

12 THE COURT: Do you want to compare the names?

13 MR. REICHEL: The juror who is presently sitting in
14 number six, Your Honor.

15 THE COURT: Mr. Schuessler. Thank you, sir.
16 Appreciate your time. And Mr. Parnell, now if you will take
17 number six.

18 Now to the Government. Excuse me. I shouldn't have
19 gone to the Government. They have one more. Excuse me.

20 MR. REICHEL: Your Honor, we would pass as well.

21 THE COURT: Government?

22 MR. LAPHAM: Government passes.

23 THE COURT: Thank you. Government passes. Madam
24 Clerk, would you please swear in the jury.

25 THE CLERK: To the 12 in the top box, please stand

1 and raise your right hand.

2 (Jury sworn by the Deputy Clerk.)

3 Jury in unison: I do.

4 THE COURT: Thank you. Please be seated. We're now
5 going to select two alternates, and we're going to go in order,
6 down the line, like I explained, and we will start with Ms.
7 Gaskin. We will go with the Government. You have two. And
8 you have two.

9 So it's either if you exercise every one, the next
10 two that come up are going to be -- so I will take as to Ms.
11 Gaskin?

12 MR. LAPHAM: As to Ms. Gaskin?

13 THE COURT: Do you wish to pass?

14 MR. LAPHAM: Yes, we'll pass.

15 THE COURT: All right. Mr. Reichel?

16 MR. REICHEL: Are we doing both defense ones now?

17 THE COURT: No. One and one.

18 MR. REICHEL: Thank and excuse Ms. Gaskin, Your
19 Honor.

20 THE COURT: Thank you Ms. Gaskin. Now your second
21 and last.

22 MR. LAPHAM: Your Honor, I know I earlier said pass
23 for cause. I'd like to review Mr. Fuqua again. We don't have
24 any -- we don't have complete information at this point. I
25 wasn't sure we were going to get to him.

1 THE COURT: We'll take sidebar. Just briefly. I
2 think I understand what you're referring to.

3 (Begin sidebar conference.)

4 THE COURT: Quite frankly, I didn't get to him. The
5 only reason why I'm concerned is he has indicated that there
6 may be a problem with him -- his work which creates a problem
7 unless you all were going to stipulate.

8 MR. REICHEL: I was going to use my second one on him
9 if it would save time.

10 MR. LAPHAM: Well --

11 MR. REICHEL: I'm going to use it right now. Go back
12 out. It would be my second peremptory on the alternates.

13 MR. LAPHAM: Well, with that understanding --

14 THE COURT: Then you're willing to have the last two
15 be the alternates?

16 MR. LAPHAM: Well, we were going to exercise ours on
17 the last one.

18 THE COURT: That's what I thought. Because if you
19 pass, that's it, and you have to go and exercise one in Fuqua,
20 and the next two are the last ones. They are going to be the
21 alternates who will be picked in random order.

22 MR. REICHEL: Fine.

23 THE COURT: Okay.

24 MR. LAPHAM: Well, I think the right thing to do is
25 to let Mr. Fuqua go.

1 THE COURT: I don't have a problem with letting him
2 call over the lunch hour, bring them all back and find out.

3 MS. ENDRIZZI: Well, he was visibly upset over his
4 son's arrest, and we don't know what the arrest was for.

5 THE COURT: I understand. But I just want to give
6 you an opportunity, if you're willing to go along, we can pick
7 the jury and alternates. The jury is sworn.

8 MR. LAPHAM: We'll agree to let Mr. Fuqua go, and
9 we'll take the last two.

10 MR. REICHEL: And if you need one, are you ready to
11 go?

12 THE COURT: There is not one or two alternates. It's
13 whoever gets --

14 MR. REICHEL: Can I give you the coin?

15 THE COURT: Do you want to exercise?

16 MR. LAPHAM: So we're going to excuse him for cause?

17 THE COURT: You pass and then --

18 MR. REICHEL: Yeah. Just pass, and I'll excuse him.

19 THE COURT: Okay.

20 (End sidebar discussion.)

21 THE COURT: And to the Government?

22 MR. LAPHAM: Your Honor, we'll thank and excuse
23 Mr. Fuqua.

24 THE COURT: Thank you, sir. You get to make it to
25 your class tonight.

1 PROSPECTIVE JUROR 16: Thank you, Your Honor.

2 THE COURT: Thank you for your time, sir.

3 MR. REICHEL: We'll pass, Your Honor.

4 THE COURT: Thank you very much. And if you will
5 please swear Mr. Regan and Mr. Huiras as the two alternates.

6 (Alternates sworn by the Deputy Clerk.)

7 (Alternates in unison: Yes.)

8 THE COURT: Ladies and gentlemen, for those of you
9 that are remaining in the audience, we have selected the jury
10 and the two alternates. I want to thank you very much for your
11 time that you've given us today in helping to administer
12 justice in the Eastern District of California. If you will
13 follow the instructions that I gave earlier to call the 800
14 number after 5:00 p.m., I would appreciate it. Thank you very
15 much for your time again, and you are all now excused.

16 And for the members of the jury and the two
17 alternates, in just a moment you will be taken to the jury
18 deliberation room, which is where you will congregate from now
19 on. You will be given your key cards, notebooks, pads, and you
20 will return at 1:30 p.m. when I will give a brief
21 pre-instruction, if you will, on your duties and obligations as
22 jurors. Should take probably five-to-seven minutes.

23 Once I conclude that, the Government will present its
24 opening statement. And Mr. Reichel, are you going to reserve
25 or give one today?

1 MR. REICHEL: Give one today, Your Honor.

2 THE COURT: Then the defense will give an opening
3 statement. And once that's been concluded, we'll start with
4 our first witness this afternoon.

5 All right. Here's your first admonition of many.
6 Please do not discuss the case with anyone including each
7 other, and please do not form any opinions at this time. Thank
8 you. Court's in recess until 1:30 p.m.

9 (Jury out.)

10 THE COURT: We're outside the presence of the jury at
11 this time. Counsel, is there anything I need to put on the
12 record outside their presence?

13 MR. LAPHAM: No, Your Honor.

14 MR. REICHEL: Not for the defense.

15 THE COURT: Thank you. See you at 1:30 p.m.

16 (Lunch break taken.)

17 (Jury in.)

18 THE COURT: All right. For the record, all 12 jurors
19 are present, along with the two alternates. And, counsel,
20 unless I state otherwise, it will be presumed that all 12
21 jurors and alternates are seated after we return from each
22 recess.

23 MR. LAPHAM: Yes, Your Honor.

24 MR. REICHEL: Yes, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury, you are

1 now the jury, and there are a few things that I want to tell
2 you about before we actually begin the actual trial. These are
3 preliminary instructions. At the end of the trial, I will give
4 you more detailed instructions. Those instructions will
5 control your deliberations.

6 You should not take anything I may say or do during
7 the trial as indicating what I think of the evidence, or what I
8 think your verdict should be.

9 This is, once again, a criminal case which has been
10 brought by the United States of America against Mr. McDavid.

11 The charges that were filed are in an Indictment, as
12 I indicated to you previously, and that Indictment is not
13 evidence of anything whatsoever.

14 In that filing of the Indictment, Mr. McDavid has
15 pled not guilty, and he is presumed to be innocent, as I've
16 told you earlier today, unless and until he is proved guilty
17 beyond a reasonable doubt. A defendant has the right to remain
18 silent and never has to prove innocence or present any
19 evidence.

20 The evidence that you are to consider during the
21 course of the trial will consist of: The sworn testimony of
22 any witness; the exhibits which are received into evidence; and
23 any facts to which the lawyers stipulate.

24 In the event the lawyers stipulate to a fact, I will
25 more than likely remind you that you are to consider that fact

1 as having been proven during the course of your deliberations.

2 The following things are not evidence, and you are
3 not to consider them at any time in your deliberations: The
4 statements and arguments of attorneys; questions and objections
5 of the attorneys; any testimony that I instruct you to
6 disregard; or anything that you may see or hear when court is
7 not in session, even if what you see or hear is said or done by
8 one of the parties or the attorneys.

9 Some evidence during the course of the trial may be
10 admitted for a limited purpose. If I instruct you that
11 evidence is to be admitted for a limited purpose, you are to
12 consider it during your deliberations for that limited purpose
13 and for no other.

14 Evidence may be direct and circumstantial. Direct
15 evidence is direct proof of a fact such as testimony by a
16 witness about what that witness personally saw, heard or did.

17 Circumstantial evidence is indirect evidence, which
18 is proof of one or more facts from which another fact can be
19 proven.

20 You are to consider both direct and circumstantial
21 evidence. The law permits you to give equal weight to both,
22 but it is for you to decide how much weight, if any, to give to
23 any evidence.

24 There are rules of evidence which control what can be
25 received into evidence during the trial. When a lawyer asks a

1 question or offers an exhibit into evidence, and a lawyer on
2 the other side thinks that it is not permitted by the Rules of
3 Evidence, that lawyer may object.

4 If I overrule that objection, the question may be
5 answered by the witness or the exhibit received into evidence.

6 If I sustain the objection, the question cannot be
7 answered, and the exhibit cannot be received into evidence.

8 Whenever I sustain an objection, you must ignore the
9 question and not guess or speculate on what the answer might
10 have been.

11 There may be times where I order that evidence will
12 be stricken from the record or that you are to disregard or
13 ignore the evidence. That means, once again, that when you are
14 deciding the case during your deliberations, you must not
15 consider the evidence which I have told you to disregard.

16 In deciding what the facts are of this case, you may
17 have to decide which testimony to believe and which testimony
18 not to believe. You may believe all of what a witness says,
19 some of what a witness says, or none of what a witness says.

20 When you are considering the testimony of any witness
21 who testifies here in court, you may take into account any of
22 the following: The opportunity and ability of the witness to
23 see or hear or know the things testified to; the witness'
24 memory; the witness' manner and/or demeanor while testifying
25 here in court; the witness' interest in the outcome of the case

1 and any bias or prejudice; whether other evidence has
2 contradicted what the witness is saying now; the reasonableness
3 of the witness' testimony in light of all the other evidence
4 you have received; and any other factors which you feel bear on
5 this witness' believability.

6 The weight of the evidence to a fact does not
7 necessarily depend on the number of witnesses who testify to
8 that fact.

9 Again, your conduct as jurors. As I've mentioned to
10 you previously, you are not to discuss the case with anyone,
11 including your fellow jurors, members of your family, people
12 involved in the trial, or anyone else, nor allow anyone else to
13 speak to you.

14 If anyone approaches you and tries to speak to you
15 about this case, please let me or one of my staff know
16 immediately.

17 Second, please do not read any newspaper accounts of
18 this case or listen to any television or radio reports
19 regarding this case.

20 Third, do not do any research such as consulting
21 reference works or speaking with other individuals or using the
22 Internet to try to gain any additional information.

23 Fourth, if you need to communicate with me, please
24 give a signed note to the Courtroom Deputy, or, if you are
25 deliberating, to the Court Security Officer.

1 And, finally, do not make up your mind about what the
2 verdict should be until after you have heard all the evidence,
3 been instructed on the law, and you have deliberated with your
4 fellow jurors.

5 At the end of trial, you will be called upon to make
6 your decision based upon what you recall of the evidence. You
7 will not have a verbatim transcript of the trial proceedings
8 with you in the deliberation room. I therefore urge you to pay
9 close attention to the trial.

10 You do, however, have notes and pens that have been
11 given to you. You may use these notes during the course of the
12 trial to take notes for yourself. Please keep the notes to
13 yourself until you go to the jury room to decide the case.

14 One caution, while you are taking notes during the
15 trial, please do not let the taking of notes distract you from
16 the ongoing proceedings, and distract you from being able to
17 view the witness as he or she is testifying.

18 When you leave each day, you can leave your notes in
19 the jury deliberation room as there will be no one else in that
20 room except for the deliberating jurors -- or for the jurors
21 and two alternates at this time.

22 Remember, the notes that you take are only to assist
23 your own memory of what was said, and you are not to be overly
24 influenced by any notes that you may have taken during the
25 trial.

