

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-00035

VOLUME III

ERIC McDAVID,

Pages 369 to 686

Defendant.

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REPORTER'S TRANSCRIPT

TRIAL PROCEEDINGS

WEDNESDAY, SEPTEMBER 12, 2007

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

APPEARANCES

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SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 12, 2007

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(Jury in.)

THE CLERK: Calling criminal case 06-cr-0035, United States v. Eric McDavid. On for jury trial, day three, Your Honor.

THE COURT: Thank you. Good morning. For the record, all parties are present. Counsel, are you ready to proceed at this time?

MR. LAPHAM: Yes, Your Honor.

THE COURT: Mr. Reichel?

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

THE COURT: Mr. Reichel, we will bring up Anna once again for cross-examination purposes.

Good morning, Anna. And since we are on your cross-examination, I want to remind you of the oath that you took yesterday. Do you recall that?

THE WITNESS: Yes.

THE COURT: And you understand that you are still under oath today?

THE WITNESS: Yes.

THE COURT: Thank you very much. Mr. Reichel, proceed.

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1 "ANNA",
2 a witness called by the Government, having been previously
3 sworn by the Clerk to tell the truth, the whole truth, and
4 nothing but the truth, testified as follows:

5 CROSS-EXAMINATION

6 BY MR. REICHEL:

7 Q. Thank you very much. Good morning, Anna.

8 A. Good morning.

9 Q. Let me ask you some questions about before you
10 actually met Mr. McDavid, okay?

11 A. Okay.

12 Q. So your recollection is you met him in August of
13 2004?

14 A. Correct.

15 Q. Okay. And prior to that you had already been doing
16 some undercover activities, correct?

17 A. Correct.

18 Q. Let me ask you about going as far back as July of
19 2002. I'd like to focus you in that area.

20 A. Okay.

21 Q. Do you recall writing or drafting an e-mail to
22 militarywomen.org?

23 A. Possibly, yes.

24 Q. Okay. And do you recall that e-mail was about
25 joining the military, correct?

1 A. Correct.

2 Q. And it was something to the effect of joining
3 military intelligence or counter-intelligence in the military?

4 A. I was interested in that, yes.

5 Q. And you were about 16 years old at that time?

6 A. 15 or 16, yes.

7 Q. Okay. Is it fair to say if it was July, it would
8 make you, I think, 15?

9 A. I believe that would make me 15.

10 Q. Okay. And do you recall in the content of it you had
11 stated a phrase along the lines of it had always been your
12 dream to be in military intelligence?

13 A. When I was younger.

14 Q. I'm sorry. Withdraw that question.

15 You know, when you wrote that e-mail, you were
16 writing it to a women-in-the-military organization, so to
17 speak, correct?

18 A. Correct.

19 Q. And there was no reason for you to put anything false
20 in there, you weren't undercover at that time, correct?

21 A. Correct.

22 Q. So if you put something in there at the time, as you
23 recall today it would have been accurate, it would have been --
24 no intent to lie in that, correct?

25 A. Correct.

1 Q. And in there do you recall -- do you recall that you,
2 in fact, put it had been your dream to be in military
3 intelligence or counter-intelligence in the military?

4 A. When I was younger, I very much looked forward to a
5 career in the military. However, as I grew up, my goals
6 changed.

7 Q. Now, but at that time you -- if you wrote down it had
8 been my dream to be in military intelligence, that was true,
9 correct?

10 A. Correct.

11 Q. That was your dream, that was your goal, correct?

12 A. Correct.

13 Q. Do you recall in there there was a discussion in that
14 e-mail about someone else who had posted on that discussion
15 board on the Internet, and that that person had discussed their
16 dissatisfaction with military intelligence; do you recall that?

17 A. I do not, actually.

18 Q. If I were to show you what appears to be a copy of
19 that e-mail would that refresh your recollection or help you
20 recall that?

21 A. It would.

22 MR. REICHEL: May I have permission to approach, Your
23 Honor.

24 THE COURT: You do.

25 MR. REICHEL: Your Honor, I'm going to show the

1 witness what I've marked for identification purposes only.

2 THE COURT: I'm assuming, Mr. Lapham, you've seen
3 this.

4 MR. LAPHAM: Yes -- well, Your Honor, I got it
5 moments before court. I'm looking at it right now.

6 THE COURT: Have you had sufficient time to look at
7 it?

8 MR. LAPHAM: I'm not sure exactly what --

9 THE COURT: Why don't you show him what you are going
10 to show her, Mr. Reichel.

11 Q. BY MR. REICHEL: Ma'am, I'm going to hand you what's
12 previously been marked as Defendant's Exhibit A and ask you to
13 take a look at that for a moment.

14 A. The whole thing?

15 Q. No. I'm going to direct your attention -- well,
16 would you take a look at the first couple of paragraphs, does
17 that refresh your recollection?

18 A. Yes.

19 Q. Thank you.

20 What I'm going to ask you about is on the second page
21 where it says 2 of 8.

22 A. Okay.

23 Q. And you see the -- under MOS97B questions heading?

24 A. Yes.

25 Q. Good. And the first paragraph states, (reading): Hi

1 all. Throughout high school, my dream has been to join the
2 Army. I've wanted to join the Counter Intelligence Corps.
3 Correct?

4 A. Correct.

5 Q. And it says at the end of that paragraph, (reading):
6 I plan to enlist within the next few weeks. Correct?

7 MR. LAPHAM: Your Honor, I'm going to object at this
8 point. If he is showing it to have her refresh her
9 recollection, that's proper.

10 THE COURT: True. Can she just read it and go
11 through it first?

12 MR. REICHEL: I'll ask her to read the first
13 paragraph there where it begins "hi all."

14 THE WITNESS: Aloud?

15 THE COURT: No. Read it to yourself first to refresh
16 your recollection, then we'll go from there.

17 THE WITNESS: (Witness reviewing document.) All
18 right.

19 Q. BY MR. REICHEL: Let me ask you, does that refresh
20 your recollection?

21 A. It does.

22 Q. Do you recall writing that?

23 A. I do.

24 Q. Okay. And what you put in there was your true
25 thoughts at the time, correct?

1 A. Correct.

2 Q. And that would be your dreams and your mission at
3 that time, correct?

4 A. Correct.

5 Q. Which was to enlist in the Army in the next few
6 weeks, correct?

7 A. Correct.

8 Q. And, like we said, your dream had been to be in
9 counter-intelligence?

10 A. Correct.

11 Q. The next two paragraphs down -- or actually the next
12 paragraph begins "today I read"?

13 A. (Reading): Today I read an article which really
14 disturbed me.

15 Q. Yes. Do you recall writing that?

16 A. I do.

17 Q. And it was about -- you wrote about a man who claimed
18 to be a senior NCO in the Army, and he went on to -- and these
19 are your words, correct -- trash the MI and CI Corps of the
20 Army?

21 A. The CI Corps of the Army?

22 Q. Yes.

23 A. Yes.

24 Q. And then I'd ask you to just go down to the bottom of
25 that passage, which begins on the top of page three?

1 A. Okay.

2 Q. Do you see where it says, "I can't comment on it"?

3 A. Yes.

4 Q. And it says -- the last sentence of that paragraph
5 is, (reading): Please help me out here, as I'm a little shaken
6 by this and wondering if it's true. Is that correct?

7 A. Correct.

8 Q. And you wrote that?

9 A. Correct.

10 Q. Thank you. Okay. I'm not going to ask you anymore
11 questions about that e-mail.

12 A. Okay.

13 Q. You can close it up and get it so it doesn't distract
14 either one of us. Thank you.

15 Now, you first did undercover work on your own,
16 correct?

17 Let me ask you this. The first time you went and did
18 anything which we can call undercover is when you went to the
19 FTAA protest in 2003?

20 A. Correct. I was writing a school report.

21 Q. And there was a college professor that you wanted to,
22 let's say, please or make happy because you were inspired by
23 that person?

24 A. Correct.

25 Q. And that was a political protest, the FTAA in 2003

1 was a political protest?

2 A. Yes, it was.

3 Q. Okay. And did you decide on your own to do that, or
4 did he or she suggest that?

5 A. I decided on my own.

6 Q. And you knew that you were going to have to assume a
7 role to be successful in that work, correct?

8 A. Correct.

9 Q. Okay. I mean, you couldn't just walk in dressed like
10 I am or you are or the Court, for that matter, and try to get
11 inside of these protestors, correct?

12 A. Correct.

13 Q. Now, this was in -- would this be November of '03, or
14 when was it?

15 A. This was November of '03.

16 Q. And it was in Miami?

17 A. Yes.

18 Q. And that actual protest resulted in some violence
19 between law enforcement and protestors, correct?

20 A. There was some violence, yes.

21 Q. Well, after the protest, did you pay attention to it
22 in the newspapers of the results of the protest and so forth?

23 A. For a short while, yes.

24 Q. But you're familiar with the fact that there was
25 quite a bit of press about the violence and the clash between

1 protesters and law enforcement?

2 A. Yes.

3 Q. So, now, it didn't go well, let's say, for the City
4 at that point because of this big -- the protest got out of
5 hand, correct?

6 A. I thought the City handled it very well.

7 Q. Okay. But there was, like I said, there was violence
8 that wasn't planned out in advance at least by law enforcement,
9 correct?

10 A. No.

11 Q. Now, you went -- the first time you went to get
12 inside on this protest, to meet the protestors, do you remember
13 that?

14 A. It was the night before, yes.

15 Q. And the night before is kind of like a general
16 planning meeting that they have, correct?

17 A. Correct.

18 Q. Okay. And that's when they're going to plan what
19 they are going to do the next couple of days and so forth?

20 A. Correct.

21 Q. And at that point you weren't really actually one of
22 the protestors, right?

23 A. Not at all.

24 Q. So my point is you kind of had to sneak in, so to
25 speak?

1 A. I was writing my report, and I was in that role.

2 Q. So you would have to sneak in, correct?

3 A. Correct.

4 Q. Now, that first night you actually didn't make it in,
5 correct?

6 A. That afternoon I did not make it in, correct.

7 Q. And that's because the dress wasn't appropriate,
8 correct?

9 A. Correct.

10 Q. So you hadn't fooled them, right?

11 A. Correct.

12 Q. So when you left, did you decide to just abandon the
13 complete endeavor?

14 A. No. That afternoon I had been interested and
15 intrigued, and I decided to try and augment my appearance so I
16 could go in and try and learn a little bit more.

17 Q. So when you left, you realized I've got to do better
18 to deceive these people, correct?

19 A. There wasn't an element of deception at that time.

20 Q. But they had sent you out, correct? Well, here's my
21 point, why wasn't that deception?

22 A. My goal and intent at that time was not to deceive
23 them. My goal was more a anthropological sort of observation
24 from within.

25 Q. Did you tell them your true name, and that you were a

1 college student hoping to do a project on it?

2 A. I did tell them that I was a college student. I did
3 not reveal my true name, nor did I reveal that I was writing a
4 report.

5 Q. You gave them a different name, correct?

6 A. At the time I don't believe I actually gave a name.

7 Q. Did you give them a profession or something that you
8 were a medic or something like that?

9 A. At the time, no.

10 Q. So there was no real deception that night -- that
11 afternoon when you didn't get in, is that what you are saying?

12 A. No, there was no deception.

13 Q. In just didn't work out?

14 A. It just didn't work out.

15 Q. So as a result, you changed some things, correct?

16 A. Correct.

17 Q. Which would be your appearance?

18 A. Correct.

19 Q. And when you went back in, you were then accepted,
20 right?

21 A. Correct.

22 Q. Okay. And did you -- they ask you your name when you
23 got accepted? Yes or no? How about that. Did they ask you
24 your name when you got accepted?

25 A. No.

1 Q. That second day when you got accepted did you at any
2 time introduce yourself and give them your name?

3 A. I don't believe so.

4 Q. So you were just nameless?

5 A. Yes.

6 Q. Okay. Did you tell them that you had a certain
7 talent or training or skill like a medic or anything?

8 A. At that time, no.

9 Q. Did you lead them to believe that you were a
10 protestor as well?

11 A. That night? No.

12 Q. Yeah, when you got accepted?

13 A. When I got accepted, no.

14 Q. So you had been thrown out or not allowed in one day,
15 the next day you were allowed in, and all you had done is
16 changed your appearance?

17 A. I would like to explain the circumstances around
18 which I was, quote, allowed back in.

19 Q. Let me ask you some questions about that, how is
20 that?

21 A. Okay.

22 Q. Now there must have been some circumstances that
23 allowed you to get back in, right?

24 A. Yes.

25 Q. Did those circumstances involve you telling them your

1 true name?

2 A. No.

3 Q. Did those circumstances involve you dressing the same
4 way as you did the day before?

5 A. No.

6 Q. Did those circumstances include you telling them you
7 were a college student and you were going to write a paper on
8 this?

9 A. I had told them I was a college student. I did not
10 tell them I would write a paper.

11 Q. What -- what was the key factor why they allowed you
12 back, why did they let you in the next day?

13 A. Because it was a general meeting, an open meeting,
14 and everyone who was interested was invited in.

15 Q. Did any of them recognize you from the day before?

16 A. They did not.

17 Q. So you couldn't get in the second day to the more --
18 the second day was a bigger meeting, was a general meeting?

19 A. Yes, it was.

20 Q. Okay. But you did try to change things so that you
21 would be approved in, correct?

22 A. Correct.

23 Q. That was your goal?

24 A. Yes.

25 Q. Okay. And it worked, correct?

1 A. It did.

2 Q. Okay. Now, after that, you had the college class,
3 and in the college class you got a very good grade on the
4 report, correct?

5 A. There was actually no grade on it.

6 Q. Okay. Was it approved -- was it received well by the
7 college professor?

8 A. He was very impressed, yes.

9 Q. Okay. And the other students were impressed, right?

10 A. Yes.

11 Q. And you were proud of the work you did, correct?

12 A. Correct.

13 Q. And it was a report you had to write down?

14 A. Yes.

15 Q. And did you take some notes right afterwards and do
16 the whole outline and prepare the typical college report?

17 A. Actually, I'm a pretty bad report writer. I just sit
18 down and do stream of consciousness.

19 Q. Okay. And you still did real well?

20 A. I did.

21 Q. And did you present it to the whole class?

22 A. I did.

23 Q. And you received accolades from a lot of people in
24 the class?

25 A. Most of them were surprised at what I had done, and

1 they wouldn't do the same thing they said.

2 Q. Right. Were they surprised that you were able to
3 infiltrate and get inside and do that?

4 A. No. Because I did not use those words.

5 Q. Okay. Were they surprised that you had kind of
6 concealed what you were really doing?

7 A. They were surprised that I had gone down there to
8 observe what the protestors were doing.

9 Q. And then after that, there was a law enforcement
10 officer, as you told us, who approached you and said, I'm very
11 intrigued by this?

12 A. Yes.

13 Q. And the next day he went to the -- was it the Miami
14 Police Department?

15 A. Yes.

16 Q. Let me ask you to go fast forward for a minute.
17 Yesterday you told us about a meeting with the FBI which is in
18 November of 2005 here in Sacramento?

19 A. Yes.

20 Q. And that was before you actually went to the McDavid
21 family home just before Thanksgiving?

22 A. Correct.

23 Q. And you sat down with the FBI?

24 A. Correct.

25 Q. And I think it was Mr. Nasson Walker was there?

1 A. Correct.

2 Q. Was Mr. Torres from Philadelphia there?

3 A. Yes, he was.

4 Q. And they tape recorded -- did they tape record that
5 interview?

6 A. The interview? Between the FBI? No.

7 Q. Okay. Did they make a report that they gave to you
8 of that meeting?

9 A. Of the meeting between the three of us?

10 Q. Yes.

11 A. That I read about of our report?

12 Q. Well, let me ask you, you met with them, right?

13 A. Yes.

14 Q. And they gave you some instructions on things to do
15 when you went to the McDavid home, right?

16 A. Correct.

17 Q. And it related to how to do this investigation which
18 -- by November of '05, right?

19 A. Correct.

20 Q. That's what you told us yesterday?

21 A. Correct.

22 Q. And these were, like, important instructions they had
23 given you, right?

24 A. Correct.

25 Q. You felt they were important?

1 A. Yes.

2 Q. They felt they were important?

3 A. Yes.

4 Q. And they didn't say, can we tape record this?

5 A. No.

6 Q. Okay. Did they take notes and -- while you were
7 there?

8 A. Regarding the instructions given to me?

9 Q. Yes.

10 A. No.

11 Q. Okay. Did you take notes of the instructions?

12 A. No.

13 Q. Okay. Do you recall yesterday that they had told you
14 -- you told us that they had told you at that time a variety of
15 things, right?

16 A. Correct.

17 Q. Specifically about how to perform the undercover
18 investigation certain ways?

19 A. Correct.

20 Q. Specifically, don't be a leader?

21 A. Correct.

22 Q. Don't volunteer instructions, I believe?

23 A. Correct.

24 Q. Don't give instructions?

25 A. Correct.

1 Q. And to just kind of be a participant like?

2 A. Correct.

3 Q. And not to push or cajole or, your know, harass
4 someone, correct?

5 A. Correct.

6 Q. So no pushing. And in other words, they didn't want
7 you to be the manufacturer of the activity that was going on,
8 right?

9 A. Correct.

10 Q. They didn't want you to be the person pushing people
11 to do things, right?

12 A. Correct.

13 Q. Okay. Now, going back to when you met with the Miami
14 Police Department, it's about December of '03, roughly?

15 A. Late November, early December '03, correct.

16 Q. Okay. And they said would you mind doing -- would
17 you do some work for us?

18 A. Correct.

19 Q. And that's really -- I mean, fair to say that's your
20 first official working, right?

21 A. That was the first time they approached me. I
22 actually didn't start working for them until after the new
23 year.

24 Q. I apologize.

25 A. But you're correct.

1 Q. It was going to be your first official job for them?

2 A. Correct.

3 Q. And the FBI was involved in that?

4 A. Yes.

5 Q. And they gave you several -- they gave you, I think,
6 three things to look into, which would be the RNC, which is the
7 Republican National Convention?

8 A. Correct.

9 Q. And that was political protestors who were going to
10 go to New York and protest at the Republican National
11 Convention?

12 A. My job was not to look at the political protestors.

13 Q. Okay. Your job was to -- well you agreed at the time
14 -- or you at least understood, when they were talking to you,
15 that the Republican National Convention was going to be in New
16 York, right?

17 A. Correct.

18 Q. And there was going to be a gathering of protestors
19 for that, correct?

20 A. Correct.

21 Q. And they wanted you to identify some certain segments
22 of that to go and get undercover with, correct?

23 A. Certain violent segments that might engage in illegal
24 action, yes.

25 Q. A certain violent segment that would engage in

1 illegal actions, okay?

2 A. Correct.

3 Q. And had you had any law enforcement training at that
4 time?

5 A. I did not.

6 Q. And as you sit here today, have you been to the FBI
7 Academy in Quantico, Virginia or anything?

8 A. No.

9 Q. Would you like to go?

10 A. To the FBI Academy in Quantico?

11 Q. Yes.

12 A. Probably not.

13 Q. As you sit here today, have you had any formal law
14 enforcement training with just local police forces?

15 A. No.

16 Q. Any state agencies that do law enforcement, have you
17 gotten any training from them?

18 A. No.

19 Q. So it's fair to say you are self-taught, so to speak?

20 A. Correct.

21 Q. Now, when you spoke with the Miami FBI in '03, we
22 talked about the Republican National Convention, correct?

23 A. Correct.

24 Q. And you were also going to go to the Democratic
25 National Convention, right?

1 A. Correct.

2 Q. And, again, there were going to be political
3 protestors who were going to protest the Democratic National
4 Convention in Boston, right?

5 A. Correct.

6 Q. And was the FBI with the Miami PD back in '03 asking
7 you to do this?

8 A. Yes, they were.

9 Q. So the FBI had asked you to, for their benefit, go to
10 the Republican National Convention and the Democratic National
11 Convention, right?

12 A. Correct.

13 Q. And you agree with me that there were going to be
14 political protestors there, correct?

15 A. Correct.

16 Q. And you were going to be an undercover FBI agent at
17 those events, right?

18 A. No. I was not going to be an undercover FBI agent.

19 Q. Okay. The FBI asked you to go there at their behest,
20 right?

21 A. Yes.

22 Q. Okay. And you went, right?

23 A. Yes.

24 Q. Okay. And you know "at their behest" means they
25 wanted you to do something there that benefits them and Anna,

1 correct?

2 A. I understand what "at your behest" means. My concern
3 was with your word "agent." I was not an agent.

4 Q. Okay. That's fine. I'm not going to say you were an
5 undercover agent at that time.

6 Now, you weren't an FBI agent either, though?

7 A. No. I was not an FBI agent.

8 Q. So they wanted you to go there. And what I'm getting
9 at is the goals for that or the mission.

10 A. Okay.

11 Q. The mission when you were freelancing, or whatever
12 the connection was, was to go there and to, A, keep your eyes
13 open for problems or what you want to report back on, right?

14 A. For illegal activity, yes.

15 Q. But keep your eyes open?

16 A. Correct.

17 Q. Chat it up and keep your ears open, correct?

18 A. Correct.

19 Q. And to remember what you're seeing?

20 A. Correct.

21 Q. Because otherwise you would be no good to be in there
22 if you are not doing these things, right?

23 A. Correct.

24 Q. Okay. Simple. They wanted you to be someone in
25 there who could observe everything, right?

1 A. Correct.

2 Q. And the third thing they wanted you to go to was the
3 G8 Summit in Georgia?

4 A. Correct.

5 Q. And you agreed do to all three of those things,
6 right?

7 A. Yes, I did.

8 Q. And did they tell you to keep a log of everything?

9 A. No, they did not.

10 Q. Did they tell you to report back real-time, like,
11 live as things were going on to them?

12 A. Yes.

13 Q. Okay. And you agreed to do this over your cell
14 phone?

15 A. Correct.

16 Q. So you first went to -- the G8 Summit in Georgia, is
17 that your first one that you went in?

18 A. Yes, it is.

19 Q. Okay. And when you went to the G8 Summit in Georgia,
20 there were a good number of people there?

21 A. No. There weren't very many people there.

22 Q. How many would you say were protestors?

23 A. At max there were 30.

24 Q. Okay. And when you got there, did you tell them that
25 you had just recently met with the FBI and you were there to

1 observe them?

2 A. No.

3 Q. Okay. My point is you went undercover?

4 A. At that time I did, yes.

5 Q. And did you -- it's fair to say no one going
6 undercover, I hope you agree with me, wants to be found out,
7 correct?

8 A. Correct.

9 (Interruption in proceedings.)

10 THE COURT: Make sure all cell phones are off.

11 Q. BY MR. REICHEL: Just like no one wants their cell
12 phone to go off in court, no one undercover wants to be found
13 out, correct?

14 A. Correct.

15 Q. Fair to say, that's basically number one goal, right?

16 A. Correct.

17 Q. In fact, whether you had the conversation with the
18 FBI or not, your thoughts were, look, number one is to not get
19 caught, forget reporting back on these people, don't get
20 identified, right?

21 A. Correct.

22 Q. So let's start with the G8 Summit. Did you put the
23 appropriate clothing on so you wouldn't get found out?

24 A. Yes, I did.

25 Q. Did you rehearse with yourself on who you were, what

1 your identity was going to be, and why you were there?

2 A. Yes.

3 Q. You had to do some -- you had to acquaint yourself
4 with what they were going to act like when you're there, so you
5 could look like them, right?

6 A. Correct.

7 Q. And you were prepared when you went there to Georgia,
8 right?

9 A. Yes.

10 Q. And you went and participated in this G8 Summit
11 protest?

12 A. Yes.

13 Q. Okay. And there was -- actually, you met Zach Jenson
14 there, correct?

15 A. Yes, I did.

16 Q. And there was a break-away march at that point?

17 A. Yes, there was.

18 Q. And those are something that are inherently arguably
19 dangerous, so to speak?

20 A. Yes.

21 Q. They are not approved by law enforcement, right?

22 A. Correct.

23 Q. And that increases the risk for, you know, violence?

24 A. Correct.

25 Q. Okay. And you witnessed all of that, right?

1 A. Yes, I did.

2 Q. And law enforcement take action when those
3 individuals did the break-away protest?

4 A. They allowed the break-away march to continue for
5 several miles before the marchers became tired, and as they
6 became tired, they began to allow them to fall off the march.

7 Q. And at the end of your work inside the G8 Summit, you
8 had not been found out by any of those protestors, right?

9 A. Correct.

10 Q. So successful, correct?

11 A. Correct.

12 Q. You had gone in and fooled them and then reported
13 back to the FBI, correct?

14 A. Correct.

15 Q. Okay. So that was successful?

16 A. Correct.

17 Q. Did you start feeling that you were getting pretty
18 good at this?

19 A. I was relieved that I had not been found out.

20 Q. And part of that is that you think it's probably
21 because I did a good job, right?

22 A. Correct.

23 Q. At fooling them, correct?

24 A. Correct.

25 Q. Now, you then went to -- did you then go to Des

1 Moines, or did you then go -- right after the G8 Summit in June
2 in Georgia, where did you go next?

3 A. To Boston.

4 Q. And that's the DNC?

5 A. Correct.

6 Q. And without going through this whole thing again, the
7 same thing happened, correct?

8 A. Correct.

9 Q. But there is a lot more protestors at the DNC in
10 Boston, right?

11 A. Correct.

12 Q. A large number?

13 A. Correct.

14 Q. Okay. And do you recall, you know, 10,000 or more?

15 A. No. Not that many.

16 Q. Okay. Sometimes the papers are wrong. How many did
17 it seem to be?

18 A. 1,000 maybe -- maybe up to 2,000, but definitely not
19 10.

20 Q. And before you go to Boston, you, again, prepare, I'm
21 sure, to get your story straight, so that when you go in there
22 you're successful, right?

23 A. Correct.

24 Q. And the story was a certain name, right?

25 A. Correct.

1 Q. And it was Anna by then, correct?

2 A. Yes, it was.

3 Q. You had adopted the persona of a medic at that point,
4 correct?

5 A. At that point I had.

6 Q. And that's because these protestors need medics?

7 A. Yes.

8 Q. They like to have medics there?

9 A. Yes, they do.

10 Q. Medics carry water, right?

11 A. Yes.

12 Q. And render aid to somebody if they overheat in the
13 summer, so forth?

14 A. Correct.

15 Q. And that's kind of common, actually. Did that happen
16 in Georgia?

17 A. I don't recall that happening in Georgia.

18 Q. But they obviously are going to be somebody that is
19 somewhat of a responsible role there?

20 A. Correct.

21 Q. Okay. And the people are going to come to -- if they
22 need aid, they would come to the medic, right?

23 A. Correct.

24 Q. And you had actually had no formal medical training
25 at that point, right?

1 A. Correct.

2 Q. But you were going to play off as a medic, right?
3 Correct?

4 A. I wore the attire of a street medic. However, if
5 someone came to me for aid, I always passed them off to someone
6 else.

7 Q. So if someone -- well, I understand. My point is you
8 had no real medical training?

9 A. Correct.

10 Q. But you told them, look, the role I can play is a
11 medic, you told the protestors that, right?

12 A. Correct. I wore the attire of a medic, and they
13 believed from the attire what they wished to believe.

14 Q. But there had to be conversations that you said you
15 were a medic, right?

16 A. Correct.

17 Q. Okay. And that just wasn't true, right?

18 A. No, it was not.

19 Q. That was a lie, right?

20 A. Yes, it was.

21 Q. Now, and the attire was a lie, right?

22 A. Yes, it was.

23 Q. And, of course, you know, I won't do this through
24 every protest, but you didn't say, nice to meet you, I'm
25 actually working for the FBI?

1 A. No, I did not.

2 Q. Okay. Now, that was successful in that you were not
3 found out, right?

4 A. Correct.

5 Q. And then the next was Des Moines, right?

6 A. Correct.

7 Q. In fact, that's when you first met Mr. McDavid,
8 correct?

9 A. Yes, it is.

10 Q. You didn't know anything of him at that time,
11 correct?

12 A. No, I did not.

13 Q. Okay. And by the time the two of you had this
14 occasion to meet, you were still on that same role, right?

15 A. Correct.

16 Q. And my point is you had been successful at the FTAA
17 in '03, right?

18 A. Correct.

19 Q. And you had been successful at the G8 Summit in June
20 of '04?

21 A. Correct.

22 Q. And you had been successful at the DNC in Boston,
23 right?

24 A. Correct.

25 Q. And now you were going to Des Moines?

1 A. Correct.

2 Q. And there is no way you wanted to be found out at Des
3 Moines either, right?

4 A. Correct.

5 Q. So you're still going to have the same exact persona?

6 A. Correct.

7 Q. Okay. And it's going to involve a whole lot of
8 lying, right?

9 A. Correct.

10 Q. Okay. And at that point, Mr. McDavid didn't know
11 your true identification, right?

12 A. Correct.

13 Q. Okay. And you got there, and there was several other
14 people there, right?

15 A. Yes.

16 Q. And, you know, we don't have to go through it all
17 again, and I won't. I'll just say it was successful again when
18 you left there, right?

19 A. Yes, it was.

20 Q. And when we say success, means you didn't get found
21 out, you observed, and you were able to report back to the FBI
22 and so forth?

23 A. Correct.

24 Q. And at this protest you reported to the FBI after
25 meeting Mr. McDavid, right?

1 A. Correct.

2 Q. And you spent -- he and a friend picked you up on a
3 road or something?

4 A. Yes, they did.

5 Q. And they drove you in their car -- or someone's car?

6 A. In one of their cars, yes.

7 Q. Okay. And then you came in to the Des Moines
8 CrimethInc, and you spent like three days with Mr. McDavid?

9 A. Correct.

10 Q. Okay. And was Zach Jenson there also?

11 A. I believe he was.

12 Q. And you fooled him as well, right?

13 A. Correct.

14 Q. Now, the first night, did you sleep upstairs in some
15 farmhouse?

16 A. Yes. The whole group stayed in one house.

17 Q. All right. And Mr. McDavid slept in that house?

18 A. Yes, he did.

19 Q. And you slept upstairs?

20 A. Yes.

21 Q. And Mr. McDavid slept upstairs?

22 A. I believe he did.

23 Q. Okay. And you both slept right next to each other,
24 correct?

25 A. I can't recall.

1 Q. Is there -- do you have any explanation why you
2 wouldn't recall that?

3 A. There were 15 people sleeping in the house. I don't
4 recall the exact sleeping arrangements of everyone.

5 Q. Okay. Is it fair to say you buddied up with Mr.
6 McDavid those two or three days?

7 A. He was someone I viewed as non-threatening.

8 Q. Okay. Well, in that situation isn't that somebody
9 that would be good for you to buddy up with at least?

10 A. Correct.

11 Q. You don't want to pick the biggest, bad'est wolf
12 there and stand next to them, right?

13 A. Correct.

14 Q. You want to go towards something that looks a little
15 gentler, right?

16 A. Correct.

17 Q. And, in fact, you reported back to the FBI after Des
18 Moines that he was inconsequential to the FBI, correct?

19 A. Correct.

20 Q. He was not a person of concern?

21 A. Correct.

22 Q. Not of interest?

23 A. At that time, no.

24 Q. But you still reported back to the FBI about him,
25 correct?

1 A. Correct.

2 Q. Okay. And how long were you there in Des Moines?

3 A. Probably no more than five days.

4 Q. Okay. And was there anybody else that you saw as
5 non-threatening that you went and buddied up with that you
6 recall there today?

7 A. Yes, actually.

8 Q. Okay. Who was that?

9 A. That would be Jenny.

10 Q. Okay. Now, when you buddied up with Mr. McDavid, you
11 spent at least three or four days with him?

12 A. With the group, yes.

13 Q. Okay. And you didn't sit silent, right?

14 A. No.

15 Q. Okay. First of all, I think if you sat silent,
16 wouldn't you be found out, it would be suspicious?

17 A. It would be somewhat suspicious.

18 Q. Well, in the role, when somebody is talking about
19 something, you can't be found out, right? When they are
20 talking about these things, at Des Moines especially, you don't
21 want to be found out, so you're going to say things which are
22 responsive to what they say, right?

23 A. Correct.

24 Q. So in the role you are going to say things back to
25 them to make them think this person is okay, it's not an FBI

1 agent, right?

2 A. Correct.

3 Q. Because, well, you think people would speak freely if
4 they thought somebody was an FBI agent?

5 A. No.

6 Q. Okay. Now, like we said, you weren't found out,
7 right, after Des Moines?

8 A. Correct.

9 Q. So you must have at least participated in some of
10 these discussions with Mr. McDavid in Des Moines?

11 A. I did.

12 Q. I mean, you know, if you thought he was a nice guy
13 and you kind of buddied up, you had a lot of discussions over
14 three days, right?

15 A. The discussions were relatively easy to engage in.
16 Do you remember the topic?

17 Q. Well, I know. Do you remember some of them?

18 A. Yes, I do.

19 Q. Let me ask you this. Was there any time where
20 Mr. McDavid said something which when you were not in that role
21 you would not have agreed with?

22 A. I can't recall specifics like that.

23 Q. But there were topics that if you weren't in that
24 role you would not have agreed with, right?

25 A. Repeat the question, please?

1 Q. I'm going to withdraw the question.

2 Okay. Now, after the G8 -- excuse me -- after Des
3 Moines, you exchanged information with Mr. McDavid, right?

4 A. After Des Moines?

5 Q. Yeah, like contact information is what I'm saying.

6 A. E-mail contact information, correct.

7 Q. And that you guys were going to stay in contact,
8 right?

9 A. Correct.

10 Q. Okay. And did you have any address you gave him that
11 he could write letters to or anything?

12 A. I don't believe so.

13 Q. Okay. And did you agree that you were going to --
14 well Des Moines is kind of a staging ground for the protest in
15 the RNC in New York, right?

16 A. A small group of protestors intended it to be so, but
17 it was not a main staging ground.

18 Q. But the people in Des Moines were going to head out
19 to --

20 A. Correct.

21 Q. -- to New York for the RNC demonstration --

22 A. Correct.

23 Q. -- and protest?

24 And Mr. McDavid said he was going to go there?

25 A. Yes, he did.

1 Q. And you said you were going to go there?

2 A. Yes.

3 Q. And you said you would meet up there?

4 A. Correct.

5 Q. And that was going to be when?

6 A. That was going to be later that August.

7 Q. Okay. And then, in fact, he showed up in New York,
8 and you showed up in New York?

9 A. Yes.

10 Q. Did you stay in the same house?

11 A. In New York?

12 Q. Yeah.

13 A. No.

14 Q. Did you see Zach Jenson there?

15 A. In New York?

16 Q. Yeah.

17 A. Yes.

18 Q. And did you see Lauren Weiner there?

19 A. No.

20 Q. Okay. And in New York at the RNC protest you were in
21 the sale role, right?

22 A. Correct.

23 Q. So, again, you've -- you're a medic, you're Anna,
24 dressed a certain way?

25 A. Correct.

1 Q. And you don't want to be found out, right?

2 A. Correct.

3 Q. And you talked to Mr. McDavid there, right?

4 A. Correct.

5 Q. And you remembered you found him to be somebody who
6 wasn't threatening before, right?

7 A. Correct.

8 Q. And how much time did you spend with him there, the
9 same amount as in Des Moines or less?

10 A. At the RNC?

11 Q. Yes.

12 A. Approximately the same amount of time or more.

13 Q. Okay. And after that was over, you did not contact
14 the FBI and say he was somebody of interest now? And when I
15 say "over," the RNC was over.

16 A. I can answer that question, but I need to expand
17 because it goes into details of the RNC.

18 Q. Well, let me ask you, did you find somebody -- did
19 you find McDavid somebody at that time that you needed to
20 contact the FBI and tell them this guy is somebody we need to
21 follow?

22 A. During the RNC he had made comments about engaging in
23 some sort of illegal protest, and at that time I was able to
24 contact the FBI and list him as someone who would engage in
25 illegal protest activity after the RNC. I did not say he

1 needed to be followed.

2 Q. Now, after the RNC, you were going -- where were you
3 going to go next? Was there another protest coming up?

4 A. I was going to go home.

5 Q. And Mr. McDavid told you he was going to go home,
6 too?

7 A. Correct.

8 Q. So the two of you kind of parted separate ways right
9 after the RNC protest, right?

10 A. Correct.

11 Q. And what was the date of that?

12 A. That would be late August 2004.

13 Q. Okay. Is it fair to say that the next time you did
14 something -- or well at least you definitely went undercover at
15 the Organization of American States protest in Fort Lauderdale
16 in June of 2005, right?

17 A. Correct.

18 Q. You also went -- I have to back up. You went to the
19 inauguration for President Bush in January of '05?

20 A. Correct.

21 Q. In Washington D.C.?

22 A. Correct.

23 Q. And at that time it was the same role, right?

24 A. Correct.

25 Q. It was for the Secret Service and the FBI?

1 A. Correct.

2 Q. And you met with them beforehand?

3 A. Correct.

4 Q. And this was -- there was going to be protestors at
5 the inauguration of the President, right?

6 A. Correct.

7 Q. And you again were going to work at the behest of the
8 FBI for that?

9 A. Correct.

10 Q. And you didn't want to get found out?

11 A. Correct.

12 Q. So you again participated in all -- the whole
13 charade, right?

14 A. Correct.

15 Q. And kind of like a chameleon, so to speak?

16 A. Correct.

17 Q. You wake up in the morning, and you're really
18 yourself when you wake up, but within a nanosecond you got to
19 get back into your role, right?

20 A. That is what being undercover is all about.

21 Q. You don't stay in the undercover role when you are
22 dreaming at night, do you?

23 A. No.

24 Q. Did you come to a point where you were doing this so
25 much that that happened?

1 A. No.

2 Q. But, you know, until you go to bed at night, it's
3 fair to say you're still in that role -- until you go to sleep,
4 when you are conscious, you are in that role when you are in
5 this environment, right?

