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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA, ) Case No. 2:06-cr-00035-MCE  
 ) fka: No. 2:06-mj-00021-GGH  
 )  
Plaintiff, )  
 ) Sacramento, California  
vs. ) Friday, January 20, 2006  
 ) 2:17 P.M.  
ERIC McDAVID, et al., )  
 ) Detention hearing re:  
Defendants. ) Defendant Lauren Weiner.  
 )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

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            L = Lapham  
            D = Dratman  
            W = Weiner

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FOR DEFENDANT:

(None)

1 SACRAMENTO, CALIFORNIA, FRIDAY, JANUARY 20, 2006, 2:17 P.M.

2

3 THE CLERK: Calling Magistrate Case 06-0021-GGH,  
4 United States v. Lauren Weiner. This matter is on calendar for  
5 detention hearing, Your Honor.

6 MS. ENDRIZZI: Good afternoon, Your Honor. Ellen  
7 Endrizzi and Steven Lapham for the United States.

8 THE COURT: And good afternoon to both of you.

9 MR. DRATMAN: Good afternoon, Your Honor. David W.  
10 Dratman on behalf of Lauren Weiner who is present. I'm also  
11 going to be -- actually my co-counsel is going to be Jeffrey  
12 Weiner who is present. We have not been able to execute the  
13 pro hac vice documents. He is from the Southern District of  
14 Florida. We have the documents and we will pay the fee and I'm  
15 asking the Court to admit Mr. Weiner in this matter as counsel  
16 with me.

17 THE COURT: Mr. Weiner, any relation to the defendant  
18 for the record?

19 MR. WEINER: Yes, Your Honor. She's my cousin.

20 THE COURT: All right. Then I will admit you for the  
21 purposes of today's hearing. I'm sure the paperwork will  
22 follow.

23 MR. WEINER: We have it right here, sir. Thank you  
24 very much.

25 THE COURT: All right. Thank you. What is the

1 position of the government after the Pretrial Services report?

2 MS. ENDRIZZI: Your Honor, the government still moves  
3 for detention based on flight and danger and strongly opposes  
4 the Pretrial Services report which I would characterize as a  
5 memorandum on behalf of the defendant as there is no mention of  
6 the government's position, no issues raised in the affidavits  
7 and through the complaint about flight and dangerousness.

8 We do have two witnesses to put on regarding those  
9 issues of flight and danger and if the Court would like, we can  
10 get right to that.

11 THE COURT: I'll certainly hear from those witnesses.  
12 There's a few things I wanted to take up so we could get things  
13 out of the way.

14 Is there any dispute that this is a presumptive  
15 offense for detention purposes?

16 MR. DRATMAN: I don't believe there's any dispute,  
17 Your Honor.

18 THE COURT: All right. And in terms of a Vacarro  
19 bond, is there any dispute that I can do that if I wanted to?

20 MR. DRATMAN: From our standpoint, Your Honor, there  
21 is no dispute. This Court and the Magistrate Judges and  
22 District Court Judges in this District have done them  
23 consistently and this is a case where we have present both  
24 parents who --

25 THE COURT: All right. I'm going to get to that in a

1 moment.

2 MR. DRATMAN: -- who are willing to -- the mother is  
3 willing to execute a Vacarro bond.

4 THE COURT: The only reason I mentioned that is  
5 Congress a few years back had had some pending legislation to  
6 abolish Vacarro bonds and it never came to fruition, I don't  
7 think, unless Counsel correct me.

8 MS. ENDRIZZI: No, Your Honor. I believe you do have  
9 the ability, but it's the government's position to always  
10 oppose those bonds.

11 THE COURT: Why is that, by the way?

12 MS. ENDRIZZI: Because it's so difficult to --  
13 they're meaningless essentially because we can't get to the  
14 property.

15 THE COURT: Why not? Let's say if bond was posted  
16 for a flight risk. You could get to the property if you wanted  
17 to if the defendant didn't make an appearance, could you not?

18 MS. ENDRIZZI: Well, what it is, is my understanding  
19 for the flight risk is that we have to let it go all the way  
20 through to trial and to sentencing because if she does appear,  
21 then all that work to get the property is for naught because it  
22 goes right back to the owners and the folks who have posted the  
23 bond.

24 So, for instance, if she failed to appear and there  
25 was a 500,000, a million dollar bond posted, the government

1 would go through the process of trying to get that property and  
2 those liens, yet if she appeared the second time, that real  
3 estate basically would be -- and the fact that she failed to  
4 appear would have no consequence. You know, it's like the  
5 government would have to give the money back and the house  
6 back. And --

7 THE COURT: Well, maybe and maybe not. The  
8 government would certainly be reimbursed for its expenses in  
9 having to go out and catch the person again. But that's the  
10 flight risk bond.

11 Without all the technicalities, I mean we do that  
12 every day here. Whether or not it's hard to get the property  
13 or whether it's not on a Vacarro bond which is bond for the  
14 fulfillment of any condition of pretrial release, why is that  
15 any more difficult than just a plain old flight risk bond?

16 MS. ENDRIZZI: Well, it isn't, Your Honor, because  
17 I've had defendants who have failed to appear and I've spoken  
18 to our civil division and they had made it clear that going  
19 after the property without a final failure to appear at  
20 sentencing is futile.

21 THE COURT: All right. Well, so that's failure to  
22 appear. Let's say she committed a violation of law while out  
23 on pretrial release, that's done.

24 MS. ENDRIZZI: Um-hmm.

25 THE COURT: She either did it or she didn't and if

1 the Court finds she did it, the bond would be subject to  
2 forfeiture, would it not?

3 MS. ENDRIZZI: Yes, Your Honor.

4 THE COURT: You don't have to wait for anything else.

5 MS. ENDRIZZI: No, Your Honor.

6 THE COURT: All right.

7 MS. ENDRIZZI: But I would say that a lien against  
8 the house that isn't for the full amount would also be  
9 difficult to recover and the government would take the position  
10 that if she's going to put up a bond, it's got to be the entire  
11 amount for that house so that if she fails to appear, if she  
12 violates pretrial release, that house is put up for sale  
13 immediately rather than having a lien and going through that  
14 entire process.

15 THE COURT: Yeah. I'm not sure the Courts would  
16 agree with the Department of Justice's position there that it  
17 has to be always unencumbered, but in this case -- a family  
18 have unencumbered property which is going to be totally posted.

19 MS. ENDRIZZI: That is correct, Your Honor.

20 THE COURT: All right.

21 MR. DRATMAN: Actually, Your Honor, the  
22 recommendation is \$500,000 of the \$1 million equity. I have  
23 actually provided to the government a copy of a current  
24 appraisal as well as a title report concerning the property and  
25 we also have Mrs. Weiner here to testify that there are no



1 liens against the property as well as her ex-husband -- so to  
2 be ex-husband.

3 But the recommendation is that half the equity be  
4 there and I think --

5 THE COURT: All right.

6 MR. DRATMAN: -- there's reason for that, but --

7 THE COURT: Well, we might -- may or may not get to  
8 that depending on the danger issue. And so why don't we get to  
9 that and the government's witnesses.

10 MS. ENDRIZZI: Sure. The United States calls Nasson  
11 Walker, Special Agent of the FBI.

12 MR. WEINER: Your Honor, I understand that the  
13 government has a second witness, so I'd like to respectfully  
14 ask that the rule be invoked.

15 THE COURT: And I will invoke the rule with respect  
16 to that second witness.

17 MR. LAPHAM: Your Honor, actually that second witness  
18 is an expert witness on ELF and ALF. I think it might be  
19 beneficial to him and to the Court to hear Mr. Walker's  
20 testimony.

21 MR. DRATMAN: Your Honor, we'll reconsider that.  
22 That's fine.

23 THE COURT: All right. Thank you. If you'd step  
24 forward and raise your right hand.

25 NASSON WALKER, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: Please state your name and spell your  
2 name for the record.

3 THE WITNESS: Nasson Walker, N-a-s-s-o-n W-a-l-k-e-r.

4 THE COURT: Mr. Walker, have a seat.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Lapham, Ms. Endrizzi, whoever is  
7 doing it. Mr. Lapham.

8 MR. LAPHAM: I will do it, Your Honor. Thank you.

9 THE COURT: All right.

10 DIRECT EXAMINATION

11 BY MR. LAPHAM:

12 Q. Mr. Walker, by whom are you employed?

13 A. The FBI.

14 Q. And how long have you been so employed?

15 A. About a year and a half.

16 Q. You're a Special Agent?

17 A. Yes, sir.

18 Q. And would you be a case agent assigned to the current  
19 investigation?

20 A. Yes, sir.

21 Q. Now, those arrests took place on January 13th of this  
22 year; is that correct?

23 A. That's correct.

24 Q. And that was the culmination of an investigation that  
25 occurred over a several month period?

1 A. That's correct.

2 Q. Did the FBI have a source into that conspiracy from a very  
3 early stage?

4 A. We did.

5 Q. And did that source participate in all the major --

6 MR. WEINER: Your Honor, I'm sorry to object, sir,  
7 and I understand there's no jury here and some leading is  
8 permissible, but I haven't heard one question that wasn't  
9 leading, so I respectfully object and ask that the leading now  
10 stop now that we're getting into substantive matters.

11 THE COURT: Well --

12 MR. LAPHAM: Your Honor, this is preliminary.

13 THE COURT: It's preliminary. Once it does, make  
14 your objection --

15 MR. WEINER: All right, sir.

16 THE COURT: -- and we'll get into it. Go ahead,  
17 Mr. Lapham.

18 MR. LAPHAM: Thank you.

19 BY MR. LAPHAM:

20 Q. The FBI did have a source that participated in all the  
21 major conversations involved in the formation and execution of  
22 this conspiracy?

23 A. That's correct.

24 Q. And were those -- was the source equipped with a body wire  
25 for that period of time?

1 MR. WEINER: Your Honor, I'm sorry again, sir, but  
2 I'm just -- I don't mean to upset the Court, but when the  
3 prosecutor slips in little words like for all the conversations  
4 and did she wear a body wire, there's no qualifications. It's  
5 an unfair question because it presumes the answer and what does  
6 all mean. I mean did she sleep in the body -- you know, with a  
7 body wire on.

8 THE COURT: Well, all right. I'm listening to that,  
9 but the Rules of Evidence actually don't apply to these  
10 proceedings.

11 MR. WEINER: Yes, sir.

12 THE COURT: I pay attention to them a little bit so  
13 that we won't get unreliable information in, but this is just  
14 preliminary right now and you can certainly bring it out on  
15 cross if you wish.

16 MR. WEINER: All right, sir.

17 MR. LAPHAM: Thank you, Your Honor.

18 BY MR. LAPHAM:

19 Q. I'm not sure if you answered the question.

20 A. No, I didn't. The source had a body wire some of the time  
21 and we recorded a lot of conversations between the source and  
22 subjects.

23 Q. All right. And during a portion of this investigation,  
24 the defendants met at a residence in January of this year; is  
25 that correct?

1 A. That's correct.

2 Q. And was that residence wired with sound and video  
3 equipment?

4 A. It was.

5 Q. All right. So I'm doing to ask you some questions about  
6 the defendant and you're basing -- are you basing your answers  
7 on conversations that you heard or read reviews of that are  
8 based on those recorded conversations?

9 THE COURT: How would he know unless he hears a  
10 question, Mr. Lapham?

11 MR. LAPHAM: Well, I'm about to ask those questions.  
12 This is just --

13 THE COURT: He knows what the questions are?

14 MR. LAPHAM: No. I'm going to ask him about --  
15 questions about the defendant and are his answers going to be  
16 based on the conversations that he heard or reviewed. It's  
17 just the source of his information.

18 THE COURT: All right. If he can anticipate all your  
19 questions, go ahead.

20 THE WITNESS: In part, the defendant also has a  
21 website that's publicly available and some of that information  
22 comes from it.

23 MR. LAPHAM: All right.

24 BY MR. LAPHAM:

25 Q. Let me ask you first, do you have information regarding

1 the defendant's anarchistic philosophy?

2 A. She's an anarchist. She's opposed to the government. She  
3 made comments to the source to the effect that she would like  
4 to participate in the overthrow of the government in a  
5 revolution. She's also opposed to the capitalist system that  
6 we have.

7 Q. And when did she make those comments?

8 A. She made comments to that effect. I don't remember the  
9 exact date, but it was in between the November planning meeting  
10 that the subjects had and their arrival in California in  
11 January.

12 Q. All right. Does she also maintain an account on  
13 MySpace.com?

14 A. She does.

15 Q. What is MySpace.com?

16 A. It's a website where you can create a personal web page.  
17 She maintains two, provides personal information but also give  
18 the user an opportunity to communicate with other users via  
19 text message.

20 Q. And does she provide personal information on that --  
21 either of those accounts?

22 A. She does.

23 Q. As well as a picture of herself?

24 A. There's a picture of her on the site -- on one of the  
25 sites and she lists things about herself. There are journal

1 entries. She describes events in her life, things that she has  
2 done, favorite books, that sort of thing.

3 Q. And is there an indication on that website as to an  
4 anarchistic philosophy?

5 A. There are references to anarchist thought. She lists as  
6 one of her favorite books a book by Derrick Jensen who's a  
7 leading thinker in the anarchist movement.

8 Q. Is there a reference to --

9 MR. WEINER: Your Honor, I'm going to have to move to  
10 strike that. I know that -- I mean I think it's getting pretty  
11 far afield when we're talking about First Amendment rights and  
12 because she lists a favorite that has a philosophy that the FBI  
13 may not agree with that that somehow is evidence.

14 THE COURT: No. The question was does she have an  
15 anarchist philosophy and if so --

16 MR. WEINER: Yes.

17 THE COURT: -- what was it based upon.

18 MR. WEINER: Yes, sir.

19 THE COURT: And I suppose it's relevant to this  
20 hearing. I believe that it is. Go ahead, Mr. Lapham.

21 BY MR. LAPHAM:

22 Q. Did you finish your answer?

23 A. Could you repeat the question. I don't remember.

24 Q. I'm not sure if I remember the question. There's a  
25 reference to an anarchist book?

1 A. That's correct. By Derrick Jensen.

2 Q. All right. And is there also a reference to CrimethInc?

3 A. I don't recall, but from the sources reported to us that  
4 the defendant has participated in CrimethInc convergences or  
5 meetings sponsored by CrimethInc.

6 THE COURT: Let's get back to the website for a  
7 moment. In terms of anarchist thought, how do you define --  
8 what is anarchist to you?

9 THE WITNESS: I am not an expert in anarchist thought  
10 or the anarchist movement. My understanding is it seeks to end  
11 all systems, all institutions that have some form of  
12 authoritarian or hierarchical element.

13 THE COURT: And you're saying her website according  
14 to your view met that definition?

15 THE WITNESS: There were aspects of the website that  
16 indicated that she was involved in the movement.

17 THE COURT: Go ahead, Mr. Lapham.

18 MR. LAPHAM: Your Honor, the government's next  
19 witness, Mr. Naliboff, will testify about the connection  
20 between the anarchist movement and the radical environmental  
21 movement and he'll explain some of these concepts. We're  
22 attempting here just to lay the foundation for that Ms. Weiner  
23 was part of that movement in process.

24 THE COURT: Well, it depends on how one defines.  
25 Mr. Weiner's objection then becomes more pertinent. One



1 person's anarchy might be another's First Amendments right or  
2 something and we need to have a common definition of it.

3 MR. LAPHAM: All right.

4 BY MR. LAPHAM:

5 Q. Agent Walker, you earlier indicated that Ms. Weiner made a  
6 comment. At some point, did she say wanted to be part of a  
7 revolution to topple the government, destroy society, and  
8 collapse the capitalistic system?

9 A. She did.

10 MR. LAPHAM: And, Your Honor, just for the record,  
11 that's referenced at page 25 of the discovery.

12 THE COURT: Right. But just for me, since I don't  
13 have the discovery, who said that? That's what I want to know.  
14 What's the basis for that comment.

15 MR. LAPHAM: Ms. Weiner said that. Is it --

16 THE WITNESS: That was a discussion between the  
17 source and the defendant.

18 THE COURT: Was that on tape or was it just something  
19 that was -- that related to --

20 THE WITNESS: I don't know if it's on tape or not.  
21 We have not reviewed all of the tapes, so I can't say whether  
22 we have it on tape or not.

23 BY MR. LAPHAM:

24 Q. And, Agent Walker, you have evidence that she -- that  
25 Ms. Weiner had a connection to something called A-Space; is

1 that correct?

2 A. That's correct. And our understanding is A-Space is a  
3 meeting area where anarchists meet in the Philadelphia area.  
4 She participated in that.

5 Q. To your knowledge, has the defendant had training in how  
6 to organize an anarchist collective and how to plan direct  
7 action campaigns?

8 A. That's correct. She told the source that during a  
9 September protest that she attended in Washington, D.C., at the  
10 World Bank she participated in skill shares classes in which  
11 they instructed attendees on how to create groups to organize  
12 direct action -- criminal activity essentially.

13 Q. What are direct actions?

14 A. It's code for criminal activity.

15 MR. WEINER: Your Honor, I have to object. There's  
16 no proper predicate or foundation for this agent just sort of  
17 guessing at these answers.

18 THE COURT: All right. I'll sustain it. Lay a  
19 foundation, Mr. Lapham, if you would.

20 BY MR. LAPHAM:

21 Q. Agent Walker, have you participated in investigations in  
22 the past regarding the radical environmental movement?

23 A. Yes.

24 Q. Specifically what investigation?

25 A. I was -- we investigated two attempted arsons and one

1 actual arson, late 2004/early 2005, for which we arrested four  
2 people.

3 Q. That was the Ryan Lewis case?

4 A. Ryan Lewis case; correct.

5 Q. And during that case and in other cases, have you gained  
6 an understanding of certain terms and terminology in the  
7 radical environmental movement?

8 A. Yes.

9 Q. And is one of those terms the term direct action?

10 A. Yes.

11 Q. And have you gained that knowledge both from your  
12 investigations as well as from reviewing radical environmental  
13 websites?

14 A. I have.

15 Q. Does that include the ELF website?

16 A. Yes.

17 Q. And the ALF website?

18 A. I don't remember off the top of my head, but I've run  
19 across that term numerous places.

20 Q. I suppose just for clarification, we should say what ELF  
21 stands for.

22 A. The Earth Liberation Front.

23 Q. And ALF?

24 A. The Animal Liberation Front.

25 Q. Based on your knowledge, what is direct action?

1 A. It is code -- it is a code word for criminal activity to  
2 advance a political objective.

3 Q. And what type of criminal activity is referenced by the  
4 ELF website as direct actions?

5 MR. WEINER: Your Honor, I have to object. Unless  
6 it's linked to the defendant, it's irrelevant and immaterial.

7 MR. LAPHAM: Your Honor, we will make that link.

8 THE COURT: I'll overrule the objection at this point  
9 subject to a motion to strike.

10 BY MR. LAPHAM:

11 Q. You can answer the question.

12 A. Could you repeat it.

13 Q. What are some examples of the type of criminal activity --

14 A. Okay.

15 Q. -- that are referenced on the ELF website as direct  
16 action?

17 A. I couldn't say as far as the website. I don't recall.

18 Q. Then generally.

19 A. Generally, arson is a popular type of direct action, but  
20 it could -- you know, it could mean --

21 MR. WEINER: Your Honor, I renew my objection, sir.  
22 He hasn't even seen the website and now he's sort of  
23 speculating what it might contain.

24 MR. LAPHAM: Your Honor, he's --

25 THE COURT: No. We're off the website. We're on to

1 his general knowledge, so I'll overrule the objection.

2 THE WITNESS: Arson, economic sabotage of one form or  
3 another, the ALF considers animal releases at research  
4 facilities type of direct action. But it could range. It  
5 ranges.