1 We're about to begin the next phase of the trial.
2 Each side may make an opening statement, and the opening
3 statement that's going to be given is not evidence, and it is
4 also not argument. You will note that we have an opening
5 statement and a closing argument.

6 At this point in time, the opening statement is
7 simply designed to give you what the respective parties believe
8 will be the evidence that will be shown during the course of
9 the trial.

10 After the Government presents its opening statement,
11 the defense will be permitted to present its opening statement.

12 After the opening statements have been presented, the
13 Government will present its case, and the defense will be able
14 to cross-examine those witnesses, and once the Government has
15 rested its case, if the defense decides to do so, they may
16 present evidence at that time. And once they have completed
17 any evidence presentation, the Government may present a
18 rebuttal, but they are not required to do so.

19 One thing that you may have noticed already is that I
20 have a computer here on the bench, which I use to take notes
21 during the course of the trial, also to keep track of exhibits,
22 also to keep track of witnesses and the times that they are
23 testifying during the course of the trial.

24 If you happen to observe my use of the computer
25 during the course of the trial, you are not to consider in any

1 way my actions or movements to suggest to you how you should
2 view any questions of fact, or, more importantly, that I may be
3 attaching any particular importance to an item of testimony or
4 an exhibit.

5 If my using the computer during of the course of the
6 trial would seem to indicate that I am putting any emphasis on
7 any particular part of the testimony, or on any particular
8 exhibit, you are to disregard my actions or movements with the
9 computer and form your own opinions.

10 That will conclude my pre-instruction, ladies and
11 gentlemen. Mr. Lapham.

12 MR. LAPHAM: Yes.

13 THE COURT: If you would please begin your opening
14 statement.

15 MR. LAPHAM: Thank you, Your Honor.

16 Ladies and gentlemen, good afternoon. It will be my
17 pleasure to present the opening statement on behalf of the
18 Government. And before I begin, I want to just explain what an
19 opening statement is and what the purpose of it is.

20 The purpose is not to convince you that we have --
21 that the defendant is guilty, that you have all the evidence in
22 front of you. You don't have any evidence in front of you, and
23 the Judge has just told you that an opening statement is simply
24 a preview of what is going to come, and that's kind of the way
25 I view it.

1 I like to analogize it to constructing a jigsaw
2 puzzle. When you start a jigsaw puzzle, you dump all the
3 pieces on the table. And the first thing you do is you put the
4 box top in front of you, so you know what you are constructing.
5 That's all we're doing here. We just want to give you an idea
6 of what the final picture is going to look like. And that way
7 when particular pieces of evidence and testimony come in,
8 you'll know kind of what portion of the picture that piece fits
9 in.

10 This case is about an eco-terrorist plot to use fire
11 and explosives to attack several targets in Northern
12 California. That conspiracy involved the defendant, Eric
13 McDavid, who was the leader of that conspiracy, and involved
14 three other individuals. They planned to target such sites as
15 the Nimbus Dam and Fish Hatchery, the Institute of Forest
16 Service Genetics, which is a facility in Placerville,
17 California, run by the Forest Service. They planned to attack
18 cell phone towers and dams and power stations. All because of
19 an eco-terrorist agenda that was spearheaded by the defendant,
20 Eric McDavid.

21 Mr. McDavid, the evidence will show, was the leader
22 of this conspiracy. He is the person who recruited the other
23 three members of that conspiracy. He is the one who pumped
24 them up and gave them the philosophical indoctrination to make
25 this plot go forward. And he is the one that suggested several

1 of the targets that the group was planning on attacking.

2 Now, in the course of the case, you will hear
3 testimony from two of those other co-conspirators, Lauren
4 Weiner and Zachary Jenson were recruited by the defendant to
5 join him in this conspiracy. Those two individuals have pled
6 guilty. They've agreed to testify in this case about their
7 conduct and about the conduct of Eric McDavid throughout the
8 course of this scheme.

9 And you are also going to hear from a fourth -- the
10 fourth member of this conspiracy. Her name is Anna. We refer
11 to her simply as Anna because she was acting in an undercover
12 capacity on behalf of the FBI. She was not an FBI agent or an
13 employee. She was a person that had managed to make
14 friendships and acquaintances within the anarchist and radical
15 eco-terrorism movement, and as a result, she became aware that
16 Eric McDavid had a plot to blow up facilities in California.

17 She reported that to the FBI. And as a result -- and
18 I'll give you more of the details of this in a minute -- but as
19 a result, she was given recording devices, and she was able to
20 capture on tape many of the discussions that all four
21 conspirators had regarding the details of this plot.

22 And as a result of that, you will actually hear from
23 the fourth member of this conspiracy, Eric McDavid. You will
24 hear his voice on tape talking about targets he wants to hit,
25 about why those targets are relevant to his eco-terrorist

1 adventure.

2 And, interestingly, you will also hear him say in one
3 of the early discussions to all of his co-conspirators, he
4 says, you realize that just sitting down here talking about
5 this is illegal. It's a conspiracy. It's terrorism. He uses
6 those words.

7 He knew that what he was doing was illegal, and he
8 could go to prison. And in that same breath he said he would
9 be proud to go to prison for his beliefs.

10 You'll hear him talking about how to claim
11 responsibility for these actions. In his parlance these are
12 called direct actions. That's a code word for illegal conduct.
13 And the group talked about taking responsibility for these
14 actions, these bombings, on behalf of a shadowy, eco-terrorism
15 group known as the Earth Liberation Front.

16 The Earth Liberation Front believes in an aggressive
17 agenda in which its adherents should try and inflict the
18 maximum amount of economic damage on selected targets that have
19 some deleterious effect on the environment. So you'll hear the
20 group discussing taking responsibility on behalf of ELF and
21 exactly how that should be done.

22 ELF has a website, and they have guidelines that tell
23 you exactly how you should take these actions. And I'll
24 discuss that a little bit more in a few minutes.

25 And you will also hear a very philosophical

1 discussion that runs -- it's a very lengthy discussion about
2 the possibility that there might be an accidental death as a
3 result of their bombings and arsons.

4 And each member of the conspiracy participates in
5 that discussion. Zachary Jenson, Lauren Weiner are a little
6 squeamish about the idea. Weiner says -- Jenson says, boy, if
7 that happened, I think we shut the whole thing down. Weiner
8 voices the opinion that that doesn't meet the Earth Liberation
9 Front or the Animal Liberation Front guidelines. You are not
10 supposed to kill people or injure living things.

11 And then Eric McDavid enters the conversation, and he
12 has got no problem with it. He talks about that being -- he
13 doesn't exactly want to use the phrase collateral damage, but
14 he says, well, if that happened, that's just some guy who died
15 while he was on the job. That's what he would call it.
16 Totally un-phased.

17 So that's just in general terms what this case is all
18 about and kind of an overview of the evidence. To properly
19 understand this case and this plot, we need to take you into an
20 inside look of the radical environmental movement, and in
21 particular the Earth Liberation Front, and to a lesser extent
22 the Animal Liberation Front.

23 Because, as I said, they have guidelines. They have
24 suggestions and help on how you carry out these kind of things,
25 and to a larger extent, overall, the anarchist movement.

1 Because the defendant fancied himself an anarchist. He had the
2 anarchist lifestyle. He had the anarchist belief system. And
3 simply put, what that means is he wanted to bring down
4 everything about the industrial society. Didn't believe in
5 Government. Believed that everyone should be able to govern
6 themselves.

7 And as a result, he attempted to live his life in
8 such a way that he accepted nothing from corporate America.
9 Food he got from dumpster diving, or he would get from begging
10 or getting it free from some source. Travel, he would ride the
11 rails to get from place to place.

12 Now, the anarchist movement bears a very close
13 affinity to the Animal Liberation Front, the Earth Liberation
14 Front, and those types of concepts. And as a result of that,
15 so you can put all this stuff in perspective, the first witness
16 you'll hear from is an individual named Bruce Naliboff.

17 He is an investigator with the Yolo County D.A.'s
18 office, and he has spent quite a number of years studying the
19 anarchism movement and specifically Earth Liberation Front,
20 Animal Liberation Front and associated organizations.

21 He will give you an overview of what this group --
22 what these groups are all about. It's, in a nutshell, called
23 leader-less resistance. ELF has a website. ALF has a website.
24 They suggest that you form small cells of no more than three to
25 five people, people you are very familiar with, have a prior

1 history with, and then you select targets to hit. And this is
2 all autonomous. On your own. You go out, and you hit those
3 targets in any form of vandalism from simple tagging, writing
4 the ELF name on the side of a building, all the way up to arson
5 or explosives.

6 And then under the ELF guidelines, they tell you to
7 report your action and declare it as an action on behalf of ELF
8 or ALF, over and above just leaving some graffiti at the scene.
9 You contact the local press office, Sacramento Bee, something
10 like that, or you contact the ELF press office itself, and you
11 describe what you did. And, of course, you do all this over a
12 very secure network. And they have guidelines about that, too.

13 So Mr. Naliboff will explain the inside agenda of
14 these organizations.

15 The next witness you'll hear from is Anna. And Anna
16 will tell you about this conspiracy from its inception up to
17 the day that all of the defendants were arrested.

18 The genesis of this conspiracy was in June of 2005.
19 There was a biotechnology conference, international conference,
20 in Philadelphia at that time. Delegates from all over the
21 world were attending this. Demonstrations were expected.
22 Illegal protests were expected because the biotechnology
23 conference that was held the year before in San Francisco
24 resulted in violent protests.

25 And so law enforcement was prepared for this and was

1 interested in knowing what was going on within the movement.
2 They called upon Anna. Let me stop right here to tell you a
3 little bit of the background of Anna.

4 Anna is currently 21 years old. Just turned 21 last
5 month. At the age of 17 she was in a sophomore college class
6 in Florida, and as an extra credit project she decided to try
7 and get an inside look at a protest movement. It just so
8 happened that there was a protest in town in Miami, in the very
9 near future. The Free Trade Association of the Americas, I
10 believe, was in town. And it was known that anarchists would
11 be protesting against that.

12 So Anna, on her own, as a young college kid, tried to
13 go undercover. And she dressed down for the part, and she --
14 actually, over a couple-day period she managed to get inside
15 the group, the planning group.

16 And she came back on the final day, just as an
17 observer, to see if their plans, protest plans went off as they
18 had planned. And these are illegal activities we're talking
19 about. We're not talking about First Amendment type, lawful
20 protests.

21 Well, she reports back. She does a report for her
22 class, her college class, and it just so happens that there is
23 a Florida investigator, law enforcement officer, in her class.
24 And he is impressed by this report and asks if he can show it
25 to his supervisor.

1 And long story short, Anna winds up being asked if
2 she would be willing to do this again on occasion. And an FBI
3 agent is there and asks her the same question, and she agrees.

4 Her parents are consulted of course, and she's
5 allowed to go forward with this idea. Over the next year or so
6 she attends various functions where illegal protests are
7 expected. The Republican National Convention, the Democratic
8 National Convention, and the G-8 Summit, which was in Georgia.
9 Georgia -- Boston -- I'm not sure where the Republican National
10 Convention was that year.

11 And she attends these, and her mission, her purpose
12 in being there is to give law enforcement real-time information
13 on any illegal activities that may be occurring. Not what
14 people are -- not what ideas they are expressing or political
15 thought, things like that, but to report if somebody is
16 stockpiling bricks or planning on attacking the police. Things
17 of that nature.

18 So she does that. And at the end of this, she's
19 going to those three things, she thinks she's pretty much done,
20 but she gets called back into it in June of 2005. She's asked
21 by the Philadelphia division of the FBI if she would be willing
22 to come up and go to the biotechnology protests.

23 Now, again, as far as a little background is
24 concerned here, the people that attend a lot of these protests,
25 are the same people. They show up. They make a circuit, in a

1 sense. They go to the G-8 Summit. They go to this convention,
2 that convention. And so it so happens that Anna is running
3 into some of the same people she's seen before.

4 In about August of 2005, Anna attended something
5 called a CrimethInc convergence -- I'm sorry -- I said 2005.
6 August 2004. She attended something called a CrimethInc
7 convergence.