6 A. The outward appearance, yes. My mind was still my
7 own.

8 Q. I understand. I understand. Now, do you recall that
9 you told us yesterday that you really didn't have any contact
10 or thoughts about Mr. McDavid until June 19th -- is that when
11 it is -- where we go to the biodiversity in Philadelphia which
12 is June 19th of 2005?

13 A. Correct.

14 Q. Okay. And you told us that after the RNC, which was
15 in August, you didn't think -- Mr. McDavid, so to speak, got a
16 clean bill of health from you after that for them watching him,
17 correct?

18 A. Correct.

19 Q. Okay. Now, why would you have written, if you did,
20 an e-mail to someone in May saying, you know, where is McDavid
21 and Ollie, I'm trying to get ahold of them?

22 A. I was attempting to gain further access into the
23 protest groups and the groups that I had previous contacts
24 with. I had not been undercover within those groups for a
25 lengthy period of time. And I was attempting to use the

1 contacts that I had once known to gain further access to the
2 groups.

3 Q. Just a question about that. Thank you for that
4 answer.

5 Are you familiar with the gentleman by the name of
6 Cal Brower (phonetic)?

7 A. Does he live in San Antonio?

8 Q. Yes, he does.

9 A. Then, yes, I am.

10 MR. REICHEL: Your Honor, with your permission I
11 would like to approach and show the witness what's previously
12 been identified as Defendant's Exhibit A-2.

13 THE COURT: You may.

14 MR. REICHEL: Thank you very much.

15 I'm just giving it to you, so I'm going to have to
16 ask you to just take a look at it for a minute.

17 THE WITNESS: (Witness reviewing document.)

18 Q. BY MR. REICHEL: Do you recognize that?

19 A. I do.

20 Q. Okay. Do you recall sending that e-mail?

21 A. I do.

22 Q. Okay. Let me ask you about the first -- the first
23 paragraph, which is the Monday, May 9th of '05 entry in the
24 e-mail.

25 A. Okay.

1 Q. And it says, (reading): Hey, Cal, I got your e-mail
2 from Kelly, I hope you don't mind. Right?

3 A. Correct.

4 Q. So you had e-mailed Cal, and he hadn't e-mailed you,
5 you got his on your own, right?

6 A. Correct.

7 Q. I'm just saying it's not a response, right?

8 A. Correct.

9 Q. And say things in there about, (reading): Been
10 trying to track you down for a while, the Halliburton
11 Shareholders meeting is coming up soon in Houston.

12 A. Correct.

13 Q. And you put in there, (reading): Anything, quotation
14 marks, fun, close quotation marks, planned?

15 A. Correct.

16 Q. (Reading): I'd love to have a party if you know what
17 I mean.

18 A. Correct.

19 Q. Okay. What we were talking about a minute ago is you
20 were trying to -- you said you were trying to get inside the
21 community, so to speak?

22 A. Correct.

23 Q. So it's kind of like blast e-mails or blast faxes,
24 you're trying to shotgun and at least get inside of as many as
25 you can and pick what you need from them, right?

1 A. Correct.

2 Q. Okay. Because we're going to get to in a minute
3 where you ask Cal about Ollie and D, right?

4 A. Correct.

5 Q. And Ollie and D would be Zach Jenson?

6 A. Zach Jenson was Ollie.

7 Q. And Eric McDavid would be D in that e-mail?

8 A. Correct.

9 Q. And you had last seen him physically, I think, at the
10 RNC?

11 A. Correct.

12 Q. And this was May of '05?

13 A. Correct.

14 Q. And you -- after the inauguration in January of '05,
15 you were going to go home?

16 A. Correct.

17 Q. But what I'm asking you to explain why this isn't
18 peculiar is that in early May of '05 you're asking Cal if he is
19 going to go Halliburton, correct?

20 A. Correct.

21 Q. And I'd ask you to look down to his response to you.

22 A. (Witness reviewing document.)

23 Q. And he states in there he probably can't go to some
24 of these upcoming protests that you spoke about, right?

25 A. Correct.

1 Q. In fact, you told him the rest of the summer the OAS,
2 the dates are June 5 to 9, the Biotech is in Philly, it's June
3 18, then there's the G8 in Scotland this year.

4 A. Correct.

5 Q. And in your first paragraph, your first e-mail, you
6 say to him, (reading): You gonna come play with me then,
7 question mark. Right?

8 A. In which paragraph?

9 Q. The first e-mail to him.

10 A. Which paragraph though?

11 Q. The last paragraph above "hope to see you again
12 soon"?

13 A. Okay. Okay.

14 Q. You asked him are you going to come play with me
15 then?

16 A. Correct.

17 Q. And then you said to him, (reading): D and Ollie are
18 traveling around the country right now and will be attending
19 some of this as well. Correct?

20 A. Correct.

21 Q. So you're telling him in an e-mail on May 9th that D
22 and Ollie are traveling around the country, and they are
23 probably going to attend some of these that you just
24 identified, right?

25 A. Correct.

1 Q. And you had parted ways with Mr. McDavid earlier,
2 right?

3 A. In physical contact, correct.

4 Q. Now, did Mr. McDavid from when you last saw him after
5 the RNC, which is August of '04, and this is May of 2005, in
6 that timeframe did he write you what I'm just going to call
7 love letters?

8 A. We had sporadic e-mail contact, and I believe in some
9 of those letters he gave slight indication that he might have
10 been interested in me.

11 Q. He was gushing for you, correct?

12 A. I don't recall that.

13 Q. Okay. Did you -- do you remember --

14 A. I don't recall of that at that time, that time
15 period.

16 Q. Okay. But what I'm getting at is by May of '05 when
17 you are talking to Cal on the e-mail?

18 A. Uh-huh.

19 Q. You're referencing Mr. McDavid?

20 A. Yes, I am.

21 Q. And my question is in August until May of '05 he
22 wrote you letters which clearly showed his interest
23 romantically in you, right?

24 A. I don't recall those letters.

25 Q. Okay. Do you remember telling Lauren Weiner in

1 January of 2006 that Eric McDavid had written you three love
2 letters to be exact?

3 A. In January of 2006 I told her this?

4 Q. Yes.

5 A. Correct.

6 Q. And that's actually -- let me just ask you this, in
7 preparation for your testimony or just in preparation of this
8 case, you've listened to the undercover tapes that were made
9 when you were undercover in this case, right?

10 A. Correct.

11 Q. And those are some that we heard yesterday?

12 A. Correct.

13 Q. So -- and have you read the transcripts of most of
14 those?

15 A. Correct.

16 Q. So when I say there was a conversation with Lauren
17 Weiner -- between you and Lauren in January of 2006, and that
18 you said to her, you know, Eric wrote me three love letters to
19 be exact; do you recall saying that?

20 A. Yes.

21 Q. Okay. So he did at some point write you three love
22 letters?

23 A. Correct.

24 Q. Okay. Now, with regard to Cal in May of 2005 -- and
25 this is part of your contacting individuals, trying to get them

1 to come out and play, right?

2 A. This is part of my contacting individuals to try and
3 see where they were headed and what they were doing.

4 Q. Was this at the FBI's request?

5 A. Yes, it was.

6 Q. They had told you to try to contact to keep an eye on
7 all sorts of people?

8 A. In preparation to go undercover again at another
9 protest I was asked to recontact my old contacts and see what
10 they were planning.

11 Q. Even those that you -- well had you had any -- had
12 you reported back ever about Cal Brower to the FBI?

13 A. Yes.

14 Q. As a person of interest?

15 A. Cal Brower was at the G8, and he was one of the
16 individuals arrested.

17 Q. Okay. And so that was worth -- he was arrested for
18 the break-out march?

19 A. Yes.

20 Q. The break-out protest, so to speak?

21 A. Correct.

22 Q. Which they let them go and do that for a while,
23 right?

24 A. Correct.

25 Q. And so Cal's -- sum and substance of it is Cal broke

1 out of a protest line and went somewhere else, right?

2 A. Correct.

3 Q. And that was worthy of a phone call to the FBI?

4 A. They already knew about it. They had arrested him.

5 Q. Okay. But you talked to them about Cal Brower,
6 right?

7 A. They knew I had contact with him.

8 Q. Let me ask you this, I'm going to ask you to go to
9 what's marked as -- let's see, it's going to be the third page
10 in, ask you to take a look at that.

11 MR. LAPHAM: Counsel, which exhibit?

12 MR. REICHEL: This is still on A-2, and it's the
13 third page in, Mr. Lapham.

14 THE WITNESS: There are several e-mails here. Which
15 one would you like me to look at?

16 Q. BY MR. REICHEL: That's right. They are between you
17 and Cal?

18 A. Yes.

19 Q. And May 11th through the 16th of 2005?

20 A. Okay.

21 Q. And here's one, the second one down on May 11th, the
22 second one from the top is May 11th, and it's a reply to Cal,
23 and it's from you, right?

24 A. Correct.

25 Q. And it says if you decide --

1 MR. LAPHAM: Your Honor, can we give the witness a
2 chance to read the e-mails before she is asked questions?

3 MR. REICHEL: Yes.

4 THE COURT: Yes. Thank you.

5 MR. REICHEL: I'm sorry.

6 THE WITNESS: Thank you. (Witness reviewing
7 document.)

8 Q. BY MR. REICHEL: I'm sorry. Anna, do you see where
9 the May 11th entry from you to Cal, the first part says, "yeah,
10 he's crazy"?

11 A. I believe that's Cal to me.

12 Q. There we go. Well, if it is, it says, (reading):
13 Yeah, if you decide to go, come on out and hang out with me in
14 Austin?

15 A. Correct.

16 Q. And he lived in Austin at the time, you believe?

17 A. Correct.

18 Q. Okay. And below that is your reply to him, right?

19 A. Correct.

20 Q. And it says, (reading): Brutal, it will be a
21 reunion.

22 A. Correct.

23 Q. And that's in reference to attending the Halliburton
24 demonstration, right?

25 A. Correct.

1 Q. And that's the demonstration against the Halliburton
2 Shareholders meeting?

3 A. Correct.

4 Q. And it's somewhat of a political protest, so to
5 speak?

6 A. Economic protest. I don't think there's politics
7 involved in that.

8 Q. Right. You know what a die-in is, right?

9 A. Yes.

10 Q. And that's where the protestors go and lay on the
11 sidewalk and lay down and put -- I think it's red dye or paint
12 as if they've died?

13 A. Correct.

14 Q. And it's symbolic?

15 A. Correct.

16 Q. It means that whatever that corporation is doing is
17 killing people?

18 A. Correct.

19 Q. And it's -- sometimes they get arrested, sometimes
20 they don't?

21 A. Correct.

22 Q. And that's -- in active circles that's known as a
23 die-in?

24 A. Correct.

25 Q. As opposed to a sit-in?

1 A. Correct.

2 Q. Or a walk-in?

3 A. Correct.

4 Q. Now, you said something to Cal here, I want you to
5 verify. You said, (reading): Do you guys need anything?

6 A. Correct.

7 Q. You said, (reading): Supplies, paint, chains, nails,
8 pipe, anything, tar and feathers. Like I said, disposable
9 income so ask around, all your contacts, and it'd be safer to
10 bring it from the outside as well, so what are we gonna do?

11 A. Correct.

12 Q. You wrote that to Cal?

13 A. Yes, I did.

14 Q. And he replied back, (reading): Sounds great. He
15 says, red paint, red dye, white towel. And then he puts in
16 parentheses, for the horse cops.

17 A. Correct.

18 Q. And that's because the red paint and the red dye
19 would be for the die-in?

20 A. I can't say that.

21 Q. The white towel would be for when the horses come
22 when the protestors are laying on the floor, right?

23 A. I can't say that.

24 Q. It says, (reading): Basically just get ready to have
25 a good time, I'll ask the others and get back to you on whether

1 we need anything else. Right?

2 A. Correct.

3 Q. Okay. And so that was -- it was actually your
4 suggestion, at that point, right, about the paint, the chains,
5 the nails, the pipes, anything, tar and feathers, right?

6 A. That was not a suggestion. That was a question.

7 Q. Okay. That's fine. But it was an offer, right?

8 A. It was a question.

9 Q. Okay. But it was an offer to provide something,
10 right?

11 A. It was a question about what supplies they might
12 need.

13 Q. Okay. Now, you -- the next you're going to go to
14 after that would be -- the next you're going to appear at is
15 the Philadelphia biodiversity conference?

16 A. Correct.

17 Q. Okay. The protest there?

18 A. Correct.

19 Q. And that's June 19th of 2005?

20 A. Correct.

21 Q. And you met Mr. McDavid there?

22 A. Yes.

23 Q. And at some point you actually met on Lauren Weiner's
24 balcony, right?

25 A. Correct.

1 Q. And that was you, Lauren Weiner, Zachary Jenson and
2 Eric McDavid, right?

3 A. No, it was not.

4 Q. Okay. It was -- let me take a guess -- it was you,
5 Eric McDavid and Zach Jenson?

6 A. No.

7 Q. Twenty questions. How about you tell me who was
8 there at the balcony at Lauren Weiner's?

9 A. Myself and Eric McDavid.

10 Q. And just Eric McDavid and you?

11 A. Correct.

12 Q. And you had a discussion on the balcony?

13 A. Correct.

14 Q. Right. And after that you remember he sent you an
15 e-mail?

16 A. He sent me several e-mails.

17 Q. Okay. But he definitely sent you one on October 26th
18 of 2005; do you recall that?

19 A. He sent me several e-mails. I can't recall a
20 specific date and draw up the text right away.

21 Q. Did he use the -- he used the e-mail handle by
22 October of 2005 as Sal Vasques, right?

23 A. Yes, he did.

24 Q. Swashbuckler?

25 A. Correct.

1 MR. REICHEL: Okay. And I'm going to show you what's
2 marked as Defendant's Exhibit D-5, with the Court's permission
3 may I approach, Your Honor?

4 THE COURT: You may.

5 MR. REICHEL: Thank you. Mr. Lapham previously has a
6 copy.

7 THE WITNESS: Thank you. (Witness reviewing
8 document.)

9 MR. REICHEL: I would like to put it on that, but
10 D-5.

11 THE WITNESS: Thank you.

12 Q. BY MR. REICHEL: Thank you very much. Have you had
13 time to read that?

14 A. I have.

15 Q. Have you read the whole thing?

16 A. I just read his e-mail to me.

17 Q. Okay. And do you recall that?

18 A. I do.

19 Q. Okay. And that that comes from the criminal
20 discovery in this case, correct?

21 A. Correct.

22 Q. Okay. And provided by the United States Attorney's
23 Office, correct?

24 A. Correct.

25 Q. And you've reviewed it before this, correct?

1 A. Correct.

2 Q. Can we read to the jury -- would you -- let me just
3 ask you about what Mr. McDavid says to you. This is on
4 October 26 of 2005, right?

5 A. Correct.

6 Q. And he says to Anna, (reading): Hey, what's up?
7 Feelin', I don't know, nostalgic, I guess. Feel like writin'.
8 Totally miss you. You're never far from my thoughts or heart.
9 Guess I've been fighting that last part a little bit. Okay, a
10 lot. I truly value the time that I've been able to spend with
11 you. It sticks out and comes up whenever I delve into memories
12 of the past summer. I don't know why exactly, but shortness of
13 breath always follows the first thoughts of remembering you or
14 the excitement of knowing I'll see you again soon. Thinking of
15 it, I can still remember your voice, the smile and that last
16 embrace in Philly. Giggly chills. Don't mean to trip you out.
17 It's just the way I feel, and it feels good to get it out.
18 Though it would feel better, hard to imagine, to be with you
19 face-to-face and tell you straight out without this damn
20 mediation, but what do you do? You work with what you got, I
21 guess. Well, I'll let you get back to whatever you were doing.
22 Just wanted to say hi, and that I've been thinking of you.
23 Much love, me. (End reading.) Right?

24 A. Correct.

25 Q. Okay. Fair to say that would be a love e-mail,

1 correct?

2 A. Correct.

3 Q. Now, at that point in October of 2005, you were aware
4 of Mr. McDavid's feelings for you, right?

5 A. Correct.

6 Q. He had previously written you love letters, correct?

7 A. This is one of the love letters.

8 Q. Okay. But he had previously written you one before
9 this, right?

10 A. I can't recall specific dates on the love letters.

11 Q. Now, you know, if he -- let me ask you, you were
12 working undercover as of October of '05 for the FBI, right?

13 A. Correct.

14 Q. And if you get something important about somebody
15 that you are kind of monitoring --

16 A. Correct.

17 Q. -- you have to at least maintain it, right?

18 A. Yes.

19 Q. And give it to the FBI if it's important?

20 A. Correct.

21 Q. And if it's not important, you're at least going to
22 probably maintain it somewhere?

23 A. It was maintained on the e-mail account server.

24 Q. Right. But anything -- let's say somebody wrote you
25 a handwritten note and gave it to you that was very

1 significant, you would save that, right?

2 A. If I didn't turn it over to the FBI. The FBI would
3 have it.

4 Q. Right. Because you understand the importance of it
5 -- you're kind of acting as a police officer in the field, so
6 to speak, right?

7 A. Not really.

8 Q. But you're going to do good work for the police,
9 right?

10 A. Correct.

11 Q. And doing good work would be to save everything
12 that's important, right?

13 A. Correct.

14 Q. Okay. To save the stuff that's either evidence of
15 somebody's intent or lack of intent, right?

16 A. Correct.

17 Q. Okay. Or, you know, other important information?

18 A. Correct.

19 Q. Did you ever, you know, throw anything away so that
20 you didn't have to turn it over to the FBI?

21 A. No.

22 Q. Did you ever give them something that you thought was
23 important that since these guys were arrested you haven't seen
24 in the discovery?

25 A. No.

1 MR. LAPHAM: Well -- objection. That calls for
2 speculation.

3 THE COURT: Sustained.

4 Q. BY MR. REICHEL: Have you seen just about all the
5 evidence in this case, the criminal discovery that was made
6 during the investigation in this case?

7 MR. LAPHAM: Objection. That calls for speculation.

8 THE COURT: Sustained.

9 Q. BY MR. REICHEL: Have you seen a lot of the evidence
10 in this case that was done in the undercover work?

11 MR. LAPHAM: Again, calls for speculation.

12 THE COURT: Sustained. The term's "a lot." We can't
13 define that, Counsel.

14 Q. BY MR. REICHEL: All right. Let me ask you, you told
15 Lauren Weiner that there were three love letters from Mr.
16 McDavid, right?

17 A. Correct.

18 Q. Okay. Was that a lie?

19 A. I don't believe so.

20 Q. Okay. Have you seen the other two love letters
21 anywhere?

22 A. I don't recall.

23 Q. Okay. So does that lead you to believe that you
24 either lost them or someone lost the other two, right?

25 A. When you're talking love letters, I believe these are

1 e-mails, and they are probably still residing on the e-mail
2 server.

3 Q. But in preparation of your testimony, have you
4 reviewed certain things in this case?

5 A. Yes.

6 Q. Your own journals? Your own log?

7 A. Correct.

8 Q. Okay. You know, all the, you know, discovery the
9 United States has provided you, right?

10 A. Correct.

11 Q. And let's go through that. That includes the e-mails
12 that they seized in this case, right?

13 A. Correct, some of them.

14 Q. Well, you had seen this e-mail before today, right?
15 And I'm referring to D-5, right?

16 A. Correct.

17 Q. Now -- and you've read the transcripts of the tapes?

18 A. Correct.

19 Q. And listened to the tapes?

20 A. Correct.

21 Q. You've watched the videos that were made?

22 A. Correct.

23 Q. Anywhere have you seen the other two missing love
24 letters?

25 A. No.

1 Q. Okay. Now, when Eric McDavid wrote you D-5, which is
2 10-26-05, which is the e-mail, he talks about the last embrace
3 in Philly and the giggly chills, right?

4 A. Yes.

5 Q. That's the balcony in Philadelphia with you and Eric,
6 correct?

7 A. No, it is not.

8 Q. It is not the balcony?

9 A. It is not.

10 Q. Okay. Now, when you were in Philly at this
11 biodiversity conference, you were again undercover?

12 A. Correct.

13 Q. And all that that we talked about earlier about not
14 wanting to be found out was still true, right?

15 A. Correct.

16 Q. So everything you were doing was to prevent, you
17 know, prevent from being found out, right?

18 A. With the caveat of having my safety as well, correct.

19 Q. Yeah, I mean, that was probably the goal behind it.
20 You didn't want to be found out because of your safety?

21 A. Correct.

22 Q. So, you know, that's paramount, right?

23 A. Correct.

24 Q. And, you know, it's just fair to say that if someone
25 has romances towards you, there are going to be reactions when

1 they are spurned, correct, they would be easy reactions or hard
2 reactions, right?

3 A. Correct.

4 Q. And you don't want to be found out, right?

5 A. Correct.

6 Q. For example, when you're talking with other people in
7 Philly that are talking about doing some dangerous things, you
8 don't want to jump back and be aghast at it because you're
9 going to be found out, right?

10 A. Correct.

11 Q. So Mr. McDavid wrote you in October, and all he
12 referred to about was -- in that e-mail was, you know, that he
13 is in love with you, right?

14 A. Correct.

15 MR. LAPHAM: Objection.

16 THE COURT: Sustained.

17 MR. LAPHAM: That's a mischaracterization.

18 THE COURT: Sustained.

19 Q. BY MR. REICHEL: When you were in Philly with him,
20 you clearly had some final embrace, right?

21 A. Yes.

22 Q. You did not spurn his advances so that he got the
23 message that you didn't want anything to do with him
24 romantically, correct?

25 A. That answer involves an explanation.

1 Q. Then I'm just going to ask you to answer yes or no on
2 some things.

3 MR. LAPHAM: Objection.

4 MR. REICHEL: Withdraw the question, Your Honor.

5 THE COURT: The question is withdrawn.

6 Q. BY MR. REICHEL: Now, you agree with me that if
7 someone has a strong romantic interest of someone, and they are
8 spurned or turned away, they are going to have a reaction,
9 correct?

10 A. Sometimes. Correct.

11 Q. Okay. And it could be a mild reaction to a hard
12 reaction, a tough reaction, right?

13 A. Correct.

14 Q. Now, Mr. McDavid wrote you in October, three months
15 later, four months later, right?

16 A. Correct.

17 Q. He expressed a lot of, you know, romantic feelings in
18 this, right?

19 A. Correct.

20 Q. I won't use the term that he was in love with you,
21 but he expressed a lot of romantic feelings, right?

22 A. Correct.

23 Q. Okay. Now, you replied back to him, and I'm
24 referring to D-5, and your reply is above.

25 A. Correct.

1 Q. And, (reading): Hey, glad to hear from you again.
2 Do you see where it goes down and says, (reading):
3 Your e-mail made me smile, period?

4 A. Yes.

5 Q. Okay. It says, (reading): Keep e-mailing, keep
6 chatting, see you in the winter?

7 A. Correct.

8 Q. Now, did you -- you didn't put anything in there
9 about knock off the romance, right?

10 A. No, I did not.

11 Q. Okay. I'm not going to ask you anymore questions
12 about D-5. Thank you.

13 Now, let me ask you, after Philadelphia, that's when
14 you -- you had the conversation with the FBI after
15 Philadelphia?

16 A. Correct.

17 Q. And that was about Mr. McDavid and some of the
18 others?

19 A. Correct.

20 Q. And at that point, the FBI talked to you about their
21 knowledge of Mr. McDavid, right?

22 A. Correct.

23 Q. And, in fact, their knowledge they told you was that
24 he was now a person of interest out in Sacramento?

25 A. Correct.

1 Q. Okay. And so that gave you some information that you
2 found was valuable, right?

3 A. Say again, please?

4 Q. Did that give information you found to be valuable?

5 A. That I found to be valuable?

6 Q. Yeah.

7 A. I don't know why I would place a value on it one way
8 or the other.

9 Q. When they said, well, we have a file on him, and
10 we're interested in him, too?

11 A. That's valuable for the FBI.

12 Q. Well, you're working for them, and if they tell you
13 there's somebody we want you to watch or we're interested in,
14 that's valuable for you, that's important?

15 A. Not particularly, no, actually.

16 Q. Okay. But you're still undercover for them, right?

17 A. At the time I was in the process of actually leaving
18 employment with FBI.

19 Q. Well, but you didn't?

20 A. But I didn't.

21 Q. Okay. And right after Philly, in the process of
22 leaving the FBI, you went to CrimethInc, right, in Bloomington?

23 A. Correct.

24 Q. And that was July 14th?

25 A. Correct.

1 Q. But after Philadelphia, you went home to Florida?

2 A. Correct.

3 Q. Went to Florida. And then you went back up through
4 West Virginia?

5 A. Through West Virginia, correct.

6 Q. And you went to -- was there a protest there that you
7 went by?

8 A. I picked up Eric McDavid and some of his friends.

9 Q. Was this -- let me just ask -- was this in your
10 process of leaving the FBI?

11 A. Prior to the Bloomington CrimethInc convergence the
12 FBI asked me to remain on employment with them.

13 Q. What I'm interested in is what they told you about
14 Mr. McDavid.

15 A. About Mr. McDavid.

16 Q. After Philadelphia.

17 A. Okay.

18 Q. Because you had to relate to them your thoughts about
19 Mr. McDavid in Philadelphia, right?

20 A. Uh-huh.

21 Q. And they responded back. In fact, yesterday you told
22 us that they looked him up and said, oh, we know who you are
23 talking about?

24 A. Correct.

25 Q. Right?

1 A. Correct.

2 Q. And they told you Sacramento area?

3 A. Correct.

4 Q. Person of interest to us?

5 A. Correct.

6 Q. And they mentioned something about the Ryan Lewis
7 criminal charges and so forth?

8 A. No, they did not.

9 Q. They just said definite person of interest we're
10 interested in?

11 A. Yes, they did.

12 Q. And they said we're kind of looking to talk to him?

13 A. Correct.

14 Q. And, in essence, they wanted to do their own formal
15 interview before you -- you know, at that time as well?

16 A. Correct.

17 Q. So he's somebody they wanted at the time?

18 Well, let me stop there. You agreed to go up to
19 Bloomington after Philadelphia?

20 A. Correct.

21 Q. Again for the FBI?

22 A. Correct.

23 Q. And my point is they just told you McDavid is a
24 person of interest?

25 A. Correct.

1 Q. Okay. And they want to sit down and have a formal
2 interview with him, they want to ask him questions, right?

3 A. Correct.

4 Q. But now they've got Anna that can do that, right?

5 A. Correct.

6 Q. And so you're in your undercover role, right? Right?

7 A. Correct.

8 Q. And you are still trying to, you know, fool people
9 and so forth, right?

10 A. Correct.

11 Q. And you don't want to be found out?

12 A. Correct.

13 Q. My point is, they've given you something, boy, they
14 would sure like to find out some questions, right, about Eric
15 McDavid?

16 A. Correct.

17 Q. And what a perfect opportunity, they've got Anna who
18 is going to drive with him, right?

19 A. Correct.

20 Q. So you say, okay, I'll stay in, and I'll go get
21 McDavid?

22 A. Correct.

23 Q. Now, again, I'm going to ask you to go forward to
24 November of 2005.

25 A. Okay.

1 Q. When you sat down with the FBI?

2 A. Okay.

3 Q. There's Mr. Walker, I think we talked about, and some
4 of the others?

5 A. Correct.

6 Q. And they told you, don't be a leader, no pushing,
7 just participate, don't provide, you know, instruction or
8 anything, right?

9 A. Correct.

10 Q. Okay. But back when you are leaving Philly, that's
11 before the November meeting with the FBI with those
12 instructions about this case, right?

13 A. Correct.

14 Q. Okay. So you are in the car with Mr. McDavid and you
15 would like to get out some information?

16 A. Correct.

17 Q. And you talk to him?

18 A. Correct.

19 Q. And you say he openly speaks with you, right?

20 A. Correct.

21 Q. Okay. Now, you then made it to Bloomington where you
22 were with Mr. McDavid, right?

23 A. Correct.

24 Q. And it was the same thing, it was a political
25 protest, and you were going to go undercover?

1 A. This was a skill share. This was not a protest.

2 Q. Okay. It was a skill share?

3 A. Correct.

4 Q. But you can't tell those people that you're there,
5 that you're with the FBI, right?

6 A. No.

7 Q. You can't tell them your real name, right?

8 A. Correct.

9 Q. And your real goal is to get inside, look around,
10 hear what's going on, observe who is there, and sometimes
11 live-time, real-time, report it back to the FBI, right?

12 A. Correct.

13 Q. Now, do you recall -- if you've viewed the tapes in
14 this case, in January of 2006 there was a conversation between
15 you and Mr. McDavid, and in that conversation you said, do you
16 remember Bloomington when you said blow up federal buildings,
17 and Mr. McDavid replied, I didn't say that, and I don't
18 remember that in Bloomington?

19 Do you remember that? You've listened to the tapes.

20 A. I do recall that, yes.

21 Q. Okay. So your testimony yesterday was that
22 Mr. McDavid -- your testimony yesterday was that at Bloomington
23 the discussion about blowing up federal buildings occurred, and
24 Mr. McDavid said, I'm in, so to speak.

25 MR. LAPHAM: Objection. Mischaracterizes the

1 evidence.

2 THE COURT: Sustained.

3 Q. BY MR. REICHEL: Along those lines? Your testimony
4 yesterday is that at Bloomington Mr. McDavid -- there was a
5 discussion about blowing up federal buildings, and Mr. McDavid
6 gave his approval, correct?

7 A. Correct.

8 Q. So that was roughly your testimony yesterday?

9 A. Correct.

10 Q. Which he agreed to the whole blowup the federal
11 buildings?

12 A. Correct.

13 Q. Right? And then, now, in your preparation of this
14 case, you reviewed the tape of January 9th of 2006, where you
15 say to Mr. McDavid, kind of reaffirming that to him on a tape
16 recorder, do you remember in Bloomington, Mr. McDavid, you
17 agreed about blowing up the federal buildings, and he
18 responded, I didn't do that, I didn't say that; do you remember
19 that?

20 A. Correct, yes.

21 Q. So, in essence, he didn't know in January of 2006 you
22 were wearing a body wire, did he?

23 A. No.

24 Q. Okay. So his -- you have no reason to believe that
25 what he said was intended to change the evidence, right?

1 A. Correct.

2 Q. That was his true recollection, right?

3 A. I can't make that statement on whether his
4 recollections are truly accurate.

5 Q. Okay. That's understandable.

6 But when you asked him that, that's kind of a
7 reaffirmation, you wanted to get something on tape from him
8 about that, right?

9 A. Correct.

10 Q. And it just didn't get on there, right?

11 A. Correct.

12 Q. In fact, the opposite got on there, correct?

13 A. Correct.

14 Q. Okay. Now, post Bloomington you had a conversation
15 with Mr. McDavid about the Ryan Lewis matter, right?

16 A. Correct.

17 Q. And one of the big points of that conversation is
18 that Mr. McDavid said that Mr. Lewis screwed up, so to speak?

19 A. Yes.

20 Q. First of all, he had been caught, right?

21 A. Correct.

22 Q. That's never good.

23 A. Correct.

24 Q. Okay. He was facing federal charges or something,
25 was looking at a long time in prison?

1 A. Correct.

2 Q. 40 years or something?

3 A. As McDavid said, yes.

4 Q. And he mentioned, you know, that Lewis had done it
5 specifically too close to home?

6 A. Correct.

7 Q. And, you know, and you knew at the time that he meant
8 too close to where he was at?

9 A. Correct.

10 Q. Where he lived?

11 A. Correct.

12 Q. And, you know, as a result, that wasn't a good way to
13 do things, right?

14 A. Correct.

15 Q. I mean, that's very clear, that was Mr. McDavid's
16 statement to you of his intentions or discussions or thoughts
17 that you can't do it too close to home, right?

18 A. Correct.

19 Q. Which would lead you to believe that if Mr. McDavid
20 was going to do something along the lines of Mr. Lewis, it
21 certainly wouldn't be near home, right?

22 A. Correct.

23 Q. Because he repeatedly said that Ryan Lewis, what a
24 knucklehead, right?

25 A. Correct.

1 Q. So to speak. Thank you.

2 Now, he also said he didn't want to end up like Lewis
3 because of that, right?

4 A. Correct.

5 Q. That drive, there was no body wire on, right?

6 A. No.

7 Q. There was no contemporaneous, like, cell phone
8 conversation with the FBI during that drive, right?

9 A. Right.

10 Q. Here's my point, you know, some of these
11 conversations between you and Eric McDavid were between you and
12 Eric McDavid and no one else, right?

13 A. Correct.

14 Q. So the only person left is you and Mr. McDavid who
15 were in those conversations, right?

16 A. Correct.

17 Q. There is no body wire?

18 A. No, there's not.

19 Q. So it's your word that he said some of these things,
20 right?

21 A. Yes, it is.

22 Q. Now, when you testified as you testified yesterday,
23 you kind of summarized things that people said, correct?

24 A. Correct.

25 Q. It wasn't verbatim?

1 A. No, it was not.

2 Q. Because you can't verbatim recite things like that,
3 right?

4 A. Exactly.

5 Q. Now, yesterday when you testified, you testified
6 almost in summary fashion for the jury about things the group
7 said?

8 A. Correct.

9 Q. Group goals, group ideas?

10 A. There were individual goal in there as well.

11 Q. Right. And group plans?

12 A. Correct.

13 Q. And Mr. Lapham would ask you a question about, well,
14 what happened then, and you would say, well, the group then
15 discussed.

16 A. Correct.

17 Q. Okay. And that is not, Lauren said this, Eric said
18 that, Zach said this, I said that, Lauren said this, Zach said
19 that, it is a summary?

20 A. Correct.

21 Q. It is not verbatim, right?

22 A. Correct. The transcripts are what is verbatim.

23 Q. Right. Yes.

24 Now, fair to say that when you took on this
25 assignment after FTAA, you had to become -- for the FBI, when

1 you took on the assignment, the initial assignments, you had to
2 be good at deception?

3 A. Correct.

4 Q. You had to be good at fooling people?

5 A. Correct.

6 Q. You had to be -- first of all, you had to participate
7 in a lot of lies?

8 A. Correct.

9 Q. Often from when you wake up in the morning, you start
10 the lie, to when you go to bed at night, you keep the lie up,
11 right?

12 A. Correct.

13 Q. I mean, you know, all lies, all the time, 24-7 would
14 be the ad in the phonebook, right?

15 A. When I was undercover in my role, correct.

16 Q. I understand. Now, what specific training had they
17 given you on how to lie?

18 A. None.

19 Q. What classes did you take at community college on how
20 to lie?

21 A. None.

22 Q. Okay. What classes did you take in high school on
23 how to lie?

24 A. None.

25 Q. You made or -- you worked, involved (sic) in a lot of

1 investigations, right?

2 A. Correct.

3 Q. Have you read Nasson Walker's affidavit in the
4 criminal complaint that charged the people in this case?

5 A. I have not.

6 Q. Okay. If Mr. Walker said that you participated in at
7 least twelve separate undercover investigations successfully,
8 would that be a fair estimate?

9 A. Yes.

10 Q. Is it above that?

11 A. No.

12 Q. Okay. My point is is there is a lot of undercover
13 investigations, right?

14 A. Correct.

15 Q. There is a lot of people that were -- you know, that
16 you undercover fooled, right?

17 A. Correct.

18 Q. And it's going to be kind of difficult to calculate
19 how many?

20 A. Correct.

21 Q. But it's fair to say, you know, a large number of
22 people?

23 A. Correct.

24 Q. And these are people that are going to be suspicious
25 about somebody who is not who they say they are, right?

1 A. Correct.

2 Q. And, you know, one of their main things is to keep an
3 eye out on who this person really is?

4 A. Correct.

5 Q. More so than the rest of us as we walk through our
6 daily lives, right?

7 A. Correct.

8 Q. So you got a hypersensitive group of people, and
9 you've got you with a job to do, which is to fool them, right?

10 A. Correct.

11 Q. And you did it for a long time?

12 A. Yes, I did.

13 Q. Were you ever found out and expelled from a group?

14 A. No, I was not.

15 Q. Except for the first time?

16 A. Correct.

17 Q. Right. So your entire works were very, very, very
18 successful, right?

19 A. Correct.

20 Q. And it would be fair to say that you came -- you
21 know, you didn't have any training in it, as far as lying,
22 right?

23 A. Correct.

24 Q. No schooling in it, right?

25 A. Correct.

1 Q. You did it one heck of a lot, right?

2 A. Correct.

3 Q. And you were very, very, very successful at it,
4 right?

5 A. Correct.

6 Q. Is it a natural skill, do you think?

7 A. No.

8 Q. Okay. It's difficult thing to do for you?

9 A. Yes.

10 Q. Okay. But you overcame that and were able to be
11 successful at it, right?

12 A. Yes.

13 Q. Okay. Now, in November of 2005, you flew out to
14 California, right?

15 A. Correct.

16 Q. And one of the things you did is you met with the
17 FBI, and they talked to you about how to proceed in this
18 investigation, right?

19 A. Correct.

20 Q. And you talked about it already, but there was no
21 pushing, and, you know, just being kind of, you know, be a
22 participant, don't be a leader?

23 A. Correct.

24 Q. Now, do you remember coming out -- before you came
25 out to California, you had conversations with Lauren Weiner?

1 A. Correct.

2 Q. And those conversations involved -- first of all, one
3 of them was while you were recording a phone conversation,
4 right?