6 BY MR. LAPHAM:

7 Q. All right. And based on your review of the recorded  
8 conversations and source information, do you have an  
9 understanding as to what Ms. Weiner's role in this particular  
10 conspiracy was?

11 A. She explained to the source that her role was to be the  
12 detail person in this conspiracy, that other people might come  
13 up with the overall objectives or the ideas and she would sort  
14 of finish those ideas with details. She offered to also  
15 provide certain materials for the group's activities including  
16 literature on bomb making, including the book Poor Man's James  
17 Bond. She offered also to acquire certain materials, chemicals  
18 that she could acquire through her art school and through her  
19 mom's greenhouse business. She offered to provide a lock  
20 picking set or a lock picking gun as well.

21 Q. We'll get to some of those in more detail in a minute.

22 A. Okay.

23 Q. Let me ask you about a meeting that occurred in November  
24 of 2005. You know the meeting I'm referencing?

25 A. Yes.

1 Q. Would you describe for the Court what that meeting was all  
2 about and who attended?

3 A. It was a planning meeting in which the subjects and the  
4 source would talk about what they intended to do and what  
5 needed to be done. That meeting lasted three days. It was  
6 from November the 18th through the 20th and we have recordings  
7 of discussion from that meeting.

8 Q. Where did that meeting take place?

9 A. It took place at Eric McDavid's parents' home in Forest  
10 Hill.

11 Q. And were the McDavid parents home at the time?

12 A. They were not. Eric McDavid explained that he was  
13 housesitting for his parents who were away on vacation.

14 Q. And who participated in that meeting?

15 A. Eric McDavid, Lauren Weiner, Zachary Jensen, and a source.

16 Q. And as you've indicated, the source was wearing a body  
17 wear?

18 A. The source was wearing a body wire.

19 Q. What topics were discussed at that meeting?

20 A. They talked about the types of targets that they would  
21 like to go after to include the U.S. --

22 MR. WEINER: Your Honor, I'm sorry to object again  
23 sir, but unless it's attributed to the defendant in the  
24 courtroom today, I think it's misleading to the Court. I mean  
25 I'm not sure what other people may have said or not said or who

1 the informant was with when she was recording this, but I think  
2 it'd be helpful to the Court aside from just general comments  
3 if they can attribute something to the defendant and so state  
4 it, then we can all deal with it.

5 MR. LAPHAM: Your Honor, I'll lay a foundation.

6 THE COURT: All right. Go ahead, Mr. Lapham.

7 BY MR. LAPHAM:

8 Q. There were four people present at this meeting over  
9 those -- that three-day period?

10 A. That's correct. The bulk of the discussion took place on  
11 the 18th and all three subjects and the source were present for  
12 that meeting -- that part of the meeting.

13 Q. And did Ms. Weiner participate in those discussions?

14 A. She did.

15 Q. What was discussed as far as targeting?

16 A. The U.S. Forest Service facility in Placerville, gas  
17 stations, gas trucks, the New York Stock Exchange was mentioned  
18 as a possible target, and that is all that I can recall.

19 Q. That was discussed at that time?

20 A. Yes.

21 Q. Was there targeting discussion at different times?

22 A. Not that I recall. I think the bulk of the discussion  
23 regarding targets occurred that night.

24 Q. I don't mean during that weekend. I mean later on in  
25 December.

1 A. Well, later on, absolutely there were discussions about  
2 targets.

3 Q. All right.

4 A. Yeah.

5 Q. Specifically with reference to the forest service  
6 facility, what -- was it discussed specifically what forest  
7 service facility?

8 A. The one in Placerville. There's only one. It's the --  
9 it's forest genetics. It's a genetic research facility.

10 Q. And during this conversation, was there an indication of  
11 why the group was considering that as a target?

12 A. No. There -- not at this meeting. At other meetings,  
13 there was.

14 Q. Okay. Was there a discussion as to on whose behalf the  
15 group would claim credit for these acts once they had been  
16 committed?

17 A. There was. The group talked about the ELF and how they  
18 could claim responsibility on behalf of the ELF.

19 THE COURT: Mr. Walker, I'm assuming when you say  
20 that Ms. Weiner or Ms. Weiner actively participated, she was  
21 participating throughout these conversations?

22 THE WITNESS: She was interjecting ideas and making  
23 suggestions and -- yes.

24 THE COURT: All right. Go ahead, Mr. Lapham.

25 MR. LAPHAM: Thank you, Your Honor.



1 BY MR. LAPHAM:

2 Q. And was there a discussion about doing some kind of  
3 communication or a press release after the acts were committed?

4 A. Not at this meeting but at later meetings, there was.

5 Q. All right. At this meeting in November, was there a  
6 discussion about whether or not the individuals knew that what  
7 they were planning was illegal?

8 A. Yes, there was. In fact, Eric McDavid made a point to  
9 explain to the group that this was a big deal. It constituted  
10 an act of conspiracy.

11 Q. Did he use the word terrorism?

12 A. Not that I -- not that I can recall.

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

14 THE COURT: Yes, you may.

15 MR. WEINER: Your Honor, may we have a reference as  
16 to what --

17 MR. LAPHAM: Yes, I'm about to give one.

18 THE COURT: Yes.

19 MR. LAPHAM: It's page 231 of the discovery.

20 BY MR. LAPHAM:

21 Q. Special Agent Walker, I've directed your attention to the  
22 second full paragraph in that document. That's an FBI 302; is  
23 that correct?

24 A. That's correct.

25 Q. Does that refresh your recollection as to what was

1 discussed at that meeting?

2 A. Yes, it does. Do you want me to read it?

3 Q. Well, you can just tell me what you now recall based --

4 A. Yeah.

5 Q. -- on having refreshed your recollection.

6 A. McDavid explained to the group that just by discussing  
7 these plans, he described them as terrorist plans, they were  
8 involved in a conspiracy and could go to jail for it.

9 Q. Was a specific type of device discussed at that meeting?

10 A. Yes. Eric McDavid talked about an explosive device that  
11 he learned about while traveling.

12 Q. And was Ms. Weiner given any specific role with respect to  
13 that device?

14 A. Yes. The device was described as a mixture of ammonia and  
15 bleach that when allowed to drive would produce crystals.

16 Those crystals could be mixed with plumbers putty. The  
17 defendant, Ms. Weiner, offered to supply the plumbers putty.

18 Q. Now, after that meeting in November -- well, at that  
19 meeting in November, was a decision made by the group to  
20 reconvene at some later period in time?

21 A. Yes.

22 Q. Would you tell the Court about that?

23 A. They agreed to reassemble either at the end of December or  
24 early part of January to begin preparations for a bombing  
25 campaign that would involve training, acquisition of materials,

1 reconnaissance, and so on.

2 Q. And did that in fact happen?

3 A. Yes.

4 Q. When did the defendants reconvene?

5 A. They arrived I believe it was on the 8th of January and  
6 they picked up Eric McDavid downtown Sacramento and then  
7 proceeded to their residence.

8 Q. Same four people?

9 A. Same four people.

10 Q. We'll get to that in a minute. In between the November  
11 meeting and the January reunion, were there any discussions  
12 between the source and Ms. Weiner?

13 A. There were.

14 Q. What were the context? How did those conversations occur?

15 A. They talked about the upcoming trip to California --

16 Q. No. I'm asking --

17 A. I'm sorry.

18 Q. -- were these phone conversations? Were these  
19 conversations in person?

20 A. There were -- there were phone conversations and there was  
21 at least one in-person discussion.

22 Q. And these are recorded conversations?

23 A. Yes.

24 Q. What was discussed in these conversations?

25 A. They talked about planning for the upcoming trip.

1 Ms. Weiner discussed her thoughts about the bombing campaign,  
2 that she would like to target cell phone towers, that she could  
3 use her digital camera to take photos of those towers, and make  
4 sketches of the towers to identify weaknesses. She talked  
5 about how she could acquire literature on bomb making, that  
6 she'd ordered some books through the Wooden Shoe. It's a  
7 bookstore where she had volunteered -- did some volunteer work  
8 at in the past.

9 Q. Did she make specific reference to one book she had  
10 ordered?

11 A. Yes. The Poor Man's James Bond. It's a book that has  
12 recipes for homemade explosives.

13 Q. And she said she had already ordered that book?

14 A. She did.

15 Q. Did she indicate why she was upset with cell towers?

16 A. She -- I believe she said because they -- they kill birds  
17 or something to that effect.

18 Q. Incidentally, at the November meeting, did the group have  
19 any discussion about what they intended to do after they  
20 committed these acts?

21 A. Yeah. They agreed to slowly sever ties with their family  
22 and that toward the end of the campaign, they would disappear.  
23 In fact Eric McDavid chose the spring to actually, you know,  
24 carry out the campaign because it would allow him to more  
25 easily hop trains to escape.

1 Q. And did Ms. Weiner specifically state what her plans were  
2 in that regard?

3 A. She told -- you know, at a -- not at the November meeting,  
4 but she told the source later that her intention was to spend  
5 Christmas with her family and to effectively say her last  
6 good-byes and that -- so that she could go into hiding after  
7 the campaign.

8 Q. What about her attendance at college?

9 A. That it was ending. Her lease was ending and that she was  
10 basically leaving school.

11 Q. Did she indicate how well she was doing in school?

12 A. She told a source she was not doing well academically.

13 Q. Did she say she was flunking out?

14 A. That's my understanding.

15 Q. Now, when the group got back together in January of this  
16 year, that was on January 8th; is that correct?

17 A. I believe so.

18 Q. Was there a discussion about a desire to blow up the  
19 Nimbus Dam?

20 A. Yes. Ms. Weiner stated that she would like to blow up a  
21 dam and flood the Valley.

22 Q. Did she say -- well, did the group discuss that idea as a  
23 potential project?

24 A. It did.

25 Q. Why don't you relay to the Court what was discussed.

1 A. Oh, she later -- she later decided that that would not be  
2 a good idea because it would essentially create lakeside  
3 property for rich people.

4 Q. Did the group undertake any surveillance of the Nimbus  
5 Dam?

6 A. They did.

7 Q. And incidentally, when we say the Nimbus Dam, that's  
8 located near Hazel and Highway 50?

9 A. That's correct.

10 Q. What reconnaissance or surveillance did they undertake?

11 A. They walked around the area. They looked at the fish  
12 hatchery. They looked at the dam. They took photos. They  
13 picked up a brochure from the visitors center.

14 Q. And were they being surveiled at the time?

15 A. They were.

16 Q. Did they discuss other targets in January of this year?

17 A. They did. They discussed possibility of targeting a cell  
18 phone tower, electrical power stations, the United States  
19 Forest Service facility in Placerville, the Institute of Forest  
20 Genetics.

21 Q. Did they also talk about targeting banks and hacking into  
22 computers?

23 A. They talked about targeting a bank possibly. And that's  
24 all that I can recall.

25 Q. Is it fair to say they ultimately decided on one target?

1 A. I don't know that it's fair to say that. They each had  
2 their preferred target. Ms. Weiner preferred to target a cell  
3 phone tower. Jensen preferred to target a power station.  
4 McDavid wanted to hit the forest service facility and they had  
5 not yet in my assessment agreed on one target.

6 Q. Did they conduct any surveillance on January 10th of this  
7 year?

8 A. Yes. They -- that was the same day they went to the  
9 Nimbus Dam area and immediately after did some reconnaissance  
10 at the Institute of Forest Genetics in Placerville.

11 Q. Specifically what did they do?

12 A. They walked around the -- walked around the grounds. They  
13 went into the main building. They signed into the guest  
14 registry -- Eric McDavid did under a false identity. They had  
15 discussions with employees on the grounds. We recovered a book  
16 from Eric McDavid at the time of his arrest which the group  
17 dubbed the burn book and it contained a handwritten sketch of  
18 the grounds of the IFG.

19 Q. Was there a discussion regarding what plans the group had  
20 for that facility?

21 A. They wanted to detonate explosives on it.

22 Q. Was there a discussion regarding the potential loss of  
23 human life as a result of that action?

24 A. There was a comment that Eric McDavid made after they had  
25 performed the reconnaissance, a question was posed because

1 they -- they learned from their visit that there were  
2 scientists that lived on the property. The question was what  
3 about human casualties and Eric McDavid indicated that that  
4 would be acceptable.

5 Q. Was this --

6 THE COURT: Who asked that question?

7 THE WITNESS: I -- I don't know.

8 BY MR. LAPHAM:

9 Q. Was this statement made in the presence of Ms. Weiner?

10 A. They were all together is my understanding.

11 Q. After that reconnaissance was conducted, did the group  
12 commence fabricating an explosive or incendiary device?

13 A. They did.

14 Q. What did they do?

15 A. They accumulated materials following a recipe in one of  
16 their books for homemade explosives. Do you want me to list  
17 the materials or --

18 Q. Yes, please.

19 A. Okay. Bleach, glass cleaner, potassium chloride. There  
20 were shotgun shells. They acquired a hydrometer, glassware for  
21 cooking. I'm trying to think what else. I can refer to my  
22 notes.

23 Q. Please do.

24 A. Okay.

25 Q. Latex gloves, respirator masks, filters, distilled water,



1 sugar, petroleum jelly. There was a strainer. There were some  
2 glass jars. There was a car battery. I don't know if I  
3 mentioned that.

4 MR. WEINER: Your Honor, may I inquire of what the  
5 agent is looking at to refresh his recollection, please.

6 THE COURT: You may.

7 THE WITNESS: It is a return on the search warrant.

8 MR. WEINER: Okay. Thank you.

9 THE WITNESS: Yeah. And that's basically the bulk of  
10 it.

11 BY MR. LAPHAM:

12 Q. Have you had discussions with the FBI bomb technician?

13 A. I had one -- yeah. I have had discussions with one bomb  
14 technician.

15 Q. Specifically with regard to these components?

16 A. Yes.

17 Q. And how -- have you had discussions about how these  
18 components can be used to fabricate an incendiary or explosive  
19 device?

20 A. In general, yes.

21 Q. And did he indicate to you that they could be used to  
22 fashion such a device?

23 A. Yes.

24 Q. Was he familiar with the recipe that they were following?

25 A. He was. He said he had done some research on the Poor

1 Man's James Bond formulas and he said that these materials are  
2 consistent with the recipe in that book.

3 Q. Okay. The -- as you indicated earlier, the defendants  
4 were arrested on January 13th?

5 A. Correct.

6 Q. They were arrested in a parking lot outside of a store?

7 A. Correct.

8 Q. Were they in possession of anything that they had  
9 purchased in the store at the time of the arrest?

10 A. They were.

11 Q. What did they have?

12 A. They had the respirator masks, the latex gloves, bleach,  
13 ammonia. They had -- yeah. That's -- that's the bulk of it.

14 Q. And those are all components that could be used in the  
15 incendiary or explosive device you discussed?

16 A. That's correct. They also had glassware.

17 Q. Huh?

18 A. They also had glassware.

19 Q. Okay. And then subsequent to those arrests, you executed  
20 a search warrant at the residence where they had come for their  
21 January meeting?

22 A. Yes.

23 Q. And you've -- I think you've already described --

24 A. I have, yeah.

25 Q. -- the main components you obtained in that search.

1 A. I did.

2 Q. All right. Let me change the discussion for a minute on  
3 issues of flight. You've already discussed that Ms. Weiner had  
4 plans of severing ties with her family. Did she indicate how  
5 she was going to do that? Let me -- that's a bad question.

6 Let me rephrase that.

7 Did she indicate what her plans were with respect to how  
8 she would live after she went underground?

9 A. I don't recall.

10 Q. Do you have information about her experience in  
11 hitchhiking?

12 A. Yes. In her website, she talks about her experiences  
13 hitchhiking and in the November meeting, the planning meeting  
14 they had, she talked about an instance where she and at least  
15 one other person from this group had hopped a train and how  
16 exciting that experience was.

17 Q. Did she also talk about dumpster diving?

18 A. There was a reference in the website to dumpsters.

19 Q. What is dumpster diving?

20 A. It's basically foraging for food out a dumpster and it's  
21 something that's taught or -- taught in some of the CrimethInc  
22 literature as something appropriate for anarchists to do  
23 because you don't -- you're not supporting the economy if you  
24 grab food out of the dumpster as opposed to purchasing.

25 Q. Now, were there individuals who were members of this group

1 paying in cash --

2 A. They were.

3 Q. -- for the items they were purchasing?

4 A. From the receipts I've seen so far, yes.

5 Q. And were there discussions about why they would pay in  
6 cash as opposed to other forms?

7 A. Not that I recall.

8 Q. Was there an indication that for security purposes they  
9 should pay in cash?

10 MR. WEINER: Leading, Your Honor. I object, sir.

11 THE COURT: Rephrase that, Mr. Lapham.

12 MR. LAPHAM: Well, I'll -- I don't think he knows the  
13 answer to the question, so I'll withdraw it.

14 BY MR. LAPHAM:

15 Q. Are there references to whether or not it was a good idea  
16 or a bad idea to stay in hotels or motels?

17 A. No, not that I recall.

18 Q. Did the -- did Ms. Weiner travel by plane or did she have  
19 aversion to traveling by plane?

20 A. She did. She explained to the source that she did not  
21 want to travel by plane because the government would be able to  
22 track her movements.

23 Q. Was there a discussion about use of secure Internet sites?

24 A. There was. The group agreed at the November meeting to  
25 establish email accounts through a foreign-based provider and

1 their belief was that the FBI would not be able to track.

2 Q. And in fact is there evidence that Ms. Weiner herself has  
3 an account with one of those websites?

4 A. The source provided us her email account through this  
5 foreign-based provider.

6 Q. And what is the foreign-based provider?

7 A. Anything Irish dot I-E.

8 Q. Special Agent Walker, is there evidence that Ms. Weiner  
9 has engaged in direct actions and in fact I'll limit it to the  
10 November 2005 time period?

11 A. Yes. She -- she told the group at this planning meeting  
12 that she, using a cover, gained access to the GlaxoSmithKline  
13 building in Philadelphia and grafitied the bathrooms. She also  
14 said she threw a brick through a window at a protest in  
15 Washington, D.C.

16 Q. Did Ms. Weiner also at one point have a discussion about  
17 creating a state of marshal law?

18 A. She did. I don't remember the specifics, but I remember  
19 that on a 302. Sorry.

20 Q. Did you finish your answer?

21 A. I did.

22 Q. Do you recall Ms. Weiner making a statement the government  
23 blows up stuff, why can't we?

24 A. Yes.

25 Q. She made that statement in January of this year?

1 A. Yes. I believe that was recorded in one of their  
2 discussions.

3 MR. LAPHAM: All right. I have no further questions.

4 THE COURT: Cross-examination.

5 MR. WEINER: Thank you, sir.

6 CROSS-EXAMINATION

7 BY MR. WEINER:

8 Q. Major Walker, you're the lead agent on this case, sir?

9 A. I am a case agent.

10 Q. Does that mean lead agent?

11 A. I don't -- it's subject to interpretation. I don't  
12 consider it a lead agent position.

13 Q. Do you know more about this case than any other agent?

14 A. Probably.

15 Q. All right, sir. Now, first of all, do you know how old my  
16 client is?

17 A. She's 20 I believe.

18 Q. Yes. Does she have any prior criminal record?

19 A. Not to my knowledge.

20 Q. And how is it that the FBI first became attracted to her?

21 A. Through a source --

22 MR. LAPHAM: Objection. Relevance.

23 THE COURT: Overruled.

24 THE WITNESS: Through a source.

25 \\

1 BY MR. WEINER:

2 Q. Okay. And the source is the same source that has been  
3 referred to throughout your direct testimony today; isn't that  
4 true?

5 A. That is true.

6 Q. Okay. And let's talk about a few things. First of all,  
7 without revealing the identity -- although of course her  
8 identity is known by everyone -- here's what I want to ask for  
9 the Judge's edification.

10 Isn't it true that this informant makes a very significant  
11 living courtesy of the FBI which pays her for being a  
12 professional informant on eco matters, in other words, matters  
13 like this?