8 Mr. Naliboff will tell you what that's all about.
9 It's basically a gathering of anarchists for a weekend or a
10 long three to four days. And they have workshops. They talk
11 about things like how to recognize undercover cops. They talk
12 about how to carry off protests, violent protests. In some
13 cases how to make Molotov Cocktails, things of that nature.
14 How to pick handcuff keys.

15 That's where she first met Eric McDavid, at this
16 CrimethInc convergence. That was in Iowa. We fast-forward to
17 June of 2005 to the biotechnology conference. Eric McDavid is
18 there also, as is Zachary Jenson and Lauren Weiner.

19 And things are going pretty much as normal. She --
20 her task is like it has been all along, to just report if there
21 are any illegal activities planned.

22 And here's what she finds out. She finds that Eric
23 McDavid is much more radical than she had remembered him from
24 prior days, from prior encounters. He is now talking about
25 using Molotov Cocktails. There is a film that they all

1 watched, the protestors watched in one of their break-out
2 sessions, about protestors making Molotov Cocktails and
3 firebombing a police car. This is on the film.

4 And there is a group discussion. Eric McDavid
5 expresses approval about that type of action. There is an
6 incident that actually happens at the biotechnology conference
7 in which demonstrators got into -- they started assaulting
8 police officers. They got into a scuffle. A police officer
9 died of a heart attack during that encounter.

10 Eric McDavid -- they talked about that. Eric McDavid
11 expressed approval for that. In fact, he went further, and he
12 said that all pigs, all police officers deserve to be killed.
13 He expressed the desire that he wished he could have been the
14 one to have caused this officer's death.

15 And just generally he is expressing the need to quit
16 these types of protests where nothing is accomplished and to
17 use harsher tactics. One of the things he recommends is going
18 to the homes of top executives of GlaxoSmithKline, the big
19 pharmaceutical company -- all of these executives live in the
20 Philadelphia area. He tried to rally people to go to their
21 homes and throw bricks through their windows.

22 He couldn't get the support for that, as it turns
23 out. But then he also intimated something to Anna which caused
24 her some concern. He indicated that he was involved in
25 something big in California.

1 And it was as a result of that comment, as well as
2 the more radical views he was expressing, that the FBI in
3 Philadelphia decided that they needed to look into this a
4 little further. And they tasked Anna with the job of trying to
5 find out more about what that "something big" was.

6 So Anna went to the CrimethInc convergence. This is
7 now the following year. They have them every year. And this
8 time it was in Bloomington, Indiana. And one of the workshops
9 she went to was a workshop on urban guerilla warfare.

10 And these are out in the woods usually, and everybody
11 sits around talking about these issues. And the point was made
12 in this group that you shouldn't attack federal buildings.

13 And Eric McDavid, in particular, and Zachary Jenson
14 disagreed with that. And they voiced the opinion that, no, you
15 should attack federal buildings, and they also talk about
16 transportation networks, because we need to ratchet up the
17 protests.

18 In the drive back to Chicago, Anna and the defendant
19 shared a vehicle. Anna tried to get more information about
20 what this "something big" thing in California was all about.
21 You'll hear testimony that Eric McDavid was a friend of Ryan
22 Lewis. Ryan Lewis was an individual who was prosecuted in this
23 district for committing arsons on behalf of the Earth
24 Liberation Front.

25 In that discussion, the defendant denied having

1 anything to do with those arsons. But he said that Ryan Lewis
2 had done it wrong. That he knew how to do it better. And he
3 indicated that he had a plan himself, and his plan was to
4 create or have a bombing campaign in California in the winter
5 of 2005/2006.

6 In the course of this conversation, he said he knew
7 how to make C-4. He described the plastic explosive. He also
8 described in some detail a chemical process for boiling down
9 bleach and ammonia and obtaining crystals from that that can be
10 used to make an explosive device, which he said could be
11 activated with something like a garage door opener.

12 And he also said this, as they are driving along and
13 he has revealed all of these plans to Anna, he gets real quiet
14 at one point. And then he says, there's something I got to get
15 off my chest. And he says, if you're a cop, I'm going to kill
16 you. And he doesn't just say, I'm going to kill you. He
17 describes exactly how he was going to do it. He would slit her
18 throat. He would cut her artery in her thigh. He lays it on.

19 And before the drive is over, Anna responds to that
20 and basically says, well, I'll kill you, too, if you're a cop.
21 And kind of deflects the conversation that way.

22 And, ultimately, before they get to Chicago, the
23 defendant asks Anna if she's free to come to California in the
24 winter of '05/'06 and join him in his plot.

25 Our next stop is just a few weeks later in August. I

1 think it's around August 5th of 2005. There's something called
2 Pointless Fest in Philadelphia. It's a gathering, again, of
3 anarchists. And Eric McDavid is there. Lauren Weiner is
4 there. She lives in Philadelphia. Jenson is there. And they
5 all stay at Weiner's apartment. And Anna shows up for about a
6 day. And in that one day, Anna finds out -- actually, it was
7 later she finds out that Weiner and Jenson have been asked to
8 join the plot. Apparently, they were asked that day but not in
9 Anna's presence.

10 But later, Lauren Weiner approaches Anna and tells
11 her that she, Lauren Weiner, knows about the plot. She's been
12 invited to join it. She knows that Anna has been invited to
13 join it also.

14 And so the conspiracy has been formed now. McDavid
15 at that time asks Anna if she's still interested, if she's been
16 able to free her schedule to come out in the winter of '05/'06,
17 and she says probably. She gives kind of a non-committal
18 answer, but indicates that, yeah, that might sound cool.

19 And the final thing McDavid asks is, can you give me
20 a chemical equivalency list to make explosives. Now, Anna has
21 passed herself off as somebody who has some knowledge of
22 chemistry, and so that's what prompts this request.

23 And what McDavid meant by a chemical equivalency
24 list, Anna will say, is a list that takes chemicals, the actual
25 chemical name of a substance that can be used to build a bomb,

1 and convert that to a common household product that would be
2 available for purchase at Walmart or Kmart, something like
3 that. For instance, bleach, ammonia, you can extract the
4 chemicals and get whatever you need to build your bomb. So
5 that's what he asked Anna to do on that occasion.

6 Our next stop is Foresthill, California. The group
7 comes together on a long weekend in November of 2005, and they
8 all meet to discuss how they are going to conduct this bombing
9 campaign. And the way that meeting comes about, the FBI didn't
10 want this plot to go too far down the tracks without keeping
11 tabs on Mr. McDavid. Mr. McDavid had already made his way out
12 to California at this point.

13 And there was no telling what he was doing out there,
14 so Anna called and came up with a story that she had a sick
15 aunt in California, and she was going to go visit that aunt,
16 and would this be an appropriate time to get together and talk
17 about the bombing campaign. And McDavid said that sounded
18 great.

19 And so Anna provided partial payment for a ticket --
20 an airline ticket -- to Lauren Weiner, because Weiner couldn't
21 afford the full price of the ticket. Weiner agreed to pay her
22 back at least in part later. And those two flew out to
23 California.

24 I think I failed to mention Zachary Jenson was
25 already out here in California at the time with the defendant.

1 And so they meet at this location in Foresthill. And the
2 location where they meet is Eric McDavid's parents' house in
3 Foresthill. The parents are gone that weekend, and they have
4 the place to themselves.

5 And during that meeting, they talk about a variety of
6 subjects. McDavid talks about the need for harsher tactics.
7 He presents the group with an interview right off the bat from
8 an individual named Derrick Jensen, who is a well-known leader
9 in the radical environmental movement, anarchist movement, who
10 recommends in this article attacking cell phone towers, dams,
11 and things of that nature.

12 He also presents the group with a startling
13 statement, which was undoubtedly designed to make sure that
14 they were fully committed. And that is that the very fact of
15 them sitting down is a conspiracy. The very fact of them
16 talking about these terrorist plans, because that's what he
17 calls them, is a crime for which they can go to prison.

18 Now, I want to stop right here for a minute. We're
19 going to come back to that Foresthill discussion in a minute.

20 But I want to talk about the elements of a conspiracy
21 because the defendant wasn't far off the bat. He was pretty
22 much right on when he made that statement.

23 And the reason I want to discuss the elements of the
24 conspiracy right now is because you need to know what you are
25 searching for in this trial, what things you should be looking

1 for among the evidence.

2 A conspiracy is an agreement to do something that the
3 law forbids. In this case, the Indictment says that it was a
4 conspiracy to conduct a campaign of blowing up specific
5 targets. The second element of the conspiracy is that the
6 defendant became a member of the conspiracy knowing of the
7 objects and intending to accomplish those objects, and then the
8 final element is an overt act.

9 It's not just good enough to sit around and talk
10 about this stuff. You have to take some substantial step to
11 actually try and accomplish it.

12 So in the next few minutes, the remainder of my
13 opening statement, I'm going to spot for you some of those
14 overt acts that the Government will prove in the course of this
15 case.

16 So let's go back to the Foresthill meeting. They
17 continue to talk. They have a discussion after dinner. They
18 go out to -- we're going to call it the fire-pit discussion.
19 They are surrounding a fire pit. I think it's on the lower
20 deck of the McDavid home. And they have this discussion. And
21 they talk about what targets to hit.

22 And there are a variety of opinions among the four
23 co-conspirators. They talk about gas stations. They talk
24 about prying off the manhole cover at the gas stations, you
25 know, where the tanker trucks fill the reservoirs, prying those

1 off and dumping sugar or some other contaminant into those big
2 reservoirs. They talk about cell phone towers, attacking cell
3 phone towers because cell phone towers interrupt the migratory
4 bird patterns, and they are damaging, ultimately, to the
5 environment. They talk about dams and power stations, the same
6 targets that Eric McDavid -- I'm sorry -- that Derrick Jensen
7 had talked about in his article. Why? Because they interrupt
8 the Salmon runs and the free flow of Salmon and other reasons,
9 I suppose.

10 And then there's Eric McDavid's pet target, a target
11 that he had mentioned all the way back to Anna in the summer.
12 The Institute of Forest Genetics. That's a facility located in
13 Placerville run by the U.S. Forest Service, and they are
14 interested in genetically modifying trees, so they will be more
15 pest resistant and so forth.

16 You'll see an article that the defendant gave to the
17 group regarding genetically modified trees and why that's a bad
18 thing. That's an exhibit that we'll show you. And you will
19 hear the defendant state his views on tape as to why that's a
20 viable target, why that needs to be hit.

21 There is a discussion about how to claim
22 responsibility. They go back and forth on whether it would be
23 a good thing to claim responsibility on behalf of ELF.
24 Certainly going to draw the FBI's attention, which is not a
25 good thing. But on other hand, they want to claim

1 responsibility for ELF to get the message out.

2 And they talk about explosive recipes. Eric McDavid,
3 himself, recounts a meeting with an individual he had in West
4 Virginia, where this individual told him how to make this
5 crystalline recipe. That is the first step in making an
6 explosive. You'll hear him talk about that on tape.

7 And, finally, the group agrees to reconvene after the
8 first of the year, so that they can actually get this show on
9 the road. It was agreed that this weekend session in November
10 is just a talking session. Just to plan what we're going to
11 do. It's not -- it's not -- they are not going to do anything
12 physical that first session.

13 And they talk about having to go underground. They
14 talk about spending Christmas with their families and saying
15 their good-byes in preparation for having to go underground for
16 an extended period of time.

17 In between November and that January meeting, the
18 defendants conduct some e-mail traffic back and forth, and
19 particularly the defendant and Anna. And you'll see some of
20 those e-mails. The defendant asks Anna, where is the recipe,
21 or have you found the recipe yet. She's been asked -- at the
22 end of this November meeting, she's been asked by McDavid to go
23 out and try to find some recipes.

24 There is a reference to "Poor James". And that needs
25 to be explained for a minute. In the November meeting they are

1 talking about explosive recipes, and Lauren Weiner, another
2 member of the conspiracy, volunteers that she knows where to
3 find explosive recipes. There is a book called The Poor Man's
4 James Bond. We have a copy of it in evidence. You'll see it.
5 You can leaf through it. It has dozens, literally dozens of
6 explosive recipes. She agrees that when they reconvene in
7 January, she will provide them with a copy of that.

8 And so on this e-mail between the defendant and Anna,
9 he is asking: Have we gotten that? That would be a good thing
10 for the group to get.