5 A. Correct.

6 Q. And it's about November 4th of 2005?

7 A. I can't be accurate as to the date.

8 Q. But close to November 4th?

9 A. I recall the incident, yes.

10 Q. Okay. Roughly November 4th. And she expressed
11 reluctance coming out to California, correct?

12 A. Initially, yes.

13 Q. She didn't have -- well, one of the things, she
14 didn't have any money to come out, right?

15 A. She had limited funds.

16 Q. And when Lauren Weiner says limited funds, we're
17 talking about \$30 or something?

18 A. I can't make a statement as to her bank account.

19 Q. Well, most of these three were pretty impoverished,
20 right?

21 A. I can't make a statement as to that.

22 Q. And, well, you know, you were with them a lot, right?

23 A. Correct.

24 Q. Okay. And you testified that Mr. McDavid was a
25 freegan, correct?

1 A. Correct.

2 Q. Did they ever have large sums of money around? Did
3 they ever have large sums of money?

4 A. Not that I saw, no.

5 Q. Okay. But you saw a lot of them, right?

6 A. Correct.

7 Q. Other than their bank accounts, for all appearances
8 to you they didn't have much money, right?

9 A. Actually, I wouldn't say that. I saw them with some
10 expensive equipment at several times.

11 Q. Okay. What's the expensive equipment you saw?

12 A. Eddie Bauer camping gear, headlamps, climbing gear,
13 outdoor gear at McDavid's family house.

14 Q. But you believe that was in the name of his parents,
15 right?

16 A. Correct.

17 Q. And he told you that?

18 A. Correct.

19 Q. So you didn't think it was his house?

20 A. No.

21 Q. Now, did either one of three of them have a car that
22 worked? And I'm talking about Lauren Weiner, Zachary Jenson
23 and Eric McDavid?

24 A. Not that I am certain of.

25 Q. Did you ever see them driving their own car?

1 A. No.

2 Q. Well, let me go back to discussions with Miss Weiner.
3 In November of '05 she is in Philadelphia at the time?

4 A. She is.

5 Q. And you are in Florida?

6 A. Yes.

7 Q. And you want to get out to the West Coast, right?

8 A. Correct.

9 Q. And the FBI wanted you to get out to the West Coast,
10 right?

11 A. Correct.

12 Q. And so the FBI wanted you to get out to the West
13 Coast, that was your goal. Lauren Weiner was reluctant at
14 first, right?

15 A. Correct.

16 Q. And you volunteered to pay for her plane fare, right?

17 A. Only with the express understanding that she would
18 pay me back.

19 Q. Okay. But you agreed to put it up front?

20 A. Correct.

21 Q. So it would be your money up front, right?

22 A. Correct.

23 Q. And then you also told her in an e-mail that you
24 would pay for her cab fare and everything, correct?

25 A. I don't recall that.

1 Q. Okay. Well, we'll get there in a minute.

2 Now, you did fly her out, right?

3 A. Correct.

4 Q. And you picked her up at the airport?

5 A. Correct.

6 Q. And then you picked up Mr. McDavid?

7 A. Correct.

8 Q. And Mr. Jenson?

9 A. Correct.

10 Q. And it was your car?

11 A. It was a rental car.

12 Q. But it wasn't their car?

13 A. No.

14 Q. Okay. And you don't own a rental agency?

15 A. No.

16 Q. Okay. So it was a rental car. And you paid for the
17 gas, right?

18 A. It was -- it had a full tank.

19 Q. Okay. Well, I understand. You were responsible for
20 it is my point?

21 A. Correct.

22 Q. What I'm saying is you were driving the train at this
23 point?

24 A. I'm driving the car.

25 Q. Now, Miss Weiner didn't actually like to fly, right,

1 she told you that?

2 A. No, I guess she didn't like to fly. I don't believe
3 she had before.

4 Q. Okay.

5 MR. REICHEL: Permission to approach the witness, and
6 provide her with previously marked e-mail, Defense Exhibit 7.

7 THE COURT: Permission granted. Mr. Lapham, have you
8 seen this?

9 MR. LAPHAM: Is it A-7?

10 MR. REICHEL: Yes, A-7. Sorry.

11 THE WITNESS: (Witness reviewing document.)

12 Q. BY MR. REICHEL: Have you had a chance to read that?

13 A. Yes.

14 Q. Do you recall that e-mail?

15 A. Yes, I do.

16 Q. And that's what you sent to Lauren Weiner?

17 A. Correct.

18 Q. And it's dated December 4th, 2005?

19 A. Correct.

20 Q. And you are in Florida, and she is in Philadelphia?

21 A. Actually, at that time I was living in Pennsylvania.

22 Q. But she's in Philadelphia?

23 A. Correct.

24 Q. And is that where she lived at the time?

25 A. Yes, it is.

1 Q. And in your e-mail you said to her, (reading): I
2 can't believe you don't know my number. I sent you a text
3 yesterday, and you sent me back, "who are you?" Correct?

4 A. Correct.

5 Q. So she had done that obviously, right?

6 A. Correct.

7 Q. And then you say, (reading): Makes me feel great.

8 A. Correct.

9 Q. Okay. Kind of explaining to her that, you know, you
10 can't believe that she forgot you, right?

11 A. Correct.

12 Q. You then say, (reading): Anyways, do you have any
13 idea how much you rocked my world when we last met. I've been
14 shaking ever since. How about you? (End reading.)

15 You wrote that, right?

16 A. Correct.

17 Q. And then the next paragraph you say you have an
18 "awesome devious plan," right?

19 A. Correct.

20 Q. And that is you have a sick aunt?

21 A. The plan's actually a couple paragraphs down.

22 Q. Right. Where you say you're going to go to
23 California?

24 A. Correct.

25 Q. Because your aunt lives in California?

1 A. Correct.

2 Q. And it says, (reading): I'm going to go out there to
3 be with her for a week. Right?

4 A. Correct.

5 Q. Okay. This is your suggestion to Lauren Weiner,
6 right?

7 A. Correct.

8 Q. And you are asking her if she wants to go out there
9 because you're going to be there for a week, right?

10 A. I will be there for a week. I am asking her if she
11 would like to come.

12 Q. Right. And --

13 THE COURT: Mr. Reichel, we will take our recess now.
14 It is 10:30. Return at 10 minutes to 11:00.

15 Ladies and gentlemen, please remember your
16 admonitions regarding discussing the case and forming opinions
17 during the recess period. We are in recess.

18 (Jury out.)

19 THE COURT: We're outside the presence of jury at
20 this time. Is there anything that needs to be on the record
21 outside their presence, counsel?

22 MR. REICHEL: Just maybe tell the Court the reason I
23 haven't put it on here is there's something on there we wanted
24 to keep private, and I didn't have a chance to block them out.
25 That's why we're reading them right now instead of putting it

1 up on the board.

2 THE COURT: Thank you. Anything else, Mr. Lapham?

3 MR. LAPHAM: No, Your Honor.

4 THE COURT: Thank you. We're in recess.

5 (Break taken.)

6 (Jury in.)

7 THE COURT: Mr. Reichel, continue, please.

8 MR. REICHEL: Thank you, Your Honor.

9 Your Honor, permission to approach the witness and
10 show her what's been previously marked as Defendant's A-8 for
11 identification.

12 THE COURT: Granted.

13 MR. REICHEL: For the record it's Bates stamps 1220
14 through 1222.

15 Q. BY MR. REICHEL: Anna, I would ask you to take a
16 minute to look at that.

17 A. (Witness reviewing document.)

18 Q. Do you see A-8 in front of you?

19 A. Yes, I do.

20 Q. Let me ask you, do you recall a phone conversation --
21 is that a phone conversation with Lauren Weiner, or is that a
22 body wire with Lauren Weiner?

23 A. I don't recall.

24 Q. Do you remember having a conversation with Lauren
25 Weiner which is referenced in that exhibit?

1 A. I do. And I believe this is a body wire, actually.

2 Q. Right. Sorry. Thank you.

3 So does that refresh your recollection of that
4 conversation with Lauren Weiner?

5 A. Yes, it does.

6 Q. And that's the Bates stamp from the Government 1220
7 to 1222?

8 A. Correct.

9 Q. You reviewed that before?

10 A. Correct.

11 Q. Okay. And all I want to do is ask you about the
12 timeframe, that's November 4th of '05 -- November 6th of 2005?

13 A. Around November, yes.

14 Q. And that's in person?

15 A. Correct.

16 Q. What city was that in?

17 A. Philadelphia.

18 Q. And you drove to Philadelphia to meet Miss Weiner?

19 A. Correct.

20 Q. And you had conversations?

21 A. Correct.

22 Q. And Mr. McDavid's name came up?

23 A. Correct.

24 Q. And you had previously e-mailed her about going out
25 to California, right?

1 A. Correct.

2 Q. And that's the one where you said you would pay for
3 plane fare and so forth?

4 A. That we would share the cost, correct.

5 Q. And the cab fare also?

6 A. I don't recall the cab fare.

7 Q. Okay. And she was initially reluctant, but then she
8 changed her mind, right?

9 A. Correct.

10 Q. So then you went and drove and talked to her --

11 A. Correct.

12 Q. -- in Philadelphia, and that's referenced in this
13 one?

14 A. Correct.

15 Q. And let me ask you to go down to almost the end of
16 the page of 1220, where it says -- this is Lauren Weiner
17 speaking -- (reading): And yet, like, I think I'm scared to go
18 there without that's why I'm, like, fuck you, I'll go, this way
19 I'll know.

20 A. Correct.

21 Q. Do you see that? Right after that is your
22 conversation with her, right?

23 A. Correct.

24 Q. And that's you speaking. Do you recall saying that?

25 A. Yes.

1 Q. And you said, (reading): Yeah, I really want D to,
2 like, drop whatever he is doing 'cause it's pretty important
3 and meet with us.

4 A. Correct.

5 Q. And D is Eric McDavid?

6 A. Correct.

7 Q. And you said, (reading): He has family time, fine,
8 comma, take an afternoon off. Right?

9 A. Correct.

10 Q. And then you said, (reading): I think that's pretty
11 selfish. If we're to go all the way out there to meet with him
12 for like a day, he can't pick a day?

13 Do you remember you said that?

14 A. Correct.

15 Q. Okay. And right underneath that you say, (reading):
16 He could be dying. We don't know what he's doing. But, I
17 mean, something you said struck me.

18 MR. LAPHAM: Your Honor, I'm going to object. Is
19 there a question pending?

20 THE COURT: Sustained.

21 Q. BY MR. REICHEL: Do you recall saying these things?

22 A. Yes, I do.

23 Q. Okay. Do you recall saying, (reading): No, but I
24 think they could bend a little bit.

25 A. Yes.

1 Q. Thank you. Now, that was prior to coming out to
2 California?

3 A. Correct.

4 MR. REICHEL: Permission to approach, Your Honor, and
5 show the witness what's marked as A-9.

6 THE COURT: Granted.

7 MR. REICHEL: The Government has a copy, Your Honor.

8 Q. BY MR. REICHEL: Anna, I'm showing you what's been
9 marked for identification purposes as Defense Exhibit A-9.

10 A. Okay.

11 Q. And do you have that in front of you?

12 A. Yes, it is.

13 Q. Okay. And that is Bates stamped 1301 to 1305?

14 A. Correct.

15 Q. Okay. And when I say "Bates stamp," that comes from
16 the Government discovery in this case?

17 A. Correct.

18 Q. And that's something that you provided to the
19 Government or worked with the Government on, right?

20 A. The stamp?

21 Q. No. The discovery?

22 A. The --

23 Q. The tapes?

24 A. I helped create the --

25 Q. The tapes?

1 A. -- the tapes.

2 Q. Thanks. So this A-9, have you had a chance to look
3 at that?

4 A. Yes. But I would like to refresh my memory, if I
5 may.

6 Q. Absolutely.

7 A. Thank you. (Witness reviewing document.) Thank you.

8 Q. Thank you. This is, in fact, a transcript of a
9 conversation you were having when you were wearing the body
10 wire at first with Lauren Weiner, right?

11 A. Correct.

12 Q. And that was in Philadelphia?

13 A. Correct.

14 Q. And it's the same body wire and the same meeting that
15 we talked about in A-8, correct?

16 A. I believe so.

17 Q. And during this conversation with Lauren Weiner, Eric
18 McDavid called?

19 A. Correct.

20 Q. And you then had the conversation with Mr. McDavid on
21 your cell phone so Miss Weiner could hear everything?

22 A. Correct.

23 Q. And the tape picked it up? I mean the tape picked up
24 what you were saying?

25 A. Correct.

1 Q. And I would like you to look at the middle of the
2 front page, 1301 is what it is, and it is where it says, "Anna
3 says, oh, yeah"?

4 A. Okay.

5 Q. And it says -- this is you talking to Mr. McDavid,
6 right?

7 A. Correct.

8 Q. And you say, (reading): Okay, so that's why you're
9 stuck. You can't get away for even a day?

10 Do you recall saying that?

11 A. Correct. Yes.

12 Q. So that was Mr. McDavid telling you that he couldn't
13 get away for even a day, correct?

14 A. Correct.

15 Q. And then you told him that your aunt was having
16 surgery, so you were going to be out there a little while,
17 right?

18 A. Correct.

19 Q. And you then say, (reading): I wanted to get, um, a
20 conversation going between everyone. I wanted to get, um,
21 everyone together to try and talk. Correct?

22 A. Correct.

23 Q. Now, this is November 6th, and the FBI has told you
24 that you got to -- that they wanted you as a goal for them to
25 get everybody out to the West Coast, right?

1 A. Correct.

2 Q. And to meet out there?

3 A. Correct.

4 Q. And that would be all four of you?

5 A. Correct.

6 Q. Zach, Eric, Lauren and yourself?

7 A. Correct.

8 Q. And so this is part of your effort to do that, right?

9 A. Correct.

10 Q. And look down to the next sentence where it says,
11 (reading): So I can get the two of us out there. We can at
12 the least the two of us -- I'll be out there a little longer,
13 so I'll have wheels, so we can get to you.

14 Do you remember saying that?

15 A. Yes.

16 Q. And you are telling Mr. McDavid that?

17 A. Correct.

18 Q. Okay. And you're referring to flying you and Ren
19 out?

20 A. Correct.

21 Q. And then having a rental car available, right?

22 A. Correct.

23 Q. Now, let me ask you to go down to halfway through the
24 page there on this transcript. See where it says, (reading):

25 How are you? More importantly, are you all right?

1 A. Is this on page two?

2 Q. Yes, ma'am.

3 A. Yes.

4 Q. And you say -- that's what you told him, you said,
5 "are you all right," correct?

6 A. Correct.

7 Q. And then you say, (reading): Yeah, yeah. And then
8 you say, you've been -- you've been sounding stressed. I've
9 been getting some stress vibes from you. Yeah, it's good to
10 talk to you. Good to talk to you. Correct?

11 A. Correct.

12 Q. You said that to Mr. McDavid?

13 A. Correct.

14 Q. So you felt you were getting stress vibes from him at
15 that time?

16 A. Correct.

17 Q. Yeah, okay. And this was pursuant to your -- kind of
18 your mission or your goal to get everybody together on the West
19 Coast, right?

20 A. Yes, it was.

21 Q. So the things that you were saying to Mr. McDavid
22 there were pursuant to that goal, that object, right?

23 A. Correct.

24 MR. REICHEL: Your Honor, permission to approach the
25 witness and show her what's been marked for identification as

1 Defense Exhibit A-11.

2 THE COURT: Mr. Lapham, I'm going to assume that
3 you've seen all these exhibits unless you tell me otherwise.

4 MR. LAPHAM: Very well.

5 THE COURT: Thank you.

6 Q. BY MR. REICHEL: Anna, I'm showing you what's been
7 marked as A-11, which is an e-mail, and ask you to take a look
8 at that.

9 A. (Witness reviewing document.)

10 Q. While you're looking at it, I'm going to ask you to
11 go to page two -- ask you to take a look at page two.

12 A. Okay. (Witness reviewing document.) Okay.

13 Q. Miss Weiner wrote you an e-mail is how this starts,
14 correct?

15 A. Correct.

16 Q. And one of the things in there she says you need to
17 call her about the flight?

18 A. Correct.

19 Q. And she says do it way cheap?

20 A. Correct.

21 Q. Because she's way poor?

22 A. Correct.

23 Q. And then she talks about -- well, just says she's way
24 poor and you need to book the flight, right.

25 Let me ask you to go to the next page, which is your

1 reply, right?

2 A. Uh-huh. Yes.

3 Q. And her header to you was "W-T-F, question mark,"
4 right?

5 A. I believe so. Is it somewhere up here? Yes. There
6 it is.

7 Q. And unfortunately that means "what the fuck"?

8 A. Correct.

9 Q. And you replied back, (reading): Whoa, what's up
10 with that? Why the header? Right?

11 A. Correct.

12 Q. And you told her, (reading): I'm taking care of
13 everything trust me. Right?

14 A. Correct.

15 Q. You said, (reading): You told me what you needed,
16 wanted, and it's being done. I'm also going to give you cab
17 fare for your ride to the airport, so you don't have to worry
18 about getting a ride. Right?

19 A. Correct.

20 Q. You wrote her that, and that's about flying out to
21 California?

22 A. Correct.

23 Q. Okay. And you say you got tickets for the Saturday
24 morning to Tuesday night, right?

25 A. Correct.

1 Q. And then you tell her, (reading): Have you heard
2 from D and Ollie yet? I haven't gotten directions yet.

3 A. Correct.

4 Q. Okay. Then two paragraphs down you say, (reading):
5 You're going in and out of Philly airport. The Westchester
6 Airport was too expensive.

7 A. Correct.

8 Q. And that's about the flight out to California?

9 A. Correct.

10 Q. Okay. Now, you haven't had that conversation yet
11 with the FBI in Sacramento about some of your instructions when
12 you are undercover in this specific investigation in
13 California, right?

14 A. Correct. I was only under the general instructions
15 from the FBI at that time.

16 Q. Okay. Well, let me ask you, you hadn't had your
17 specific instructions in this case?

18 A. Correct.

19 Q. Now, your general instructions from the FBI which, I
20 guess, we're going to hear about, were that you were allowed to
21 assume a leadership role, correct?

22 A. Assume a leadership role?

23 Q. Yes.

24 A. That was part of my instructions?

25 Q. Yes.

1 A. No. Those were not my instructions.

2 Q. And they were to -- that the instructions that you're
3 going to tell us about, the general ones from the FBI, which we
4 haven't heard about yet, did they say that you could push
5 people to do things they didn't want to do?

6 A. I could not.

7 Q. And did they say that you could give instruction on
8 certain things?

9 A. Give instruction?

10 Q. Yeah.

11 A. Such as training people?

12 Q. Yes.

13 A. No, I could not.

14 Q. Okay. So, in essence, it's relatively similar to
15 what you were told in November out in Sacramento?

16 A. Correct.

17 Q. Okay. I think this is a good time to ask you. Did
18 they go over with you the Attorney General or the Department of
19 Justice Guidelines on the use of confidential informants in
20 undercover operations?

21 A. Yes, they did.

22 Q. Okay. And what meeting was that with the FBI?

23 A. That was a telephone conference in Philadelphia.

24 Q. And what month was that?

25 A. The timeframe was probably late October, early

1 November. I can't be quite certain.

2 Q. Of 2005?

3 A. Of 2005.

4 Q. And did you have a copy -- excuse me, Your Honor. I
5 withdraw the question.

6 When you spoke to them, where were you at?

7 A. I was at the Philadelphia FBI field office.

8 Q. Did they provide you with a written copy of something
9 entitled the Attorney General's Guidelines on FBI Undercover
10 Operations?

11 A. No.

12 Q. They didn't. Did they provide you with a copy of the
13 Attorney General Guidelines Regarding the Use of Confidential
14 Informants?

15 A. Do you have copies of these so I can refresh my
16 memory?

17 Q. Absolutely. Permission to approach, Your Honor?

18 THE COURT: You may.

19 MR. REICHEL: I'm going to mark defense exhibit -- I
20 think 10 was reserved. I don't have a copy for the Government,
21 Your Honor. It's just for identification purposes.

22 THE COURT: All right.

23 MR. REICHEL: Mr. Lapham may be familiar with the
24 guidelines.

25 MR. LAPHAM: No problem, Your Honor.

1 THE COURT: Thank you.

2 MR. REICHEL: Just for identification, I'm going to
3 approach the witness, Your Honor, and hand her -- and it's my
4 only copy, so if I can just stand here to tell her what we're
5 looking at.

6 THE COURT: Yes. Go ahead and point it out.

7 MR. REICHEL: The first one is going to the Attorney
8 General' Guidelines --

9 THE WITNESS: Uh-huh.

10 MR. REICHEL: -- on Federal Bureau of Investigation
11 Undercover Operations, and it's going to break, and it's going
12 to the next chapter, which is a separate document, which is the
13 Attorney General's Guidelines Regarding the Use of Confidential
14 Informants.

15 THE WITNESS: No, I did not have this document fully
16 in front of me. It was, however, summarized to me.

17 MR. REICHEL: May I approach, Your Honor?

18 THE COURT: You may.

19 Q. BY MR. REICHEL: Who summarized it for you?

20 A. Steve Lapham.

21 Q. Over the telephone?

22 A. Yes.

23 Q. And in the course of your investigation in this case,
24 to keep track of everything -- I mean, because it's fair to
25 say, you know, you're contacting a lot of different people, not

1 just Mr. McDavid, right?

2 A. Correct.

3 Q. What I want to know is, what do you do for
4 organization, do you keep notes in a log somewhere?

5 A. What I would do is I would write down notes after a
6 protest or contact or a meeting with an individual. I would
7 write something down and then turn that writing and any notes
8 that I had kept over to the FBI.

9 Q. What about just general notes for yourself like
10 outlines and instructions you get?

11 A. No.

12 Q. Okay. So what I'm getting at is it fair to say the
13 conversations with Mr. Lapham in November you didn't make notes
14 of that, right?

15 A. No, I did not.

16 Q. So you just heard what he had to say, and that was
17 it, right?

18 A. Correct.

19 Q. Has he since that time given you his notes of that
20 conversation?

21 A. No, he has not.

22 Q. Okay. Before you testified today, did you review
23 anything regarding that phone conversation prior to your
24 testimony today?

25 A. No, we did not.

1 Q. In the last couple of weeks have you reviewed that?

2 A. No.

3 Q. Did you speak to Mr. Lapham in the last couple of
4 weeks about that phone conversation?

5 A. No, we did not.

6 Q. So that phone conversation occurs roughly October of
7 '05 or November, correct?

8 A. Correct.

9 Q. And then since then you've not had conversations with
10 Mr. Lapham about that conversation, right?

11 A. Correct.

12 Q. So that was it, right?

13 A. Correct.

14 Q. Okay. And did he tell you the importance of several
15 things?

16 A. Yes.

17 Q. Okay. I mean, my point is -- I'm not trying to be
18 coy with you -- if he calls you -- were you at the FBI office
19 in Philadelphia?

20 A. Yes, I was.

21 Q. I mean, this is serious stuff when he is going to
22 tell you how to do these things, right?

23 A. Correct.

24 Q. Okay. So I'm not going to ask you weren't they
25 important, because you're going to agree that that was an

1 important part of your work, right?

2 A. Correct.

3 Q. And you cannot just, you know, do whatever you want
4 in an undercover capacity, right?

5 A. Correct.

6 Q. You have to follow the rules?

7 A. Correct.

8 Q. Right? But when you first got into the FTAA in
9 November of '03, nobody was supervising you then, right?

10 A. Correct.

11 Q. Now you could, you know, kind of do whatever you
12 wanted, I mean you were working for yourself?

13 A. I was writing a report.

14 Q. Right. But you weren't working for the FBI?

15 A. Correct.

16 Q. So you weren't beholden to their guidelines?

17 A. Correct.

18 Q. Now, when you went undercover, let's say as of
19 October of 2005, when you were working, did you feel that you
20 were beholden to the FBI guidelines on undercover work?

21 A. Yes.

22 Q. Okay. And that if the guidelines prohibited
23 something, that you shouldn't do it?

24 A. Correct.

25 Q. Okay. And if they, you know, required you to do

1 certain things like keep certain records or whatever, you would
2 do your best to do that?

3 A. Correct.

4 Q. Okay. Like when they paid you, did you sign any
5 receipt or anything from the Government?

6 A. Yes, I did.

7 Q. You had signed receipts?

8 A. Yes.

9 Q. And they sat down, and they told you your obligation
10 in regard to that money?

11 A. Correct.

12 Q. Specifically, pay taxes on it?

13 A. Correct.

14 Q. Account for it?

15 A. Correct.

16 Q. And you did all that?

17 A. Correct.

18 Q. And did you provide proof of that to Mr. Torres out
19 of Philadelphia?

20 A. No.

21 Q. Now, when I say Mr. Torres, he is an FBI agent?

22 A. Yes, he is.

23 Q. Ricardo Torres?

24 A. Yes.

25 Q. Okay. And he is probably going to testify in this

1 case?

2 A. Correct.

3 Q. And he was like your handler, so to speak, for a
4 while?

5 A. Correct.

6 Q. And by handler, I mean, he is the kind of the agent
7 you would report to?

8 A. Correct.

9 Q. And was responsible for you?

10 A. Correct.

11 Q. And he is the one that should probably give you -- I
12 mean, fair to say he should monitor whether you're completely
13 breaking some rules or not?

14 A. Correct.

15 Q. And sit down and talk to you about the rules?

16 A. Correct.

17 Q. And make sure you understand them?

18 A. Correct.

19 Q. That you understand the importance of following them
20 and so forth?

21 A. Correct.

22 Q. In that regard, what did the FBI guidelines tell you
23 about -- well in -- did Mr. -- prior to Mr. Lapham talking to
24 you, who else at the FBI went over this stuff with you?

25 A. Agent Torres.

1 Q. Did you meet him in June of '05?

2 A. Correct.

3 Q. But prior to that, no one had gone over these things?

4 A. The agents in Miami when I first started had.

5 Q. They also did?

6 A. Correct.

7 Q. And did you keep notes of those?

8 A. No.

9 Q. Did you keep notes when Mr. Torres did it?

10 A. No.

11 Q. So it was just on your own memory?

12 A. Correct.

13 Q. And well, have you ever in your life sat down and
14 actually read the entire section in the federal books on the
15 Attorney General's Guidelines on FBI Undercover Operations?

16 A. No.

17 Q. Have you ever done the same thing with regard to the
18 Attorney General's Guidelines Regarding the Use of Confidential
19 Informants?

20 A. No.

21 Q. Are you aware whether or not they have an age
22 requirement for the use of informants?

23 A. Yes.

24 Q. Okay. And they do have an age requirement, correct?

25 A. Yes, they do.

1 Q. In fact, it's not somebody under 18, correct?

2 A. Correct.

3 Q. Now, you're also under these guidelines not allowed
4 to just go into strictly political meetings and spy, correct?

5 A. Correct.

6 Q. You're not allowed to report back to the FBI on
7 people that are solely doing political discussions, so to
8 speak?

9 A. Correct.

10 Q. Because that's -- it just violates the guidelines?

11 A. Correct.

12 Q. And you yourself have a fundamental fear -- feeling
13 that that's just not appropriate, right?

14 A. Correct.

15 Q. So it would have to be targeting something else,
16 right?

17 A. Correct.

18 Q. And if you did do that, you agree that would violate
19 the guidelines?

20 A. Correct.

21 Q. Your own sense of fairness?

22 A. Correct.

23 Q. And what they told you not to do?

24 A. Correct.

25 Q. Okay. Now, you never had any actual formal training

1 at, like, the Quantico Academy for the FBI, right?

2 A. Correct.

3 Q. But you had somebody -- the Miami group had told you
4 some things?

5 A. Correct.

6 Q. Okay. And then Mr. Torres did?

7 A. Correct.

8 Q. And then Mr. Lapham did?

9 A. Yes, he did.

10 Q. Now, if Miami talked to you and Mr. Torres talked to
11 you, by the time you talked to Mr. Lapham, you had already
12 heard this stuff twice, right?

13 A. Correct.

14 Q. And did you feel relatively familiar with the
15 knowledge of it?

16 A. With the points they were making, yes.

17 Q. And is it fair to say then that Mr. Lapham was just
18 being redundant from what you already knew?

19 A. I wouldn't put it that way. He was just reiterating
20 the message.

21 Q. Did he say, look, I'm reading directly from the
22 guidelines for you?

23 A. I don't recall a specific statement as to that.

24 Q. Okay. And did he ask you if you had been told these
25 guidelines before?

1 A. I can't recall specifics of the conversation.

2 Q. Okay. Now, did -- this may sound silly, but, I mean,
3 did they ever give you a quiz on this or test on this?

4 A. No.

5 Q. There's no one-page quiz on what the rules are?

6 A. No.

7 Q. Okay. They didn't sit down with you and go over,
8 like, sign a contract with you, did they?

9 A. Yes, they did.

10 Q. Okay. And it was a contract listing your
11 obligations?

12 A. They are called FBI Admonishments.

13 Q. Right. And it is their discussion with you of
14 certain things?

15 A. Correct.

16 Q. And then you sign it?

17 A. Correct.

18 Q. And they sign it?

19 A. Correct.

20 Q. Okay. And it's actually an agreement, right?

21 A. Correct.

22 Q. And have you been shown a copy of that?

23 A. No, I do not (sic).

24 Q. Okay. Did the Miami office have one?

25 A. Yes.

1 Q. And then Philadelphia?

2 A. Yes.

3 Q. Did the D.C. one in January of '05 have one?

4 A. No.

5 Q. And then did Mr. Lapham have you sign one, or
6 Mr. Walker, I think Agent Walker?

7 A. Agent Walker did not.

8 Q. Okay. Because you already had the Philadelphia one?

9 A. I got an increase in my FBI admonishments. I was
10 allowed to do tier one criminal activity.

11 Q. Right. We're going to get to that. And now, before
12 you testified for Mr. Lapham, it's fair to say that you met
13 with him and talked about the trial, right?

14 A. Correct.

15 Q. I mean, have you ever testified before?

16 A. I have not.

17 Q. So when Mr. Lapham -- you know a lot about this case,
18 right?

19 A. Correct.

20 Q. Okay. Before you testified, all I'm trying to get to
21 is you talked about this case, right?

22 A. Correct.

23 Q. And you went to his office?

24 A. Correct.

25 Q. You talked about the discovery?

1 A. Correct.

2 Q. The tapes?

3 A. Yes.

4 Q. The e-mails?

5 A. Yes.

6 Q. The transcripts?

7 A. Yes.

8 Q. Important stuff?

9 A. Yes.

10 Q. Interesting stuff in the case?

11 A. Yes.

12 Q. The questions I was going to ask you?

13 A. No.

14 Q. The questions he was going to ask you?

15 A. No.

16 Q. Okay. He didn't talk about the questions he was
17 going to ask you?

18 A. We went through the evidence.

19 Q. Right. When you say "went through the evidence," I
20 mean it's fair to say -- did you come down and use this room?

21 A. No.

22 Q. You didn't sit in that chair and practice?

23 A. No.

24 Q. You sat in a chair in his office, the conference
25 room?

1 A. Yes.

2 Q. In their office?

3 A. Yes.

4 Q. Okay. Was Mr. Walker there?

5 A. For part of the time, yes.

6 Q. Mr. Torres?

7 A. Yes.

8 Q. Ms. Endrizzi?

9 A. Minimally.

10 Q. Okay. But, I mean, did you go through -- you walked
11 through what the trial was going to be about?

12 A. Correct.

13 Q. And your testimony?

14 A. Correct.

15 Q. Yes. Now, you and I have not prepared before, right?

16 A. No.

17 Q. Yet you knew I was going to go to that OIA provision
18 (sic) in December, right?

19 A. Say that again?

20 Q. The Otherwise Illegal Activity approval you got?

21 A. Okay.

22 Q. In December of '05?

23 A. Yes.

24 Q. And that allows you to do a variety of new things,
25 you think?

1 A. Correct.

2 Q. Specifically engage in criminal activity?

3 A. Correct.

4 Q. That gave you the approval to engage in criminal
5 activity?

6 A. Correct.

7 Q. But prior to that, you didn't have the approval to
8 engage in criminal activity?

9 A. Correct.

10 Q. Now, do you remember when -- prior to that when you
11 were undercover, had you engaged in any criminal activity?

12 A. I had not.

13 Q. But you had watched it?

14 A. I had observed it, yes, and reported it to the FBI.

15 Q. And been right by it?

16 A. Correct.

17 Q. And not let them know that you weren't one of them?

18 A. Correct.

19 Q. And somewhat participated in it, right?

20 A. I did not participate in it.

21 Q. But you are with them when they do break-away
22 marches, right?

23 A. Correct.

24 Q. With them when they do illegal sit-downs in the
25 street, right?

1 A. Correct.

2 Q. There's a march, and the rules beforehand are no
3 sit-downs, keep the traffic moving, and you are with others
4 that sit down or stand by them or helping them, I mean, that's
5 illegal what they are doing, right?

6 A. At the G8 I sat down with the protestors, and then I
7 got up and moved away.

8 Q. Okay. One point you did break the rules and sit
9 down?

10 A. Correct.

11 Q. And that was early on in your career?

12 A. Correct.

13 Q. And what about at OAS in Fort Lauderdale in 2005?

14 A. I did not sit down.

15 Q. Did you see some other protestors sit down?

16 A. Yes.

17 Q. And that was in violation of the rules?

18 A. Correct.

19 Q. And there was riot officers right there by them?

20 A. Correct.

21 Q. Got to be a pretty dangerous situation?

22 A. Not in my estimation.

23 Q. But for the protestors?

24 A. Not in my estimation.

25 Q. Okay. For the police?

1 A. Not in my estimation.

2 Q. For any of us?

3 A. I don't think so.

4 Q. Okay. But they did violate the rules?

5 A. Correct.

6 Q. And they sat right down in front of the police?

7 A. Correct.

8 Q. Okay. Now, the OIA, the Otherwise Illegal Activity,

9 that you got authority for, you got that in the middle of

10 December of 2005?

11 A. Correct.

12 Q. And you've reviewed that before your testimony today?

13 A. No, I have not.

14 Q. Do you remember when it was issued, though?

15 A. I'm sorry. Say that again?

16 Q. Do you recall when it was issued?

17 A. December 2005.

18 Q. Yeah.

19 A. Oh, do you recall the incident? Yes.

20 Q. Was it Mr. Torres that sought that?

21 A. Yes.

22 Q. Was it Mr. Walker?

23 A. I believe it was Mr. Torres.

24 Q. Okay. And he sought approval from higher up in the

25 Justice Department for you to engage in Otherwise Illegal

1 Activity, right?

2 A. Correct.

3 Q. And that was granted?

4 A. Correct.

5 Q. And it said that at that point you could be engaged
6 in instructing others, right?

7 A. Not in instructing others, no.

8 Q. Was it your understanding that you couldn't instruct
9 others?

10 A. I still could not instruct others.

11 Q. Even in making bombs or something like that?

12 A. Correct.

13 MR. REICHEL: Your Honor, I'm going to approach the
14 witness and ask to show her, if I may, Defendant's Exhibit
15 A-20, which is not Bates stamped. I'm just going to mark for
16 identification purposes only. Mr. Lapham does have a copy of
17 it.

18 MR. LAPHAM: Not A-20.

19 MR. REICHEL: We're just making it, I'm sorry.

20 THE WITNESS: Thank you.

21 Q. BY MR. REICHEL: I would ask you to take a look at
22 the second paragraph there discussing what you are going to be
23 called on to do.

24 A. (Witness reviewing document.) Okay.

25 Q. So that we all understand what this is, that's number

1 20, Defense Exhibit A-20, and that is Mr. Torres, the FBI agent
2 from Philadelphia?

3 A. Correct.

4 Q. That's his request from the Justice Department?

5 A. Correct.

6 Q. To give you approval to engage in activity that is
7 otherwise illegal?

8 A. Correct.

9 Q. And I keep referring to it as OIA, and I won't.

10 Okay.

11 A. Correct.

12 Q. Now, it says in there, the second paragraph, that
13 what you're going to be called upon to do is to advise the
14 group, correct?

15 A. On various chemicals, correct.

16 Q. To advise the group, correct?

17 A. Correct.

18 Q. And to participate in the conspiracy?

19 A. Correct.

20 Q. And that is my only copy. Quickly, Your Honor. I
21 stand here and ask you. It also says methods to avoid
22 detection?

23 A. Correct.

24 Q. Defeat security measures?

25 A. Correct.

1 Q. In order to attack targeted locations?

2 A. Correct.

3 Q. CW, which is you?

4 A. Correct.

5 Q. May participate in the reconnaissance of target
6 locations?

7 A. Correct.

8 Q. Okay. As well as the gathering and making of
9 chemicals -- see where it says, (reading): As well as the
10 gathering and mixing of chemicals required to make explosives?

11 A. Yes.

12 Q. So this is different than what you were allowed
13 earlier?

14 A. Correct.

15 Q. Prior to that -- and this now allows you to be
16 involved in gathering and mixing chemicals required to make
17 explosives, right?

18 A. Correct.

19 Q. It allows you to advise the group?

20 A. In certain areas.

21 Q. Right. Specifically on various chemicals required to
22 make explosives?

23 A. Correct.

24 Q. So at that point you have the authority to advise the
25 group on how to mix chemicals together to make various

1 explosives?

2 A. No.

3 Q. Let's me ask you, it says, (reading): Advise the
4 group on various chemicals required to make explosives. Right?

5 A. Correct.

6 Q. And then it says, (reading): The gathering and
7 mixing of chemicals required to make explosives.

8 A. Correct.

9 Q. Okay. I'm not going to show you that anymore, so
10 we're done with number 20.

11 Your Honor, permission to approach the witness and
12 show her what's previously been marked as Defendant's Exhibit
13 A-13.

14 THE COURT: Granted.

15 MR. REICHEL: Your Honor, permission to approach the
16 witness and actually show her A-12.

17 THE COURT: Granted also.

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

19 Mr. Lapham, A-12.

20 THE WITNESS: Thank you.

21 Q. BY MR. REICHEL: Ask you to take a look at that.

22 A. (Witness reviewing document.) Okay.

23 Q. Thank you. Do you see what this is, this is an
24 e-mail from you to Lauren Weiner, right?

25 A. Yes.

1 Q. And dated December 22?

2 A. Correct.

3 Q. 2005?

4 A. Yes.

5 Q. And the substance of the conversation is about coming
6 out to California?

7 A. Correct.

8 Q. Okay. And, in fact, that's the first time that the
9 location is finally fixed, so to speak?

10 A. The cabin?

11 Q. Yes.

12 A. Correct.

13 Q. Okay. And that's the cabin that you found?

14 A. Correct.

15 Q. And do you see where it says here, (reading): Are
16 you good for the January 2nd leaving?

17 A. Yes.

18 Q. You're asking Lauren Weiner if she's good for
19 January 2nd leaving, right?

20 A. Correct.

21 Q. You say, (reading): I'm solidifying that date and
22 there is no going back now.

23 A. Correct.

24 Q. And then you tell her, (reading): I will leave that
25 day, I hope you're coming with me.

1 A. Correct.

2 Q. And then you say, (reading): I don't want to be
3 dilly-dallying around forever, which I know I could do and fall
4 into that trap but I want to avoid you doing that too.