14 A. She's been paid. I don't know if she's made a living at  
15 it, but she has been paid for her work on cases related to the  
16 anarchy movement in ecoterrorism, animal rights extremism.

17 Q. Could you tell the Judge how much money she's made so far?

18 A. To my knowledge, approximately \$75,000 in two -- over two  
19 years.

20 Q. Okay. That's significant money, isn't it?

21 A. To me it is.

22 Q. Okay.

23 A. Yeah.

24 Q. All right. Now, how did she meet my client since she  
25 brought my client into this?

1 A. I believe --

2 THE COURT: Well, is that true or is that your  
3 testimony or --

4 MR. WEINER: Well, I'm not testifying. I'm asking  
5 him. I mean I thought that's what he said. He got -- the FBI  
6 got attracted to her through this informant.

7 THE COURT: Right. You said that she brought your  
8 client into this and I thought maybe there was some evidence I  
9 hadn't heard.

10 MR. WEINER: Not yet.

11 THE COURT: All right. Go ahead.

12 MR. WEINER: But hopefully it'll be coming shortly.

13 THE WITNESS: I believe they met in 2004 and I'm not  
14 certain, but I believe they met at the CrimethInc convergence  
15 in Des Moines, Iowa, if I'm not mistaken.

16 BY MR. WEINER:

17 Q. All right, sir. Now -- I'm sorry, sir.

18 A. If I'm not mistaken.

19 Q. All right.

20 A. Yeah.

21 Q. Now, you've given some testimony. Have you ever been to  
22 one of those seminars?

23 A. The convergences?

24 Q. Right.

25 A. No. They -- they are very difficult to get into.



1 Q. Well, the FBI got into this little group, right, through  
2 the informant.

3 A. Through the -- through an informant, it's much easier than  
4 through an agent.

5 Q. All right. So -- but isn't it true, sir, that although  
6 you haven't been to one, you know that a lot of what they talk  
7 about is not illegal at all but is talking about environmental  
8 issues and other issues that certain concerned citizens and  
9 concerned citizens groups care very much about that's not at  
10 all illegal.

11 A. That's true.

12 Q. All right. And you don't know what classes if any or what  
13 seminars if any my client attended, do you?

14 A. Not off the top of my head, no.

15 Q. And at that initial seminar, you don't have any reports  
16 from the informant as to what my client allegedly did or said,  
17 do you?

18 A. No. I think at that -- at that point in time, Ms. Weiner  
19 was not a person of interest.

20 Q. All right. That's fair enough. But isn't it true then  
21 that your informant befriended my client and actually got my  
22 client to allow the informant to stay at her home? Isn't that  
23 so?

24 A. I -- I don't know if that was her intent, but the  
25 informant didn't know about Weiner -- Ms. Weiner's involvement

1 in this conspiracy until Ms. Weiner brought it up to her and  
2 this was after the informant stayed at her house.

3 Q. Okay. How old is the informant?

4 MR. LAPHAM: Objection. Relevance.

5 THE COURT: I'll allow that question, but we'll be  
6 careful with it.

7 THE WITNESS: Do I need to answer that question?

8 THE COURT: Yes.

9 THE WITNESS: I'm not certain how old she is. I  
10 believe she's 20.

11 BY MR. WEINER:

12 Q. The informant is 20 years old?

13 A. I believe so.

14 Q. You don't know though her age?

15 A. I don't.

16 Q. Okay. Let me ask you a question. When you said you're  
17 not sure about how it came to be that she spent the night at my  
18 client's house, how is that that you don't know something like  
19 that? I mean you have no idea how it came about, who suggested  
20 it, or anything?

21 MR. LAPHAM: Objection. Calls for speculation.  
22 Argumentative.

23 THE COURT: It is somewhat argumentative.

24 MR. WEINER: All right, sir. I'll withdraw the  
25 question.

1 THE COURT: And there was a lot to that question. If  
2 you want to rephrase it and break it down, that's fine.

3 MR. WEINER: All right.

4 BY MR. WEINER:

5 Q. Who -- how did it come to be that your informant stayed at  
6 my client's home?

7 A. I -- I don't -- I don't know.

8 Q. At the time the informant stayed at my client's home, she  
9 was already a paid informant for the FBI; isn't that correct?

10 A. That's true.

11 Q. And her goal was to be around people that can -- that  
12 might at some point commit a criminal act so she could earn  
13 more money by providing more information to the FBI; isn't that  
14 correct?

15 A. No. Her job is to report -- my understanding is her job  
16 is to report on any impending violent acts so that the police  
17 could be properly notified.

18 Q. Well, when you say it's your understanding, are you her  
19 handler?

20 A. No.

21 Q. Okay. Did -- is it part of her job to become -- to  
22 befriend people who have not yet expressed an interest in any  
23 criminal activity, to try to get them to become involved?

24 MR. LAPHAM: Objection. Calls for speculation.

25 THE COURT: If you know.

1 THE WITNESS: I don't know. I'm not the handler.

2 BY MR. WEINER:

3 Q. All right. But let me ask you this then. Certainly under  
4 the FBI rules and regulations -- and correct me if I'm wrong --  
5 it would be totally improper for the informant to take a lead  
6 role in committing criminal acts; isn't that so?

7 A. Yeah. They're not encouraged to do -- they're discouraged  
8 to do that.

9 Q. Exactly.

10 A. Correct.

11 Q. But now in this case, you testified to His Honor and to  
12 all of us in this courtroom under oath that my client came  
13 out -- and by the way, how did she come from Phillie to here?

14 A. She rode with the informant and another subject,  
15 Mr. Jensen, in a vehicle.

16 Q. Did there ever come a time when she flew?

17 A. The -- the planning meeting in November, she did fly.

18 Q. Okay. Now, so you said she had an aversion to flying, but  
19 she flew; right?

20 A. She flew on that occasion and --

21 Q. Okay.

22 A. -- our source suggested that they fly again and she  
23 clearly objected to that.

24 Q. Okay. But here's what I'm getting to. First of all, who  
25 made the plane reservations for my client?

1 A. I'm not sure.

2 Q. Well, what if I told you that your informant made the  
3 plane reservations, would that help to jog your memory?

4 A. I can't answer definitively either way.

5 Q. Would it help to jog your memory if you were told that my  
6 client merely appeared at the airport to retrieve her prepaid  
7 ticket paid for by your informant in my client's correct name?

8 MR. LAPHAM: Objection. States facts not in  
9 evidence.

10 THE COURT: The witness can say whether he knows or  
11 not and I'll take the witness's answer as the evidence, not the  
12 question.

13 THE WITNESS: I don't know.

14 BY MR. WEINER:

15 Q. Well, were you not monitoring at that point for quite some  
16 time waiting for my client and others to come out here and get  
17 together in California?

18 A. We monitored after they arrived.

19 Q. So in other words, you have no idea what the discussions  
20 were that led to my client getting out here; is that right?

21 A. I have a general idea what those -- I don't have specific  
22 information about --

23 Q. Well, in that little pile of documents you have, do you  
24 think there's anything there that might show that your  
25 informant paid for the airline ticket and purchased it for my

1 client in my client's name?

2 A. I don't believe so.

3 Q. You don't believe you have it.

4 A. I don't believe I have it in this file.

5 Q. Okay. That's fair enough. No problem. Now, sir, is it  
6 true that at the time my client and the co-defendants and the  
7 informant were all meeting in this house that you've spoken  
8 about that the house was rented by the informant?

9 A. That's true.

10 Q. And that was done so that the informant can bring all the  
11 people to the house; isn't that true?

12 A. That's fair.

13 Q. And isn't it true that you had already prewired the house  
14 with cameras and microphones so that when the FBI chose to turn  
15 them on, they could listen?

16 A. That's true.

17 Q. And isn't it further true that although the microphones  
18 were in the house during the entire time from the time the  
19 house was first made available until the arrest that the FBI  
20 only selectively turned on the tape recorders and photo  
21 monitors when you chose to do it?

22 A. We had to do that because our authority to record and  
23 monitor came from the source. So we could only monitor and  
24 record when the source was present.

25 Q. Exactly. So -- but in addition when the source was

1 present, isn't it true that there was many times when you all  
2 simply did not turn on the microphones?

3 A. Well, then they were -- for example, when they were asleep  
4 at night, yes, we did not -- we would spot check to make sure  
5 the source was okay, but there was no activity going on, so we  
6 didn't -- we felt no need to record somebody sleeping.

7 Q. But isn't it true and isn't it even in your documents that  
8 there were discussions after lights were out so to speak and  
9 everybody was going to sleep?

10 A. Well, they would only be in our documents if we observed  
11 them.

12 Q. Okay. But --

13 A. So --

14 Q. So my point is you don't know all that went on in that  
15 house. You only know what you heard when you decided to flip  
16 on the machines.

17 A. Right. That was the --

18 Q. Isn't that true?

19 A. That's the product of the authority we were operating on.  
20 We could not monitor all the time. We would prefer to for the  
21 safety of our source.

22 Q. Sir, there's no problem. I'm just asking you isn't it a  
23 fact that you selectively turned on and off the machines -- the  
24 monitoring machines and there was a lot that went on and that  
25 was said that you don't know about. You didn't see or hear.

1 That's all I'm asking.

2 A. I don't know if there's a lot, but we certainly missed out  
3 on some things because the source would go out of view and we  
4 were required to turn off the monitors.

5 Q. All right, sir. And not only out of view but out of voice  
6 range too; isn't that true?

7 A. That's -- that's true.

8 Q. Now, isn't it further true that the informant in order to  
9 make the \$75,000 has to produce cases -- arrests? Isn't that  
10 so?

11 A. That's not true.

12 Q. It's not true. She gets paid just for being alive?

13 A. She gets paid for the work that she does. Gets reimbursed  
14 for expenses. She doesn't have to make a --

15 Q. Did she get reimbursed for the airline ticket for my  
16 client?

17 A. I believe so. I don't know definitively.

18 Q. Well, if you believe so, then doesn't that mean what I  
19 suggested earlier, that she bought the airline ticket for my  
20 client?

21 A. Like I said, I can't answer you definitively. I don't  
22 know. I'm not the handler.

23 Q. Sir, at the time my client was arrested, did she give you  
24 any statements?

25 A. I was not the arresting agent. I was not present at the



1 arrest, but my -- from what I've heard, no, there were no  
2 statements.

3 Q. All right, sir.

4 A. She invoked her rights.

5 Q. Now, sir, you spent some time early on in your direct  
6 testimony talking about the defendant's website and you  
7 mentioned to the Judge something about an anarchist viewpoint.  
8 What was on her website that was anarchy -- that talked about  
9 anarchy?

10 A. I believe there are several references to anarchy. There  
11 was the book by Derrick Jensen. He's a well-known anarchist.

12 Q. Did you read that book by the way? You ever read that  
13 book?

14 A. I have not.

15 Q. Okay. So because she listed a book that you haven't even  
16 read as a favorite book, that's how you come before this Court  
17 and say that it's a reference to anarchy?

18 A. I know the author.

19 Q. Yeah.

20 A. I'm familiar with the author. I've read some of his  
21 material.

22 Q. Uh-huh.

23 A. I know that's what he writes about.

24 Q. I see. Okay. And by the way, before you came in today --  
25 and of course it's totally proper -- you met with both of these

1 prosecutors to discuss your testimony, didn't you?

2 A. I did.

3 Q. Is there some reason you didn't bring an actual copy of  
4 the website for His Honor to see?

5 A. There is a copy of the website somewhere. We looked at  
6 it.

7 MR. LAPHAM: Counsel, I have it right here if you  
8 want to see it.

9 MR. WEINER: Yeah, I'd like to see it. Thank you.

10 MR. LAPHAM: It's --

11 MR. WEINER: I don't want to take the Court's time  
12 now, but I'll be happy to get --

13 MR. LAPHAM: It's page 185 of the discovery.

14 MR. WEINER: Thank you.

15 BY MR. WEINER:

16 Q. Now, sir, there is a reference you made on page 25 to the  
17 prosecutor's questions earlier on about a discussion between my  
18 client and the confidential informant that you said you  
19 believed a lot, you believe you heard this or that. Do you  
20 know what I'm referring to on page 25?

21 A. I don't have it in front of me.

22 Q. Okay. Yes, sir. You made some comments that on  
23 page 25 -- and I have no objection if you want to look at it  
24 right now. While you're looking, I saw what I think --

25 A. Okay.

1 Q. -- that you said and if I'm wrong, you tell me, but I  
2 think you told the Court that my client made some statements  
3 against the United States government, that she wants to topple  
4 the government and she doesn't believe in our system of  
5 government, words to that effect; is that correct?

6 A. That's correct.

7 Q. Okay, sir. Now, is that on tape?

8 A. I don't know.

9 Q. Why don't you know? I mean this is your case. These are  
10 your reports. This is your evidence --

11 A. Yes.

12 Q. -- isn't it?

13 A. There are a lot of recordings that we have not had a  
14 chance to review.

15 Q. But, sir, on page 25, you -- it refreshed your  
16 recollection as I recall when the prosecutor asked you and you  
17 did not hesitate in telling His Honor that my client --

18 A. Um-hmm.

19 Q. -- made these statements. So --

20 A. This --

21 Q. -- I'm only asking you how do you know? Did you hear her  
22 make them?

23 A. This is based on a debrief of the source.

24 Q. Okay. So this is strictly relying on the confidential  
25 informant --

1 A. I don't know --

2 Q. -- paid confidential informant; is that right?

3 A. I don't know if we're strictly relying or not. We may  
4 have a recording that backs it up. I just don't know.

5 Q. You don't know.

6 A. Yeah.

7 Q. How long has this investigation been going on, sir?

8 A. Since June of -- June or July of 2005.

9 Q. Okay. Now, if she had made those statements, wouldn't  
10 that support your theory that she's part of this group that you  
11 referred to, this ELF group? Wouldn't that help --

12 A. If she -- I don't -- I don't understand the question.

13 Q. Well, if she had actually made those statements and you  
14 actually had evidence of it other than what your informant  
15 supposedly told you, that would bolster your case, wouldn't it?

16 A. If we had recordings of this --

17 Q. Yeah.

18 A. I think so, yeah.

19 Q. Okay. So your testimony is simply you don't know if you  
20 have recordings or not --

21 A. I don't know.

22 Q. -- even though you know today is the pretrial detention  
23 hearing and you knew an arrest was coming and we were going to  
24 be before a United States Magistrate Judge; is that right?

25 A. Yeah. There are -- there are many hours of recordings

1 and --

2 Q. Yes, sir.

3 A. -- we have not had -- and a lot of those recordings  
4 happened recently, so we haven't had a chance to review them.

5 Q. Well, correct me if I'm wrong, but when recordings were  
6 made, isn't it true that there was a whole FBI unit outside the  
7 home which was rented by the FBI and you were listening  
8 simultaneously as the recordings were made; isn't that true?

9 A. Not in this case. This recording happened in November.  
10 If I had to speculate, I would say it's probably recorded  
11 because at that point in time, the source had agreed to testify  
12 and wear a body wire.

13 Q. Okay. But --

14 A. But I don't -- I don't know for sure.

15 Q. Okay. And in fact you don't have any direct recollection,  
16 do you?

17 A. Of this --

18 Q. It's pure speculation.

19 A. Number 25?

20 Q. Right.

21 A. I'm going off of a report from another division.

22 Q. Well, does that report say that an FBI agent heard it,  
23 monitored it, recorded it?

24 A. It's -- like I said, it's a debrief of the source.

25 Q. Okay. All right, sir. Now, you talked about Ace Space on

1 direct examination; is that correct?

2 A. A-Space, the letter A.

3 Q. A-Space.

4 A. Yes.

5 Q. All right. And the prosecutor asked you what that was  
6 about and what did you say?

7 A. I'm going -- based on a report again that it's a place  
8 where anarchists gather in the Philadelphia area.

9 Q. Now, have you been to Philadelphia?

10 A. I have.

11 Q. Have you been there in conjunction with this case?

12 A. Yes.

13 Q. And did you go to A-Space?

14 A. No, I did not.

15 Q. So you're just saying it, but you don't really know;  
16 right?

17 A. Well, it's based off of a 302, so --

18 Q. So it must be accurate.

19 A. -- it's evidentiary.

20 Q. Is the FBI said it; right?

21 A. Well, another agent has reviewed it for accuracy and  
22 completeness.

23 Q. All right. And what is this place exactly? I mean, does  
24 someone have to take an oath when they go in, or did they swear  
25 allegiance, or -- I mean, in other words, what is this? Is

1 this a coffee shop, an empty room, a warehouse? What is it?

2 A. I don't know. I'm basing my answer on a report that I've  
3 seen from -- that came from another division.

4 Q. Okay. Now, isn't it also true when you talk about direct  
5 action campaigns, that although you told the prosecutor what  
6 that really means is criminal acts, that direct action  
7 campaigns include many legal acts protected by the United  
8 States Constitution, including assembling, protesting, having  
9 signs, signing petitions, and things of that nature?

10 A. It's a --

11 Q. I'm not saying that it necessarily excludes criminal acts,  
12 but it includes legal acts as well, does it not?

13 A. It might. I mean, it depends on a person's  
14 interpretation. I know it's used as code for criminal  
15 activity.

16 Q. All right, sir. Now, let's talk a little bit more here  
17 about the materials that you say were purchased. Now, I'm  
18 concerned about something because if I heard you right, the  
19 prosecutor asked you about the fact that these items were  
20 purchased for cash. Do you remember that?

21 A. I remember the question.

22 Q. Okay. And the question was, if I'm -- if I remember  
23 right, didn't they purchase these items for cash? Yes.

24 A. Yes.

25 Q. And why? And then you speculated for the Court, didn't

1 you?

2 A. I don't recall.

3 Q. Didn't you say that that way it couldn't be traced?

4 A. No, I don't think so.

5 Q. Okay. Well, now, let's talk about what really happened  
6 for just a moment.

7 Isn't it true that the money to purchase every one of  
8 those items came from the FBI paid informants?

9 A. I don't know that that's true. I know that some of the  
10 money came from the source.

11 Q. Isn't it a fact that the source produced hundred dollar  
12 bills that were given to her by the FBI and given to various  
13 people that are charged in this case, and told to purchase  
14 those items?

15 A. I don't know for a fact that that's true.

16 Q. Were you outside the store, I think it was a Wal-Mart  
17 store, when these items were purchased?

18 A. No.

19 Q. You were not there?

20 A. No.

21 Q. All right, sir. Why is it that -- have you met this  
22 informant?

23 A. Yes.

24 Q. Did you ever talk with her before she went in and out of  
25 these meetings?



1 A. Not -- it would be unusual for me to be involved in those  
2 meetings.

3 Q. Isn't it important for you as the case agent, when you  
4 come before a United States judge, to know about who paid for  
5 airline tickets, who paid for these supplies that they  
6 purchased at Wal-Mart?

7 MR. LAPHAM: Objection, argumentative.

8 MR. WEINER: I'll withdraw the question. I  
9 apologize.

10 BY MR. WEINER:

11 Q. Let me ask you this, sir. This burn book, didn't you make  
12 a comment, or actually maybe the prosecutor testified to the  
13 fact that this group came up with the name "burn book;" do you  
14 remember that?

15 A. I don't know about the name -- yeah, they -- I don't know  
16 specifically who came up with that name, but it was known among  
17 the group as the "burn book."

18 Q. And isn't it true it was known that way because that's  
19 precisely what your informant named the book?

20 A. I don't know.

21 Q. Isn't it also true -- have you looked at that so-called  
22 "burn book"?

23 A. Yes.

24 Q. Okay. And that you testified as to some of the contents.  
25 Now, would you like to tell the Court whether it's true that at

1 least 99 percent of the handwriting in that burn book is of  
2 your paid FBI informant?