11 He phrases his questions as in vague terms. Have you
12 looked at the -- found the Christmas cookie recipe? Things of
13 that nature. Anna actually sends him a coded message that
14 contains a formula that bears a resemblance to that crystalline
15 recipe that he was talking about in the November meeting.

16 Now, let's be clear on this. The FBI would never
17 allow conspirators to get ahold of a bomb recipe. They were
18 never given an actual bomb recipe or anything that could be
19 injurious to these defendants. They wouldn't let that
20 information out.

21 So this was a fake recipe. It was intended to look
22 close enough to the actual recipe that Eric McDavid had
23 described, so that it would be believable. But at no time were
24 any of the defendants, or Anna, the undercover, in any danger,
25 as we'll see later on when they started actually trying to put

1 this recipe into effect.

2 Our next stop along the way is Dutch Flat,
3 California. That's up I-80, a little bit northeast of Colfax.
4 Anna, at the end of the November meeting, had volunteered to
5 find the next place where they would meet to conduct these
6 activities. The reason she did that was the group was talking
7 about going down to a commune in Fresno and conducting their
8 experiments and their preparation for the bombing campaign down
9 there. This was some kind of anarchist commune.

10 Well, the FBI didn't want to lose control of this
11 situation, so they contrived to have Anna provide this cabin,
12 and then they wired it for sound and video. So when the
13 conspirators showed up on this January date, the FBI could
14 monitor all of the discussions, and that is how you will hear
15 much of the dialogue for that weekend, and much of the
16 chronology of the testing and so forth that occurs that week.

17 So I want to briefly go through just a general
18 summary, day by day, so you'll know what we have coming.

19 The very first day, that's a Sunday, Sunday night,
20 they all arrive at the cabin. They are all very pleased with
21 the way the cabin is laid out, and Anna introduces something
22 that we'll come to know as the Burn Book. The Burn Book, she
23 says, is something that the group can use to record their
24 thoughts, their to-do lists, their -- if they need to go buy
25 chemicals, they can write a list of all the chemicals down

1 there. Just whatever comes up during the course of
2 discussions, they can use the Burn Book to jot it down.

3 Why call it the Burn Book? Because a couple of the
4 members of the conspiracy, specifically Lauren Weiner and
5 Zachary Jenson, kind of bridled at the fact that we're writing
6 all this stuff down. We don't want to commit any of this to
7 writing. Anna solves that problem. She says, that's simple.
8 We'll burn it at the end. After we're done, we're going to
9 burn this book.

10 Eric McDavid loves that idea. He says it's great. He
11 practically adopts the Burn Book as his own, and you will see
12 through the course of the next week Eric McDavid carries it
13 practically everywhere he goes.

14 There is a videotape you'll see of them going -- they
15 are driving in the car. The car is wired for sound and video
16 also. And you'll see him pull the Burn Book out of his coat
17 pocket at one point to consult it, to remind himself of what it
18 is they have to get at the store when they stop.

19 And the Burn Book is going to be important for other
20 reasons, as you'll see in a minute.

21 That night, that very night, January 8th, the group
22 decides it's too late to really discuss anything in detail.
23 Let's make a list of the topics we want to discuss tomorrow.
24 And so they make a list. The list includes things like what
25 targets should we attack? How to claim responsibility for

1 those targets. And the subject of accidental death. And
2 that's recorded in the Burn Book. They write down those
3 topics.

4 The next day, they talk about those topics. And sure
5 enough, in the Burn Book, you see writing next to the topic
6 headings to reflect what has been discussed with respect to
7 each one of those topics. And it's in various people's
8 handwriting, including Eric McDavid. Zachary -- actually,
9 Zachary doesn't do it. Lauren Weiner and Anna also contribute.

10 So the next day they start off the day by having this
11 discussion. They talk about accidental death. I've already
12 previewed that discussion for you. I won't go over it again.
13 They talk about potential targets. Again, the same targets
14 they talked about before. And they talk once more about ELF as
15 being a person -- the entity for which they will claim
16 responsibility.

17 We move to January 10th. The group goes into Auburn,
18 and they do Internet research. McDavid and Anna go to the
19 Auburn library, and they look up dams and power stations. And
20 they come back -- actually, they first drop off Zachary Jenson
21 and Lauren Weiner at a little coffee shop up there called the
22 Flower Garden. Zachary and Lauren are going to do Internet
23 research there over the WiFi.

24 And they are attempting to download Google Earth, so
25 that they can get satellite imagery of some of the targets.

1 Remember, we're talking about overt acts. We're now in the
2 realm of overt acts. We're taking some substantial steps
3 toward accomplishing this plot.

4 McDavid and Anna come back from their library
5 research with some printouts of dams and power stations all
6 over California, specifically Folsom Dam is one of the ones
7 they have a larger printout of.

8 The next stop, after doing the Internet research, is
9 Nimbus Dam and Fish Hatchery. As the four conspirators are
10 traveling down to the Nimbus Fish Hatchery, they are pointing
11 out cell towers all along the way as potential targets. Some
12 cell phone towers aren't as good a target because they might be
13 close to a residential section. But others that might be out
14 in the middle of nowhere are better targets. These are the
15 things they are talking about.

16 Actually, before I get to the IFG, at the Fish
17 Hatchery they tour the fish ladders, the fish hatchery itself.
18 They go under the roadway and take a look at the dam, and a
19 closer look at the power station that's just to the left of the
20 dam. They talk about the possibility of blowing up the fish
21 ladder. They also go across, look at the dam, and talk about
22 the possibility of blowing up the dam.

23 Now, candidly, I think it's probably accurate to say
24 that they looked at this big old dam and decided they didn't
25 have the wherewithal to blow it up. They're probably right

1 about that.

2 But that doesn't mean that they didn't continue to
3 actively investigate the idea. Lauren Weiner suggested that
4 they buy concrete. And you can see that in the Burn Book. One
5 of the to-do lists is go out and get concrete. Her plan was,
6 after we build our bomb, we need to go out and test it against
7 some concrete to see how much damage has been done. And they
8 talked about doing this testing at a remote place, Susanville.
9 Out in the desert.

10 The next stop is the Institute of Forest Genetics in
11 Placerville. You'll hear testimony that the group drove there.
12 They parked outside. Even though there's parking inside the
13 area, they parked outside and walked in so they could -- so
14 their car wouldn't be seen, and also so they could get a slower
15 and better view of the facilities. They could walk it slowly
16 and see things a little better than if they drove in.

17 When they got there, they signed into the visitor's
18 register, and the defendant gave a phony name, Sean Douglas,
19 and phony names for the other individuals. And he also gave a
20 phony story. He said that they were a college class from
21 American River College. They were studying ecology. And they
22 just happened upon this place and wanted to take a tour.

23 And they got a tour. And as they were taking this
24 tour, part of it is guided, but part of it is self-guided.
25 Eric McDavid has the Burn Book, and he is sketching a complete

1 schematic of the grounds, including all the buildings, the
2 place where the genetics lab is, where the arboretum is, and
3 the headquarters building is, including the surveillance
4 cameras, the location of surveillance cameras that are posted
5 on the various building.

6 And that hand-drawn map, which is contained in the
7 Burn Book, bears a striking resemblance to the actual map that
8 you will see of this area.

9 Randy Meyer is a Forest Service employee at the IFG
10 who conducted this tour. And he'll introduce into evidence not
11 only the visitor's register with their names in it, as well as
12 this map that shows the layout of the grounds.

13 The next day the group had decided to go to San
14 Francisco. They were going to do some more Internet research
15 there. And the reason for -- and they were also going to try
16 to locate chemical supply houses where they could buy -- they
17 needed a hydrometer to conduct one of their explosive recipes
18 -- to make one of the recipes. And they were hoping to find
19 that.

20 And the reason for going to San Francisco was
21 probably two-fold. Partly personal. Zachary Jenson apparently
22 was going to raise some money by selling some writings that he
23 had written, and he was hoping to get money to help finance his
24 share of this conspiracy.

25 But also the group wanted to, insofar as they could,

1 buy the components for their explosives from places far away,
2 or at least different places from where they were purchasing
3 other chemicals and supplies.

4 So they spent the day in San Francisco. They do the
5 Internet research. They actually make some phone calls to
6 chemical supply houses asking for various things with not too
7 much success.

8 On the return trip to Sacramento, or to the
9 Sacramento area, they stop at a Walmart, and they buy a lot of
10 the components, ingredients, they will need to start building
11 their bomb, which is what they planned to do the following day.

12 They buy bleach. They buy a battery, a car battery
13 to extract the battery acid from it. I believe they buy
14 ammonia. I think they buy face masks, like a painter wears.
15 Gloves and other items. We have the receipt. That will be
16 introduced into evidence, so you can see what was purchased.

17 That brings us to January 12th. The group goes to
18 Auburn for some last-minute ingredients in the morning that
19 day. One of the things they buy -- and Eric McDavid is the one
20 who buys these -- shotgun shells. He wants to extract the
21 gunpowder from the shotgun shells to form a fuse. They also
22 buy trick party candles. These are the kind of candles --
23 you've probably all seen them -- you blow them out. They come
24 right back again. There is no way to blow these things out.
25 Those were going to be used as part of McDavid's fusing

1 mechanism.

2 And Jenson and Weiner buy hair dye. And you'll hear
3 testimony, just generally, that the defendants were slowly
4 starting to alter their appearance to -- so that they wouldn't
5 be recognized if seen again, and so that they would get a
6 little bit out of this anarchist look so they wouldn't draw as
7 much attention.

8 The group returns to the cabin, and they start
9 immediately -- Eric McDavid immediately starts boiling down the
10 bleach, starting on this chemical recipe. While the bleach is
11 boiling, he turns his attention to removing the powder from the
12 shotgun shells, and he begins timing the fuses. He gets a
13 stopwatch out. He lays the trick party candle next to a line
14 of gunpowder, and he lights the party candle, and watches it
15 burn down until it gets to the line of gunpowder. So he times
16 how long it take to say do that, so he'll know how long his
17 time-delay fuses are.

18 Now, I want to mention something because I think it's
19 important to why this case came to a termination when it did.
20 Several stressful things happened that day both to Anna and to
21 the group as a whole. The group gets stopped. Anna is
22 driving. And she makes what I call a California stop. She
23 rolls through a right-hand turn. And she gets stopped by the
24 California Highway Patrol, who, obviously, have no clue that
25 this is an undercover investigation going on. She doesn't wind

1 up getting a ticket for anything, but it rattles her, and it
2 rattles the group a little.

3 The second stressful thing that occurs that day is
4 Eric McDavid actually finds the recording device that has been
5 installed in Anna's car. He is actually at one point holding
6 it in his hand. It's positioned in such a way that it's near
7 the tape deck in the car. And he is fishing around for
8 something -- I'm not exactly sure what the story is, but Anna
9 can describe it to you -- and he pulls something out, some
10 wires and this unit, and he is actually holding it in his hand
11 while Anna is driving.

12 And he says, what's this? And she passes it off as
13 this cheap, junky car I've got. Just shove it back up there
14 and don't worry about it. And he buys it. And he is none the
15 wiser. And so they move on down the road. But it rattled her,
16 and it caused her a great deal of stress.

17 And then the last thing that occurs is during the
18 process of concocting this explosive recipe, the Pyrex bowl
19 that's housing the chemicals gets too hot, and apparently cools
20 too quickly, and it breaks, and so all their hard day's work is
21 wasted. And the way that impacted Anna was because of the
22 earlier stresses, she was hoping to get out of this thing and
23 to stop her undercover activities relatively soon.

24 And she saw this as a setback that would require her
25 to be with this group, in the mix, a little while longer. And

1 you'll hear that she actually had a little bit of a meltdown
2 and left the group for about two hours. And during that period
3 of time, she consulted with the FBI agents who were just off
4 site. And she didn't want to continue.

5 And as a result of that -- partly as a result of
6 that, the agents made the decision to take the case down the
7 following day. And with that understanding, she was able to
8 return to the cabin that night.