5 A. Correct.

6 Q. So you don't want Lauren Weiner to dilly-dally
7 around, fall in that trap of dilly-dallying around?

8 A. Correct.

9 Q. And the January 2nd leave date is what you really
10 want?

11 A. It's when I was leaving, yes.

12 Q. And you want Lauren Weiner to go with you?

13 A. Yes.

14 Q. And this is your way of telling her, come on, let's
15 go?

16 A. Correct.

17 Q. And Lauren Weiner, let's face it, can dilly-dally?

18 A. Yes, she can.

19 Q. And Zachary Jenson can dilly-dally?

20 A. Yes, he can.

21 Q. It can be tough with these types of individuals, in
22 general, basically, to get them, you know, off the dime, so to
23 speak?

24 A. Correct.

25 Q. And this is because the FBI now I think in November

1 had asked you to get them to the West Coast, and you were going
2 to get this cabin set up?

3 A. Correct.

4 Q. And, in fact, you had already got the cabin set up by
5 the time you wrote this e-mail?

6 A. Correct.

7 Q. And that's December 22nd?

8 A. Correct.

9 Q. Anyway, you say also the cabin changed, the first
10 place fell through, and my first choice opened up, so we're in
11 a better place and a different place, I think you say, right?

12 A. Yes.

13 Q. And that was to Lauren Weiner, and that was
14 December 22nd?

15 A. Correct.

16 Q. Now, I am going to ask you to take a look at Defense
17 Exhibit A-13. And, Your Honor, may I approach again?

18 THE COURT: Yes.

19 Q. BY MR. REICHEL: I've provided you with A-13 and ask
20 you to take a look at that.

21 A. (Witness reviewing document.) All right.

22 Q. Thank you very much. This is -- do you recognize
23 what this is?

24 A. Yes.

25 Q. Okay. And it's Bates stamped, again, 1663 to 1667?

1 A. It's cut off on the pages, but it looks accurate.

2 Q. I know. It's been difficult for me as well. But
3 it's A-13, and do you recognize that?

4 A. Yes, I do.

5 Q. That's a conversation on the telephone between you
6 and Lauren Weiner?

7 A. Correct.

8 Q. And December 6, 2005?

9 A. Correct.

10 Q. Okay. And you are calling her December 6, 2005, and
11 it's about going to California?

12 A. Correct.

13 Q. Okay. And you talk about taking an airplane out
14 there?

15 A. Correct.

16 Q. She doesn't want to take an airplane?

17 A. Correct.

18 Q. Very fair to say?

19 A. Correct.

20 Q. She does not want to fly, correct?

21 A. Correct.

22 Q. Okay. She wants to -- if anything she's going to go
23 it's going to be in a car?

24 A. Correct.

25 Q. But she can't -- you know, you're going to have to

1 pick her up in a car, right?

2 A. Correct.

3 Q. And that's what you offer, and that's the discussion?

4 A. Correct.

5 Q. And then she says she kind of wants you to spend some
6 time with her in New York?

7 A. She forcefully tells me she wants me to spend time
8 with her in New York.

9 Q. You should be flattered. She says she's arranged a
10 place to stay and they're putting a roof rack on the car and so
11 forth, right?

12 A. Wants to put a roof rack on the car.

13 Q. This is basically the dilly-dallying of Lauren
14 Weiner?

15 A. Very forceful dilly-dallying.

16 Q. Then you say something to the effect of, when did you
17 decide what I was going to do over the Christmas holiday, I'm
18 not going to New York?

19 A. Correct.

20 Q. Right. She's in Philly?

21 A. Correct.

22 Q. What you then spend some time with is telling her,
23 you know, you want to fly, and she wants to drive?

24 A. Correct.

25 Q. Okay. And you -- she starts talking you into driving

1 out there because it could be fun?

2 A. Correct.

3 Q. Time to read and so forth?

4 A. Correct.

5 Q. And it's fair to say that she wasn't flying, and,
6 secondly, she was dilly-dallying, right?

7 I mean, let me ask you this. I'll withdraw that
8 question.

9 She's hesitant about going January 2nd?

10 A. Doesn't look like it from this transcript.

11 Q. Doesn't look like she's hesitant?

12 A. Correct.

13 Q. It looks like she wants to go on January 2nd?

14 A. Correct.

15 Q. It doesn't look like she's dilly-dallying?

16 A. No, it does not.

17 Q. Doesn't she want to go to New York?

18 A. To put a roof rack on the car for the drive out
19 there.

20 Q. Oh, okay. But she definitely does not want to fly
21 out?

22 A. But she does not want to fly out.

23 Q. She's going to drive?

24 A. Correct.

25 Q. Okay. It's later in your conversations with her that

1 she wants to dilly-dally about January 2nd, right?

2 A. I don't have those transcripts in front of me. I
3 can't say that.

4 Q. I apologize. I mean the e-mail thereafter where you
5 say on the 22nd --

6 A. This e-mail in front of me still?

7 Q. Yeah. Defense Exhibit A-12.

8 A. I actually believe I'm referring to my
9 dilly-dallying.

10 Q. And you don't want her to fall into that trap, too?

11 A. Into my dilly-dally trap.

12 Q. Okay. All right. Why? She's going to follow you
13 around into the dilly-dally trap?

14 A. Probably not with how forceful she's looking from
15 this transcript.

16 Q. Well, forceful to see you, right?

17 A. To put the roof rack on my car.

18 Q. All right. Now, in November of 2005, when you're out
19 here now and you've flown Lauren Weiner out and agreed to pay
20 her cab fare and so forth, right --

21 A. Uh-huh.

22 Q. -- you pick up Mr. McDavid and Mr. Jenson?

23 A. Correct.

24 Q. And we talked about that, there was the rental car
25 and so forth, right?

1 A. Correct.

2 Q. There was a meeting at Mr. McDavid's parents' house?

3 A. Correct.

4 Q. And you wore a wire?

5 A. Correct.

6 Q. And you had instructions from the FBI?

7 A. Yes, I did.

8 Q. And then we talked yesterday about the fact that
9 sometimes the wire didn't work?

10 A. Correct.

11 Q. The recorder, just it was difficult to operate?

12 A. Yes, it was.

13 Q. And so there's times where there's conversations that
14 were not recorded?

15 A. Correct.

16 Q. And you testified yesterday that there were heated
17 discussions at times in that -- I withdraw the question.

18 That was a two- or three-day meeting at the McDavid
19 house?

20 A. Correct.

21 Q. November 18, approximately?

22 A. Correct.

23 Q. Two days. And there was many items discussed, in
24 fact you testified to them?

25 A. Correct.

1 Q. We listened to some tapes of them?

2 A. Correct.

3 Q. There was a heated discussion, you told us yesterday,
4 about ELF and whether to use the moniker or tag of ELF, right?

5 A. Correct.

6 Q. In fact, there was -- it's fair to say there was no
7 full agreement at that time on whether or not anything you did
8 would be tagged ELF, right?

9 A. Correct.

10 Q. There was no agreement among the four of you, right?

11 A. Correct.

12 Q. No meeting of the minds?

13 A. Correct.

14 Q. Now, you broke -- the meeting of November 18th breaks
15 up?

16 A. Correct.

17 Q. Tasks are assigned, right?

18 A. Correct.

19 Q. But it's fair to say -- and I think you told us
20 yesterday -- you were confused after November 18th, right?

21 A. Confused as to what?

22 Q. Whether there was any real specific plan, right?

23 A. No, I was not.

24 Q. Okay. You were not confused at all?

25 A. No.

1 Q. Okay. Was there a specific plan when you broke in
2 November 18th of '05 on exactly what to do? Yes or no?

3 A. That answer requires more than a yes or no.

4 Q. Then don't answer it.

5 Was there a specific date that was set, a specific
6 date that was set for when to meet next?

7 A. No.

8 Q. Okay. Was there a specific agreement on what to use
9 in whatever plan there was as far as --

10 A. That was part of the tasking for the other members to
11 come back with.

12 Q. So the other members were going to go out and discuss
13 -- excuse me -- do work on what to use?

14 A. On what to use, yes.

15 Q. And come back to the group, right?

16 A. Correct.

17 Q. And what about the exact specific roles of each
18 individual in the plan, was that finalized by November -- the
19 end of November 18th?

20 A. Finalized for the time period between November 18th
21 and the reconvening in January.

22 Q. Reconvening is what we would call it?

23 A. Correct.

24 Q. But there was no exact specific date set?

25 A. No.

1 Q. In fact, I think there was a discussion about going
2 to Fresno after that?

3 A. Correct.

4 Q. Right? Not Dutch Flats?

5 A. Correct.

6 Q. Okay. And was there a specific timeline on once you
7 reconvened exactly how long you'd be together?

8 A. There were discussions but nothing was solidified.

9 Q. Right. So as far as the time you were going to be
10 together once you got back together wasn't really established,
11 right?

12 A. Correct.

13 Q. Various things were discussed at the November 18th
14 meeting, right?

15 A. Correct.

16 Q. Including what type of actions?

17 A. Correct.

18 Q. And, importantly, a big one that was discussed was
19 the concept of flash actions?

20 A. Correct.

21 Q. And Firefly, did that come up?

22 A. Yes.

23 Q. And that was Lauren Weiner's --

24 A. Correct.

25 Q. -- moniker?

1 And so the flash actions, specifically, are to do --
2 when you say flash actions, we mean one flash here, one flash
3 there, one flash there, and one flash there; is that fair to
4 say?

5 A. Correct.

6 MR. REICHEL: And for the record, Your Honor, I was
7 pointing in four separate directions as I spoke.

8 THE COURT: Thank you.

9 Q. BY MR. REICHEL: Thank you. Now, what I'm talking
10 about is separate actions at separate times at separate
11 geographies, right?

12 A. Correct.

13 Q. And separate types, right?

14 A. More importantly on the different locations, times
15 and aspects. Maybe not so much the type.

16 Q. But couldn't some be, you know, decimating a
17 billboard and some being much bigger than that?

18 A. True.

19 Q. So when I say "flash," I really do want it to -- I
20 think, and you were there, and you can tell us -- whether flash
21 means different types of direct action?

22 A. Correct.

23 Q. As well as different areas?

24 A. Correct.

25 Q. Different periods in between them?

1 A. Correct.

2 Q. So there could be long periods between one and
3 shorter periods between others?

4 A. Correct.

5 Q. So that was a big discussion there?

6 A. Correct.

7 Q. Now, you had received -- prior to this November
8 meeting you had received instructions not to be a leader?

9 A. Correct.

10 Q. Not to instruct?

11 A. Correct.

12 Q. And those things we talked about, right?

13 A. Correct.

14 Q. But -- excuse me -- tasks were assigned?

15 A. Correct.

16 Q. In fact, Zach Jenson -- not Derek Jenson -- but Zach
17 Jenson was given a task. Wasn't his task to return as a ninja
18 warrior?

19 A. Ah, yes.

20 Q. When he announced that, did you believe that that
21 would come to fruition?

22 A. No.

23 Q. Because, you know, we haven't seen him yet, but you
24 knew Zach Jenson a little bit at least, right?

25 A. Yes, I do.

1 Q. Ninja warrior, it's fair to say, is above his
2 capability?

3 A. Yes.

4 Q. Okay. I mean, just as soon as see the Easter Bunny
5 return as Zach Jenson as a ninja warrior, right?

6 A. Correct.

7 Q. That's the reality. So it's fair to say what he set
8 for his task didn't make sense, right?

9 A. Correct.

10 Q. I mean it was just Zach Jenson being Zach Jenson?

11 A. He was serious about it.

12 Q. Well, yeah, right. And -- but just so the record is
13 very clear, he didn't return as a ninja warrior, correct?

14 A. He had made firm attempts to.

15 Q. Okay. Was he successful when you met him in January?

16 A. As a ninja warrior?

17 Q. Yes.

18 A. He showcased his practiced abilities, but I would not
19 say that he was a successful ninja warrior.

20 Q. Okay. So that was his task. And then there was a
21 task for Lauren Weiner, correct?

22 A. Yes.

23 Q. And Lauren Weiner's task was -- you told us
24 yesterday. What was it?

25 A. To procure a couple of books.

1 Q. Okay. And those were books, The Poor Man's James
2 Bond?

3 A. The Poor Man's James Bond.

4 Q. And these were instructions on the chemicals needed
5 to make explosives?

6 A. Chemicals, explosives, guerilla warfare, correct.

7 Q. And that was her job.

8 And then you we're going to -- it was agreed that you
9 were going to find a place for everyone to re-meet?

10 A. Correct.

11 Q. And that was going to be your task?

12 A. Correct.

13 Q. To go out and find a new place, right?

14 A. Correct.

15 Q. Okay. And then you went where after November? Did
16 you go back to Florida or --

17 A. I returned to Pennsylvania.

18 Q. Pennsylvania. And did you continue to work on other
19 cases?

20 A. No, I did not.

21 Q. You were just working on this case?

22 A. Correct.

23 Q. And then you went to -- when did you go pick up
24 Lauren Weiner?

25 A. To return in January?

1 Q. Yeah.

2 A. Shortly after the New Year.

3 Q. And roughly January 1 or 2?

4 A. Correct.

5 Q. And you got in the car --

6 A. Correct.

7 Q. -- with her? You drove cross-country?

8 A. Correct.

9 Q. And that car was mic'd with an undercover tape
10 recorder?

11 A. Yes.

12 Q. Okay. And how long -- and was it on, I mean, when
13 you were in the car?

14 A. Yes.

15 Q. Most of the time?

16 A. Yes.

17 Q. And do you remember having conversations with -- I
18 apologize. Got ahead of myself.

19 Was Zach Jenson out there then?

20 A. Yes, he was in the car with us.

21 Q. All right. So you picked up Ren and the ninja
22 warrior about January 2nd?

23 A. Correct.

24 Q. And was he in Philadelphia also?

25 A. No. He was with Lauren Weiner in Washington D.C.

1 Q. And is that where you picked them up?

2 A. Correct.

3 Q. And so the three of you got in the car and started
4 driving out to the West Coast?

5 A. Correct.

6 Q. Do you remember having conversations with them that
7 were tape recorded?

8 A. Yes.

9 Q. And did you listen to those?

10 A. I have not.

11 Q. You haven't listened to those conversations. Okay.
12 Have you seen transcripts of those conversations?

13 A. I have.

14 Q. You have. Okay. Do you recall the conversation that
15 came up where -- let me ask you about marijuana use. Okay?

16 A. Okay.

17 Q. Not yours or mine. Okay. Zach Jenson.

18 A. Okay.

19 Q. Zach Jenson uses a lot of marijuana, right?

20 A. I believe he does.

21 Q. I mean, do you recall undercover in this case saying
22 several times, you know, something to the effect of stop
23 smoking marijuana so much?

24 A. Yes.

25 Q. Because he talks stupid sometimes?

1 A. Okay.

2 Q. And -- well, yes?

3 A. That's your opinion, yes.

4 Q. But at some point did you say things, you know, to
5 him about, you know, stop smoking marijuana?

6 A. Yes.

7 Q. Now, on the trip out, what I'm getting at, is from
8 D.C. to California, and I refer to the automobile trip, was
9 Zach Jenson smoking pot?

10 A. Not to my knowledge.

11 Q. So when he would speak in the car, he was not high?

12 A. To my knowledge he was not high.

13 Q. And you guys -- how many days did you take to come
14 out?

15 A. Between three and five. I can't be exact.

16 Q. Okay. And did you stay in separate rooms or
17 anything, did you sleep in the car?

18 A. We drove straight through, correct?

19 Q. Non-stop?

20 A. Non-stop.

21 Q. And nobody was smoking anything?

22 A. Not to my knowledge.

23 Q. Okay. You drove the whole way?

24 A. No. I drove most of the way.

25 Q. Who drove -- who else drove?

1 A. The three of us shared the responsibilities.

2 Q. And do you remember a conversation in the car, since
3 you've seen the transcripts of that, where Zach -- where you
4 said something about who is the leader of the group?

5 A. Who was in this discussion?

6 Q. Okay. Zach Jenson, Lauren Weiner, and yourself in
7 the car.

8 A. In the car. Who are the subjects of the discussion,
9 though, for the record?

10 Q. I'll make it easier for us.

11 A. Thank you.

12 Q. Driving out in the car, the undercover -- the wire
13 was on, the recorder was on?

14 A. Correct.

15 Q. And if you've reviewed those transcripts -- you
16 haven't listened to that tape, right?

17 A. I have not.

18 Q. Do you recall a conversation where you said, how do
19 you folks feel about D -- as being Mr. McDavid -- being our
20 leader; do you remember that?

21 A. Yes, I do.

22 Q. Okay. Do you remember Zach Jenson saying he is not
23 our leader?

24 A. I believe so.

25 Q. Do you remember him saying you're our leader?

1 A. No. No.

2 Q. Is it possible it was said, you just don't remember
3 it?

4 A. It's possible but --

5 Q. I'm not saying it means anything. It's Zach Jenson
6 speaking, right?

7 A. Correct.

8 Q. Do you remember having a conversation with Lauren
9 Weiner to that effect?

10 A. About leadership?

11 Q. This conversation -- first of all, she would have
12 been in the car when you and Zach had that exchange, right?

13 A. If we're remembering the same conversation, she was
14 not in the car.

15 Q. Was it a stop or rest stop or something?

16 A. Yes.

17 Q. Do you remember having that similar conversation with
18 Miss Weiner -- and I'll tell you what I mean by similar
19 conversation -- and that is something to the effect of, how do
20 you feel about D being our leader, and her replying something
21 about he is not our leader; do you remember that?

22 A. To answer this question requires more than a yes or
23 no answer.

24 Q. Okay. That's okay.

25 So now we get out to California, in the car, and

1 where did you find Mr. McDavid?

2 A. I believe we picked him up in Downtown Sacramento.

3 Q. Now on the way out, did Miss Weiner or Mr. Jenson pay
4 for any of the gasoline?

5 A. Yes, they did.

6 Q. With their own money?

7 A. Yes, they did.

8 Q. Did they pay for their own food?

9 A. Yes, they did.

10 Q. With their money?

11 A. Yes.

12 Q. And did they pull the cash out in front of you?

13 A. Yes.

14 Q. Okay.

15 A. Jenson used a food stamp card.

16 Q. Say that again?

17 A. Jenson used a food stamp card.

18 Q. How much did it have on it?

19 A. I don't know. That was his card.

20 Q. Okay. So he had a food stamp card?

21 A. Correct.

22 Q. Was it issued in his name?

23 A. Yes, it was.

24 Q. Okay. So he qualified for food stamps that you knew?

25 A. Correct.

1 Q. Okay. But remember, Weiner had said earlier this had
2 to be way cheap because she was way broke, right?

3 A. The following sentence was she was saving up all her
4 money for the trip out.

5 Q. So then we go out, you're here in California, and you
6 find Mr. McDavid in Sacramento?

7 A. Correct.

8 Q. And then he doesn't know where you're going, right?

9 A. Correct.

10 Q. You picked him up?

11 A. Correct.

12 Q. And you guys went to the cabin in Dutch Flats?

13 A. Correct.

14 Q. Let me ask you about the cabin in Dutch Flats. It
15 had been rented by the FBI?

16 A. Correct.

17 Q. And it had been installed with -- inside it had been
18 installed with listening devices?

19 A. Correct.

20 Q. And video camera devices?

21 A. Correct.

22 Q. I think two or three video cameras?

23 A. Correct.

24 Q. They showed you where they were?

25 A. No.

1 Q. They didn't -- you didn't know where they were?

2 A. No.

3 Q. Okay. But you knew they were there?

4 A. Yes, I did.

5 Q. And it's fair to say that that's to document
6 evidence, number one, right?

7 A. Correct.

8 Q. And, secondly, for your protection?

9 A. Correct.

10 Q. You're undercover?

11 A. Correct.

12 Q. And so it would try to get coverage of just about
13 everything in the case that was needed, right?

14 A. Correct.

15 Q. And you've been doing -- at this point, you know, you
16 had some familiarity with undercover work, right?

17 A. Correct.

18 Q. So I mean if you don't want it so that people can go
19 over into a corner and talk quietly and, you know, defeat the
20 purpose of being watched and also for your safety, right?

21 A. Correct.

22 Q. So the best way to do it is to have it all seen, so
23 to speak?

24 A. Correct.

25 Q. And all hearing, right?

1 A. Correct.

2 Q. Okay. And it was your understanding that this was
3 going to be accomplished by the way they wired the cabin,
4 right?

5 A. Correct.

6 Q. In fact, there was like a barn or a garage that had
7 the brains of the operation, so to speak, in it?

8 A. No.

9 Q. Didn't it have the equipment in a garage?

10 A. I don't have knowledge about that.

11 Q. Okay. Did they tell you that they would be in there
12 listening?

13 A. Persons? In the cabin? In the garage?

14 Q. Yeah.

15 A. No.

16 Q. No?

17 A. No.

18 Q. Okay. And they would be nearby, though?

19 A. Correct.

20 Q. That's the FBI?

21 A. Correct.

22 Q. And task force officers?

23 A. Correct.

24 Q. And that included Mr. Nasson Walker?

25 A. Correct.

1 Q. Mr. Torres?

2 A. Correct.

3 Q. Okay. Many others?

4 A. Correct.

5 Q. Mr. St. Amant from the California Highway Patrol?

6 A. Yes.

7 Q. Okay. And you got to the cabin, and the concept
8 there was kind of a joint concept? I mean, the FBI had asked
9 you to get to California to, you know, get these guys going on
10 something, right?

11 A. Correct.

12 Q. Okay. And to have them in a controlled environment
13 where they could participate and observe it, right?

14 A. Correct.

15 Q. And so fair to say you're almost there? I mean,
16 we're in the cabin now?

17 A. Correct.

18 Q. Got it wired and mic'd?

19 A. Correct.

20 Q. And there's several, several discussions throughout
21 the days at that cabin, right?

22 A. Correct.

23 Q. One of those discussions was to have an end-result
24 product explosive -- explosives, right?

25 A. Correct.

1 Q. And that would be something you could take out and
2 test somewhere, right?

3 A. Correct.

4 Q. And that would be something small enough, so that you
5 would be able to deal with it in a remote area and blow
6 something small up and see if it worked?

7 A. Correct.

8 Q. Like calibrating what you're doing, doing tests?

9 A. Correct.

10 Q. Experiments?

11 A. Correct.

12 Q. And there was a lot of discussion -- and we heard
13 this a lot yesterday, and I don't need to go over it with you
14 because the jury heard it -- is that there was a lot of
15 discussion about the different methods and different types of
16 explosives to use?

17 A. Correct.

18 Q. And different recipes and so forth?

19 A. Correct.

20 Q. Okay. And that was when -- that's the first time you
21 gave the burn book to the group?

22 A. Correct.

23 Q. And the burn book there were, fair to say, about six
24 recipes?

25 A. I believe so.

1 Q. And those you had -- you had written those down,
2 handwritten them?

3 A. Those were given to me by the FBI, and I wrote them
4 in the book, yes.

5 Q. But the entries we talked about, those are your
6 entries, right?

7 A. Correct.

8 Q. And you put all those in the burn book and provided
9 those recipes, right?

10 A. At the request of McDavid, yes.

11 Q. Okay. Well, thank you. Answer my questions
12 completely every time. Thank you.

13 Now, it was also actually -- I mean, well, it was his
14 request, but it was a joint request, it was also a joint
15 request of the FBI that you give it to him?

16 A. To give those specific recipes that had been vetted
17 for safety.

18 Q. Right. That's what I'm going to ask you about.
19 They're all duds?

20 A. Correct. To my knowledge, correct. I'm not an
21 explosives expert.

22 Q. But you believed they were duds?

23 A. Correct.

24 Q. And you relied on that?

25 A. Correct.

1 Q. And your testimony is that Mr. McDavid had begun
2 exploring the whole explosives concept quite a while earlier,
3 correct?

4 A. Correct.

5 Q. And then even in -- I mean, we saw yesterday e-mail
6 exchanges between you and him about recipes?

7 A. Correct.

8 Q. In fact, one was a Christmas cookie that he asked
9 about?

10 A. That was the code name, yes.

11 Q. Right. And you provided -- you actually sent it back
12 to him in code, right?

13 A. Correct.

14 Q. And told him to open up the Irish account?

15 A. Correct.

16 Q. So that, you know, you kind of tell him open up the
17 Irish account, it makes this easier?

18 A. Correct.

19 Q. What I'm trying to get at is these recipes by
20 January, right. It's fair to say we're not real far along on
21 these recipes by January 9th or so, right?

22 A. By January 9th?

23 Q. Yes.

24 A. Correct.

25 Q. Okay. Specifically my point is that, you know,

1 Mr. McDavid and you start discussing recipes for explosives
2 back in, you know, the summer of '05, right?

3 A. Correct.

4 Q. And then there's phone calls and e-mails and
5 discussions, right?

6 A. Correct.

7 Q. And then there's you telling him -- I mean, I'm not
8 putting words in your mouth -- but the e-mail yesterday we saw
9 talked about you telling him the ingredients and so forth?

10 He is asking you for what's missing from this, put it
11 that way?

12 A. In the e-mail?

13 Q. Yes.

14 A. The coded e-mail that I sent back?

15 Q. Yes.

16 A. Actually, that -- if you would permit me to explain?

17 Q. Absolutely.

18 A. The e-mail was -- stemmed from a discussion in the
19 November meeting, which we heard on the transcripts yesterday,
20 in which he discussed his first initial contact with the
21 explosives recipe in West Virginia. And from there at the
22 meeting in January, he asked me to follow-up by finding more or
23 complete bomb-making recipes. At which point, I returned the
24 e-mail in December to him.

25 Q. So more -- more recipes for --

1 A. More recipes.

2 Q. And complete recipes for explosives?

3 A. And complete recipes.

4 Q. And this is early December, right?

5 A. Correct.

6 Q. This is after you've talked -- after you met with
7 Mr. Walker and got instructions on how to do this undercover
8 operation, right?

9 A. Correct.

10 Q. And it was to not give instructions, right?

11 A. Correct.

12 Q. And not to be a leader, correct?

13 A. Correct.

14 Q. And this is actually before you had been given this
15 otherwise illegal activity approval?

16 A. Correct.

17 Q. Which then did give you the ability to advise on bomb
18 making?

19 A. Correct.

20 Q. But prior to that, you didn't?

21 A. You're missing one key instruction.

22 Q. Okay. Now that is an instruction we haven't heard
23 yet, is that with Mr. Walker?

24 A. No. You've heard this instruction.

25 Q. Okay. Well, not that I recall. And I'm still under

1 oath, so I'll answer that as I don't recall. Now let me ask
2 you -- here's the point I'm getting at --

3 A. Would you --

4 Q. I'm going to ask the questions.

5 THE COURT: Was there a question that she needed to
6 respond? Are you withdrawing it?

7 MR. REICHEL: Yes.

8 MR. LAPHAM: Your Honor, she should be allowed to
9 complete her answer. The question was asked.

10 MR. REICHEL: She asked me a question, Your Honor.

11 THE COURT: Hold on.

12 Actually, it was: Okay, now, that is an instruction
13 we haven't heard yet, is that with Mr. Walker? No. You've
14 heard the instruction.

15 And then the question, if you call it that, was:
16 Well, not that I recall. And I'm still under oath, so I'll
17 answer that as I don't recall. Now, let me ask you --

18 And her response was: Would you --

19 So there really hasn't been a question that's been
20 posed at this point. So the objection is overruled.

21 Q. BY MR. REICHEL: Back to January 8th and 9th with the
22 burn book and the concept of recipes and explosives.

23 THE COURT: Excuse me, let me just take a break now.
24 I have to speak to counsel before the noon hour for five
25 minutes. So we'll let you go at this time, ladies and

1 gentlemen. Please return at 1:30 p.m. Remember your
2 admonitions regarding discussing the case and forming opinions.
3 Thank you. We're in recess for the noon hour.

4 (Jury out.)

5 THE COURT: All right. We're outside the presence of
6 the jury. Counsel, anything you need to put on the record
7 first of all?

8 MR. REICHEL: No.

9 THE COURT: If not, I just want to find out
10 scheduling and timing, so that I'm prepared for the remainder
11 of today, so I can also give the jury an update as far as the
12 scheduling for next week, and if we're on schedule at this
13 time.

14 MR. REICHEL: I can tell you, I think I'm probably
15 going to be another 15 minutes at the most. I apologize. I
16 told Mr. Lapham that at 10:30. But I really think that's it,
17 and then I'm done. He is going to redirect her for -- he is
18 longer than I am half the time, so I mean, really, I've never
19 seen that. But anyway, I think he is going to be at least a
20 half an hour to redirect, and I'm going to be 15 minutes.

21 So I think we're to the 3:20 break. We're at 3:20
22 with her still today, and he has got an FBI agent.

23 MR. LAPHAM: Your Honor, to answer your overall
24 question, I think we're still on track to finish the case on
25 schedule. We're prepared for fill out the afternoon with other

1 witnesses.

2 THE COURT: With another agent coming in this
3 afternoon?

4 MR. LAPHAM: We have two agents. And if we get that
5 far, we've got Lauren Weiner.

6 THE COURT: All right. We will determine that then
7 -- sounds like we're just going to be with just the agents then
8 this afternoon, is what it sounds like. Thank you very much.
9 See you back at 1:30.

10 (Lunch break taken.)

11 (Jury in.)

12 THE COURT: All right. Mr. Reichel, continue,
13 please.

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

15 Q. BY MR. REICHEL: Anna, I would like to direct your
16 attention to the car ride from Washington D.C. to California?

17 A. Okay.

18 Q. Which would include Lauren Weiner, yourself, and
19 Zachary Jenson?

20 A. Correct.

21 Q. Approximately January 5th of 2006?

22 A. Okay.

23 Q. Okay. And that car was -- as we discussed, had a
24 wire in it or a hidden recorder?

25 A. Yes, it did.

1 Q. Okay. And you've listened to that -- or, no, you
2 have not listened to that, but you've seen transcripts of that?

3 A. Correct.

4 MR. REICHEL: Your Honor, with permission I would
5 like to approach the witness and show her what's been marked
6 for identification as Defendant's Exhibit A-19.

7 THE COURT: Granted.

8 MR. REICHEL: Thank you. I'm sorry, Your Honor, it's
9 A-18.

10 Just take a look at it. Take as much time as you
11 need. And I believe just the first page, maybe the beginning
12 of the second.

13 THE WITNESS: (Witness reviewing document.) Okay.

14 Q. BY MR. REICHEL: Do you recall that conversation in
15 the car?

16 A. I do.

17 Q. Okay. Specifically, I'm going to ask you to look
18 down on the very bottom of page one.

19 A. Uh-huh.

20 Q. And you are talking to Miss Weiner?

21 A. Yes, I am.

22 Q. And you're talking about Mr. McDavid?

23 A. Yes, I am.

24 Q. And the timeframe you're talking about is when you
25 first met him, right?

1 A. Correct.

2 Q. And you say, (reading): He radicalized himself so
3 fast, shockingly fast.

4 A. Correct.

5 Q. And what you meant by that was by the time you
6 re-meet him, I think, in Philly in June of 2005?

7 A. Correct.

8 Q. So from Des Moines in August of '04 to June of 2005
9 you believe he had now radicalized himself?

10 A. Correct.

11 Q. In fact, you testified yesterday that that's what
12 your feelings were?

13 A. Correct.

14 Q. So when you first meet him, he wasn't radicalized and
15 now he is, right?

16 A. Yes.

17 Q. And you're talking to Miss Weiner?

18 A. Yes.

19 Q. And you say you, (reading): Barely recognized him or
20 barely seemed to know him when you met him in Philly in 2005.

21 A. Correct.

22 Q. (Reading): Because he changed so much.

23 A. Correct.

24 Q. (Reading): Once he opened his mouth, I didn't even
25 know it was the same guy.

1 A. Correct.

2 Q. (Reading): When I first met him he was tubby,
3 physically he was different.

4 A. Correct.

5 Q. (Reading): He was tubby. He was smoking pot all the
6 time. He really didn't know what he was doing.

7 A. Correct.

8 Q. (Reading): He came out to Iowa -- which was Des
9 Moines?

10 A. Correct.

11 Q. (Reading): To just check things out and he was --

12 A. Correct.

13 Q. (Reading): He was a total home boy.

14 A. Correct.

15 Q. (Reading): And he totally changed in a year.

16 A. Correct.

17 Q. Now, I want you to go to the top where it says,
18 (reading): At bio we were on your balcony.

19 A. Correct.

20 Q. And you said something to the effect of, (reading):
21 I think this is when like now that I think about it, you had
22 said we were up in your room alone or something?

23 A. Correct.

24 Q. And Lauren Weiner says, (reading): Oh, yeah, I was,
25 like, make sure they are not having sex in my room.

1 A. Correct.

2 Q. That was Miss Weiner's concern back then?

3 A. That was her concern.

4 Q. Okay. And then you explained we weren't in your room
5 alone, and there was nothing to worry about, right?

6 A. Correct.

7 Q. And you were out on the balcony just talking?

8 A. Correct.

9 Q. But the next paragraph, see where it says, (reading):
10 I kind of called him on how much he had changed.

11 A. Uh-huh.

12 Q. Correct?

13 A. Yes.

14 Q. And then you told Miss Weiner he said, (reading):
15 Yeah, well, I had a lot of big influences.

16 A. Correct.

17 Q. And then you told Miss Weiner, (reading): I asked
18 him, like what, and he said, you for one. Correct?

19 A. Correct.

20 Q. That's what you told Miss Weiner?

21 A. Correct.

22 Q. And you then told her, (reading): I near about fell
23 over and died.

24 A. Correct.

25 Q. And then you said, (reading): I knew you for a week,

1 is what you were telling him.

2 A. Correct.

3 Q. And then she interrupted and said? Can you tell the
4 jury what Miss Weiner said?

5 A. You would like me to read this?

6 Q. Yes.

7 A. (Reading): 'Cause he loves ya.

8 Q. Then you said, (reading): Yeah, it's weird. It's
9 like a love slash hate. It's just he hates everything that I
10 embody, but every time he sees me, he goes nuts. And then you
11 said, so I don't know. It will be interesting.

12 A. Correct.

13 Q. Now, does that refresh your recollection about
14 whether or not he had fallen somewhat in love with you by
15 bio-div in June of 2005? Withdraw the question.

16 Did he express to you by bio-div that he had fallen
17 in love with you?

18 A. At bio-div he expressed that he had romantic feelings
19 for me.

20 Q. And that's June of 2005?

21 A. Yes.

22 Q. Okay. Thank you.

23 Now, I just want to go back up to -- well, farther
24 ahead to January of 2006, near the end, just before the arrest.

25 A. Okay.

1 Q. The times in the cabin. And by then you had been
2 given the authority to advise on bomb making and explosives?

3 A. Correct.

4 Q. And when you got to the cabin, what you provided was
5 the burn book?

6 A. Correct.

7 Q. And the burn book had approximately six recipes that
8 you wrote down?

9 A. Correct.

10 Q. And they were all -- we've agreed already, they were
11 duds, right?

12 A. Correct.

13 Q. And they would not have resulted in an explosive --
14 an explosive device?

15 A. Correct.

16 Q. Okay. Now, at that time when you were going in you
17 had concerns that you did not want to be found out by anyone,
18 right?

19 A. Correct.

20 Q. And we talked about that extensively here that that
21 was the number one goal?

22 A. Correct.

23 Q. So everything you would do would be to prevent being
24 found out?

25 A. Correct.

1 Q. And so you'd have to be confident on all of your
2 moves that you wouldn't be found out if you did something,
3 right?

4 A. Correct.

5 Q. I mean, that's well planned-out strategy, right?

6 A. Correct.

7 Q. Well, the burn book had the six recipes you provided,
8 correct?

9 A. Correct.

10 Q. Now, your testimony is that Mr. McDavid had been
11 discussing recipes with you for quite some time, right -- I'll
12 withdraw the question -- at least since, I think, July of '05
13 or August of '05?

14 A. Correct.

15 Q. Okay. Recipes. And now we're in January of '06,
16 right?

17 A. Correct.

18 Q. You give him six dud recipes, right?

19 A. Correct.

20 Q. And you don't want to get caught, right?

21 A. Correct.

22 Q. It's fair to say you knew he didn't have much
23 sophistication in making explosive devices at that point,
24 right?

25 A. I can't make that statement. I don't know what his

1 expertise was.

2 Q. I'm sorry. You didn't want to get caught, right?

3 A. Correct.

4 Q. So if you're going to give him dud recipes, you want
5 to make sure that you're not going to get caught, right?

6 A. Correct.

7 Q. So you have to rely on what Mr. McDavid can do with
8 the dud recipes, right?

9 A. Correct.

10 Q. And you know that he has been talking to you about
11 recipes for about four, five, maybe six months?

12 A. Correct.

13 Q. And yet you -- you know, you did this, and you
14 weren't overly concerned he's going to read these and say these
15 are duds, right?

16 A. They were specifically vetted by the FBI so they
17 would look accurate. But unless you were a bomb expert, you
18 would not know that they were inaccurate.