3 A. I wouldn't say 99 percent, but a part of it --

4 Q. How about 98 percent?

5 A. No. Part of it was written by the source, but not all.

6 Q. Well, I'm not trying to be cute with you here, agent, I  
7 think it's important -- I think it's important that the judge  
8 know, I mean, are we talking about a few pages, or are we  
9 talking about the overwhelming majority of this so-called  
10 incriminating evidence being written by your paid informant?  
11 Isn't that a fair statement?

12 A. No. I don't think overwhelming majority is a fair  
13 characterization.

14 MR. WEINER: Judge, I don't want to take the Court's  
15 valuable time, but if the agent has it, and I'm sure he does,  
16 I'd love for him to just flip through it, it will take one  
17 minute, and I think he will change his answer very quickly.

18 THE COURT: If you have the book, he can refer to it.

19 THE WITNESS: I can't recognize the source's  
20 handwriting and distinguish it from other people.

21 BY MR. WEINER:

22 Q. All right. So you want to have my client detained based  
23 on writings and you don't even know who wrote them.

24 A. No.

25 MR. LAPHAM: Objection, argumentative.

1 THE COURT: No, I'll overrule that objection.

2 THE WITNESS: I know that the source wrote many of  
3 the things in that book, and that Eric McDavid wrote many  
4 things in that book.

5 BY MR. WEINER:

6 Q. Did my client write one thing in that book?

7 A. Not to my knowledge.

8 Q. Thank you. Now, sir, the prosecutor asked you about Ryan  
9 Lewis and other co-defendants in a case some time ago right in  
10 this courthouse; isn't that true?

11 A. It's true.

12 Q. Okay. And isn't it also true that the government asked  
13 for pretrial detention on Ryan Lewis and all of his co-  
14 defendants?

15 A. That's true.

16 Q. And isn't it true that they were all immediately released  
17 on bail because they were no longer a danger or a threat  
18 according to the government immediately after they entered  
19 their guilty pleas?

20 MR. LAPHAM: Objection, relevance.

21 MR. WEINER: Well, he opened the door by asking all  
22 about that other case.

23 THE COURT: But not the bail proceedings, which I'm  
24 unaware of. It wouldn't make any difference. I wouldn't know  
25 what the situation was.

1 MR. WEINER: Fair enough, sir.

2 BY MR. WEINER:

3 Q. Okay. Now, this ELF website that you talked about, have  
4 you seen that website?

5 A. I've seen it.

6 Q. Do you have any evidence that my client has ever seen it,  
7 been on it?

8 A. No.

9 Q. Okay. And you also talked about this group ALF with  
10 animal releases and things like that. My client's not involved  
11 in that, is she?

12 A. Your client made a statement to our source regarding how  
13 she knows people involved in the ALF in the Washington, D.C.  
14 area.

15 Q. Okay. But my question was not who she maybe knows, and  
16 what she maybe said to the informant, it was my client is not  
17 involved in that organization, is she?

18 A. She may. I don't know.

19 Q. Okay. Now, sir, you went on to tell His Honor today that  
20 my client was the detail person, and that others had the  
21 objectives and that she would finish with the details. Now,  
22 I'd like you to tell us please, what details did my client  
23 finish with?

24 A. I don't know that I could --

25 Q. Tell us any detail, anything.

1 A. That was her description of her role as the detail person.

2 Q. But the fact of the matter is that number one, did she buy  
3 anything at that Wal-Mart?

4 A. We haven't reviewed the surveillance tape. We don't know  
5 who bought what at this point.

6 Q. So don't -- isn't it a practice before you testify before  
7 a federal judge on a case to review your evidence?

8 A. There's too many hours of tape to review before we had  
9 this hearing. There's just too many hours.

10 Q. Okay. Let me ask you a question. No bomb was ever made  
11 in this case, was there?

12 A. They were attempting to make a bomb.

13 Q. Sir, my question was, no bomb was ever made; isn't that  
14 true?

15 A. That's true.

16 Q. And in fact, when you say they were attempting to make a  
17 bomb, the only evidence that you have of any materials is that  
18 some bleach was oiled, and it broke the little jar it was  
19 boiled in, or they -- the glass container, and that's it; isn't  
20 that true?

21 A. There were a lot of other items there that were used for a  
22 recipe they were following.

23 Q. All right, sir. So there were items, and if I'm correct,  
24 suggested by your paid informant, purchased by your paid  
25 informant, and brought to the house, which was your paid

1 informant's house, or the FBI's house, by her. Isn't that  
2 true?

3 A. That's not true.

4 MR. LAPHAM: Objection, argumentative.

5 THE COURT: And it also states facts not in evidence.  
6 Sustained.

7 MR. WEINER: All right.

8 BY MR. WEINER:

9 Q. You can't provide any details then that my client  
10 supposedly did; isn't that so?

11 A. We know that she was -- as they were boiling the bleach,  
12 she's the one who stirred the bleach and measured it with the  
13 hydrometer.

14 Q. And how do you know that?

15 A. From the source -- from a debrief of the source.

16 Q. All right. So really, the bottom line here, based on your  
17 testimony, is your relying on this \$75,000 paid FBI informant  
18 for your information to charge my client.

19 A. No, not --

20 Q. Isn't that true?

21 A. Not entirely.

22 MR. LAPHAM: Objection, argumentative.

23 THE COURT: Overruled.

24 THE WITNESS: We have a lot of surveillance tape,  
25 some of which we have reviewed, some of which we have not that

1 substantiates --

2 BY MR. WEINER:

3 Q. Would you please tell -- I'm sorry, I didn't mean to cut  
4 you off.

5 A. That substantiates what the source has reported.

6 Q. All right. Would you please tell us please what evidence  
7 you have that my client committed a crime?

8 MR. LAPHAM: Other than what he's already testified  
9 to?

10 BY MR. WEINER:

11 Q. Yeah. Other than what you've already said. Do you have  
12 any evidence she committed a criminal act?

13 A. I think we've talked about it at length.

14 Q. Okay.

15 A. The discussions, the reconnaissance, the acquisition of  
16 materials, the fact that she was --

17 Q. Okay. Now, you also had talked about possible targets  
18 that "the group" was talking about. Did my client ever suggest  
19 anything other than you made a reference to cell phone towers?  
20 She never suggested anything else, did she?

21 A. She suggested a dam --

22 Q. A dam.

23 A. -- and a cell phone tower.

24 Q. I see. And of course, you know from your expertise and  
25 knowledge and talking to the FBI bomb expert that if, in fact,

1 it ever came to be that there was a real intent to do anything,  
2 and if anything was ever made, what they were going to produce  
3 would hardly make a dent in a dam or a cell phone tower; isn't  
4 that true?

5 A. No, a dam, true, but a cell phone tower, according to our  
6 bomb tech, you could do some damage.

7 Q. Depending on how big the bomb was?

8 A. I'm not an expert. I can't answer questions about  
9 explosives.

10 Q. All right. That's fair enough. Now, you also made a  
11 point of answering the prosecutor's questions about a press  
12 release, and who was going to take credit for an act on a  
13 target that was never selected; isn't that true?

14 A. I did.

15 Q. And isn't it also true that my client was never mentioned,  
16 or considered, or discussed for being involved in that press  
17 release in any way, shape, or form?

18 A. She was there when the idea was discussed.

19 Q. Well, how do you know that?

20 A. Because we were observing through the monitor.

21 Q. Yeah. And did she say anything, or was she ever suggested  
22 to be someone who was going to be involved in any way?

23 A. No. To my recollection, Jenson, Mr. Jenson was going to  
24 be the P.R. person.

25 Q. Okay. Now, sir, I presume that you have recordings of the



1 confidential informant talking to my client to -- I'll use the  
2 word, induce her, or to ask her, or to talk about getting my  
3 client to come out here. Do you?

4 A. I believe we do.

5 Q. All right. Have you reviewed those?

6 A. I have not.

7 Q. Would it concern you if, in fact, your informant, your  
8 paid informant was turned loose on this 20-year-old young lady  
9 without supervision of the FBI?

10 MR. LAPHAM: Objection, that's entirely speculative  
11 and calls for facts not in evidence.

12 THE COURT: That is, and it's also argumentative.

13 MR. WEINER: All right.

14 THE COURT: I think that's not fair.

15 BY MR. WEINER:

16 Q. Now, you said that she ordered a book called "The Poor  
17 Man's James Bond;" is that right?

18 A. Right.

19 Q. Do you have any proof that she ordered the book?

20 A. I believe we have it in evidence.

21 Q. In what evidence?

22 A. It -- at the FBI.

23 Q. Okay. Not here in court, though?

24 A. No.

25 Q. Okay. And that book's not an illegal book, right? I mean

1 you can get it in almost any city in the country; isn't that  
2 true?

3 A. Well, I don't know how easy it is to get, but I don't  
4 think here's anything illegal about having it.

5 Q. Okay. And by the way, these Christmas goodbyes that you  
6 talked about, were any of those recorded that my client was  
7 supposed to have said goodbye to her family?

8 A. Possibly.

9 Q. But you don't know?

10 A. I don't know.

11 Q. So possibly or not possibly, right?

12 A. Right.

13 Q. I mean, you don't know?

14 A. I don't know.

15 Q. Okay. Did you interview my client's parents?

16 A. No.

17 Q. Did you send an agent to go interview either or both of  
18 them to say hey, did your daughter say anything like she'd be  
19 leaving, or you wouldn't hear from her?

20 MR. LAPHAM: Objection, asked --

21 MR. WEINER: Anything?

22 MR. LAPHAM: Asked and answered.

23 THE COURT: I'll overrule it. Go ahead.

24 THE WITNESS: No.

25 BY MR. WEINER:

1 Q. But you interviewed other defendant's in this case's  
2 parents, isn't that true?

3 A. That's not true.

4 Q. Well, isn't one of them scheduled to appear before a grand  
5 jury?

6 MR. LAPHAM: Objection, Your Honor. Relevance.

7 MR. WEINER: I just want to show that they had the  
8 ability to ask questions and they selectively chose who to talk  
9 to and who to ask.

10 THE COURT: It's fairly remote at this time, Mr.  
11 Weiner.

12 MR. WEINER: All right, sir.

13 BY MR. WEINER:

14 Q. Now, you talked about my client's grades in college; is  
15 that right?

16 A. I did.

17 Q. You told the judge that her grades were bad, she was  
18 flunking out; is that true?

19 A. I didn't talk about her grades.

20 Q. Did you say she was flunking out, Agent?

21 A. I said that the source -- yes. I said the source reported  
22 that she was not performing well academically.

23 Q. I thought you said she was flunking out.

24 A. I didn't say that.

25 Q. You didn't. Okay. Did you check her grades at her

1 college?

2 A. I did not.

3 Q. What college does she go to, do you even know?

4 A. I think it's the University of the Arts in Philadelphia.

5 Q. Okay. Well -- all right, so you don't have any direct  
6 knowledge of that either?

7 A. I don't know how -- no.

8 Q. Okay. And by the way, this apartment that my client had,  
9 do you have a copy of the lease, do you have any rent checks,  
10 do you have anything to show that her lease was up?

11 A. No, the defendant reported to the source that her lease  
12 was up.

13 Q. And that wasn't recorded either, though, was it?

14 A. Again --

15 Q. You don't know?

16 A. -- I can't speak to that.

17 Q. Okay. I'm almost done, sir, and I appreciate you giving  
18 me this opportunity.

19 (Pause.)

20 Does it say anywhere in your reports about that burn book  
21 who -- I think the prosecutor used the word "dubbed it," who  
22 dubbed it the burn book. Is that anywhere in your reports?

23 A. I don't believe so.

24 Q. All right. When McDavid supposedly made comments about  
25 casualties, isn't it true that my client immediately objected?

1 A. I don't know.

2 Q. Didn't you tell the judge that she said "No casualties"?

3 A. I didn't say that.

4 Q. You didn't say that in your direct?

5 A. No.

6 Q. Do you have any evidence that my client agreed, or  
7 acquiesced in any way to McDavid's alleged statement about  
8 casualties?

9 MR. LAPHAM: Objection, compound.

10 THE COURT: Overruled.

11 THE WITNESS: No.

12 BY MR. WEINER:

13 Q. Okay. Did you have any agents inside the Wal-Mart when  
14 the informant was in there with these people when they were  
15 buying things?

16 A. Yes.

17 Q. And did they observe where -- who gave the money, and who  
18 gave the list of items to purchase?

19 A. The -- I mean their instructions were to maintain a  
20 distance and attempt to identify which aisles they used so that  
21 we could recover video surveillance later on.

22 Q. Does anybody in the FBI know who gave the money to buy  
23 this stuff? Anybody?

24 A. I'm sure there's some -- I don't have that information.

25 Q. Okay. But as the case agent, isn't it true that

1 everything that the FBI does is recorded and filed in reports?

2 A. That's true.

3 Q. Okay. And before coming to court, I mean, I see you have  
4 the reports, I know you met with the prosecutors, did you even  
5 read them?

6 A. I did. There are many reports that we are still in the  
7 process of creating.

8 Q. All right.

9 A. Sometimes it takes a while.

10 Q. All right. Now, if, in fact, it turns out that the FBI  
11 told -- gave the informant the cash and said let them pay in  
12 cash, or you pay in cash and come out with receipts, isn't  
13 it -- is it a fair -- let me just -- I'll strike that and just  
14 ask it this way. Do you know any of the conversations that led  
15 up to the group going to Wal-Mart, paying for and selecting  
16 certain items?

17 A. I have some limited knowledge of that.

18 Q. Okay. But limited in the sense that you don't know -- and  
19 I won't belabor the point anymore, but you don't know where the  
20 money came from; is that right?

21 A. I don't.

22 Q. Was there marked money given to the informant to do things  
23 in this case?

24 A. No.

25 Q. She was never given money?

1 A. Marked money? I don't know what that is.

2 Q. Okay. Money that the FBI records the serial numbers of.

3 A. No.

4 Q. Was she ever given money to spend to help this case move  
5 along?

6 THE COURT: Excuse me. Ms. Negin? Ms. Negin?

7 MS. NEGIN: Yes, Your Honor.

8 THE COURT: Why don't you wait for just one second,  
9 because I'm going to get to you in a moment.

10 MS. NEGIN: Oh, I'm sorry --

11 MR. WEINER: Do you want to take a break, Judge.

12 THE COURT: I just don't want you to go away. No, go  
13 ahead and finish your questioning.

14 MR. WEINER: All right.

15 BY MR. WEINER:

16 Q. Money that the FBI knew about that was given to the  
17 informant, did that ever happen in this case?

18 A. I think she received money to cover expenses during the  
19 trip.

20 Q. Do you know how much?

21 A. I don't.

22 Q. But that's the only money she got, just expenses for a  
23 trip?

24 A. For this particular trip, I believe so.

25 Q. Let's talk about anything Irish. You sort of concluded

1 your testimony talking about that website. Isn't it true that  
2 that website was suggested by the informant and that my client  
3 got an e-mail account on there with the help, direction and  
4 guidance of the FBI paid informant?

5 A. I don't know.

6 Q. Who does know?

7 A. Probably the source's handler perhaps? I don't know. I  
8 don't know if that's true, or --

9 Q. Who is that? That's not a secret. Who is it?

10 A. Special Agent Rick Torres.

11 Q. Okay. And finally, and I'm about to conclude, you made  
12 some --

13 MR. DRATMAN: Actually, Your Honor, I'm going to  
14 interrupt. I have some -- if I can just have a moment.

15 (Pause - counsel conferring.)

16 MR. DRATMAN: I'm sorry, Your Honor.

17 THE COURT: All right. It sounds like the  
18 questioning might not be at its end.

19 MR. DRATMAN: Well, they will be --

20 MR. WEINER: Well, it is basically, I just have a  
21 couple of questions. Like one minute.

22 THE COURT: All right. Because I want to take care  
23 of logistical matters as well. All right, go ahead. One  
24 minute you got.

25 MR. WEINER: Okay, sir.



1 BY MR. WEINER:

2 Q. First of all, you ended your testimony talking about the  
3 Glaxo matter, is that correct? You said my client had done  
4 something there.

5 A. She --

6 Q. Right?

7 A. That's correct.

8 Q. Okay. Now, she was not arrested; right?

9 A. No.

10 Q. There's no record of anything ever happening like that, is  
11 there?

12 A. There's a recording of her talking about what she did.

13 Q. Right. But there's no evidence that it ever happened;  
14 isn't that true?

15 A. Other than her own admission, no.

16 Q. So there's no corpus delicti, right?

17 A. I don't know what that means.

18 Q. You don't. All right. Let me ask you this. Other than  
19 what my client supposedly said on that brick matter, there's no  
20 police reports of a brick that are attributed to my client in  
21 any way; isn't that true?

22 A. None that I know of.

23 Q. Okay. And finally, sir, laptops. I believe there was  
24 some discovery that some laptops were seized; isn't that true?

25 A. That's true.

1 Q. Why don't you tell His Honor who the laptops belonged to.

2 A. They were provided by the FBI.

3 Q. Okay. So in other words, the FBI laptops were seized as  
4 evidence even though they belonged to the FBI?

5 A. That's true.

6 Q. Okay. So you provided the evidence, provided the  
7 informant, and isn't it also true that the informant is the one  
8 who spent the majority of time creating evidence on the laptop  
9 so that when the FBI looked at it after the fact, they would  
10 see whatever was there?

11 A. No, I don't think that's true.

12 Q. Do you know that it's true, or you're just guessing again?

13 A. I don't know.

14 MR. WEINER: All right. I have no further questions.

15 THE WITNESS: Okay.

16 MR. WEINER: Thank you, sir.

17 THE COURT: All right. Thank you. I think we have  
18 Mr. Jewett in the holding cell and we need to do something  
19 about him.

20 (Brief discussion re: USA v. Jewett.)

21 THE COURT: Was there any redirect here, Mr. Lapham?

22 MR. LAPHAM: Just a few questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. LAPHAM:

25 Q. Special Agent Walker, was the source given any

1 instructions as to her conduct in this case?

2 A. Yes.

3 Q. And specifically, is there an FBI protocol, and Department  
4 of Justice or Attorney General guidelines with respect to  
5 sources such as this?

6 A. I can't speak to the protocol, but I can speak to what she  
7 was advised.

8 Q. Would you do so please?

9 A. She was --

10 MR. WEINER: Your Honor, I have to object, because --  
11 I object because when I asked him these questions, he knew  
12 nothing about what she was told. Now all of a sudden his  
13 memory has improved and we're going to hear a whole litany of  
14 things she was told.

15 THE COURT: I think --

16 MR. LAPHAM: I don't recall any --

17 MR. WEINER: I asked him 10 different ways.

18 THE COURT: All right. Stop. I think perhaps you've  
19 over-generalized and I'll overrule the objection.

20 MR. WEINER: All right.

21 THE WITNESS: I remember we had meetings with the  
22 source in which it was stressed to her not to lead the group,  
23 not to make -- not to give the group direction, but to pose  
24 questions, to provide alternatives in the form of questions  
25 such that it could not be characterized that this is a case of

1 entrapment.

2 MR. LAPHAM: Thank you. I have nothing further.

3 THE COURT: All right, Agent, you may step down.

4 MR. WEINER: Your Honor, may I follow-up with one  
5 question that just came out, only have to do with the rebuttal?

6 THE COURT: One question. Can you do it?

7 RECROSS EXAMINATION

8 BY MR. WEINER:

9 Q. Isn't it true on the day before the arrest your informant  
10 got so upset that nothing was progressing as far as a target,  
11 as far as making an explosive device or anything, that she had  
12 a temper tantrum that all of you listened to on the tape  
13 recordings, watched on the cameras, and she stormed out of the  
14 FBI house where everybody was. Is that true?

15 A. I don't know that that's true. I was not on the  
16 surveillance team that day.

17 Q. Did you read it in any reports?

18 A. No, I did not.

19 MR. WEINER: No further questions. Thank you, sir.

20 THE COURT: All right. Thank you. You may step  
21 down.

22 (Witness excused.)