9 And the following day -- I think my Power Point has a
10 problem -- the following day is January 13th. And on that
11 date, the group gets up. They've -- Anna has come back to the
12 cabin, and she's had a little bit of a cat fight with Lauren
13 Weiner. And they discuss maybe slowing up this conspiracy,
14 maybe going slower, so they don't have these mistakes. Anna is
15 pushing to get more organized.

16 And she comes back to the cabin and the group
17 basically makes up to her, and says, you know, we hear what
18 you're saying. We know you're stressed. Let's all get a good
19 night's sleep and start again tomorrow.

20 And that's what they do. They make a list of things
21 that they are going to do the next day. And that involves
22 going back into Auburn, getting some more ingredients, and
23 starting this thing over. And that's what they do. And they
24 go to Kmart and get their ingredients, and as they are walking
25 out of store, they are arrested. And there ends the

1 conspiracy.

2 Now, as I've said, my purpose in laying all this out
3 for you is not to convince you that the evidence is sufficient
4 to convict Eric McDavid. You need to hear that evidence first.
5 It's simply to give you a roadmap of what the Government
6 intends to prove.

7 At the end of the day, there is one count. At the
8 end of this trial, there is one count you will have to
9 consider. That's a conspiracy count against Eric McDavid.

10 We'll prove to you that there was an agreement, that
11 Eric McDavid was the initiator and a full member of that
12 agreement and conspiracy, and that there were multiple overt
13 acts, as I've just described, to put that conspiracy in effect.

14 And we'll be asking at the end of this case for you
15 to return a verdict of guilty as to Eric McDavid as to
16 conspiracy. Thank you.

17 THE COURT: Thank you, Mr. Lapham. Mr. Reichel.

18 MR. REICHEL: Thank you, Your Honor.

19 MR. LAPHAM: Do you need the screen up?

20 MR. REICHEL: No.

21 MR. REICHEL: Ladies and gentlemen of the jury, what
22 is essential is often invisible to the eye. And that is a
23 quote from a book in 1943 called The Little Prince. And I
24 believe it's incredibly relevant and very important as the
25 roadmap that Mr. Lapham gave you.

1 You can take that quote with you in the car when you
2 follow this roadmap in this trial. Specifically, what is
3 essential is often invisible to the eye. What that really
4 means is, when you see something, you may have your first
5 impression of it, you may understand its symbolic importance at
6 that time, and you may have an understanding of it, but you
7 don't truly know. You can't truly appreciate it, and you can't
8 really own it, you cannot understand it until you know what has
9 gone on before, what has made that event, that symbol prior to.
10 Where it's come from. What its real significance is as it
11 relates to other things. It's really just one way of saying
12 that through experience and life experience and history as how
13 things evolve into something that you see. Nothing exists in a
14 vacuum, basically.

15 And in this case, why that's very, very relevant is
16 because a lot of the essential items that you are going to see
17 through the defense case you're going to see in the
18 cross-examination of witnesses as well as in our evidence.

19 And you're going to hear, as Mr. Lapham told you,
20 from two other co-defendants in this case. And I want you to
21 think of snowflakes, first of all, when you think of those
22 co-defendants. Because those co-defendants are Lauren Weiner
23 and Zachary Jenson, and they are going to testify in this case.
24 They're snowflakes because we commonly believe that no two
25 snowflakes are exactly alike. And that the intent of those

1 individuals when they were in this case, when they were -- when
2 they were being videotaped, when they were being investigated,
3 when they were in this case, their intent has to match
4 Mr. McDavid's. For a conspiracy to exist there must be an
5 agreement between two or more persons to do the same thing.

6 And I think that you'll hear, and you'll see in the
7 evidence in this case, when the videos are shown of these
8 people talking about this plot, talking about these things,
9 when you hear their tapes, it's going to be very difficult to
10 discern whose intent was what, and whether it actually matched
11 anyone else's. They are snowflakes. Zachary Jenson is a
12 snowflake that comes along, and he is incredibly different than
13 probably anybody -- he is going to be a lot more different than
14 most people you've met, or most people you will meet the rest
15 of your life. Lauren Weiner the same thing. Very young
16 people. Very different young people. And, again, snowflakes
17 in every aspect.

18 Additionally, I'm going to ask you to think, as you
19 go, you take this roadmap on this road to this trial, to think
20 about tumbleweeds. And tumbleweeds -- the wind blows and a
21 tumbleweed goes there, the wind goes and a tumbleweed goes
22 there. You've never heard of tumbleweeds that just kind of
23 blow always in the same direction.

24 For tumbleweeds to blow in the same exact direction
25 all at times, and for tumbleweeds that get off the path and all

1 of a sudden they get back on the path, and they follow it down,
2 there must be some real, powerful and horrific force that can
3 keep tumbleweeds together.

4 And through the cross-examination and the evidence in
5 this case, you'll hear that these are three individuals that
6 are clearly tumbleweeds. These are individuals that I believe
7 don't know what they are doing tomorrow. Tomorrow, when they
8 wake up in the morning, they don't know what they are doing
9 that day.

10 You're going to hear these young individuals, and
11 different, and free-thinkers that are not tied down to anything
12 were tied down to one thing, as Mr. Lapham identified. The FBI
13 wanted to keep very close control on this case. And if these
14 individuals had moved to Fresno, the FBI would not have been
15 able to control the case any longer.

16 Now, I want you to also think about a brief quote,
17 and that's from Alice in Wonderland. Queen of Hearts, in the
18 trial, she says -- I believe it's -- someone asked: Where
19 shall I begin? The Queen of Hearts says, I've always found the
20 very best place to begin is at the beginning.

21 So you didn't hear much from Mr. Lapham, and you will
22 from us, about the beginning. Because in the beginning you
23 have August, I believe, of '04 when Mr. McDavid and Anna meet,
24 and that's the true beginning of the case. We're going to have
25 character witnesses for you. We're going to try to paint a

1 picture for you. Because this is a case -- this is the making
2 of a case in the courtroom. None of us were here when this
3 went down. None of us were here when these facts were
4 developed and these events were occurring. But what we're
5 trying to do in this courtroom is to make a case. The
6 Government's outline is their attempt at making a case.

7 We also want to show you that at the beginning there
8 was a certain Eric McDavid and, of course, there was a certain
9 Anna. Mr. McDavid was one way, and Ms. Anna was another way.
10 And we're going to show you that.

11 Finally, I think the most important thing that I'm
12 going to ask you to focus on is the intent. The Court will
13 instruct you, and Mr. Lapham was correct. I think he put some
14 of the elements of the crime up on the board. And the Court,
15 again, will instruct you as to intent.

16 I ask you to focus on intent because our roadmap is
17 we are going to try to show you where did the intent come from,
18 whose intent was it. And you have to understand. No one can
19 manufacture somebody else's intent, ever. It can appear one
20 way, and you can try to manufacture. But you can't
21 successfully manufacture their intent. You can't get someone
22 down a road, and then say that that's on their own volition.
23 You can't push someone to do something.

24 And I want you to take a good look at where
25 everything originates. What is essential is often invisible to

1 the eye, but you can find it if you look closely. We're going
2 to ask you, and we're going to direct you, and we're going to
3 lead you through this closely where you'll see that there is a
4 lot the Government did tell you, and that we agree with what
5 Mr. Lapham just told you, but there is a lot we're going to
6 show you that he didn't present in his opening and will come
7 out through the defense case. I ask you to keep an open mind,
8 and thank you very much for your time.

9 THE COURT: Thank you. Call your first witness,
10 please.

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

13 THE COURT: Thank you.

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: Bruce David Naliboff, N-a-l-i-b-o-f-f.

19 THE COURT: Go ahead.

20 BRUCE NALIBOFF,

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

24 DIRECT EXAMINATION

25 BY MR. LAPHAM:

1 Q. Mr. Naliboff, by whom are you employed?

2 A. I'm employed by the Yolo County District Attorney's
3 Office.

4 Q. And in what capacity?

5 A. I'm a Lieutenant of Criminal Investigations.

6 Q. And how long have you been so employed?

7 A. I've been a police officer in the State of California
8 since January 1982. I've been with the District Attorney's
9 office since May of 2002.

10 Q. And during that time period what kind of activities
11 have you been involved in?

12 A. As a police officer?

13 Q. Yes.

14 A. As a police officer, I started off as a police
15 officer in the City of Greenfield, California. After
16 three-and-a-half years there, I became a police officer at the
17 University of California at Davis Police Department, where I
18 remained for 16 years, retiring as a lieutenant.

19 Q. Now, during that period of time, have you developed
20 an expertise in the radical environmental movement?

21 A. Yes, I have. When I was a patrol officer at the
22 University of California Davis Police Department, in April of
23 1987 there was a \$4 million fire at the Vet Med Diagnostic Lab
24 that was claimed by the Animal Liberation Front.

25 Since that time I have tried to develop an awareness

1 of different environmental extremist groups.

2 Q. How have you done that?

3 A. I've done that by reading numerous books, articles,
4 attending conferences such as the Western States Domestic
5 Terrorism Workshop held by the Washington State Patrol. I
6 attended that in 1999, 2000, 2001.

7 I've also attended training put on by the United
8 States Department of Justice concerning domestic terrorism.
9 And I've attended training conferences hosted by the California
10 Attorney General's Office.

11 Q. And do you attempt to keep current on that type of
12 information?

13 A. Yes, I do.

14 Q. What do you do?

15 A. Information, public-domain type information on the
16 Internet concerning animal and environmental actions or
17 criminal activity that are claimed by different groups. I
18 download them on a weekly basis, and I have binders going back
19 to 1997 of claimed actions.

20 Q. And does the Earth Liberation Front have a website?

21 A. Yes, they do.

22 Q. And does the Animal Liberation Front have a website?

23 A. Yes, they do. The Animal Liberation Front website is
24 maintained in this country by a group called the North American
25 Animal Liberation Front Press Office.

1 Q. And what type of information is contained on those
2 websites?

3 A. They contain information about what the Animal
4 Liberation Front and Earth Liberation Front is, contains
5 information about if you do an action, which to us is criminal
6 activity, how to report it in a way that your security is not
7 compromised.

8 It also contains links to something called PGP
9 Encryption, which is how to send a computer message to these
10 groups without your identity being traced.

11 Also talks about pre-action security and how to spot
12 police infiltrators and a number of things.

13 Q. All right. Let's go over some of those things in
14 more detail. Is there a mission statement for ELF or some
15 statement of its purpose on its website?

16 A. Yes, there are.

17 Q. And what is that?

18 A. The basic mission statement for Earth Liberation
19 Front is to do the maximum amount of damage without harming
20 life, either human or animal.

21 Q. And to what type of targets, what's the Earth
22 Liberation Front's agenda?

23 A. Their agenda are targets that they feel compromises
24 Mother Earth. And it's very far ranging. Typically, what you
25 see on the news is when housing developments are burned, and

1 usually they are also grafitti'd "ELF was here," "build it, we
2 will burn it," things like that.

3 Businesses. There is a long-standing kind of
4 alliance between the Earth Liberation Front ideologies and
5 those of people that are against genetically-modified organisms
6 or genetically-engineered trees and plants, so that type of
7 damage is encouraged.

8 And there is also a publication that was put out in
9 the late 1990s called The Guide to Gardening, which talked
10 about how to go about destroying genetically-engineered
11 substances.

12 Q. So we've talked about what types of targets. What
13 about -- does the website give assistance on how to attack
14 those targets?

15 A. There are numerous publications that you can get
16 links to from the websites that talk about attacking targets.
17 Some of those are the Animal Liberation Front Primer of Direct
18 Action. Setting Fires With Electrical Timed Devices, which is
19 an Earth Liberation Front guide that first came up on their
20 website. There's another publication by the Animal Liberation
21 Front called Arson-Around with Auntie ALF.

22 There's a publication, Don't Just Read It, a
23 Beginner's Guide to Direct Action For Animal Liberation, The
24 Nighttime Gardener. There's also for the anti-fur people,
25 Destroying the Fur Industry, the Final Nail, Number Two, and it

1 goes on and on from there.

2 THE COURT: All right. We'll take our recess now.
3 It's 3:00. Return at 3:20. Ladies and gentlemen, please
4 remember your admonitions regarding discussing the case and
5 forming opinions.