19 Q. Okay. But you knew they were duds?

20 A. I did.

21 Q. And anybody who is going to go through them is going
22 to find out that they are duds, right?

23 A. Correct.

24 Q. He had been working, you believe, on the Internet for
25 a while on explosive recipes?

1 A. Correct.

2 Q. And, in fact, Lauren Weiner was going to get books on
3 them?

4 A. Correct.

5 Q. And the entire group was going to use those?

6 A. Correct.

7 Q. And he had asked you for some advice in the e-mails
8 in October about missing ingredients, right?

9 A. Correct.

10 Q. And when are you going to get me that recipe,
11 something along those lines?

12 A. Correct.

13 Q. And then he actually gave you one and said can you
14 tell me how this works?

15 A. Correct.

16 Q. Okay. Along those lines.

17 Okay. And did you have conversations with the FBI
18 before January of 2006 about the lack of sophistication of
19 McDavid when it came to recipes?

20 A. I don't recall a specific discussion.

21 Q. But, I mean, as you sit here today, do you recall
22 general discussions about that?

23 What I'm asking you about is is he going to figure
24 this out these are duds?

25 A. Would you like me to explain?

1 Q. No. Here's what we'll do. I'm sorry. Probably not
2 an easy question for you, so I'll ask something else. Okay.

3 You definitely don't want him to look at the burn
4 book and spend a little bit of time on these recipes and
5 realize they're duds, right?

6 A. Correct.

7 Q. In fact, it's fair to say he never found out these
8 were duds, right?

9 A. Correct.

10 Q. When they were arrested, they didn't know these were
11 duds?

12 A. Correct.

13 Q. Okay. In fact, they had done some testing of some of
14 these recipes, right?

15 A. Correct.

16 Q. And they still didn't know that they were duds,
17 right?

18 A. Correct.

19 Q. And you had been allowed to advise them on how to
20 make these and so forth?

21 A. Repeat the question?

22 Q. You'd been allowed to advise them on the recipes?

23 A. In some ways, yes.

24 Q. And, I mean, you stood by when they got the
25 materials, right?

1 A. Correct.

2 Q. You stood by when they were writing down and talking
3 about what materials to get?

4 A. Correct.

5 Q. And you volunteered repeatedly on what materials,
6 right?

7 A. I volunteered?

8 Q. Yes.

9 A. I believe they made the shopping list.

10 Q. By the way, when they went into town -- the first
11 time they went into town to buy supplies -- and we looked at
12 the Government's exhibit -- I think it was \$90 worth of some of
13 these supplies.

14 A. Uh-huh.

15 Q. Do you remember that?

16 A. Uh-huh.

17 Q. That was your money, right?

18 A. That was group money, yes.

19 Q. When you say "group money," had you all put it in a
20 pot somewhere?

21 A. We had.

22 Q. Where was it? What was it in?

23 A. We all understood the money to be available to the
24 group.

25 Q. Okay. When you actually went into the stores, who

1 actually reached into their actual pocket and paid the
2 cashiers?

3 A. I did.

4 Q. But it was just understood that was group money?

5 A. Correct.

6 Q. Okay. But you were nice enough to be the -- so to
7 speak --

8 A. Let me rephrase myself.

9 Q. That's okay. You know, I'm not going to ask you that
10 question.

11 MR. LAPHAM: Your Honor --

12 THE COURT: Yes.

13 MR. LAPHAM: -- she should be allowed to --

14 THE COURT: She should be able to. Mr. Reichel, if
15 you're going to ask a question, let her finish it to the best
16 she can. Go ahead. Answer the question.

17 THE WITNESS: You're asking who pulled the money out
18 of their pocket. That would be out of McDavid's and then
19 Weiner's pockets. And then some of the money was taken from
20 within the cabin from the group pot.

21 Q. BY MR. REICHEL: Okay. Now, you went back to the
22 store again the next day, right?

23 A. Which day is this?

24 Q. Let's go -- did you go to the store on the 11th, the
25 Walmart?

1 A. Yes.

2 Q. Okay. And you went to the store on the 12th?

3 A. Correct.

4 Q. And on any of those days, did you actually reach into
5 your pocket and pay with the cash?

6 A. I don't believe I did.

7 Q. Okay. Both times it was either McDavid or Weiner or
8 Jenson?

9 A. Correct.

10 Q. And when you say it was group money, how was it group
11 money?

12 A. The group was supposed to come out to the cabin in
13 January with some funds, and we were all supposed to draw on
14 these funds together and use them. For instance, Weiner had
15 brought some funds out on her own, and she referenced that she
16 had been saving up her money for that. Jenson had his food
17 stamp card and went to San Francisco to try to sell articles to
18 gain more money for the group. And Weiner and McDavid planned
19 on working in a ski resort if they had stayed there longer to
20 try to gain money for the group.

21 Q. Now, San Francisco, you went over to San Francisco
22 with the group?

23 A. Yes.

24 Q. What day was that?

25 A. That was -- the date of the Walmart trip was the

1 11th, you said?

2 Q. Yeah.

3 A. That was earlier that day on the 11th.

4 Q. Okay. And Lauren Weiner was with you?

5 A. Yes.

6 Q. She bought marijuana that day?

7 A. I don't know. I wasn't around her when she did.

8 Q. Did they tell you that she bought marijuana?

9 A. They would not have told me such things.

10 Q. Why is that?

11 A. They knew that I was a so-called straight-edge.

12 Q. Okay. That was part of your role?

13 A. Yes, it was.

14 Q. And your role as a straight edge is a certain type of
15 activist?

16 A. Straight-edge is a certain type of activist.

17 Q. Nothing to do with drugs?

18 A. Nothing to do with drugs.

19 Q. Okay. But you drove the car back from San Francisco,
20 right?

21 A. I did.

22 Q. And it was your rental car?

23 A. It was the FBI car wired up with audio and video.

24 Q. But it wasn't McDavid's or the other two's, right?

25 A. Correct.

1 Q. Okay. And you had no idea at any time that she had
2 purchased marijuana in San Francisco?

3 A. I did not know.

4 Q. Even when you got back to the cabin?

5 A. They didn't tell me.

6 Q. They smoked pot at the cabin, correct?

7 A. Correct.

8 Q. Okay. Especially on the night of 12th, actually,
9 that was the night there was the big argument?

10 A. That I had left, yes.

11 Q. And when you came back, you found out they had smoked
12 pot, right?

13 A. Correct.

14 Q. And right after that, after you came back and found
15 out they'd smoked pot, that's when McDavid actually started
16 writing some things down in the burn book, correct?

17 A. Which things would you be referencing?

18 Q. Whatever he wrote after you came back, he wrote
19 things down specifically for the next day, right?

20 A. He had written the schedule that the group had
21 presented me with while I was gone. And the shopping list, I
22 believe, was made the following morning.

23 Q. But you saw him that night, we saw the tape
24 yesterday, after you came back, right?

25 A. After -- there was no tape after I came back.

1 Q. That night?

2 A. That night.

3 Q. Did you see McDavid writing things in the burn book
4 that night?

5 A. I saw him show me what he had previously written in
6 the burn book that night.

7 Q. Okay. But it's your testimony that he didn't write
8 anything that night after smoking the pot?

9 A. After smoking the pot, no.

10 Q. Okay. And you had conversations with him after he
11 smoked the pot?

12 A. Brief, yes.

13 Q. Now a day earlier you say that there was -- you were
14 stopped by the CHP in the car, with the group in the car,
15 right?

16 A. That was that day.

17 Q. Okay. And that caused them a lot of concern?

18 A. Yes.

19 Q. And the reason is because just a scary situation for
20 all of them?

21 A. Correct.

22 Q. Including yourself?

23 A. Correct.

24 Q. In fact, that's when you really started thinking,
25 wow, I've got to do something here, right?

1 A. I've got to do something here?

2 Q. Yeah. You started thinking about jettisoning this
3 operation, getting out of this?

4 A. My stress level was high, and I was thinking that I
5 couldn't continue on for the full month that the undercover
6 operation had been planned.

7 Q. So it had been set up to go for at least another
8 month, right?

9 A. Correct.

10 Q. The whole month of January?

11 A. Correct.

12 Q. And in that time there would have been all this
13 testing and discussions, correct?

14 A. Correct.

15 Q. And sketching things out?

16 A. Correct.

17 Q. And planning things?

18 A. Correct.

19 Q. And determining whether there are going to be flash
20 operations or not flash operations?

21 A. Correct.

22 Q. And hopefully by the end of the month come up with,
23 you know, took a month come up with the final plan, correct?

24 A. The group moved so fast, we didn't need a month.

25 Q. Okay. I understand. But let me ask you about the

1 reason you had a month planned out?

2 A. Okay.

3 Q. They asked you to at least stay with them for a
4 month, right?

5 A. The FBI asked me to stay with the group for a month,
6 yes.

7 Q. Right. And you agreed to do that?

8 A. I did.

9 Q. And the goal was because that month was going to take
10 -- in that month, like we talked about, we were going to narrow
11 down things and put some things together here, right?

12 A. Correct.

13 Q. Including testing different types of explosive
14 devices, right?

15 A. Correct.

16 Q. And there are several recipes involved, right?

17 A. Correct.

18 Q. With different types of ingredients, right?

19 A. Correct.

20 Q. Recipes for explosives for different purposes, right?

21 A. Correct.

22 Q. Okay. And there were a bunch of targets actually
23 identified in that time period, right?

24 A. Correct.

25 Q. Some were, I believe, on the East Coast, correct?

1 A. Correct.

2 Q. And then some were in banks, the World Bank, I
3 believe?

4 A. Correct.

5 Q. Okay. And some other targets in Southern California?

6 A. Southern California?

7 Q. Yeah.

8 A. Correct.

9 Q. Are do you remember testifying yesterday you talked
10 about Southern California, Southern California and the coast --

11 A. Yes.

12 Q. -- with Mr. McDavid?

13 And that was when you went to a library and
14 researched places?

15 A. Correct.

16 Q. And you printed them out, and that's an exhibit in
17 this case, right?

18 A. Correct. The power stations.

19 Q. And that has -- I mean, it has destinations all over
20 the place?

21 A. Correct.

22 Q. Not just -- well, I mean, they are really all over
23 the place?

24 A. Correct.

25 Q. Which is really consistent with possible flash

1 operations?

2 A. Yes, it is.

3 Q. And flash operations, we've discussed, are not near
4 each other in time, right?

5 A. Correct.

6 Q. Not near each other in place?

7 A. Correct.

8 Q. Not near each other in style?

9 A. Correct.

10 Q. Okay. You don't want to use the same MO because
11 that's like a fingerprint?

12 A. Correct.

13 Q. Okay. Now, let me ask you about in the car at one
14 point the group -- and this may have been the 10th or the 11th
15 -- ran into someone that Mr. McDavid knew?

16 A. Yes, we did.

17 Q. Right. Do you remember that?

18 A. Yes, I do.

19 Q. Clear as a bell?

20 A. Yes, I do.

21 Q. Okay. Because it was significant?

22 A. Yes, it was.

23 Q. If we harken back to Mr. McDavid when he first
24 started talking to you, let's say, confidentially or in depth,
25 or whatever -- and that's CrimethInc, I'm going to say.

1 I want to ask you about when he is talking to you in
2 Bloomington about Ryan Lewis.

3 A. Correct.

4 Q. And he said, oh, problems because Ryan Lewis, in his
5 opinion, he had done things near his house?

6 A. Correct.

7 Q. And he knew him?

8 A. Correct.

9 Q. And Ryan and his friends had gotten caught?

10 A. Correct.

11 Q. Facing big time?

12 A. Correct.

13 Q. And that was not Mr. McDavid's idea, right?

14 A. Repeat?

15 Q. That was not Mr. McDavid's idea of a good thing,
16 right?

17 A. Correct.

18 Q. So seeing one of those individuals on January 10th or
19 11th would be a really significant event?

20 A. Correct.

21 Q. And it would harken him back to what he had told you
22 at first, right?

23 A. Correct.

24 Q. So after you saw one of those individuals, you gave
25 that a lot of significance, right?

1 A. I gave that a lot of significance?

2 Q. Yeah.

3 A. I believe McDavid gave that a lot of significance.

4 Q. Which then gave you concerns about things, right?

5 A. What concerns would I have had?

6 Q. What I'm talking about when you started thinking
7 about you had to get out of this and didn't want to spend the
8 whole month?

9 A. No. I was not concerned by seeing this individual on
10 the 10th.

11 Q. But the car pulled up, and you saw this individual,
12 it was a woman, right?

13 A. Yes.

14 Q. And that she was one of the Holland sisters?

15 A. Yes.

16 Q. Okay. And McDavid said something to the effect,
17 oh -- probably expletive, right?

18 A. Correct.

19 Q. And was visibly shaken?

20 A. Correct.

21 Q. Okay. And you were driving?

22 A. I was driving, yes.

23 Q. Okay. And you said something to the effect of, you
24 know, what's the problem?

25 A. Right.

1 Q. And you were trying to calm him, right?

2 A. Correct.

3 Q. Okay. And he said, well, that's, oh, my gosh, you
4 know, that's Eva Holland?

5 A. Correct.

6 Q. And she's one of those people that got caught?

7 A. Correct.

8 Q. And then a conversation took place about, you know,
9 this is awful close to home, we're all driving around awful
10 close to home, right?

11 A. I believe so.

12 Q. Okay. And you were in that conversation with
13 Mr. McDavid, right?

14 A. Correct.

15 Q. And he was relaying these things to you?

16 A. He did not seem overtly concerned about that fact.

17 Q. But he was concerned about seeing Eva Holland?

18 A. Concerned about seeing Eva Holland, correct.

19 Q. And he was visibly shaken?

20 A. Yes.

21 Q. And did you then put your hand on his shoulder and
22 say, it's okay, relax?

23 A. Yes.

24 Q. Okay. And did that seem to somewhat relax him little
25 bit?

1 A. No.

2 Q. He was still shaken?

3 A. Yes.

4 Q. And, I mean, you know, you've been involved in this
5 for a long time at that point. Did you see that Mr. McDavid
6 had somewhat transferred back or transformed back to
7 Bloomington and his discussions about not a good idea to do it
8 near home?

9 A. I didn't catch that word. Transformed?

10 Q. Yeah. Let me ask you this. It's obvious that he is
11 now seeing something that's startling him, right?

12 A. Correct.

13 Q. And you're very aware of that?

14 A. Correct.

15 Q. And at that point, did you say to him -- I mean, yes
16 or no -- did you say to him, you know, we can pull out now, we
17 don't have to do this; did you say that?

18 A. I don't recall saying that.

19 Q. Okay. But you recall putting your hand on his
20 shoulder and saying it's okay?

21 A. Correct.

22 Q. And that seemed to calm him down?

23 A. Marginally.

24 Q. It was your intent to calm him down?

25 A. It was my intent to calm him down.

1 Q. Okay. So that he stayed in the car, so to speak?

2 A. So that we could continue on with the day.

3 Q. And get the things that were on the list and so
4 forth?

5 A. Correct.

6 Q. And shortly thereafter there's the big discussion
7 that we saw yesterday, which you refer -- we kind of refer to
8 as an argument, you and Lauren Weiner started talking over each
9 other?

10 A. There was an argument.

11 Q. And we watched the tape of that with the transcript?

12 A. Yes, we did.

13 Q. And they all talked about different targets, right?

14 A. Yes.

15 Q. And some people were reluctant or hesitant about
16 certain targets for reasons, right?

17 A. Yes, sir.

18 Q. And some people were okay and gung-ho on some
19 targets?

20 A. Correct.

21 Q. And some people were gung-ho on some, reluctant on
22 others, right?

23 A. Correct.

24 Q. And as a result, you kind of got up and walked out,
25 right?

1 A. No.

2 Q. You got angry, right?

3 A. I was frustrated with the culmination of the stress
4 throughout the day, and as the argument developed, and people
5 began talking about different aspects of the group, it seemed
6 that I was no longer being included in many of the discussions,
7 and that my feelings of just wanting to be left alone for a
8 little bit to de-stress were not being acknowledged.

9 Q. So you told us yesterday you were worried about being
10 ostracized, you felt ostracized?

11 A. Correct.

12 Q. You felt that they were starting to exclude you?

13 A. Correct.

14 Q. Now, if you -- did you think they were going to
15 exclude you?

16 A. It felt like -- as I just said, it felt like my
17 desires were not being included in the group.

18 Q. Okay. Now, so they were somewhat rebuffing your
19 desires, right?

20 A. Correct.

21 Q. So whatever you would desire and put in as part of
22 the ideas, they were just kind of pushing them out?

23 A. Correct.

24 Q. Now, if they -- well, let me ask you. What was the
25 concern about being ostracized, the cabin was in your name,

1 right?

2 A. Say again?

3 Q. The cabin was yours? The FBI's?

4 A. Yes.

5 Q. The car was the FBI's, right?

6 A. Correct.

7 Q. And would you have taken the burn book back if you
8 got ostracized?

9 A. I'm not sure. It never came to that.

10 Q. But that was your property to start with, you brought
11 it in, right?

12 A. Correct.

13 Q. And, well, it's fair to say you were paying for a lot
14 of this financially, right, they really didn't have the money
15 to do this stuff?

16 A. They had some funds.

17 Q. But you had a lot more?

18 A. True.

19 Q. And the FBI -- I mean, your goal was to accomplish
20 this and get it over with, right?

21 A. True.

22 Q. And you were getting reimbursed by the FBI whenever
23 you needed it, right?

24 A. When they were expenses in the case, yes.

25 Q. But they didn't put a limit on this, like, when you

1 went into the cabin, they didn't say, now, you know, it's \$25 a
2 day?

3 A. No.

4 Q. Okay. It's carte blanche, right?

5 A. Yes.

6 Q. Get 'er done, so to speak, right?

7 A. Can't exactly go out and buy a new car, though.

8 Q. Right. It would have been nice, but they didn't give
9 you that.

10 Now, your concerns about being ostracized that was
11 because you felt tension on their part, right?

12 A. Ostracized is probably not the right word.

13 Q. No longer admitted or -- they were just having
14 problems with you, is that what you're saying?

15 A. No. As I said before, it was more about the desires
16 that I had specifically relating to that argument in that I
17 just wanted to be left alone to de-stress. And then within the
18 group itself it seemed as if they were coming together as a
19 cohesive group; whereas, I was still feeling left out but not
20 about to be physically pushed out. They had all bonded
21 together, and I had not, which was almost to be expected.

22 Q. Okay. Now, they were starting to have their own,
23 like, kind of inner-squabbles about exactly what they were
24 doing, right?

25 A. A few.

1 Q. I mean, they were having squabbles about what we're
2 doing, right?

3 A. It seemed to be the growing pains of the group.

4 Q. And the timeframe was something they talked about,
5 right?

6 A. Correct.

7 Q. And targets they talked about?

8 A. Correct.

9 Q. And they were not agreeing on a timeframe or targets,
10 right?

11 A. People had different targets in mind.

12 Q. Right. But, I mean, it's fair to say, they hadn't
13 come to this final all-agreement on everything, right?

14 A. Correct.

15 Q. And the reason was is 'cause they all expressed
16 different concerns about that, right?

17 A. Different concerns about the targets?

18 Q. Everything. About timeframe, target, where,
19 everything, right?

20 A. True. It was growing pains of the group.

21 Q. Well, you're going to call it growing pains, but
22 that's an inability to get something done, fair to say, right?

23 A. True.

24 Q. Okay. So in this inability to get something done,
25 they were showing stress also?

1 A. Correct.

2 Q. And they were trying to mollify each other, and, you
3 know, get everybody to relax, right?

4 A. Correct.

5 Q. And is that why you felt that you were being singled
6 out or pushed out?

7 A. Because they were trying to mollify each other?

8 Q. Yeah.

9 A. It was a combination of a lot of things. Them all
10 coming together in a cohesive unit. Myself not being part of
11 that. They indulged in drugs. I did not. It was a
12 combination of personality conflicts and --

13 Q. But you knew -- I mean, you said that in August of
14 '04 Mr. McDavid was smoking pot at that time?

15 A. Yes.

16 Q. And you've acknowledged almost kind of flippantly how
17 much pot Zach Jenson smoked?

18 A. Yes.

19 Q. And what a bad idea that was for Zach Jenson, right?

20 Okay. Now, my point is this is, you know, late in
21 the game, so to speak, and you're feeling uncomfortable, right?

22 A. Correct.

23 Q. And you don't want to be found out, right?

24 A. Correct.

25 Q. Definitely not?

1 A. Correct.

2 Q. And you don't want them to know your true role,
3 right?

4 A. Correct.

5 Q. And you've been doing this for quite some time at
6 that point, right?

7 A. Correct.

8 Q. We talked about that?

9 A. Correct.

10 Q. I mean an extensive amount of time you've done this?

11 A. At that point, about year-and-a-half, two years, yes.

12 Q. Well, yeah, over. '03, November of '03 to January of
13 '06, a little over two-and-a-half years maybe. But a lot of
14 people you had fooled is what I'm getting at?

15 A. Correct.

16 Q. Okay. With your role?

17 A. Correct.

18 Q. With your speech, right?

19 A. Correct.

20 Q. With your dress?

21 A. Correct.

22 Q. With your manner?

23 A. Correct.

24 Q. With your identification?

25 A. Correct.

1 Q. With your political philosophy?

2 A. Correct.

3 Q. You name it, you had been able to fool them?

4 A. Correct.

5 Q. Okay. And yet this day things were getting kinda
6 tough, and you thought they might find you out?

7 A. Correct. At one point.

8 Q. Okay. And is it fair to say you started thinking I
9 might not be able to fool these people?

10 A. No, I did not have that thought.

11 Q. But you still had concerns about being found out,
12 right?

13 A. General concerns, yes.

14 Q. That day? I'm talking about the 12th when you got up
15 and leave and get mad. You came to the FBI and said, look, I
16 think I want out?

17 A. The stress level was amazingly high.

18 Q. But stress level -- one of the big stresses for you
19 was you didn't want to be found out?

20 A. Correct.

21 Q. Okay. So when you come to them you say, look, you
22 know, big stress, and I think I need to get out because I think
23 they are going to find out?

24 A. Big stress. I think I need to get out. I don't
25 think I can handle the stress for the rest of the month.

1 Q. Right. If this goes on any longer, I'm going to have
2 a migraine, right?

3 A. Among other things, yes.

4 Q. Yes. I understand. So be better for you to get it
5 over with as soon as possible, right?

6 A. Correct.

7 Q. Because you want out?

8 A. Correct.

9 Q. Now, did you at any time think that -- well, let me
10 ask you this, did you think that if they told you that they
11 were going to move on without you, okay, that they were going
12 to leave the cabin, or they were going to stay in the cabin and
13 make you leave?

14 A. I never felt that that discussion was on the horizon.

15 Q. I mean, they couldn't have done that, the cabin --
16 you told them that you had rented the cabin in your name,
17 right?

18 A. Correct.

19 Q. You remember telling them, you said, look, I've
20 rented it in my name?

21 A. Correct.

22 Q. You said you talked to the landlord or something?

23 A. Correct.

24 Q. And the -- you had driven -- you had driven Zach
25 Jenson out from Washington D.C. to that cabin?

1 A. Correct.

2 Q. And you had driven Lauren Weiner out from Washington
3 D.C. to that cabin?

4 A. Correct.

5 Q. And that was in your car?

6 A. Yes.

7 Q. And you had been there for three days or so?

8 A. Three or four days, yes.

9 Q. And they had saved some money for this trip, right?

10 A. Correct.

11 Q. But you're going to agree with me these are not the
12 most wealthy individuals around, right?

13 A. Correct.

14 Q. I mean, Zach Jenson's got a food stamp card?

15 A. Correct.

16 Q. Okay. So here's my concern is what would have been
17 the harm in playing this out for the whole 30 days to you?
18 Because it was your cabin, your car. I mean, what did you
19 think -- were they really going to blow the operation by
20 saying, Anna, you're out, and we're going to stay here? They
21 couldn't have said that, right?

22 A. They easily could have. It just never crossed their
23 minds to my knowledge.

24 Q. But they couldn't say to you in that group, with what
25 was going on, they couldn't say to you, look, you know, you're

1 out, and we're going to stay in the cabin, and we're going to
2 keep your car, right?

3 A. That's so outside the realm of possibility for what
4 was going on that it's hard for me to make a judgment on that
5 one way or the other.

6 Q. Okay. But would it have been feasible? You know the
7 operation, what's going on at that time.

8 A. Would they have continued on without me, is that what
9 you're asking?

10 Q. At that cabin?

11 A. At that cabin? They possibly could have, yes.

12 Q. And you would left and taken the car?

13 A. One of their lifestyle philosophies is squatting. So
14 it would not have been outside the realm of their possibility
15 or their reality to continue to stay in the cabin without me
16 there paying the rent.

17 Q. But after all that had gone on with all of you, you
18 can agree that there would have been a big blow out, you would
19 have had a big blow out if they said we're staying here and
20 you're out?

21 A. There possibly would have been an argument, yes.

22 Q. Okay. And then it would have been over, right? Your
23 involvement with them would have been over, right?

24 A. Possibly, yes.

25 Q. Your undercover operation would have been over?

1 A. Correct.

2 Q. Okay. And no matter -- but you didn't want that to
3 happen, right, you wanted to finalize this?

4 A. The scenario is so off the wall that it doesn't even
5 seem to have ever --

6 Q. It wouldn't have happened?

7 A. It wouldn't have happened, yes.

8 Q. But I thought your big concern was that you were
9 being so ostracized?

10 A. As I told you, ostracized was not the correct word.

11 Q. Sorry. You were so stressed out about the
12 relationship with the others?

13 A. Correct.

14 Q. It just wasn't going well?

15 A. As I said, there were growing pains within the group.

16 Q. With everyone, not just you?

17 A. With everyone.

18 Q. Okay. But you're the one who walked away and --

19 A. I had a little bit of added stress, wouldn't you
20 think?

21 Q. Well, you walked out for two hours, right?

22 A. Yes.

23 Q. Were they able to reduce that stress when you went
24 and spoke to the FBI?

25 A. Yes.

1 Q. So you got rid of that stress?

2 A. It was reduced.

3 Q. Okay. And you came back?

4 A. Yes.

5 Q. Now, you had been very, very successful at fooling so
6 many people for so long, right?

7 A. Again, yes.

8 Q. And yet for some reason that day, as it got on, the
9 evening of the 12th, you finally had concerns that you might be
10 found out, right, that's one of your concerns?

11 A. Earlier in that day, McDavid was holding the recorder
12 in his hands, yes, I would say that was a viable concern.

13 Q. Okay. But he didn't say anything about it then?

14 A. He didn't know what he was holding at the time.

15 Q. Right. So, you'd seen a CHP officer, you'd seen Eva
16 Holland and --

17 A. That was the --

18 Q. Day before?

19 A. That was at least two days prior to the argument.

20 Q. Right. Right. But then all these things you
21 testified yesterday had caused the stress level to rise?

22 A. Correct.

23 Q. And so we have no final plan and people bickering at
24 that time, right?

25 A. Please say again?

1 Q. We have no final, fixed plan and people bickering,
2 right?

3 A. Correct.

4 Q. And you are feeling stress, right?

5 A. Correct.

6 Q. You don't want to be found out by them, right?

7 A. Again, correct.

8 Q. Okay. And so you don't want to show too much of that
9 stress to them?

10 A. Correct.

11 Q. Okay. But yet you broke down and you did show
12 stress?

13 A. Correct.

14 Q. And something was going on that day where you were
15 worried that you couldn't act your way through this anymore,
16 right, fair to say?

17 A. With the discovery of the Hawk, I felt that that was
18 the closest that I had ever come to being found out, correct.

19 Q. But it's fair to say you thought at this point you
20 couldn't act your way through this anymore, right?

21 A. Well, I could have still acted. I could have still
22 pursued my role.

23 Q. Sure. You went to Mr. Walker, though, that night of
24 the 12th and said I can only do this for a few more hours?

25 A. Few more hours?

1 Q. Roughly.

2 A. I don't believe I put a timeframe on my willingness
3 to commit.

4 Q. Wasn't it the next morning agreed that the 13th --
5 the next morning it was going to be over?

6 A. When I left the cabin, I found out that the FBI had
7 already decided that they were going to be arrested the next
8 day.

9 Q. So did they call you and tell you on the cell?

10 A. They were trying to figure out a way to contact me
11 either via cell or via text message as the argument was taking
12 place and as I stormed out.

13 Q. Right. But at some point, you found out they were
14 going to do the arrest that morning?

15 A. Correct.

16 Q. Okay. And that relieved your mind?

17 A. Yes.

18 Q. And other than Mr. McDavid, had Miss Weiner started
19 acting different to you where you thought she might be figuring
20 out who you are?

21 A. She was acting different. Her personality had
22 changed, yes, but not insomuch as finding out who I was.

23 Q. What about Mr. Jenson?

24 A. His personality had also changed markedly, too,
25 although not in finding about who I was.

1 Q. Was that because he was high on pot?

2 A. Actually, no. He had decided to abstain from smoking
3 pot as much as he could in an effort to have a clear-headed
4 mind while working with explosives.

5 Q. Okay. But my point is, so he changed a little
6 towards you as well, you just told us?

7 A. He changed -- his personality changed in general.

8 Q. Okay. And then Lauren Weiner's personality changed
9 in general?

10 A. Correct.

11 Q. And you had concerns about McDavid's personality
12 changing in general?

13 A. From before. His dramatic personality change from
14 before in the time that I met him from Des Moines until
15 biotech.

16 Q. I'm sorry. I'm asking you about the days --

17 A. About the days in January.

18 Q. Yeah. 10th, 11th, 12th.

19 A. His personality --

20 Q. I understand. Here's the point, on the 12th when you
21 have the big -- I'm trying to, you know, discuss with you on
22 the 12th when you have the big argument and then you want out,
23 right?

24 A. Yes.

25 Q. And the reason is everybody is changing towards you,

1 right?

2 A. You're misconstruing what I just said.

3 Q. That's okay. Then I withdraw the question. You're
4 interacting with them differently, right?

5 A. In terms of my stress level?

6 Q. Yes.

7 A. My stress level was sky high that day. I had a short
8 temper, so did they. As Weiner said on her own in the audio,
9 tempers had been up and down, stress levels had been up and
10 down, and everyone within the group had been tested, as Lauren
11 Weiner said that day.

12 Q. You remember that, right?

13 A. Yes, I do.

14 Q. So we've all been tested today?

15 A. Correct.

16 Q. Right. And of the various things that could cause
17 them to start becoming stressful around everyone is a concern
18 that they're going to get caught, right?

19 A. Correct.

20 Q. So they are becoming kind of hypersensitive about
21 being caught, right?

22 A. Correct.

23 Q. And then you were in the position where you started
24 worrying about them looking at you like they might figure out
25 who you are, was that -- that was a concern, right?

1 A. There was a general concern of mine constantly that I
2 would be discovered. But the only point within the group that
3 I ever felt directly concerned about them identifying me was --
4 excuse me -- was when McDavid had the recorder in his hand.

5 Q. Right. That was on the day of the --

6 A. That was that same day.

7 Q. Okay. But when you went to the FBI, you told us
8 yesterday, and that you were worried about being found out,
9 right?

10 A. Generally, yes.

11 Q. Because they had reacted since they saw the CHP
12 officer?

13 A. Correct.

14 Q. They had reacted because of Eva Holland?

15 A. Correct.

16 Q. They had reacted -- or at least seen the wire in the
17 car, right?

18 A. Correct.

19 Q. And then there was a big argument that took place on
20 the night of 12th?

21 A. Correct.

22 Q. And my point for you is is it seems like there's
23 something that was going on there that was causing them to, you
24 know, not buy your routine any longer; do you understand?

25 A. If you know of this incident, please let me know. I

1 was unaware of an incident where they --

2 Q. Okay. You left and told the FBI I'm starting to get
3 concerns now that I'm going to be found out, right?

4 A. I left and told them my stress level was sky high,
5 and I didn't not feel that I could continue in any undercover
6 role throughout the month due to the high stress levels.

7 Q. Now, one of the things in the stress level was that
8 you might be found out, right?

9 A. Yes.

10 Q. Now, you hadn't told them that before you went into
11 the cabin, right?

12 A. Hadn't told who? The FBI?

13 Q. That I'm stressed out, and I don't want to do this
14 because I think I might be found out?

15 A. The FBI --

16 MR. LAPHAM: Objection, Your Honor, vague as to time.

17 THE COURT: Sustained.

18 Q. BY MR. REICHEL: Let's go to the day before you go
19 into the cabin.

20 A. Okay.

21 Q. Did you tell the FBI that my stress level is really
22 high because I think -- one of reasons I think I'm going to be
23 found out? Yes or no?

24 A. Verbatim, no.

25 Q. Okay. I understand.

1 So was there something going on that caused them to
2 react that scared you, like that you were pushing them to do
3 things that they didn't feel comfortable doing; is fair to say?

4 A. Please identify "them" and repeat the question.

5 Q. Sure. Was there something going on on the 12th --
6 and when I say something going on, I mean actions of you
7 getting them to doing things -- and by "them" I mean Zach,
8 Lauren and Eric McDavid -- that they weren't comfortable with
9 doing? Yes or no?

10 MR. LAPHAM: Objection. That calls for speculation
11 about --

12 THE COURT: Sustained.

13 Q. BY MR. REICHEL: That's fine, Your Honor.

14 Were you actually doing things -- well, this is the
15 first day that you're actually -- these are the first days that
16 you're actually trying to mix the explosives, right?

17 A. Correct.

18 Q. And when you were trying to mix the explosives, the
19 ingredients together, Lauren Weiner was in the kitchen, right?

20 A. For the beginning part.

21 Q. But she came out of the kitchen because you told her
22 to, right?

23 A. She came out of kitchen on her own.

24 Q. Didn't you tell her, come on out, you've got to be a
25 part of this?

1 A. I believe I might have said that as she was coming
2 out, yes.

3 Q. But you encouraged her, you said you really have to
4 be part of this, right?

5 A. Correct.

6 Q. And in the argument later, you brought that up with
7 her that she was kind of hiding out and wasn't participating,
8 right?

9 A. Correct. And she said, no, I did participate.

10 Q. And do you remember the conversation with -- sitting
11 around the couch on the evening of the 12th -- we saw this
12 yesterday -- where you started talking about targets, right?

13 A. Correct.

14 Q. And is it fair to say you were trying to get
15 everybody to identify what targets they felt comfortable with?

16 A. Correct.

17 Q. And phrases like, you know, look, we've got to get a
18 schedule going?

19 A. I was asking questions of the group in terms of what
20 targets were they comfortable with, what targets did they want
21 to pursue, and I was asking them if they were -- if they had
22 any intentions on following the schedules that they had set out
23 earlier in the week.

24 Q. And so they had schedules, and they weren't following
25 them, and you wanted to ask them why, right?

1 A. Correct.

2 Q. So do you believe the reason that things fell apart
3 there is because you couldn't do the role any longer
4 believably?

5 A. Things fell apart that night with the argument?

6 Q. Yeah, because you couldn't do the role anymore?

7 MR. LAPHAM: Objection. I'll object that "things
8 fell apart" is vague and --

9 MR. REICHEL: She can answer.

10 THE COURT: Do you understand?

11 THE WITNESS: I understand things fell as apart as
12 the argument occurred.

13 MR. REICHEL: Yes.

14 THE COURT: Objection is overruled. Go ahead.

15 THE WITNESS: Repeat the question, please.

16 Q. BY MR. REICHEL: Do you believe that things fell
17 apart because you couldn't play the role any longer?

18 A. The argument -- any longer -- no. No. The argument
19 occurred because my stress level was sky high, and my temper
20 was short, everyone's temper was short in the cabin that day
21 and --

22 Q. If you didn't get out of there, you weren't going to
23 be able to play the role any longer, right?

24 A. If I did not get out of there?

25 Q. Yes.

1 A. No.

2 Q. You couldn't have sat there and played the role for
3 another couple hours?

4 A. I could have.

5 Q. But you didn't?

6 A. I needed to go somewhere and de-stress.

7 Q. Okay. And that's because for some reason something
8 was going on?

9 A. I believe the other members of the group also said
10 they needed some time to chill out and de-stress as well.

11 Q. Because something was going on?

12 A. Because it was a stressful day.

13 Q. And in that meeting, that argument, so to speak,
14 something was going on there that just made everybody very
15 stressed out?

16 A. In the argument?

17 Q. Yes.

18 A. The fact of the argument was very stressful.

19 Q. So everyone was stressed after the argument?

20 A. Correct.

21 Q. During the argument?

22 A. Correct.

23 Q. And yet you were in this role, right?

24 A. Correct.

25 Q. And you were concerned when you left that they might

1 find you out, right?

2 A. Correct.

3 MR. REICHEL: Thank you. No further questions at
4 this time, Your Honor.

5 THE COURT: Thank you. Redirect.

6 MR. LAPHAM: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LAPHAM:

9 Q. Ma'am, did things fall apart that night?

10 A. Things fell apart meaning the argument occurred?

11 MR. REICHEL: Objection, Your Honor. That's a
12 leading question.

13 MR. LAPHAM: I'm going to rephrase any way.

14 THE COURT: Thank you.

15 Q. BY MR. LAPHAM: Did the plot fall apart that night?

16 A. No.

17 MR. REICHEL: Objection. Leading as to plot, Your
18 Honor.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 Q. BY MR. LAPHAM: When you came back from your two
22 hours away from the cabin, what were the others proposing to
23 you?

24 A. They were proposing that the group follow a set
25 schedule for the rest of the time that the group was together,

1 and that the group function more cohesively as a unit by
2 following this schedule.

3 Q. And, in fact, the next morning what did the group
4 wind up doing?

5 A. We followed the morning schedule plan, which was a
6 morning meeting, followed by breakfast, followed by the day's
7 events on schedule.

8 Q. And this was something that they planned in your
9 absence?

10 A. Correct.

11 Q. When you were gone on your two-hour -- two hours away
12 from the cabin?

13 A. Correct.

14 Q. Let's talk about your stress that night. You talked
15 about the CHP stop?

16 A. Correct.

17 Q. How did the group react to you in particular
18 regarding that stop?

19 A. They were irritated with me for allowing the CHP to
20 stop us, that is to say, they were irritated with me for
21 rolling through the stop sign and allowing the CHP to stop us.