23 THE COURT: And Mr. Lapham, with respect to this next  
24 witness, there's been testimony thus far that Ms. Weiner may  
25 have participated in ELF-like activities. I don't recall any

1 connection -- direct connection of Ms. Weiner -- is it Weiner  
2 or Weiner?

3 MR. WEINER: Weiner.

4 THE COURT: Ms. Weiner with ELF, and wouldn't that be  
5 necessary before I listen to all this business about ELF?

6 MR. LAPHAM: Well, first of all, there is a  
7 connection. They discussed at the November meeting to -- and  
8 it was agreed that they would claim responsibility for these  
9 actions on behalf of ELF.

10 MR. WEINER: Your Honor, I have to object, that's not  
11 in evidence.

12 THE COURT: Do I have that in evidence, Mr. Lapham?

13 MR. LAPHAM: Yes, that is what Special Agent Walker  
14 testified to. There was a discussion as to how they would  
15 claim responsibility. I believe it was Mr. Jensen who was  
16 going to take the lead on doing some kind of press release.

17 THE COURT: I understand all that. I didn't not know  
18 it was connected with ELF. I didn't hear it, but perhaps the  
19 agent can come back and inform us again. Mr. Walker, if you'd  
20 come back? And you're still under oath.

21 Go ahead, Mr. Lapham.

22 FURTHER DIRECT EXAMINATION

23 BY MR. LAPHAM:

24 Q. Special Agent Walker, directing your attention to that  
25 November 2005 meeting, was there a discussion as to -- by the

1 group as to how they would claim responsibility for the acts  
2 that they were planning?

3 A. Yes, and this was from Mr. McDavid, that they would claim  
4 responsibility on behalf of the ELF.

5 Q. And --

6 A. There was also a discussion in the vehicle on the way up  
7 to Forest Hill in which Ms. Weiner talked about a 60-minute  
8 show that she had recently seen on the ELF in which an agent  
9 explained that there were a hundred or more incidents, but only  
10 40 arrests, and she used that to kind of underscore the point  
11 that they just needed to be smart about what they were doing,  
12 and they wouldn't get caught.

13 Q. During that conversation in the care to Forest Hill, did  
14 she express pride in that fact, that there had only been 40  
15 arrests?

16 A. It seemed -- that was my assessment.

17 THE COURT: Well, Mr. Lapham, we might have a case of  
18 ELF wannabes, or you might have a case of ELFs, but I --

19 MR. LAPHAM: Your Honor --

20 THE COURT: -- don't know.

21 MR. LAPHAM: -- the next witness will testify about  
22 the relationship between ELF, anarchism and the radical  
23 environmental movement.

24 THE COURT: I know.

25 MR. LAPHAM: He can provide context for what we're

1 talking about here.

2 THE COURT: Well, he might, and he might talk about  
3 Hell's Angels too.

4 MR. LAPHAM: He's not going to talk about Hell's  
5 Angeles, he's going to talk specifically --

6 THE COURT: I'm being facetious, but unless he  
7 relates this group to this defendant, unless there's evidence  
8 that really relates membership in this group, I don't know that  
9 just reference to ELF by Mr. McDavid --

10 MR. LAPHAM: Your Honor, this is why we need an  
11 expert to testify. There is no group or hierarchy known as  
12 ELF. It is a movement which is characterized by something  
13 called leaderless resistance. The ELF website proposes to  
14 people that they form independent cells just like this, that  
15 they go out and commit direct actions which --

16 MR. WEINER: Judge, I'm going to have to object.

17 MR. LAPHAM: Your Honor, I'm making a proffer here.

18 THE COURT: I have a proffer -- I have a proffer. Go  
19 ahead, Mr. Lapham.

20 MR. LAPHAM: That they go out and create direct  
21 actions, which is not code, it is absolutely a reference to  
22 committing crimes. The ELF and ALF websites have specific  
23 directions on how those crimes can be committed. In the arson  
24 context, for instance, the website has something -- has an  
25 arson manual which instructs people on how to create incendiary

1 devices, how to commit those crimes with timing devices, what  
2 time of day to commit those crimes, how to make your escape,  
3 how to make sure there are no fingerprints left behind, and  
4 then significantly, most importantly, that once the direct  
5 action is committed, to communicate with ELF and claim  
6 responsibility on behalf of ELF, and to leave a marker at  
7 the -- usually at the crime scene referencing that this is an  
8 ELF action.

9           That is exactly the situation we have here. We're  
10 not going to be able to show you any organization with a  
11 membership list, and a board of directors and a vice president  
12 that has regular meetings. We're going to be able to show  
13 through Mr. Naliboff, the next witness, that there is this  
14 website and support structure that encourages people to go out  
15 and commit crimes on behalf of ELF and ALF.

16           THE COURT: But in terms of this case, that's -- I'm  
17 struggling with the connect, but divorce it from this case for  
18 a moment, take Al Qaida, which produces a lot of information on  
19 what you should do, and what we want you to do, and here's our  
20 goals, and so forth and so on, reams of information.

21           Now, somebody might look at that and say, that's a  
22 good idea, I want to do that. Why do I need testimony on Al  
23 Qaida? I'm concerned about what the person did, what the  
24 person thought, no so much where the person may have got the  
25 idea from.



1           MR. LAPHAM: Your Honor, here's why it's important to  
2 the detention issue. We're not talking about the guilt or  
3 innocence at this point, we're talking about the detention  
4 question.

5           There is a whole support structure embodied in the  
6 ELF website and the movement for prisoners, people who get  
7 arrested for crimes committed on behalf of ELF. There is a  
8 support structure which has worked in the past and the expert  
9 will testify about specific examples where individuals who  
10 committed crimes on behalf of ELF were assisted in their  
11 attempts to flee. And --

12           THE COURT: But what is the sine qui non for the  
13 relevance here?

14           MR. LAPHAM: And there is specific information -- in  
15 fact, I -- you just reminded me, I should have asked the agent  
16 these questions.

17           There is specific information that Ms. Weiner has  
18 already been visited in jail by this support group.

19           THE COURT: Well, that would certainly be  
20 informative, but I didn't hear that.

21           MR. LAPHAM: I'll ask the agent right now if the  
22 Court permits.

23           MR. WEINER: Your Honor, I have to object. Now, this  
24 is twice the agent hears what he's supposed to say, and up he  
25 goes on the stand. I think it's absolutely inappropriate.

1 They were done with this witness.

2 THE COURT: Mr. Lapham, really, and then you'd have  
3 to have a basis for how you knew this person was ELF related,  
4 which of course, nobody carries a membership card, but we're  
5 just kind of assuming that they're ELF related. It would --  
6 you'd never get that information in at trial based on the  
7 foundation thus far.

8 MR. LAPHAM: Your Honor, I disagree. There are  
9 specific comments in a conspiratorial setting in which the four  
10 conspirators are talking about their plans and they're talking  
11 about committing those acts on behalf of a group, claiming  
12 responsibility on behalf of a group, and your reference to Al  
13 Qaida is not a bad one. Al Qaida means the base. It's a look  
14 support structure for terrorists around the world, and the  
15 analogy is a good one that Al Qaida encourages people to commit  
16 acts on their behalf and to claim responsibility on behalf of  
17 Al Qaida.

18 THE COURT: But the only evidence I have right now  
19 that I can recall that I heard, and I think I heard it even  
20 before, that Mr. McDavid said let's attribute this to ELF,  
21 which a lot of groups might do. Say, we get more P.R. if we  
22 attribute it to Al Qaida, or ELF, or ALF, or whatever you are,  
23 not that we have any connection with them whatsoever, let's  
24 just attribute it to them.

25 MR. LAPHAM: Your Honor, the connection you have is

1 first of all, as I said, the expert will testify about the  
2 relationship between the anarchist movement and ELF and the  
3 radical environmental movement in general. We've drawn that  
4 connection. That's why we brought out the information about  
5 her anarchist views, not because it's a crime to be an  
6 anarchist, because it is information that shows a motive for  
7 committing these crimes and a relationship to the radical  
8 environmental movement.

9           The agent testified about why she wanted to target  
10 cell phone towers because they are destructive to the bird  
11 environment. He testified about her desire to blow up a dam.

12           THE COURT: Is it not true, though, that the best  
13 your expert could say after he accurately describes his  
14 understanding, or her understanding, I'm not sure who you  
15 expert is, of ELF, that he could say that with respect to the  
16 activities alleged here, these are similar or ELF-like  
17 activities?

18           MR. LAPHAM: But --

19           THE COURT: But your expert's not going to be able to  
20 say this is a connection to ELF. I can tell you that.

21           MR. LAPHAM: Well, I don't think anybody can say that  
22 there's a connection to ELF, except out of the words of the  
23 mouths of the defendants.

24           THE COURT: Well, this --

25           MR. LAPHAM: I mean they know --

1 THE COURT: -- defendant --

2 MR. LAPHAM: Well --

3 THE COURT: This particular defendant.

4 MR. LAPHAM: But, Your Honor, this statement by Mr.  
5 McDavid made in the presence of Ms. Weiner would be admissible  
6 as a co-conspirator's statement. It is in furtherance of the  
7 conspiracy. We are going to commit this act on behalf of  
8 another organization. How can that not be in furtherance of  
9 the conspiracy?

10 THE COURT: Right. But I'm -- what I'm concerned  
11 about are her connections to this group, and just that one  
12 statement by itself is a little bit tenuous.

13 MR. LAPHAM: Well, I don't know that we have to show  
14 a specific connection to a group that really doesn't exist.  
15 What we need to show is that she committed this crime on behalf  
16 of this movement, and there are elements within this movement  
17 that stand -- are standing by ready to assist individuals who  
18 commit crimes on behalf of this movement.

19 THE COURT: Well, I'm going to have testimony about a  
20 group that doesn't exist and attribute it somehow to this  
21 defendant.

22 MR. LAPHAM: It is a movement, and that's what the  
23 expert will testify about, and there are people within that  
24 movement who stand ready to provide financial assistance and  
25 material support for people who commit crimes on behalf of that

1 movement, and that includes spiriting them out of the country.

2 THE COURT: All right. Let me hear from defense  
3 counsel.

4 MR. DRATMAN: Your Honor, I hear what the Court is  
5 saying, and quite frankly, I agree. I don't think that there  
6 is a reason why this Court has to hear testimony from a person  
7 that may have information about how ELF works when the  
8 connection at best is tenuous.

9 I don't know what the government expects to prove by  
10 way of this. Are they going to show that there are specific  
11 plans that exist if this Court fashions conditions of release,  
12 or adopts the conditions of release that are suggested by  
13 Pretrial Services, that she will somehow then be spirited out  
14 of the county? If that's the case, I actually -- I actually  
15 make a proffer to the Court. This is the proffer.

16 The proffer to the Court is that the expert who  
17 testified -- who they have to testify, Bruce Naliboff,  
18 testified in a hearing involving Ryan Lewis, prosecuted by Mr.  
19 Lapham, called to the stand by Mr. Lapham in the Ryan Lewis  
20 case, and I bring that up because it's mentioned in the  
21 criminal complaint and in the search warrant affidavit that was  
22 signed off on by Your Honor.

23 In those situation -- in that case, this witness  
24 testified that if release he would -- that is Ryan Lewis --  
25 that his testimony was used so the government could argue that

1 if released, Ryan Lewis would somehow be a danger or a flight  
2 risk.

3 The problem with that is that if you look at the  
4 docket for the Ryan Lewis case, you'll see that not very long  
5 ago Mr. Lewis on stipulation of the government was released on  
6 \$500,000 bond.

7 And the value of this witness, I say, is nothing.  
8 Because if Mr. Lewis by stipulation is now not a flight risk or  
9 a danger following this hearing where the same two witnesses  
10 testified, Mr. -- Agent Walker testified, listened to by  
11 Agent -- or by Mr. Naliboff and one followed the other.

12 It quite frankly is very tenuous, and my proffer is  
13 going to be asking about why it is that Ryan Lewis can now be  
14 released on bond when at one point in time he was a flight risk  
15 and a danger according to the government. How does that fit  
16 in? It becomes very far afield, but I think the Ryan Lewis  
17 situation, which is referred to, and associated to this, is  
18 relevant to the Court.

19 MR. LAPHAM: Your Honor --

20 MS. ENDRIZZI: Your Honor --

21 THE COURT: All right. Just going back to Al Qaida  
22 for a moment, I mean, there might be some shadowy group, we'll  
23 just make up a name, the shadowy revolutionary jihad, and they  
24 are reputed to have some contacts with Al Qaida back and forth,  
25 they may or may not. They certainly espouse some of the same

1 goals, and let's say we had that case here, would I take a lot  
2 of testimony on Al Qaida simply because it's theoretically  
3 possible that because they share the same beliefs that there  
4 may be some aid and sustenance for this group, or is that guilt  
5 by association?

6 MR. LAPHAM: Your Honor, the question is not guilt or  
7 innocence, the question is flight risk. The potential that if  
8 this defendant is released she could obtain material and  
9 resources, and money by which she could leave the country, or  
10 flee. That --

11 THE COURT: But by -- then what your proffer is, that  
12 anyone that commits an environmental crime, such as an  
13 environmental terroristic crime such as arson may come to the  
14 attention of the ELF shadowy organization and may want to  
15 support them for leaving the country, simply because they did  
16 something that the ELF likes.

17 MR. LAPHAM: Well, to a certain extent, yes. That's  
18 a little bit of an over-generalization, but we don't have to  
19 dwell too much on that because she's already been contacted by  
20 this prisoner support network.

21 THE COURT: I'll let you get that out, but the most  
22 critical testimony you didn't ask him. I don't know why you  
23 didn't ask this.

24 MR. LAPHAM: Well, Your Honor, I neglected to ask  
25 that, but he's here, and it's two questions, but --

1           THE COURT: I'll allow you to reopen that, but I want  
2 to have some basis that he knows who these people are and why  
3 they're ELF associate -- I don't know what you call them for  
4 this organization that doesn't exist, ELF kind of franchisees,  
5 or something, whatever you want to call them.

6           MR. LAPHAM: It's a movement and not an organization.

7           THE COURT: All right. A basis --

8           MR. LAPHAM: There is not an organizational  
9 structure, at least none that the government is aware of, but  
10 it's a movement that is characterized by leaderless resistance,  
11 a website that instructs and encourages people to commit crimes  
12 on behalf of the movement, and then offers them support when  
13 they do so.

14          THE COURT: I'll listen to your foundation. Go a  
15 head.

16          MS. ENDRIZZI: And Your Honor, I would like to  
17 interject for a moment. Defense counsel wanted you to see this  
18 MySpace, he makes reference to it, her writings, and I think at  
19 the moment we are focused on ELF, but you need to look at the  
20 larger picture here. We're looking at flight, and we're  
21 looking at danger. I can proffer these to the Court about her  
22 personal statements about --

23          THE COURT: I wondered if you were ever going to do  
24 that.

25          MS. ENDRIZZI: -- hitchhiking. You know, I can give



1 you these copies right now. Membership in a feminist anarchist  
2 group, hitchhiking across country, dumpster diving, summer  
3 vacation that she doesn't like to be any one place for more  
4 than three months. And you know what? I'd like to just offer  
5 this up to the Court. It's her statement, she --

6 MR. WEINER: Your Honor, I'm -- go ahead, I'm sorry.

7 MS. ENDRIZZI: It's publicly available on the website  
8 and you know what, I could read them to you if you'd like,  
9 but --

10 THE COURT: Is it attributable to her?

11 MS. ENDRIZZI: Yes.

12 THE COURT: All right.

13 MS. ENDRIZZI: Because what you heard --

14 THE COURT: You have a copy of that, Mr. Weiner?

15 MR. WEINER: Yes, I do have a copy, and I object,  
16 Your Honor, and here's why.

17 THE COURT: And the basis?

18 MR. WEINER: The basis is number one, I've never  
19 heard more testimony from lawyers in my life. They have in  
20 essence been the witnesses here today.

21 THE COURT: Including yourself.

22 MR. WEINER: Well, I was just asking questions,  
23 Judge, but --

24 THE COURT: Okay.

25 MR. WEINER: But what concerns me is this. They give

1 us discovery and now, when they've had more than an adequate  
2 time, and before that goes up to the judge, I'm still arguing,  
3 ma'am, the -- when they had adequate time to explore it with an  
4 agent, who by his own admission said, I don't know more than he  
5 answered any questions, at least by my count, now they want to  
6 buttress this by selective documents from discovery.

7 We have hundreds of pages of discovery that they gave  
8 us, and as Your Honor can tell from the testimony of this  
9 agent, we only have a tiny bit of it. He has no clue what  
10 really went on here by his own testimony and now we're going to  
11 be allegedly harmed by something that supposedly came from our  
12 client that they put in without any predicate or foundation.

13 THE COURT: All right. I had testimony from the  
14 agent about this website and there was questions, and you asked  
15 questions about it. I'm going to accept that, because I don't  
16 need any more of a basis in a detention hearing. So we'll  
17 label that a Government's Exhibit 1 at this detention hearing.  
18 I'll allow you to do the foundation, Mr. Lapham.

19 FURTHER DIRECT EXAMINATION

20 BY MR. LAPHAM:

21 Q. Mr. Walker, has Ms. Weiner been contacted by a prison  
22 support group while she's been in custody?

23 A. Yes.

24 Q. What -- specifically what group?

25 A. The Sacramento Prisoner Support.

1 Q. Do you know what type of group that is?

2 A. It's a group that came up in the Ryan Lewis investigation,  
3 a group of local individuals that contacted Ryan Lewis,  
4 expressed support for what he did and offered to help in the  
5 form of obtaining books for him, getting letters of support.  
6 The group, or an individual -- two individuals from that group  
7 visited his family and offered legal advice, and offered to  
8 acquire an attorney for him.

9 MR. LAPHAM: Okay. Your Honor, I think I've  
10 exhausted this witness's knowledge of that. Mr. Naliboff would  
11 then pick it up and explain what he knows about that group.

12 THE COURT: Well, just how do you know that this  
13 transpired?

14 THE WITNESS: We got copies of the letters, or the  
15 communications between -- the letters between the group and Mr.  
16 Lewis as well tape recordings of their conversations.

17 THE COURT: And how do you know that there was a  
18 contact by that group in this case with Ms. Weiner?

19 THE WITNESS: There were individuals that we know are  
20 associated with that group that visited Ms. Weiner, and Mr.  
21 Jenson, Mr. McDavid over the weekend.

22 BY MR. LAPHAM:

23 Q. Incidentally, was one of those members actually expelled  
24 from the jail?

25 A. Yes.

1 Q. For what reason?

2 A. That particular individual was communicating with Ms.  
3 Weiner via post-it notes.

4 Q. Held up to the glass?

5 A. Held up to the glass.

6 THE COURT: All right. Any questions on that?

7 MR. WEINER: Yes.

8 THE COURT: All right. Go ahead.

9 CROSS-EXAMINATION

10 BY MR. WEINER:

11 Q. Who is it that visited my client?

12 A. I believe the name is Megan Riley.

13 Q. And let me ask you a question. Did you monitor what this  
14 person said to my client?

15 A. There is a tape recording that we received earlier in the  
16 week.

17 Q. Right. Did you listen to it?

18 A. I have not listened to it.

19 Q. Okay. Look, the bottom line, and correct me if I'm wrong,  
20 there's a bunch of young kids who are very environmentally  
21 conscious let's say, who want to come in and say, hi, let's get  
22 letters, let's get some books. That doesn't translate into  
23 fleeing the country, does it?