6 And I want to remind you even now at this break, even
7 though it's not for the evening, with the different types of
8 cell phones and things we have, even though you're hearing
9 mention of websites and things here during the testimony,
10 please do not try to look up these websites during a break or
11 on a cell phone, PDA or at night as well. That cannot happen.
12 I'll remind you of that again. All right. Thank you very
13 much. Court's in recess.

14 (Break taken.)

15 (Jury out.)

16 THE COURT: All right. We're outside the presence of
17 the jury at this time. I understand there's an issue regarding
18 new evidence.

19 MR. LAPHAM: Not really an issue, Your Honor. We
20 just became aware that Anna, who is going to be the next
21 witness, had kept some notes of her own, and she didn't know if
22 she still had those or not, but she's given it to us.

23 Now, all of these notes would have been already
24 summarized in a 302 that would have been turned over long ago.
25 I don't think there's anything new in here, but I offered to

1 Mr. Reichel that, if he prefers, rather than starting her this
2 afternoon, we could start her tomorrow morning to give him time
3 to digest this material.

4 THE COURT: So I take it you just received these
5 today, Mr. Reichel?

6 MR. REICHEL: Yes, Your Honor.

7 Does the Court want to entertain my motion to
8 dismiss? For the record, I was joking.

9 Your Honor, we did just get these.

10 THE COURT: How much is it that we're talking about?

11 MR. REICHEL: First of all, there's more is my
12 understanding. I think this is about six pages. I haven't
13 read it yet. It looks to be six pages -- seven pages. And
14 it's small type. I mean, it's a lot of information. But would
15 the Court like just for the proffer to take a look at it?

16 THE COURT: I'm sorry.

17 MR. REICHEL: Does the Court want to take a look at
18 it?

19 THE COURT: No. Not at this point in time. I'm just
20 more concerned about the timing for the jury, what we have,
21 other witnesses, what does this do to the --

22 MR. LAPHAM: Your Honor, we're prepared to put her on
23 after Mr. Naliboff. She's ready to go. And I think there are
24 about six more pages that I need to obtain and get to
25 Mr. Reichel.

1 MR. REICHEL: She has on her laptop. She's going to
2 printout. It's her journal.

3 MR. LAPHAM: These were not in the Government's
4 possession, and I was previously unaware.

5 THE COURT: So what I'm trying to find out then, are
6 you asking to stop early today to allow this to --

7 MR. REICHEL: I am.

8 THE COURT: How much time are we going to have
9 Mr. Naliboff?

10 MR. LAPHAM: I think we'll take it up to at least
11 4:00.

12 THE COURT: That's fine. We'll just go ahead and
13 take him as far as we can, which would be about 4:00,
14 30 minutes, 35 minutes.

15 MR. REICHEL: That's fine, Your Honor. While we're
16 on the subject -- while we're here without the presence of the
17 jury -- Mr. Naliboff's testimony, I just want to -- in advance
18 to the Court -- I may, at the conclusion of it all, make a
19 motion to strike because I just think it may be prejudicial,
20 violates 403, and it may be nothing but 404(b). And I just
21 think it's like drug profile evidence and gang evidence. That
22 unless, you know, I think very strong prejudicial aspect to
23 hearing all these terrible crimes of ELF and ALF and then --

24 THE COURT: Response.

25 MR. LAPHAM: Your Honor, the evidence will show that

1 Mr. McDavid actually mentioned -- referenced ELF several times.
2 They discussed whether or not a particular action complied with
3 the ELF guidelines. How to get notification that this was an
4 ELF action. These are all things that the jury can't really
5 understand or put into perspective without knowing who ELF is
6 and what those guidelines are.

7 MR. REICHEL: My reply would be, Your Honor, that
8 that's probably not -- that's probative somewhat, but it's
9 outweighed by the prejudice. Because if he is going to
10 introduce evidence there was a plan to blow up this and to burn
11 that, Your Honor, and to blow up the cell phones (sic), I think
12 the evidence could be limited to that, and all this extraneous
13 stuff of other ELF activities detracts from that.

14 THE COURT: First of all, is there a motion right
15 now?

16 MR. REICHEL: Yes.

17 THE COURT: What is the motion?

18 MR. REICHEL: To bar his testimony.

19 THE COURT: I will overrule the objection. I find
20 that the information and testimony at this point is probative,
21 and I don't find that it would be is so prejudicial that it
22 outweighs that probative value that it has at this time. I
23 think it provides context for what I will presume will be the
24 evidence that will be presented based upon the proffer made by
25 Mr. Lapham here in court, so I will let him continue.

1 MR. REICHEL: Additionally, I would make a motion
2 that I think it's improper 404(b) because it's just -- it's the
3 character of Mr. McDavid. It's an attempt to portray the
4 character of Mr. McDavid.

5 THE COURT: I haven't heard anything that's about
6 Mr. McDavid's character at this point. It's simply in general
7 terms about what ELF is about and possibly ALF. There's been
8 no connection that's been made that I've heard between this
9 defendant and these particular organizations.

10 MR. REICHEL: And finally --

11 THE COURT: Motion denied. Pardon me. Overruled.

12 MR. REICHEL: And the final grounds for the motion
13 would be under Evidence Code 704. That it's the ultimate
14 issue. He's giving an opinion, and he's testifying as to the
15 ultimate issue for the jury to decide, whether or not
16 Mr. McDavid was involved in and has the intent to carry out
17 this act.

18 And that's where the courier profiling/gang evidence
19 comes in is under 704. That it's the ultimate issue being --
20 he is testifying to the ultimate issue, which is inappropriate
21 for experts.

22 THE COURT: He hasn't been declared an expert, and
23 I've heard nothing more than his basic understanding, his own
24 -- what's the word -- actual knowledge and experience that he
25 has. He has not been qualified as an expert as such. He has

1 not been asked to give an opinion as to anything. So this is
2 simply his own experiences that he has had since, I would
3 assume, being on the police force at U.C. Davis.

4 THE WITNESS: That's correct and beyond.

5 THE COURT: And beyond. And a lot of this was -- and
6 the reasons why he is interested in this particular area, and
7 it goes back to the bombing of the vet clinic back in 1987.

8 THE WITNESS: That's correct, Your Honor.

9 THE COURT: So objection is overruled. Bring the
10 jury in, please.

11 (Jury in.)

12 THE COURT: All right. For the record, the jurors
13 and alternates are present.

14 Ladies and gentlemen, I apologize for the delay in
15 starting up. We had a matter that I needed to attend to
16 outside of your presence, and I will also tell you that it
17 appears that we will be stopping a little bit earlier today,
18 about 4:00 or so.

19 MR. LAPHAM: When this witness is finished.

20 THE COURT: Yes. Which should be about 4:00 as
21 opposed to 4:30 due to some other matters that have come up.
22 Mr. Lapham, continue, please.

23 MR. LAPHAM: Thank you, Your Honor.

24 Q. BY MR. LAPHAM: Mr. Naliboff -- and I think it was
25 your last answer you referenced a phrase "direct action"?

1 A. Yes.

2 Q. Do you recall that?

3 Would you explain to the jury what that means?

4 A. Direct action as it's referred to by people
5 participating in this movement is what we in law enforcement
6 call criminal activity.

7 Direct action could be something as small as spray
8 painting slogans on windows, etching glass, breaking windows,
9 common vandalism to actually burning down buildings or toppling
10 cell phone towers.

11 Q. And now I think you started to talk earlier about
12 whether ALF or ELF give advice on how to go about forming a
13 group to commit these activities. Would you explain that?

14 A. Yes. In a lot of the literature they talk about the
15 cell structure. And by cell structure I mean activists that
16 are encouraged, that want to take part in direct actions, to
17 form small groups, usually two to five in number, but they can
18 be upwards of ten or so people. They are cautioned to only
19 allow close friends in. Not strangers. People that they feel
20 comfortable with.

21 And the reason for this is the security culture that
22 abounds in this arena. By having small groups, you lessen the
23 chance to have law enforcement infiltrate your group, and you
24 lessen the chance that somebody that's involved in the criminal
25 activity with you will talk about the action or what actually

1 occurred.

2 They also caution about talking about things after
3 they've happened. Just speak with your small group of people,
4 and that's it. You are cautioned not to try and join existing
5 cells, if you learn of an existing cell, but to begin your own
6 following the guidelines of either the Earth Liberation Front
7 or Animal Liberation Front. Or if you're into genetic
8 engineering actions, following those guidelines.

9 And they also talk about reporting actions. They
10 talk about surveillance. They talk about the importance of --
11 if you are going to do an activity at a target, to surveil the
12 area beforehand, look for law enforcement presence, the
13 presence of security cameras, how often police patrols are,
14 things of that nature.

15 They talk about disposing of possible items of
16 evidence after your action is over. That could be going so far
17 as to throw away all of your clothing in different dumpsters,
18 to wear coverings over your shoes and throw them away, or,
19 better yet, throw the whole shoes away.

20 When you report your actions to either news media or
21 one of the news sites for the groups, they caution you if you
22 send things by U.S. Mail to -- one of the sites says you should
23 block print everything and have different people work on each
24 letter, so your handwriting can't be traced. They tell you not
25 to lick envelopes or lick stamps because the police can match

1 your DNA to that. And they tell you to use encrypted e-mail
2 when possible.

3 As a matter of fact, the North American Animal
4 Liberation Front Press Office has a link with instructions on
5 how to use encrypted e-mail.

6 Q. And you mentioned something earlier PGP?

7 A. That's correct.

8 Q. What is that?

9 A. That's a method of encrypting your e-mail so
10 theoretically it cannot be traced to the source that sent it.

11 Q. Now, one of the things you mentioned in that answer
12 was reporting direct actions after they are committed?

13 A. That's correct.

14 Q. And how would one do that?

15 A. The typical way that's talked about on the animal
16 site, or the site, is to send them notification. You can also
17 notify local media anonymously. And some of the -- some of the
18 publications I've read talk about using -- if you do something
19 by computer or typewriter, use it at a public library or a
20 public facility, so it can't be traced back to you.

21 Talk about not doing actions real close to where you
22 live or where you frequent. They need to have publicity
23 because part of leader-less resistance or the cell structure,
24 when it was initially formed as part of the Animal Liberation
25 Front in the late '70s, it was a way for a small number of

1 people to create the biggest amount of damage and reduce the
2 likelihood of being caught plus publicize their activities with
3 hit-and-run attacks.

4 Q. Now, based on your research of the ELF and ALF
5 websites, does this actually happen? Do people actually form
6 cells and attack sites based on the guidelines in ELF?

7 A. Yes, they do. The ELF site since -- the past couple
8 years has not been as active, and most of those are now
9 reported on the ALF site. Because the former spokesperson for
10 the Earth Liberation Front has moved on to other endeavors.

11 But there is a publication through something called
12 Bite Back Magazine, and they publish a diary of actions, and
13 the actions are listed. There is a public site. They are
14 listed by year, by country, and what happened. And then there
15 are links to each, and you can click the link and get the
16 newspaper article.

17 Q. And approximately how many actions over the last
18 couple of years are listed?

19 A. From 2007 there's three-and-a-half pages, small type.

20 Q. All right.

21 A. Well over 100.

22 Q. Is there any type of connection between the
23 environmental -- radical environmental movement that you've
24 been speaking of and the anarchy movement?

25 A. Yes, there is.

1 Q. What's that connection?

2 A. Well, first of all, one of the difficult parts with
3 these movements is when you start talking about anarchy, not
4 everybody that views themselves as an anarchist is going to go
5 out and do a crime. Some people have philosophical agreements
6 just like with Earth Liberation Front or Animal Liberation
7 Front.

8 But for basic philosophy, basically if you believe in
9 the rule of Government, in corporations, in having the right to
10 own property, in having credit cards and in having cell phones,
11 you're not an anarchist.

12 Anarchists believe in no privatization of property.
13 Everything is individual freedom. All forms of Government are
14 oppressive and should be abolished and they want to destroy
15 capitalism.

16 Q. And how does that translate to an affinity with ELF
17 or ALF?

18 A. Well, it has a greater affinity at times with the
19 Earth Liberation Front because one of their primary focuses is
20 everything that they view impacts Mother Earth.