22 Q. And you've already talked about McDavid finding the
23 recorder and how that increased your stress?

24 MR. REICHEL: Objection. Leading, Your Honor.

25 THE COURT: Sustained.

1 Q. BY MR. LAPHAM: That was -- was that another thing
2 that contributed to your stress?

3 A. Yes, it was.

4 MR. REICHEL: Same objection, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, it was.

7 Q. BY MR. LAPHAM: And when you made your trip away from
8 the cabin, did you find out any information that reduced your
9 stress?

10 A. Yes, I did.

11 Q. And what's that?

12 A. That the FBI had been planning to arrest them the
13 following morning.

14 Q. All right. So your job was coming to an end?

15 A. Yes, it was.

16 Q. Was there anything that increased your stress again
17 that happened after that?

18 A. Yes, there was.

19 Q. What was that?

20 A. That night, after I had fallen asleep, Eric McDavid
21 came over to where I was on the couch, took out his knife, and
22 began waving his knife over my face while I was on the couch.

23 Q. How did you become aware of that?

24 A. The FBI was watching the cabin through the
25 audio/video.

1 MR. REICHEL: Objection, Your Honor. She has no
2 personal knowledge of this. No foundation.

3 MR. LAPHAM: I disagree.

4 THE COURT: I think this is exactly how we're laying
5 the foundation. Objection overruled.

6 Q. BY MR. LAPHAM: Do you have personal knowledge of
7 what you're describing?

8 A. Yes, I do.

9 Q. How did you acquire that -- well, why don't you
10 continue with your answer.

11 A. The FBI was watching on the video cameras in the
12 cabin, and they sent me a text message which vibrated the cell
13 phone on my hip, woke me up, and I opened my eyes and saw him
14 leaning over me with the knife.

15 Q. And what happened after that?

16 A. He said, I'm sorry, and he walked away.

17 Q. Let me talk briefly about this encounter with Eva
18 Holland. Are you familiar with the view of ELF and ALF
19 regarding people who testify against others?

20 A. Yes, I am.

21 Q. Is there a name for that?

22 A. I believe they're called snitches.

23 Q. And what's the ELF or ALF view of snitches?

24 A. That snitches should be cut-off. Snitches are no
25 longer a part of the movement. And snitches should never be

1 trusted or contacted again.

2 Q. And are there certain elements of ELF or ALF that
3 propose violent action against snitches?

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

5 THE COURT: Sustained.

6 Q. BY MR. LAPHAM: Are you aware of elements of ELF and
7 ALF who go beyond what you've described?

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

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 Q. BY MR. LAPHAM: In fact, are you aware of that with
12 specific reference to yourself?

13 A. Yes.

14 Q. And this Eva Holland person that was seen at this
15 restaurant, did McDavid indicate to you what her role in the
16 Ryan Lewis case was?

17 A. Yes.

18 Q. What did he tell you?

19 A. He said that she was a snitch.

20 Q. Was that why he was upset?

21 A. Partly, yes.

22 Q. Let me kind of switch topics on you here.

23 Did you ever have a romantic relationship with the
24 defendant?

25 A. I did not.

1 Q. Did you ever indicate to the defendant that you
2 desired a romantic relationship?

3 A. I did not.

4 Q. But as you've testified, you were aware that he had a
5 romantic interest in you?

6 A. Yes, I was.

7 Q. Is that something you discussed with the FBI?

8 A. Yes, it was.

9 Q. In what context? What did you do?

10 A. I relayed to the FBI my concerns that McDavid had
11 this ongoing romantic interest in me, and how would I deal with
12 that if I was to be assigned to him, and how would I deal with
13 his ongoing romantic feelings toward me without spurning him so
14 much that he would have a violent or uncomfortable reaction.

15 And the FBI contacted the Behavioral Analysis Unit
16 for me, and I was sent a six-page questionnaire that I had to
17 fill out regarding his personality, his behavior, personal
18 habits, actions he has done, things he has said. After filling
19 this out, I returned it to the Behavioral Analysis Unit where
20 they analyzed my answers and came back with a series of
21 responses I should give to McDavid should he give me another
22 romantic advance.

23 Q. And did you employ that advice in your future contact
24 with Mr. McDavid?

25 A. I did.

1 Q. Did you ever have any romantic interest in
2 Mr. McDavid?

3 A. Never.

4 Q. Did any other members of this plot indicate to you
5 that they had a romantic interest in Mr. McDavid?

6 A. Yes, they did.

7 Q. Who?

8 A. Lauren Weiner and Zachary Jenson.

9 Q. And when did Lauren Weiner indicate to you that she
10 had a romantic interest?

11 A. During a conversation in Philadelphia, she told me
12 that she had an interest in McDavid. And I responded to her
13 that if she was interested in him, by all means she could seek
14 him out.

15 Q. And is that reflected on a transcript?

16 A. Yes, it is.

17 Q. Of that particular conversation?

18 A. Yes, it is.

19 Q. How about any other members of the conspiracy?

20 A. Zachary Jenson expressed a romantic interest in Eric
21 McDavid.

22 Q. Did McDavid ever indicate to you that he had similar
23 feelings?

24 A. It was understood to the group that Zachary Jenson
25 and Eric McDavid might be romantically involved.

1 Q. Do you recall any specific conversations either with
2 Mr. Jenson or Mr. McDavid?

3 A. Yes. Yes. At the biotech conference, Zachary Jenson
4 made the comment, quote, D, when you get drunk, you get very
5 horny, and McDavid laughed, and he turned to Jenson and said,
6 yes, but you like it.

7 MR. REICHEL: Objection, Your Honor, as to hearsay to
8 Mr. Jenson. It's a hearsay answer and not a co-conspirator
9 statement in any way. Mr. Jenson is not on the stand.

10 THE COURT: I understand. But for the purpose in
11 which it's offered, objection is overruled.

12 Q. BY MR. LAPHAM: Did Mr. McDavid ever tell you that he
13 had a relationship with another --

14 THE COURT: Excuse me. Let me make that clear.
15 Because the question was regarding whether or not what her
16 perception was and what she felt, and she was relating the
17 reasons for her feelings and understandings. The fact of
18 whether or not there was truly such a relationship is
19 irrelevant, and that was not the point of the question. That
20 was the basis for the Court's ruling. Go ahead.

21 Q. BY MR. LAPHAM: Thank you, Your Honor.

22 Did Mr. McDavid ever indicate to you that he had a
23 relationship with someone else?

24 A. Yes, he did.

25 Q. And who was that person?

1 A. I knew this individual by the name of Sid.

2 Q. That was a woman?

3 A. This was a woman.

4 Q. Do you happen to know her real name or another name?

5 A. I believe her name was Sarah.

6 Q. And what did he -- when did he indicate to you
7 something about Sid?

8 A. I knew that McDavid was traveling with Jenson and
9 this woman known as Sid from California to Florida for the OAS.

10 From the Fort Lauderdale Police Department, I know
11 that Sid and McDavid were escorted out of Fort Lauderdale
12 together.

13 And by the time McDavid had traveled north to
14 Philadelphia for the biotech, Sid was no longer around. But
15 through e-mail discussions after the biotech, I know that
16 Jenson and this woman, Sid, and McDavid were traveling around
17 together again, and it was my understanding that the three of
18 them were romantically involved together.

19 Q. Now, at the cabin, in January of 2006, when you first
20 arrived you -- you described earlier on direct examination
21 where everybody went when they first set up. Would you tell
22 the jury one more time?

23 A. When everyone arrived at the cabin, Weiner and
24 McDavid took the master bedroom with the queen bed as their
25 sleeping area. Jenson took the spare bedroom with two single

1 beds in it for his sleeping area. I slept on the couch
2 directly under one of the video recorders.

3 And halfway through the week, Jenson moved from his
4 bedroom to the master bedroom to join with McDavid and Weiner.

5 Q. So for the rest of the week -- well, how many beds
6 were in that bedroom?

7 A. In the master?

8 Q. Yes.

9 A. One.

10 Q. And what kind of bed was that?

11 A. It was a queen bed.

12 Q. So from that portion of the week on, all three of the
13 co-conspirators were sleeping in the same bed as far as you
14 knew?

15 A. As far as I know.

16 Q. Or at least in the same bedroom?

17 A. Correct.

18 Q. Okay. Did there come a time during the life of this
19 plot when Mr. McDavid made an advance to you?

20 A. Yes, there did. Yes, there was. Excuse me.

21 Q. And what was the circumstances of that? Do you
22 remember the date or the time?

23 A. There was a time in November when he made an advance
24 to me while we were at his parents' house. We were driving in
25 the car. We had ordered a pizza, and Jenson and Weiner were

1 still at the family's house. McDavid and I rode in the rental
2 car down to the pizza place to pick up the pizza.

3 And on the way there, McDavid said, I have to get
4 something off my chest. I'm wondering what's going on with us.
5 Where do we stand? Are we an item? Are we together?

6 And I remembered what the Behavioral Analysis Unit
7 had told me. They said if he makes another advance at you,
8 what you need to say to him to calm him, to mollify him, is
9 that we need to put the mission first. We need to put the
10 mission first. There's time for romance later.

11 Q. And is that what you did?

12 A. That is what I told him.

13 MR. LAPHAM: Your Honor, at this time, we'd like to
14 play an excerpt that she's just -- of the conversation she's
15 just described. We'll mark that -- I guess we -- well, it's
16 going to be on a different disk.

17 Your Honor, if we could do it this way. We can
18 include this transcript on the disk which is marked as
19 Exhibit 30. We can do that after court today, and then we
20 could mark the transcript as next in order.

21 THE CLERK: 12.

22 MR. LAPHAM: 30.

23 THE CLERK: Excerpt 12 of 30.

24 THE COURT: What would be the 30 subset?

25 THE CLERK: 31 is reserved, so it would be 30-K.

1 THE COURT: K.

2 MR. LAPHAM: 30-K.

3 THE COURT: That's fine.

4 MR. LAPHAM: And at this time, I would like
5 permission to pass it out to the jury, the transcript?

6 THE COURT: Go ahead. Ladies and gentlemen, let me
7 remind you once again regarding the transcripts of what you are
8 about -- is this the audio only?

9 MR. LAPHAM: Yes.

10 THE COURT: What you are about to hear. The actual
11 evidence is what you perceive. And the papers that you are
12 receiving are only to help you understand what we believe the
13 words are, and that is not evidence. We'll pick those up
14 immediately after the playing of the audio portion.

15 MR. LAPHAM: Your Honor, we're not getting any sound.
16 Maybe if we take a break later. I can defer and go on to other
17 topics.

18 THE COURT: Okay. Why don't you go ahead, counsel.

19 MR. LAPHAM: All right.

20 THE COURT: Pick up the papers for now, please.
21 Thank you.

22 Q. BY MR. LAPHAM: All right. Let me ask you a few
23 questions about your role here.

24 Now, you understood -- well, Mr. Reichel asked you a
25 question about your instructions from the FBI?

1 A. Yes.

2 Q. Do you recall those, that line of questioning?

3 A. Yes, I do.

4 Q. And one of the questions he asked you was you
5 indicated there was a missing instruction, one that --

6 MR. REICHEL: Objection, Your Honor. Leading the
7 witness. Come on.

8 THE COURT: Sustained.

9 Q. BY MR. LAPHAM: Your Honor, I'm just trying to orient
10 her to the question.

11 THE COURT: See if you can rephrase it, counsel.

12 Q. BY MR. LAPHAM: Do you recall an answer you gave in
13 cross-examination regarding a missing instruction?

14 A. Yes.

15 Q. What did that relate to, your answer?

16 A. It related to there were a set of instructions given
17 to me, never lead, never take an advisory role, but when asked
18 questions or when information is solicited from you, then in
19 the capacity of your role you are to respond.

20 Q. All right. That's the missing instruction you were
21 referring to?

22 A. That is the missing instruction.

23 Q. And how does that relate to the conduct you undertook
24 in this case?

25 A. McDavid solicited information from me by asking for

1 bomb recipes.

2 Q. And you -- what about encouraging the group to come
3 out and have the meeting in November?

4 A. I was directly instructed by the FBI to encourage the
5 group to come out in November.

6 Q. And were you a participant in those conversations
7 with the FBI regarding why that should be done?

8 A. Yes, I was.

9 Q. And why was that going to be done?

10 A. The conspiracy had just grown from a member of one to
11 a member -- a number of three. And the FBI was concerned that
12 this was going to be far more serious and on far larger scale
13 than they had initially thought. And they wanted to make sure
14 that the members of the conspiracy were serious and were really
15 going to move ahead with their plans.

16 Q. One of the other things Mr. Reichel asked you about
17 was way back when, when you first got involved in this, you
18 were a minor?

19 A. Yes.

20 Q. And the Attorney General Guidelines require special
21 approval to hire a minor --

22 MR. REICHEL: Objection, Your Honor. Facts not in
23 evidence. He is testifying about what the guidelines require.
24 There was no evidence about special circumstances.

25 THE COURT: No. On cross-examination it was elicited

1 whether or not the person had to be over the age of 18.

2 Objection is overruled.

3 Q. BY MR. LAPHAM: Are you aware whether or not special
4 approval was obtained to bring you on board as a minor?

5 A. Special approval was obtained.

6 Q. Now, Mr. Reichel showed you various e-mails and
7 transcripts, and I want to go over -- not all of them -- but
8 just a few of them.

9 But let me ask a general question first. Every
10 e-mail that you sent in this case at least to one of your --
11 the other members of this plot, did you do those entirely on
12 your own?

13 A. No, I did not.

14 Q. Would you explain that?

15 A. Every e-mail that I sent in the course of this case
16 after the -- after I was moved from the capacity of a CI to a
17 CW, every e-mail in the course of this case was vetted by the
18 FBI. They read it. They approved it. They understood exactly
19 what I was sending.

20 Q. Okay. Let's explain those terms for the jury.
21 What's a CI?

22 A. Confidential informant.

23 Q. And what's a CW?

24 A. Cooperating witness.

25 Q. And what's the difference between the two?

1 A. Confidential informant is a source. It is what I was
2 when I started this. Someone who goes undercover and provides
3 real-time intelligence but does not testify.

4 When I agreed to follow through with this case and
5 follow McDavid, wear a wire, and cooperate with the FBI, my
6 status switched to that of a cooperating witness.

7 Q. And, incidentally, while we're on that subject,
8 Mr. Reichel mentioned that you were not wearing a wire for some
9 of these things?

10 A. Correct.

11 Q. Is that correct? And why is that?

12 A. At the time I was not a CW, and I was not authorized
13 to wear a wire.

14 Q. So after you were converted from a CI to a CW, that's
15 when you got authority to wear the wire?

16 MR. REICHEL: Objection. Leading question, Your
17 Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Correct.

20 Q. BY MR. LAPHAM: Now, with respect to conduct that
21 occurred after November of 2005, were you wearing a wire?

22 A. Yes.

23 Q. Directing your attention to some conduct before
24 November 2005, specifically the CrimethInc convergence in
25 Bloomington, Indiana, and the drive to Chicago?

1 A. Correct.

2 Q. Were you wearing a wire there?

3 A. I was not.

4 Q. Now, you talk about certain conversations you had
5 with Mr. McDavid during that drive to Chicago; do you recall
6 that?

7 A. Yes.

8 Q. So those conversations were not captured on tape?

9 A. They were not.

10 Q. Did you do a contemporaneous report regarding those
11 conversations?

12 A. I did.

13 Q. And did you give that report to the FBI?

14 A. Yes, I did.

15 Q. That report was turned over in discovery to the
16 defense?

17 A. Yes, it was.

18 MR. REICHEL: Objection, Your Honor. She has no
19 personal knowledge of that.

20 THE COURT: Sustained.

21 Q. BY MR. LAPHAM: Let's talk about your purchase of the
22 plane ticket for Lauren Weiner. Would you tell the jury how
23 that came about?

24 A. I was directed to bring the group out to California
25 at the behest of the FBI, so that they could determine whether

1 the group was serious about this plot or not. As part of that,
2 Lauren Weiner needed to travel from Philadelphia to California,
3 and it was proposed that I try and get her to fly out for the
4 weekend. And she didn't have a lot of money, but she had some
5 money, and when I said, you know, would you be willing to pay
6 me back if I let you have a little bit of money for the plane
7 ticket, she said yes, she would.

8 Q. Now, Mr. Reichel indicated to you -- showed you an
9 e-mail, I believe it was, Exhibit A-11. Your Honor, may I
10 approach?

11 THE COURT: You may.

12 Q. BY MR. LAPHAM: Do you recall seeing that e-mail?

13 A. Yes, I do.

14 Q. And he quoted from the e-mail some language to the
15 effect -- that's an e-mail from Lauren Weiner to you?

16 A. Correct.

17 Q. And he quoted some language from that e-mail to the
18 effect that Weiner says she's way poor?

19 A. Correct.

20 Q. Is that an accurate characterization of the entire
21 e-mail?

22 A. It is not.

23 Q. Why is that?

24 A. Because the sentences immediately following that say
25 that she is saving up her money for the time when we leave over

1 the holidays to travel out to California. She also says that
2 she will be able to pay for gas and food. And that since she
3 has stopped buying drugs, she has a lot more money now.

4 Q. Now, there is a conversation that Mr. Reichel talked
5 about regarding Mr. McDavid being selfish for wanting to take
6 some personal time for himself; do you recall that --

7 A. Yes.

8 Q. -- conversation?

9 And that's reflected in transcript marked -- or
10 Defense Exhibit 8-A.

11 While we're looking for that exhibit, do you recall
12 the conversation I'm describing?

13 A. Yes.

14 Q. Would you recount the conversation for the jury?

15 A. The conversation in its accurate form was that Weiner
16 said to me, you know, we're changing our lives for this guy,
17 we're leaving the East Coast, we're going out to California to
18 be a part of this plot and be with him. And I said, yes, we
19 are. Isn't D being so selfish? And she goes, yes, yes, yes.
20 And we continued on that train of thought. And within the
21 transcript excerpt that we read in court it goes back to say,
22 yes, Ren -- her alias -- yes, Ren, what you said made sense,
23 what you said stuck out to me. We are changing our lives for
24 this guy.

25 Q. All right. And, Your Honor, may I approach? I've

1 now got the exhibit.

2 Can you take a look at Defense Exhibit A-8 and tell
3 me specifically the reference you're referring to?

4 A. Would you like me to read it?

5 Q. Yes.

6 A. (Reading): I say, I think that's pretty selfish if
7 we're going to go all the way out there to meet with him for a
8 day. He can't pick a day. And further on down I say, but I
9 mean -- I mean you -- referring to Ren -- what you said stuck
10 with me, a lot that you said, you know, we're changing our
11 entire lives, we're dropping everything.

12 And when I was referring to what she had said is
13 where the beginning of the conversation was.

14 Q. So who started this conversation about McDavid being
15 selfish?

16 A. Lauren Weiner.

17 Q. And you were just contributing to it?

18 A. Correct.

19 Q. In the comment that Mr. Reichel quoted?

20 A. Correct.

21 Q. And on that subject, in the next exhibit, defense
22 A-9 -- Your Honor, may I approach?

23 THE COURT: Yes.

24 Q. BY MR. LAPHAM: There is a reference in there that
25 Mr. Reichel quoted about stressed vibes?

1 A. Correct.

2 Q. Do you see that?

3 And what -- why don't we frame the conversation for
4 the jury. What was this conversation about? Who was it
5 between, and what was the nature of the conversation?

6 A. This was a phone conversation captured while I was
7 with Lauren Weiner. The phone conversation was between myself
8 and McDavid, and we were talking about what he was doing in
9 California. And he was talking about the, quote, family time
10 that he was having and the difficulties he was having with
11 that. And when I was commenting on the, quote, stressed vibes
12 that he had, I was commenting on how he was dealing with his
13 family.

14 Q. So his stress -- he had told you that he was stressed
15 out with family issues?

16 MR. REICHEL: Objection, Your Honor. Leading
17 question.

18 THE COURT: Sustained.

19 Q. BY MR. LAPHAM: What did he tell you that his stress
20 concerned?

21 A. That his stress came directly from his family.

22 Q. Did he tell you specifically? I mean, did he put
23 meat on those bones and tell you what specifically was the
24 problem with his family?

25 A. He had said later on that his family was -- they

1 needed some bonding time. They needed time to all come
2 together and really reintegrate. He felt that the family --
3 his family unit had fallen apart a little bit, and he wanted to
4 become closer with his sisters and his parents and his father.

5 Q. Incidentally, referring to -- going back to the topic
6 of Lauren Weiner's plane ticket and referring to Defense
7 Exhibit A-7 -- Your Honor may I approach again?

8 THE COURT: You may.

9 Q. BY MR. LAPHAM: Mr. Reichel showed you that e-mail.
10 Is there a reference in that e-mail to how the ticket will be
11 paid?

12 A. Yes, there is.

13 Q. What's that reference?

14 First of all, who is the e-mail to and from?

15 A. This is an e-mail from me to Lauren Weiner.

16 Q. And what's the reference to how the payment will be
17 made?

18 A. I am telling her that I can help her pay for the
19 ticket, and then, humorously, I say, or rather, you can help me
20 pay for the ticket.

21 Q. So what was your understanding as to who would pay
22 for the ticket?

23 A. I would pay for the ticket up front, and she would
24 reimburse me as much as she could for the ticket at a later
25 date.

1 Q. Did Lauren Weiner show any hesitation to coming out
2 to California for the November meeting?

3 A. Initially.

4 Q. What type of hesitation?

5 A. Due to lack of funds.

6 Q. Okay. Did she show any hesitation regarding the plot
7 itself?

8 MR. REICHEL: Objection, Your Honor, as to plot.
9 November of '05.

10 THE COURT: What was the last part you said?

11 MR. REICHEL: November of '05, a conversation, and
12 the use of the term "plot."

13 THE COURT: Sustained as to the term.

14 Q. BY MR. LAPHAM: Your Honor, we've laid a foundation
15 up to that point in time.

16 MR. REICHEL: Specifically --

17 MR. LAPHAM: I can --

18 THE COURT: Would you please rephrase it.

19 Q. BY MR. LAPHAM: Well, I can lay it here.

20 When did you learn that Lauren Weiner was part of
21 this plot?

22 A. In late October.

23 Q. And how did you learn that?

24 A. She told me herself.

25 Q. And then it was -- well, when was it in relation to

1 that that the trip to California in November was being planned?

2 A. Shortly thereafter.

3 Q. And when did you first approach Lauren Weiner about
4 going out to California?

5 A. Shortly after the meeting with her where she told me
6 she was now a part of the plot.

7 Q. All right.

8 MR. LAPHAM: Your Honor, may I have a moment?

9 THE COURT: Yes.

10 MR. LAPHAM: Your Honor, I just have one other series
11 of questions, but I'd like to play this audio if I can. I
12 wonder if we can take our afternoon recess a little early and
13 see if we can solve this problem.

14 MR. REICHEL: Your Honor, I could just ask a few
15 follow-up questions, so we don't have to break, and then
16 Mr. Lapham can show that after that.

17 THE COURT: Well, I think he has got the questions,
18 and they may be a part of what you're planning on playing; is
19 that correct, Mr. Lapham.

20 MR. LAPHAM: Well, I can ask a few more questions.

21 THE COURT: Get as much done as we can beforehand. I
22 would prefer to do that.

23 MR. LAPHAM: That would be fine.

24 Q. BY MR. LAPHAM: Ma'am, you indicated to Mr. Reichel
25 that you had an early intention of joining the military?

1 A. Yes, I did.

2 Q. At approximately what age did you start making
3 inquiries there?

4 A. 15.

5 Q. And what were your -- what was your motivation in
6 wanting to join the military at that age?

7 A. Patriotic service to my country.

8 Q. Actually, I mis-phrased that. You wouldn't have
9 actually joined at that age?

10 A. At that age, no.

11 Q. You were just making inquiries at that age?

12 A. Correct.

13 Q. And your motivation was?

14 A. Patriotic service to my country.

15 Q. And what about when you were approached by the FBI to
16 do undercover work in this case?

17 A. Again, it would be a form of patriotic service to my
18 country.

19 Q. And at the time you did that, did you have any
20 expectation that you would be paid for those services beyond
21 reimbursement for expenses?

22 A. I did not.

23 Q. And did you have any contract in this case, referring
24 to the McDavid case, regarding any payment that you would
25 receive?

1 A. No, I did not.

2 Q. Now, you, in fact, received about \$31,000 overall for
3 your service in all of these investigations that you
4 participated in over the last two years?

5 A. Yes.

6 Q. And did you have any expectation as to what amount
7 would be forthcoming?

8 A. No.

9 Q. And so why did you agree to undertake this service?

10 A. As I said, it was a form of patriotic service to my
11 country, and it was the right thing to do, and it was something
12 I was interested in doing.

13 Q. Now, you took an oath when you first sat down in that
14 chair?

15 A. Yes, I did.

16 Q. Do you take that oath seriously?

17 A. Yes, I do.

18 MR. REICHEL: Objection, Your Honor.

19 THE COURT: Objection is overruled.

20 THE WITNESS: Yes, I do.

21 MR. LAPHAM: Thank you. No further questions.

22 THE COURT: Subject to --

23 MR. LAPHAM: Subject to, yes, permission to play the
24 tape.

25 THE COURT: All right. Mr. Reichel, recross.

REXCROSS-EXAMINATION

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BY MR. REICHEL:

Q. Thank you, Your Honor.

You've listened to the extensive amount of undercover tapes in this case, right?

A. I've listened to excerpts of a lot of them, yes.

Q. And you've read the transcripts of those excerpts, right?

A. I've read a lot of transcripts, yes.

Q. Well, I mean, you know a lot of them exist, right?

A. Yes.

Q. Are there some you haven't reviewed?

A. Yes.

Q. Okay. Which ones are those?

A. I don't know.

Q. Did they tell you there's certain tapes or something, how would you -- how would you know that you didn't get to hear something that was recorded?

A. There is an amazing amount of audio and video footage from this case.

Q. In that amazing amount of audio footage, let me ask you, how many times did they use the word "plot"?

A. "Plot."

Q. Yeah.

A. I actually believe they used the word "cell" more

1 than they used "plot."

2 Q. Did Mr. McDavid use the term "plot"?

3 A. He used the word "conspiracy" instead of plot. No,
4 he did not say plot.

5 Q. So the answer is actually, no, he didn't use plot?

6 A. No. No.

7 Q. Now Lauren Weiner didn't use the word plot, right?

8 A. No.

9 Q. Neither did Zach Jenson, right?

10 A. No.

11 Q. You didn't use the word plot, either?

12 A. No.

13 Q. The only one is Mr. Lapham, correct?

14 A. Correct.

15 Q. Thank you.

16 Now, when you first wrote to the military on the
17 militarywomen.org, that was July of 2002?

18 A. I believe so, yes.

19 Q. And you told us in July of 2002 you were just
20 15 years old?

21 A. Correct.

22 Q. And you told us you had no intention at that time of
23 joining the military, right?

24 A. I would not have been taken by the military at that
25 time. I was too young.

1 Q. Okay. But you told me earlier today in front of the
2 jury that you had no reason to lie to that website, right?

3 A. Right.

4 Q. There would be no reason to, right?

5 A. Right.

6 Q. Do you remember in the e-mail -- I'll show it to you
7 -- where you said, "I plan to join in a few weeks"?

8 A. I thought I could.

9 Q. Well, was that a lie at that point?

10 A. No. It was --

11 Q. Let me ask you, did you intend to join in a few
12 weeks? Yes or no? Yes or no? Did you intend to join in a few
13 weeks?

14 A. That question needs an explanation with it.

15 Q. No. Then I'll withdraw the question.

16 But you agree with me you didn't intend to join in
17 two weeks, right? Correct?

18 A. As I say, that question needs an explanation to it.

19 Q. But you remember writing that, right?

20 A. I do.

21 Q. Okay. And that wasn't true, correct?

22 A. It was a misunderstanding of mine.

23 Q. Okay.

24 A. An error of youth.

25 Q. Was it because at 15 you thought you could join the

1 military?

2 A. No. It was because I thought I was joining something
3 else, something called a JROTC unit.

4 Q. Okay. And you didn't join the JROTC, did you?

5 A. No, I did not.

6 Q. Now, let me ask you about what you told Mr. Lapham
7 and us about when you saw Eva Holland. Do you remember that?

8 A. Yes.

9 Q. And you said that there was a feeling that she was a
10 snitch, right?

11 A. Correct.

12 Q. And the word snitch she would -- I mean, so we
13 understand, she would inform on people committing crimes?

14 A. Correct.

15 Q. To the FBI?

16 A. Correct.

17 Q. To the federal government?

18 A. Correct.

19 Q. Even to Mr. Lapham, right? Right?

20 A. Correct.

21 Q. Okay. And she actually had become like a cooperating
22 defendant in the Ryan Lewis case, right?

23 A. She had.

24 Q. Okay. And what day was this, January 12th?

25 A. I believe this was the 11th.

1 Q. Okay. And so my question is, is you're in the car
2 and you see somebody who is a cooperating defendant, right?

3 A. Excuse me. The date was the 10th.

4 Q. The 10th, that's fine. Somebody that's a cooperating
5 defendant?

6 A. Correct.

7 Q. And somebody that's a cooperating defendant in the
8 Ryan Lewis case, right?

9 A. Correct.

10 Q. And you're at Dutch Flats now with this gang, right?

11 A. Correct.

12 Q. And Mr. McDavid had told you months earlier that he
13 thought the Ryan Lewis thing was a fiasco because it happened
14 so close to home, right?

15 A. Correct.

16 Q. And he was looking at a lot of time, and people were
17 cooperating against him, right?

18 A. Correct.

19 Q. And then you run into this person, right?

20 A. Correct.

21 Q. You have to agree with me that that's got to be a
22 giant concern among the group at that time, right?

23 A. It was stressful for McDavid.

24 Q. Right. And when we say stressful, that's because it
25 could -- I mean it could cause him to back out of anything,

1 especially what you were talking about at that time, right?

2 A. I did not get that feeling from him that he was about
3 to back out.

4 Q. Okay. But it could cause him to back out, right?

5 A. I suppose it could have. Hypothetically.

6 Q. If Ryan Lewis showed up in the car with the FBI,
7 right?

8 A. Perhaps, yes.

9 Q. So it's a big event?

10 A. Correct.

11 Q. Right. And that's when, because of his stress, you
12 put your hand on his shoulder and said, don't worry, it's going
13 to be okay, and calmed him down, right?

14 A. I attempted to, yes.

15 Q. Okay. Now, Mr. McDavid's romantic feelings for you,
16 we want to explore again.

17 A. Okay.

18 Q. Okay. You got training from the FBI on how to rebuke
19 that, so to speak?

20 A. Yes, I did.

21 Q. Did you have training on that -- you didn't get
22 training on that until November of '05?

23 A. Correct. Shortly before.

24 Q. Right. So when you met him in Des Moines, you didn't
25 have that training?

1 A. Correct.

2 Q. When you met him in Philadelphia in June of '05, you
3 didn't have that training?

4 A. Correct.

5 Q. And when you saw him in Bloomington, you didn't have
6 that training?

7 A. Correct.

8 Q. And then you got the e-mail from him in late October
9 about -- you know, it says I love you?

10 A. That e-mail was the reason why I went to the BAU,
11 Behavioral Analysis Unit.

12 Q. Right. That caused you --

13 A. That was the straw that broke the camel's back.

14 Q. Because how he saw the balcony scene in Philly was
15 different from yours, right?

16 A. Correct.

17 Q. He clearly had one view, right?

18 A. I assume so.

19 Q. Well, I mean, you've read it with us, and you agreed,
20 right, I mean, he shows how romantically attracted to you he
21 was?

22 A. Correct.

23 Q. And so that's why you went to the FBI to get the
24 training?

25 A. Correct.

1 Q. But you didn't have the training when you met him in
2 Des Moines in August of '04, right?

3 A. Right.

4 Q. And in Philly again you still hadn't the benefit of
5 that training in June of '05?

6 A. Correct.

7 Q. And he had written you -- you believe he had written
8 you love letters in the meantime, right, we talked about that?

9 A. A few, yes.

10 Q. Okay. And we don't have those anymore, correct?

11 A. No. Correct.

12 Q. And you were still working for the FBI when those
13 disappeared, though, correct?

14 A. Correct.

15 Q. Now, with something significant you make a
16 contemporaneous report to the FBI while you're in your
17 undercover capacity, right?

18 A. Correct.

19 Q. And the night of January 12th you were still in your
20 undercover capacity?

21 A. Correct.

22 Q. And significant events you have to report to the FBI,
23 right?

24 A. Correct.

25 Q. And that's just you're participating in good police

1 work, right?

2 A. Correct.

3 Q. If it's significant, you got to report it to them?

4 A. Correct.

5 Q. And you're going to agree with me that if it's
6 significant, they have to make a report about it, right?

7 A. Correct.

8 Q. And you heard Mr. Lapham talk about FBI reports that
9 you believe had been provided to me in discovery, right?

10 A. Correct.

11 Q. Now, I want to direct your attention to the night
12 again on the 12th. I apologize. I will not belabor it. But
13 you had gone to Mr. Walker, and you were worried, right?

14 A. Correct.

15 Q. And then later that night the cell phone buzzes,
16 right?

17 A. Correct.

18 Q. Now, that house was wired with video cameras and
19 audio sensory devices for your protection, right?

20 A. Correct.

21 Q. So that anything that would go off, you know, they
22 could rush in, correct?

23 A. Correct.

24 Q. And it just didn't work that night evidently when you
25 were sleeping, correct?

1 A. The which didn't work?

2 Q. Sorry. Bad question. There was video cameras all in
3 the house on the night of the 12th, right?

4 A. Correct.

5 Q. For your protection?

6 A. Correct.

7 Q. And it's wired for sound, so they can listen in for
8 your protection?

9 A. Correct.

10 Q. And you had just left from the FBI saying I got all
11 the stress here?

12 A. Correct.

13 Q. It's stressful having Mark Reichel ask me questions.
14 And I'm really, really, really stressed here, and one of the
15 reasons is I may be found out by these people?

16 A. Correct.

17 Q. And after all that stress, when you went back, were
18 you pretty tired?

19 A. Exhausted.

20 Q. I'm getting to the part where you were sleeping.
21 Okay. I don't know if you know that. Now, the FBI then buzzed
22 you on the pager, the buzzer, right?

23 A. Correct.

24 Q. And this is in the house where the video cameras are,
25 and the wire -- the microphones are, they're listening, right?

1 A. Correct.

2 Q. And, I mean, you're no fool, you've been doing this
3 for a while. You're not going to sleep over in some area
4 that's not being viewed by them, right?

5 A. Correct.

6 Q. You're not going to sleep in some area that doesn't
7 have any kind of sound, right?

8 A. Correct.

9 Q. And if anything significant happens, you immediately
10 notify the FBI, right?

11 A. Correct.

12 Q. Okay. Now, we heard today about Mr. McDavid waving a
13 knife over your head?

14 A. Yes.

15 Q. Correct? Now, and you went back to sleep right after
16 that, correct?

17 A. Correct.

18 Q. Okay. And did you -- did you see -- you're familiar
19 with this -- familiar as I am with this case and the documents
20 -- did you see any reports about the knife waving?

21 A. I believe it's within the audio/video recordings.

22 Q. Did you see any written reports of it?

23 A. No.

24 Q. Okay. Have you reviewed the -- do you see when
25 Mr. McDavid was apprehended there was no knife that was found

1 on him, correct?

2 A. I had not looked at the --

3 Q. Do you have any explanation why no knife was found on
4 him the next day when he was arrested?

5 A. I believe we'd have to ask the evidence search team
6 if a knife was found in the cabin.

7 MR. REICHEL: Okay. I have nothing further, Your
8 Honor.

9 THE COURT: Thank you. Mr. Lapham, did you have any
10 redirect off his re-cross?

11 MR. LAPHAM: Actually, just one question.

12 THE COURT: Okay.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. LAPHAM:

15 Q. That night when Mr. McDavid was waving the knife over
16 you --

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

19 THE COURT: Overruled.

20 Q. BY MR. LAPHAM: -- did you get back to sleep that
21 night?

22 A. I did.

23 Q. Were you able to sleep?

24 A. I was able to sleep restlessly, but I was able to
25 sleep because the FBI was on the other end of the camera

1 watching me 24-7.

2 MR. LAPHAM: No further questions.

3 THE COURT: Anything else? Mr. Reichel?

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

5 FURTHER RECROSS-EXAMINATION

6 BY MR. REICHEL:

7 Q. Anna, you know that now, as we stand here today,
8 Lauren Weiner is cooperating to testify for the Government,
9 right?

10 A. Yes.

11 Q. And Zach Jenson as well?

12 A. Yes.

13 Q. And the FBI, you know that they interviewed these
14 individuals after they agreed to cooperate, right?

15 MR. LAPHAM: Objection, Your Honor. This is beyond
16 the scope.

17 MR. REICHEL: I'll withdraw that question.

18 THE COURT: Yes, it is. Sustained. But it's
19 withdrawn, so the sustaining doesn't need to be done. So
20 you've withdrawn the question.

21 Q. BY MR. REICHEL: In preparation for your testimony
22 here you had to review some documents to refresh your
23 recollection, right?

24 A. Correct.

25 Q. You've seen the reports of the interviews with Zach

1 Jenson by the FBI, right?

2 A. No, I have not.

3 THE COURT: Sustained. This is beyond the scope of
4 redirect. Specifically it was regarding her ability to return
5 to sleep that night.

6 Q. BY MR. REICHEL: Okay. When you were with the group
7 January -- at Dutch Flats, the 9th through the 13th --

8 A. Okay.

9 Q. -- one of the things you're going to be alert for is
10 any changes in their behavior, right?

11 A. Yes.

12 Q. Okay. Did you notice if any of them -- you got the
13 feeling any of them were acting at any point?

14 A. Were acting?

15 Q. Yes. Acting.

16 MR. LAPHAM: Your Honor, again --

17 THE COURT: Sustained.

18 MR. REICHEL: Nothing further, Your Honor.

19 THE COURT: Thank you. That's it?

20 MR. LAPHAM: Yes, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, we will
22 take our afternoon recess at this time. Return at 3:20 p.m.
23 Please remember your admonitions regarding discussing the case
24 and forming opinions. Thank you.