24 MR. LAPHAM: Objection, argumentative.

25 THE COURT: I'll overrule that.

1 BY MR. WEINER:

2 Q. Do you have one -- oh, you'll overrule it.

3 THE COURT: No, let him answer that question. I did.

4 BY MR. WEINER:

5 Q. Thank you. Go ahead.

6 A. Not necessarily, no.

7 Q. Okay. Do you have one scintilla of evidence that my  
8 client plans to flee if she's released on bond? Anything?

9 A. She conveyed to the source that that was her intent, not  
10 to flee the country, but to go into hiding.

11 Q. Right. After something might happen, right?

12 A. Right.

13 Q. Okay. My question is, if she's released on bond, do you  
14 have one drop of evidence to tell this judge that she has made  
15 plans, that these local kids who supposedly -- or kid who went  
16 into see her somehow has money or resources? I mean, what  
17 evidence is there that she's going to flee, other than the  
18 prosecutor saying it?

19 MR. LAPHAM: Objection, compound.

20 THE COURT: And argumentative.

21 BY MR. WEINER:

22 Q. All right. Do you have any evidence, sir, that my client  
23 is going to flee if she's released on bond?

24 A. No.

25 MR. WEINER: Thank you. No further questions.

1 THE COURT: And I'm going to listen to this witness  
2 for a while, Mr. Lapham. It may illuminate some of the things  
3 that you've said, and Ms. Endrizzi has said. I still have my  
4 questions and we'll see where it goes from there. It may be  
5 useful, it may be useless, I don't know.

6 MR. LAPHAM: Thank you, Your Honor. I'll make it  
7 brief.

8 THE COURT: All right. Thank you.

9 THE WITNESS: Thank you.

10 (Witness excused.)

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

13 BRUCE NALIBOFF, PLAINTIFF'S WITNESS, SWORN

14 THE CLERK: Please state your name and spell your  
15 name for the record.

16 THE WITNESS: Bruce Naliboff, N-a-l-i-b-o-f-f.

17 THE COURT: Go ahead, Mr. Lapham.

18 MR. LAPHAM: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. LAPHAM:

21 Q. Mr. Naliboff, by whom are you employed?

22 A. I'm employed as a supervising investigator with the Yolo  
23 County District Attorney's Office.

24 Q. And how long have you been so employed?

25 A. I've been employed with he District Attorney's Office for

1 the past five years. I've been in law enforcement since  
2 January of 1982.

3 Q. And summarize what your experience is over those years?

4 A. I was a police officer for the City of Greenfield for  
5 three and a half years. After that I went to the University of  
6 California, Davis where I was a police officer for  
7 approximately 16 years. Three of those years I was a patrol  
8 sergeant, four as a detective sergeant and four as a  
9 lieutenant. I retired from there in the year 2000 and went to  
10 the District Attorney's Office.

11 Q. Do you have particularized knowledge regarding the radical  
12 environmental movement?

13 A. Yes, I have. I've been interested in the movement ever  
14 since the Animal Liberation Front took credit for a fire in  
15 April 1987 of a Vet Med. Diagnostic Lab on the campus at U.S.  
16 Davis where the loss was approximately \$4 million.

17 Q. And what is your experience and knowledge with respect to  
18 the radical environmental movement consist of?

19 A. I have attended conferences on at least three occasions  
20 put on by the Washington State Patrol concerning criminal  
21 intelligence, specifically focusing on the environmental  
22 movement, or at least half of the conference on the  
23 environmental movement. I received training from the FBI on  
24 domestic terrorism. I'm currently part of the Sacramento FBI's  
25 Joint Terrorism Task Force. I have also taught for the

1 California Department of Justice Attorney General's Conference  
2 on Organized Crime, Gangs, and Criminal Intelligence on the  
3 field of ecoterrorism on three occasions in the past five year.  
4 I've taught for the U.S. Attorney's Office at their annual  
5 Eastern District Conference for Police Chiefs and district  
6 attorneys, and when the State of California formed CADIC, which  
7 is their California Criminal Intelligence Division, I conducted  
8 a two hour training for all of the agents and analysts  
9 specifically on ecoterrorism.

10 Q. Now, I've used the term "radical environmental movement"  
11 in -- with the intent of distinguishing that from a more  
12 mainstream environmental movement. What do you mean when you  
13 use the word or the term "radical environmental movement"?

14 A. Well, I lump everything under what I call ecoterrorism,  
15 which is basically -- are basically crimes committed to save  
16 nature.

17 Q. And what types of crimes would those consist of?

18 A. Lately there have mainly been arsons. But it goes  
19 everything from mink releases on the animal side of things,  
20 destruction of fur shops for people against the fur trade,  
21 arson like that was at U.C. Davis, destruction of facilities  
22 that produce genetically modified organisms, and those began in  
23 1999 with something called the "Operation Cremate Monsanto"  
24 because the activists did not like the connection between  
25 Monsanto and genetically modified organisms.



1 Arson, an example I used before was U.C. Davis, that was  
2 claimed by Animal Liberation Front. Earth Liberation Front in  
3 the past few years has claimed a \$40 million arson of  
4 condominiums in Del Mar outside of San Diego. They claimed the  
5 Vail, Colorado fire several years ago of a ski lodge, and the  
6 reported intent for that fire was to protect a lynx habitat.

7 And the interesting part of these is, like you were  
8 stating earlier, they're really movements, they're not  
9 organized structures. I believe reference was made in passing  
10 to the Hell's Angels or something. If you do an investigation  
11 regarding the Hell's Angels, or a criminal street gang, there  
12 is some sort of hierarchal structure.

13 MR. DRATMAN: Your Honor, I do object to this. I  
14 realize that we're --

15 THE COURT: What's the basis, Mr. Dratman?

16 MR. DRATMAN: There's no foundation for him to talk  
17 about street gangs in his background, or comparing this to  
18 Hell's Angels, and -- well, he's not an expert on Hell's  
19 Angels.

20 THE COURT: I'll overrule that objection.

21 THE WITNESS: With the Animal Liberation Front, when  
22 it was first formed, or began claiming actions in 1976, it was  
23 put together by an individual by the name of Ronnie Lee when he  
24 was released from prison in England for burning down a  
25 pharmaceutical company. He devised the strategy of hit and run

1 tactics, high media publicity and the cell structure.

2 And one of the things the cell structure provides  
3 usually is an anonymity. It makes it more difficult for law  
4 enforcement to infiltrate and more difficult to get at the root  
5 of the problem, because the way the Animal Liberation Front and  
6 Earth Liberation Front philosophy is, is if you commit a crime  
7 following their guidelines, which is maximum economic damage,  
8 and until recently, without loss of life, you are them.

9 For example, if someone were to throw a rock through  
10 a McDonald's restaurant window because there's always a  
11 campaign against McDonald's, they call it McMurder, and write  
12 ALF on the side, and send a communique off to the North  
13 American ALF press office as a claimed ALF action, you -- that  
14 is an ALF action. It was done to damage something that has  
15 been listed as a target by them, and it was done by causing  
16 economic damage, and there was graffiti at the site that  
17 identified it, and it would probably show up on their diary of  
18 actions which they post every year.

19 MR. DRATMAN: Your Honor, I do have to object to  
20 this. This is so far afield from the limited foundation that  
21 was laid by the very brief, if not very factual testimony of  
22 the agent, and this is way far afield.

23 THE COURT: I'm going to allow you to question him,  
24 Mr. Dratman, and if this were trial, you'd be absolutely  
25 correct. This isn't trial, and I just need to really get to the

1 bottom of the problems that I've expressed, and I don't know  
2 that we have yet.

3 MR. WEINER: Your Honor, can I just say one other  
4 thing? I just want the record to be clear that we're objecting  
5 to all of this testimony because there's not one link or nexus  
6 between this lecture we're getting and our client. Nothing.  
7 It's pure, 100 percent speculation.

8 THE COURT: Well, so far.

9 MR. WEINER: For a group that doesn't even exist,  
10 according to the prosecutor.

11 THE COURT: So far. But it's subject to a motion to  
12 strike, and I note your objection.

13 MR. WEINER: All right. Thank you.

14 BY MR. LAPHAM:

15 Q. Mr. Naliboff, does ELF -- do ELF and ALF have websites?

16 A. Yes, they do. There's ELF websites, ALF websites, anti-  
17 genetic engineering websites, there's a lot of things out in  
18 the public.

19 And one of the things that ha happened in recent years is  
20 there's a lot of crossover in the earlier '90s, middle '90s, if  
21 somebody affiliated themselves with the Animal Liberation Front  
22 you could know that they would be involved in specific  
23 incidents or demonstrations, or First Amendment activities  
24 regarding animals and animal treatment, or people that sell  
25 furs, and products like that.

1           There began in the mid-'90s to be a lot of crossover  
2 between ALF, ELF, anti-genetic engineering, and then going over  
3 to the anarchy side, and that's best demonstrated by an  
4 individual by the name of Craig Rosebraugh, which if you'd  
5 like, I can speak further on it.

6           THE COURT: Mr. Lapham, let me interrupt you for a  
7 moment. You mentioned an ELF website.

8           THE WITNESS: Yes.

9           THE COURT: Normally that would conjure up the idea  
10 that there's a webmaster for that website.

11           THE WITNESS: There is this -- there is usually a  
12 spokesperson for both ELF and ALF, and they put a disclaimer on  
13 the website that they are just reporting things that have been  
14 reported to them, and they have nothing to do with illegal  
15 actions.

16           THE COURT: Well, who runs these websites? Somebody  
17 must put them up. Can anybody -- could I put up an ELF  
18 website?

19           THE WITNESS: You could put up a website. The  
20 current North American ALF website is put up by Dr. Steven Best  
21 out of University of Texas, El Paso, and Dr. Jerry Vlasic, who  
22 is an activist in the Los Angeles area who says that he  
23 advocates the killing of researchers.

24           THE COURT: How about ELF?

25           THE WITNESS: ELF website used to be maintained by

1 Craig Rosebraugh and then Craig Rosebraugh stated he left that,  
2 and he developed something called ARISA, which is to build a  
3 revolutionary movement to overthrow the United States  
4 government.

5 THE COURT: So somebody must take ownership or pride  
6 of authorship, if you will, in quotes, on these websites.

7 THE WITNESS: They take ownership as to reporting  
8 their thoughts, but not ownership as to having any knowledge of  
9 the crimes that were committed except by receiving anonymous  
10 communiques.

11 THE COURT: Okay. Go ahead, Mr. Lapham.

12 BY MR. LAPHAM:

13 Q. Do these websites encourage individuals to undertake  
14 illegal actions?

15 A. Some of them do, yes, and some of them have detailed  
16 instructions, for example, the ELF website came out with  
17 a -- it's about a 25 or 30 page manual entitled "Setting Fires  
18 With Electrically Timed Ignition Devices." They also came out  
19 with a videotape which was narrated by Craig Rosebraugh, and  
20 another gentleman by the name of Leslie Pickering called  
21 "Igniting the Revolution," and what it basically said is the  
22 time for protest is over with and arson is very effective, and  
23 it showed examples of arsons claimed by ELF.

24 THE COURT: Let me -- that brings to mind another  
25 question. Is there anyone that edits this website? In other

1 words, has the power to say, this is not something we want on  
2 this website, or this is something we do want on this website?

3 THE WITNESS: Not that I know of. The websites do  
4 disappear and then reappear at times.

5 THE COURT: And so anybody in the world can post  
6 something to this website and nobody cares?

7 THE WITNESS: The websites are maintained by specific  
8 people, but they don't take credit for any of the information  
9 they put up. They state they're basically passing on  
10 information received anonymously.

11 THE COURT: And I suppose they have the power to  
12 reject some information they just think is irrelevant or  
13 stupid?

14 THE WITNESS: I would suppose.

15 THE COURT: All right.

16 BY MR. LAPHAM:

17 Q. Is this like a billboard where people send things in that  
18 are posted?

19 A. No, it's not a posting, or a chat room, or anything like  
20 that. No. It is published articles and manuals.

21 Q. Right. It's a respondent --

22 MR. WEINER: Your Honor -- I'm sorry, counselor, I  
23 just want to respectfully remind the Court that I asked the  
24 case agent does he have any evidence my client had ever even  
25 seen this website, or been on it, including with the computers

1 they have, and he said no.

2 THE COURT: Okay. Remind me in argument.

3 MR. WEINER: All right.

4 THE COURT: Thank you. Go ahead, Mr. Lapham.

5 MR. LAPHAM: All right.

6 BY MR. LAPHAM:

7 Q. So this is a resource tool that interested individuals can  
8 go to?

9 A. Yes, they are public websites.

10 Q. And in addition to suggesting types of crimes that  
11 individuals can commit on behalf of the movement, there are  
12 specific instructions on how to commit those crimes?

13 A. Yes. There's manuals put up on websites, and it goes  
14 anywhere ALF, ELF, there used to be something about gardening  
15 which was put out by an anti-genetic engineering group.

16 They talk about pre-incident surveillance, how to dress,  
17 what to look for, how to escape detection, it's best to do  
18 things away from being very close to where you live, because  
19 that helps to evade detection, not to stay in motels, because  
20 that creates a record, you should use cash.

21 They even go so far as to saying that you should throw  
22 away clothes after an action and for sure get rid of your shoes  
23 because the soil if you're outside doing an action outside can  
24 be traced from your shoes to the location where you were.

25 Q. Is there a relation between the radical environmental

1 movement and anarchism, or the anarchistic movement?

2 A. Yes, there is. And the example I gave real briefly of Mr.  
3 Rosebraugh is probably the most dramatic example of the  
4 crossover between the animal, environmental, anti-genetic  
5 engineering and then revolutionary, because ARISA is a  
6 revolutionary group, obviously, an anarchist group, and a lot  
7 of the people lately seem to be attracted to the CrimethInc  
8 website, and it was mentioned by the defense, the Ryan Lewis  
9 case. That was something that Mr. Lewis was attracted to.

10 And from CrimethInk there's a link to something called  
11 "Evasion," which is a periodical put out by someone who was on  
12 the run for a number of years, and it talks about committing  
13 crimes while you're on the run, and the thrill you get from  
14 that, and how to get away.

15 THE COURT: Mr. Lapham, would you ask this witness,  
16 move into the area of how, if at all, this movement supports  
17 persons that are incarcerated?

18 MR. LAPHAM: I will.

19 BY MR. LAPHAM:

20 Q. Mr. Naliboff, is there a support structure in place for  
21 those who are arrested for crimes that are committed on behalf  
22 of ALF or ELF?

23 A. Yes. There's a public website from the United Kingdom  
24 that lists Earth Liberation Front prisoners that want their  
25 names listed, and they exist to basically get them things while



1 they're in custody, get letters for them, provide reading  
2 materials, and there's also a number of people who after  
3 indictment have disappeared for a number of years. And one of  
4 the reasons for that successful disappearance that I've been  
5 able to figure out is because they're already accustomed to the  
6 lifestyle which include not using credit cards repeatedly, not  
7 staying in motels, doing things that make you a lot less able  
8 to be tracked.

9 Q. That would include hitchhiking?

10 A. Yes, hitchhiking and hopping trains are two very important  
11 ways.

12 Q. Were you familiar with the group -- you were here when  
13 Special Agent Walker was testifying?

14 A. Yes.

15 Q. And you heard him mention the group that paid a visit to  
16 Ms. Weiner?

17 A. Yes.

18 Q. Are you familiar with that group?

19 A. I'm familiar from them in that I've read their postings on  
20 the San Francisco Bay In The Media Website where they list  
21 prisoner updates in this case and others.

22 Q. Now, let me just stop you right there. What is the In The  
23 Media Website?

24 A. Independent media has outlets all around the world, and  
25 they mainly post news about animal, environmental, anti-war

1 anarchy type concerns. They post news from around the world,  
2 and updates on people that are in custody, or protests that are  
3 planned, or events that are happening.

4 Q. And does that news include direct actions that are taken  
5 on behalf of ELF and ALF?

6 A. Yes. Those postings can be found there also.

7 Q. Are you aware of other similarly situated individuals  
8 charged with crimes on behalf of the radical environmental  
9 movement who have fled?

10 A. Yes, I can --

11 MR. WEINER: Judge, I have to object. This is so far  
12 afield and irrelevant.

13 THE COURT: I'm going to sustain it. Similarly  
14 situated, Mr. Lapham, is a very ambiguous --

15 MR. DRATMAN: Actually, Your Honor, I know the  
16 testimony that he's going to be referring to, they were not  
17 similarly situated.

18 THE COURT: I sustained the objection.

19 MR. LAPHAM: I'll rephrase the question.

20 BY MR. LAPHAM:

21 Q. Are you familiar with other individuals who have been  
22 charged with crimes committed on behalf of the radical  
23 environmental movement who have been assisted in fleeing?

24 A. Yes.

25 MR. DRATMAN: Your Honor, I object to him asking the

1 follow-up questions unless there's a foundation that those  
2 persons were brought before a United States Magistrate Judge,  
3 released on conditions and then fled. Otherwise, it's  
4 irrelevant.

5 MR. LAPHAM: Well, Your Honor, Mr. Dratman doesn't  
6 seem --

7 THE COURT: There's not a question pending so there's  
8 no objection yet. Go ahead, Mr. Lapham.

9 BY MR. LAPHAM:

10 Q. What examples are you aware of?

11 MR. DRATMAN: Your Honor, that calls for a narrative,  
12 and it calls for a narrative without a foundation.

13 THE COURT: I'm going to listen to the testimony in  
14 any event. Go ahead.

15 THE WITNESS: Okay. I'll refer to just a few  
16 individuals. The first would be Justin Samuels and Peter  
17 Young. I'll speak about hem together, because they were  
18 indicted in the fall of 1997 after a series of mink raids in  
19 Wisconsin. Mr. Samuels fled to Belgium, and in 1999 he was  
20 finally apprehended in Belgium after some McDonald's  
21 restaurants started to burn and extradited back to the United  
22 States.

23 And Mr. Young was on the run until 2005 when he was  
24 arrested shoplifting CDs at Starbuck's in San Jose, and he had  
25 a fake ID, and eventually it was figured out who he was.

1           The other person who was --

2           THE COURT: Let me stop you there. Now, from whom  
3 did he get support? If you know, and what's the basis of your  
4 knowledge?

5           THE WITNESS: I know that Peter Young -- that case is  
6 still being investigated. He did get support. I'm not privy  
7 to that entire investigation, but he was living with others in  
8 the Santa Cruz/San Jose area for a while.

9 BY MR. LAPHAM:

10 Q. Did he -- do you have any indication of his economic means  
11 prior to his fleeing?

12 A. I believe a diary -- from what I was told by an ATF agent,  
13 a diary recovered in his vehicle when he was stopped in 1997 in  
14 Wisconsin stated he mainly lived by dumpster diving, and that's  
15 why he preferred the San Jose -- or the Santa Cruz area because  
16 they have the best dumpster diving.

17 Q. Okay. Do you have other examples?

18 A. The other example I have would be Michael Scarpetti who  
19 has legally changed his name to Tre Arrow. He was indicted in  
20 2002 for arson of logging trucks and cement trucks in Oregon,  
21 and he was finally apprehended in March of 2004 in Victoria,  
22 British Columbia while shoplifting.

23           THE COURT: Now, how does one go about getting  
24 support from this ELF movement if they were in prison, and if  
25 they were of a mind to flee?

1           THE WITNESS: A lot of the -- they're very mobile.  
2 I've dealt with people in the past when I worked at U.C. Davis  
3 who would in one instance get arrested at U.C. Davis for crimes  
4 committed during a protest, and the following week the same  
5 people would be getting arrested in Atlanta at a protest.

6           So they're very mobile and have a very good network.  
7 There used to be, I don't know if there still is, something  
8 called "the list," and it was a list of animal activists that  
9 would communicate with each other across the country.

10          THE COURT: So what you're telling me, it's up to  
11 each individual activist, for want of a better word, to decide  
12 to volunteer support or not to -- if they hear about somebody  
13 they just decide they'll go and support them?

14          THE WITNESS: They're -- one of their philosophies is  
15 to give support unless the person cooperates with the police,  
16 and then they're branded as a snitch and they're put up on the  
17 internet forever as a snitch to the movement.