21 For an example, multi-million dollar fire in Vail,
22 Colorado several years ago. That was done because, according
23 to the people that set the fire, it was destroying a lynx
24 habitat where they were building the ski resort.

25 It's typical when housing developments are built, if

1 there are fires, it's to stop urban sprawl. And the thought
2 being the violence they are committing on the structure is not
3 as great as the violence it's committing to the Earth by people
4 that are building on the Earth. And so that comes to more of
5 an anarchy lifestyle.

6 Where, typically, the Animal Liberation Front people
7 are more against things that are easier to pinpoint. Animal
8 research. If you manufacture cages for an animal testing
9 program, you could be a target. Kind of concrete things like
10 that.

11 Q. Are you familiar with something called CrimethInc?

12 A. Excuse me. Yes, I am.

13 Q. What is that?

14 A. CrimethInc is an an anarchist collective. And by
15 "collective," I mean it's a group of small anarchist cells that
16 operate independent of one another.

17 It first came into being in the late 1999, that area.
18 It's associated with the North American anarchist/punk rock
19 type of scene because of publishing of a journal called Inside
20 Front, which has a combination of hard-core punk-type music or
21 concepts and anarchist action, and then it's expanded into the
22 anti-capitalist movement.

23 And some believe that the name "CrimethInc" is a
24 reference to the concept of thought crime from George Orwell's
25 book 1984.

1 Q. Are you familiar with something called a CrimethInc
2 convergence?

3 A. Yes. There are CrimethInc convergence annually.

4 THE COURT: Pardon me.

5 MR. REICHEL: Lodge an objection that the witness is
6 reading from a document. Not testifying. He appears --

7 THE COURT: Are you reading at this time?

8 THE WITNESS: I'm referring to some notes I made,
9 Your Honor.

10 THE COURT: That you made?

11 THE WITNESS: Yes.

12 THE COURT: Objection is overruled. Go ahead.

13 Q. BY MR. LAPHAM: Do you remember what the question
14 was?

15 A. Yes. It was regarding the CrimethInc convergence.

16 A CrimethInc convergence is what can be called an
17 annual conference or meeting of people that believe in whatever
18 the CrimethInc philosophy is. It's held in a different city
19 every year, and there's been one held ever since 2002.

20 Q. And what types of things go on at the CrimethInc
21 convergence?

22 A. From what I have heard and gather -- or read and
23 gather, I should say -- it would be similar to an Earth First
24 training camp or Ruckus training camp. They talk about ideas,
25 planning, activities.

1 I'm not saying that a group of people that large, if
2 it is attended by a lot would plan a crime together, because
3 that's not how the cell structure works. But they talk about
4 how to watch for police infiltrators or police informers.
5 There is a very strong anti-informer, anti-snitch culture in
6 the movement, that runs throughout the movement.

7 They also sometimes do some street actions. One of
8 them is called "reclaim the streets." And that's basically
9 where a crowd of people, however many you can get together,
10 take over a busy intersection or a street, so public
11 transportation cannot get by. And the thought is they are
12 returning public land to the public.

13 And the other common thing that people do is
14 "critical mass" it's called. We have those in Sacramento
15 occasionally. San Francisco often. It's when a large number
16 of bicycle riders get together and decide at a certain point in
17 time to ride slowly through the streets and block vehicle
18 traffic. It's a political statement.

19 Q. Is there an anarchist type of lifestyle?

20 A. Yes. Since anarchists are anti-capitalist, they
21 don't believe in owning property. There are -- there's one
22 book that I think you can obtain through the CrimethInc -- or
23 used to be able to -- called Evasion, where it talks about a
24 lifestyle of dumpster-diving, hopping trains, bumming rides.

25 Some people that refer to themselves as vegans -- and

1 I don't know if you need me to explain the term vegan or not.

2 Q. Why don't you do that?

3 A. Vegans are basically vegetarians that don't eat any
4 meat, fish, poultry, dairy products. They also -- if they
5 really believe in their veganism, they will only eat
6 whole-grain type products, obviously. They don't wear any
7 clothes made from animal products.

8 Most animal extremists are vegans because they
9 obviously care very deeply, you know, towards the animals.
10 There's some vegans in the anarchy/earth type movement, but
11 there's almost like a disclaimer. Some people describe
12 themselves as freegans.

13 And what a freegan is is they are a person that,
14 while they might be vegan if they choose to go out and obtain
15 food for themselves through purchasing it, if they obtain food
16 through dumpster-diving or being given food, they will eat
17 anything.

18 And it's more of a political statement that they
19 don't need to go purchase things. It's not that they can't,
20 but they are living off the glut of society, if you will.

21 Q. So what about money in the anarchist lifestyle?

22 A. Money is not a commodity that's usually in great
23 supply. But then again, if you're not paying for rent or for
24 food, and your transportation consists of hitch-hiking or
25 hopping rails, or going with acquaintances, your overhead is

1 not that high.

2 Q. Are you familiar with an individual named Derrick
3 Jensen?

4 A. Yes. I'm familiar with some of his writings.

5 Q. And how would you describe him?

6 A. He has been described as a -- kind of an
7 enviro-anarchist. Some sources describe him as a green
8 anarchist.

9 Q. And in preparation for your testimony today, did you
10 review an interview between "Lor X" and Derrick Jensen?

11 A. Yes, I did.

12 Q. Showing you Government's Exhibit 20, is that the
13 article that you reviewed?

14 A. Yes, it is.

15 MR. LAPHAM: And, Your Honor, for the record, we'll
16 tie this up later on by showing that this is an article that
17 was brought to the attention of other members of the group by
18 the defendant.

19 THE COURT: All right. Thank you.

20 Q. BY MR. LAPHAM: Would you -- You've read that
21 article?

22 A. Yes, I have.

23 Q. And would you summarize that article for the jury --
24 or the interview? What's it about?

25 A. Basically, what he says in here is the problem of our

1 culture originates in civilization. And what he describes
2 civilization as is people living in cities. And he further
3 describes a city as being a group of people that has to import
4 resources in order to sustain itself. And he thinks we should
5 return to the non-industrialized state.

6 Q. And how does he suggest we do that? Or does he?

7 A. He -- what he suggests is -- I think he says he wants
8 civilization brought down right now.

9 Q. Does he indicate -- does he mention dams in that
10 article?

11 A. Yes, he mentions dams.

12 Q. What does he talk about there?

13 A. I think, without referring specifically in trying to
14 find the quote, he refers to some people ask him -- or he gets
15 up in the morning, and he has to decide whether or not he is
16 going to blow up a dam or write. And his role in the world is
17 to write.

18 Q. Is he advocating that others should blow up dams?

19 A. He is advocating that people should take action
20 necessary to overthrow society as we know it.

21 Q. How about cell phone towers? Is that mentioned in
22 the article?

23 A. Yes. As a matter of fact, in the same thought where
24 he states he wants civilization brought down, and I want it
25 down now, he states you can't make a moral argument for leaving

1 a cell phone tower up.

2 Q. Now, at the tail end of that article is there a
3 discussion about what the effect of harsh tactics will be on
4 fence sitters?

5 A. Yes. He doesn't care much for fence sitters, which
6 are basically people that can't decide what they want to do.

7 Q. And what does he say about them?

8 A. He says, and I quote -- and I apologize for the
9 language -- people say you are going to scare away fence
10 sitters. I don't give a fuck. They are going to be scared
11 away anyway.

12 MR. LAPHAM: Your Honor, I think I misidentified that
13 exhibit. It's Exhibit 21 not 20.

14 THE COURT: All right. Thank you.

15 Q. BY MR. LAPHAM: Now, in preparation for your
16 testimony today, did you also review an article regarding
17 genetically-modified trees?

18 A. Yes, I did.

19 MR. LAPHAM: And, Your Honor, if I may approach
20 again?

21 THE COURT: You may.

22 Q. BY MR. LAPHAM: Showing you Exhibit 20, is that the
23 article?

24 A. Yes, it is.

25 MR. LAPHAM: And, Your Honor, I'll make the same

1 proffer with respect to this. This was another article that
2 was given to the group by Mr. McDavid.

3 THE COURT: All right. We'll expect to have it tied
4 up eventually. Thank you.

5 Q. BY MR. LAPHAM: What's the nature of that article?

6 A. It is about genetically-engineered trees. It's
7 called From Chainsaws to Gene Guns.

8 Q. And what is the tenor of that article? Is that a
9 good thing or bad thing?

10 A. It's talking about the evils of
11 genetically-engineered trees, and it also lists some sites,
12 including the Institute of Forest Genetics based in
13 Placerville, California, where the United States Forest Service
14 is working in collaboration on some genetically-engineered
15 trees.

16 MR. LAPHAM: Thank you. Your Honor. I have no
17 further questions.

18 THE COURT: Thank you. Cross.

19 MR. REICHEL: Yes. May I approach the witness, Your
20 Honor --

21 THE COURT: You may.

22 MR. REICHEL: -- and review what he is reading from?

23 THE COURT: Are you reading from something? I can't
24 see.

25 THE WITNESS: I do have some notes I typed up, Your

1 Honor, including a short CV about my experience.

2 CROSS-EXAMINATION

3 BY MR. REICHEL:

4 Q. Did you review those notes prior to your testimony
5 today?

6 A. Yes, I did.

7 Q. Did they help you to testify today?

8 A. A couple pages, yes.

9 MR. REICHEL: May I see the notes, Your Honor?

10 THE COURT: Yes. Mr. Lapham, do you wish to take a
11 look?

12 MR. LAPHAM: Yes. Thank you, Your Honor.

13 (Counsel reviewing notes.)

14 Q. BY MR. REICHEL: Mr. Naliboff, how much did the
15 information that you prepared prior to your testimony -- how
16 much did that assist you prior to your testimony today? How
17 helpful is it?

18 A. It was helpful to refer to some quotes from the
19 articles written by Mr. Jensen and from this.

20 Q. Without reading it today, without reviewing it before
21 you testified, would you have been able to, as you sit here
22 today, answer those questions the same way?

23 A. I would not have been able to recall the quotes that
24 I did, but my basic testimony would remain the same, yes.

25 Q. Okay. But as far as the quotes that you got and let

1 me ask you, what was the purpose, then, of drafting those notes
2 prior to the testimony today?

3 A. So I would have something to refer to to be as
4 professional and prepared as possible.

5 Q. Did you speak to -- Mr. Lapham here is the
6 prosecutor -- did you speak to him about your testimony prior
7 to your testimony today?

8 A. Yes.

9 Q. Okay. And when was the last time you spoke to him
10 about that?

11 A. Yesterday.

12 Q. Okay. And that was during the working hours?

13 A. It was during the daytime.

14 Q. Okay. Was it in his office?

15 A. Yes.

16 Q. And was Ms. Endrizzi there as well?

17 A. Not in the office, no.

18 Q. Was Mr. Walker there, the case agent?

19 A. For a short period of time.

20 Q. Let me just imagine the scene is that he talked to
21 you about the questions that he was going to ask, correct?

22 A. He didn't talk specific questions. It was more of
23 what he wanted, which was a historical overview. Because in
24 the number of years I've been involved in this field and the
25 amount of teaching I've also done to various agencies, I wanted

1 to make sure that I stayed on point with just giving a
2 historical overview for the jury's consideration.

3 Q. And after he had told you what he really wanted, did
4 you then take your notes down then that you have today?

5 A. I obtained a couple quotes from the articles that I
6 had read prior to our discussion.

7 Q. Well, let me -- I want to get the sequence. So
8 Mr. Lapham and you had a conversation in his office, and you
9 discussed what -- you discussed what he needed or what he
10 wanted you to testify to, correct?

11 A. It wasn't what he needed. It was what my overall
12 testimony -- if it was going to be historical in nature, or if
13 I was going to be expected to voice an opinion, like I have in
14 the past. And it was just to clarify the scope of my testimony
15 I think would be an accurate portrayal.

16 Q. Did Mr. Lapham prepare those notes that you are
17 reading from?

18 A. No.

19 Q. Did you prepare them?

20 A. Yes.

21 Q. Did you prepare them last night?

22 A. I prepared some yesterday afternoon. The majority of
23 this I did not prepare then.

24 Q. Okay. So the notes that you are reviewing -- the
25 notes, when you refer to your notes there, okay, those were

1 prepared yesterday afternoon, "yes" or "no"?