25 (Jury out.)

1 THE COURT: All right. We're outside the presence of
2 jury. Anything on the record at this time, counsel?

3 MR. LAPHAM: No, Your Honor.

4 MR. REICHEL: Not that I know of.

5 THE COURT: Thank you. All right. Off the record.

6 (Discussion off the record.)

7 (Jury in.)

8 THE COURT: Mr. Lapham, are we ready to proceed with
9 the audio recording?

10 MR. LAPHAM: Yes, we are, Your Honor.

11 THE COURT: And have you passed out the transcripts?

12 MR. LAPHAM: I will do so now.

13 THE COURT: Thank you. Mr. Lapham, do you have
14 another copy of that?

15 MR. LAPHAM: Yes, I'm sorry, Your Honor.

16 THE COURT: Thank you.

17 (Audio playing. 3:28 p.m. - 3:31 p.m.)

18 MR. LAPHAM: Your Honor, I have no further questions.

19 THE COURT: Thank you. Pick these up, please.

20 Mr. Lapham, here is the Exhibit 30-K. Return it to you.

21 MR. REICHEL: I may have a question.

22 FURTHER RECROSS-EXAMINATION

23 BY MR. REICHEL:

24 Q. Yes, I do have a question, Your Honor. I was just
25 provided it, so I'm just reading it now.

1 Do you still have it in front of you?

2 A. Yes.

3 Q. 30-K. And he says to you, (reading): I got to get
4 this off of my chest, right?

5 A. Correct.

6 Q. And he says, (reading): It's been pissing me off
7 because I haven't said anything about it yet. Right?

8 A. Correct.

9 Q. And he says, (reading): I don't know if we talked
10 about it last summer on the ride up to Chicago.

11 A. Correct.

12 Q. And he approaches, (reading): So did you just want
13 to keep our relationship professional. Right?

14 A. Correct.

15 Q. As much as it can be in that circumstance.

16 A. What do you mean by that?

17 Q. Well, a professional relationship. Were you both
18 professionals at that time?

19 A. We had a non-romantic and non-intimate relationship.

20 Q. Your response at the top of page two is, (reading):
21 I honestly don't know how I feel right now.

22 A. Correct.

23 Q. Did the FBI train you -- do they tell you to say, "I
24 honestly don't know how I feel right now"?

25 A. I was instructed to placate him as best I could, not

1 to shoot him down outright, that that might make him be
2 unstable, but to placate him as best I could while denying all
3 romantic interest.

4 Q. Right. But not shoot him down right straight away?
5 Correct?

6 A. Correct.

7 THE REPORTER: I'm sorry, counsel, what was your
8 question? You were walking away.

9 Q. BY MR. REICHEL: The FBI instruction was to not shoot
10 him down right straight away, correct?

11 A. Correct. Because that might cause an unstable
12 reaction.

13 MR. REICHEL: Thank you.

14 THE COURT: Nothing else?

15 MR. LAPHAM: No, Your Honor. Thank you.

16 THE COURT: All right. Thank you very much. You may
17 step down.

18 THE WITNESS: Thank you.

19 THE COURT: And just so we're clear, she is excused?

20 MR. REICHEL: We have an agreement that she may be
21 subject to recall.

22 THE COURT: You are subject to recall then which
23 means that you're not to discuss your testimony other than what
24 we're talking about here in court unless otherwise I tell you
25 differently. All right.

1 THE WITNESS: Okay.

2 THE COURT: Thank you very much. You are free to go
3 today, though.

4 THE WITNESS: Thank you.

5 THE COURT: Next witness.

6 THE WITNESS: Please.

7 MR. LAPHAM: Your Honor, the United States will call
8 briefly Matt St. Amant.

9 (The witness was sworn by the Clerk.)

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please state your full name
12 and spell your last name for the record.

13 THE WITNESS: Matthew St. Amant. S-t period
14 a-m-a-n-t.

15 THE CLERK: Thank you.

16 THE COURT: Go ahead, please.

17 MATTHEW ST. AMANT,
18 a witness called by the Government, having been first duly
19 sworn by the Clerk to tell the truth, the whole truth, and
20 nothing but the truth, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LAPHAM:

23 Q. Mr. St. Amant, by whom are you employed?

24 A. California Highway Patrol.

25 Q. And are you currently attached to the FBI?

1 A. Yes.

2 Q. In what assignment?

3 A. I'm a task force officer working with the FBI on
4 their Joint Terrorism Task Force.

5 Q. And did you participate in the investigation and
6 prosecution of this case?

7 A. Yes, I did.

8 Q. And specifically did you participate in the arrest of
9 Eric McDavid?

10 A. I did.

11 Q. Where did that arrest occur?

12 A. In Auburn, California.

13 Q. And what specific location?

14 A. It was within a Kmart parking lot.

15 Q. And at the time of his arrest, did you conduct a
16 search of his person?

17 A. I did.

18 Q. And did you find a knife on his person at that time?

19 A. I did.

20 MR. LAPHAM: Thank you. No further questions. No
21 further questions.

22 THE COURT: Thank you.

23 CROSS-EXAMINATION

24 BY MR. REICHEL:

25 Q. Mr. St. Amant, did you prepare a written report, an

1 FBI Form 302 regarding the arrest of Mr. McDavid?

2 A. I did.

3 Q. And when you prepared it, you took the time to make
4 sure it was accurate?

5 A. Yes.

6 Q. Okay. And as you sit here today, you've reviewed
7 this prior to your testimony?

8 A. I have.

9 Q. Okay. And when I say "this," I'm referring to the
10 302 you prepared. Do you know what I'm holding?

11 A. I do.

12 Q. And it was -- you did it on the 13th of January,
13 2006?

14 A. As far as when it was prepared?

15 Q. Yes.

16 A. I would have to look --

17 MR. REICHEL: Permission to approach the witness,
18 Your Honor?

19 THE COURT: Granted.

20 THE WITNESS: Yes. That's accurate. 13th.

21 Q. BY MR. REICHEL: My question actually is: Does that
22 report accurately depict what you did that day when you
23 arrested him?

24 A. Yes.

25 Q. As far as the search of him?

1 A. Yes.

2 Q. And gathering the evidence, so forth?

3 A. Yes.

4 Q. And it says in there -- there is a line in there that
5 he was -- there was a knife on his possession?

6 A. Yes.

7 Q. And it says attached to a small carabiner?

8 A. Yes.

9 Q. Is that what you recall, there was a knife attached
10 to a small carabiner?

11 A. Yes.

12 Q. And was there a separate knife other than that one
13 that was on his possession?

14 A. I don't recall. I didn't find any. It would have
15 been documented, had I.

16 Q. Yeah. That's actually what I wanted to ask you.
17 It's fair to say that that's the only knife that you found on
18 him, right?

19 A. Yes.

20 Q. Because if there had been some other knife, you would
21 have put it in there, correct?

22 A. Correct.

23 MR. REICHEL: Okay. No further questions, Your
24 Honor.

25 THE COURT: Redirect.

1 MR. LAPHAM: Just one question, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. LAPHAM:

4 Q. That knife would have been booked into evidence?

5 A. Yes.

6 MR. LAPHAM: That's all.

7 RECROSS-EXAMINATION

8 BY MR. REICHEL:

9 Q. What would you have booked -- would you have given it
10 a tag or a number if we need to find it?

11 A. Yes. It would be within the FBI property room under
12 an evidence label.

13 Q. And you would taken care to make sure that that got a
14 certain label and so forth?

15 A. That would have been done. Not by me personally, but
16 yes.

17 Q. Do you have any reason to believe that it -- I mean,
18 the next person that gets it, I assume, we want to know, is you
19 come in and say this is the evidence, this is the property I
20 found on the defendant?

21 A. Correct.

22 Q. And they label it as such?

23 A. Correct.

24 Q. And it's stored somewhere safely?

25 A. Yes.

1 MR. REICHEL: Okay. Nothing further.

2 THE COURT: Anything else?

3 MR. LAPHAM: No, Your Honor. Thank you.

4 THE COURT: Thank you very much. You may step down.

5 Next witness, please.

6 MR. REICHEL: Your Honor, I'm just going to get my
7 exhibits from the prior witness.

8 THE COURT: Go ahead. Next witness, please.

9 MR. LAPHAM: Your Honor, the United States calls
10 Ricardo Torres.

11 (The witness was sworn by the Clerk.)

12 THE WITNESS: I do.

13 THE CLERK: Please state your full name and spell
14 your last name for the record.

15 THE WITNESS: Ricardo Rafael Torres, T-o-r-r-e-s.

16 THE COURT: Go ahead, please.

17 RICARDO RAFAEL TORRES,

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

21 DIRECT EXAMINATION

22 BY MR. LAPHAM:

23 Q. Sir, by whom are you employed?

24 A. The FBI, sir.

25 Q. And where is your home office?

1 A. The Philadelphia office.

2 Q. Were you the case agent assigned to the investigation
3 initially of Eric McDavid?

4 A. Yes, I was.

5 Q. One of the case agents?

6 A. Yes.

7 Q. And were you also the agent that requested that Anna
8 come to Philadelphia to participate in the biotechnology
9 conference?

10 A. Yes, I did.

11 Q. I want to ask you questions about those two subjects.
12 First of all, with respect to the biotechnology
13 conference, that was held in Philadelphia in June of 2005?

14 A. Yes, sir.

15 Q. What prior history did you have or did law
16 enforcement have with respect to the biotechnology conference?

17 A. In 2004, the biotechnology conference, which is an
18 international gathering of CEOs and scientists from
19 biotechnology firms, about 1,000 people attend every year.

20 In 2004, it was in San Francisco. And there, people
21 associated with the anarchist movement, animal rights movement,
22 and the Earth Liberation Front did some property damage and
23 violent acts such as riding bicycles and throwing them
24 underneath the buses moving the attendees from the hotels they
25 were staying at to the conference site.

1 They also did things like throw bricks through
2 windows, have altercations with the police lines where they
3 were trying to keep the crowds away from the conference site.

4 So in light of this, I was actually the lead FBI
5 agent for security for this event in Philadelphia. And, you
6 know, with this information, coupled with some Internet, some
7 very threatening things on the Internet, once again posted to
8 anarchist websites, people dealing with Earth Liberation Front,
9 animal rights movements, threatening to do the same thing in
10 Philadelphia, I sent out a request asking for somebody who
11 could work within these groups to report on any criminal or
12 violent activity that would injure the citizens of
13 Philadelphia, or result in property damage to the city, and
14 basically assist law enforcement in ensuring a safe and secure
15 environment for the conference.

16 Q. And what kind of response did you get to your
17 request?

18 A. I received notice that Anna would be available, and
19 this is what, you know, she was capable of doing. And so I
20 responded in the affirmative, please, you know, let's get
21 together and talk about bringing Anna to Philadelphia to assist
22 us.

23 Q. And that notice came from where, which office?

24 A. The Miami division.

25 Q. Of the FBI?

1 A. Yes, sir.

2 Q. All right. So you met with Anna?

3 A. Yes, I did.

4 Q. What type of instructions, if any, did you give to
5 Anna regarding what she would be asked to do?

6 A. Anna was tasked to work within the anarchist elements
7 of the protestors in order to identify any individual or group
8 of people that would either plan to or advocate any kind of
9 criminal or violent acts, once again, against the city, you
10 know, any buildings, against people, planning to charge police
11 barricades, things like that.

12 So those are the instructions that she received. Get
13 out there and see who is going to do the bad things to the city
14 that the police need to be worried about to protect -- protect
15 the city and the people.

16 Q. Was she asked to do any reporting on -- I'll just use
17 shorthand -- First Amendment activities?

18 A. Absolutely not.

19 Q. Lawful protests?

20 A. No, sir.

21 Q. Did she, in fact, report on any illegal activity that
22 was occurring at the biotechnology conference?

23 A. Yes, she did. She was extremely helpful to law
24 enforcement on -- for example, on one occasion there was a
25 large crowd forming in front of the Philadelphia convention

1 center, which was where the biotechnology conference was taking
2 place. And they were starting to press against the police
3 barricade and trying to push their way up to the convention
4 center. Anna notified me that there was a small group of
5 individuals, who were wearing a black masks and all black
6 outfits, and they had spray bottles with bleach in them. And
7 what they were planning on doing was spraying some of the
8 police manning the barricade line to burn them and distract
9 them to create a weak point within the police line, so that
10 some of the other persons in the group could then push and
11 break through the police barricade and get into -- up on the
12 front of the convention center where the front doors were, they
13 were trying, you know, to protect.

14 Q. Now, after the biotechnology conference, was Anna
15 given a further task to perform?

16 A. I'm sorry, sir?

17 Q. After the biotechnology conference, or perhaps during
18 the biotechnology conference, was she given a further task to
19 perform with respect to Mr. McDavid?

20 A. Yes. On some information we received from Anna about
21 Mr. McDavid, which was -- there was a film shown -- that
22 protest I just described where they wanted to spray the bleach,
23 I reported that to the City of Philadelphia police. They went
24 into the crowd very quickly, and what we call snatched those
25 people that had the bleach bottles to head off that problem.

1 However, a short while thereafter, that group of
2 people became unruly, and there was an altercation with the
3 police in which one of the police officers had a heart attack
4 wrestling with some of these individuals, and he unfortunately
5 died.

6 That night, there was a movie held. And there was
7 actually two groups. One group went and did a candlelight
8 vigil in support of, you know, the police officer because that
9 was actually a sad event for the city.

10 And another group, who said basically, you know, we
11 don't want to support anybody -- you know, death of police
12 officer is kind of a good thing, they went to a film festival.
13 At this film that was shown, the last film of the evening was
14 how to make Molotov Cocktails.

15 MR. REICHEL: Objection, Your Honor. There is no
16 foundation he has any personal knowledge as to what a
17 individual said about it, or their feelings about it, as well
18 as I don't believe he saw the movie.

19 MR. LAPHAM: Your Honor, I can rephrase the question.

20 THE COURT: Thank you. Objection sustained.

21 MR. REICHEL: May I ask that the answer be stricken
22 for the record until he cleans the question up?

23 THE COURT: Well, not the entire answer, just the
24 portions relevant to what your objection was to because that
25 was just the last sentence. So I'll strike that, and the jury

1 is ordered to disregard it. Please lay the foundation,
2 Mr. Lapham.

3 Q. BY MR. LAPHAM: Actually, Special Agent Torres, the
4 jury has already heard testimony regarding that incident.

5 A. Yes, sir.

6 Q. What I want to ask you about is after learning about
7 the incident you've just described about the movie fest, was
8 Anna tasked with some additional duties with respect to
9 Mr. McDavid?

10 A. Yes. Based on the reporting of Eric McDavid's desire
11 to commit some violent criminal acts and his support of those
12 things, you know, Anna's task then became two-fold. One to
13 continue reporting on anybody that wanted to commit violence or
14 criminal acts against the convention or the city or property.
15 But also to, you know, report on -- more on Eric McDavid. You
16 know, what's he doing, who some of his associates are, what
17 plans is he forming.

18 And this was derived from -- once I received that
19 initial reporting that he had made some kind of -- you know,
20 espoused some violent rhetoric, we did some FBI database
21 checks. And in that I found that Eric McDavid was wanted for
22 some questioning in an arson here in Sacramento related to
23 another case.

24 So I contacted Special Agent Walker, who is charge of
25 that case, and he gave me some information on Eric McDavid, and

1 through that conversation turned -- that turned into the
2 tasking to Anna. Keep track of Eric McDavid, his associates,
3 what's he doing, see if you can get more information so we can
4 assess how dangerous he may be.

5 Q. Now, was she -- did you ask her to attend an
6 additional function after the biotechnology conversation?

7 A. Are you referring to the CrimethInc, sir?

8 Q. Yes.

9 A. Yes. In Bloomington, Indiana, the CrimethInc
10 convergence.

11 Q. Now, again, we've already heard testimony of that,
12 about that. I want to ask you some very specific questions
13 about her reporting to you after that.

14 Did she report to you about a conversation she had
15 with Mr. McDavid on a drive that occurred from the CrimethInc
16 function to Chicago?

17 A. Yes, she did.

18 Q. And did she -- how soon after that event did she
19 report that to you?

20 A. She telephoned me immediately after dropping Eric
21 McDavid off in Chicago.

22 Q. What did she report to you?

23 A. She reported several things. One of which was that
24 Eric McDavid had some plans for what he described as a winter
25 bombing campaign. And some of the targets that she described

1 to me were the genetic research facility run by the Forest
2 Service in Placerville, among others.

3 And she also -- and she was very shaken up. She
4 described to me how he told her if you work with the police,
5 I'm going to stab you in the neck and the leg and kill you. So
6 those are the two main things she told me.

7 Q. Now at this point, we've had testimony that -- about
8 the difference between a CI and a CW?

9 A. Okay.

10 Q. At this point, was she a CI or CW?

11 A. At this point she was a confidential informant, which
12 is what we call a CI.

13 Q. And can a CI wear a body recorder or recording
14 equipment?

15 A. No, they cannot.

16 Q. Under FBI guidelines?

17 A. Correct. Under FBI guidelines, they cannot wear
18 recording equipment.

19 Q. All right. So she wasn't wired up at any point
20 during this drive to Chicago?

21 A. No, sir.

22 Q. And then subsequently down the line she was converted
23 to a cooperating witness?

24 A. Yes, she was.

25 Q. I want to direct your attention now to how the FBI

1 reacted to that information that Eric McDavid was planning a
2 bombing campaign.

3 What additional steps did you take with respect to
4 that information?

5 A. Once we received information that was a little more
6 specific about Eric McDavid's intentions, we directed Anna to
7 continue maintaining contact with him because he was very
8 difficult to keep track of due to his lifestyle.

9 So that we could further assess, you know, what his
10 future plans were, and if he had the means, and if he had any
11 co-conspirators.

12 Q. Now, did the FBI's attitude change at any point after
13 that about keeping tabs on Mr. McDavid?

14 A. Yes. Once we determined that Eric McDavid was
15 serious about trying to put together a bombing campaign, we
16 then converted Anna from what we described as the confidential
17 informant to the cooperating witness.

18 MR. REICHEL: Objection, Your Honor. Speculating as
19 to Mr. McDavid's mind "being serious." He is speculating about
20 Mr. McDavid.

21 THE COURT: That's a terminology. Objection
22 overruled. Go ahead.

23 Q. BY MR. LAPHAM: You know, Mr. Torres, I'll rephrase
24 the question a little bit. You learned information in October
25 that there were other members of this group?

1 A. Yes, we did.

2 Q. And how did that come to you?

3 A. Anna learned that there were two other members in
4 this group that Eric McDavid had brought into this conspiracy.

5 Q. And how did the FBI react to that information?

6 A. Since now a cell was coalescing around this bombing
7 plan, you know, we decided it was extremely serious, that these
8 individuals were going to move this bombing campaign forward.

9 So in order to ensure the safety of the public, you
10 know, we took some steps to gain control of the situation. And
11 one of which was to set the stage for a possible meeting among
12 all the conspirators.

13 We did this by tasking Anna to say she had a sick
14 relative here in California, and that she would -- you know,
15 was going to travel out to California to meet, you know, with
16 this sick relative.

17 So then you had Eric McDavid here in California, and
18 you had Anna in California, you had Mr. Jenson also on the West
19 Coast. We thought at that time up in Seattle. And since Anna
20 was in contact with Miss Weiner quite often, we suspected that
21 once the three of them would be on the West Coast, that she
22 also would make her way out there.

23 So we set the stage for this meeting to see if they
24 would actually plan to have this meeting. And, therefore, once
25 they were all together and had discussion about the bombing

1 campaign, that would give us some good information to see if
2 they were serious, if they had the motivation, did they have a
3 way to get some of the materials they needed.

4 So that meeting was very critical because if they
5 would have discussed some benign subjects, we'd breathe a sigh
6 of relief and say, okay, let's move on. This is not a serious
7 threat.

8 However, that did not happen. The information that
9 came out of there we felt was very serious, so we started
10 moving forward with future strategy in order to -- in order to
11 be able to arrest these people.

12 Q. Now, after that November meeting, the FBI provided
13 certain explosive recipes to Anna?

14 A. Yes, we did.

15 Q. Would you explain to the jury how that came about?

16 A. On a couple of occasions Mr. McDavid had verbally
17 described an explosives recipe to Anna.

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

19 THE COURT: Sustained.

20 Q. BY MR. LAPHAM: Are you talking about reporting that
21 Anna gave to you?

22 A. Yes --

23 Q. -- following the November meeting?

24 MR. REICHEL: Objection. Leading, Your Honor.

25 THE WITNESS: Okay.

1 THE COURT: Sustained.

2 Q. BY MR. LAPHAM: Following the November meeting, did
3 Anna report to you as to the results of that meeting?

4 A. Yes, she did.

5 Q. All right. And did you also have quite a bit of
6 audio -- I guess it would just be audio in November --
7 information regarding that meeting?

8 A. Yes, we did.

9 Q. All right. Did you listen to that?

10 A. Yes, I did.

11 Q. All right. And based on that information, what did
12 you conclude about the plot?

13 A. We concluded the plot was very serious and moving
14 forward.

15 Q. And were explosive recipes discussed in that plot?

16 A. Yes, they were.

17 Q. Or, I'm sorry, in those conversations?

18 A. Yes, they were.

19 Q. And, well, put the question again. Why did you
20 provide Anna with explosive recipes?

21 A. Because Mr. McDavid had described one of the recipes
22 to Anna and had asked her, you know, this is what I think, you
23 know, is a C4 explosive recipe.

24 Basically, since he believed she worked in a
25 chemistry lab, because that's part of the cover that we had

1 created for her, he asked her, hey, get this in writing. So
2 then Anna and I together searched public source information on
3 the internet, things such as The Anarchist's Cookbook, the
4 Earth Liberation Front website, and other extremist websites
5 like that, and came up with, you know, public source
6 information off the Internet of what looked, you know, very
7 similar to what Eric McDavid had described to Anna.

8 So then I took that, had a discussion with our bomb
9 technicians in Philadelphia, and said, hey, you know, what is
10 this, what can it do, and they said what it actually is is what
11 we call an initiator. It creates a lot of flash and heat. It
12 will make a big fire and "foof". If it was next to an
13 explosive material, it would generate enough heat to blowup the
14 explosive material.

15 The recipe in and of itself was fairly stable. It
16 was not an explosive itself. So, therefore, I got with Anna,
17 passed on some information to educate her, so she could talk
18 smart about the explosive recipe, and then she passed it on to
19 Eric McDavid to fulfill his request.

20 Q. And before doing that, did you consult anyone else at
21 the FBI?

22 A. Other people in that strategy discussion, is that the
23 question?

24 Q. Regarding specifically about the explosive mixture
25 and whether -- how dangerous it would be.

1 A. We discussed that with the Philadelphia bomb
2 technicians.

3 Q. Okay. And the decision was made to go forward
4 with --

5 A. Yes, sir.

6 Q. -- with that plan?

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

8 THE COURT: Overruled.

9 Q. BY MR. LAPHAM: I just have one final topic, and that
10 concerns the night of January 12th. And that would be the
11 night that Anna -- the night before the arrest?

12 A. Yes, sir.

13 Q. Were you on scene at Dutch Flat on that occasion?

14 A. Yes, sir. I was in the FBI field command post.

15 Q. And where was that located in relation to the cabin
16 itself?

17 A. That was less than a mile away.

18 Q. All right. And did Anna visit the command post that
19 night?

20 A. Yes, she did.

21 Q. Had you been monitoring the activities in the cabin
22 up to that point?

23 A. Yes. In our command post we were monitoring,
24 real-time, the audio and video of what was going on inside the
25 cabin.

1 Q. And what was Anna's demeanor when she visited the
2 cabin -- or when she visited the command post?

3 A. She was extremely upset.

4 Q. Can you describe that?

5 A. On the video, you could see Anna's stress level
6 rising. She had been in this role, you know, for about a week
7 now, and you could see it was starting to wear her down, and
8 she was getting more upset. And finally she left the cabin.
9 And I actually -- Dutch Flat is small place. Only one street.
10 I met her out on the street, and she was crying, she was
11 saying, "I can't do this anymore, I'm going back to
12 Philadelphia, I'm done," very, very upset.

13 So I took her back to the command post, and just --
14 we got her calmed down a little bit. We gave her some good
15 food, gave her a Coke, and that kind of stuff, and informed her
16 that she didn't have much more to go because we were planning
17 on executing the arrest the next day. And that helped to calm
18 her down a lot, knowing that there was an end nearby.

19 So with that and a couple of hours of rest, you know,
20 we convinced her, and she was quite the trooper to go to back
21 and join the group.

22 Q. Did an incident happen later that night respecting
23 Anna --

24 A. Yes, sir.

25 Q. -- and the cabin? Were you still in the command post

1 at that time?

2 A. Yes, I was.

3 Q. And were you watching that real-time?

4 A. Yes.

5 Q. What happened? Or what did you see?

6 A. Anna at this time had gone to sleep in the living
7 room on the couch where she was sleeping, and Mr. McDavid went
8 over to the couch and was hovering over her, over her upper
9 torso and face, playing with something in his hand. And we
10 were -- several of us were, what's he doing, you know, what's
11 that. And you could see that he had a knife, and he was kind
12 of twittling it and twirling it in his fingers, and he was
13 crouched over the top of her.

14 We were getting very concerned. One of her
15 instructions was to sleep with her phone up against her chest
16 on vibrate, so if I ever needed to wake her up at night, I
17 could. I started calling her and vibrating it to wake up. We
18 were getting ready, actually, to -- we were actually leaving
19 the command post to go to the cabin in case he did attack her.
20 That's what it looked like to us. He was getting ready to
21 assault or attack her in some way.

22 At this point, we were leaving the command post, and
23 he said, oh, hey, she's waking up. And she said something to
24 him, and he kind of backed off and left, and she seemed safe at
25 that point. We were very concerned for her safety, though.

1 MR. LAPHAM: No further questions. Thank you.

2 THE COURT: Cross.

3 CROSS-EXAMINATION

4 BY MR. REICHEL:

5 Q. Good afternoon, Agent Torres.

6 A. Good afternoon, sir.

7 Q. And you're stationed in Philadelphia?

8 A. I'm in Philadelphia, located at what we call the
9 Scranton resident agency. I moved there maybe a year ago. At
10 the time of this case, though, I was stationed in the City of
11 Philadelphia and lived nearby.

12 Q. And how long have you been employed with the FBI?

13 A. A little over four years, sir.

14 Q. So you went to the training academy. About when did
15 you first go FBI training academy?

16 A. In 2003, sir.

17 Q. 2003?

18 A. Yes, sir.

19 Q. Have you been back for subsequent training?

20 A. Yes, sir.

21 Q. Okay. And fair -- when did you go back last?

22 A. To the FBI academy itself?

23 Q. Yes.

24 A. Perhaps a year or two ago.

25 Q. Do you remember when?

1 A. No. Not exactly, sir.

2 Q. Within the last two years?

3 A. Yes, sir.

4 Q. And how long did you stay that time?

5 A. A week, sir.

6 Q. A week. And that's at the FBI training, is that in
7 Quantico, Virginia?

8 A. The FBI academy is in Quantico, Virginia.

9 Q. And when you first started out in '03 you were at
10 Quantico as well, right?

11 A. Yes, sir.

12 Q. And how long was the training?

13 A. It's about four months or so, sir.

14 Q. Full time four months?

15 A. Yes, sir.

16 Q. And, you know, that training is for a variety of
17 things in your job as an FBI agent, right?

18 A. Yes, sir.

19 Q. And, you know, from arresting people to going
20 undercover, right?

21 A. Undercover training is additional training, sir. But
22 arresting people is obviously part of it.

23 Q. And so to actually perform in an undercover capacity
24 you need additional training above that four months, right?

25 A. We are able to participate in what's called a cameo

1 role, a short brief undercover stint without that further
2 training.

3 Q. Okay. But to do a long-term undercover assignment as
4 an agent you need additional training over the four months that
5 you originally get, right?

6 A. Yes, sir.

7 Q. And there is a reason for that, right?

8 A. Yes, sir.

9 Q. Okay. That's so you get trained well on how to do an
10 undercover, right?

11 A. Yes, sir.

12 Q. And there is some FBI specialists that give training,
13 some professionals who give training for that?

14 A. Yes, sir.

15 Q. Okay. And you agree that's a good thing to do,
16 right?

17 A. Yes, sir.

18 Q. And that's so that at the time that person's done
19 after that training, they are well-trained at being an
20 undercover agent, right?

21 A. Yes, sir.

22 Q. Okay. Now, you handled Anna in this case, correct?

23 A. Yes, sir.

24 Q. She didn't go to that training, correct?

25 A. No, sir.

1 Q. She didn't have any formal training, right?

2 A. No, sir.

3 Q. She had on-the-job training, so to speak?

4 A. She had on-the-job training and discussions with
5 myself as well as one of our undercover agents who did go
6 through that training.

7 Q. Who was the undercover agent that spoke with her?

8 A. That's a difficult question to answer due to his
9 undercover capacity.

10 Q. Was it in Philadelphia though?

11 THE REPORTER: Was there an answer?

12 THE COURT: There wasn't an answer. Can you reask
13 the question.

14 THE WITNESS: Can you repeat the question? I'm
15 sorry.

16 (Record read.)

17 THE WITNESS: Was what in Philadelphia?

18 MR. REICHEL: I'll reask the question. Just withdraw
19 that question.

20 Q. BY MR. REICHEL: So Anna received training from an
21 undercover specialist, correct?

22 A. I would say more of a discussion.

23 Q. So it wasn't training, it was a discussion?

24 A. Yes, sir.

25 Q. Now, when you -- let me just ask you about special

1 agents. Would they qualify -- after this four months, were
2 they qualified to be considered an undercover specialist just
3 on a discussion? I mean the answer's no, right?

4 A. No, sir.

5 Q. They have to go through training?

6 A. Yes, sir.

7 Q. But it's different when you use civilian informants,
8 right?

9 A. Yes, sir.

10 Q. Okay. I mean, it obviously is by your answers,
11 right?

12 A. Yes, sir.

13 Q. Okay. Anna didn't get any of that?

14 A. No. She did not receive the FBI agent training for
15 undercover operatives.

16 Q. Now, it's fair to say that you desire to do your job
17 well, correct?

18 A. Yes, sir.

19 Q. Okay. And to be a good FBI agent, right?

20 A. Yes, sir.

21 Q. And in that, it means following the rules, right?

22 A. Yes, sir.

23 Q. And, okay, to follow them you have to know them
24 obviously, right?

25 A. Yes, sir.

1 Q. And part of your training is to keep informed on new
2 developments for FBI guidelines, right?

3 A. Yes, sir.

4 Q. Okay. And so not -- I mean, you went to Quantico in
5 '03, but, you know, you were required to stay current as far as
6 learning, reading and receiving training, right?

7 A. Yes, sir.

8 Q. And if something big happens with the FBI, a shift in
9 policy or something like that, you have to pay attention to it,
10 right?

11 A. Yes, sir.

12 Q. And you would want to, right?

13 A. Yes, sir.

14 Q. Okay. Because we have established that you're going
15 to try to do your job well at all times, right?

16 A. Yes, sir.

17 Q. Now, the use of undercover informants by the FBI, in
18 that area there is a lot of literature from the FBI on how to
19 do that, right?

20 A. I would assume so, yes, sir.

21 Q. Well, do you not know if there is?

22 A. I personally have not read all of it, no, sir.

23 Q. You are aware that there are the Attorney General
24 guidelines on the use of undercover informants, correct?

25 A. Yes, sir.

1 Q. And you're aware that there is a FBI legal -- FBI
2 special agent -- legal handbook for special agents, you are
3 aware of that, right?

4 A. Yes, sir.

5 Q. And that discusses the use of undercover informants,
6 right?

7 A. Yes, sir.

8 Q. And you are aware that there is an Attorney General
9 guideline on Federal Bureau of Investigation undercover
10 operations just generally, right?

11 A. Yes, sir.

12 Q. Okay. And being aware of all those things, you try
13 to keep current on the FBI policy in those areas, right?

14 A. Yes, sir.

15 Q. Because if you don't know a rule, you could possibly
16 violate it, right?

17 A. Yes, sir.

18 Q. And what I'm trying to get at is, do you remember in
19 September of 2005 that the -- do you know what the Office of
20 Inspector General is?

21 A. Yes, I do.

22 Q. Okay. And that's through the Department of Justice?

23 A. Not sure if they're within or outside the Department
24 of Justice to tell you the truth.

25 Q. But you know that they are the Office of the

1 Inspector General for the United States, right?

2 A. Yes, sir.

3 Q. And do you recall in September of 2005 they issued a
4 very voluminous finding on the FBI's use of confidential
5 informants, correct?

6 MR. LAPHAM: Objection. Relevance.

7 MR. REICHEL: It's his learning, training, experience
8 Your Honor --

9 THE COURT: I'll allow this for a brief moment,
10 Mr. Lapham. Objection is overruled. But caution you,
11 Mr. Reichel.

12 MR. REICHEL: We're not going to go into the
13 specifics of it, Your Honor.

14 THE COURT: I know. I just want to make sure we
15 recall our previous discussion.

16 MR. REICHEL: You've got it, Your Honor. Yes.

17 Q. BY MR. REICHEL: So you're aware that in September of
18 2005 the Office of the Inspector General issued a large report
19 on the FBI's use of confidential informants, correct?

20 A. No, sir.

21 Q. You didn't -- you've never heard of that?

22 A. If you were tell me some specifics, I could better
23 answer the question. Because our legal counsel -- whenever
24 there is a report or finding or adjustment in legal opinion, we
25 do receive training through our division legal counsel on what

1 the new policies are and how we're going to change. If it
2 changes, what we're going to do or forms or whatnot.

3 And just because I have not gone all the way back to
4 FBI at Quantico, I have gone to several weeks of training every
5 year at various places around the country. So I actually do
6 maintain very current on a lot of our investigative skills.

7 Q. So your testimony is that you try to keep and
8 maintain very current on FBI policies regarding these things,
9 correct?

10 A. Yes, sir.

11 Q. Okay. But, yet, September of 2005 you do not recall,
12 as you sit here today, the Office of the Inspector General's
13 report on the FBI's use of confidential informants? Yes or no?

14 A. No, sir.

15 Q. Okay. Now, as far as the use -- excuse me -- the
16 guidelines by the Attorney General of the United States on the
17 use of confidential informants, you're aware of those
18 guidelines, right?

19 A. Yes, sir.

20 Q. But you told us as far as specific sections as you
21 sit here today you can't recall them verbatim, correct?

22 A. I don't recall a question about a section.

23 Q. Okay. Well, you're aware that the Attorney General
24 has guidelines on the use of confidential informants by the
25 FBI, right?

1 A. Yes, sir.

2 Q. When is the last time you read those?

3 A. The Attorney General guidelines?

4 Q. Yes.

5 A. About 12:45 this afternoon.

6 Q. So at 12:45 today. That's over the lunch hour,
7 correct?

8 A. Yes, sir.

9 Q. And did Mr. Lapham provide those to you?

10 A. No, sir.

11 Q. Did where did you get them?

12 A. I received them from Philadelphia.

13 Q. You contacted the Philadelphia office?

14 A. Yes, sir.

15 Q. When did you contact them? In the morning?

16 A. Over lunch.

17 Q. Over lunch you called them?

18 A. Yes, sir.

19 Q. And you asked them to -- what, did they read you some
20 of the applicable guidelines?

21 A. No. I had them fax them to me.

22 Q. And they faxed them to Mr. Lapham's office?

23 A. Yes, sir.

24 Q. And you picked them up there?

25 A. Yes, sir.

1 Q. And did you review them prior to your testimony
2 today?

3 A. Yes, sir.

4 Q. Okay. And do you have them with you here, or are
5 they back up in his office?

6 A. I don't know where they are at right now, sir.

7 Q. But you had adequate time to review them?

8 A. Yes, sir.

9 Q. And it sets forth what the FBI says you can do and
10 can't do with informants?

11 A. Yes, sir.

12 Q. Okay. And it has a passage in there about whether or
13 not you can send an informant into a purely political protest,
14 correct?

15 A. Yes, sir.

16 Q. Okay. And it says you can't, right?

17 A. Are you talking about the Attorney General
18 guidelines, sir?

19 Q. Yes.

20 A. In the Attorney General guidelines I don't recall
21 anything saying about political protest.

22 Q. Okay.

23 A. That may be perhaps in the FBI guidelines, separate
24 from the Attorney General guidelines.

25 Q. But is it fair to say that the FBI guidelines say --

1 well, I withdraw that statement.

2 So your testimony is you don't believe it's in the
3 Attorney General guidelines, right?

4 MR. LAPHAM: Objection, Your Honor. That misstates
5 his testimony.

6 MR. REICHEL: I'll withdraw the question.

7 THE COURT: Sustained.

8 Q. BY MR. REICHEL: Do you believe that it's in the FBI
9 -- excuse me -- do you believe it's in the Attorney General
10 guidelines on the use of confidential informants?

11 MR. LAPHAM: Asked and answered.

12 MR. REICHEL: I'm sorry. I think Mr. Lapham is
13 right. He answered he doesn't think it's in there.

14 THE COURT: He did. He did.

15 Q. BY MR. REICHEL: Thank you. So it is asked and
16 answered.

17 But you believe it may be in the FBI handbook, right?

18 A. It may be, yes, sir.

19 Q. And it's obvious that you are not allowed to send an
20 informant into a purely political protest, correct?

21 A. That's not exactly correct, sir.

22 Q. Does it say you can send them into political
23 protests?

24 A. You can if you have some predication.

25 Q. I'm sorry?

1 A. You can if you have some cause, some reason to do so.

2 Q. And you say predication or reason to do so?

3 A. Yes.

4 Q. And that's because those guidelines actually say upon
5 reasonable cause, reasonable suspicion or probable cause of
6 illegal activity, right?