18          THE COURT: Go ahead, Mr. Lapham.

19 BY MR. LAPHAM:

20 Q. Now, these individuals you're talking about, they didn't  
21 break out of jail, they were released?

22 A. That's correct.

23 Q. On some kind of bond, or some kind of conditions?

24 A. I know with Justin Samuels and Peter Young, they were  
25 taken into custody and then released, and then they fled. I

1 don't know the exact details.

2 Q. And then did you have another example?

3 A. Daniel Andre of San Diego who is still on the run, he was  
4 indicted for destructive devices that were set at Chiron,  
5 Incorporated in Emeryville and Shackley and Pleasanton in 2003,  
6 and this was part of the movement to stop Huntington Life  
7 Science's research.

8 Q. Now, if a defendant chooses to -- I mean -- rephrase that.

9 In the examples you've given, if those defendants flee, is  
10 it more difficult to track them than the typical defendant?

11 A. One of the things that makes it difficult is they don't  
12 have criminal records and a lot of known associates because the  
13 animal, environmental anarchy groups all operate within the  
14 cell structure, it's more difficult to law enforcement to know  
15 who exactly their associates are.

16 Typically, cells are approximately three to five people  
17 and it's very difficult to get information from them. It's not  
18 like working a group of people distributing narcotics, and you  
19 work higher up the food chain. And when I was assigned as a  
20 narcotics agent for two years, that is what we often did. We  
21 tried to keep buying above and doing things like that.

22 This is a movement that's a political/philosophical  
23 movement and if you commit direct action, which is criminal  
24 activity under the guidelines that these organizations or  
25 philosophies post, you are the movement. So it makes it very

1 difficult to track.

2 And then if you add the train hopping, hitchhiking, using  
3 cash, not staying in motels, it makes it more difficult, and  
4 that's compounded if the subjects break off relationship with  
5 their relatives, because that's often the first place to look.

6 Q. Do you necessarily have to be a proclaimed member of ELF,  
7 or ALF, or any other entity to obtain this type of support?

8 A. No, because if you do, an action that falls within the  
9 guidelines of the philosophy of the organization, then you are  
10 a member if you want to call it that, you are one of them, and  
11 the only way to have a real large falling out is to help the  
12 government, because they all oppose the government.

13 THE COURT: But it would depend in every case on  
14 whose ever contacted by the person in jail as to whether the  
15 outside person is going to help them or not. They may or they  
16 may not, depending on how deeply they're involved in the  
17 movement, if they don't want to get caught helping this person.

18 THE WITNESS: That's true. Some people in jail could  
19 refuse the request for assistance because they didn't want to  
20 be identified as any part of an eco extremist group, or  
21 anarchist group, so they could refuse contact.

22 THE COURT: So you're saying the people in the  
23 movement would contact the people in jail?

24 THE WITNESS: If they're in custody, yes. People  
25 that work with the prisoner support side of things, which does

1 not necessarily mean -- if they're working with prisoner  
2 support, they have a belief to help all eco-prisoners. It  
3 doesn't mean that they're out there themselves committing  
4 crimes. It means they are supporting prisoners that have been  
5 arrested for committing these crimes.

6 THE COURT: It doesn't mean they're going to help  
7 them flee, does it? Necessarily?

8 THE WITNESS: No, but on the other hand, it doesn't  
9 mean they won't.

10 THE COURT: All right. Mr. Lapham, are you  
11 almost --

12 MR. LAPHAM: This is my last question.

13 BY MR. LAPHAM:

14 Q. Mr. Naliboff, you were sitting here in the courtroom  
15 listening to Special Agent Walker testify?

16 A. Yes.

17 Q. And you heard him testify about the group of individuals  
18 who were planning these crimes and the methods they were going  
19 to use to do those crimes.

20 Based on your experience, is this the way the radical  
21 environmental movement functions?

22 A. Yes. The description about using cash for items, not  
23 staying in motels, using pre-surveillance of your site ,and  
24 even the discussion of every person in the group had a  
25 different target they wanted, that falls right into the



1 anarchy, because anarchy is leaderless resistance. As long as  
2 you resist the government and corporate America, you are them,  
3 but everybody doesn't have to agree. There's a freedom of  
4 thought.

5 Q. And how about the claim of responsibility for these  
6 actions on behalf of ELF?

7 A. That would be very typical and in the work I've done over  
8 the years, I have not heard of any ALF, or ELF claimed actions  
9 from their website that really did not occur.

10 MR. LAPHAM: I have nothing further.

11 THE COURT: Cross-examination?

12 MR. DRATMAN: Yes.

13 CROSS-EXAMINATION

14 BY MR. DRATMAN:

15 Q. Mr. Naliboff, did you participate in the investigation of  
16 Lauren Weiner?

17 A. No.

18 Q. Have you reviewed any documents or materials in connection  
19 with that investigation and her arrest?

20 A. I briefly reviewed the affidavit.

21 Q. Which affidavit?

22 A. The affidavit that's posted on-line.

23 Q. The affidavit in support of the complaint?

24 A. Yes, sir.

25 Q. And have you been provided with any materials by the

1 United States Attorney's Office to review in connection with  
2 this -- your testimony?

3 A. No.

4 Q. Did you meet with -- you have met with the FBI in the past  
5 in order to give them information concerning how these  
6 particular organizations work; is that correct?

7 A. Yes, I've conducted training regarding a historical  
8 perspective of these groups.

9 Q. Have you trained informants on how it is that these  
10 particular organizations work?

11 A. No.

12 Q. Are you aware of whether the information that you've  
13 provided to the FBI has been passed along to informants, and  
14 how things work? Such as, you gave the example, cash is used,  
15 every person has to have a target, those kinds of things. Do  
16 you know whether or not you provided that information to the  
17 FBI?

18 A. No. And I never said every person has to have a target.

19 Q. Well, isn't that what you said that is part of these  
20 environmental radical groups?

21 A. No, I believe I was referring to Agent Walker's testimony  
22 when he stated that each of the four people had a different  
23 target, and that did not surprise me, because in anarchist  
24 groups, they don't really come to consensus.

25 Q. Would it surprise you to -- did you hear testimony that

1 alluded to the fact that -- no -- that established the fact  
2 that the informant supplied cash for the purchases of  
3 particular items in this case?

4 A. I don't recall that ever being shown.

5 Q. Well, presume that the informant had cash that was used in  
6 purchasing materials that were used in this particular case.

7 Would that --

8 MR. LAPHAM: Your Honor -- I'm sorry, go ahead.

9 BY MR. DRATMAN:

10 Q. Would that be something that would change your opinion as  
11 to the nature of this group, and how it was functioning?

12 A. On the first part of the question, I have no knowledge  
13 what he informant did do or didn't do. If cash was used, it  
14 was used and in my experience, cash is usually used because it  
15 is not as traceable as credit cards or checks.

16 Q. If it was used at the behest of the informant, would that  
17 tell you that the informant was perhaps controlling things in  
18 terms of your knowledge of these organizations?

19 MR. LAPHAM: Objection, that calls for speculation.

20 MR. DRATMAN: It calls for what this witness is up  
21 here for.

22 THE COURT: No, don't argue. I'll allow the answer.

23 BY MR. DRATMAN:

24 Q. I'm asking you in terms of your background and experience  
25 whether finding out the source of who supplied the cash, would

1 that be helpful to you in determining whether this was a real  
2 organization of the type you're testifying, or something that  
3 perhaps was being led by an informant?

4 A. I think it would be helpful to know of discussions around  
5 who had cash to be used. That would be interesting to know.  
6 But whose pocket the cash came out of after a discussion I know  
7 nothing about, I could not form an opinion.

8 Q. Did you hear any testimony about the informant having had  
9 cash?

10 A. Yes.

11 Q. Now, in discussing for the Court these various persons  
12 that had contact with law enforcement, and as I recall your  
13 testimony, after indictment they were released on some kind of  
14 conditions and then fled. Is that your testimony?

15 A. No, my testimony was after contact with law enforcement, I  
16 did not know the stage of the case. The person I know who has  
17 been indicted is Daniel Andre of San Diego.

18 Q. And Daniel Andrew of San Diego was indicted in the  
19 Northern District of California; correct?

20 A. That's correct.

21 Q. And have you examined the -- actually, he wasn't indicted,  
22 was he. He was charged by way of complaint; isn't that true?

23 A. Okay. I believe he had been charged. I probably  
24 misstated when I used the indictment word.

25 Q. And in fact, it was a sealed complaint, was it not?

1 A. I don't know.

2 Q. And a bench warrant issued for him, and he was never  
3 arrested or taken before the Court, do you know that?

4 A. I know that he has not been able to be located lately.

5 Q. Do you know in terms of your testimony for the Court  
6 whether Mr. Daniel Andre of San Diego was arrested on a  
7 complaint, taken to a magistrate judge, released on conditions  
8 and then failed to appear in violation of those conditions?

9 A. No, he was not arrested. I was showing the ability of  
10 people to flee.

11 Q. I just asked you that question. I asked you that  
12 question --

13 THE COURT: All right. I've got the answer.

14 MR. DRATMAN: Thank you.

15 BY MR. DRATMAN:

16 Q. Now, as to Michael Scarpetti, he also is known as Tre  
17 Arrow?

18 A. Yes, I believe he changed his name to that.

19 Q. And he was charged in the District of Oregon out of  
20 Portland; correct? Well, no, I'm asking you whether you know  
21 that's correct.

22 A. I don't know what district, I know it was out of Oregon.

23 Q. Well, can you tell us do you know what he was charged  
24 with? What the crimes are that he was charged with? You're  
25 looking down at something, do you have notes there?

1 A. Yes. Can I refer to them?

2 Q. May I see what --

3 THE COURT: Yes, you may.

4 MR. DRATMAN: Thank you.

5 (Pause - counsel examines notes.)

6 BY MR. DRATMAN:

7 Q. You were pointing at a summary there. Where did you get  
8 the information that the summary is based upon?

9 A. From various sources.

10 Q. What would be the sources for Mr. Scarpetti?

11 A. I don't recall the exact source.

12 Q. What year was he charged?

13 A. I believe it was 2002.

14 Q. And what was he charged with?

15 A. I believe it was arson of logging trucks and cement trucks  
16 in Oregon.

17 Q. And was he ever arrested?

18 A. Not until Oregon in 2000 -- or excuse me, not until  
19 Victoria in 2004. He was unable to be located.

20 Q. He was not arrested and taken before a court pursuant to  
21 an indictment that issued in 2002, released on conditions,  
22 which conditions he violated by failing to appear. That would  
23 be accurate; correct?

24 A. I believe so.

25 Q. That didn't happen? Right?

1 A. I believe so.

2 Q. So, now you also mentioned a Peter Young. Where was he  
3 charged?

4 A. I believe it was out of Wisconsin.

5 Q. And what year was he charged?

6 A. Let me refer to my notes here. I believe in 1998.

7 Q. And when was he arrested?

8 A. For that crime?

9 Q. For that crime.

10 A. For that crime he was arrested in 2005. He had been taken  
11 into custody in 1997 following a traffic stop of his vehicle.

12 Q. Okay. He was not taken into custody in 1997 for an  
13 indictment that issued on -- in 1998; correct?

14 A. That's correct. I believe local authorities took him into  
15 custody in 1997.

16 Q. In 1997 he was arrested on something and released, and  
17 then he was indicted at a later time in 1998, and he was not  
18 arrested, or given a summons to show up in Court, and showed up  
19 in Court and was released on conditions and failed to abide by  
20 those conditions. Is that a correct statement?

21 A. I believe so.

22 Q. And as to Justin Samuels, the same -- where was he  
23 arrested?

24 A. He was arrested in Belgium.

25 Q. And where was the indictment for Justin Samuels?

1 A. It was out of the same court as Peter Young.

2 Q. And in that case, he also was not arrested pursuant to  
3 that indictment, released on conditions, violating those  
4 conditions by going to Belgium; is that correct?

5 A. He was taken into custody the same as Peter Young, and  
6 then he fled to Europe sometime during that time period.

7 Q. Peter Young, according to you, was not taken into custody  
8 based on the indictment?

9 A. That's correct.

10 Q. So, are you saying that Justin Samuels was not taken into  
11 custody on the indictment?

12 A. I'm saying he and Peter Young were detained at the same  
13 time and then they went their separate ways.

14 Q. Which they were entitled to do because they had not been  
15 indicted; correct?

16 A. I don't know what their conditions of release were, or if  
17 there were ever state charges filed against them.

18 Q. And if there were no state charges filed, you don't know  
19 anything -- you don't know whether state charges were filed?

20 A. That's correct.

21 Q. You don't know whether they failed to appear or do  
22 anything that was required of them; correct?

23 A. That's correct. I just know they cannot be located.

24 Q. Do you have any evidence whatsoever that Lauren Weiner in  
25 this case ever visited any of the websites that you've referred



1 to in your testimony?

2 A. No, I don't.

3 Q. Do you have any evidence as to what it is -- first of all,  
4 do you know the names of the people that may have visited her?

5 A. No.

6 Q. Do you know whether -- how is it that you know about  
7 people that may -- strike that. Strike that.

8 In the Ryan Lewis case, did you not testify that Ryan  
9 Lewis was approached by people that were involved in prisoner  
10 support?

11 A. Yes.

12 Q. And you also gave testimony there concerning the  
13 possibility of flight risk for Ryan Lewis?

14 A. Yes.

15 Q. And are you aware now that Ryan Lewis has been released on  
16 bond?

17 A. I was aware that after the hearing he was held until the  
18 case progressed some more.

19 Q. I'm sorry, I didn't hear his answer.

20 A. I understood that after the hearing I testified on, Ryan  
21 Lewis was held without bond. At a later date, as the case  
22 progressed, and more evidence was gathered, he was then granted  
23 bond.

24 Q. As more evidence was gathered against him, leading him to  
25 plead guilty to a crime for which he faces between five and six

1 years in prison; correct?

2 A. I have no information as to the further investigation with  
3 Ryan Lewis. I participated in the search of his parents'  
4 residence where he lived, and I testified in court.

5 Q. And --

6 THE COURT: Let me see counsel at the sidebar for a  
7 moment.

8 (Inaudible sidebar discussion.)

9 BY MR. DRATMAN:

10 Q. Do you know whether or not Lauren Weiner in this case  
11 invited any of the people that visited her to actually visit  
12 her?

13 A. No, but I can read you a statement from a website which  
14 talks about the results of the visit with all three  
15 individuals.

16 Q. Can I see what the witness is going to -- has now referred  
17 to?

18 THE COURT: Yes. Please.

19 (Pause to examine document.)

20 MR. DRATMAN: This is an alert and updates by someone  
21 who --

22 BY MR. DRATMAN:

23 Q. First of all, do you know who wrote this?

24 A. No, I just know that it's signed Sac. Prisoner Support.

25 Q. And do you know whether -- first of all, is there anything

1 in here concerning assisting Lauren Weiner in escaping?

2 A. No. There's a comment about now might not be the right  
3 time to do anything more than write her letters and offer  
4 support, I believe.

5 Q. In fact, all it says is that we've been in contact with  
6 all three prisoners, and they have all requested prisoner  
7 support including receiving letters, which are, as you know, at  
8 the Sacramento County Jail, are all reviewed at the Sacramento  
9 County Jail by staff there; correct?

10 A. That's correct.

11 Q. Well, which you also know can be received at the  
12 Sacramento County Jail, and assistance in obtaining legal  
13 counsel. Is that what this says? Is the sum and substance  
14 of --

15 A. Those words are there; yes.

16 Q. And is there anything in here that suggests that this  
17 prisoner support organization is going to assist her in fleeing  
18 the jurisdiction should she be granted condition -- or release  
19 on conditions?

20 A. No, but there is something that suggests that you should  
21 wait until the prisoners and their lawyers have had an  
22 opportunity to develop defense strategies before organizing any  
23 activities on their behalf other than letter writing.

24 Q. And is there anything in there that says that Lauren  
25 Weiner asked for such activities to be organized on her behalf?

1 A. No, it's stated that you are not supposed to ask that, but  
2 right now, they've all requested prisoner support, including  
3 receiving letters, books, and assistance in obtaining legal  
4 counsel.

5 Q. Is there anything in there that indicates they would  
6 assist Lauren Weiner in somehow breaking the law should she be  
7 released on conditions?

8 A. No.

9 Q. You have a resume that indicates a series of books that  
10 should be read in connection, or that are of interest in  
11 connection with your -- with this -- the items that you've  
12 testified about.

13 A. They're all books that I have read and there's others that  
14 aren't on there yet.

15 Q. Well, are there any books on the list that I was provided  
16 that -- and that's your current resume; correct?

17 A. It's just a short bio.

18 Q. Are there any books by Garrett Jenson on there?

19 A. No.

20 (Pause - conferring with counsel.)

21 MR. DRATMAN: If I could just have a moment, Your  
22 Honor.

23 THE COURT: For logistical purposes, Mr. Lapham, this  
24 was your last witness, Ms. Endrizzi?

25 MR. LAPHAM: Yes, Your Honor.

1 MR. DRATMAN: Your Honor, I have no further  
2 questions.

3 MR. LAPHAM: Your Honor, I have just one question.

4 THE COURT: One, and then that's it.

5 MR. LAPHAM: First of all, I'd move that document  
6 into evidence regarding the support network so you can take a  
7 look at if you want.

8 THE COURT: The one that was just referenced?

9 MR. LAPHAM: Yes.

10 THE COURT: The website? Government's Exhibit 2 will  
11 be the website that was just referenced.

12 MR. WEINER: Judge, just for the record, we object.  
13 There's still absolutely no nexus between anything this man  
14 said and our client, and we move to strike all of his  
15 testimony.

16 THE COURT: I have that under submission.

17 MR. WEINER: Yes.

18 REDIRECT EXAMINATION

19 BY MR. LAPHAM:

20 Q. And my one question is, Mr. Naliboff, would you expect on  
21 any document as public as that website for the group to suggest  
22 any overt criminal activity is going to happen?

23 MR. WEINER: Objection, Your Honor, it calls for pure  
24 speculation. It's irrelevant what he suspects.

25 THE COURT: It's really argument, Mr. Lapham. You

1 can argue that to me whether they're going to put in will help  
2 you break out of jail right on their website, that would be  
3 unusual.

4 MR. LAPHAM: Fair enough.

5 THE COURT: All right. Thank you, you may step down.

6 (Witness excused.)

7 MR. WEINER: Your Honor, in order to save time, and I  
8 appreciate you giving both sides an ample opportunity, more  
9 than ample opportunity to argue our case, we have the parents  
10 of the defendants who are here. Both have flown in from New  
11 York. In order to save time, I can give a proffer, and if the  
12 government wants to ask anything -- all they're going to  
13 testify to is essentially what's the Pretrial Services report,  
14 and that is this:

15 They have been married for 20 years. They are in the  
16 process of a divorce. They are friendly. They care about each  
17 other. This is not at all -- there's no animosity in this.  
18 There's no separation order. They haven't even been to court.  
19 They've worked it out, and the way that they've worked it out  
20 is Jesse Weiner, the gentleman -- will you stand up, Jesse,  
21 please?

22 Jesse, as part of their settlement, gave money to his  
23 wife, and she purchased a home. The purchase price of the home  
24 was \$980,000. The appraisal shows the fair market value is a  
25 million dollars. There's no encumbrances on the home.

1           The defendant's mother, Betsy Weiner, who is here in  
2 court, lives in that home. Both of them will state, and by the  
3 way, Jesse Weiner has a home with a fair market value of about  
4 \$2 million of which he has equity of \$500,000.

5           Both of them, if Your Honor will follow our proposal,  
6 will state that they are more than happy and want their  
7 daughter to be in the custody of the mother. The mother and  
8 the father live only a few minutes from each other, and see  
9 each other regularly and will, and our proposal is that she be  
10 released to the custody of her mother. The mother will post  
11 the house under whatever conditions Your Honor wants with the  
12 understanding that the defendant, who is 20 years old, will not  
13 leave the house absent permission from Pretrial Services,  
14 whether it's to go to the doctor, or whatever else.