2 A. Not all of them.

3 Q. Okay. Some of them?

4 A. As I stated, the ones I referred to were the quote
5 from the Derrick Jensen article.

6 Q. So did you not prepare any notes yesterday afternoon,
7 you just obtained quotes; is that your answer?

8 A. That's correct.

9 Q. Okay. So the notes you're reading from were prior to
10 your meeting with Mr. Lapham, correct?

11 A. I'm not reading from notes, sir. One of the things I
12 looked at was the years I attended certain conferences, the
13 names of some publications. I've passed those out at training
14 that I've done for the past six or seven years.

15 Q. Now, you've been employed in law enforcement since
16 1982, correct?

17 A. That's correct.

18 Q. And you've -- since '82 have you only been employed
19 in law enforcement?

20 A. Since 1982, yes.

21 Q. You've never been employed in some private sector
22 outside of law enforcement, correct?

23 A. That's correct.

24 Q. Is it fair to say that by doing -- by becoming
25 someone familiar in this area you are testifying to today, that

1 that's advanced your career, correct?

2 A. No.

3 Q. Okay. Has it hampered your career?

4 A. No. It's just part of my career.

5 Q. Okay. But is everyone at the Yolo -- everybody in
6 the Yolo County D.A.'s office also sufficiently knowledgeable
7 as you are or do you stand out?

8 A. No. It is an area that I had expertise in when I
9 came to the District Attorney's Office, and the District
10 Attorney has allowed me to maintain my expertise.

11 Q. And it's fair to say, though, that you are law
12 enforcement, correct?

13 A. That's correct.

14 Q. It's fair to say that, I mean, you are biased in
15 favor of Mr. Lapham in this case, correct?

16 A. That's not correct.

17 Q. Do you have any bias whatsoever when you testify
18 about this?

19 A. My bias is to tell the truth.

20 Q. Okay. Now, all of the -- most of what you talked
21 about you were able to learn in some -- from some written
22 medium, correct?

23 A. That's correct.

24 Q. And these are books?

25 A. Books, articles, Internet publications. I've been to

1 some training classes. I've also seen some films.

2 Q. Okay. Now, but is it fair to say the Internet has
3 educated you quite a bit on this?

4 A. The Internet is one way to stay current, yes.

5 Q. Did the Internet not educate you on this?

6 A. No. It educated me some.

7 Q. So is it fair to say that someone could get on the
8 Internet, and a lot of what you told us about they could also
9 learn and educate themselves?

10 A. If they wanted to also read all the books that I've
11 read that are not on the Internet and review the publications,
12 some of which are and some of which not, sure.

13 Q. So, "yes" or "no," there is an ALF website, correct?

14 A. There is as North American Animal Liberation Front
15 Press Office website in this country.

16 Q. I take that as a "yes"?

17 A. Sure.

18 Q. Is there an Earth Liberation Front website on the
19 Internet?

20 A. There is one, and the domain is currently for sale.

21 Q. But it has information on it and has had for the last
22 several years?

23 A. Yes.

24 Q. Okay. And, in fact, didn't you testify on direct
25 that both of these websites provide quite a bit of information

1 to the viewer?

2 A. Yes. They are public websites.

3 Q. Well, I know they are public. But do they just have
4 one line on there, or do they seem to provide a lot of
5 information --

6 A. No, you can get links to different websites from each
7 of those websites that will lead you into anarchy,
8 genetically-engineered things, prisoner support groups like
9 Break the Chains. There's numerous sites on the Internet.

10 Q. And then from those sites on the Internet you can
11 educate yourself, correct?

12 A. That's correct.

13 Q. And, in fact, that's where you got some of your
14 education?

15 A. That's correct.

16 Q. So anyone could do that if they wanted to on the
17 Internet, correct?

18 A. Sure.

19 Q. And when you testified on direct, you told us about
20 some of this counter-surveillance techniques and so forth that
21 are taught on these sites, correct?

22 A. That's correct.

23 Q. And these are easily available, again, to anybody who
24 plugs on to that site, correct?

25 A. Yes.

1 Q. And are there others in law enforcement like yourself
2 who have become educated in this area?

3 A. Sure.

4 Q. And part of the way they do it is through the
5 Internet as well? I mean, it's part of how they do it,
6 correct?

7 A. Sure. It's an important medium in our culture today.

8 Q. And there are books available that you've read in
9 this area, correct?

10 A. Yes.

11 Q. And these books are just as instructive as some of
12 this stuff on the Internet?

13 A. Yes.

14 Q. Now, you've done a lot -- you've done some reading on
15 anarchy and the anarchist philosophy; is that correct?

16 A. I've done some, yes.

17 Q. Would you agree with me that there are some famous
18 anarchists in history that most people wouldn't know are
19 anarchists; isn't that correct?

20 A. I'm not a renowned authority on anarchism.

21 Q. With what you do have, though, do you agree with me
22 that Henry David Thoreau was an anarchist?

23 A. I could see how he could be viewed as one.

24 Q. And do you know who Noam Chomsky is at the
25 Massachusetts Institute of Technology?

1 A. Yes.

2 Q. And he's, of course, a famous anarchist, right?

3 A. Uh-huh.

4 THE COURT: Is that "yes"?

5 THE WITNESS: Yes.

6 Q. BY MR. REICHEL: Yes?

7 A. Yes.

8 Q. And that's the professor at the Massachusetts
9 Institute of Technology, correct?

10 A. Right. I believe I stated that not all anarchists
11 believe in committing crimes.

12 Q. I just wanted to hear it. Let me ask you about your
13 knowledge of vegan diets and those that call themselves vegans,
14 okay?

15 A. Okay.

16 Q. It's fair to say that if you're a vegan that doesn't
17 mean you're an anarchist, correct?

18 A. That's correct.

19 Q. And you know somewhat about vegans, correct?

20 A. Yes.

21 Q. And you know that the current presidential candidate
22 the senator -- Congressman from Ohio, Dennis Kucinich, is in
23 fact a vegan, correct?

24 A. I don't know that, but I know that being a vegan does
25 not make you commit criminal acts.

1 Q. And let me ask you about your knowledge of ELF, and
2 you can answer some of those questions.

3 For ELF, anybody could do anything they wanted and
4 claim it in the name of ELF, correct?

5 A. That's correct.

6 Q. You could throw a tack in the street and call it ELF,
7 right?

8 A. That's correct.

9 Q. You could take a bunch of McDonald's hamburgers and
10 just throw them in the trash can and call that ELF as well,
11 correct?

12 A. Well, that would typically would be an Animal
13 Liberation Front action if it was claimed as such, but yes.

14 Q. So that you could claim as ALF?

15 A. Sure.

16 Q. And so the point being that there are many, many,
17 many varying degrees of actions that could be considered in the
18 name of ELF or ALF, right?

19 A. Yes. I believe I stated it could be as simple as
20 spray painting a window or doing minor vandalism.

21 Q. Gluing locks on doors together?

22 A. That's a typical vandalism, yes.

23 Q. Okay. And, in fact, when you spoke about direct
24 action and Mr. Lapham asked you about direct action, do you
25 recall?

1 A. Yes.

2 Q. And you said in law enforcement we use that as code
3 for criminal action, right?

4 A. It's not code for criminal action. The activists'
5 own words. Direct action, they say, is viewed by the
6 authorities as criminal behavior.

7 Q. And you didn't say that we in law enforcement call
8 that criminal behavior?

9 A. I did say we call it criminal behavior. I didn't say
10 we use it as code for criminal behavior.

11 Q. Direct action can't be a protest, or can it be a
12 protest?

13 A. If it's a protest that stays within the realm of the
14 First Amendment, it is not direct action. If it's a protest in
15 which people commit vandalism, run through police lines, block
16 a roadway, failure to disperse, and decide to get arrested,
17 that would be viewed direct action, and that part of the
18 protest would be criminal in nature, but that doesn't
19 criminalize the other people at the protest that are exercising
20 their First Amendment right.

21 Q. So if someone is at a sit-in -- can we agree on the
22 phrase sit-in?

23 How about if I give you this. If someone goes to a
24 politician's office and sits down and refuses to move, at some
25 point they are going to be arrested, correct?

1 A. That's correct.

2 Q. And that infraction there is direct action, right?

3 A. If their refusing to leave constituted a crime, say
4 the business closed, they refused to leave at closing, that
5 would be a direct action, and it would be a misdemeanor crime
6 of trespass.

7 Q. So when we say direct action -- when you say direct
8 action in regard to any of these activists groups, it's
9 something that has to be criminal, correct?

10 A. That's correct.

11 Q. But it can even be as simple as a very small criminal
12 infraction, correct?

13 A. In my mind, it is a misdemeanor crime that is done to
14 further your cause. And it can be, as I stated on direct,
15 anything from simple vandalism to a major felony.

16 Q. Did you -- have you studied other political
17 philosophies besides anarchy, or would anarchy be the only
18 political philosophy you studied?

19 A. No. I'm not a student of political philosophies.

20 Q. So, let me ask you. But you've studied anarchy,
21 correct?

22 A. I've read about anarchy, yes.

23 Q. As a political philosophy, right?

24 A. You can call it that.

25 Q. What would you call it?

1 A. I would call it the people's philosophical way of
2 life, the way they choose to live their life.

3 Q. So anarchy would be a life philosophy, in your
4 opinion?

5 A. I don't care how you label it, sir.

6 Q. Well, let me ask you how you label it. How do you
7 label anarchy as you've testified in this case?

8 A. I label it as people who do not believe in the
9 Government as it is, and who don't believe in owning property,
10 and all the other things I describe.

11 I'm not giving it a political, social, philosophical
12 label. It's just their belief system.

13 Q. Okay. But you've obviously somehow in your life
14 you've studied other political philosophies, correct?

15 A. Not as a police officer.

16 Q. Okay. But you have an understanding of those,
17 correct, let's say capitalism?

18 A. Yes.

19 Q. Socialism?

20 A. Not really.

21 Q. Communism?

22 A. Not really.

23 Q. Marxism?

24 A. No.

25 Q. Okay. Totalitarianism?

1 A. No.

2 Q. So, it's capitalism and anarchism is what you are
3 actually familiar with?

4 A. I really haven't studied anything except anarchism.
5 I've done it through reading and from listening to people at
6 conferences.

7 MR. REICHEL: Okay. I have nothing further, Your
8 Honor, at this time.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. LAPHAM:

12 Q. And the reason you've done reading on anarchism is
13 simply because of the inter-relationship with ALF and ELF?

14 A. Yes. That's correct.

15 MR. LAPHAM: Thank you. That's all.

16 THE COURT: Anything else?

17 MR. REICHEL: No, Your Honor.

18 THE COURT: All right. Thank you very much. You may
19 step down. Is this witness excused?

20 MR. LAPHAM: Yes, Your Honor.

21 MR. REICHEL: Yes, Your Honor.

22 THE COURT: Thank you. Can we have a stipulation,
23 counsel, that from now on unless otherwise stated, the
24 witnesses, once they are excused from the witness stand, will
25 be excused from further testimony?

1 MR. LAPHAM: So stipulated.

2 MR. REICHEL: So stipulated.

3 THE COURT: Thank you very much.

4 Ladies and gentlemen, as I indicated to you earlier,
5 we're going to stopping a little bit earlier than we are
6 normally going to. It's about 4:05 as opposed to 4:30 right
7 now.

8 Once again, this is going to be your first recess as
9 a jury, and I do want to just reaffirm the admonitions that
10 I've given you earlier about not discussing the case, forming
11 opinions, not reading any newspaper reports about this
12 particular case, or radio, or television, and just try to keep
13 everything that you are going to hear in this case what you
14 hear in this courtroom only.

15 Are there any questions regarding time, what time to
16 return tomorrow, or scheduling for the next two days? If not,
17 thank you very much. Have a very nice evening. Court's
18 adjourned.

19 (Court adjourned.)

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CERTIFICATION

I, Diane J. Shepard, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ DIANE J. SHEPARD

DIANE J. SHEPARD, CSR #6331, RPR
Official Court Reporter
United States District Court