7 A. I know the reasonable belief term is in there.

8 Q. Reasonable belief, reasonable cause, right?

9 A. Yes, sir.

10 Q. And it's your understanding of them that's because we
11 don't want to send informants into a purely political
12 gathering, right?

13 A. That goes back to we don't want to suppress any legal
14 First Amendment rights.

15 Q. So it's only when there is reasonable cause that
16 there is -- reasonable cause that criminality might be afoot in
17 that political group, right?

18 A. Yes, sir. When there's Internet threats, or there's
19 previous history that gives us that reasonable belief that this
20 meeting may further those plans, so we may send someone in
21 there to determine that.

22 Q. And if an informant were to violate that, that would
23 be against the rules, right?

24 A. Yes, sir.

25 Q. Okay. So if an informant was contacting people

1 solely about political matters and reporting back to the FBI,
2 that would violate the guidelines, right?

3 A. No, sir. Only if I recorded it as such.

4 Q. So they can go in, they can look around, and they can
5 report it to you, but only if you record it does it violate the
6 guidelines; is that correct?

7 A. That's more correct, yes, sir.

8 Q. And I actually am just asking your understanding of
9 them because you've testified basically you're the one that
10 trained Anna, right, originally?

11 A. Not originally, no, sir.

12 Q. Okay. But you trained her at some point, right?

13 A. Yes, sir.

14 Q. You were her handler, right?

15 A. Yes, sir.

16 Q. In this case?

17 A. Yes, sir.

18 Q. Okay. She told us that her handler is who she
19 reported to?

20 A. Yes, sir.

21 Q. Okay. She told us her handler is who is responsible
22 for her?

23 A. Yes, sir.

24 Q. Is it set up some other way that somebody other than
25 her handler is responsible for making sure she doesn't violate

1 the guidelines?

2 A. No. It is my responsibility.

3 Q. Okay. And I would like to know your understanding
4 because your understanding was paramount to her working for
5 you, right?

6 A. Yes, sir.

7 Q. Okay. Thank you. Now, you are aware, are you not,
8 that she solicited individuals as far as May of '05 to come
9 attend the Philadelphia biodiversity convergence, right?

10 MR. LAPHAM: Objection. Misstates the evidence.

11 THE COURT: Sustained.

12 Q. BY MR. REICHEL: Was she allowed to solicit
13 individuals to come to political protests?

14 A. At what time?

15 Q. May of 2005.

16 A. I did not work with her in May 2005, so I don't know.

17 Q. You met her in the middle of June?

18 A. Yes, sir.

19 Q. So if she was doing that, it certainly wasn't on your
20 watch, right?

21 A. I don't know, sir.

22 Q. Well, anything she did before you wasn't on your
23 watch, right?

24 A. I really don't understand what you are trying to ask
25 me.

1 Q. Anything she did -- well, you knew that -- well you
2 met her June 19th or so for the Philadelphia convergence,
3 right?

4 A. Yes, sir.

5 Q. You sent out requests to have somebody to come help
6 you, right?

7 A. Right.

8 Q. And what you asked for was somebody, you know, who is
9 basically an undercover operative, right?

10 A. Yes, sir.

11 Q. Because you wanted to get inside groups in Philly and
12 get intelligence?

13 A. Right. The criminal violent groups, yes, sir.

14 Q. So you sent out some kind of request and, you know,
15 along comes Anna, right?

16 A. Yes, sir.

17 Q. And when you met her, it's not that you knew nothing
18 about her, right? When you met her, you must have learned
19 something at that point?

20 A. Yes, sir.

21 Q. My point is you knew she had been working for the FBI
22 for a while?

23 A. Yes, sir.

24 Q. In fact, you may have thought they had trained her,
25 right?

1 A. I don't know.

2 Q. Okay. But I mean, well, you knew she had done some
3 successful work?

4 A. Yes, sir.

5 Q. And so you were happy to have her?

6 A. Yes, sir.

7 Q. Now you're going to be the one handling her, right?

8 A. At that event at that point, yes, sir.

9 Q. And you took on her for a while thereafter, right?

10 A. Yes, sir.

11 Q. Okay. Now, the several things that informants do --
12 you know, I'm sorry. Let me ask you this.

13 It's correct that the guidelines say an informant
14 can't do anything that an agent can't do, right?

15 A. It doesn't say that.

16 MR. LAPHAM: Objection. Vague as to the guidelines.

17 THE COURT: Sustained.

18 Q. BY MR. REICHEL: The Attorney General guidelines on
19 the FBI's use of confidential informants provide a variety of
20 rules, right?

21 A. Yes, sir.

22 Q. And the special -- the legal handbook for special
23 agents provides a variety of rules, right?

24 A. Yes, sir.

25 Q. On what informants can do, right?

1 A. Yes, sir.

2 Q. And both of them give the responsibility of watching
3 those informants to the agent handling them, right?

4 A. Yes, sir.

5 Q. Okay. And the rules they provide are to be policed
6 by, so to speak, the agent that handles the informant, right?

7 A. Yes, sir.

8 Q. Okay. Now, they say things in there, in these rules
9 -- and I'm talking about the Attorney General guidelines on the
10 use of confidential informants and the legal handbook for
11 special agents, okay? When I'm saying "the rules," these rules
12 provide that informants can only do certain things and can't do
13 certain things, right?

14 A. Yes.

15 Q. And one of the main ones is an informant cannot do
16 anything that an agent could not do, right?

17 A. I don't recall reading that sentence.

18 Q. Okay. And so --

19 A. Are you saying that verbatim that's what it says in
20 there?

21 Q. Yes.

22 A. Okay.

23 Q. Okay. Now, but you didn't have an understanding of
24 that, is that what you're telling us?

25 A. I just don't recall that exact sentence being in

1 there.

2 Q. But you have -- maybe you don't recall that exact
3 sentence, but I'm interested in when you talked to Anna when
4 she came to work for you, what your understanding of what the
5 rules were, okay?

6 Was it your understanding when you met Anna, that the
7 rules did not allow informants to do anything that an agent
8 could not do? Yes or no?

9 A. Anything an agent could not do?

10 Q. Correct. She could not do something that an agent
11 could not do?

12 A. Would you be a little more specific?

13 THE COURT: That might be kind of a double negative,
14 too. She could not do or couldn't do.

15 Q. BY MR. REICHEL: That's fine.

16 Let me ask you, inside as an undercover agent, when
17 she acted as an undercover agent, okay --

18 A. Technically she was never an undercover agent.

19 Q. She was a CI, cooperating --

20 A. Cooperating -- confidential informant then
21 cooperating witness.

22 Q. But first she was a CI, right?

23 A. Yes, sir.

24 Q. And, in fact, that's significant because there's
25 lists of things that CIs can do, right?

1 A. Yes, sir.

2 Q. And lists of things that CWs can do?

3 A. Yes, sir.

4 Q. And it's rather well-documented, right?

5 A. Yes, sir.

6 Q. I mean, there's a lot of, you know, requirements
7 about the age and so forth and so on?

8 A. Yes.

9 Q. Goes so far as rules about their alien status, right?

10 A. Yes.

11 Q. Okay. Now, in the undercover operation, did the
12 rules allow a CI to do things inside of groups that the FBI
13 agent, him or herself, could not do? Did it allow them to do
14 things that you could not do?

15 A. I don't know.

16 Q. Okay. So let me ask you about the issue of the rule
17 regarding contact with represented persons, okay?

18 A. Represented persons?

19 Q. A person who has an attorney. There is a suspect who
20 has an attorney.

21 A. Okay.

22 Q. And the rules about whether or not the FBI can
23 interview, or what their rules are. There's rules for that,
24 right?

25 A. Yes, sir.

1 Q. And you've read those rules?

2 A. Yes, sir.

3 Q. And you know those rules?

4 A. Yes, sir.

5 Q. Okay. I mean, they are important rules?

6 A. Yes, sir.

7 Q. And you try to abide by them?

8 A. Yes, sir, I do.

9 Q. And you want your informants to abide by them?

10 A. Yes, sir, I do.

11 Q. And Anna talked to you in about -- after Philly, she
12 talked to you about Mr. McDavid and her conversations with him,
13 right?

14 A. I'm sorry. Say that again?

15 Q. Anna talked to you after Philadelphia at the bio-div
16 about her conversations with Eric McDavid?

17 A. Yes, she did.

18 Q. And do you remember those?

19 A. Yes.

20 Q. And didn't she talk to you after the Bloomington
21 meetings with Mr. McDavid, right?

22 A. Yes, she did.

23 Q. And you remember those conversations?

24 A. In general, yes, sir.

25 Q. And you made reports, FBI 302 reports, right?

1 A. I did not write that report.

2 Q. Okay. But you wrote --

3 A. I've read it.

4 Q. You've written 302 reports about your conversations
5 with Anna, right?

6 A. Yes, I have.

7 Q. Do you remember where she said in one of them, she
8 said -- well, do you remember when she talked to you -- and
9 this is after Bloomington -- and she said that Mr. McDavid said
10 he was staying away from the West Coast for a while, right?

11 A. Yes, sir.

12 Q. And the reason he was staying away --

13 MR. LAPHAM: Your Honor, excuse me, I'm going to
14 renew my objection on relevance.

15 MR. REICHEL: Your Honor --

16 THE COURT: Overruled.

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

18 Q. BY MR. REICHEL: Briefly. And she said to you that
19 Mr. McDavid had said he wanted to stay away from the West
20 Coast, right?

21 A. What timeframe are we talking about now?

22 Q. After Philadelphia in June of 2005, she talked to you
23 about Mr. McDavid talking to her, right?

24 A. Yes, sir.

25 Q. And you talked back to her that you -- in the

1 conversation you said, well, we've ran him, and we see that,
2 actually, Mr. Nasson Walker wanted to talk to him about an
3 investigation in California, right?

4 A. Yes, sir.

5 Q. And then she replies back, well, that's consistent
6 with kind of what McDavid is saying, that he is out here hiding
7 from the West, right?

8 A. I know she said something to that effect. I don't
9 know exactly when.

10 Q. But it was to that effect?

11 A. Yes, sir.

12 Q. And he said that, you know, a lawyer had given him
13 advice to get out and get away from the West for a while?

14 A. I know he was staying away, yes, sir.

15 Q. Do you remember her saying that he had a lawyer that
16 had given him advice to stay away from the West for a while?

17 A. Yes, sir.

18 Q. So a lawyer had given him advice, and he was talking
19 to Anna about that, right?

20 A. About the advice?

21 Q. Yes.

22 A. No, sir.

23 Q. Okay. Well, he talked to Anna, and she talked to
24 you, and she relayed the substance of why he was out there, and
25 that he had a lawyer, right?

1 A. Something like "get out of town."

2 Q. The lawyer told him that?

3 A. Yes, sir.

4 Q. And he tells Anna who tells you, right?

5 A. Yes, sir.

6 Q. And, now, there are FBI and, of course, Attorney
7 General guidelines on contact by agents with persons who are
8 represented by an attorney, right?

9 MR. LAPHAM: Objection, Your Honor. Relevance.

10 THE COURT: Sustained.

11 MR. REICHEL: He just testified to it, Your Honor.

12 THE COURT: I know. At this point, I've given you
13 leeway up to this point, and I'm sustaining the objection,
14 counsel.

15 MR. REICHEL: Thank you, Your Honor.

16 Q. BY MR. REICHEL: But it's a violation -- if an agent
17 talks to somebody who is represented, it's a violation, right?

18 A. No, sir.

19 Q. It doesn't violate the regulations?

20 A. I can talk to somebody who is represented by an
21 attorney. They can waive that right. They can talk to me.
22 They cannot talk to me. I can go talk to them, though.

23 Q. But the rules don't allow you to use an undercover
24 person to talk to that person who is represented, right?

25 MR. LAPHAM: Objection. Relevance.

1 THE COURT: Sustained.

2 Q. BY MR. REICHEL: Now, in all of these rules, you
3 know, they're there for a good reason, correct?

4 A. Yes, sir.

5 Q. And they have things about entrapment in there,
6 correct?

7 A. Yes, sir.

8 Q. And you're familiar with those?

9 A. Yes, sir.

10 Q. In fact, those are what you read at 12:45 today,
11 correct?

12 A. I read rules on entrapment? No, sir. That's not
13 what I read.

14 Q. What rules did you read?

15 A. I read the Attorney General guidelines. I didn't
16 read anything called rules of entrapment.

17 Q. I understand. Did you read the Attorney General
18 guidelines on the use of confidential informants?

19 A. I read the Attorney General guidelines on the use of
20 cooperating witnesses.

21 Q. And that's still with us somewhere here?

22 A. What do you mean? I'm sorry? "With us"?

23 Q. Yeah. Where did you put it?

24 A. I don't recall exactly where it's at.

25 Q. Did you take notes on it?

1 A. I did not take any notes on it.

2 Q. And what caused you to get ahold of that at 12:45
3 today?

4 A. We were discussing --

5 Q. "We" would be Mr. Lapham and yourself and Mr. Walker,
6 right?

7 A. I know Special Agent Walker and I discussed what
8 guidelines or rules I had given Anna. So I said, hey, they are
9 in the Attorney General guidelines. I can get them, the ones
10 that I read to her.

11 Q. Okay. So Mr. Walker, is this Case Agent Nasson
12 Walker with the FBI?

13 A. Yes, sir.

14 Q. And he was sitting here this morning with Ms. Anna
15 testifying, right?

16 A. I assume so. I wasn't here. I'm sure he was.

17 Q. Okay. Do you have any doubt that he was here?

18 A. No, sir.

19 Q. Okay. And Anna testified this morning?

20 A. Yes, sir.

21 Q. Okay. And you are her handler?

22 A. Yes, sir.

23 Q. And Mr. Walker at noon tells you we should look into
24 what you told her, right?

25 MR. LAPHAM: Objection. Misstates the evidence.

1 THE COURT: Sustained.

2 Q. BY MR. REICHEL: Mr. Walker said what, if you don't
3 mind me asking?

4 A. There was just a general discussion of what were the
5 guidelines you gave her. I said they would be the Attorney
6 General guidelines, and I can get them right now from
7 Philadelphia if you'd like. And so I did that, and I reviewed
8 them.

9 Q. Okay. And it had nothing in there about entrapment
10 that you recall?

11 A. There were a lot of rules in there, but nothing
12 called rules of entrapment as you describe them.

13 Q. But there are rules that discuss entrapment, correct?
14 Or no?

15 A. I don't know. I don't think the word "entrapment" is
16 in there.

17 Q. Is it fair to say that what you reviewed over the
18 12:45 lunch hour didn't have anything to do with entrapment,
19 right?

20 A. I'm sorry. Say that again? I'm sorry.

21 Q. Okay. Well --

22 A. I just didn't understand what you just said.

23 Q. And I apologize. At 12:45 you reviewed the Attorney
24 General guidelines regarding the use of cooperating witnesses
25 or something?

1 A. Yes, sir.

2 Q. Confidential informants?

3 A. The cooperating witnesses, yes, sir.

4 Q. Do the Attorney General guidelines omit the concept
5 of entrapment and how you educate a CI about that?

6 MR. LAPHAM: Your Honor, I'm going to object. The
7 witness has already testified he hasn't seen or doesn't have
8 the Attorney General guidelines in front of him.

9 THE COURT: Exactly, Mr. Reichel. He has indicated
10 that he was not aware of the November 2005 Attorney General
11 guidelines in total, but he has had certain limited training or
12 specific training, I should say, in particular areas so --

13 MR. REICHEL: I understand, Your Honor.

14 THE COURT: It's been asked and answered. If you're
15 going to go to a specific question, that's something else, but
16 I'm sustaining the objection at this point.

17 Q. BY MR. REICHEL: Okay. Now --

18 THE COURT: In fact, rather than seems like you're
19 going to change, we're going to stop at this point.

20 MR. REICHEL: We have a timing --

21 MR. LAPHAM: Your Honor, we were hoping to get this
22 witness off the stand today because he does have a vacation
23 planned for next week. We were trying to -- hoping he would be
24 able to make that. Mr. Reichel has indicated he has maybe five
25 or ten more minutes. I won't have any redirect.

1 THE COURT: All right. I had told you, ladies and
2 gentlemen, 4:30 each day. Is this going to create a problem
3 for anyone? All right. Proceed, Mr. Reichel.

4 MR. LAPHAM: Thank you. I appreciate that, Your
5 Honor.

6 THE COURT: Thank you.

7 Q. BY MR. REICHEL: You gave Anna -- you had a
8 discussion with Anna about -- which we're going to call her
9 training from you, right?

10 Well, I'll give you the time. Philadelphia time.
11 She became your informant, right?

12 A. Yes, sir.

13 Q. So you had some discussions, you told us, and we're
14 calling that that's her training with you?

15 A. I had discussions with her to task her and make sure
16 she understood what she had to do.

17 Q. Did you take notes of that meeting with her?

18 A. No, sir.

19 Q. Did she take notes?

20 A. No, sir.

21 Q. Did you tape record that?

22 A. No, sir.

23 Q. As you sit here today, we have to harken back to June
24 of 2005, right?

25 A. Yes, sir.

1 Q. Okay. And a lot happened in this case after June of
2 2005, right?

3 A. Yes, sir.

4 Q. And it's fair to say this is not your only case,
5 right?

6 A. No, it is not.

7 Q. And you've made a lot of cases or been involved in a
8 lot of cases since June of 2005?

9 A. Yes, sir.

10 Q. And prior to your testimony today, did you review
11 some materials other than the stuff at 12:45?

12 A. Just in general? Prior to this testimony?

13 Q. Yes.

14 A. Yes, sir. I've reviewed transcripts and audio/video
15 recordings, those kind of things.

16 Q. And 302s, FBI 302 reports?

17 A. Yes, sir. Reports that we've written, yes, sir.

18 Q. And all of that helped refresh your recollection?

19 A. Yes, sir.

20 Q. -- to get it accurate, right?

21 A. Yes, sir.

22 Q. And my point is there is no -- I mean, that stuff
23 helped you to get accurate for the case in general, right?

24 A. Yes, sir.

25 Q. But you don't have anything in writing or recorded

1 about your conversations with Anna, right, about training --

2 I'm sorry -- about what she can and what she can't do, right?

3 A. We have, once again, the Attorney General guidelines,
4 which I reviewed them at 12:45 today, but, however, I actually
5 had read them last week for something else.

6 And that is -- what you're calling the training, that
7 is the discussion we have, the limits, and what they are able
8 to do and what they are able not to do. There's things in
9 there that say, hey, you can't sign a contract on behalf of the
10 Government, you can't say I'm not paying my taxes because I'm
11 working for the FBI. There is a whole bunch of stuff in there
12 to include what you can and cannot do when you're working,
13 working with these people.

14 Q. Some of things they can't do are, number one, they
15 have to pay taxes on the money you pay them, right?

16 A. Yes, sir.

17 Q. And they have to account for those, right?

18 A. Yes, sir.

19 Q. And these are usually in contracts that they sign
20 with you, right?

21 A. No, sir.

22 Q. They are not in the contracts?

23 A. We did not sign a contract with Anna.

24 Q. Okay. You don't have the informant agreement with
25 her? No?

1 A. We don't have informant agreements.

2 Q. Is it the Philly office doesn't have informant
3 agreements or something?

4 A. The FBI doesn't have anything called an informant
5 agreement.

6 Q. You don't -- you didn't have anything signed with
7 Anna, right?

8 A. Signed to do what? Please, if you're more specific,
9 I could answer the question.

10 Q. Do you have any kind of -- the FBI advisement, did
11 you give her that?

12 A. The Attorney General guidelines?

13 Q. Yeah.

14 A. Yes, sir.

15 Q. You gave her a copy of the Attorney General
16 guidelines?

17 A. We do not give those copies out.

18 Q. Did you give her relevant passages?

19 A. I have a copy in front of me. I have another agent
20 sits next to me. We read those verbatim to the -- in this case
21 we read them verbatim to Anna, made sure she understood every
22 point, answered all her questions. I sign it. The other agent
23 signs it. And the supervisor reviews it. But Anna never
24 signed it. Because that is just not our policy. Not how we do
25 it.

1 Q. Do other agencies have the informant sign it as well?

2 A. I don't know what other agencies do. We do not have
3 the informant sign them because simply we do not want a record
4 of their identity. We've gone to great lengths to protect
5 Anna. She's been placed in a very dangerous situation. So
6 that's one of the ways we protect her identity. We have three
7 agents attesting that she was given these guidelines, but we're
8 not going to have her write her name on the form.

9 Q. So this is obviously a matter of routine practice for
10 you when you have informants?

11 A. With the Attorney General Guidelines?

12 Q. Yes.

13 A. Yes, sir.

14 Q. So you sit down with them, you have two others there
15 usually, and you read the relevant passages?

16 A. You have one other. The supervisor reviews it. Yes,
17 sir. And we don't read the relevant passages. We read the --
18 verbatim. We read the document verbatim.

19 Q. How many pages do you read them when you do this
20 routinely every time?

21 A. The Attorney General guidelines that we advise are
22 two pages.

23 Q. Oh, so -- okay. But just two pages?

24 A. Yes, sir.

25 Q. Okay. Do you have -- you have that copy here

1 somewhere, right?

2 A. It's somewhere. I'd have to go find it.

3 Q. But you agree with me that's not the entire Attorney
4 General guidelines on confidential informants, right?

5 A. No, sir. It is kind of a layman's version of the
6 Attorney General guidelines because the Attorney General
7 guidelines, as you can see, is this huge book. And it was just
8 too cumbersome to go through the entire thing. So just like
9 any kind of job aid or outline or brief description, executive
10 summary, that's what we go over with -- that's what I went over
11 with Anna. Something that everyone can understand.

12 Because, frankly, we have attorneys who read the big
13 book and say, hey, these two pages are what everybody needs to
14 know.

15 Q. Anna then left. When she leaves Philly, did you sit
16 down with her again at some point and reaffirm all the
17 instructions you had given her, or was that Nasson Walker that
18 did that in November?

19 A. The -- technically -- or officially the Attorney
20 General guidelines are officially advised once a year.

21 Q. Okay. And the thing you signed with the other two
22 agents, was it in Philly, the bio-div in June of '05?

23 A. Yes. However, she was working for the Miami division
24 at that time. So when she came up, she would work with me in
25 conjunction with, you know, the Miami office.

1 Q. Okay.

2 A. She did not officially work with me at that time, so
3 I did not officially read the guidelines to her.

4 Q. Of these two pages, it tells them some of the things
5 they can and some of things they can't do, right?

6 A. Yes, sir.

7 Q. And it says on there -- I believe it says they can't
8 drive unless they have a driver's license, right?

9 A. I don't think it says that.

10 Q. It says they can't commit any criminal acts, right?

11 A. Yes, sir.

12 Q. Or violent acts?

13 A. Yes, sir.

14 Q. They can't violate the law, right?

15 A. Yes, sir.

16 Q. Okay. They can't use drugs, right?

17 A. Yes. It says -- I'm not sure about using drugs, but
18 it says you can't commit criminal acts. That would be a
19 criminal act.

20 Q. And they have to, like I said, they have to document
21 the money they receive from you? You have to give them a
22 receipt when you give them money, right?

23 A. No, sir.

24 Q. You don't?

25 A. No, sir.

1 Q. Do they have to sign something when you give them
2 money?

3 A. They sign something that we retain, yes, sir.

4 Q. Kind of like a receipt, right?

5 A. It's a receipt so the FBI knows I'm not stealing the
6 money. That's what it is.

7 MR. REICHEL: Your Honor, just one moment while I ask
8 a quick question. I have no further questions.

9 Q. BY MR. REICHEL: I'm sorry. You maintained a file on
10 Anna, correct?

11 A. Yes, sir.

12 Q. Okay. And did you bring that with you out here to
13 testify?

14 A. No, sir. All relevant documents have been turned
15 over in discovery.

16 Q. So the --

17 A. The official pristine copy is not here. It is in the
18 Philadelphia division.

19 MR. REICHEL: Okay. Nothing further, Your Honor.

20 THE COURT: Thank you. And no redirect?

21 MR. LAPHAM: I just have one question, Your Honor.

22 It was brought up after I made that promise.

23 REDIRECT EXAMINATION

24 BY MR. LAPHAM:

25 Q. Illegal activity.

1 A. Yes, sir.

2 Q. The FBI can authorize an individual to engage in
3 illegal activity?

4 A. Yes, we can.

5 Q. That's consistent with the FBI guidelines?

6 A. Yes, sir.

7 Q. And Anna got that authority in this case?

8 A. Yes, she did.

9 MR. LAPHAM: All right. That's all.

10 MR. REICHEL: Your Honor, just briefly.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. REICHEL:

13 Q. That's this Otherwise Illegal Activity approval,
14 right?

15 A. Yes, sir.

16 Q. For tier one, tier two and tier three?

17 A. Yes, sir.

18 Q. And you're familiar with that stuff?

19 A. Yes, sir.

20 Q. Okay. And she got that on December 22nd, 2005,
21 right?

22 A. I don't recall the exact date.

23 Q. But around December of 2005?

24 A. Yes, sir.

25 Q. You're the one that sought it, right?

1 A. Yes, sir.

2 Q. You prepared it?

3 A. Yes, sir.

4 Q. But it was approximately December of 2005, right?

5 A. If you say so. I have not -- I would have to look at
6 the document for the date, but it was December 2005 would
7 probably be about right.

8 Q. But it wasn't June of 2005?

9 A. No, sir.

10 Q. So the first time you meet with her, one of the
11 things that's written down on this two-page sheet is you shall
12 not commit any crimes or commit any illegal activity?

13 A. Of which she didn't.

14 Q. Right. Well, she's not allowed to, right?

15 A. She's not allowed, and she did not.

16 Q. To the best of your knowledge, right?

17 A. I watched her -- personally watched her and debriefed
18 her. You know, I do not believe she committed any criminal
19 acts.

20 Q. But, eventually, you sought out the approval for her
21 to do that, right?

22 A. Yes, sir. So she could be a convincing member of
23 this violent cell.

24 MR. REICHEL: Okay. Nothing further, Your Honor.

25 THE WITNESS: Thank you.

1 MR. LAPHAM: No further questions. Thank you.

2 THE COURT: Thank you very much. You are excused.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Thank you, ladies and gentlemen. Thank
5 you for your consideration in allowing us to go over the
6 promised ending time.

7 According to counsel, as of the afternoon break we
8 are on schedule.

9 MR. LAPHAM: Yes, I believe so, Your Honor.

10 THE COURT: We're still on schedule to complete the
11 evidence by next week, the Wednesday of next week. So we're
12 not in session tomorrow or Friday. We'll return Monday at 9:00
13 a.m.

14 Are there any questions regarding the timing,
15 returning, or any other issues that I need to address at this
16 time?

17 If not, I'll just remind you of your admonitions
18 regarding discussing the case, forming opinions.

19 I also will caution you to not view any television
20 reports of this case, listen to any radio reports or any read
21 any newspaper articles concerning this case, and do not speak
22 to anyone who may have done any of those acts regarding your
23 participation in this trial.

24 With that, thank you very much. We'll see you Monday
25 morning at 9:00. Court is adjourned.

1 (Jury out.)

2 THE COURT: We're outside the presence of the jury.
3 Anything on the record, counsel?

4 MR. LAPHAM: Your Honor, I would like to put
5 something on the record.

6 THE COURT: Go ahead.

7 MR. LAPHAM: I would like to explain more fully my
8 relevance objection to that last line of inquiry in case it
9 comes up again.

10 There's been no foundation in this case that Anna has
11 engaged in any unauthorized activity that would violate the
12 Attorney General guidelines.

13 No evidence to date that there has been an unlawful
14 contact with a represented person. Unless that's established,
15 there is no basis for even inquiring into the Attorney General
16 guidelines and what they say and so forth.

17 And even if a foundation had been shown, that's not
18 the basis for any kind of defense that Mr. Reichel could argue
19 to the Grand Jury -- to the jury. It's simply not a basis for
20 exoneration of guilt, especially based on the evidence that's
21 been produced to date.

22 MR. REICHEL: It's not attempt for exoneration of
23 guilt, Your Honor.

24 It's relevant solely for this informant who goes out
25 and makes a case. And to have the handlers who handle her not,

1 you know, testify about what they told her, their understanding
2 of those rules, and whether they comply with them, whether they
3 know them, it's very relevant to a fact of consequence as to
4 whether or not -- not whether or not he should be exonerated
5 because they violated the Attorney General guidelines, but it's
6 absolutely relevant -- especially when the case gets into an
7 entrapment area -- as to what the informant was told, what the
8 informant was trained on.

9 Because it's more likely than not that if they are
10 not trained, they are not going to do the proper job or stay in
11 the boundaries. That's for the jury to determine whether or
12 not they stayed within the bounds. But it's relevant in any
13 case of entrapment or any case of an informant -- in an
14 extensive case of an informant going undercover for six months,
15 it's highly relevant to ask the agents what you told the
16 person, what their understanding was, what your understanding
17 of the rules are, what the rules actually are, and whether you
18 got them right.

19 THE COURT: Well, I allowed you to continue with your
20 examination because I did find that it was at least relevant
21 under the Evidence Code.

22 There were times you were getting a little far afield
23 and becoming very general with the Attorney General guidelines,
24 which he had said he did not understand or did not have
25 knowledge of. I allowed it to go on.

1 But I will caution you that in the future that a
2 continued line of questioning in this area could be violative
3 of 403, and that it is repetitive, and that it may consume an
4 undue amount of time, and would, therefore, outweigh the
5 probative value that this line of questioning may have with
6 this particular witness, who has now been excused, and any
7 future witnesses that may come to testify in this particular
8 area.

9 I don't know if there are going to be anymore in this
10 area that would allow this to come up, but I do just want to
11 caution you of the Court's -- or remind you, rather, caution
12 you of the Court's pretrial ruling regarding the motions in
13 limine regarding this particular issue.

14 MR. LAPHAM: Your Honor, I'm also concerned about
15 closing argument. There is no basis to argue any of these
16 violations for any relevant purpose. And, if necessary, we may
17 have to ask for a jury instruction that indicates that it's not
18 improper to do the various things that Anna did.

19 MR. REICHEL: We'll just have to do the research on
20 that. I think that is perilously close to harmful error --
21 very, very harmful error to say that in an entrapment case that
22 you can't say this is an poorly-trained informant.

23 THE COURT: Well, being poorly trained is no where
24 near the same as telling someone to do something that's illegal
25 or that they did, and somehow violated. That's a far cry.

1 That may be what you're trying to bootstrap at this point, but
2 there's been no evidence of that occurring at this point.

3 MR. REICHEL: Criminality? Right, until she gets
4 this approval. I'm not saying that.

5 I'm saying there are general guidelines that she has
6 to follow including -- there are numerous guidelines about not
7 pushing people. When you go undercover -- and he said that.
8 When you go undercover, you have to do certain things.

9 MR. LAPHAM: And, Your Honor, I think we've just
10 identified the real problem here.

11 The entrapment defense, Mr. Reichel says this is an
12 entrapment case. We haven't seen any foundation for that yet.
13 But to the extent it is an entrapment case, the entrapment
14 defense looks heavily to predisposition. That has nothing to
15 do with any of this misconduct.

16 He is talking about -- assuming for the sake of
17 argument that Anna engaged in contact with a represented person
18 or criminal conduct before she was authorized to do so, that
19 doesn't tell us anything about Mr. McDavid's predisposition or
20 him being entrapped into this case.

21 He is merely trying to bring in so-called outrageous
22 Government conduct under the guise of all this Attorney General
23 guideline.

24 MR. REICHEL: I suggest we do the research on it,
25 Your Honor. Mr. Lapham can try to instruct us on the law. I

1 just happen to know the entrapment law, and it's not what he's
2 saying it is.

3 THE COURT: Well, before we get to the point of
4 having closing arguments, I will make certain that I try to set
5 forth the guidelines of where I expect both of you to proceed.

6 MR. REICHEL: That's fine.

7 THE COURT: And at this point in time, I'm waiting,
8 Mr. Reichel, just to see what you've got. Because at this
9 point in time, whether or not the agents understood the FBI --
10 or pardon me -- the Inspector General's report of November or
11 December 2005 in total, and if they explained it in total, or
12 what was explained, or not explained, I don't know if you're
13 trying to say that that's outrageous behavior, and that they
14 failed to do something at this point in time.

15 MR. REICHEL: Here's what it is.

16 THE COURT: I don't know at this point. That's what
17 it seems as if that was some of what you were trying to elicit
18 from the testimony today.

19 MR. REICHEL: Thank you.

20 For the record, Your Honor, in September of 2004,
21 Mr. Lapham, who works for the Department of Justice, is very
22 aware -- I think it's 3,000 pages -- the Office of the
23 Inspector General issued a very, extremely critical, extremely
24 critical report on the FBI's use of confidential informants in
25 an undercover capacity.

1 There were hearings in Congress on it. In fact, the
2 Attorney General gave a press conference that said, boy, in
3 essence, we're really going to change things. We've really
4 been muffing up. Look at the statistical data here.

5 87 percent of files with undercover informants have gigantic
6 problems. It was really a earthshaking experience in the
7 Department of Justice for the use of confidential informants.

8 From that, for this individual to say that he has no
9 idea whatsoever about those, never heard of those, Your Honor,
10 is highly relevant as to whether from September 20th of 2005
11 afterward they were in compliance with those or not.

12 It's highly relevant to whether he is a good agent to
13 be, you know, supervising someone who is in an undercover
14 capacity in a large federal case after having given them a
15 two-sheet, you know, notebook markup about their common
16 person's understanding of relevant passages of the guidelines,
17 the earlier guidelines, which weren't followed at all.

18 And, specifically, also, you know, discussed that
19 there was no discussion in there about entrapment that he ever
20 saw. And that's relevant. That's relevant for closing
21 argument about what this informant was. This was an informant
22 who was inside, and I get to comment on her training, her
23 experience, and what they told her.

24 If it was a regular FBI agent who went undercover and
25 infiltrated a group, we would get to cross-examine them about

1 their training, their knowledge of the rules, what they could
2 do, and what they couldn't do.

3 There is no reason when they just move an informant
4 over here, that they don't have to abide by those. The case
5 there is not --

6 THE COURT: Well, I'm waiting to see what the
7 evidence is if this ever happened that she did something
8 improper at this point in time. Because just saying that this
9 agent did not know of all 3,000 pages of the IG's report really
10 doesn't tell me anything about what Anna did at the time that
11 she was in this operation.

12 And unless and until there's evidence supporting your
13 position that she did something that was somehow improper, the
14 IG report can be 30,000 pages, and it's not relevant to this
15 case.

16 So I'm waiting to hear what the connection is going
17 to be before you're going to start condemning the agent for not
18 knowing about a 3,000 page report that was written in 2004.
19 That in and of itself is really not the point here.

20 MR. REICHEL: Well, I understand.

21 THE COURT: It may be as to his credibility. It may
22 be as to him. But how does that bootstrap as to possibly being
23 entrapment as to Anna? There's been no evidence yet,
24 Mr. Reichel.

25 MR. REICHEL: I understand, Your Honor.

1 THE COURT: Other than the fact that he -- you say he
2 didn't tell her about everything in that report, and I just
3 haven't seen it yet. It hasn't been there. There's nothing
4 that showed that she did anything outside of whatever the
5 report says, whatever the report recommended.

6 It's not there yet. And unless and until it's there,
7 you're not going to be able to argue it, you're not going to
8 get an instruction on it. It's not there.

9 MR. REICHEL: I'm not asking for an instruction on
10 it, Your Honor.

11 THE COURT: I'm telling you right now that there's
12 not going to be one unless there is evidence. That's why I
13 don't do jury instructions until after the evidence is closed.
14 Because we're not going to settle the instructions in a blue
15 sky atmosphere, thinking what might come up next week or might
16 come up tomorrow.

17 When we do them, it will be final, and we will know
18 exactly. So unless and until I hear it, the instruction is not
19 coming in.

20 MR. REICHEL: And the instruction on whether or
21 not --

22 THE COURT: Whatever it is that you're going toward.

23 MR. REICHEL: It's not me. They're the ones -- they
24 want to bar something I say.

25 THE COURT: Not yet, Mr. Reichel. Not yet. I'm just

1 waiting. I'm just saying that unless and until I hear more
2 about it.

3 But to say that what -- I may be extrapolating from
4 what you're saying. It sounds like you're saying that because
5 this agent did not know about all 3,000 pages of this report,
6 that we may be looking to really get that entrapment defense
7 here.

8 MR. REICHEL: He actually said he'd never even heard
9 of it.

10 THE COURT: Well, maybe he didn't.

11 MR. REICHEL: That's significant.

12 THE COURT: What did she do with respect to your
13 client?

14 MR. REICHEL: He's supervising her. She's getting
15 everything from him.

16 THE COURT: That's fine. But what did she do with
17 respect to your client?

18 MR. REICHEL: She got inside and did an undercover
19 investigation.

20 THE COURT: What did she do as a result of the
21 Government's conduct that affected your client? That's going
22 to be the issue.

23 MR. REICHEL: Right. And we're going to try to show
24 that she pushed. She violated -- she did things that she
25 shouldn't be doing. That she pushed. She made comments. She

1 instructed. She provided. She did things that she shouldn't
2 have been doing.

3 THE COURT: I think I've made my point clear.

4 MR. REICHEL: Yes.

5 THE COURT: Court's adjourned.

6 MR. REICHEL: Thank you.

7 MR. LAPHAM: Thank you, Your Honor.

8 (Court adjourned. 4:50 p.m.)

9
10 CERTIFICATION

11
12 I, Diane J. Shepard, certify that the foregoing is a
13 correct transcript from the record of proceedings in the
14 above-entitled matter.

15
16
17 /S/ DIANE J. SHEPARD
18 DIANE J. SHEPARD, CSR #6331, RPR
19 Official Court Reporter
20 United States District Court
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