15           And then I -- of course, we're prepared to argue  
16 further, but that's all we would present to the Court as far as  
17 actual testimony. And neither of the parents have ever had any  
18 problem with the law whatsoever. Of course our client hasn't  
19 either.

20           THE COURT: I need to ask them some questions which  
21 I'll do here shortly.

22           MR. WEINER: All right.

23           THE COURT: It won't take long. If I could have the  
24 parents come forward? And by asking these questions, I don't  
25 mean I've made my decision, but I've got to ask the questions.

1 (Pause - Mr. and Mrs. Weiner come forward.)

2 MR. WEINER: Would you like to ask them, or would you  
3 like me to?

4 THE COURT: I will.

5 MR. WEINER: All right, sir.

6 THE COURT: All right. Just stand by the podium, if  
7 you would, is fine, and just go ahead and state your name  
8 again.

9 MRS. WEINER: Elizabeth Weiner.

10 MR. WEINER: And Jess Weiner.

11 THE COURT: Do you understand that you both might be  
12 called upon to post property as security for your daughter's  
13 appearance?

14 MRS. WEINER: Yes, sir.

15 MR. WEINER: Yes.

16 THE COURT: And do you understand that if this were  
17 to come about, and I'm not saying it will, but if this were to  
18 come about, you would post your property as security for  
19 compliance with all terms and conditions of release?

20 MRS. WEINER: Yes, sir.

21 MR. WEINER: Absolutely.

22 THE COURT: And do you understand that this would not  
23 just mean appearance, it would mean any term and condition of  
24 release that's posted?

25 MRS. WEINER: Yes, sir.



1 MR. WEINER: Absolutely.

2 THE COURT: So for example, if there were a condition  
3 that she not associate with certain persons, or certain groups,  
4 and she violated that, you could lose your property because she  
5 would have materially breached a term and condition of release?

6 MRS. WEINER: Yes, sir. I understand.

7 THE COURT: All right. Do you have any questions  
8 about your responsibilities in this? Or about the posting of  
9 the property?

10 MRS. WEINER: No, sir.

11 THE COURT: And then you understand it's more than  
12 just posting property to secure appearance? In other words,  
13 it's all the things --

14 MRS. WEINER: Yes, sir.

15 THE COURT: -- that I've said?

16 MRS. WEINER: Yes, sir.

17 THE COURT: All right. Ms. Endrizzi and Mr. Lapham,  
18 do you have any questions?

19 MR. WEINER: Your Honor, may I ask just a few follow-  
20 up?

21 THE COURT: Yes, go ahead.

22 MR. WEINER: Are you prepared, Mrs. Weiner, to take  
23 the responsibility for your daughter if she is released, and to  
24 be at home with her?

25 MRS. WEINER: Yes, sir.

1 MR. WEINER: Are you going to be at home each day?

2 MRS. WEINER: If that's what the Court wants, I will.

3 MR. WEINER: It does not pose any problems to you?

4 MRS. WEINER: No, sir.

5 MR. WEINER: Now, I know -- tell the Court very  
6 briefly, I don't want to lead, but in 10 seconds or less, you  
7 were employed for about 25 years at one job; is that right?

8 MRS. WEINER: Correct.

9 MR. WEINER: Right in the area where you live, is  
10 that right?

11 MRS. WEINER: Twenty miles away.

12 MR. WEINER: Okay. And you're now working -- you're  
13 now at home?

14 MRS. WEINER: I work three days a week for that job.

15 MR. WEINER: Okay. And are you prepared, and would  
16 you be willing if the required you to give up that three day a  
17 week job to be at home with your daughter?

18 MRS. WEINER: Yes.

19 MR. WEINER: And what do you propose to do at home  
20 everyday with your daughter if she's released to your custody?

21 MRS. WEINER: Make quilts.

22 MR. WEINER: Okay. Do you feel that your daughter is  
23 uncontrollable in any way?

24 MRS. WEINER: No, sir.

25 MR. WEINER: If the judge orders her not to be on the

1 internet, not to accept phone calls, not to accept visitors, do  
2 you have any question but that she would be able to comply with  
3 the judge's order?

4 MRS. WEINER: Yes, sir. We have no trouble.

5 MR. WEINER: Do you have any -- would you have a  
6 problem if your daughter was to violate in contacting me as an  
7 officer of the Court to advise me so that I could take whatever  
8 action is appropriate?

9 MRS. WEINER: I would have no problem with it, no.

10 MR. WEINER: Would you hesitate at all?

11 MRS. WEINER: Not at all.

12 MR. WEINER: Okay. Jesse Weiner, my question to you,  
13 sir. Would you visit your daughter on a regular basis?

14 MR. JESSE WEINER: Absolutely.

15 MR. WEINER: Do you have any question that she  
16 would -- are you concerned at all that she would run and leave  
17 you and your wife basically penniless?

18 MR. JESSE WEINER: Absolutely not.

19 MR. WEINER: Okay. Do you feel that she's  
20 controllable?

21 MR. JESSE WEINER: Absolutely.

22 MR. WEINER: Do you feel she poses a threat or a  
23 danger to the community?

24 MR. JESSE WEINER: Absolutely not.

25 MR. WEINER: Is she a flight risk?

1 MR. JESSE WEINER: No.

2 MR. WEINER: Will she run?

3 MR. JESSE WEINER: No.

4 MR. WEINER: Sir, you are in possession of her  
5 passport; is that correct?

6 MR. JESSE WEINER: I am.

7 MR. WEINER: You took a family trip together; is that  
8 right?

9 MR. JESSE WEINER: Yes.

10 MR. WEINER: If the judge requires it, will you send  
11 that passport either --

12 MR. JESSE WEINER: Absolutely.

13 MR. WEINER: -- directly to a Pretrial Services  
14 officer, or to me, or to the Court, or the prosecutor, whatever  
15 the judge requires?

16 MR. JESSE WEINER: Yes.

17 MR. WEINER: Any problem?

18 MR. JESSE WEINER: No problem.

19 MR. WEINER: Okay. Thank you. I have no further  
20 questions. Why don't you all wait here, and the prosecutor may  
21 wish to ask questions of you.

22 THE COURT: All right. Mr. Lapham, any questions?  
23 And what I'm going to do is swear these witnesses, and then get  
24 them to incorporate their previous answers into that sworn  
25 testimony if that's what they want to do. But go ahead and ask

1 your questions, Mr. Lapham, I'll do it all at one time.

2 MR. LAPHAM: No, I don't think I have any questions.

3 Thank you Mr. and Mrs. Weiner.

4 THE COURT: All right. I'm going to swear you to  
5 tell the truth. Would you both raise your right hands?

6 (Mr. and Mrs. Weiner comply.)

7 THE COURT: And do you swear that the testimony that  
8 you're about to give me will be the truth, the whole truth and  
9 nothing but the truth so help you God?

10 MRS. WEINER: Yes, sir.

11 MR. JESSE WEINER: Yes, I do.

12 THE COURT: Now, I asked you questions; correct? I  
13 did previously.

14 MRS. WEINER: Yes, you did.

15 THE COURT: And defense counsel asked you questions?

16 MRS. WEINER: Yes.

17 THE COURT: And you gave answers to those questions?

18 MRS. WEINER: Yes.

19 THE COURT: Are all those questions true -- I'm  
20 sorry, are all those answer to the questions true under --

21 MRS. WEINER: Yes.

22 THE COURT: -- and you realize you're giving that  
23 response under penalty of perjury?

24 MRS. WEINER: Yes.

25 THE COURT: And you incorporate all those answers and

1 all -- to those questions into this sworn testimony?

2 MRS. WEINER: Yes.

3 MR. JESSE WEINER: Yes, I do.

4 THE COURT: All right. Mr. Lapham, anything you'd  
5 like to add or --

6 MR. LAPHAM: No, Your Honor.

7 THE COURT: Counsel?

8 MR. WEINER: Nothing.

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

10 MR. JESSE WEINER: Thank you.

11 THE COURT: Anything else from the defense?

12 MR. WEINER: If Your Honor wants to hear brief  
13 argument we'd love to make a very, very brief argument. I know  
14 Your Honor has paid extraordinary attention, that's obvious by  
15 your questions and comments. Whatever Your Honor wishes.

16 THE COURT: I'm not sure that we could do it justice,  
17 but I want to make sure that you have had enough time to  
18 present whatever you would like to present here. I mean, you  
19 got it at about quarter till 5:00 here today. It didn't give  
20 you much time.

21 MR. WEINER: Well, Judge, I live in Miami, and I flew  
22 in after returning from out of the country last night, so I  
23 just flew in this morning, and I have to go back because I have  
24 a -- my own trial schedule of course. Now, I'll do whatever  
25 Your Honor says, and if Your Honor is thinking of waiting till

1 Monday, or tomorrow, of course I'll do it, but I can complete  
2 argument in three minutes, really, three minutes, not lawyer's  
3 time.

4 THE COURT: All right. And Mr. Lapham, Ms. Endrizzi,  
5 you have three minutes, equal?

6 MS. ENDRIZZI: Yes, Your Honor, please.

7 THE COURT: All right. Go ahead. I'll take  
8 it -- the government has the burden, but I'll let you go first.

9 MR. WEINER: Thank you.

10 DEFENDANT'S ARGUMENT

11 MR. WEINER: Your Honor, our argument in a nutshell  
12 is this. You heard all of the testimony. Let's assume in a  
13 light most favorable to the government that our client, a 20  
14 year old young lady with no prior criminal history made the  
15 mistake of involving herself with these people.

16 The testimony you heard basically shows she was  
17 there, on a few occasions she contributed some advice. Nothing  
18 ever came of it. She is not a danger, and she is not a flight  
19 risk. This is her first and only involvement with the court  
20 system. She's got parents of impeccable reputation, long-  
21 standing in their communities with substantial assets who have  
22 come before this Court and stated that they will comply with  
23 each and every term that is imposed by this Court.

24 When pretrial intervention -- when pretrial detention  
25 was argued from the Department of Justice to get Congress to

1 agree to it, they were talking about Columbian hit men, mafia  
2 people and others.

3 I don't think they had in mind detaining a 20 year  
4 old kid who at the best situation, or the worst, had terrible  
5 judgment in affiliating with people who were far more  
6 experienced in moving a cause and an issue, especially the  
7 government informant, who I'd suggest -- maybe we weren't able  
8 to show, because we don't have the evidence yet, but by the  
9 answers given by the agent, if our client had any role, it was  
10 a minor role as a follower who was induced, who was brought  
11 along, and who made some stupid comments.

12 Other than that, I'd respectfully suggest that if you  
13 grant her bond, you'll be doing what Congress had in mind.  
14 It's the fair and the proper thing to do. And when Your Honor  
15 let the prosecutors go into the comments about an unsolicited  
16 visit, because there's no evidence she requested it, what  
17 happens is she's arrested, there's publicity that she's  
18 arrested with other people, and some of these kids appear and  
19 say, hey, can we get letters for you, can we send you a  
20 magazine or a book?

21 She doesn't know anything. She's never had any  
22 contact with the criminal justice system.

23 Now, Your Honor, I can also say this as -- not only  
24 as her lawyer, but as her relative, I know these parents.  
25 There is no question she's not going to flee. She will face





1 MS. ENDRIZZI: Your Honor, this is a presumption case  
2 based upon the charges that have been levied, and I think we  
3 need to take that into consideration. I also think we need to  
4 take into consideration the standard here, it's a preponderance  
5 of evidence, more likely than not.

6 And I'd like to go through first flight risk, and  
7 then danger.

8 Flight risk. We've had testimony about her aliases,  
9 Ren, and Renegade, and Fire Fly. We have testimony about  
10 goodbyes to her family, cutting ties, and then leaving for  
11 California. Yes, she was going to spend Christmas with her  
12 family, but then she was out.

13 We have testimony regarding the need for alibi and  
14 that Weiner herself had just suggested farm workers and  
15 welding, being welders as their alibi.

16 We have testimony about the defendant hitchhiking and  
17 you have her words in front of you, about hitchhiking, meeting  
18 with others in different states, and different cities, crashing  
19 with others, no mention of returning to family. She's  
20 unemployed, and she has not lived with her parents during the  
21 entire college period. She was out of the city. They had no  
22 idea -- there's no testimony that they have any idea what she  
23 was doing in Philadelphia, and that was where she was based.

24 Now, in terms of the danger, we have statements about  
25 specific sites that they wanted. We have statements and

1 observations of them doing reconnaissance of these sites. We  
2 have not heard any testimony -- there was argument made, I  
3 would say, by counsel, that she wasn't involved in this because  
4 McDavid was making the statements, but we don't have any  
5 objections, we don't have any withdrawals.

6           The defendant participated in mixing the bleach, and  
7 that is on video. The defendant has made statements to the  
8 group about her participation and direct action, yes at Glaxo  
9 and throwing bricks. Defendant volunteers to provide resources  
10 to the group, the putty, her mother's credit cards to buy  
11 supplies.

12           Defendant purchased the book that was used for the  
13 explosives recipe. She purchased it from the Wooden Shoe Book  
14 Store. Defendant, as I said, participated in reconnaissance.  
15 Yes, we have ELF natures. Right. There's statements about how  
16 they want to be a part of ELF, and they're doing this on behalf  
17 of ELF, and there is testimony by Mr. Naliboff that ELF in  
18 itself has means and supports flight, and supports certain  
19 actions in order to minimize detection, and minimize  
20 identification by police and being arrested.

21           What I would suggest to you here, Your Honor, is that  
22 we focused a lot on evidence that shows -- we focused on the  
23 defendant's statements and what she's done. Now, true, we  
24 don't have the tapes, because this is three days afterwards.  
25 We didn't listen to the tapes, they don't have the tapes. I'm

1 certain once we get the tapes if she is released, we will  
2 reopen.

3 But we don't have testimony in terms of why she won't  
4 run. I mean, the idea being -- I'm sure her parents are  
5 lovely. But she is in Westchester County, she is in Pound  
6 Ridge, you hop on Metro North, you get yourself down to the  
7 city, you can be gone by AmTrak, Greyhound, Newark  
8 International Airport, JFK International Airport for \$20 from  
9 Pound Ridge.

10 Pretrial Services is giving her the run of the State  
11 of New York. I would say if you were going to think about even  
12 possibly releasing her, it would be the Southern District of  
13 New York, White Plains Division so that she has no way of  
14 getting into the city.

15 THE COURT: Let me tell you what I'm struggling with,  
16 Ms. Endrizzi, and --

17 MS. ENDRIZZI: Sure.

18 THE COURT: -- surely all of the things that you have  
19 said, there's probable cause plus in this case in terms of her  
20 intent to be a part of this conspiracy, statements that she  
21 either acquiesced in, or listened to, or even made that are in  
22 the complaint, and I've heard otherwise, would certainly  
23 indicate a very malicious frame of mind.

24 The question is, has she been shocked out of that by  
25 the last three days, or the last four days in the Sacramento

1 County Jail? Now, certainly they would be amazed over there to  
2 know that they have such rehabilitative effect that at three  
3 days in jail you're cured, and that's all it takes.

4 I think the more important question is was when  
5 she -- could she look in her parents' eyes and see the anguish  
6 and the angst and the hurt, and knowing that she would cause  
7 them if she were flee, knowing that she's caused them that  
8 already, has that been enough of a shock?

9 Perhaps. We're all mind readers here, and certainly  
10 indications that you rely on, very plausible, something that I  
11 would need to think about in terms of not so much flight risk,  
12 but in terms of she's so ingrained in this movement, however  
13 organized, or disorganized it is, that she'll say it's just the  
14 price of being in this movement, goodbye million dollar  
15 property, I'm out, I'm going to cause some more damage here.

16 You know, is tat the case on the one end of the  
17 spectrum, or has she been brought to her senses, so to speak,  
18 and --

19 MS. ENDRIZZI: Your Honor, I think it's unfair --

20 THE COURT: -- that's what you have to think about.

21 MS. ENDRIZZI: I'm sorry. I think it's kind of  
22 unfair to single her out as this young 20-year-old girl and  
23 because she's got wealthy parents, maybe she's been shocked by  
24 the jail, and she should be, you know, maybe she's turned over  
25 her leaf because she is so scared.

1           But the question is also, is she so scared of the  
2 fact that she is facing a five-year minimum term, a possible  
3 terrorism enhancement that gives her up to 12 years in jail,  
4 that she won't flee, that her experiences in jail have  
5 frightened her so much that it is the situation where she will  
6 do anything to get out of jail.

7           Now, you've listened to Mr. and Mrs. Weiner. They  
8 definitely have property, they definitely have money. You also  
9 have to consider the converse of that. Well, what's a million  
10 bucks to my parents when they have so much? And we don't know  
11 what their net worth is. We don't know whether a million  
12 dollars is actually a significant sum for them.

13           And I would suggest to you that maybe perhaps Ms.  
14 Weiner is making calculations in her head, and I don't think,  
15 given this presumption, and the crime of violence with which  
16 she is charged, we should take that gamble, and I think that  
17 the defense has not met their burden of overcoming the  
18 presumption to show that she won't flee.

19           THE COURT: Okay. Be careful. They have a burden of  
20 production, you have the burden of proof.

21           MS. ENDRIZZI: Yes. Sorry.

22           THE COURT: But let me ask you this: is the  
23 presumption irrebuttable?

24           MR. LAPHAM: No.

25           THE COURT: No, it's not. I mean, I asked that

1 rhetorically. No, it's not. And what would rebut it? What  
2 could rebut a presumptive flight or a danger to the community?

3 MS. ENDRIZZI: Well, I mean, what could rebut it  
4 would be --

5 MR. LAPHAM: Your Honor, if I may?

6 THE COURT: Quickly, but lack of criminal record, Mr.  
7 Lapham? Would that be one thing?

8 MR. LAPHAM: Well, I think the way we usually judge  
9 cases like this, we look at ties to the community, we look at  
10 family ties, we look at employment and work history, and I  
11 think there is some mischaracterizations in the presentence --  
12 in the Pretrial Services report in that respect.

13 I think we've heard today that whatever family ties  
14 we thought she might have are not as strong as we thought at  
15 the start o the hearing because she was making plans of  
16 jettisoning her family and going underground. She talked  
17 specifically about that.

18 She was flunking out of college, or at least not  
19 doing well in college, and had planned on leaving that  
20 environment. So we're -- if we apply the standard we apply to  
21 most individuals who come before this Court, especially with a  
22 case involving a presumption, I think the burden has been  
23 carried by the government, and it has not been overcome by the  
24 defense.

25 It's not an irrebuttable presumption, but I haven't

1 seen anything from the defense that is sufficient to overcome  
2 that presumption.

3 THE COURT: All right. I have your arguments. I  
4 will take the matter under submission. Nobody -- I'll have a  
5 decision out by the end of next week.

6 I'm also going to participate in the hearings next  
7 Tuesday with the other defendants. If there's more than I need  
8 from the defense, or you want another opportunity, you'll have  
9 that, but I plan on getting a written decision out by the end  
10 of next week, and so have a good trip back.

11 MR. WEINER: Thank you.

12 MS. ENDRIZZI: Thank you, Your Honor.

13 MR. LAPHAM: Thank you, Your Honor.

14 MR. WEINER: And Judge, whatever you decide, I really  
15 feel you gave us a chance to argue, and I appreciate it very  
16 much.

17 THE COURT: Thank you. Thank you.

18 (Whereupon the hearing in the above-entitled matter was  
19 adjourned at 5:08 p.m.)

20 --o0o--

21 CERTIFICATE

22 I certify that the foregoing is a correct transcript from  
23 the electronic sound recording of the proceedings in the above-  
entitled matter.

24 \_\_\_\_\_  
25 Patricia A. Petrilla, Transcriber  
AAERT CERT\*D-113

July 24, 2008